

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**

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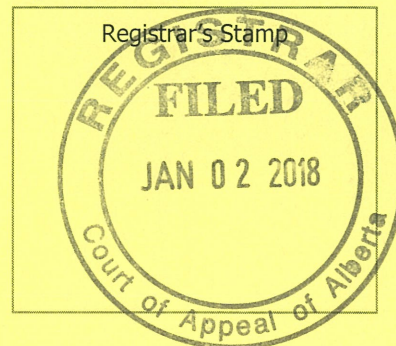
Appeal from the Decision of  
The Honourable Mr. Justice R.P. Belzil  
Dated the 13<sup>th</sup> day of October, 2017

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EXTRACTS OF KEY EVIDENCE OF THE APPELLANT  
**Volume 1 of 2**  
Pages A1 – A296

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Registrar's Stamp







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**COURT OF APPEAL OF ALBERTA**

**Form AP-5**

[Rule 14.87]

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BERTHA L'HIRONDELLE and MARGARET WARD, as Trustees for  
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RESPONDENT:

OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL:

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Appeal from the Decision of  
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EXTRACTS OF KEY EVIDENCE OF THE APPELLANT

**Volume 1 of 2**  
Pages A1 – A296

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## EXTRACTS OF KEY EVIDENCE

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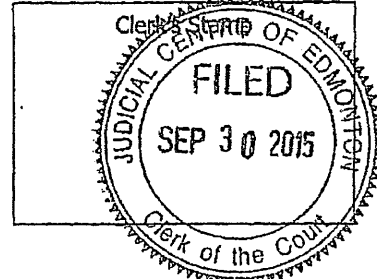


Form 49  
Alberta Rules of Court  
Rule 13.19

COURT FILE NO. 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON



IN 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")

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**

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**AFFIDAVIT OF CATHERINE TWINN**

**SWORN ON THE 23<sup>rd</sup> DAY OF SEPTEMBER, 2015**

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 was appointed as trustee of the 1985 Trust on December 18, 1986 and of the 1986 Trust on August 15, 1986. I have continuously maintained my position as a trustee since these appointments.
3. It is my understanding that the Trusts will have a collective asset value of approximately \$213 million dollars by 2015.

### BACKGROUND

4. My late husband was Walter Patrick Twinn. He passed away on October 30, 1997. My husband was the Chief of the Sawridge Indian Band (the "Band") from 1966 until his death.
5. The Band is comprised of three family groups, the Twin(n)s, the Potskins and the Wards. The majority of the Band membership of approximately 44 members is comprised of the Twin(n) family. Only 3 of the 44 Band members are minor children.
6. The trustees of the Trusts have taken the position that membership in the Band, as determined by Band Council, is definitive of beneficiary status under the 1986 Trust. There has not been an independent legal determination of the beneficiaries of the 1985 Trust or a process put into place to make this determination.
7. Paul Bujold has been the Administrator of the Trusts since September 9, 2009. This is a salaried position that is contracted for by the Trusts. Mr. Bujold is not a trustee of the Trusts and has no voting power. His position is at the discretion of the trustees.
8. Brian Heidecker has been the Chair of the Trusts since May 10, 2010 (the "Chair"). This is also a position that receives financial compensation. Mr. Heidecker is not a trustee of the Trusts and has no voting power. His position is at the discretion of the trustees.
9. The current trustees of the Trusts are:
  - (a) Myself;
  - (b) Bertha L'Hirondelle (also a paid elected elder of the Band);
  - (c) Roland C. Twinn (also the elected Chief of the Band);
  - (d) E. Justin Twin (also an elected Band Councillor), appointed January 21, 2014; and
  - (e) Peggy Ward, appointed August 12, 2014.
10. As 3 out of the 5 trustees are also elected officials of the Band, these individuals are duly responsible for administering and managing the Trusts, but also have the ability to determine or influence Band membership and thus who is a beneficiary under the 1986 Trust.

### HISTORY OF TRUSTS

11. Prior to the subject Trusts, various assets of the Band were held under prior trust deeds starting in 1982. Prior to 1982, the assets of the Band were held in a bare trust by the Band Council for the benefit of the Band.
12. As my late husband was the Chief of the Band in the 1980s, he was the settlor of the Trusts.
13. It is my understanding that under prior trust deeds, elected officials of the Band were automatically designated as Trustees. The terms of the subject Trusts were a marked departure from this practice, as they do not provide for the automatic appointment of elected officials as trustees of the Trusts. The deeds of settlement for each of the subject Trusts provide that a maximum of two of the trustees may be non-beneficiaries of the Trusts and a minimum of three trustees must qualify as beneficiaries under each Trust.

14. My late husband and I had many conversations regarding this change in practice. My late husband expressed concerns about having trustees of the Trusts who were also elected officials of the Band and was attempting to move away from such a practice.

#### Recent Appointments to Trusts

##### Justin Everret Twin-McCoy ("Justin")

15. In or around January 8, 2014, I was notified by Mr. Bujold that Walter Felix Twin intended to resign as a trustee of the Trusts.
16. At the next trustee meeting on January 21, 2014, six motions were presented, without prior notice to me, that accepted Walter Felix Twin's resignation and appointed Justin Everret Twin-McCoy in his place and sought to make a transfer of the Trusts' assets to the new trustees. These motions were approved by Bertha Twin-L'Hirondelle, Clara Twin-Midbo and Roland Twinn. I did not consent to this appointment and instead raised questions, including the need for a proper succession planning process and whether Justin was a beneficiary under the 1985 Trust, which was a requirement as Walter Felix Twin was a beneficiary trustee.
17. Bertha Twin-L'Hirondelle and Clara Twin-Midbo were Roland Twinn and Justin's aunts. I am Chief Roland Twinn's step mother and Justin's aunt. Bertha and Clara do not qualify as beneficiaries under the 1985 Trust. Under the 1985 Trust, Band membership is not synonymous with beneficiary status as it is under the 1986 Trust.
18. While the deeds of the Trusts do not require unanimous approval, to my knowledge, in all past trustee votes to appoint a successor trustee, it was a practice and policy that the decision be unanimous. Attached as **Exhibit "A"** to my Affidavit is a draft document tendered by the Chair at the September 17, 2013 trustee meeting that speaks to this issue at paragraph 7(b)(ii)(2) wherein it states "Gives each Trustee a veto regarding Trustee succession" (the "September Chair Agenda").
19. At the time of and following Justin's appointment, I raised concerns with the other trustees, the Chair and Mr. Bujold regarding whether Justin was an eligible beneficiary under the 1985 Trust. Approximately two months after Justin's appointment, I received a letter from Mike McKinney dated March 5, 2014 that stated that Justin qualified as a beneficiary under the 1985 Trust. Mike McKinney is a lawyer employed in house by the Sawridge First Nation. His employment is determined by the Chief and Council of which, Roland Twinn is the Chief and Justin is a Council member. Roland Twinn and Justin constitute a majority of the three person Band Council.
20. I relayed my concerns to the Chair that it was essential that an independent legal opinion was obtained. I proceeded to obtain the opinion of Larry Gilbert, who is a lawyer and was the former Registrar of Indian Status and Band membership for Indian and Northern Affairs Canada. The opinion of Mr. Gilbert dated July 2, 2014 concluded that Justin did not qualify as a beneficiary under the 1985 Trust, despite Justin being a Band member. Attached as **Exhibit "B"** to my Affidavit is a copy of Mr. Gilbert's opinion.
21. To date, from my perspective, the issue of whether Justin is a beneficiary under the 1985 Trust has not been resolved and his appointment to replace Walter Felix Twin is a violation of the terms of the 1985 Trust deed.

**Clara Midbo ("Clara")**

22. On July 13, 2014, Clara Midbo passed away from cancer. I was not aware that she was terminally ill and no prior disclosure or discussion on this matter had occurred at any trustee meetings I was present at, including the June 10, 2014 meeting where trustee succession was an agenda item.
23. As a result of her death, Mr. Bujold called an emergency trustee meeting for August 12, 2014 for the stated purpose of appointing a replacement trustee for Clara.
24. On August 6, 2014, I emailed Mr. Bujold, the Chair and the three other trustees, asking who was being proposed as a replacement trustee. I did not receive a response.
25. On August 12, 2014, I proposed that an independent outside professional trustee be appointed to fill the vacancy. This proposal was met with criticism by Justin and Roland Twinn. Roland Twinn stated that the Trusts' beneficiaries were unhappy with having outside directors for the corporations held by the Trusts and the sale of the Slave Lake hotel and further, the beneficiaries would not be supportive of having independent professional individuals appointed as trustees for the Trusts. This concerns me because a trustee ought not to fetter their discretion.
26. By way of background, in 2003 the control of the Sawridge Group of Companies was transferred to outside management from Band Council management because the Sawridge Group of Companies were in financial distress. Since the Sawridge Group of Companies were transferred to the control of outside management (2003) and directors (2006), they have financially recovered and avoided bankruptcy.
27. Despite my objections and proposal that an independent professional trustee be appointed who met a skills matrix I tabled, Peggy Ward, a Band member and a beneficiary of the 1985 Trust, was appointed by the other trustees as Clara's successor.
28. At the time of Peggy Ward's appointment, I was not aware of her past business, board, investment, financial and trust experience and what skill set and qualities she would bring as a trustee of the Trusts. I am deeply troubled with how and the circumstances in which this appointment was conducted, that an individual would be elected as a trustee of the Trusts without a resume being presented in support of her nomination, without regard to the need for independent, professional, expertise to modernize the Trusts and without due regard to other highly qualified and independent candidates whose resumes were tabled.

**Interaction between Political Interests and Trust Management**

29. For some time, I have been very concerned that the elected Band Council members and elders, who are also trustees of the Trusts, are allowing their political and/or personal agenda to influence their decision making as trustees. My concern is that elected Band Council members, with elected elder support, are approving Band members who are then beneficiaries of the 1986 Trust. This process does not appear to be fair, timely, unbiased or transparent, in addition, I am concerned that it is not Charter compliant. When my concerns are expressed to the other trustees, the Chair and Mr. Bujold, I am either ignored or met with varying degrees of ridicule, denial, reprisal and/or contempt. The following are various examples of why I am concerned:
  - (a) Ascertaining the Trusts beneficiaries in a fair, timely and unbiased process has been an ongoing issue and subject to an interlocutory decision by Justice D. Thomas on June 12, 2012. Attached as Exhibit "C" to my Affidavit is a copy of Justice Thomas' decision. I have observed examples of where family members of the elected Band Council, including

Chief Roland Twinn, were quickly added to the Band membership list, while membership applications of non-Twin(n) family members have remained unprocessed or denied.

- (b) It concerns me that individuals who are responsible for managing, growing and distributing the Trusts' wealth, are demonstrating bias in their capacity as members of Council in determining who is entitled to the Trusts' wealth. One particularly disturbing example of this behavior was when Chief Roland Twinn and Bertha Twin-L'Hirondelle voted against Alfred Potskin's membership application at a membership committee meeting after Chief Roland Twinn's sister, Arlene Twinn, told a story wherein a Potskin woman had allegedly been rude to their mother many years ago. Arlene Twinn finished the story with the statement "this is payback time". Immediately thereafter, Chief Roland Twinn and Bertha Twin-L'Hirondelle voted to not recommend Alfred Potskin's membership application. This recommendation and the application, then goes to Chief and Council who make the decision. As of August 10, 2014, Alfred Potskin's name is not on the Band list. I note that Chief Roland Twinn is placed in the dual role of recommending and deciding upon membership applications. I was present during this event. I also note that with the exception of only a few individuals, only the children of former and currently elected Band officials have been granted Band membership by Chief and Council, while other children have been discounted and/or discouraged from applying.
- (c) There have been instances where a ruling on Band membership has not been made in a timely manner, including one applicant who waited 28 years for a decision.
- (d) I have concluded that, based on information received from persons who may be entitled to beneficiary status under 1985 Trust rules, they will not be granted that beneficiary status as the trustees have never gone through a process of independently determining who qualifies as beneficiaries. Thus the eligible pool of candidates to be trustees who qualify as beneficiaries of both Trusts is greatly limited as a direct result of the decisions made by those trustees who are also elected officials of the Band and decide and restrict Band membership.
- (e) At the August 12, 2014 and September 14, 2014 trustee meetings, Chief Roland Twinn stated "we don't know who they are". This statement referred to the beneficiaries of the 1985 Trust. I advised him that those who qualify under the 1985 Trust rules can be ascertained, but the trustees have repeatedly failed to provide an independent process for such. The separate issue of whether those rules are valid is before Justice Thomas. This is just one example of the trustees refusal to make meaningful attempts to even discuss how to determine the proper beneficiaries of the 1985 Trust. At present, despite my insistence, the beneficiaries of the 1985 Trust have not been properly ascertained. The September Chair Agenda is a further example of how these issues have been tabled at trustee meetings for years however, despite the passage of time, no resolution to these issues has been reached. A further example of the trustees unwillingness to address these issues is shown in a January 19, 2009 letter to David Ward, Q.C. of Davies Ward Phillips & Vineberg LLP which is attached as **Exhibit "D"** to my Affidavit and was copied to the other trustees. In this correspondence, I raise the issue of trustee composition. Robert Roth from Fraser Milner Casgrain (as it was then known) had been retained to develop and deliver a process however Chief Roland Twinn failed to engage and the process terminated.

- (f) It has been made clear to me by the Chair, Mr. Bujold and the trustees who are also elected Band officials, that how membership is determined is not the concern of the trustees. I see two very separate issues that this statement raises, authority to determine membership and the trustee's confidence in the determination of the beneficiaries of the 1986 Trust.
- (g) As a trustee I have expressed concern about the Band membership lists, as this list determines the 1986 Trust beneficiaries, to date, this difficult issue has not been properly discussed and resolved by the trustees.
- (h) Benefits from the Trusts have only been extended to the 1986 Trust beneficiaries, which group, at present, only amounts to 44 individuals. This has been to the detriment of the 1985 Trust beneficiaries who can be ascertained under the 1985 Trust rules and who the settlor expressly intended to include and benefit. I believe that the 1985 Trust beneficiaries is much larger than the Band membership group who comprise the 1986 Trust beneficiaries.
- (i) Chief Roland Twinn and Band Council are the directors of Sawridge Resource Development. The Band is the shareholder and presumably, it is the Chief and Council who appoint directors. Chief Roland Twinn is also the CEO. As a result, Chief Roland Twinn directly controls the employment and monetary income of Band members employed by Sawridge Resource Development because he has the power to terminate or otherwise control their employment. As a result, he influences Band membership, employment and beneficiary status, amongst other things.
- (j) I am afraid that if I speak out at trustee meetings, that I will be faced with reprisal from or because of Chief Roland Twinn. I base this concern on the fact that Chief Roland Twinn has threatened to take my home on the Band reserve from me, without compensation, which could further result in my Band membership being revoked by the Chief and Council as a non-resident member. This is only one example of the many reprisals I have experienced from Chief Roland Twinn.
- (k) Despite my objections, a majority of the trustees authorized payment of the Band's legal fees in relation to the Band's participation in the matter before Justice Thomas regarding Band membership, despite the fact that such a payment is not allowed pursuant to the deeds of settlement.
- (l) I am concerned that the former counsel for the Band, Marco Poretti, is now acting as counsel for the Trusts at his new law firm, Reynolds Mirth Richards & Farmer.
- (m) It took years from 2003 when the Band Council's management contract was terminated to transfer and gather records relating to the Trusts' assets from Band Council (which was previously responsible for the management of the Trusts' assets). While efforts were still being made to obtain these records, Chief Roland Twinn and Bertha L'Hirondelle advised at a trustee meeting that some records had been burned.
- (n) Many of the trustees who were or are elected officials of the Band supported adding the Band as a beneficiary of the Trusts and developing "an innovative approach that will enable the construction of a new office and community center complex on the Sawridge First Nation". The September Chair Agenda attached as **Exhibit "A"** documents this request for a community center. I did not support this initiative for a number of reasons, including, the fact that a majority of the beneficiaries of the Trusts do not live on the

Sawridge reserve and this may not be the best use of Trust funds to benefit the beneficiaries. I am concerned that the community center initiative is an example of the elected officials political agendas interfering with their decision making as a trustee.

30. On or about January 12, 2009, the trustees of the Trusts executed a Code of Conduct for Trustees ("Code"). Attached as **Exhibit "E"** is a copy of the executed Code. I am concerned that the instances of conflict and breach of duty that are described in my Affidavit, violate the Code.

#### **ROLE OF BAND COUNCIL**

31. The elected members of Band Council and the Chief have a myriad of duties, powers and responsibilities. They deal with a wide range of issues that include political, social, legal, financial, economic, governmental, and personal issues relating to band members. Resources, including their allocation, are a challenge, along with overcoming many complex challenges and historical legacies.
32. First Nations groups are unique in the sense that members of each Nation are related to each other and have long histories as clans and families. As a result of these long histories, conflict amongst members often results.
33. Given the often competing interests already facing elected members of Council and the Chief, I am concerned that it is an inherent conflict of interest for elected members of Band Council or the Chief to also hold the office of a trustee of the Trusts. As members of Council, individuals are called to act in the best interest in the community, while as trustees, individuals are called to act in the best interests of the beneficiaries of the Trusts – these two interests have the potential to conflict. In addition, given that the elected officials have the ability to seriously impact an individual's livelihood, reputation, residency, membership and security in the reserve community and beyond, it makes it difficult for non-elected official trustees to take positions that are contrary to the majority, even if the trustee believes that taking the position is in the best interests of the beneficiaries. This is especially so when one of the elected officials is the Chief of the Band.
34. The enmeshment of elected officials of the Band acting as trustees of the Trusts creates the opportunity for and causes me to be fearful of reprisal if I question how beneficiaries are being determined or why persons who appear qualified and entitled are being excluded as beneficiaries. I have found it very stressful to voice concerns about my lack of confidence in the systems ascertaining beneficiary status. The trustees who are elected officials of the Band have an undue influence at the trustee table both by the fact they are a majority of the trustees and control decision making and also because of the deference shown to them by others and the difficulty in separating political interests from trustee decision making. Undue influence and conflict of interest are compelling reasons to employ the separation rule that elected Band officials and their employees and agents cannot be trustees. I find it hard as a non-elected trustee to cast a vote against the Chief and other elected Band officials who are trustees for fear of political, legal, financial and other repercussions. While all trustees should be considered equal, the Chief remains the Chief and in most cases is the primary influencer of decisions at trustee meetings.

35. It is my understanding and I do verily believe that many other First Nations in Alberta and Canada structure their trusts, or are in the process or restructuring their trusts, so that elected officials and their employees and agents, cannot sit as trustees or if so, are ex officio or a minority. Examples of this include:

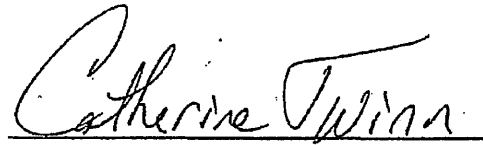
- (a) Samson Cree Nation;
- (b) Ermineskin First Nation;
- (c) Onion Lake Cree Nation;
- (d) Stoney Nakoda;
- (e) Mikisew Cree Nation; and
- (f) Saddle Lake Cree Nation.

36. 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 23<sup>rd</sup> day of September, 2015



A Commissioner for Oaths In and  
for the Province of Alberta





This is Exhibit "A" referred to in the  
Affidavit of  
Catherine Twinn  
Sworn before me this 23 day  
of September A.D., 2015  
[Signature]  
A Commissioner for Oaths in and for the  
Province of Alberta

**SAWRIDGE TRUSTS** KAREN A. PLATTEN, Q.C.  
BARRISTER & SOLICITOR  
A COMMISSIONER FOR OATHS  
IN AND FOR ALBERTA

**A VISION OF OUR FUTURE**

**2024 & 2038**

**"Kootsapatamik"**

**'Something we hope to see in the future'**

**'Our hopes, dreams, aspirations for the future'**

**September 16, 2013**

**Draft #4**

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## **1. Introduction**

"This strategic plan has been developed by the Trustees of the Sawridge in order to...."

To demonstrate that we understand that the status quo is not an option

To consolidate and modernize our efforts

To prepare for our reporting to the beneficiaries

Etc

## **2. Our Community in 2024 and in 2038**

A clear description of what we aspire to be

Fairly lofty but inspirational

"It's for the kids and the Grandkids"

Failure is not an option

## **3. Our History**

A brief over of our history and our evolution

## **4. Our Governance and Board**

The Trusts Deeds set out the powers and responsibilities. Etc etc

## **5. Our Stakeholders**

- a. The beneficiaries
- b. The Sawridge Group of Companies
- c. The Sawridge Trusts
- d. The Sawridge Trustees
- e. The Sawridge First Nation
- f. The communities in which we live, work and do business
- g. Lesser Slave Lake Regional Council

## **6. Our organizational tenets**

### **a. Our Vision**

*(As approved by the Trustees 01-05-15)*

"A healthy and harmonious community of beneficiaries united by relationships based on mutuality, reciprocity, respect, love, kindness, common interest and common good.

A community in which individuals seek to secure the good of others, and thereby secure their own.

A community which works together and supports the unique gifts and abilities of each member of the community thereby raising the community as a whole.

A community based on respect and affection.

A community based on the recognition that we are all spiritual beings

Seven phases of life and seven gifts: Love, Honesty, Humility, Respect, Truth, Patience, Wisdom.

Make our houses strong. Everything that lives"

### **b. Our Mission**

*(As approved by the Trustees 01-05-15)*

"The Trustees recognize that wealth is a concept that encompasses much more than financial prosperity. Our mission is to preserve and increase the wealth of our community in all respects -physically, socially and spiritually - in a balanced and sustainable way that respects the human and natural world. The Trustees will manage the trust funds to achieve this end for the benefit of the existing beneficiary group and future generations of beneficiaries."

### **c. Our Ethos**

The disposition, character, or fundamental values particular to a specific person, people, culture, or movement.

- i. We firmly believe that our mandate is to avoid activities that may lead to entitlement and dependency attitudes

ii. We believe that the capital of the Trusts should be preserved for future generations

iii.

d. Our Values

Values define who we are and who we want to be, both individually and as a group.

The highlighted portions of the Preamble to the Constitution of the SFN describe the existing values and aspirations of our Beneficiary group.

## Constitution of the Sawridge First Nation

### Preamble

We the Cree People of the Sawridge First Nation, having the inherent responsibilities, rights and powers to govern ourselves and the lands to which we belong, from time immemorial granted to us by the Creator for as long as the grass grows, the wind blows and the water flows, HEREBY DECLARE THE FOLLOWING TO BE OUR TRUTHS:

1. Family is the foundation of our Community. We value Community, Relationships, Cultural Survival, the Cree Language, and our Ancestors and will strive for the protection of these values.
2. We continue to live in family-based communities in the territory which we have occupied since time immemorial.
3. We have the obligation and responsibility to preserve our culture and language and to pass on our language, our cultural practices and our history to our descendants.
4. Our Land, waters, and natural resources are sacred and essential to the survival of our community.
5. As with all peoples, we have the inalienable right to the pursuit of happiness.
6. We will govern ourselves as a community which is safe, supportive, prosperous, friendly, and caring, and which will always be here for our grandchildren and descendants.

7. Our ancestors occupied these lands and utilized our waters and resources since time immemorial, living by the Natural Law which is encompassed by the traditional values of Love, Honesty, Kindness, Humility, Respect, Truth, Patience, Contribution, Responsibility, Self-Reliance, Independence, Accountability, and Wisdom.
8. Our inherent right to govern ourselves was recognized in Treaty #8 which was entered into between our ancestors and the Crown as original signatories.
9. Since the signing of Treaty #8, this inherent right has been distorted by the imposition of forced dependency, attitudes of superiority, systems of control, which, through this Constitution we disavow, denounce, and discard.
10. To ensure the preservation and advancement of the Sawridge First Nation we herein record the traditions, customs and practices of the Sawridge First Nation, formerly called the Sawridge Indian Band, in this, the Constitution of the Sawridge First Nation.
11. The Sawridge First Nation shall, in accordance with its customs and traditions, have an effective governing body which is transparent and accountable to the members of the Sawridge First Nation, which respects and preserves the rights of those members, and manages the property, resources, programs and services of the First Nation, and which is mandated to defend and protect our lands, waters, resources, air space, rights and Treaty relationship.
12. Reflecting an integral part of our tradition, our wish is that our governance be guided by Elders who have the respect and trust of the First Nation; who are known for their wisdom and good judgment; who demonstrate a significant commitment to and knowledge of the history, customs, traditions, cultural and communal life of the First Nation, and who are known for a character and lifestyle that does not cause detriment to the future welfare or advancement of our First Nation.

## 7. Our current realities

### a. Facts and Truisms

- i. This generation must initiate and practice new approaches
- ii. intergenerational trauma must be identified and accepted/acknowledged
- iii. Granddaughter said "Why am I so sad?"
- iv. Very strong sense of duty and obligation to kids
- v. Problems must be acknowledged before they can be fixed
- vi. First Nation culture based on very long term view "7 generations"
- vii. Unique blend of European religion and First Nation's spirituality

b. Reality check

- i. Very complex web of issues and challenges
- ii. Trust deeds act as a "Poison Pill"
  - 1. Precludes a hostile takeover
  - 2. Gives each Trustee a veto regarding Trustee succession
- iii. Stuck on fundamental issues
- iv. Not a harmonious group
  - 1. We basically have a Mexican Standoff
  - 2. Nobody can "win", therefore everybody "loses"
- v. How do we get to unanimity?
- vi.

c. Outstanding Issues

- i. Settling Catherine's accounts
- ii. Trustee evaluation process
- iii. Trustee succession
- iv. Identifying our beneficiaries
- v. Reporting to our beneficiaries
- vi. Understanding the costs of benefits into the future
- vii. Societal issues
  - 1. Lateral violence
  - 2. Addictions and their consequences
  - 3. Intergenerational trauma
- viii. Honouring Walter Twinn
- ix.

d. Risks and Challenges

- i. How to assure continuation of services and support for our people?
- ii. Racism and stereotyping
- iii. Restore and maintain pride and dignity
- iv. Loss of control of trusts
- v. Dispersal of trust funds = poor legacy
- vi. Attainment of self-determination on wide scale
- vii. Dispel the bogeyman
- viii. Maintaining critical mass
- ix. What if our report to beneficiaries is not acceptable to the majority?
- x. Status-quo is not sustainable, we have to change

e. Risks

- i. Are we in compliance with trust standards?
- ii. If not, are trustees liable?
- iii. Inherent "questions" regarding conflict of interest
- iv. Unrest among beneficiaries
- v. Dissipation of trust assets
- vi. Desirability/practicality of continuing current culture
- vii. Protracted litigation
- viii. Court removal
- ix.

f.

8. SWOT analysis

a. Strengths

- i. Our financial capacity
- ii. Our Trust deeds
- iii. Companies are doing very well
- iv. Good benefits program
- v. Trusts office is functioning well
- vi.
- vii.

b. Weaknesses

- i. Very complex and long standing web of issues & challenges
- ii. Difficulty in coming to decisions
  - 1. Not a harmonious group
  - 2. Mexican stand-off, nobody can win, so everybody loses
- iii. Lack of clarity re beneficiaries of 1985 Trust
- iv. Unrest amongst beneficiaries
- v.
- vi.

c. Opportunities

- i. Capitalizing on a buoyant Alberta market
- ii. Capitalizing on the excellent public image of the SGC
- iii. Capitalizing on the positive public perception of the SFN/Sawridge Trusts business structure and strategies
- iv. Providing indirect benefits to the beneficiaries at the community level
- v. Court application to clarify beneficiaries
- vi. Developing and providing a report to our beneficiaries
- vii.
- viii.

d. Threats

- i. Maintaining critical mass



- ii. Racism and profiling
- iii. Intergenerational trauma
- iv.
- v.

## **9. Our Desired Outcomes**

- a. Clearly defined beneficiaries of the 1985 and 1986 trusts
- b. Membership process based on principles of administrative law
- c. Profitable, well managed companies able to pay sustainable dividends
- d. Understand and mitigate the Impact of an influx of beneficiaries
- e. Maintain separation of economic and political activities
- f. Provide a thoughtful suite of benefits that mitigate against entitlement or dependency attitudes
- g. Being respectful of 114 years of Sawridge tradition
- h. Maintaining our long-term endowment mindset
- i. Strip of gray
- j. Families raised in a community with positive relational abundance
  - i. Community and family matter!!
  - ii. "communal system"
- k. Must be aware of the 4 pillars of our environment
  - i. Physical
  - ii. Mental
  - iii. Emotional
  - iv. Spiritual
- l.

## **10. Our Strategic objectives**

- a. Critical Long Term Investment-Capacity Building
  - i. Education
  - ii. Training
  - iii. Skills upgrading
  - iv. Leadership development
  - v. Mentors
  - vi. Heroes
  - vii. Role models
  - viii.
- b. Risk Mitigation to protect our investments and ensure our legacy
  - i. Addictions treatment programs
  - ii. Address intergenerational issues
    - 1. Identification
    - 2. Acknowledgement

- 3. Remedial action
- iii. Maintain critical mass
  - 1. A fair and effective membership application process
  - 2. Clarification of definition of beneficiary
  - 3.
- iv.

c. Acknowledging our success – saying "Congratulations"

- i. Why? To acknowledge the wisdom and perseverance of forgoing immediate cash payments in favour of developing a long term Trust Fund that will pay benefits for generations to come
- ii. To whom?
  - 1. Our seniors
  - 2. Our elders
  - 3. Our champions
  - 4. Our heroes
  - 5. Our "average" members
  - 6. Our neighbours
  - 7. Our friends
  - 8. Our families
- iii. Acknowledging and celebrating our history
- iv.

## 11. Our Goals and Actions

a. Critical Long Term Investment-Capacity Building

- i. Continue our investment into education and skills upgrading
- ii. Develop plans for leadership development
- iii. Identify individuals who can act as mentors, heroes and role models
- iv.

b. Risk Mitigation to protect our investments and ensure our legacy

- i. Continue funding our addiction programs
- ii. Develop long range avoidance strategies
- iii. Obtain clarification of who are beneficiaries are
- iv. Critical to have a quality membership approval process
- v. Maintaining the separation of political and economic functions
- vi. Report to our beneficiaries
- vii. Develop and implement a Trustee succession plan
- viii. Resolve our outstanding issues
- ix.

c. Acknowledging our success – saying "Congratulations"

- i. Fund some generic projects that appeal to "average" members

1. Develop an innovative approach that will enable the construction of a new office and community centre complex on the SFN
2. A key collaboration of the SGC, SFN and the Sawridge Trusts
- 3.
- 4.
- ii. Identify locations to display and highlight SFN history and successes
  1. The new Sawridge Community Centre
  2. Work with the designer to maximize and optimize the spaces that could be used to describe Sawridge history and its achievements
  3. Identify honorific naming opportunities
    - a. The Building
    - b. Rooms and internal areas
    - c. Chairs
    - d. Wall spaces
  4. Develop modules/displays of Sawridge history
  5. Develop modules/displays of Sawridge achievements
  - 6.
  - 7.
- iii. Identify key messages for each target audience
- iv.
- d.

## **12. Evaluation –how will we measure success?**

- a. Key success indicators
- b. How have our FN peers fared?
- c. How does SFN compare to Albertans?
- d.

## **13. Appendix**



**LARRY GILBERT**  
**LAW CORPORATION**  
 275 PALLISIER AVENUE  
 VICTORIA, BRITISH COLUMBIA  
 V9B 1C5  
 (250) 478-8881

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

Catherine Twinn

Sworn before me this 23 day

of September A.D., 20 15

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

Catherine M. Twinn  
 Barrister & Solicitor  
 Box 1460  
 Slave Lake, Alberta  
 T0G 2A0

July 2, 2014

**KAREN A. PLATTEN, Q.C.**  
 BARRISTER & SOLICITOR  
 A COMMISSIONER FOR OATHS  
 IN AND FOR ALBERTA

Dear Ms. Twinn:

**RE: OPINION REGARDING JUSTIN TWIN-McCOY AS A BENEFICIARY AND AS A TRUSTEE FOR THE APRIL 15, 1985 SAWRIDGE INDIAN BAND TRUST FUND**

You have asked me to answer a number of questions:

1. Under sections 11 and 12 of the Indian Act, R.S.C. 1970, c. I-6 ("the rules") as these rules existed prior to April 17, 1982, does Justin McCoy-Twin qualify to be registered as an Indian and listed on the Sawridge Band List maintained by the Department?
  - a) In particular, based on the facts and "the rules", is Justin McCoy-Twin, the son of Vera Twin and Jody McCoy, entitled to be registered as an Indian under those rules, firstly because at birth he was the illegitimate child of an Indian woman and non-Indian man?
  - b) Secondly, what is the effect of the marriage of his parents, Vera Twin and Jody McCoy, as the marriage deems Justin McCoy-Twin the legitimate child of the marriage effective from the date of his date of birth.
  - c) What effect does the language of the April 15, 1982 Sawridge Band Trust, antecedent to the 1985 Trust, have on Justin McCoy-Twin's eligibility? Does the Settlor's clear 1982 intention to exclude the illegitimate children of Indian women carry forward to the 1985 Trust vis a vis Justin Twin McCoy's eligibility as a beneficiary of the 1985 Trust?
2. What effect does the Chapman v. Martin, [1983] 1 SCR 356 case have to these facts? As I understand the case, the illegitimate children - male or female - of a male Indian are entitled to registration.
3. Do the actions or inactions of the Sawridge Band impact the eligibility of Justin McCoy-Twin under those rules? If so, how?

I have been asked to render this legal opinion based on a number of assumptions regarding Justin McCoy-Twin's birth and his family without access to the records that

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may or may not confirm those assumptions. I am prepared to revisit this legal opinion if any of those assumptions are proven to be incorrect.

Sections 11 and 12 of the Indian Act, R.S.C. 1970, c. I-6 provide the following:

11. (1) Subject to section 12, a person is entitled to be registered if that person

- (a) on the 26<sup>th</sup> day of May, 1874 was, for the purposes of an Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
- (b) is a member of a band
  - (i) for whose use and benefit, in common, lands have been set apart or since the 26<sup>th</sup> day of May 1874, have been agreed by treaty to be set apart, or
  - (ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;
- (c) is a male person who is a direct descendent in the male line of a male person described in paragraph (a) or (b);
- (d) is the legitimate child of
  - (i) a male person described in paragraph (a) or (b),
  - or
  - (ii) a person described in paragraph (c);
- (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or
- (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

(2) Paragraph (1) (e) applies only to persons born after the 13<sup>th</sup> day of August 1956.

12. (1) The following persons are not entitled to be registered, namely,

- (a) a person who
  - (i) has received or has been allotted half-breed lands or money scrip,
  - (ii) is a descendent of a person described in sub-paragraph (i),
  - (iii) is enfranchised, or
  - (iv) is a person born of a marriage entered into after the 4<sup>th</sup> day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),



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unless, being a woman, that person is the wife or widow of a person described in section 11, and

(b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

(4) Subparagraphs 1 (a)(i) and (ii) do not apply to a person who  
(a) pursuant to this Act is registered as an Indian on the 13<sup>th</sup> day of August 1958, or  
(b) is a descendent of a person described in paragraph (a) of this subsection.

(5) Subsection (2) applies only to persons born after the 13<sup>th</sup> day of August 1956.

Justin McCoy-Twin was born on September 23, 1982. His mother is Vera Irene Twin, born on December 15, 1956 who has been on the Sawridge Paylist since birth. His father is Jody McCoy, a non-Indian. On September 23, 1982, Justin McCoy-Twin's parents were not married. Justin McCoy-Twin was registered as an Indian as the illegitimate child of an Indian woman. I am informed that his paternity must not have been disclosed to the Department. This is important because the Indian Act, 1970 determined Indian status and Band Membership strictly and in accordance with the paternal line. As noted above, section 11(1)(c) refers to the male line:

11(1) Subject to section 12, a person is entitled to be registered if that person

(c) is a male person who is a direct descendent in the male line of a male person described in paragraph (a) or (b).

Contrast that provision with paragraphs 11(1)(e) and 12(2), both dealing with the illegitimate child of an Indian woman:

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11(1) Subject to section 12, a person is entitled to be registered if that person

(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d).

12.(1) The following persons are not entitled to be registered, namely,

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

Accordingly, the policy of the Department at the time was to deny registration for an illegitimate child because the father was presumed to be a non-Indian. However, the Band or the person submitting the birth record to the Department can and often did overcome that presumption by providing evidence that the father was an Indian such as in a sworn statement from the Indian father. Indeed, even today, the policy is to presume that the father of an illegitimate child is a non-Indian unless the mother and/or the Band proves otherwise.

Although Justin McCoy-Twin was registered as an Indian, he was not entitled to be registered because his father was a non-Indian.

I conclude therefore that Justin McCoy-Twin was not entitled to be registered as an Indian under the Indian Act, 1970. In addition, he was not entitled under that Act to be added to the Band List of the Sawridge Indian Band as that List was maintained by the Department.

Turning now to the Sawridge Band Inter Vivos Settlement and Declaration of Trust dated April 15, 1985. The question asked is whether Justin McCoy-Twin is eligible to be a Beneficiary of that Trust and whether Justin McCoy-Twin is eligible to be a Trustee of that Trust. These questions arise because recently Justin McCoy-Twin was made a Beneficiary and appointed as a Trustee of that Trust by Chief and Council of the Sawridge Indian Band.

Paragraph 2(a) of the Trust describes who may be a Beneficiary:

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15<sup>th</sup> day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15<sup>th</sup> day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge

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Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15<sup>th</sup> 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 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.

Based on the above-quoted statement about "Beneficiaries", I conclude that it is the Settlor's intention that

- (i) those persons whose names appeared on the Band List maintained by the Department under the authority of the Indian Act, 1970, on April 15, 1982 shall be considered to be Beneficiaries of this Trust and that
- (ii) no person who would not qualify to have his or her name on the Band List maintained by the Department under the authority of the Indian Act, on April 15, 1982 shall be considered to be a Beneficiary of this Trust and that
- (iii) no person whose entitlement to membership in the Sawridge Indian Band that flows only from an amended Indian Act shall be considered to be a Beneficiary of this Trust.

As noted above, Justin McCoy-Twin was born on September 23, 1982. Accordingly, he could not have his name entered on the Band List maintained by the Department under the authority of the Indian Act, 1970, on April 15, 1982 because he was not yet born. On that basis alone Justin McCoy-Twin is not qualified to be a Beneficiary of the Trust. Furthermore, as noted above, Justin McCoy-Twin is not qualified to be a Beneficiary because he was never entitled to be registered as an Indian in accordance with the Indian Act, 1970, and he was never entitled to have his name entered on the Band List maintained by the Department under the authority of the Indian Act, 1970, on April 15, 1982 or even on the date of his birth, September 23, 1982 because of his status as an illegitimate child.

In the Declaration of Trust, Sawridge Band Trust dated April 15, 1982, the Settlor wrote at paragraph 6:

The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of twenty one (21)

- 6 -

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years after the death of the last descendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band 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; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act.)

By virtue of paragraph 6 of the Declaration of Trust, Sawridge Band Trust dated April 15, 1982, I believe it was the intention of the Settlor of the 1985 Trust Fund to exclude illegitimate children from being Beneficiaries of the Trust. As Justin McCoy-Twin was born the illegitimate child of his Indian mother and although his name was added to the Indian Register and the addition of his name to the Registry was not protested, paragraph 6 provides that Justin McCoy-Twin is nevertheless not entitled to be a Beneficiary of the Trust:

I am informed that sometime after the Indian Act, 1970 was amended in 1985, Justin McCoy-Twin became the legitimate child of his parents when they were legally married. With that legal marriage occurring after the Indian Act was amended, the illegitimacy of the child was no longer used as a basis to add or delete a name to or from the Indian Registry. Accordingly, Justin McCoy-Twin's status under the Indian Act, 1970, was unchanged by his parent's legal marriage. Justin-McCoy Twin would however be entitled to be registered under the amended Indian Act, R.S.C. 1985, c. I-5 as a person with one Indian parent, namely, his mother:

According to the instructions I received in preparation for this legal opinion, immediately prior to his appointment as a Trustee, there were already two (2) Trustees of this Settlement who are not Beneficiaries. Guidance on this issue is found in paragraph 5 of the Sawridge Band Inter Vivos Settlement and Declaration of Trust dated April 15, 1985. Paragraph 5 deals with who may be appointed as a Trustee:

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 power shall be exercised so that at all times (except for the period pending

June 9, 2015

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.

As there are already two (2) Trustees of this Settlement who are not Beneficiaries and as Justin McCoy-Twin is not a Beneficiary, it follows therefore that Justin McCoy-Twin cannot and should not have been appointed as a Trustee of this Settlement.

I was asked to comment on whether the Supreme Court of Canada decision in Martin v. Chapman, [1983] 1 SCR 356 has any impact on the facts of this case. This is the case of an illegitimate child of an Indian man being denied registration as an Indian because according to the Registrar in the Department, the Federal Court of Canada and the Federal Court of Appeal all decided that paragraph 11(1) (c):

11(1) Subject to section 12, a person is entitled to be registered if that person

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);

means that only legitimate descendants in the male line are entitled to be registered. The Supreme Court of Canada said no; paragraph 11(1)(c) applies equally to an illegitimate or legitimate male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b). As Justin McCoy-Twin was the illegitimate child of an Indian woman, paragraph 11(1)(c) has no application to his case and the decision of Martin v. Chapman has no relevance to these facts.

Finally, the question is whether the actions or inactions of the Sawridge Band impacts the eligibility of Justin McCoy-Twin under those rules? If so, how? I conclude that the Sawridge Band and the mother of Justin McCoy-Twin were responsible for Justin McCoy-Twin being registered as an Indian when he was born on September 23, 1982 notwithstanding the fact that he was never entitled to be registered as an Indian in accordance with the Indian Act, 1970.

I also conclude that it was the Chief and Council of the Sawridge Indian Band who decided Justin McCoy-Twin is entitled to be a Beneficiary of this Trust and declared him a Beneficiary and then appointed him as a Trustee of this Trust. As noted above, Justin McCoy-Twin is not entitled to be a Beneficiary and should never have been granted that status. Furthermore, Justin McCoy-Twin is not qualified but is specifically disqualified from being appointed as a Trustee of this Trust.

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June 9, 2015

Please do not hesitate to call or write if you have any questions or concerns regarding this legal opinion.

Yours truly,

A handwritten signature in cursive script, appearing to read "Larry Gilbert", enclosed within a hand-drawn oval.

Larry Gilbert  
Barrister & Solicitor

## Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365  
This is Exhibit "C" referred to in the Affidavit of

Catherine Twinn  
Sworn before me this 23 day  
of September A.D., 2015  
[Signature]  
A Commissioner for Oaths in and for the  
Province of Alberta

Date: 20120612  
Docket: 1103 14112  
Registry: Edmonton  
KAREN A. PLATTEN, Q.C.  
BARRISTER & SOLICITOR  
A COMMISSIONER FOR OATHS  
IN AND FOR ALBERTA

Provinces 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  
the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust")

Between:

Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle, and  
Clara Midbo, As Trustees for the 1985 Sawridge Trust

Respondent

- and -

Public Trustee of Alberta

Applicant

Reasons for Judgment  
of the  
Honourable Mr. Justice D.R.G. Thomas

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#### I. Introduction

[1] On April 15, 1985 the Sawridge Indian Band, No. 19, now known as the Sawridge First Nation [the "Band" or "Sawridge Band"] set up the 1985 Sawridge Trust [sometimes referred to as the "Trust" or the "Sawridge Trust"] to hold some Band property on behalf of its then members. The 1985 Sawridge Trust and other related trusts were created in the expectation that persons who had been excluded from Band membership by gender (or the gender of their parents) would be entitled to join the Band as a consequence of amendments to the *Indian Act*, R.S.C. 1985, c. I-5 which were being proposed to make that legislation compliant with the *Canadian Charter of Rights and Freedoms*, Part 1, *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 [the "Charter"].

[2] The 1985 Sawridge Trust is administered by the Trustees named as Respondents in this application [the "Sawridge Trustees" or the "Trustees"] who now seek the advice and direction of this Court in respect to proposed amendments to the definition of the term "Beneficiaries" in the 1985 Sawridge Trust and confirmation of the transfer of assets into that Trust. One consequence of these proposed amendments to the 1985 Sawridge Trust would be that the entitlement of certain dependent children to share in Trust assets would be affected. There is some question as to the exact nature of the effects, although it seems to be accepted by all of those involved on this application that certain children who are presently entitled to a share in the benefits of the 1985 Sawridge Trust would be excluded if the proposed changes are approved and implemented. Another concern is that the proposed revisions would mean that certain dependent children of proposed members of the Trust would become beneficiaries and entitled to shares in the Trust, while other dependent children would be excluded.

[3] At the time of confirming the scope of notices to be given in respect to the application for advice and directions, it was observed that children who might be affected by variations to the 1985 Sawridge Trust were not represented by counsel. In my Order of August 31, 2011 [the "August 31 Order"] I directed that the Office of the Public Trustee of Alberta [the "Public Trustee"] be notified of the proceedings and invited to comment on whether it should act in respect of any existing or potential minor beneficiaries of the Sawridge Trust.



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[4] On February 14, 2012 the Public Trustee applied to be appointed as the litigation representative of minors interested in the proceedings, for the payment of advance costs on a solicitor and own client basis and exemption from liability for the costs of others. The Public Trustee also applied, for the purposes of questioning on affidavits which might be filed in this proceeding, for an advance ruling that information and evidence relating to the membership criteria and processes of the Sawridge Band is relevant material.

[5] On April 5, 2012 I heard submissions on the application by the Public Trustee which was opposed by the Sawridge Trustees and the Chief and Council of the Sawridge Band. The Trustees and the Band, through their Chief and Council, argue that the guardians of the potentially affected children will serve as adequate representatives of the interests of any minors.

[6] Ultimately in this application I conclude that it is appropriate that the Public Trustee represent potentially affected minors, that all costs of such representation be borne by the Sawridge Trust and that the Public Trustee may make inquiries into the membership and application processes and practices of the Sawridge Band.

## II. The History of the 1985 Sawridge Trust

[7] An overview of the history of the 1985 Sawridge Trust provides a context for examining the potential role of the Public Trustee in these proceedings. The relevant facts are not in dispute and are found primarily in the evidence contained in the affidavits of Paul Bujold (August 30, 2011, September 12, 2011, September 30, 2011), and of Elizabeth Poitras (December 7, 2011).

[8] In 1982 various assets purchased with funds of the Sawridge Band were placed in a formal trust for the members of the Sawridge Band. In 1985 those assets were transferred into the 1985 Sawridge Trust. At the present time the value of assets held by the 1985 Sawridge Trust is approximately \$70 million. As previously noted, the beneficiaries of the Sawridge Trust are restricted to persons who were members of the Band prior to the adoption by Parliament of the *Charter* compliant definition of Indian status.

[9] In 1985 the Sawridge Band also took on the administration of its membership list. It then attempted (unsuccessfully) to deny membership to Indian women who married non-aboriginal persons: *Sawridge Band v. Canada*, 2009 FCA 123, 391 N.R. 375, leave denied [2009] S.C.C.A. No. 248. At least 11 women were ordered to be added as members of the Band as a consequence of this litigation: *Sawridge Band v. Canada*, 2003 FCT 347, [2003] 4 F.C. 748, affirmed 2004 FCA 16, [2004] 3 F.C.R. 274. Other litigation continues to the present in relation to disputed Band memberships: *Poitras v. Sawridge Band*, 2012 FCA 47, 428 N.R. 282, leave sought [2012] S.C.C.A. No. 152.

[10] At the time of argument in April 2012, the Band had 41 adult members, and 31 minors. The Sawridge Trustees report that 23 of those minors currently qualify as beneficiaries of the 1985 Sawridge Trust; the other eight minors do not.

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[11] At least four of the five Sawridge Trustees are beneficiaries of the Sawridge Trust. There is overlap between the Sawridge Trustees and the Sawridge Band Chief and Council. Trustee Bertha L'Hirondelle has acted as Chief; Walter Felix Twinn is a former Band Councillor. Trustee Roland Twinn is currently the Chief of the Sawridge Band.

[12] The Sawridge Trustees have now concluded that the definition of "Beneficiaries" contained in the 1985 Sawridge Trust is "potentially discriminatory". They seek to redefine the class of beneficiaries as the present members of the Sawridge Band, which is consistent with the definition of "Beneficiaries" in another trust known as the 1986 Trust.

[13] This proposed revision to the definition of the defined term "Beneficiaries" is a precursor to a proposed distribution of the assets of the 1985 Sawridge Trust. The Sawridge Trustees indicate that they have retained a consultant to identify social and health programs and services to be provided by the Sawridge Trust to the beneficiaries and their minor children. Effectively they say that whether a minor is or is not a Band member will not matter: see the Trustee's written brief at para. 26. The Trustees report that they have taken steps to notify current and potential beneficiaries of the 1985 Sawridge Trust and I accept that they have been diligent in implementing that part of my August 31 Order.

### III. Application by the Public Trustee

[14] In its application the Public Trustee asks to be named as the litigation representative for minors whose interests are potentially affected by the application for advice and directions being made by the Sawridge Trustees. In summary, the Public Trustee asks the Court:

1. to determine which minors should be represented by it;
2. to order that the costs of legal representation by the Public Trustee be paid from the 1985 Sawridge Trust and that the Public Trustee be shielded from any liability for costs arising; and
3. to order that the Public Trustee be authorized to make inquiries through questioning into the Sawridge Band membership criteria and application processes.

The Public Trustee is firm in stating that it will only represent some or all of the potentially affected minors if the costs of its representation are paid from the 1985 Sawridge Trust and that it must be shielded from liability for any costs arising in this proceeding.

[15] The Sawridge Trustees and the Band both argue that the Public Trustee is not a necessary or appropriate litigation representative for the minors, that the costs of the Public Trustee should not be paid by the Sawridge Trust and that the criteria and mechanisms by which the Sawridge

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Band identifies its members is not relevant and, in any event, the Court has no jurisdiction to make such determinations.

#### IV. Should the Public Trustee be Appointed as a Litigation Representative?

[16] Persons under the age of 18 who reside in Alberta may only participate in a legal action via a litigation representative: *Alberta Rules of Court*, Alta Reg 124/2010, s. 2.11(a) [the "Rules", or individually a "Rule"]. The general authority for the Court to appoint a litigation representative is provided by *Rule*, 2.15. A litigation representative is also required where the membership of a trust class is unclear: *Rule*, 2.16. The common-law *parens patriae* role of the courts (*E. v. Eve (Guardian Ad Litem)*, [1986] 2 S.C.R. 388, 31 D.L.R. (4th) 1) allows for the appointment of a litigation representative when such action is in the best interests of a child. The *parens patriae* authority serves to supplement authority provided by statute: *R.W. v. Alberta (Child, Youth and Family Enhancement Act Director)*, 2010 ABCA 412 at para. 15, 44 Alta. L.R. (5th) 313. In summary, I have the authority in these circumstances to appoint a litigation representative for minors potentially affected by the proposed changes to the 1985 Sawridge Trust definition of "Beneficiaries".

[17] The Public Trustee takes the position that it would be an appropriate litigation representative for the minors who may be potentially affected in an adverse way by the proposed redefinition of the term "Beneficiaries" in the 1985 Sawridge Trust documentation and also in respect to the transfer of the assets of that Trust. The alternative of the Minister of Aboriginal Affairs and Northern Development applying to act in that role, as potentially authorized by the *Indian Act*, R.S.C. 1985, c. I-5, s. 52, has not occurred, although counsel for the Minister takes a watching role.

[18] In any event, the Public Trustee argues that it is an appropriate litigation representative given the scope of its authorizing legislation. The Public Trustee is capable of being appointed to supervise trust entitlements of minors by a trust instrument (*Public Trustee Act*, S.A. 2004, c. P-44.1, s. 21) or by a court (*Public Trustee Act*, s. 22). These provisions apply to all minors in Alberta.

##### A. Is a litigation representative necessary?

[19] Both The Sawridge Trustees and Sawridge Band argue that there is no need for a litigation representative to be appointed in these proceedings. They acknowledge that under the proposed change to the definition of the term "Beneficiaries" no minors could be part of the 1985 Sawridge Trust. However, that would not mean that this class of minors would lose access to any resources of the Sawridge Trust; rather it is said that these benefits can and will be funnelled to those minors through those of their parents who are beneficiaries of the Sawridge Trust, or minors will become full members of the Sawridge Trust when they turn 18 years of age.

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[20] In the meantime the interests of the affected children would be defended by their parents. The Sawridge Trustees argue that the Courts have long presumptively recognized that parents will act in the best interest of their children, and that no one else is better positioned to care for and make decisions that affect a child: *R.B. v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at 317-318, 122 D.L.R. (4th) 1. Ideally, a parent should act as a 'next friend' [now a 'litigation representative' under the new Rules]: *V.B. v. Alberta (Minister of Children's Services)*, 2004 ABQB 788 at para. 19, 365 A.R. 179; *C.H.S. v. Alberta (Director of Child Welfare)*, 2008 ABQB 620, 452 A.R. 98.

[21] The Sawridge Trustees take the position at para. 48 of its written brief that:

[i]t is anachronistic to assume that the Public Trustee knows better than a First Nation parent what is best for the children of that parent.

The Sawridge Trustees observe that the parents have been notified of the plans of the Sawridge Trust, but none of them have commented, or asked for the Public Trustee to intervene on behalf of their children. They argue that the silence of the parents should be determinative.

[22] The Sawridge Band argues further that no conflict of interest arises from the fact that certain Sawridge Trustees have served and continue to serve as members of the Sawridge Band Chief and Council. At para. 27 of its written brief, the Sawridge Band advances the following argument:

... there is no conflict of interest between the fiduciary duty of a Sawridge Trustee administering the 1985 Trust and the duty of impartiality for determining membership application for the Sawridge First Nation. The two roles are separate and have no interests that are incompatible. The Public Trustee has provided no explanation for why or how the two roles are in conflict. Indeed, the interests of the two roles are more likely complementary.

[23] In response the Public Trustee notes the well established fiduciary obligation of a trustee in respect to trust property and beneficiaries: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at para. 148, [2011] 2 S.C.R. 175. It observes that a trustee should avoid potential conflict scenarios or any circumstance that is "... ambiguous ... a situation where a conflict of interest and duty might occur ..." (citing D. W. M. Waters, M. Gillen and L. Smith, eds., *Waters' Law of Trusts in Canada*, 3<sup>rd</sup> ed. (Toronto: Thomson Carswell, 2005), at p. 914 [*"Waters' Law of Trusts"*]). Here, the Sawridge Trustees are personally affected by the assignment of persons inside and outside of the Trust. However, they have not taken preemptive steps, for example, to appoint an independent person or entity to protect or oversee the interests of the 23 minors, each of whom the Sawridge Trustees acknowledge could lose their beneficial interest in approximately \$1.1 million in assets of the Sawridge Trust.

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[24] In these circumstances I conclude that a litigation representative is appropriate and required because of the substantial monetary interests involved in this case. The Sawridge Trustees have indicated that their plan has two parts:

firstly, to revise and clarify the definition of "Beneficiaries" under the 1985 Sawridge Trust; and

secondly, then seek direction to distribute the assets of the 1985 Sawridge Trust with the new amended definition of beneficiary.

While I do not dispute that the Sawridge Trustees plan to use the Trust to provide for various social and health benefits to the beneficiaries of the Trust and their children, I observe that to date the proposed variation to the 1985 Sawridge Trust does not include a *requirement* that the Trust distribution occur in that manner. The Trustees could, instead, exercise their powers to liquidate the Sawridge Trust and distribute approximate \$1.75 million shares to the 41 adult beneficiaries who are the present members of the Sawridge Band. That would, at a minimum, deny 23 of the minors their current share of approximately \$1.1 million each.

[25] It is obvious that very large sums of money are in play here. A decision on who falls inside or outside of the class of beneficiaries under the 1985 Sawridge Trust will significantly affect the potential share of those inside the Sawridge Trust. The key players in both the administration of the Sawridge Trust and of the Sawridge Band overlap and these persons are currently entitled to shares of the Trust property. The members of the Sawridge Band Chief and Council are elected by and answer to an interested group of persons, namely those who will have a right to share in the 1985 Sawridge Trust. These facts provide a logical basis for a concern by the Public Trustee and this Court of a potential for an unfair distribution of the assets of the 1985 Sawridge Trust.

[26] I reject the position of the Sawridge Band that there is no potential for a conflict of interest to arise in these circumstances. I also reject as being unhelpful the argument of the Sawridge Trustees that it is "anachronistic" to give oversight through a public body over the wisdom of a "First Nations parent". In Alberta, persons under the age of 18 are minors and their racial and cultural backgrounds are irrelevant when it comes to the question of protection of their interests by this Court.

[27] The essence of the argument of the Sawridge Trustees is that there is no need to be concerned that the current and potential beneficiaries who are minors would be denied their share of the 1985 Sawridge Trust; that their parents, the Trustees, and the Chief and Council will only act in the best interests of those children. One, of course, hopes that that would be the case, however, only a somewhat naive person would deny that, at times, parents do not always act in the best interests of their children and that elected persons sometimes misuse their authority for personal benefit. That is why the rules requiring fiduciaries to avoid conflicts of interest is so strict. It is a rule of very longstanding and applies to all persons in a position of trust.

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[28] I conclude that the appointment of the Public Trustee as a litigation representative of the minors involved in this case is appropriate. No alternative representatives have come forward as a result of the giving of notice, nor have any been nominated by the Respondents. The Sawridge Trustees and the adult members of the Sawridge Band (including the Chief and Council) are in a potential conflict between their personal interests and their duties as fiduciaries.

[29] This is a 'structural' conflict which, along with the fact that the proposed beneficiary definition would remove the entitlement to some share in the assets of the Sawridge Trust for at least some of the children, is a sufficient basis to order that a litigation representative be appointed. As a consequence I have not considered the history of litigation that relates to Sawridge Band membership and the allegations that the membership application and admission process may be suspect. Those issues (if indeed they are issues) will be better reviewed and addressed in the substantive argument on the adoption of a new definition of "Beneficiaries" under the revised 1985 Sawridge Trust.

**B. Which minors should the Public Trustee represent?**

[30] The second issue arising is who the Public Trustee ought to represent. Counsel for the Public Trustee notes that the Sawridge Trustees identify 31 children of current members of the Band. Some of these persons, according to the Sawridge Trustees, will lose their current entitlement to a share in the 1985 Sawridge Trust under the new definition of "Beneficiaries". Others may remain outside the beneficiary class.

[31] There is no question that the 31 children who are potentially affected by this variation to the Sawridge Trust ought to be represented by the Public Trustee. There are also an unknown number of potentially affected minors, namely, the children of applicants seeking to be admitted into membership of the Sawridge Band. These candidate children, as I will call them, could, in theory, be represented by their parents. However, that potential representation by parents may encounter the same issue of conflict of interest which arises in respect to the 31 children of current Band members.

[32] The Public Trustee can only identify these candidate children via inquiry into the outstanding membership applications of the Sawridge Band. The Sawridge Trustees and Band argue that this Court has no authority to investigate those applications and the application process. I will deal in more detail with that argument in Part VI of this decision.

[33] The candidate children of applicants for membership in the Sawridge Band are clearly a group of persons who may be readily ascertained. I am concerned that their interest is also at risk. Therefore, I conclude that the Public Trustee should be appointed as the litigation representative not only of minors who are children of current Band members, but also the children of applicants for Band membership who are also minors.

**V. The Costs of the Public Trustee**

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[34] The Public Trustee is clear that it will only represent the minors involved here if:

1. advance costs determined on a solicitor and own client basis are paid to the Public Trustee by the Sawridge Trust; and
2. that the Public Trustee is exempted from liability for the costs of other litigation participants in this proceeding by an order of this Court.

[35] The Public Trustee says that it has no budget for the costs of this type of proceedings, and that its enabling legislation specifically includes cost recovery provisions: *Public Trustee Act*, ss. 10, 12(4), 41. The Public Trustee is not often involved in litigation raising aboriginal issues. As a general principle, a trust should pay for legal costs to clarify the construction or administration of that trust: *Deans v. Thachuk*, 2005 ABCA 368 at paras. 42-43, 261 D.L.R. (4th) 300, leave denied [2005] S.C.C.A. No. 555.

[36] Further, the Public Trustee observes that the Sawridge Trustees are, by virtue of their status as current beneficiaries of the Trust, in a conflict of interest. Their fiduciary obligations require independent representation of the potentially affected minors. Any litigation representative appointed for those children would most probably require payment of legal costs. It is not fair, nor is it equitable, at this point for the Sawridge Trustees to shift the obligation of their failure to nominate an independent representative for the minors to the taxpayers of Alberta.

[37] Aline Huzar, June Kolosky, and Maurice Stoney agree with the Public Trustee and observe that trusts have provided the funds for litigation representation in aboriginal disputes: *Horse Lake First Nation v. Horseman*, 2003 ABQB 114, 337 A.R. 22; *Blueberry Interim Trust (Re)*, 2012 BCSC 254.

[38] The Sawridge Trustees argue that the Public Trustee should only receive advance costs on a full indemnity basis if it meets the strict criteria set out in *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2, [2007] 1 S.C.R. 38 ["*Little Sisters*"] and *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78. They say that in this instance the Public Trustee can afford to pay, the issues are not of public or general importance and the litigation will proceed without the participation of the Public Trustee.

[39] Advance costs on a solicitor and own client basis are appropriate in this instance, as well as immunization against costs of other parties. The *Little Sisters* criteria are intended for advance costs by a litigant with an independent interest in a proceeding. Operationally, the role of the Public Trustee in this litigation is as a neutral 'agent' or 'officer' of the court. The Public Trustee will hold that position only by appointment by this Court. In these circumstances, the Public Trustee operates in a manner similar to a court appointed receiver, as described by Dickson J.A. (as he then was) in *Braid Builders Supply & Fuel Ltd. v. Genevieve Mortgage Corp. Ltd.* (1972), 29 D.L.R. (3d) 373, 17 C.B.R. (N.S.) 305 (Man. C.A.):

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In the performance of his duties the receiver is subject to the order and direction of the Court, not the parties. The parties do not control his acts nor his expenditures and cannot therefore in justice be accountable for his fees or for the reimbursement of his expenditures. It follows that the receiver's remuneration must come out of the assets under the control of the Court and not from the pocket of those who sought his appointment.

In this case, the property of the Sawridge Trust is the equivalent of the "assets under control of the Court" in an insolvency. Trustees in bankruptcy operate in a similar way and are generally indemnified for their reasonable costs: *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236, 393 A.R. 340, affirmed 2006 ABCA 293, 275 D.L.R. (4<sup>th</sup>).

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[40] I have concluded that a litigation representative is appropriate in this instance. The Sawridge Trustees argue this litigation will proceed, irrespective of whether or not the potentially affected children are represented. That is not a basis to avoid the need and cost to represent these minors; the Sawridge Trustees cannot reasonably deny the requirement for independent representation of the affected minors. On that point, I note that the Sawridge Trustees did not propose an alternative entity or person to serve as an independent representative in the event this Court concluded the potentially affected minors required representation.

[41] The Sawridge Band cites recent caselaw where costs were denied parties in estate matters. These authorities are not relevant to the present scenario. Those disputes involved alleged entitlement of a person to a disputed estate; the litigant had an interest in the result. That is different from a court-appointed independent representative. A homologous example to the Public Trustee's representation of the Sawridge Trust potential minor beneficiaries would be a dispute on costs where the Public Trustee had represented a minor in a dispute over a last will and testament. In such a case this Court has authority to direct that the costs of the Public Trustee become a charge to the estate: *Public Trustee Act*, s. 41(b).

[42] The Public Trustee is a neutral and independent party which has agreed to represent the interests of minors who would otherwise remain unrepresented in proceedings that may affect their substantial monetary trust entitlements. The Public Trustee's role is necessary due to the potential conflict of interest of other litigants and the failure of the Sawridge Trustees to propose alternative independent representation. In these circumstances, I conclude that the Public Trustee should receive full and advance indemnification for its participation in the proceedings to make revisions to the 1985 Sawridge Trust.

## VI. Inquiries into the Sawridge Band Membership Scheme and Application Processes

[43] The Public Trustee seeks authorization to make inquiries, through questioning under the *Rules*, into how the Sawridge Band determines membership and the status and number of applications before the Band Council for membership. The Public Trustee observes that the



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application process and membership criteria as reported in the affidavit of Elizabeth Poitras appears to be highly discretionary, with the decision-making falling to the Sawridge Band Chief and Council. At paras. 25 - 29 of its written brief, The Public Trustee notes that several reported cases suggest that the membership application and review processes may be less than timely and may possibly involve irregularities.

[44] The Band and Trustees argue that the Band membership rules and procedure should not be the subject of inquiry, because:

- A. those subjects are irrelevant to the application to revise certain aspects of the 1985 Sawridge Trust documentation; and
- B. this Court has no authority to review or challenge the membership definition and processes of the Band; as a federal tribunal decisions of a band council are subject to the exclusive jurisdiction of the Federal Court of Canada: *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.

A. In this proceeding are the Band membership rules and application processes relevant?

[45] The Band Chief and Council argue that the rules of the Sawridge Band for membership and application for membership and the existence and status of any outstanding applications for such membership are irrelevant to this proceeding. They stress at para. 16 of their written brief that the "Advice and Direction Application" will not ask the Court to identify beneficiaries of the 1985 Sawridge Trust, and state further at para. 17 that "... the Sawridge First Nation is fully capable of determining its membership and identifying members of the Sawridge First Nation." They argue that any question of trust entitlement will be addressed by the Sawridge Trustees, in due course.

[46] The Sawridge Trustees also argue that the question of yet to be resolved Band membership issues is irrelevant, simply because the Public Trustee has not shown that Band membership is a relevant consideration. At para. 108 of its written brief the Sawridge Trustees observe that the fact the Band membership was in flux several years ago, or that litigation had occurred on that topic, does not mean that Band membership remains unclear. However, I think that argument is premature. The Public Trustee seeks to investigate these issues not because it has *proven* Band membership is a point of uncertainty and dispute, but rather to reassure itself (and the Court) that the beneficiary class can and has been adequately defined.

[47] The Public Trustee explains its interest in these questions on several bases. The first is simply a matter of logic. The terms of the 1985 Sawridge Trust link membership in the Band to an interest in the Trust property. The Public Trustee notes that one of the three 'certainties' of a valid trust is that the beneficiaries can be "ascertained", and that if identification of Band membership is difficult or impossible, then that uncertainty feeds through and could disrupt the "certainty of object": *Waters' Law of Trusts* at p. 156-157.

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[48] The Public Trustee notes that the historical litigation and the controversy around membership in the Sawridge Band suggests that the 'upstream' criteria for membership in the Sawridge Trust may be a subject of some dispute and disagreement. In any case, it occurs to me that it would be peculiar if, in varying the definition of "Beneficiaries" in the trust documents, that the Court did not make some sort inquiry as to the membership application process that the Trustees and the Chief and Council acknowledge is underway.

[49] I agree with the Public Trustee. I note that the Sawridge Band Chief and Council argue that the Band membership issue is irrelevant and immaterial because Band membership will be clarified at the appropriate time, and the proper persons will then become beneficiaries of the 1985 Sawridge Trust. It contrasts the actions of the Sawridge Band and Trustees with the scenario reported in *Barry v. Garden River Band of Ojibways* (1997), 33 O.R. (3d) 782, 147 D.L.R. (4th) 61 (Ont. C.A.), where premature distribution of a trust had the effect of denying shares to potential beneficiaries whose claims, via band membership, had not yet crystalized. While the Band and Trustees stress their good intentions, this Court has an obligation to make inquiries as to the procedures and status of Band memberships where a party (or its representative) who is potentially a claimant to the Trust queries whether the beneficiary class can be "ascertained". In coming to that conclusion, I also note that the Sawridge Trustees acknowledge that the proposed revised definition of "Beneficiaries" may exclude a significant number of the persons who are currently within that group.

#### **B. Exclusive jurisdiction of the Federal Court of Canada**

[50] The Public Trustee emphasizes that its application is not to challenge the procedure, guidelines, or otherwise "interfere in the affairs of the First Nations membership application process". Rather, the Public Trustee says that the information which it seeks is relevant to evaluate and identify the beneficiaries of the 1985 Sawridge Trust. As such, it seeks information in respect to Band membership processes, but not to affect those processes. They say that this Court will not intrude into the jurisdiction of the Federal Court because that is not 'relief' against the Sawridge Band Chief and Council. Disclosure of information by a federal board, commission, or tribunal is not a kind of relief that falls into the exclusive jurisdiction of the Federal Courts, per *Federal Court Act*, s. 18.

[51] As well, I note that the "exclusive jurisdiction" of statutory courts is not as strict as alleged by the Trustees and the Band Chief and Council. In *783783 Alberta Ltd. v. Canada (Attorney General)*, 2010 ABCA 226, 322 D.L.R. (4th) 56, the Alberta Court of Appeal commented on the jurisdiction of the Tax Court of Canada, which per *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, s. 12 has "exclusive original jurisdiction" to hear appeals of or references to interpret the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The Supreme Court of Canada in *Canada v. Addison & Lyeon Ltd.*, 2007 SCC 33, 365 N.R. 62 indicated that interpretation of the *Income Tax Act* was the sole jurisdiction of the Tax Court of Canada (para. 7), and that (para. 11):

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... The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. ...

[52] The legal issue in *783783 Alberta Ltd. v. Canada (Attorney General)* was an unusual tort claim against the Government of Canada for what might be described as "negligent taxation" of a group of advertisers, with the alleged effect that one of two competing newspapers was disadvantaged. Whether the advertisers had or had not paid the correct income tax was a necessary fact to be proven at trial to establish that injury: paras. 24-25. The Alberta Court of Appeal concluded that the jurisdiction of a provincial superior court includes whatever statutory interpretation or application of fact to law that is necessary for a given issue, in that case a tort: para. 28. In that sense, the trial court was free to interpret and apply the *Income Tax Act*, provided in doing so it did not determine the income tax liability of a taxpayer: paras. 26-27.

[53] I conclude that it is entirely within the jurisdiction of this Court to examine the Band's membership definition and application processes, provided that:

1. investigation and commentary is appropriate to evaluate the proposed amendments to the 1985 Sawridge Trust, and
2. the result of that investigation does not duplicate the exclusive jurisdiction of the Federal Court to order "relief" against the Sawridge Band Chief and Council.

[54] Put another way, this Court has the authority to examine the band membership processes and evaluate, for example, whether or not those processes are discriminatory, biased, unreasonable, delayed without reason, and otherwise breach *Charter* principles and the requirements of natural justice. However, I do not have authority to order a judicial review remedy on that basis because that jurisdiction is assigned to the Federal Court of Canada.

[55] In the result, I direct that the Public Trustee may pursue, through questioning, information relating to the Sawridge Band membership criteria and processes because such information may be relevant and material to determining issues arising on the advice and directions application.

## VII. Conclusion

[56] The application of the Public Trustee is granted with all costs of this application to be calculated on a solicitor and its own client basis.

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Heard on the 5<sup>th</sup> day of April, 2012.

Dated at the City of Edmonton, Alberta this 12<sup>th</sup> day of June, 2012.

---

D.R.G. Thomas  
J.C.Q.B.A.

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**Appearances:**

Ms. Janet L. Hutchison  
(Chamberlain Hutchison)  
for the Public Trustee / Applicants

Ms. Doris Bonora,  
Mr. Marco S. Poretti  
(Reynolds, Mirth, Richards & Farmer LLP)  
for the Sawridge Trustees / Respondents

Mr. Edward H. Molstad, Q.C.  
(Parlee McLaws LLP)  
for the Sawridge Band / Respondents

# Twinn

Barristers and Solicitors

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[clwinnlaw@twinnlaw.com](mailto:clwinnlaw@twinnlaw.com)

Service Address: 610 Caribou Trail N.E.  
 Sawridge Indian Reserve 150G  
 Slave Lake, Alberta  
 T0G 2A0

January 19, 2009

ATTENTION: DAVID WARD Q.C.

DAVIES WARD PHILLIPS & VINEBERG LLP

44th Floor  
 1 First Canadian Place  
 Toronto, Ontario M5X 1B1

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

Catherine Twinn

Sworn before me this 23 day  
 of September, A.D., 2015

Karen A. Platten  
 A Commissioner for Oaths in and for the  
 Province of Alberta

KAREN A. PLATTEN, Q.C.  
 BARRISTER & SOLICITOR  
 A COMMISSIONER FOR OATHS  
 IN AND FOR ALBERTA

Dear David,

Given Ron Ewonlak's January 14, 2009 resignation as Chair of the Trustees, his reasons for resigning and his January 15, 2009 communication he would reconsider only if there were a significant change in the composition of the Board of Trustees, it is clear the Board is not functioning and its composition must be seriously examined. My main goal is to ensure the Beneficiaries are properly served. This means there must be significant change in the composition of the Trustee Group. Each of the Trustees must resolve what they intend to do after they have been given an opportunity to:

- fully understand Ron's reasons for resigning;
- Self-assess, seek counsel and determine their response.

Beneficiaries must be confident that the Trustees can individually and as a group work, think and act in an effective and fair manner.

I've requested a conference call today with the Trustees at 3:00 p.m. to:

- a. Understand and discuss Ron's reasons for resigning;
- b. Initiate a Trustee performance review;
- c. Determine what to do to have Ron reconsider or find a replacement;
- d. Retain an Interim administrator.

What follows below is my summary from various discussions with you and Ron as to why Ron resigned.

1. The Trustees, as a group, are not functional.
2. In Ron's view, which I share, 3 Trustees are not performing the function of Trustee.

3. The work that must be done is not being done by the Trustees. I am doing the work which the Trustees as a body are supposed to be doing. By my performing the work of the group, other Trustees think this is improper. They refuse to pay me for my work, time and effort beyond the meeting fee. They seem to take the position that I should not be doing this work, that they have not authorized the work to be done and they do not intend that the work should be paid for. The Chair is not prepared to take on this work. No one has stepped up to do the work, but they fault me for doing so, even though I am fulfilling my duties and theirs.
3. Some trustees do not prepare for meetings of the trustees by reading the material sent to them. This wastes the time of the chair, of other trustees and the \$15,000 plus meeting fee.
4. Some of the trustees bring into the meetings a baggage of personal hostility that makes working with them intolerable.
5. The trustees, apart from me, do not prepare for their meetings and criticize me for the work I do including the work I do to support the Chair. So long as I am a Trustee, it is necessary I do this work to discharge my duties as a Trustee.
6. Some Trustees have not enabled effective communication amongst Trustees then blame me and/or the Chair for what they do not know or understand.

Ron Ewoniak would reconsider his resignation if there is a significant change in the composition of the Trustees. Ron has done an excellent job as Chair. Since he assumed the duties of Chair, much has been accomplished.

Ron believes a cooperative, functional group of Trustees could, within 6 months, resolve all issues with the Board of Directors and deliver benefits (e.g. financial distributions, programs and services) to the Beneficiaries.

With Ron gone, all the work will fall back on me. My potential liability as a Trustee increased with Ron's resignation.

My health is adversely affected by constant criticisms, attacks, stonewalling and selective recall. Financially, I cannot continue to provide hours of uncompensated work.

If I continue as a Trustee, I am legally bound to fulfill my individual duty as a Trustee. This means doing all the work for all Trustees, without compensation, working in oppressive and hostile conditions.

A Trustee can be removed:

- a. By the Court, on its own motion or on application by a Beneficiary;
- b. By 80% of the Beneficiaries.

In the call will you explain to the Trustees why you think Ron Ewoniak resigned and whether the reasons stated above accurately express Ron's reasons? I have copied Ron on this letter which is appropriate. The Trustees must be clear on what Ron's reasons are, then be responsible for their personal self assessment and what happens next. In today's call, Trustees should be asked

what they intend to do and how long they need to consider this. Perhaps they may wish to speak with you individually. I will suggest in today's call that each Trustee is free to speak with you on a confidential basis, or anyone else they feel comfortable with, as to whether they should continue as a Trustee.

While the self-reflection process is underway, today I will ask the Trustees to make decisions on two matters:

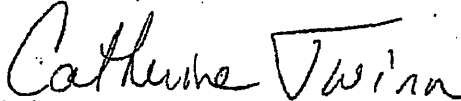
- a. A performance evaluation should be undertaken forthwith of each Trustee by a Trust lawyer in Alberta. You and Ron Ewoniak should be interviewed. This should be completed quickly.
- b. Appointment of an interim administrator to be retained immediately to ensure the orderly administration of the Trusts.

The goal is to bring about a functional and cooperative group of individuals who can work together.

As I understand, when Trustees resign, the issues of compensation can and ought to be passed through the Courts. This would include my unpaid compensation claim. Please confirm that the Trusts are responsible for all costs involved in the preparation and passing of all Accounts before the Court from the beginning and the notice requirements to Beneficiaries.

You have my authorization to release this letter to any Beneficiary as you see fit.

Best Regards,



Catherine Twinn

cc. Roland Twinn  
dd. Bertha L'Hirondelle  
ee. Clara Midbo  
ff. Walter F. Twin  
gg. Ronald Ewoniak





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This is Exhibit "E" referred to in the  
Affidavit ofCatherine Twinn  
Sworn before me this 23 day  
of September A.D., 2015A Commissioner for Oaths in and for the  
Province of Alberta**CODE OF CONDUCT**Trustees of The Sawridge Band Inter Vivos Settlement and of The Sawridge TrustsKAREN A. PLATTEN, Q.C.  
BARRISTER & SOLICITOR  
A COMMISSIONER FOR OATHS  
IN AND FOR ALBERTA**WHEREAS:**

- (1) The Sawridge Band *Inter Vivos* Settlement (the "1985 Trust") was established by Chief Walter P. Twinn by a Deed dated April 15, 1985.
- (2) The Sawridge Trust (the "1986 Trust") was established by Chief Walter P. Twinn by a Deed dated August 15, 1986.
- (3) The undersigned, Walter Felix Twinn, Bertha L'Hirondelle, Roland Twinn, Catherine Twinn and Clara Midbo, are currently the trustees (the "Current Trustees") of both the 1985 Trust and the 1986 Trust (collectively, the "Trusts"). The trustees of the Trusts from time to time are hereinafter referred to as the "Trustees".
- (4) The following additional documents are attached as schedules to this Code of Conduct:
  - (a) a document prepared by Davies Ward Phillips & Vineberg LLP as counsel for the Trustees which is entitled "Responsibilities of Trustees of the Sawridge Trusts" (the "Trustees' Responsibilities document"), which is attached as Schedule A; and
  - (b) Trustees' resolutions dealing with the procedure for Trustee decision-making, which are attached as Schedules B1 and B2.
- (5) In order to facilitate the effective administration of the Trusts, the Current Trustees wish to enter this Code of Conduct to which they have all agreed.

NOW THEREFORE the undersigned Current Trustees all agree to the following provisions of this Code of Conduct:

**1. General**

In order to carry out the Trustees' basic obligation of acting in the best interests of the beneficiaries, the Trustees must act with care, skill and diligence, integrity and impartiality; they must in general avoid conflicts of interest and duty; they must act in a way that enables decisions to be made effectively; they must respect confidentiality; and they must not act in a way which brings the office of Trustee into disrepute. This Code of Conduct will deal with each of these aspects of the Trustees' responsibilities. It will also deal with communications between Trustees and directors and management of the corporations directly or indirectly owned by the Trusts (the "Sawridge Corporations").

This Code of Conduct will also provide a procedure for resolving disputes arising from this Code of Conduct.

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## 2. Care and Diligence

As expressed in the Trustees' Responsibilities document, the applicable general principle is that Trustees are required to exercise the care, skill and diligence of an ordinary prudent person. In particular, this requires that Trustees will:

- (a) attend all Trustee meetings except only when unable to do so;
- (b) read and consider the agendas for Trustee meetings along with accompanying materials; and
- (c) generally give careful consideration to all issues arising for decision by them as Trustees.

## 3. Communications with Directors and Management of Sawridge Corporations

As expressed in the Trustees' Responsibilities document, the Trustees have adopted an arrangement under which none of them sit on the boards of Sawridge Corporations; instead, the Trustees have elected qualified persons to act as directors. This arrangement rests on two principles. The first is that the Trustees will not interfere in the roles, respectively, of the directors and of the management of the corporations. The second is that the Trustees will have sufficient and timely information about the conduct of the Sawridge Corporations so that, as a group, they are kept fully apprised of the business and affairs of the corporations and where considered advisable communicate any concerns through the Trustees' Chair to the Chair of the Board of Directors.

Two points dealing with the practical application of these principles apply to the conduct of Trustees. These are:

- (a) Communications between the Trustees and the directors will ordinarily be made by and to the Trustees collectively only through the Trustees' Chair. Individual communications may occur only at meetings of the shareholders at which directors attend, including at annual shareholder meetings.
- (b) Trustees will not interfere with management of the Sawridge Corporations. If any Trustee has any concern relating to management of the corporations that concern must not be communicated to the management but is to be brought to the attention of the Trustees as a group and the Trustees' concern can then be communicated through the Trustees' Chair to the Chair of the Board of Directors.

## 4. Integrity, Impartiality and Conflict of Interest

Trustees must at all times act honestly in the best interests of beneficiaries and in making decisions as Trustees must make decisions which they honestly believe to be in the beneficiaries' best interests.

Trustees must exercise their functions as trustees free of extraneous and improper influence. This includes obvious circumstances such as receiving bribes but also extends to less obvious

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circumstances such as making a decision on the basis of personal feelings about a particular beneficiary where such feelings have no relevance to the matter under consideration or where the Trustee has not expressed to the other Trustees the fact that such feelings are affecting his or her decision.

#### Conflicts of Interest

Avoidance of conflicts of interest is an aspect of the requirements of integrity and impartiality. As stated in the Trustees' Responsibilities document, the Trustees must avoid improperly acting in a position of conflict between self-interest and duty. The following procedure will be followed to deal with such conflicts:

- (a) For the purposes of this procedure, there will be considered to be a conflict in the following circumstances:

"There will be a conflict when a Trustee may obtain some benefit, directly or indirectly, from his or her position as Trustee or when the Trustee is in a position in which his or her decision-making as Trustee may potentially be influenced, directly or indirectly, by his or her personal interests. It will be assumed that a Trustee may obtain such a benefit if the benefit is obtained, not only by the Trustee, but also by the spouse, parent, sibling or child of the Trustee. Similarly, it will be assumed that a Trustee may be influenced if, not only the Trustee, but also the spouse, parent, sibling or child of the Trustee may be affected by the decision."

- (b) All possible conflicts must be disclosed by a Trustee to the other Trustees when the possible conflict becomes apparent to him or her. If in doubt about whether there is a conflict, the possible conflict should be disclosed.
- (c) Any Trustee, or the Chair if not a Trustee, may raise with the Trustees the issue of a possible conflict affecting any other Trustee.
- (d) If a conflict does not arise from the Trustees' dual position of Trustee and beneficiary, the conflict should ordinarily be avoided by the Trustee not entering into the transaction that would give rise to the conflict. For example, a Trustee must not sell his own property to the Trust (without court approval). Such a transaction cannot properly be carried out even if the vendor Trustee does not take part in the decision-making by the Trustees.

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- (e) When the conflict is expressly dealt with by the terms of the Trust Deeds, the Trustees may, despite the conflict, take part in the applicable decision-making. In particular, the Trust Deeds expressly provide for the Trustees receiving reasonable fees for their services as Trustees. They can, therefore, properly make the decision about their own fees. However, such decisions must not be open to the criticism that the Trustees have abused their position. The fees must therefore be demonstrably reasonable, and this may involve obtaining input from qualified advisors.
- (f) When the conflict arises from the Trustees' dual position as Trustee and beneficiary – for example, when consideration is being given to a distribution of trust property to a Trustee/beneficiary, the normal procedure should be for the conflicted Trustee not to be present at the Trustees' consideration of the question and should not vote on the question. In effect, such Trustee should be treated in the same way as a beneficiary who is not a Trustee.
- (g) Where possible benefits to Trustees or their relatives from a proposal under consideration by the Trustees arise only because the proposal may benefit all beneficiaries, or a broad category of them, with no particular advantage being conferred upon any Trustee or relative of a Trustee, it would be impractical and unreasonable to disqualify Trustees from consideration of the proposal merely because of such potential benefits. In such cases the potential benefits to Trustees and their relatives will generally be obvious on the face of the proposal, so that there is no hidden advantage to a Trustee or relative which should be disclosed, nor should the Trustee be exposed to criticism or potential liability for having made such a decision on the basis that it would be in the interests of the beneficiaries as a whole, or some significant group of beneficiaries.
- (h) When the Trustees decide that there is in fact no conflict in respect of a particular question or transaction but that one or more beneficiaries might nevertheless consider that there is a conflict, it will ordinarily be appropriate for the affected Trustee not to be present at the Trustees' consideration of the matter and not to vote on it.

##### 5. Conduct Involving Decision-Making Process

In order that the decision-making process be fair and effective, it is crucial that communication among Trustees be fair and effective. Therefore, the Trustees shall act in accordance with the following principles:

- (a) **Cooperation:** Trustees shall collaborate to serve the best interests of the beneficiaries.
- (b) **Tolerance:** each Trustee should seek to fully understand the views and values of the other Trustees in the best possible light and consider whether those views and values might be usefully adopted to guide the ongoing deliberations of the Trustees.

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- (c) **Inclusion:** Trustees shall use their best efforts to include all Trustees in their deliberations so that each Trustee feels that he/she had a meaningful opportunity to contribute to the discussion and that his/her views and values were given fair and full consideration.
- (d) **Compassion:** each Trustee recognizes that the other Trustees are human beings with their own weaknesses and capable of making mistakes. The Trustees agree to show patience, and provide mentorship and caring for each other.
- (e) **Relationship:** the Trustees recognize that people live in complex and essential webs of relationship and acknowledge that decisions and actions of individuals and the community unavoidably affect each other. The Trustees shall seek to make their decisions in ways that positively strengthen their relationships and in ways that promote the best consequences for the beneficiaries.
- (f) **Honesty in Communication:** Trustees must be fair, open, truthful and sincere when dealing with each other and shall all times avoid attempts to deceive or mislead each other.
- (g) **Fair Procedures:** the Trustees agree to proceed with their decisions in accordance with known and fair procedures.
- (h) **Assertiveness:** Trustees have an obligation to state their views and concerns openly and clearly for consideration by the other Trustees.
- (i) **Consensus:** where possible, Trustees should work towards unanimous agreement; where unanimous agreement is not possible, Trustees shall try to come to a consensus; where neither of these is possible Trustees shall reach decisions by simple majority. In all cases, once a decision is made by the Trustees it should be respected and followed by all.
- (j) **Objectivity:** Trustees must base their decisions upon relevant facts and information in a way that is not biased by undisclosed personal feelings or opinions.
- (k) **Transparency:** to the extent possible, the Trustees should be able to articulate their reasons for coming to a particular decision.
- (l) **Peacefulness & Respect:** Trustees have an obligation to be polite, respectful and courteous in their dealings with other Trustees; they agree to deal with each other in a calm and open manner; and they agree to avoid expressions of anger and personal attacks which may disrupt the harmony of the group.
- (m) **Reconciliation:** the Trustees accept that they are morally accountable for their own actions. Where their actions or decisions have, intentionally or unintentionally, caused disharmony, they accept a personal obligation to work towards restoring harmony.

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## 6. Confidentiality

The Trustees shall maintain the confidentiality of the deliberations of the Trustees and of any other confidential information imparted to the Trustees including information received from the Sawridge Corporations and their businesses and affairs.

## 7. Conduct Bringing Office of Trustee Into Disrepute

It is important that the role of the Trustees be respected by the beneficiaries of the Trusts. Therefore, criminal conduct or other conduct which brings the office of trustee into disrepute is contrary to this Code of Conduct, whether or not such conduct is directly connected to the carrying on of responsibilities as Trustee.

## 8. Application of the Code of Conduct

The following are the guiding principles applicable to the application of this Code of Conduct:

- (a) It is intended that Trustees will abide by this Code of Conduct, along with the Schedules to it, in carrying out their responsibilities as Trustees.
- (b) Any Trustee who has any concern about the conduct of another Trustee will ordinarily in the first place raise the concern either privately with the other Trustee or at a meeting of the Trustees, as may be appropriate in the circumstances. It is expected that such concerns will ordinarily be resolved informally without the need for any outside intervention.
- (c) Where it is alleged by a Trustee (the "Claimant") that another Trustee has acted inconsistently with this Code of Conduct and the Claimant is not satisfied that his or her concern has been properly resolved in accordance with (b) above, the Claimant may require that an outside person be appointed to act as a mediator and arbitrator to deal with the complaint, as follows:
  - (i) Subject to (iii) below, the Claimant will by notice in writing request the Trustees' Chair to arrange the selection of a mediator/arbitrator. Such mediator/arbitrator will be such person as shall be agreed by both the Claimant and the Respondent.
  - (ii) Subject to (iii) below, if the disputing Trustees do not, within 30 days from the date of the notice referred to in (i) above, agree on a mediator/arbitrator the Trustees' Chair shall appoint a mediator/arbitrator.
  - (iii) If the Trustees' Chair is a Trustee who is a disputing Trustee, the notice referred to in (i) above will be provided to the Trustees who are not the disputing Trustees and the appointment referred to in (ii) above will be made by the majority of the Trustees who are not the disputing Trustees.

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- (d) The role and authority of the mediator/arbitrator will be as follows:
- (i) the mediator/arbitrator shall arrange for a joint meeting with the parties not later than 90 days from the date of the notice referred to in 8(c)(i) above;
  - (ii) the mediator/arbitrator will first act as a mediator in order to facilitate a resolution of the dispute without the need for any binding direction;
  - (iii) if the mediator/arbitrator determines that it will not be possible to resolve the dispute without any binding direction, he or she shall act as an arbitrator to resolve the dispute by one or more directions;
  - (iv) the mediator/arbitrator shall have all the authority, powers and discretion granted to an arbitrator under the *Alberta Arbitration Act*;
  - (v) if the mediator/arbitrator makes a finding that a Trustee has acted inconsistently with this Code of Conduct the mediator/arbitrator may make one or more directions relating to any of the following:
    - (A) that a Trustee act or abstain from acting in particular ways;
    - (B) that a Trustee not be entitled to be paid remuneration to which he or she would otherwise be entitled;
    - (C) that a Trustee resign as Trustee;
    - (D) that some or all of the costs and expenses of the dispute resolution process be paid by one or more of the Trustees personally.
  - (vi) Subject to a direction made by the mediator/arbitrator pursuant to 8(c)(iv) above, the costs and expenses incurred in respect of the dispute resolution process will be paid from the assets of the Trusts.
  - (vii) There shall be no appeal from a decision of the mediator/arbitrator.

#### 9. Application of Code of Conduct to all Trustees

It is intended that all Trustees will be subject to this Code of Conduct. Therefore, it will be a condition of appointment of a person as Trustee that he or she will agree to become a signatory to the Code of Conduct.

#### 10. Severability

If any provision of this Code of Conduct is determined to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Code of Conduct.

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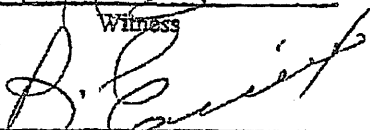
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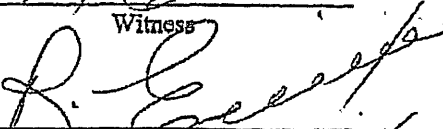
**11. Amendment of Code of Conduct**

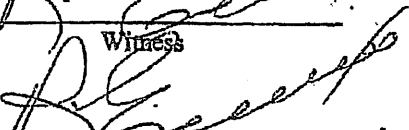
This Code of Conduct may be amended from time to time by the unanimous agreement of all of the Trustees at any such time by instrument in writing.

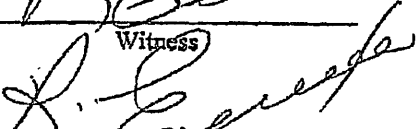
DATED this 12<sup>th</sup> day of January, 2009.

  
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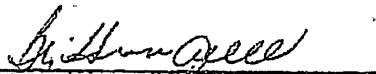
  
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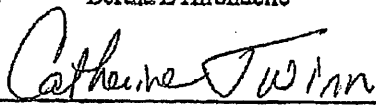
  
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\_\_\_\_\_  
Walter Felix Twinn, WFT

  
\_\_\_\_\_  
Bertha L'Hirondelle

  
\_\_\_\_\_  
Catherine Twinn

  
\_\_\_\_\_  
Roland Twinn

  
\_\_\_\_\_  
Clara Midbo



**SCHEDULE A****Responsibilities of Trustees of the Sawridge Trust****Introduction**

This document describes, in a general way, the responsibilities of the trustees (the "Trustees") of the Sawridge Band *Inter Vivos* Settlement (the "1985 Trust") and of the Sawridge Trust (the "1986 Trust") (together, the "Trusts").

Trustees are required to act in accordance with the general law of trusts as modified by the provisions of the document establishing the particular trust.

**Beneficiaries**

Paragraph 2(a) of the Trust Deed applying to the 1985 Trust defines beneficiaries for the purposes of that Trust as all persons who at any particular time qualify as members of the Sawridge Indian Band pursuant to the provisions of the *Indian Act* as those provisions existed on April 15, 1982.

Paragraph 2(a) of the Trust Deed applying to the 1986 Trust defines beneficiaries for the purposes of that Trust as all persons who at any particular time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including the membership rules and customary laws of the Sawridge Indian Band as they exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada.

**Number of Trustees**

The Trust Deed applying to the 1985 Trust provides that at all times (except for the period pending an appointment) there shall be at least five Trustees. A non-beneficiary may not be appointed if immediately before such appointment there is more than one Trustee who is not a beneficiary. There cannot, therefore, be more than two Trustees who are not beneficiaries (paragraph 5).

The Trust Deed applying to the 1986 Trust provides that at all times (except for the period pending an appointment) there is required to be a minimum of three Trustees and a maximum of seven Trustees. A non-beneficiary may not be appointed if immediately before such appointment there are more than two Trustees who are not beneficiaries (paragraph 5). It would, therefore, be possible to have three Trustees who are not beneficiaries. However, for tax reasons, it is preferable that the two Trusts have the same Trustees.

**Basic Obligation of Trustees**

The basic obligation of trustees is to act in the best interest of the beneficiaries.

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### **Distribution of Income or Capital of Trusts**

Both Trusts provide for the Trustees to have a wide discretion as to the distribution of income or capital of the Trusts, paragraph 6 of each Trust Deed providing (in part) that 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."

Although the provision of the Trust Deeds refers to the discretion as "unfettered" and "uncontrolled", it is in fact "fettered" and "controlled" by the requirements of the law of trusts. The point is that since the discretion is exercisable by the Trustees as trustees they must not exercise it arbitrarily but must do so in accordance with the requirements of trust law. These requirements, which have been laid down in case law and are expressed in fairly general terms, can be summarized as follows:

- Trustees must give active consideration to the exercise of their discretionary powers.
- Trustees must act in good faith, in the sense that they must take account of relevant factors and must not take account of irrelevant factors.

The case law does not define what is relevant for these purposes. It depends on the circumstances of each particular trust. However, the basic idea is that trustees should take account of factors relevant to the purposes of the particular trust. They must not, for example, take account of their personal feelings about particular beneficiaries.

Distributions from the Trusts may be made to or for the benefit of the beneficiaries in a variety of ways. These would include providing facilities or programmes generally for the benefit of beneficiaries and by programmes involving distributions to beneficiaries. It is important that the availability of any such facilities or programmes is made known to beneficiaries so that beneficiaries have the opportunity both to take advantage of any facilities or programmes that are generally available for beneficiaries and to apply for any facility or programme that will involve selection among the beneficiaries.

The topic of conflict of interest and duty is relevant to the exercise of the Trustees' discretion to distribute trust property. This is discussed below.

### **Process of Decision Making**

Unlike the law applicable to corporations, trust law does not specify a procedure for trustees to make decisions. Also, trust documents – like the Deeds applicable to the Trusts – do not typically provide detailed guidance for such decision making.

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The following should be noted:

- Both Trust Deeds provide for decisions being made by a majority of Trustees. In the case of the 1985 Trust, paragraph 13 of the Deed states that a "majority of fifty percent" of the Trustees shall be required for any decision or action taken on behalf of the Trust. This should be interpreted to require a simple majority which is clear when there is an odd number of Trustees, and when there is an even number it should be interpreted as a simple majority. In the case of the 1986 Trust, paragraph 13 of the deed provides as follows:

"Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision."

Although, as described above, both Trust Deeds provide that the Trustees' decisions may be made by a majority, this does not mean that decisions can properly be made with the involvement of only a majority. In general, all Trustees must take part in the decision-making process, even though ultimately the decision may be made by a majority.

- Although trustees are not required to make decisions by any particular procedure, it is important that they do have a procedure that enables decisions to be made effectively.

#### Delegation

In general, trustees cannot delegate to others the exercise of their discretionary powers. They can, however, seek professional advice and they can appoint agents to implement their decisions. In fact, when trustees do not have the expertise needed for the making of a particular decision, they should obtain such advice.

Paragraph 8(c) of both Trust Deeds provides for the employment of professional advisors and agents as follows by confirming power,

"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 payments of professional fees to any Trustee who renders professional services to the Trustees)."

The Trustees must exercise care in the appointment of professional advisors and agents and in monitoring their work appropriately.

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### Duty of Care

In general, in administering a trust and its property, trustees are required to exercise the care, skill and diligence of an ordinary prudent person. Two aspects of this should be noted, as follows.

#### Control of Corporations

Where trustees hold sufficient shares of a corporation to enable them to control that corporation, their fundamental obligation is to exercise that control for the benefit of the trust, and in doing so they must act in accordance with the standard of care referred to above. Ordinarily, this requires that:

- (1) the trustees obtain appropriate representation on the board of directors and, typically, this will have the result that one or more of the trustees will be directors;
- (2) the trustees should obtain and review appropriate information about the corporation's affairs; and
- (3) the trustees must exercise their powers as shareholders in order to fully protect the interests of the trust.

The principal assets of the Trusts are the shares in and debt owed by Sawridge Holdings Ltd. and 352736 Alberta Ltd. and their various subsidiaries (the "Sawridge Corporations"). Until the reorganization carried out in 2006, the same persons acted as Trustees of the Trusts and as directors of Sawridge Corporations. Since then, the Trustees have elected qualified persons whom they consider suitable to act as directors, and none of the Trustees has sat on the boards of Sawridge Corporations. In the circumstances of the Trusts and the Sawridge Corporations, this arrangement was considered to be the best method of dealing with the Sawridge Corporations. There are two inter-related aspects to this arrangement. The first is that the Trustees will not individually interfere in the respective roles of the directors and of management of the corporations. The second is that the Trustees have sufficient information about the conduct of the Sawridge Corporations so that they can properly monitor the activities of the corporations and be able to make informed decisions about their concerns and what should be communicated by the Trustees' Chair to the Chair of the Boards of Directors; the election of the boards of directors; and when it might be necessary – in unusual circumstances – to take a position by communication on a Chair-to-Chair basis regarding the management of the corporations. The following principles are applicable in this context:

- (1) The Trustees shall be routinely provided with the same information as is provided by management to directors.
- (2) The Trustees shall be routinely and promptly provided with the material received by directors at directors' meetings, including agenda and minutes of meetings.
- (3) Generally, the directors will supply any other information requested by the Trustees' Chair as collectively required by the Trustees.

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- (4) In order that the board of directors will not have concerns about providing confidential information, the Trustees receiving confidential information must respect the confidentiality of the information.
- (5) Communication between the Trustees and the directors will occur through the Trustees' positions being expressed collectively and through the Trustees' Chair. However, individual communications may occur at meetings of the Trustees as shareholders of the corporation, including at annual shareholder meetings.
- (6) Trustees should not interfere with management. If any Trustee has any concern relating to management, that concern should be brought to the attention of the other Trustees, and if considered by the other Trustees to be sufficiently material the Trustees' concern can then be communicated through the Trustees' Chair to the directors.

#### Investment

Paragraph 7 of both Trust Deeds gives the Trustees power to invest the Trust Fund in any investments authorized for trustees' investments by the *Alberta Trustee Act*, but the Trustees are not restricted to such investments and they may invest in any investment which they in their discretion think fit.

In dealing with investments, trustees are required to act in accordance with the standard of care described above. The Trusts were established in order to hold the Sawridge Corporations and the businesses carried on by them, and the exercise of the Trustees' investment responsibilities can properly be considered in light of this. However, it is also important for the Trustees to have regard to the principles generally applied, which are as follows:

- Trustees should, in selecting investments, perform an assessment of proposed investments, evaluating both the safety of the capital invested and the potential return from the investment. An assessment of risk, both of achieving the potential return and risk to the safety of the capital investment, should be considered.
- Ordinarily, trustees should diversify the investments of the trust, having regard to the requirements of the particular trust.
- The investment portfolio of the trust should be reviewed periodically as well as when unusual changes affecting the portfolio occur.
- Trustees may obtain expert professional advice on evaluating and selecting investments. Trustees may delegate authority to an agent with respect to the investments, so long as the trustees exercise appropriate care in the selection of the agent; the authority of the agent is clearly and appropriately restricted; and the performance of the agent is appropriately monitored.

#### Duty to Keep and Render Accounts and to Provide other Information

Under the general law of trusts, trustees have an obligation to maintain proper accounts dealing with the income and capital of the trust and, on request, to provide the accounts for the inspection of beneficiaries. Paragraph 10 of both Trust Deeds provides as follows:

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

In addition to their right to inspect trust accounts, beneficiaries are also entitled to obtain information about the trust and its administration and to inspect trust documents. This includes a right to inspect legal opinions obtained by the trustees in their capacities as trustees. A recent court decision indicates that, at least in some circumstances, beneficiaries do not have an absolute entitlement to obtain trust information and documents but that the court has an overriding ability to control such entitlement. Nevertheless, the Trustees should assume that beneficiaries will, generally, be able to assert a right to obtain trust information and documents.

It is not completely clear to what extent beneficiaries are entitled to information relating to corporations, shares of which are directly or indirectly held in the Trust. It should be assumed that the beneficiaries will be entitled to obtain all information and documents in the possession of the Trustees as trustees or which the Trustees are entitled to obtain as trustees. This will likely include any information or documents relating to any of the Sawridge Corporations, unless the production of such information or documents involves a breach of confidence or otherwise would be improper. Even in this situation, court controlled production of information or documents may permit disclosure to be made in a controlled manner. As was stated in the recent case referred to above:

"Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves and third parties. Disclosure may have to be limited and safeguards may have to be put in place."

It is the orthodox position that trustees cannot be required to provide beneficiaries with the reasons for their exercise of discretionary powers and, similarly, that documents expressing such reasons can be withheld. However, the Trustees should not rely on this orthodox position and should assume that their reasons for decisions (and the documents expressing them) will be scrutinized by beneficiaries and, in the event of a dispute, by the court.

The law is unclear as to trustees' obligations to volunteer information about the trust. As stated above, it is suggested that, at least when the Trustees have adopted a programme involving selection among beneficiaries, the availability of the programme should be made known to the beneficiaries.

#### **Duty of Loyalty: Conflict of Interest and Duty**

##### No Statutory Code

Unlike corporate law, trust law provides no statutory code dealing with the fiduciary obligations of trustees or, in particular, with conflict of interest and duty.

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### General Principles

The overriding obligation of trustees is to act in the best interests of the beneficiaries, and to prefer the interests of the beneficiaries over their personal interests. This is often described as the duty of loyalty. There are two, overlapping, aspects of the duty of loyalty. First, a trustee must not place himself in a position of conflict between his self-interest and his duty. Second, a trustee must not profit from his position as trustee. In general, a trustee who puts himself in a position of conflict is liable to disgorge any of the gains made from so doing and is liable for losses to the trust flowing from the breach of his trustee obligation. These general principles are applied very strictly against trustees. Liability does not depend on proof that the trustee in fact abused his or her position and the liability to disgorge gains does not require proof that the trust suffered any loss. Also, the liability to disgorge gains extends to those obtained indirectly as well as those obtained directly.

### Remuneration as Trustees

The general principles dealing with conflict of interest and duty are subject to modification by the terms of a particular trust. Paragraph 9 of each of the Trust Deeds provides for the Trustees to receive reasonable fees for their services as trustees in the administration of the Trusts.

### Application of General Principles

Clear examples of conflict occur if:

- a trustee makes use of trust property for his personal benefit;
- a trustee sells her own property to the trust;
- a trustee purchases property from the trust;
- a trustee establishes for herself personally a business competing directly with an established business of the trust; and
- a trustee takes advantage of a "maturing business opportunity" of the trust. For example, if trustees were negotiating to obtain some business opportunity for the trust, it would be improper for a trustee to obtain such business opportunity for himself or herself.

It is not clear whether a trustee may obtain for himself a business opportunity obtained otherwise than through his position as trustee in the circumstances that the business opportunity is of a type that the trust has adopted a policy of attempting to obtain.

It is not clear to what extent and in what circumstances the conflict principles apply where a benefit is obtained by the spouse or other close relative of the trustee. However, the Trustees should assume that the conflict principle will be applied in respect of any benefit that may be obtained indirectly by the Trustee, including where the benefit is obtained by the spouse or close relative.

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Application of Principles Where Trustees are Also Beneficiaries

The application of the general principles discussed above gives rise to some difficulty when the same persons are both trustees and beneficiaries since a conflict will often be inevitable in such circumstances. Some conflict is inherent in the two Trusts. In particular, the 1985 Trust requires that at least two Trustees be beneficiaries. Also, although it would be possible to have three Trustees of the 1986 Trust who are non-beneficiaries, for tax reasons it is preferable to have the same Trustees of the two Trusts.

As stated above, both of the Trusts give the Trustees a wide discretion to distribute income or capital of the respective Trusts to one or more of the beneficiaries. Obviously, the Trustees may be in a position of conflict – one created by the Trust arrangements and not one they have put themselves into – in exercising their discretion in a way that might benefit themselves as beneficiaries. This conflict is not acute if the policy is adopted of making distributions from the Trusts that are of general benefit for the beneficiaries, for example, if a distribution of a particular amount was distributed to each and every beneficiary or if funds were expended in creating facilities or programs available for the general benefit of beneficiaries. However, the conflict may be problematic if a policy is adopted involving the exercise of discretion to make distributions – either by way of grant or by way of loan – to particular beneficiaries. There is an obvious danger that the Trustees could be accused of acting improperly if their powers are used to benefit one or more of their own number, particularly if applications for assistance are denied to other beneficiaries.

There are two possible ways in which the inherent conflict in which the Trustees may find themselves can be managed. They are as follows:

- (1) One possibility would be for Trustees (and perhaps others closely connected to them, such as spouse and other close relations) to be excluded from benefit from any programs that involve choice among beneficiaries. However, this appears to be unfair to persons who choose to take on the responsibility of being trustees and may be an inappropriate disincentive. It must be remembered in this context that the terms of the trust instrument clearly contemplate that not only may the same person be both a trustee and a beneficiary but, particularly in the case of the 1985 Trust, it is required that some trustees must be beneficiaries.
- (2) Another possibility is to permit trustees to benefit from programmes of the sort under consideration but to manage the conflict arising from that by the use of arrangements such as the typical provisions applicable to corporations. For example, section 120 of the *Canada Business Corporations Act* contains a scheme applicable to directors under which directors are required to disclose their interests when they have a personal interest in a matter involving the corporation and they are then excluded from voting on any resolution of the board of directors relating to such matter.

The second alternative is not perfect since trust law does not contain any provision or other rule absolving a trustee from responsibility with regard to a decision affecting a matter in the circumstances described in the second alternative. Nevertheless, in the special circumstances of



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the Sawridge Trusts this is the better of the two alternatives and should provide the most appropriate method of minimizing the conflict to the extent reasonably possible.

#### Dealing with Conflict

Certain preliminary points should be emphasized. First, although a "working definition" of a conflict will be set out below, and although there are situations in which it is clear that there will be an improper conflict, there will be many other situations in which it will not be possible to determine with certainty whether it would be considered there was an improper conflict. Second, the relevant principles of trust law are typically applied strictly against trustees. Therefore, when in doubt the safe course is for trustees to avoid acting in a way that could be characterized as putting themselves into a position of conflict. This presumption in favour of caution is particularly applicable to the Trustees as the Trustees must be particularly careful not to attract the criticism that they may be improperly taking advantage of their position as Trustees to benefit themselves.

In order to deal with the management of conflicts, the following is a useful "working definition" of a conflict:

There will be a conflict whenever a Trustee may obtain some benefit, directly or indirectly, from his or her position as Trustee or when the Trustee is in a position in which his or her decision-making as Trustee may potentially be influenced, directly or indirectly, by his or her personal interests. It will be assumed that a Trustee may obtain such a benefit if the benefit is obtained, not only by the Trustee, but also by the spouse, parent, sibling or child of the Trustee. Similarly, it will be assumed that a Trustee may be influenced if, not only the Trustee, but also the spouse, parent, sibling or child of the Trustee may be affected by the decision.

Not every conflict literally falling within this definition is necessarily problematic. Where a decision of the Trustees will benefit a group of beneficiaries that may include some or all of the Trustees who are themselves beneficiaries, or other beneficiaries related to them, as long as there is no ulterior purpose of conferring advantages on Trustees or their relatives under the guise of a scheme purportedly for the benefit of a broader category of beneficiaries, the fact that Trustees or their relatives may incidentally benefit should not preclude the Trustees from making such a decision. As previously noted, the terms of the Trusts require some Trustees to be beneficiaries, so that it cannot have been the intention that decisions of the Trustees be disinterested in the sense of there being no possible interest of any Trustee in the administration of the Trusts.

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**SCHEDULE B1****THE SAWRIDGE BAND INTER VIVOS SETTLEMENT****Resolution of Trustees: Process of Decision-Making****WHEREAS:**

- (1) The Sawridge Band Inter Vivos Settlement (the "Trust") was settled by Chief Walter P. Twinn on April 15, 1985.
- (2) The undersigned, Bertha L'Hirondelle, Walter Felix Twinn, Roland Twinn, Catherine Twinn and Clara Midbo, are the present Trustees of the Trust.
- (3) Paragraph 13 of the Deed applying to the Trust provides that any decision of the Trustees may be made by a majority of 50% of the Trustees.
- (4) The Trustees, subject to the provisions of the Trust, wish to regulate the manner of making decisions by them as Trustees.

**NOW THEREFORE BE IT RESOLVED THAT:****1. Chair of Trustee Meetings**

- (a) Ronald Ewoniak shall be invited to attend meetings of the Trustees and shall act as chair (the "Chair") of such meetings, provided that the Trustees may terminate such arrangement on reasonable notice to Ronald Ewoniak and shall from time to time appoint one of the Trustees or some other person to act as Chair.

**2. Meetings of Trustees**

- (a) Subject to paragraph 3 below, all decisions of the Trustees shall be made at meetings of the Trustees.
- (b) The Trustees shall meet at least once every quarter.
- (c) The Chair shall be responsible for calling the regularly scheduled quarterly meetings of the Trustees and additional meetings which may be called by the Chair on 48 hours' notice to the Trustees.
- (d) Meetings in addition to the regularly scheduled meetings may be called by the Chair or any Trustee on 48 hours' notice to the Chair (if not calling the meeting) and to the other Trustees.
- (e) Notice may be given in writing, by e-mail, fax or telephone or in person.
- (f) Any person may participate in a meeting by means of telephone, electronic or other communication facility as permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

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- (g) A majority of the Trustees shall constitute a quorum of Trustees.
- (h) A reasonable time before each meeting, the Chair shall circulate to all Trustees an agenda to which shall be attached all relevant documents for consideration by the Trustees at the meeting.
- (i) The Trustees present at a meeting shall appoint one of the Trustees or some other person to act as the secretary of the meeting and to record the minutes of the meeting, including decisions of the Trustees.

### 3. Resolutions of Trustees

A decision of the Trustees may be also made by a resolution in writing signed by all of the Trustees.

DATED this 12<sup>th</sup> day of January, 2009.

Bertha L'Hirondelle  
Bertha L'Hirondelle

Roland Twinn  
Roland Twinn

Clara Midbo  
Clara Midbo

Walter Felix Twinn  
Walter Felix Twinn WFT

Catherine Twinn  
Catherine Twinn

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**SCHEDULE B2****THE SAWRIDGE TRUST****Resolution of Trustees: Process of Decision-Making****WHEREAS:**

- (1) The Sawridge Trust (the "Trust") was settled by Chief Walter P. Twinn on August 15, 1986.
- (2) The undersigned, Bertha L'Hirondelle, Walter Felix Twinn, Roland Twinn, Catherine Twinn and Clara Midbo, are the present Trustees of the Trust.
- (3) Paragraph 13 of the Deed applying to the Trust provides that any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claims whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.
- (4) The Trustees, subject to the provisions of the Trust, wish to regulate the manner of making decisions by them as Trustees.

**NOW THEREFORE BE IT RESOLVED THAT:****1. Chair of Trustee Meetings**

- (a) Ronald Ewoniak shall be invited to attend meetings of the Trustees and shall act as chair (the "Chair") of such meetings, provided that the Trustees may terminate such arrangement on reasonable notice to Ronald Ewoniak and shall from time to time appoint one of the Trustees or some other person to act as Chair.

**2. Meetings of Trustees**

- (a) Subject to paragraph 3 below, all decisions of the Trustees shall be made at meetings of the Trustees.
- (b) The Trustees shall meet at least once every quarter.
- (c) The Chair shall be responsible for calling the regularly scheduled quarterly meetings of the Trustees and additional meetings which may be called by the Chair on 48 hours' notice to the Trustees.
- (d) Meetings in addition to the regularly scheduled meetings may be called by the Chair or any Trustee on 48 hours' notice to the Chair (if not calling the meeting) and to the other Trustees.
- (e) Notice may be given in writing, by e-mail, fax or telephone or in person.

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- (f) Any person may participate in a meeting by means of telephone, electronic or other communication facility as permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously.
- (g) A majority of the Trustees shall constitute a quorum of Trustees.
- (h) A reasonable time before each meeting, the Chair shall circulate to all Trustees an agenda to which shall be attached all relevant documents for consideration by the Trustees at the meeting.
- (i) The Trustees present at a meeting shall appoint one of the Trustees or some other person to act as the secretary of the meeting and to record the minutes of the meeting, including decisions of the Trustees.

### 3. Resolutions of Trustees

A decision of the Trustees may be also made by a resolution in writing signed by all of the Trustees.

DATED this 12<sup>th</sup> day of January

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Bertha L'Hirondelle  
Bertha L'Hirondelle

Walter Felix Twinn  
Walter Felix Twinn WFT

Roland Twinn  
Roland Twinn

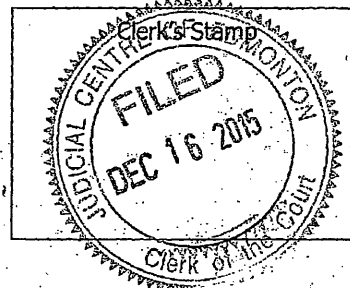
Catherine Twinn  
Catherine Twinn

Clara Midbo  
Clara Midbo



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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 AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McLENNAN ROSS LLP  
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12220 Stony Plain Road  
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Lawyer: Karen A. Platten, Q.C.  
Telephone: (780) 482-9200  
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Email: kplatten@mross.com  
File No.: 144194

#### **AFFIDAVIT OF CATHERINE TWINN**

**SWORN ON THE 15 DAY OF DECEMBER, 2015**

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 was appointed as trustee of the 1985 Trust on December 18, 1986 and of the 1986 Trust on August 15, 1986. I have continuously maintained my position as a trustee since these appointments.

**CONFLICT – COURT OF QUEEN'S BENCH ACTION NO. 1103 14112 (the "2011 Action")**

3. Dentons LLP ("Dentons") and Reynolds Mirth Richards & Farmer LLP ("RMRF") presently represent the collective group of the trustees of the 1985 Trust in the 2011 Action. As such, I am one of their clients.
4. I have had longstanding concerns with the administration of the Trusts. These concerns generally arise from what I perceive to be a conflict of interest between the duties of the trustees of the Trusts and other various roles, powers, duties and relationships they hold within the Sawridge First Nation (the "Band"), which includes elected and appointed positions. One of my earliest concerns in relation to the 1985 Trust was that appropriate steps were not being taken to ascertain the beneficiaries of that trust. I had a similar concern in regards to the 1986 Trust, more particularly that the beneficiary list was not complete because persons who should qualify for Band membership, including those who are entitled, were not being fairly admitted into membership by the Band due to political and/or personal motivations. I recommended to the other trustees that we should use a tribunal to make decisions on beneficiary status for both Trusts, however, this recommendation, after a retired Justice was engaged, was rejected as the other trustees wanted to defer to the Band to make these decisions. As time has gone on, my concerns have only grown.
5. Historically many of the 5 trustee positions for the Trusts were held by elected officials of the Band. Presently, the Chief of the Band, Roland Twinn is a trustee of both Trusts. My concerns in this regard are set out in more particular detail in my Affidavit filed on September 3, 2015 in Court of Queen's Bench Action No. 1403 04885 (the "2014 Action"), and which Affidavit was subsequently filed in the 2011 Action on September 30, 2015. Since this particular Affidavit was prepared, I remain of the view that it is imperative that the Trusts have independent representation at the trustee level so that the management of the Trusts assets is not affected by improper motivations.
6. My particular concerns with the 2011 Action increased in 2012 after the June 12, 2012 decision of Justice Thomas in the 2011 Action (the "Decision"). To summarize some of the Decision, Justice Thomas appointed the Office of the Public Trustee of Alberta ("OPT") as litigation representative for impacted minor children, directing the OPT to ascertain how the proposed changes to the beneficiary designation would affect minors. This included all potential minor beneficiaries. The proposed new beneficiary definition was that a beneficiary would include only Band members. Given that beneficiary status, under the proposed variation, would solely be tied to Band membership, the OPT's mandate flowing from the Decision directed the OPT to examine and enable an evaluation of the Band membership rules and process and whether such are fair, reasonable, timely, unbiased, due process and Charter compliant. Justice Thomas also identified a structural conflict that existed in the trustee group by the fact that some of the trustees were or are in elected Band positions.
7. At the August 2012 trustee meeting, I provided a written recommendation to the trustees to address and cure the structural conflict identified by Justice Thomas in the Decision because it was my opinion that it was in the best interests of the beneficiaries that this conflict not exist. I proposed that all trustees resign, myself included, a proper process for our replacement be put in



place and an undertaking to the OPT to work honestly and collaboratively to thoroughly examine the Band system for ascertaining beneficiaries and implementing remedies. I believed this would be appropriate and minimize legal costs to the Trusts. The other trustees rejected my recommendation and in my view, increased their hostility towards me.

8. Given the increasingly divergent views between myself and the other trustees and my belief that the other trustees were not meeting their fiduciary duties to the beneficiaries of the Trusts, I requested, in September 2012, that the Trusts reimburse me for access to independent legal advice so that I could obtain counsel on my role and duties as a trustee. My request was denied by the other trustees.
9. I tried again in February 2013 to obtain trustee approval for independent legal advice for myself. I did this by proposing a resolution at a trustee meeting that would enable me or any other trustee access to legal advice. None of the other trustees would second my motion.
10. I tried again in September 2013 to have my concerns addressed. Once again, I raised my concerns with Brian Heidecker, the Chair of the Trusts. The concerns relayed to Mr. Heidecker, in general, were:
  - (a) the membership process and rules used by the Band were deeply flawed and did not meet legal principles of fairness and due process and it did not seem that improvements would be made;
  - (b) the beneficiaries of the 1985 Trust had not been properly ascertained;
  - (c) the other trustees were rejecting all of my suggestions on how to ascertain the beneficiaries of the 1985 Trust without providing any alternative suggestions.
11. The day after my meeting with Brian Heidecker, he and Paul Bujold (Trusts Administrator) hurriedly brought forward a proposal to the Trustees asking for authority to negotiate with the OPT to grandfather certain 1985 Trust beneficiaries regardless of whether they became Band members in exchange for the proposed variation to Band membership and thereby end the examination of Band membership by the OPT. A number of lists of beneficiaries they could choose to "grandfather" were produced by Mr. Heidecker and Mr. Bujold and these lists did not appear to have been created using proper methods to ascertain the actual beneficiaries of the 1985 Trust. Then and subsequently, I requested disclosure from Mr. Heidecker and Mr. Bujold on how these lists were created and such disclosure was refused. Given their refusal to disclose how the lists were compiled, I became very concerned that their proposal was undermining the Decision, improperly excluding 1985 Trust beneficiaries and a means to support the political and personal agenda of those in control of the Band and Trusts. I am concerned that those in control of the Band wish to vary the beneficiary designation in the 1985 Trust to Band membership so that they can control who the beneficiaries of the 1985 Trust are.
12. Following this proposal by Mr. Heidecker and Mr. Bujold and the subsequent refusals to disclose the basis for it, it became clear to me that my concerns regarding the structural conflict identified by Justice Thomas would not be addressed internally by the other trustees and that proper ascertainment and inclusion of all the 1985 Trust beneficiaries would not occur. While the other trustees were in favour of Mr. Heidecker and Mr. Bujold's proposal, it was my belief that this course of action did not comply with our fiduciary obligations as trustees. This belief was largely formed because of my concern that this proposal was an attempt by the other trustees to avoid having the Band membership process scrutinized. Additionally, I believe that the trustees need to have a process in place to ascertain beneficiaries of the 1985 Trust which is clear and which the trustees understand and approve. I was very concerned about the Band membership

process, for many reasons, not the least of which included the fact that the Band only has 44 members, while, Aboriginal Affairs and Northern Development Canada had significantly more people registered as affiliated with the Band (as at January 23, 2015 the number was 478 persons).

13. As a result of these concerns, and given that Dentons and RMRF were receiving instructions based on the consensus of the entire group of trustees, as communicated by Mr. Heidecker and Mr. Bujold, and failing to address my concerns in a manner that was satisfactory to me, I retained independent legal counsel, McLennan Ross LLP ("MR"), in the fall of 2013 to assist me with my concerns as a trustee of the Trusts and to counsel me on my fiduciary obligations as a trustee of the Trusts.

#### Dentons and RMRF

14. Given the divergent views between myself and the other trustees, the representation of the collective group by Dentons and RMRF in the 2011 Action is problematic.
15. The inherent difficulty in Dentons and RMRF's representation of me in the 2011 Action became clear in 2014 when on April 1, 2014, Dentons and RMRF, at the instruction of the trustees of the Trusts, as they purportedly existed at that date and with the exception of myself, filed an application against myself in the 2014 Action which related to the transfer of assets of the Trusts from the prevailing trustees of the Trusts to the new trustees of the Trusts. This application occurred in response to the appointment of Everett Justin Twin as a replacement trustee to Walter Felix Twin. I was shocked that my apparent legal counsel would file an application seeking relief against their own client.
16. In response to this application relating to the appointment of Everett Twin, MR attempted to negotiate a binding issue resolution process with Dentons that would resolve the application and allow for a procedure, overseen by Justice Thomas, to resolve all of the outstanding concerns I had with the operation of the Trusts, including the appointment of Justin Twin. Ultimately, Dentons rejected this proposal and would not engage further in negotiations. Attached as **Exhibit "A"** is the MR letter dated May 8, 2014 to Justice Thomas and as **Exhibit "B"** a copy of the May 8, 2014 Issue Resolution Agreement MR provided to Dentons and as **Exhibit "C"** a copy of a Dentons letter sent to Justice Thomas July 1, 2014 and as **Exhibit "D"** a copy of a July 14, 2014 letter sent by MR to Justice Thomas and as **Exhibit "E"** a copy of Dentons July 21, 2014 letter to Justice Thomas.
17. This application was heard before Justice Neilson on May 16, 2014. At the application, Justice Neilson ordered that my right to bring an application on the eligibility of Everett Justin Twin to sit as a trustee of the 1985 Trust was reserved. My objection to this application was based, amongst other matters, on my concern that Everett Justin Twin did not qualify to sit as a trustee of the 1985 Trust, the process used to create his alleged appointment as a trustee and that he was an elected official of the Band. Attached as **Exhibits "F" and "G"** to my Affidavit, respectively are a copy of the April 1, 2014 application and the Order issued by Justice Neilson on May 16, 2014.
18. Following the May 16, 2014 application, further instances arose that demonstrated to me that Dentons and RMRF were advocating for the majority of the trustees and that the interests I sought to address were not being represented, namely my concerns regarding the interests of the impacted beneficiaries and potential beneficiaries. For instance, I requested from Ms. Bonora at Dentons information as to when and where cross examinations on Affidavits were occurring in the 2011 Action. I did not receive Dentons response until after one of the examinations occurred and the response advised that direction only comes through Mr. Heidecker or Mr. Bujold and that

it was Dentons understanding that Mr. Heidecker of Mr. Bujold would have provided me the information I sought. Attached as **Exhibit "H"** is a copy of Dentons email dated May 28, 2014. Another incident arose in August 2014 when another replacement trustee needed to be appointed to replace a trustee (Clara Midbo) who died suddenly and unexpectedly. My concerns and recommendations relating to that appointment, which were similar to the appointment of Justin Twin, were not advocated by, or to my knowledge, even considered by Dentons or RMRF who had no discussions with me.

19. On or about June 12, 2015, the OPT filed an application in the 2011 Application. The application of the OPT, amongst other matters, sought document production from the Band and trustees as per their mandate stemming from the Decision of Justice Thomas. This application was returnable on June 30, 2015.
20. The difficulty in Dentons and RMRF's representation of me, in my capacity as a trustee, in the 2011 Action reached a breaking point when in anticipation of the OPT's production application and without my consent, Dentons and RMRF filed an application on June 12, 2015. This application, amongst other matters, sought to approve a settlement offer allegedly proposed by the trustees of the 1985 Trust in order to resolve, in full, the 2011 Action (the "Settlement Offer"). The Settlement Offer sought to grandfather certain alleged minor beneficiaries of the 1985 Trust and vary the 1985 Trust's definition of "beneficiary" to include only Band members. Interestingly, the effect of the Settlement Offer, if approved, would avoid Band membership being scrutinized by the OPT. The Settlement Offer was later withdrawn by Dentons after the June 30, 2015 application was case managed and set for hearing on September 2 and 3, 2015 along with the application filed by the OPT in relation to document production.
21. Given my serious concerns with the actions taken by the other trustees in relation to the Settlement Offer and other matters, my counsel, MR, prepared written submissions and appeared at the June 30, 2015 application on my behalf. While MR's appearance on June 30, 2015, was the first time they appeared on the record in relation to the 2011 Action, MR has been advising me in relation to the 2011 Action since the fall of 2013. MR has also been advising me in relation to the 2014 Action since the inception of that action.
22. At the June 30, 2015 application, the conflict in Dentons and RMRF's representation of the collective group of trustees was acknowledged by the Court. The Court directed Dentons to bring an application by July 15, 2015 in order to address the conflict issue. Dentons did file this application in the 2011 Action, but it has not been heard by the Court. To my knowledge, Dentons has not taken any further steps in order to resolve this issue.
23. The OPT's application for document production was adjourned to September 2 and 3<sup>rd</sup>, 2015. Dentons and RMRF filed a Brief on behalf of the trustees of the 1985 Trust for use at the September 2 and 3<sup>rd</sup>, 2015 application. The Brief filed by Dentons and RMRF argued that the Band should not be required to produce the records sought by the OPT. As a trustee, I am firmly of the view that the trustees should not be taking an opposing position to the OPT in regards to this issue because, given the potentially *significant* variation in beneficiary designation being sought by the trustees, a full understanding of the potential impact of that change is required in order to discharge our fiduciary duties. I consider this matter especially concerning because many of the potential beneficiaries of the 1985 Trust are vulnerable and marginalized persons that do not have the ability to participate in these legal proceedings and ensure that their views are heard.
24. Once again, given my concerns with the position being advanced by Dentons and RMRF on behalf of the trustees of the 1985 Trust, my counsel, MR, attended the September 2 and 3<sup>rd</sup>, 2015 application to make submissions on my behalf as a trustee of the 1985 Trust and to ensure

that the Court was aware of my concerns, namely that the other trustees should not be opposing this relief and that it is demonstrative of the inherent conflict between the multiple roles played by those persons that are both trustees and Band officials (or were Band officials).

25. At present, while my positions are not advocated by Dentons and RMRF because they accept the instructions of the majority of the trustees and communicate through Mr. Heidecker and Mr. Bujold, I technically remain their client. This is of serious concern to me.

#### Costs

26. As of December 3, 2015, I have incurred legal expenses in excess of \$170,000.00 with MR in relation to the 2011 and 2014 Actions. Given that these Actions are so intricately related, involving the same persons, factual matrix and similar issues, it is difficult to determine with any precision which Action the costs incurred by me with MR relate to.
27. I have also incurred other legal expenses such as obtaining an opinion from Larry Gilbert, former Acting Registrar in Ottawa of Indian Status and Band Membership, Indian and Northern Affairs Canada on whether Justin Twin qualified as a beneficiary of the 1985 Trust. Larry Gilbert was responsible for deciding Indian status and where the Department controlled the Band List, band membership. He also was responsible for investigating and deciding protests under the Indian Act. In 1996, his text "Entitlement to Indian Status and Membership Codes in Canada" was published by Carswell with an expected second edition once the Supreme Court of Canada decides the Harry Daniels case regarding Metis and non-status Indians. Although Larry Gilbert was implementing the Indian Act (Bill C-31) he also had to interpret and apply the Indian Act as it read prior to Bill C-31, that is, the 1951 Indian Act because the ancestors of each applicant under Bill C-31 might still have to meet the requirements of the 1951 Act. This choice of competent counsel for an opinion on the eligibility of Justin (McCoy) Twin was provided by MR to Dentons and RMRF, but not acted upon. To date, I have not been reimbursed for this legal expense.
28. In the 2011 Action, the following law firms have made oral or written submissions before the Court or, alternatively, have been present at applications in the 2011 Action. All of these law firms have had fees reimbursed from the Trusts' assets.

#### **Law Firm - Clients**

Dentons - Trustees of the 1985 Trust

RMRF - Trustees of the 1985 Trust

Bryan & Company LLP - All trustees of the 1985 Trust with the exception of Catherine Twinn

Parlee McLaws LLP - the Band

Bennett Jones LLP - Brian Heidecker, Chair of the Board of the trustees of the 1985 Trust

29. In the 2014 Action, Dentons, RMRF and Bryan & Company have all made oral or written submissions before the Court and have all been paid in full from the Trusts' assets.
30. From February 2010 to August 10, 2015, the Trusts have paid law firms in excess of \$1.8 million dollars, mostly in relation to the 2011 Action with some costs in the 2014 Action.
31. At this point, I have been required to self-fund my representation in the 2011 Action and the

2014 Action, while the other trustees have authorized payments of legal fees for Dentons (including firms advising Dentons for the purpose of providing supporting opinions such as Horne Couper), RMRP, Bryan & Company LLP, Parlee McLaws LLP and Bennett Jones LLP. The other trustees have also had the benefit of the representation of at least 3 law firms (Dentons, RMRP and Bryan & Company) with senior counsel involved at all firms. In comparison with the legal expense incurred by the other trustees, the amount of my legal expenses is quite modest and I have only had the benefit of one law firm representing my position and counselling me on my duties as a trustee in relation to the 2011 and 2014 Actions.

32. Attached as **Exhibits "I" and "J"** to my Affidavit are copies of the 1985 and 1986 Trust Deeds, respectively. Both trust deeds specifically authorize the reasonable reimbursement of costs incurred by a trustee incurred in the administration of the Trust.
33. I am very concerned that the legal fees of the other trustees, the Band and Mr. Heidecker have all been paid from the Trusts and I have been required to self-fund. It is especially concerning to me that, despite my objections, the Band's fees have been paid from the Trusts given that such a payment is not authorized pursuant to the deeds of settlement and the Band is taking a position that, in my view, is contrary to the beneficiaries' best interest in the 2011 Action.
34. I have submitted a formal request to the other trustees for payment of my legal invoices and to date, have not received any payment, not even partial payment. Attached as **Exhibit "K"** is a copy of a letter dated July 7, 2015 from MR to Dentons formally requesting payment of my legal fees that were incurred in my role as a trustee of the Trusts.
35. 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 15 day of December, 2015

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

**Crista C. Osualdini**  
Barrister & Solicitor

Catherine Twinn  
CATHERINE TWINN





**MCLENNAN ROSS LLP**  
LEGAL COUNSEL

**COPY**

Our File Reference: 281946

**Karen A. Platten, Q.C.**  
Direct Line: (780) 482-9278  
e-mail: [kplatten@mross.com](mailto:kplatten@mross.com)

**Sandra Vermette, Legal Assistant**  
Direct Line: (780) 482-9274

Fax: (780) 482-9102

PLEASE REPLY TO EDMONTON OFFICE

May 8, 2014

The Honourable Justice D. Thomas  
Law Courts  
Edmonton, Alberta

Dear Sir:

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

Catherine Twinn

Sworn before me this 15 day

of December 2015:

Crista C. Osualdini

A Commissioner for Oaths  
in and for the Province of Alberta

Re: Sawridge Trusts

**Crista C. Osualdini**  
Barrister & Solicitor

I act for Catherine Twinn and Ms. Bonora acts for the remaining Trustees of the Sawridge Band Inter Vivos Settlement and the Sawridge Trust. I am writing to you with the full knowledge and consent of Ms. Bonora. I understand from Sharon Hinz in the Trial Coordinator's Office, that you are willing to hear matters relative to the Sawridge Band Trusts.

We would like to set a matter down before you for a half day in August respecting an Agreement signed by the Trustees of the two Sawridge Trusts. This Agreement requires participation of all Trustees and, if the goals set in the Agreement are not reached by the 1st of August, the Agreement requires that the Trustees apply to you to ensure that the terms of the Agreement are met or an alternate process is proposed by you.

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600 McLennan Ross Building  
12220 Stony Plain Road  
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p. 780.482.9200  
f. 780.482.9100  
tf. 1.800.567.9200

Calgary Office  
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350 - 7th Avenue SW  
Calgary, AB T2P 3N9  
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tf. 1.888.543.9120

Yellowknife Office  
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Yellowknife, NT X1A 1N5  
p. 867.766.7677  
f. 867.766.7678  
tf. 1.888.836.6684

- 2 -

Please advise if we could impose upon you to participate in this fashion. We believe it will assist in the process of issue resolution amongst the Trustees which is long overdue. I am advised by Ms. Hinz that the dates of August 6, 7 and 8 at 10:00 a.m. are currently open. Thank you.

Yours truly,

KAREN A. PLATTEN, Q.C.

/ssv

cc: Doris Bonora (Dentons Canada LLP)

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Justice Thomas (00718440x7AC1F).docx



Affidavit of  
Catherine Twinn  
 Sworn before me this 15 day  
 of December 2015  
Crista C. Osualdini  
 A Commissioner for Oaths  
 in and for the Province of Alberta

### AGREEMENT FOR ISSUE RESOLUTION

**Crista C. Osualdini**  
 Barrister & Solicitor

#### WHEREAS:

- A. BERTHA L'HIRONDELLE, CLARA MIDBO, ROLAND TWINN, JUSTIN TWINN and CATHERINE TWINN are the Trustees of two trusts created in 1985 and 1986 known as the Sawridge Band Inter Vivos Settlement and the Sawridge Trust respectively and referred to herein as the '85 Trust and the '86 Trust, or collectively, as the Trusts;
- B. The Trustees acknowledge that differences have arisen amongst the Trustees requiring prompt and satisfactory resolution to mitigate and manage risk;
- C. The Trustees are desirous of solving these differences and of participating in a binding process to allow the Trustees to resolve these differences and generate a positive working culture;
- D. To that end, the Trustees have agreed to a process for issue resolution where facilitators will be engaged to formulate and manage a process of addressing issues and assisting the parties in determining and implementing best practices for administration of the Trusts going forward;
- E. The issues to be resolved will include, but would not be limited to, the following:
  1. Trustee selection and succession; including issues of conflict of interest now and in the future, including examination of a separated model to remove conflict of interest, be it actual, structural or of the appearance of conflict of interest;
  2. Establishing processes, rules and a plan for orderly and balanced Trustee succession;
  3. Examination of and ensuring that the system for ascertaining beneficiaries of the Trusts is fair, reasonable, timely, unbiased and in accordance with Charter principles and natural justice;
  4. Determination and review of all beneficiary lists, including those who have applied, for each of the Trusts and validation of same by the Trustees with a list of who is excluded and reasons for same;
  5. Creation of a productive, civil and respectful working culture for the Trustees and others in the employment of the Trusts.
  6. Determination of how assets were held and transferred from Trust inception to the present day;

- 2 -

7. Determination of how the investment decisions and structures of the corporations owned by the Trusts are to be made. Do they require pre-ratification by the Trustees or do the Trustees simply need to be informed of major investment and structuring possibilities and decisions in a timely fashion;
8. Determination of whether the entire beneficiary designation in a prior 1983 Trust transferred to the 1985 Trust;
9. An independent legal opinion on whether Justin Twin qualifies as a beneficiary of the 1985 Trust;
10. Preparedness of the Trustees for Trustee meetings including provision of any documents well before a meeting.

NOW THEREFORE THE PARTIES AGREE THAT:

1. The parties agree to an Issue Resolution process as set out above.
2. By May 26, 2014, at the latest, the parties agree that they will have exchanged lists of possible facilitators and chosen the facilitators to formulate manage and report upon a process dealing with the issues set out above. If the parties cannot agree, this matter shall be referred forthwith to Justice Denny Thomas, who the parties agree is seized with the matter, to appoint three outside facilitators.
3. If a process is not in substantial progress by July 1, 2014, this matter will be returnable before Justice Denny Thomas, the first week of August, 2014. Any of the parties can bring an application for intervention of Justice Denny Thomas to ensure that the terms of this Agreement are met or that an alternative method of resolution is determined by the Court.
4. The legal costs of Catherine Twinn shall be paid by the Trusts, or either of them, for all legal fees on a solicitor-client basis in relation to these issues and this Agreement, including those fees associated with any application set before the Court of Queen's Bench, including that of April 9, 2014, adjourned to May 5, 2014. The billings of Catherine Twinn's counsel shall be submitted to the lawyers for the Trusts and paid forthwith.
5. The costs of the facilitators will be paid by the Trusts.
6. All parties will be bound by the Issue Resolution process and the report issued by the facilitators at the end of the process and will take all necessary legal, administrative and other steps to forthwith implement the recommendations of the facilitators.

- 3 -

7. The administration of the Trust, including Paul Bujold and Brian Heidecker, will not have a role in the Issue Resolution process except to provide information as requested by the parties.

Dated to be effective the \_\_\_\_ day of \_\_\_\_\_, 2014.

IN WITNESS WHEREOF the parties have executed this Agreement.

Signed by BERTHA L'HIRONDELLE  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
BERTHA L'HIRONDELLE

Signed by CLARA MIDBO  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
CLARA MIDBO

Signed by ROLAND TWINN  
in the presence of:

\_\_\_\_\_  
Witness

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

- 4 -

Signed by JUSTIN TWINN  
in the presence of:

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Witness

---

JUSTIN TWINN

Signed by CATHERINE TWINN  
in the presence of:

---

Witness

---

CATHERINE TWINN

Doris Bonora

doris.bonora@dentons.com  
 D +1 780 423 7188  
 Dentons Canada LLP  
 2900 Manulife Place  
 10180 - 101 Street  
 Edmonton, AB, Canada T5J 3V5  
 T +1 780 423 7100  
 F +1 780 423 7276

**COPY**

July 1, 2014

File No.: 551860-1

**FAX: 780-427-0334**

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

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

Catherine Twinn  
 Sworn before me this 15 day  
 of December 20 15  
Crista C. Osualdini  
 A Commissioner for Oaths  
 in and for the Province of Alberta

My Lord:

**RE: In the Matter of the Sawridge Trusts and Catherine Twinn**  
**Action Number: 1403 04885**

**Crista C. Osualdini**  
 Barrister & Solicitor

Karen Platten had written to you in May, 2014 requesting an appearance before you on August 8, 2014. This related to an agreement that was contemplated in relation to settlement of a matter between the Sawridge Trustees and Catherine Twinn. It is an entirely different matter than the Sawridge Trust action for which you are seized and on which you have already made many rulings.

Ms Platten wrote to you in May and said:

*We would like to set a matter down before you for a half day in August respecting an Agreement signed by the Trustees of the two Sawridge Trusts. This Agreement requires participation of all Trustees and, if the goals set in the Agreement are not reached by the 1st of August, the Agreement requires that the Trustees apply to you to ensure that the terms of the Agreement are met or an alternate process is proposed by you.*

When Ms. Platten wrote to you, the agreement was being negotiated. This agreement was never executed as the parties could not reach a consensus on the terms of the agreement. The matter which lead to attempting to negotiate the agreement has been resolved through a court order before Justice Nielsen and thus we no longer require the appearance in front of you on August 8, 2014.

We thank you for agreeing to hear from us. Ms. Platten is aware that I am writing to you.

Yours truly,  
**Dentons Canada LLP**

Doris Bonora

DCEB/sh

The Honourable Mr. Justice D.R.G.  
Thomas  
July 1, 2014  
Page 2

Enclosure

c.c. Marco Poretti  
Janet Hutchison



**MCLENNAN ROSS LLP**  
LEGAL COUNSEL

**COPY**

Our File Reference: 281946

**Karen A. Platten, Q.C.**

Direct Line: (780) 482-9278

e-mail: kplatten@mross.com

**Amanda Riboreau, Assistant**

Direct Line: (780) 482-9275

Fax: (780) 482-9102

PLEASE REPLY TO EDMONTON OFFICE

July 14, 2014

SENT BY FAX

Court of Queen's Bench of Alberta  
Judicial Centre of Edmonton  
(Surrogate Matter)  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Attention: The Honourable Mr. Justice Thomas

Dear Justice Thomas:

Re: **Roland Twinn et al v. Catherine Twinn**  
Action No.: 1403 04885

Further to the letter of Doris Bonora advising that we no longer need the date of August 8, we do in fact need that date. On May 16, 2014, Ms. Bonora brought an application respecting transfer of assets to the Trustees of the Sawridge Band Inter Vivos Settlement Trust of April 15, 1985 and Mr. Justice Neilsen reserved the right of Catherine Twinn to bring an application on the eligibility of Justin Twin to sit as a Trustee.

We would like to bring that application before you on August 8. We understand that you believe that you are seized with matters in relation to the Sawridge Trusts and, as such, it would be necessary to have you hear Ms. Twinn's application.

Ms. Bonora has said that she is unavailable on August 8, but we understand that Mr. Marco Poretti is also acting for the Trusts and he or another lawyer at Dentons could appear.

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

Catherine Twinn

Sworn before me this 15 day

of December 2014

Crista C. D'Amico

A Commissioner for Oaths  
in and for the Province of Alberta

**Crista C. D'Amico**  
Barrister & Solicitor

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600 West Chambers  
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tf. 1.888.836.6684

- 2 -

This is a matter of some urgency as the Trustee eligibility needs to be addressed as quickly as possible to allow the Trustees to continue to make decisions and administer the Trusts. Additionally, we have just been advised that one of the non-beneficiary Trustees has passed away so it is critically important to address the issue of successor Trustees.

Yours truly,

KAREN A. PLATTEN, Q.C.

KAP/cmf

cc: Doris C.E. Bonora

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Doris Bonora

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F +1 780 423 7276

July 21, 2014

FAX: 780-427-0334

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

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

Catherine Twinn

Sworn before me this 15 day

of December 2013

Crista C. Osualdini

A Commissioner for Oaths  
in and for the Province of Alberta

My Lord:

RE: In the Matter of the Sawridge Trusts and Catherine Twinn  
Action Number: 1403 04885

*Crista C. Osualdini*  
Barrister & Solicitor

I am writing in response to the letter you have received from Karen Platten. I advised her in advance of her sending you the letter that I did not agree that it was appropriate to send you this letter, nor did I agree with the contents of the letter. She chose to send it in any event. We have not ever heard that you are seized with all matters dealing with Sawridge trusts issues. The issues being raised by Ms. Platten have never been addressed in any originating document. It is completely unfair to Sawridge trusts to allow Ms. Twinn to write to you to ask for a hearing without notice to us of the nature of the hearing, the nature of the relief being sought nor advance warning of any evidence that may be put before you. We are not aware of any Rules of Court that allow an applicant to simply write to a judge chosen by them and ask to be heard without any notice to an opposing party of the nature of the application.

Of course we will willingly participate in an application properly brought in the proper court documents by Ms. Twinn. These matters should be addressed in the normal course of litigation.

We trust that no further letters need to be written to you in respect of this matter.

Yours truly,  
Dentons Canada LLP

*[Signature]*  
Doris Bonora

DCEB/sh

Enclosure



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE

APPLICANTS

This is Exhibit "F" referred to in the Affidavit of  
*Catherine Twinn*  
Sworn before me this *15* day of *December* 20*13*  
*Crista C. Osualdini*  
A Commissioner for Oaths  
in and for the Province of Alberta

**Crista C. Osualdini**  
Barrister & Solicitor

RESPONDENT

DOCUMENT

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

#### NOTICE TO RESPONDENT

This application is made against you. You are the 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: April 9, 2014

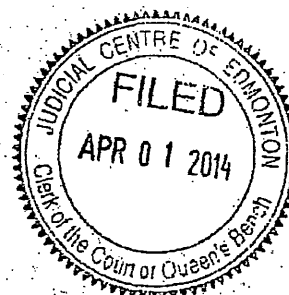
Time: 10:00 AM

Where: Law Courts Building, Edmonton, Alberta

Before: Justice in Chambers

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

Clerk's stamp:



1403 04885

COURT OF QUEEN'S BENCH OF ALBERTA  
EDMONTON

IN THE MATTER OF THE TRUSTEE ACT,

R.S.A. 2000, c. T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND  
INTER VIVOS SETTLEMENT and THE  
SAWRIDGE TRUST ("Sawridge Trusts")

ROLAND TWINN,  
WALTER FELIX TWIN,  
BERTHA L'HIRONDELLE, and  
CLARA MIDBO,  
EVERETT JUSTIN TWIN, as Trustees for the  
Sawridge Trusts

CATHERINE TWINN

Originating  
APPLICATION

Dentons Canada LLP  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora  
Telephone: (780) 423-7100  
Fax: (780) 423-72764  
File No: 551860-001-DCEB

**Relief claimed or sought:**

1. An order abridging the time for service of this application and supporting materials, and an order validating service of this application and any supporting materials to be good and sufficient, if necessary.
2. An order directing that the assets of the Sawridge Band Inter Vivos Settlement and the Sawridge Band Trust ("Sawridge Trusts") be transferred from the current trustees of the trusts being Catherine Twinn, Roland Twinn, Bertha L'Hirondelle and Clara Midbo ("the current trustees") to the new trustees being Catherine Twinn, Roland Twinn, Bertha L'Hirondelle, Clara Midbo and Everett Justin Twin ("new trustees").
3. An order directing that the administrator of the trusts to be at liberty to take any and all steps necessary and to execute any and all documents necessary to transfer the assets from the current trustees to the new trustees.
4. Costs of this application payable on a solicitor and client basis by a trustee who required the application be made or payable by the Sawridge Trusts.
5. Such further and other relief as this Honourable Court deems just and appropriate.

**Grounds for making this application:**

6. Walter Felix Twin, one of the trustees of the Sawridge Band Inter Vivos Settlement and the Sawridge Band Trust, resigned.
7. The Sawridge Band Inter Vivos Settlement requires that there be five trustees of the trust.
8. The selection of the new trustee may be done by majority vote. Everett Justin Twin was selected as a new trustee of the Sawridge Band Inter Vivos Settlement and the Sawridge Band Trust.
9. As the assets in the trust are held jointly by the trustees, it is necessary for the current trustees to transfer the assets of the trusts to the new trustees as a group.
10. The current trustees, with the exception of Catherine Twinn, have signed the necessary documents to effect a transfer of the respective trust assets from the current trustees to the new trustees.

11. Catherine Twinn has refused or neglected to sign the necessary documents to effect the transfer of assets.
12. It is necessary that the assets be transferred and it appears that it is impossible to proceed without the assistance of the Court.
13. The applicant will rely on such further and other grounds as counsel may advise and that this Honourable Court may permit.

**Material or evidence to be relied upon:**

14. Affidavit of Paul Bujold, filed.
15. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

16. Alberta Rules of Court.
17. Such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable acts and regulations:**

18. Trustee Act, RSA 2000, c. T-8, and regulations and amendments thereto.
19. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

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

20. In person, with all parties presents.

**Warning**

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



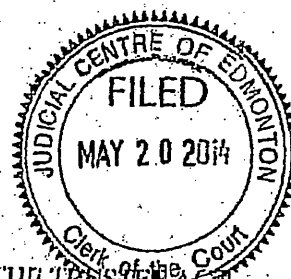
COURT FILE NUMBER

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE

Clerk's stamp:

1403 04885

EDMONTON



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

Catherine Twinn

Sworn before me this 15<sup>th</sup> day

of December A.D., 2013.

Crista C. Osualdini

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

APPLICANT'S

Crista C. Osualdini  
Barrister & SolicitorIN THE MATTER OF THE TRUSTS ACT,  
R.S.A. 2000, c. T-8, AS AMENDEDIN THE MATTER OF THE SAWRIDGE  
BAND INTER VIVOS SETTLEMENT and  
THE SAWRIDGE TRUST  
("Sawridge Trusts")ROLAND TWINN,  
EVERETT JUSTIN TWIN  
WALTER FELIX TWIN,  
BERTHA L'HIRONDELLE, and  
CLARA MIDBO, as Trustees for the  
Sawridge Trusts

RESPONDENT

CATHERINE TWINN

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENTAttention: Doris Bonora  
Dentons Canada LLP  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V8Telephone: (780) 423-7188  
Fax: (780) 423-7276  
File No: 551860-1-DCEB

Date on which Order Pronounced: May 16, 2014

Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: K. G. Nielsen

UPON the application of the Trustees of the Sawridge Trusts; AND UPON being advised that direction was required to transfer the joint assets of the Sawridge Trusts; AND UPON being referred to the contents of the affidavits of Paul Bujold and Brian Heidecker AND UPON

- 2 -

hearing counsel for the Trustees of the Sawridge Trusts and counsel for Catherine Twinn, IT IS HEREBY ORDERED AND DECLARED as follows:

1. The assets of the Sawridge Band Inter Vivos Settlement and the Sawridge Band Trust ("Sawridge Trusts") shall be transferred from the five previous trustees of the Sawridge Trusts being Catherine Twinn, Roland Twinn, Bertha L'Hirondelle, Walter Felix Twin and Clara Midbo ("the previous trustees") to the new trustees being Catherine Twinn, Roland Twinn, Bertha L'Hirondelle, Clara Midbo and Everett Justin Twin ("new trustees").
2. The administrator of the trusts, Paul Bujold, shall take any and all steps necessary and shall execute any and all documents necessary to transfer the assets from the previous trustees to the new trustees.
3. This order is made without prejudice to the right of Catherine Twinn to pursue an action to determine the eligibility of Everett Justin Twin to be appointed as a trustee of the Sawridge Band Inter Vivos Settlement.

D. Yungwirth

For Mr. Justice K. G. Nielsen

APPROVED AS TO FORM BY:

McLENNAN ROSS LLP

Per: Karen Platten

Karen Platten  
Solicitors for Catherine Twinn

DENTONS CANADA LLP

Per: Doris Benora

Doris Benora  
Counsel for the Trustees

B477862\_1\NATDOCS



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

Catherine Twinn

Sworn before me this 15 day

of December 2015

Crista C. Osualdini

A Commissioner for Oaths  
in and for the Province of Alberta

Crista C. Osualdini  
Barrister & Solicitor

**From:** Bonora, Doris [mailto:doris.bonora@dentons.com]

**Sent:** Wednesday, May 28, 2014 8:48 AM

**To:** Catherine Twinn

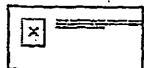
**Subject:** Response to your emails

Marco and I have not responded directly to you. We understand that Brian Heidecker provided you with a response to your inquiry. It has been our understanding that the trustees of the Sawridge trusts directed that everything in this litigation would go through either Brian or Paul. We were to take our directions from Brian and Paul who would receive their direction from the trustees as a group. It was our understanding that the trustees voted that the trustees would not be directly involved in the litigation (such as approving drafts of affidavits or attending questioning), and that no individual trustee should act on their own in the litigation.

Further, the issue of corresponding directly with you has been complicated by the fact that you have recently retained counsel. Of course you know that we should not speak directly with the client when they have retained counsel. It may be the case that this litigation is different than the litigation for which you retained Karen Platten. However, it is important for us to abide by the ethical rules and we need firm direction that we can communicate with you directly and not through your lawyers if in fact the trustees also agree that we should correspond with you directly.

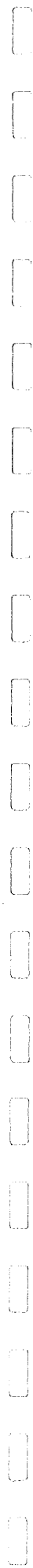
We certainly did not intend to be disrespectful in not responding to you.

Doris



Doris C.E. Bonora  
Partner

D +1 780 423 7188



## SAWRIDGE BAND INTER VIVOS SETTLEMENT

## DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 5<sup>th</sup> day of April, 1985 referred to in the Affidavit of

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"),

Sworn before me this 5 day

of December 2015

Crista C. Osualdini

A Commissioner for Oaths  
in and for the Province of Alberta

Crista C. Osualdini  
Barrister & Solicitor

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 1-6, 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~~

- 3 -

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

- 4 -

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.

- 5 -

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

- 6 -

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.



- 7 -

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.

- 8 -

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,

- 9 -

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

- 10 -

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

- 11 -

Alberta.

IN WITNESS WHEREOF the parties hereto have  
executed this Deed.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Robert J. Thom  
NAME

A. Settlor

Box 326, Slave Lake, Alta  
ADDRESS

B. Trustees:

Robert J. Thom  
NAME

1.

Box 326, Slave Lake, Alta  
ADDRESS

Robert J. Thom  
NAME

2.

Box 326, Slave Lake, Alta  
ADDRESS

Robert J. Thom  
NAME

3.

Box 326, Slave Lake, Alta  
ADDRESS

Schedule

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



001-20-1553 18:50 FROM SAWRIDGE ADMINISTRATION TO

14218977 P.29

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

Catherine Twinn

Sworn before me this 15 day of December 20 15

Crista C. Osualdini

A Commissioner for Oaths  
in and for the Province of Alberta

THE SAWRIDGE TRUST

DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

**Crista C. Osualdini**  
Barrister & Solicitor

BETWEEN:

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

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,  
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter 1-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached 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:

- 2 -

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 Deed, 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 under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada;

(b) "Trust Fund" shall mean:

(A) the property described in the Schedule attached hereto and any accumulated income thereon;

(B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed 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 Deed;



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14218977 P.31

- 3 -

- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Deed;
- (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; and
- (E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

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, lease 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 Deed.

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

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

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- 4 -

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 and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, 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.

- 5 -

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's 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 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 Québec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust 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 or to any extent detracted 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

JUL-26-1993 18:52 FROM SAWRIDGE ADMINISTRATION TO

14218977 P.34

- 6 -

(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 this Trust shall be paid from the Trust Fund, 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 this 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 provision of this Deed may be amended from time to time by a resolution of the Trustees that received 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 and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

JUL-28-1977 16:33 FROM SHAWRIDGE ADMINISTRATION TO

14218977 P.35

- 7 -

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 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 shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

OCT-26-1993 18:53 FROM SAWRIDGE ADMINISTRATION TO

14218977 P.36

- 8 -

15. 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 Trust 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.

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED  
in the presence of:

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor

CHIEF WALTER P. TWINN

B. Trustees:

1.

CHIEF WALTER P. TWINN

2.

CATHERINE M. TWINN

3.

GEORGE TWINN

JUL-26-1993 18:54 FROM SAWRIDGE ADMINISTRATION TO

14218977 P.37

- 9 -

SCHEDULE

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







**MCLENNAN ROSS** LLP  
LEGAL COUNSEL

**COPY**

Our File Reference: 144194

**Karen A. Platten, Q.C.**  
Direct Line: (780) 482-9278  
e-mail: kplatten@mross.com

**Amanda Riboreau, Assistant**  
Direct Line: (780) 482-9275

Fax: (780) 482-9102

PLEASE REPLY TO EDMONTON OFFICE

July 7, 2015

Dentons Canada LLP  
2900 Manulife Place  
10180-101 Street  
Edmonton, AB T5J 3V5

Attention: Doris Bonora

Dear Madam:

Re: Sawridge Trusts

This is Exhibit "K" referred to in the **VIA FAX**  
Affidavit of  
Catherine Twinn  
Sworn before me this 15 day  
of December 2015  
Crista C. Osualdi  
A Commissioner for Oaths  
in and for the Province of Alberta

**Crista C. Osualdi**  
Barrister & Solicitor

As you may realize, Catherine Twinn has been paying her own legal fees respecting the change to beneficiary status and the other matters respecting transfer of assets.

Catherine's information is that over 1.6 million dollars has been spent on legal fees to date as payment for counsel for the remainder of the trustees and for the fees of Janet Hutchison. It is clear that the other trustees' fees are being paid from the Trusts.

At paragraph 9 of the 1985 Trust, it indicates that the expenses of any of the trustees is to be paid by the Trust. Additionally, the *Trustee Act*, section 42, allows any trustee to bring an application to the Court for advice and direction. Each trustee is entitled to indemnification for solicitor client costs in all proceedings in which some question or matter is raised in the course of the administration of the trust.

It would be ridiculous to say that a trustee could bring their own application without reimbursement. In other words, a trustee that could be silenced by the majority of trustees, by the other trustees' refusal to provide funding for the trustee to bring the application, especially where the fiduciary obligation of the trustees is in question.

**Edmonton Office**  
600 West Chambers  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4  
p. 780.482.9200  
f. 780.482.9100  
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**Yellowknife Office**  
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5109 - 48th Street  
Yellowknife, NT X1A 1N5  
p. 867.766.7677  
f. 867.766.7678  
tf. 1.888.836.6684

In light of all of this, Catherine is seeking repayment of her legal fees, to date and going forward, from the Trust. We advise that our fees to date are \$131,216.47. We look forward to reimbursement to Catherine Twinn as quickly as possible.

Yours truly,

KAREN A. PLATTEN, Q.C.  
KAP/ar

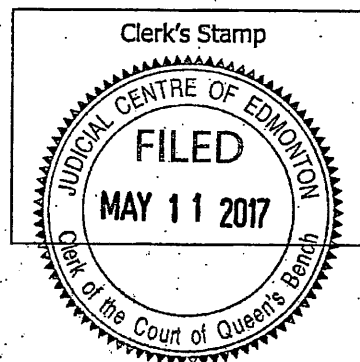
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Form 49  
Alberta Rules of Court  
Rule 13.19

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 AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

McLENNAN ROSS LLP  
#600 West Chambers  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4

Lawyer: Karen A. Platten, Q.C.  
Telephone: (780) 482-9200  
Fax: (780) 482-9102  
Email: kplatten@mross.com  
File No.: 144194

**AFFIDAVIT OF CATHERINE TWINN**

**SWORN ON THE 10 DAY OF MAY, 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 ("Paul"), identical copies of which were filed in Court of Queen's Bench Action No. 1103 14112 ("2011 Action") and Action No. 1403 04885 ("2014 Action") and both copies were sworn on February 15, 2017 (the or his "Affidavit"). I wish to provide my reply to his Affidavit and evidence given during the course of this application for indemnification, including his questioning on his Affidavit that occurred over March 7-10, 2017.

### 2011 Action

3. Prior to the 2011 Action being initiated, there were concerns discussed at trustee meetings surrounding the membership process of the Sawridge First Nation ("SFN") and ensuring proper beneficiary ascertainment. In furtherance of those concerns, legal advice was sought from Dr. Donovan Waters, Q.C. as to the duties and responsibilities of the trustees in relation to the SFN membership process and beneficiary ascertainment.
4. At my urging, initially the trustees had decided to explore utilizing a tribunal that would have the requisite expertise in order to ascertain who was a beneficiary of the 1985 Trust. Information about the tribunal and the process was publically communicated and persons who thought they might be a beneficiary of the 1985 Trust were asked to send in application forms to the trustees. Examples of this communication to potential beneficiaries are found in newsletters prepared by Mr. Bujold on behalf of the trustees and which are attached as **Exhibit "A"** to my Affidavit. In response to these requests, well over a hundred applications were received from potential 1985 Trust beneficiaries. To date, no meaningful process has been initiated by the trustees to process these applications and form a position on the applicant's entitlement as a 1985 Trust beneficiary, despite my many requests that this be done.
5. Beginning in 2000, a number of lists of possible beneficiaries of the 1985 and 1986 Trusts were produced by Mike McKinney and later by Paul Bujold; a summary of the various lists that are known to me is attached as **Exhibit "B"** to my Affidavit. There has been very limited discussion, tolerance for or explanation as to the process of ascertaining the individuals on the list or the criteria for adding, removing or not including individuals from the lists. An example of a person missing from the lists created is Michelle Ward, daughter of Georgina Ward. Attached to my Affidavit as **Exhibit "C"** is a copy of the May 21, 1985 decision from the Court of Queen's Bench upholding the Registrar's decision to add Michelle Ward to the SFN List of members and as **Exhibit "D"** the Band List from the Registrar under cover letter dated July 22, 1985 enclosing a copy of the Band List as of June 27, 1985 which includes the name of Michelle Danielle Ward. At some point after the SFN assumed control of the Band List in 1985, Michelle Ward's name was removed from the list. The evidence given by Paul Bujold that Michelle Ward was not on the Band List at the time it was turned over by the Federal Government is inaccurate. Please see page 3 of the Band List as shown in Exhibit "D". Section 10(11) of the Indian Act requires the date of her removal to appear on the membership list – this has not been complied with by the SFN. I believe that Michelle Ward is a beneficiary of both the 1985 Trust and the 1986 Trust. There are other persons who are entitled to be on the Band List whose names do not appear. These include Anna McDonald, William McDonald, Deborah Serafinchon and Cameron Shirt.
6. In addition to concerns about ascertainment of 1985 Trust beneficiaries, there were also concerns raised pertaining to proper ascertainment of 1986 Trust beneficiaries and whether the membership list produced by the SFN could be fully relied upon as a comprehensive list of the 1986 Trust beneficiaries. Dr. Waters acknowledged that there were concerns with the SFN membership process and rules and that the trustees needed to work with the SFN in order to address these matters.

7. I had also recommended to the trustees that the 1986 Trust also utilize a tribunal to ascertain beneficiaries of the 1986 Trust and, amongst other matters, to ensure that customary law was being applied in the determination of those who were entitled to be SFN members, as the 1986 Trust Deed requires, which was confirmed by legal advice from David Ward and communicated to Paul Bujold on December 4, 2009. The communication from David Ward is attached as **Exhibit "E"** to my Affidavit.
8. Subsequently, it came to the trustees attention that Chief Roland Twinn, acting in his capacity as Chief of the SFN, took exception with a tribunal being utilized and expressed that he viewed this as usurping the authority of the SFN to control its membership.
9. Dr. Waters advised the trustees that they had an interest in ensuring proper beneficiary ascertainment of both the 1985 and 1986 Trust and that there were concerns with the validity/operation of the existing SFN Membership process and its rules. The trustees were advised at the December 21, 2010 trustee meeting that an option available to the trustees was to work with the SFN to correct membership issues as "the quality of the Band membership Code process is crucial for the proper operating of the 1986 Trust." Attached as **Exhibit "F"** to my Affidavit is an email dated January 26, 2011 from Dr. Waters to Mr. Bujold stating the same.
10. Particular issues raised by Dr. Waters in terms of the SFN membership process were:
  - (a) it should be criteria based as the current criteria was too subjective; and
  - (b) timeliness in processing applications.

Attached as **Exhibit "G"** to my Affidavit is an email dated December 23, 2010 from Dr. Waters to Mr. Bujold, the trustees and Brian Heidecker stating the same.

11. At the December 21, 2010 trustee meeting, Dr. Waters provided the trustees with various options to address ascertainment of beneficiaries of the Trusts. One of those options involved varying the definition of beneficiaries under the 1985 Trust to be consistent with membership in the SFN. The trustees, including myself, approved proceeding with this option on the following basis, which is reflected in the meeting minutes as a resolution put forward by myself and seconded by Chief Roland Twinn:
  - (a) To proactively work with the Sawridge Membership Committee and the Chief and Council to expedite recommendations to the Legislative Assembly so that applications can be determined within 6 months from date received; and
  - (b) To work with the Chief and Council to develop proposed amendments to the Sawridge Citizenship Code including outlining legal standards that the decision-making process must meet.

Attached as **Exhibit "H"** to my Affidavit is a copy of the December 21, 2010 meeting minutes.

Given Chief Roland Twinn's support of the resolution, I believed that the SFN was also going to work with the trustees to achieve these objectives. Chief Roland Twinn did not advise any of the trustees at this meeting that the SFN would not support these objectives. I believed that this was a significant step to allow for fair and equal treatment of those individuals applying for membership in the SFN and as a result, receiving beneficiary status in the 1986 Trust and eventually in the 1985 Trust. Unfortunately, as time went on, I came to understand that these commitments were not going to be kept and they were likely only made to induce my support to

vary the definition of beneficiary in the 1985 Trust to membership in the SFN.

12. Mr. Bujold gave evidence at his questioning that his Affidavit sworn on August 30, 2011 and filed in the 2011 Action on September 6, 2011 would have been reviewed with the trustees by their legal team prior to it being sworn by Mr. Bujold. This is not true. I never saw this Affidavit until after it had been sworn. As a result, I did not have a chance to address any inaccuracies.
13. At the June 21, 2011 Trustee meeting the proposed Affidavit of Mr. Bujold was not final or available to the trustees. Brian Heidecker had a flip chart with 5 scenarios/possible results. Attached as **Exhibit "I"** to my Affidavit are photos of these flip charts with the 5 scenarios. I supported #4, predicated on reform of the SFN membership rules as set out in Paragraph 9 of my Affidavit as evidenced by the June 21, 2011 letter from Paul Bujold to the SFN to ensure that administrative law and Charter requirements were met to allow for fair and equal treatment for those individuals applying to become members. The June 21, 2011 letter of Paul Bujold is attached as **Exhibit "J"** of my Affidavit (the highlighting on this copy is mine). This letter raises concerns with the SFN's membership code and requests that the code be corrected to answer these concerns.
14. At the June 21, 2011 Trustee meeting, I was assured that:
  - (a) all beneficiaries and potential beneficiaries would be properly notified and fully informed so they understand the application with stringent diligence in this regard;
  - (b) Such persons participation in the 2011 Action would not be objected to;
  - (c) Upon filing the 2011 Action, the trustees would reach out to beneficiaries and potential beneficiaries in an open and transparent engagement process;
  - (d) The 1985 Trust would avoid adversarial litigation.
15. It was my understanding that when the trustees initiated the 2011 Action in August 2011 that, amongst other matters, the trustees would be working with the SFN to address and correct membership concerns and that the first task in the 2011 Action would be to obtain Court direction on whether the existing definition of "beneficiary" in the 1985 Trust was enforceable. It was on this basis that I voted in favour of proceeding with the 2011 Action at the December 21, 2010 trustee meeting. At this point in time, I genuinely believed (perhaps naively) that the SFN was going to work with the trustees to correct its membership process.
16. Since December 2010, my concerns regarding fairness and equity have not been addressed which has an obvious impact on my responsibility as a trustee to protect the interests of existing and future legitimate beneficiaries of the Trusts. Most notably, there have been no amendments to the SFN membership code; entitlement to membership in the SFN continues to be highly discretionary and arbitrary. Further, despite a request by the trustees, by the letter dated June 21, 2011, to work with the SFN on addressing concerns, this request has been ignored by the SFN. This is despite the fact that Chief Roland Twinn is both a trustee and the Chief of the SFN. In addition, Mr. Bujold has instructed legal counsel for the trustees to take the position that the definition of "beneficiary" in the 1985 Trust is discriminatory and must be amended – effectively the trustees are trying to jump to a variation of the definition before the Court has considered the enforceability of the definition.
17. If I had known that the SFN membership process was not going to be reformed, I would not have voted in favour of proceeding with the 2011 Action, as it had been presented to me initially. My position has always been that the membership system needs to be reformed to allow fair and

equal treatment to those who are eligible to apply for membership and that we will need to grandfather those beneficiaries of the 1985 Trust who cannot apply for membership.

18. The SFN Membership process is shrouded in secrecy and continues to demonstrate a lack of procedural fairness. Attached as **Exhibit "K"** to my Affidavit is a letter dated February 17, 2016 from Chief Roland Twinn to Gina Donald-Potskin, an applicant for membership in the SFN, that advises that an application was received from Gina on February 27, 2009 and that it took the SFN until December 12, 2012 to advise Gina that they did not believe her application to be complete. The letter also states that current economic conditions are a factor being considered by the SFN to determine membership admission. Attached as **Exhibit "L"** to my Affidavit is the signed statement of Gina's mother, Lilly Potskin, relative to Gina's attempts to apply for membership. Another example is a letter dated December 10, 2013, attached as **Exhibit "M"** to my Affidavit, from Mike McKinney (in house counsel for the SFN and the Companies) to Alfred Potskin that advised that the SFN had elected not to utilize its discretion to admit Mr. Potskin because it did not feel his admission was in the best interests and welfare of the nation. I am aware that Mr. Potskin's family were former members of the SFN. Mr. Potskin's parents enfranchised when he was a minor and it was on this basis that he lost his membership in the SFN many years ago. I am aware that Alfred Potskin applied for membership in 2011 and that it took over two years for him to receive a response. Attached as **Exhibit "N"** to my Affidavit is a sworn statement from Alfred Potskin dated December 26, 2014.
19. In specific response to paragraph 114 of Mr. Bujold's Affidavit he states that Alfred Potskin enfranchised in 1952. While this is true, this was the result of Mr. Potskin's father's application to enfranchise and not a result of a decision by Mr. Potskin as he was a minor at the time. At this time many indigenous persons elected to enfranchise due to fears about their children being forced into residential schools – it was not an easy decision and not necessarily a reflection that the person did not wish to be a member of their nation. In addition, Mr. Bujold incorrectly states that the reason given to Mr. Potskin for his rejection was because of the enfranchisement – this was not even mentioned in the rejection letter provided to Mr. Potskin by the SFN. I am aware that at the time Mr. Potskin received the rejection letter he was sick with cancer. As such, appealing to the electorate was not a matter that he could easily undertake. I urged Chief Roland Twinn and Bertha L'Hirondelle to reconsider and at least interview Alfred before committing to such a position on his membership.
20. Attached as **Exhibit "O"** to my Affidavit are various sworn statements from individuals who have had problems with the SFN membership process. These were previously provided to Mr. Bujold. To suggest or imply that there do not continue to be concerns with SFN membership process is difficult to fathom.
21. In addition, I am aware that in 2016 Chief Roland Twinn's children were added to the membership list of the SFN in a relatively short period of time (within months) as their applications for membership were processed prior to other applications that had been in the queue for longer, some for years.
22. Concerns with the SFN membership process were recently discussed by the Federal Court of Canada in Sam Twinn and Isaac Twinn v. Sawridge First Nation et. al. Attached as **Exhibit "P"** to my Affidavit is a copy of the decision.

#### **My History with the Trusts**

23. As set out in my prior Affidavits, I am the longest serving trustee of the Trusts and became a trustee of both Trusts in 1986. In 1986, I was in my 30s, married to Walter Twinn and raising a young family. My involvement and knowledge of the Trusts at that time was extremely limited. I

was never invited to a trustee meeting and the Trusts were dominated by men. I relied heavily on my husband, my time was consumed by domestic obligations and family and community issues – at this time addiction was rampant in the Sawridge community. I did not start becoming very active in the trusts until following my husband's death in 1997.

24. In specific response to paragraph 64(c) of Mr. Bujold's Affidavit, he states that I want a tribunal to identify beneficiaries prior to the Court providing Advice and Direction in the 2011 Action. This is a mischaracterization of my position. The relief the trustees are seeking in the 2011 Action would have the effect of disentitling persons who are currently beneficiaries under the existing definition of "beneficiary" in the 1985 Trust. It is my view that it is critical that the current beneficiaries of the 1985 Trust be identified so that those persons' interests can be properly considered by the Court and by the trustees. A tribunal is but one method of ascertaining a person's beneficiary status. I have offered and actively advocated other suggestions on how beneficiary ascertainment could occur to the other trustees, but have been met with resistance.
25. Paragraph 64(f) and 71 of Mr. Bujold's Affidavit are not entirely accurate in relation to his characterization of the advice the trustees received. The advice the trustees received was that while the SFN was responsible for determining membership in the SFN, the trustees of the Trusts had an interest in ensuring the SFN membership process was operating properly. Further, the trustees were advised by the late David Ward that they "have no power to ignore customary laws in determining the beneficiaries". See **Exhibit "E"** to my Affidavit. This is important because the definition of "beneficiary" in the 1986 Trust Deed refers to customary laws as a basis for determining membership. Despite this advice, the other trustees have taken no steps to address these issues with the SFN and have readily adopted the position that they can accept the membership list of the SFN as a complete statement of who is a beneficiary of the 1986 Trust, without question. This further reinforces my belief that the conflict of interest inherent in Chief Roland Twinn's dual role as trustee and Chief of the SFN is detrimental to the proper functioning of the Trusts.
26. In specific response to paragraph 70 of Mr. Bujold's Affidavit, he criticizes me for not taking steps to fix the SFN membership process. In fact, I did make many attempts while a member of the SFN Membership Committee to make recommendation to fix the process. My recommendations went ignored by Chief and Council. More recently, as a member, I specifically tried to ensure implementation of a review of the laws and membership code, but this was rejected by Chief Roland Twinn. As stated above, I had thought that prior to the 2011 Action being initiated that the trustees were going to work with the SFN to fix the broken membership system. It seems that once the 2011 Action was initiated and it appeared that the 1985 Trust beneficiary definition would eventually be varied to membership in the SFN, the SFN lost all interest in working with the trustees to fix the broken membership system.

#### **Appointment of Justin Twin**

27. Following learning of Walter Felix Twinn's resignation, I called him in order to discuss his reasons for resigning. He advised me that he needed to resign because the stress of trying to battle the dysfunction that was occurring at SFN had become too much for him. Attached as **Exhibit "Q"** to my Affidavit is a summary of my January 22, 2014 telephone call with Walter Felix Twinn that was signed by Walter on April 14, 2014 that confirms that this reflects his reasons for resigning as a trustee.
28. In specific response to paragraph 28 of Mr. Bujold's Affidavit, prior to the appointment of Justin Twin as a trustee, the trustees had never been asked to sign a motion that they did not vote in favour of and further had never been asked to sign transfer documents in relation to the assets of the Trusts. This request by Mr. Bujold came as a surprise to me. I felt that I was being



pressured into conceding to Justin Twin's appointment despite concerns I had with his eligibility, qualifications and his familial loyalty to Roland Twinn. In respect to my latter concern, I was aware of Justin's relationship with Roland and anticipated that he may not challenge positions appropriately or simply defer to Roland rather than consider the merits of issues before the trustees or his obligations as a trustee to the beneficiaries. Mr. Bujold states that the trustees had a legal opinion that supported these actions at that time. I was not presented with said legal opinion at that time, and to date, have never received a legal opinion that existed at the date of the January 21, 2014 trustee meeting that stated the same.

29. In response to paragraph 35 of Mr. Bujold's Affidavit, it is not true that I attacked Justin or attacked his membership at the January 21, 2014 meeting. As set out in my prior Affidavits, I was blindsided at the January 21, 2014 meeting by the appointment of Justin Twin. I had not fully considered his appropriateness or qualifications as a trustee of the 1985 Trust in advance. I did not raise concerns about Justin's eligibility as a 1985 beneficiary until after the January 21, 2014 meeting. However, when Justin Twin was being considered for a trustee-in-training program in 2004, which he was ultimately not selected for, I raised concerns at that point with whether he qualified as a 1985 Trust beneficiary. Attached as **Exhibit "R"** to my Affidavit is an email dated April 1, 2004 from myself to Bill Kostenko (a consultant working for the Companies at the time), Clara Midbo and Chief Roland Twinn that identified this concern and suggested that we needed to identify 1985 Trust beneficiaries. My recommendation was ignored.
30. Further, prior to the May 5, 2014 application to compel the transfer of assets to the new Trustee group, I had sent a letter dated March 19, 2014 to Brian Heidecker requesting various information in regards to the transfer of asset issue and ancillary matters. I had asked that the issue of Justin Twin's appointment be separated from the transfer of assets. I did not receive a substantive response to my inquiries. Attached as **Exhibit "S"** to my Affidavit is the letter of March 19, 2014.
31. In specific response to paragraph 32 of Mr. Bujold's Affidavit where he states that a pending commercial transaction had become an emergency which required the transfer of assets to be completed immediately, I have spoken with John MacNutt, CEO of the Companies, who confirmed to me that there was not an emergency from the Companies perspective and that they were proceeding with the commercial transaction irrespective of the transfer of assets as they did not perceive this as a requirement for them to conduct business. This is especially so because a transfer of assets had never been signed in the past.
32. I note that this "urgency" was also deposed to in an Affidavit by Brian Heidecker sworn on May 14, 2014 and filed in the 2014 Action on May 15, 2014, contrary to the information I received from Mr. MacNutt and from past practice in relation to major transactions such as the sale of the Slave Lake Hotel, the purchase of the Edmonton Hotel and the Best Western Plus Sawridge Suites Hotel in Fort McMurray.
33. In specific response to paragraph 51(g) of Mr. Bujold's affidavit, he notes that another Court Application needed to be made respecting the transfer of assets when Dr. Ward became a Trustee. However, at that time, there was no emergency or pending asset crisis or need for trustee consent and therefore no need to make another application to the Court.

#### **My Character**

34. I take exception with Mr. Bujold's attempts to undermine my character in his Affidavit.
35. I am a lawyer and have continuously been a member of the Law Society of Alberta since 1980. I take my ethical obligations seriously and apply them to all aspects of my life, including my role as

a trustee.

36. Attached as **Exhibit "T"** to my Affidavits are letters of recommendation from the Honourable Chief Justice Allan H. Wachowich dated March 18, 2009 wherein he recommended that I apply for a judicial appointment to the Alberta Court of Queen's Bench and believed that I would make an excellent judge. There is also a subsequent letter from the Honourable Chief Justice Wachowich dated June 21, 2011 wherein he recommended me for a senior government position. The Honourable Chief Justice Wachowich noted that my "integrity is beyond question" and I possess "a friendly demeanour with those with whom she comes into contact".
37. I have taken my duties, both legal and moral, as a member of the Sawridge community very seriously and have spent countless hours in trying to further the interests of the community. Many persons associated with the Sawridge community are marginalized persons, who suffer from lack of education, trauma based conditions, including addiction, poverty and personal/social issues. To be able to stand up for their rights requires they must first know what their rights are and have the courage and resources to do so. Accessing justice requires money, especially in these circumstances. Some are not well equipped to be able to stand up for their rights and interests.
38. I have worked tirelessly for the Trusts for many years to further the interests of all beneficiaries. For over a decade I worked on beneficiary ascertainment in relation to the 1985 Trust and advocating to the other trustees that the beneficiaries needed to be identified. The benefits program which is now offered by the 1986 Trust is a result of the Four Worlds report which report was brought about through my efforts to retain and support the work of Four Worlds. I also worked tirelessly to assist in saving the Companies from financial ruin. I have dedicated a great deal of my time to discharge my duties as a trustee and the only compensation I have received is the standard meeting compensation to which all trustees are entitled. This is despite the fact that I have spent a disproportionate amount of time working for the Trusts as compared to many of the other trustees.
39. My efforts began as raising issues and seeking to create dialogue with persons who had authority or influence to effect change. Based on my experience, dialogue alone has not been enough. This has led to my involvement in the 2011 and 2014 Actions. My involvement in these Actions was not undertaken lightly and it came based on my emerging conclusion that the only way to address my concerns and discharge my duties as a trustee was through Court process.
40. In specific response to paragraph 131 of Mr. Bujold's affidavit, a "without prejudice" agreement, attached as **Exhibit "U"** to my Affidavit, was signed by all parties at the meeting and thus, anything said at the meeting was "without prejudice", thus allowing the parties to say what they believed needed to be said in order to effect settlement.
41. In summary, I have expended a significant amount of my own funds in order to challenge the positions being taken by the majority of the trustees with respect to:
  - (a) Beneficiary definition in the 1985 trust;
  - (b) Ascertainment of beneficiaries;
  - (c) Trustee obligations;
  - (d) Conflicts of interest within the trustee group; and
  - (e) Separation of political from economic decision making.

I have done this not to benefit myself, but to discharge my duties as a trustee and to protect those beneficiaries that I believe will be excluded and marginalized as a result of the decisions of the trustees, which I believe are heavily influenced by the SFN and its political objectives. I will receive no personal benefit from the positions I am taking as I am currently a beneficiary of both Trusts and would continue to be even if the definition of "beneficiary" in the 1985 Trust is varied as sought by the majority. Taking these positions has come at a significant personal cost to myself and my family whose future applications for membership in the SFN have likely been jeopardized as a result of me speaking out. In the recent months, I have requested a minor's application form for membership in the SFN for my granddaughter, Aspen Twinn, on two separate occasions from Chief Roland Twinn. He has ignored both of my requests.

42. I have attempted for many years to work with the trustees and the SFN to effect positive change. Despite my efforts, change has not resulted. Attached as **Exhibit "V"** to my Affidavit is summary of telephone call that occurred on December 14, 2009 between David Ward, Tim Youdan, Megan, myself and Mr. Bujold. In this call, Tim Youdan (counsel to the trustees) stated that it was the trustees duty to properly ascertain the beneficiaries of both Trusts. Mr. Bujold acknowledges that I had been trying to obtain trustee cooperation in terms of beneficiary ascertainment, but the trustees "will not listen". This telephone summary was prepared by Mr. Youdan's office and not me.
43. As a trustee I have advocated on several occasions for trustee decisions that were not popular amongst the other trustees, but I believed were solely for the interest of the beneficiaries and critical for the future of the Trusts. In 2003 the Sawridge Group of Companies (the "Companies") (the shares of which are the sole asset of the Trusts) were in financial distress. At the time they were being managed by the SFN under a lucrative contract under which I was later advised by David Ward on December 14, 2009, the "Chief of the Band" and Mike McKinney were paid large sums which should properly be disclosed on a passing of accounts by the Trusts. Mr. Bujold's evidence at questioning that the SFN was simply providing bookkeeping services, is not accurate. As a result of my insistence, management of the Companies was assumed first by an outside management team led by CEO John MacNutt (who I identified and recruited) and then in 2006, by an outside Board of Directors. Many of my efforts to benefit the beneficiaries have come at a great personal cost to me. I faced a great deal of retaliation and hostility for my part in recruiting and implementing outside management and an outside Board of Directors. It is similar to the reaction that I am now experiencing for advocating for independent trustees and as articulated in Mr. Bujold's Affidavit. At the time the outside board was appointed for the Companies, similar arguments were raised that the SFN community did not want "outsiders" managing the Companies. These positions still exist today and are reflected in Mr. Bujold's Affidavit. Following the implementation of the outside CEO and Board, the Companies financially recovered. If it had not been for my insistence and numerous hours expended in implementing this change, the Companies would likely have succumbed to financial pressure and folded.
44. Mr. Bujold gave evidence at his questioning on his Affidavit that I had created tension with the independent Board of Directors of the Companies through my conduct. I deny that this occurred. I enjoy a good working relationship with the Board. Some Directors have indicated their discomfort working with Paul Bujold. The Chair and CEO expressed tension over how Brian Heidecker handled a succession issue wherein an excellent Director, Sid Hanson, was replaced with Mike Percy, Brian Heidecker's connection from the University of Alberta. The Directors are very concerned by the risks to the Companies posed by the other Trustees' management of the 2011 Action in which Paul Bujold and Brian Heidecker are the instructing clients.
45. It is noteworthy that Mr. Bujold does not depose as to the interference of Chief Roland Twinn with the Companies. I am aware that Chief Roland Twinn often interferes with the management of the Companies at an operational level and uses his position as Chief and trustee to create

deference to himself and his immediate family. For example, I am aware that he harassed a former long standing employee of the Companies (Dave Nelson) which ultimately caused Mr. Nelson to quit. Attached as **Exhibit "W"** to my Affidavit is a copy of a letter dated May 1, 2017 from Mr. Nelson that describes his experience with the Companies and Chief Roland Twinn.

#### Various Matters

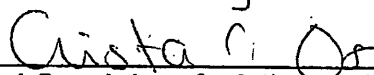
46. In specific response to paragraph 84 of Mr. Bujold's Affidavit, this is a mischaracterization of what occurred. As set out in my earlier Affidavit, I proposed a process whereby all trustees would resign and only myself and Clara Midbo would stay on for a short period of time until replacements for all trustees, including myself, could be found. I have never stated that only I am good enough to stay on as a Trustee. Many times Roland Twinn offered to resign if I did, yet when I accepted his offer, he refused. I have offered to step down if Roland Twinn and Bertha L'Hirondelle do likewise. I want a competent Board of Trustees who are truly independent and capable of critical thinking.
47. In regard to paragraph 91 of Mr. Bujold's Affidavit, I also believe that the other trustees have breached the Code in many ways and I have filed complaints against them. Attached as **Exhibit "X"** are copies of my complaints filed thus far by me in the Code of Conduct proceedings. I disagree with Mr. Bujold's characterization of my behavior at trustee meetings, however will admit that I am very frustrated because it appears that my significant concerns pertaining to, amongst other matters, beneficiary ascertainment of both Trusts, go ignored despite the fact that I have been raising these issues for years, as have others, including the Court.
48. In regard to paragraph 117 of Mr. Bujold's Affidavit, the membership committee of the SFN, prior to it being abolished was unorganized and ineffective. I raised many concerns during my time on this committee, but meaningful change was not achieved. Mr. Bujold states that he was advised that I often did not attend meetings and thus affected the ability of the committee to achieve quorum. This was surprising to me as the committee had many members, so repeated failure to reach quorum would indicate a systemic problem. Mr. Bujold acknowledged in questioning that he has no personal knowledge of these matters. What Mr. Bujold's informant failed to state is that meetings of the committee were often called on very short notice to me or no notice at all. I had a busy schedule and required reasonable notice in order to accommodate meetings. If I failed to attend a membership committee meeting, it would usually be because I had very short notice, or no notice. The meetings were not scheduled at regular times despite my request for a schedule. It was concerning to me that reasonable notice and minutes of the meetings were not provided to me. I suspected that this may have been done in order to try and prevent my attendance and keep the discussions at the meetings secret from me.
49. In specific response to paragraph 187 of Mr. Bujold's Affidavit, this is entirely untrue that I have not been working with the trustees and their counsel to try and resolve the 2011 Action. I have been actively engaged in settlement discussions. My primary concern in this litigation is that those persons, and their issue, who would be disentitled as a result of a change in definition to membership in the SFN be identified and grandfathered.
50. In regards to Mr. Bujold's responses to written interrogatories, I have the following comments:
  - (a) W/I #2 – Mr. Bujold refused to provide an example of a trustee meeting minute wherein Dr. Ward voted against the majority. I am not aware of this ever occurring.
  - (b) W/I #18 - Mr. Bujold refused to provide an example of where SFN council members have formed a majority vote against the Chief at SFN council meetings. To my knowledge, I

am not aware of this ever occurring during the tenure of Chief Roland Twinn as Chief of the SFN.

- (c) W/I #19 – Despite deposing that the other trustees all ask "tough questions" at trustee meetings. Mr. Bujold refused to produce copies of any meeting minutes that disclose such questions being asked. Based upon my experience, Justin Twin and Bertha L'Hirondelle do not actively participate at trustee meetings and defer to Chief Roland Twinn.

51. I disagree with much of what Paul Bujold gave evidence to in terms of the purpose and intention of the settlor for the Trusts, including that my late husband (the settlor) intended to merge the Trusts. I never heard Walter say this. After his death, merger was discussed at various times for tax or operational reasons but never with a view to legally strip beneficiaries and their issue of their status. To the contrary, the advice received in 2004 was that merger was a variation, beneficiary consent would be required to vary the Trust and beneficiaries must be ascertained and they and their issue grandfathered. The Trustees decided to ascertain 1985 Trust beneficiaries in 2004 and again in 2009 but failed to act and follow through.
52. Paul Bujold stated in questioning that persons do not have to be Indians to be SFN band members on the Band List. This is simply false and inconsistent with prior positions taken by the SFN and Paul Bujold himself. It is my understanding that you must be a registered Indian in order to be considered for membership in the SFN.
53. The trustees have recently taken the position that ascertaining 1985 Trust beneficiaries cannot be done – for a variety of reasons including cost, time and uncertainty. I disagree. I am aware of a First Nation Trust in Manitoba where some 300+ beneficiaries were ascertained almost all of them in less than 6 months, at a cost well under \$150,000. A consultant and lawyer competent in the Indian Act rules undertook the ascertainment and would recommend to the Board of Trustees whether that person qualified to receive a Trust benefit. The Sawridge Trustees decided to ascertain 1985 Trust beneficiaries in 2004 and 2009, but they failed to act and now have spent more than \$4 million of Trust money on an amorphous litigation process which they claim negates them of their obligation to ascertain the 1985 Trust beneficiaries until the outcome of the litigation is known.
54. 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 10<sup>th</sup> day of ~~December~~ May, 2017

  
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

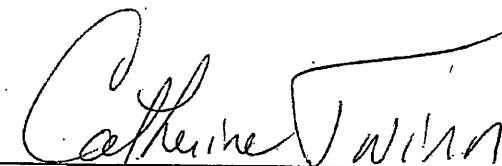
  
CATHERINE TWINN



Exhibit:

1

Date: March 8, 2017

Witness: PAUL BUJOLD

Katie McLeod, Court Reporter

RM



# Sawridge Trusts News

VOLUME 1 NUMBER 1

SPRING 2010

## SPECIAL POINTS OF INTEREST:

Check out one beneficiary, Kerry Cardinal's, business venture!

www.abors-recordings.com

Check out another beneficiary, Brenda Draney's, big win!

www.canadianart.ca/foundation/programs/rbc/2009/07/13/rbc-winner

## INSIDE THIS ISSUE:

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## Trusts Office Opened

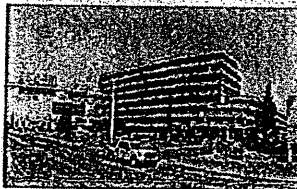
The Sawridge Trusts now have an office. It isn't exactly new—we've been here since November 2009. The Trustees hired a Trusts Administrator in September 2009. Prior to setting up the office, the Administrator was working from his home.

Beneficiaries of the Sawridge Band Intervivos Settlement and the Sawridge Trust now have a place to go to get information about the Trusts or potential benefits.

Since November, the office has been collecting the records of the Trusts, setting up the office (desks, computers, telephones), working on a web page, recruiting a chairperson for the Board of Trustees and clerical help, tracking down eligible beneficiaries

(see Tracking Beneficiaries later in this newsletter) and reviewing the performance of the Trusts since their creation in 1985.

Setting up the office was part of a



Terrace Plaza Office Building from Calgary Trail, Edmonton

plan approved in July 2009 by the Trustees. Some beneficiaries were involved in the Four Worlds study on the Trusts in January 2009. Part of the plan that came from that study was to set up an office and begin work

ing on developing benefits (see Defining Benefits later in this newsletter).

The office is now open to assist Trustees with their work and to assist beneficiaries get answers to their questions or help on various issues.

You can call us or visit the office anytime from 8:30 AM to 4:30 PM Monday through Friday. Our address is 801, 4445 Calgary Trail, Edmonton (North of the Delta Hotel and West of the Radisson Hotel just off the Whitemud Freeway). You can call us toll-free at 1-888-988-

This is Exhibit "A" 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

a Notary Public and Commissioner for Oaths  
in and for the Province of Alberta  
get people to apply to the Pleasure  
Trustees can track these Governor  
cants to the rules.

If you or someone you know hasn't applied yet, application forms are available from the Trusts office. We will mail, fax or email them to you. The review will likely begin in late May or early June 2010.

## Tracking Beneficiaries

Since the Trusts were initially set up, 25 years ago, a lot of people have come and gone. The world has also changed a great deal.

Tracking the beneficiaries of the Trusts is more complicated than one would think. The Trusts were set up for members of the Sawridge First Nation but changes to the Indian Act and

decisions by the courts have made even that question a complicated process.

For the Sawridge Trust, the beneficiary list is clearer—if you are on the Band list, you are probably a beneficiary. For the Sawridge Band Intervivos Settlement, the rules are a bit more complicated. The Trusts have to



PAGE 2



Brian Heidecker, New Chair of the Sawridge Trusts Board of Trustees

## The Trustees

The Trustees recently hired Mr. Brian Heidecker as the new Chair of the Board of Trustees. Brian will begin a three-year term as Chair on 10 May 2010.

Brian is a retired farmer from Castor, AB who now lives in Edmonton. He is presently also Chair of the University of Alberta Board of Governors and has served on many Boards, including the Board of the Bank of Canada.

In addition to the Chair, there are five Trustees serving the Sawridge Trusts: Clara Midbo, Catherine Twinn, Bertha L'Hirondelle, Roland Twinn and Walter Felix Twinn.

The Trustees meet monthly, sometimes in Slave Lake and sometimes in Edmonton at the Trusts offices. They supervise the assets and business of the Trusts and decide upon the benefits and on eligible beneficiaries.

## Trust Assets

Trust assets consist of two holding companies, Sawridge Holdings Ltd and 352736 Alberta Ltd. These two holding companies are invested in a number of businesses.

The most visible of these assets are the Sawridge Inns located in Slave Lake, Peace River, Fort McMurray, Jasper and Edmonton, Alberta. In addition to these, the holding companies own the Sawridge

Truck Stop in Slave Lake, the Slave Lake Plaza and a number of properties and other small businesses.

The assets are managed for the Trusts by Sawridge Management which is run by a Board of Directors selected by the Trustees. The Board of Directors reports to the Board of Trustees and directs the management of the business investments of the Trusts through its

management team led by CEO John McNutt and CFO Susan Berggren. Company head offices are located in Edmonton.

Through these investments, the Trusts provide economic development, jobs and, through dividends from the companies, will eventually provide benefits to the beneficiaries into the future.

"Providing benefits through dividends from the assets."

## Defining Benefits

Some First Nations receiving large land claims settlements or large profits from resource development have chosen to use some of the revenue to develop infrastructure and have distributed the rest to the membership. Sawridge First Nations chose a difference approach

by investing the income to provide future benefits to its members.

During the Four World consultations, many of the beneficiaries thought that "benefits should provide incentives for people to live in health and balance, rather than 'rewarding

people for making poor choices". People also felt that benefits needed to balance the needs of present and future generations, needed to recognize the unique needs and circumstances of each person, needed to respect unique life paths by provid-

"For our children and our children's children"





## Defining Benefits (cont'd)

ing choices; needed to provide for individuals as well as for the community as a whole; and needed to balance the need for limits with flexibility.

Beneficiaries wanted benefits to provide insurance, support related to death and illness, support related to educational needs, support related to employment and entrepreneurship, support related to financial planning and management, support for housing, support for child and youth development, support for seniors, support for community unity, support for personal devel-

opment and cash disbursement.

Developing benefits that fit within the resources available from the Trusts' investments that meet the needs of the beneficiaries is a complicated balancing process.

Trustees have begun by defining four benefits packages: The Compassionate Care and Death Benefit, the Seniors' Support Benefit, the Health and Life Insurance Benefit and the Personal Development Benefit.

Plans for 2010 include work on a Child and Youth Development

Benefit, an Educational Benefit, and a Housing Support Benefit.

Since benefits provided to the beneficiaries need to fit in to the resources available through the Trusts' investments, the Trustees have to be careful to develop benefits within the limits that the investments will permit.

Information about the benefits will be provided to the beneficiaries as it becomes available.

*"...benefits should provide incentives for people to live in health and balance, rather than 'rewarding' people for making poor choices".*

## Meet The Trusts' Administrator

In September 2009, the Trustees hired a Trusts Administrator. Paul Bujold brings a broad range of experience to the job. Paul grew up in Cold Lake. He has a bachelor's degree in psychology and a master's degree in community development from the University of Alberta.

His work experience includes serving as Director of family and community services in Killam and Cold Lake, Alberta; as Executive Director of health services at Hobbema; as Director of Operations for the Bahá'í Community of Canada in Toronto; as a financial planner with London Life in Vancouver; as CEO for child and family services authority in Eastern Alberta, as Principal of a high school in Swaziland, Africa; and as a management consultant in Ontario,

BC, Alberta and Swaziland.

Paul's family is grown—he has three daughters, one working in molecular genetics at the U of A, one working in cell biotechnology at the U of A and one studying political science-development at Grant MacEwan. He also has one grand daughter.

The Trustees plan to establish a branch office in Slave Lake as well as the main office in Edmonton.

Paul will be visiting the Slave Lake area on a

regular basis and will be available to assist beneficiaries with accessing the benefits they need.

The office staff is there to answer your questions and hear your concerns. If there is anything that we can do or any information we can provide, we will try to do that immediately. If your problem requires

a decision from the Trustees regarding benefits, the matter will be brought to the trustees attention and you will be informed as soon as there is a decision.

Please let us know what you need and we will try to develop the resources to meet these needs.



Paul Bujold,  
Trusts Administrator



Slave Lake, Home of Sawridge First Nation

## Sawridge Trusts

801, 4445 Calgary Trail  
Edmonton, AB T6H 5R7

Phone: (780) 988-7723

Fax: (780) 988-7724

E-mail: [general@sawridgetrusts.ca](mailto:general@sawridgetrusts.ca)

Web: [www.sawridgetrusts.ca](http://www.sawridgetrusts.ca) (in development)

Established in 1985 and 1986 by the Chief and Council of the Sawridge First Nation under Chief Walter P. Twinn, Sawridge Trusts were set up to provide economic development, potential for employment, create an avenue for self sufficiency, self assurance, confidence and financial independence for the members of the Sawridge First Nation.

Moneys from oil and gas development were invested in a number of businesses owned by the Trusts to provide long-term benefits to the beneficiaries and their descendants.

At the time of their establishment, the Trusts were a unique solution to long-term economic development for First Nations. This speaks highly of the foresight and skill of their prime mover, Chief Walter Twinn.

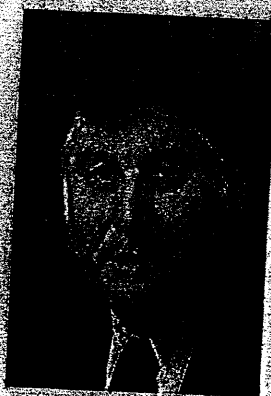
## Making the Trusts Work for You

One of the ways in which you can make the Trusts work for you is to do some planning and include the Trusts in your planning. Most of the benefits that were recommended by the beneficiaries who participated in the Four Worlds study are small, focused benefits designed to help people develop their capacities and skills. There are no large distributions of cash planned in the immediate future.

The cash distribution of \$2,500 to each member of the Sawridge Trust last December was an initial benefit to signal that the Trustees were actively involved in getting the benefits part of the Trusts implemented. Future benefits will likely be focused more on the areas identified by the beneficiaries in the study.

These areas, as previously pointed out, include help with education and training, help for child development, help for the elders, help with family illness and crises, help with financial planning and management, and help

with housing development. Benefits will be designed to first take advantage of existing government and agency programs, make the best use of personal resources and finally provide top-up support where needed.



The Late Chief and Senator Walter P. Twinn

Using the Trusts' resources in this careful and measured way will help to ensure that these benefits are available for you and your children and your grandchildren.

If you are planning to go to school, the Trust office can assist you in finding and applying for resources to cover the cost of your education and, possibly, to supplement the financial support to ensure that you can take full advantage of your educational opportunity. The Trusts cannot pass the tests or get good grades. That is up to you.

If you are planning to save money for future needs and your retirement, the Trusts can help you with planning and may be able to even help put financially but the saving has to come from you.

There are many ways we can work together to make life better for you and your family.

Exhibit:

Date:

March 8, 2017

Witness:

PAUL BUJOLD

Katie McLeod, Court Reporter

KM



# Sawridge Trusts News

VOLUME 1 NUMBER 2

SUMMER 2010

## SPECIAL POINTS OF INTEREST:

**SAWRIDGE  
FIRST  
NATION  
CONSTITU-  
TION DAY  
24 AUGUST**

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## Young Man Honoured

Congratulations to Isaac Twinn who not only graduated from High School with top marks—he got 86% in Math and 80% in Biology—but who was also selected to receive a special hockey award from the St. Francis Xavier Hockey Academy. The Michael Fogolin Memorial Award is given to student-players who demonstrate



Isaac Twinn receiving the Michael Fogolin Memorial Award from Bryan Keller. Isaac's brother, Sam, accompanied him.

solid academics, solid skills as a hockey player and, most notably, dedication and perseverance. Bryan Keller, Director of St. Francis, said about this award: "Isaac was an easy choice and [the award] is well deserved."

Isaac will be attending the University of Alberta this Fall.

AUG 23 2010

## Compassionate Care and Death Benefit

In February 2010, the Sawridge Trusts established its first benefit—the Compassionate Care and Death Benefit. As the name suggests the Compassionate Care Benefit portion provides assistance to a family when one of its members is severely ill and is placed in a care facility that is distant from where the family normally lives. In this case, the Trusts will help with travel, accommodation and meal costs

while the ill family member is being cared for in the facility. Once the ill family member returns home, the Trusts will also assist with special equipment or care that may be needed to assist in the complete recovery of the person. If no other programs, like the Federal Non-Insured Health Benefit or private health insurance, will cover these costs.

The Death Benefit will supplement costs associated with the death of a

family member including the funeral costs, plot and headstone costs and cost of the wake and reception up to a maximum of \$12,000. If the Canada Pension Plan benefit, which has a maximum of \$2,500, is due, this benefit must be used first before the \$12,000 can be used to cover the funeral costs.

More information on this benefit is available from the Trusts Administrator.

## Seniors' Support Benefit

The second benefit set up was the Seniors' Support benefit. In April 2010, the first payments were made to beneficiaries who were 65 years of age and older. The Seniors' Support benefit pays \$1,500 per month to the elder beneficiary and will reimburse up to \$500 per month for transpor-

tation and home maintenance expenses.

The Seniors' Support benefit is meant to supplement the small pension income being received by most elders through the Old Age Pension. The reimbursable expenses help these people remain

mobile by paying for vehicle operating costs or public transportation. It also helps people maintain their homes by paying for minor repairs and home or yard maintenance.

More information on this benefit is available from the Trusts Administrator.

## Health Support Benefit

The Trusts are presently setting up a health support benefit which is expected to be in place by September 2010. This benefit involves three parts: health insurance, life insurance and a Member Assistance Plan.

The health insurance will cover the difference between what is paid through Alberta Health Care and Non-Insured Health Benefits and health care, pre-

scriptions and dental care actual costs for both the beneficiary and her/his dependents.

The life insurance will provide \$250,000 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.

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 available to all beneficiaries and their families.

Call the Trusts Administrator for more information.

## Personal Development Benefit

The Personal Development benefit was set up in May 2010. It is meant to provide financial assistance in covering the costs of services like counselling and personal development courses (not educational development courses). The Trusts will reimburse 2/3 of expenses incurred by beneficiaries for tuition, professional fees, and travel costs to obtain a personal development ser-

vice.

The maximum annual benefit available per beneficiary is \$6,000 per year although for 2010 the maximum amount is only \$4,500 since the program has not been available for the whole year.

The type of services that are covered under this benefit include: personal or family counselling provided by a rec-

ognized professional, elder or healer; fitness or nutrition counselling and self-esteem building programs.

If other programs provide these benefits, they must be used first before this benefit will be paid.

More information is available from the Trusts Administrator on this program and what it will cover.

## Cash Disbursement Benefit

All eligible beneficiaries received a "good faith" cash disbursement of \$2,500 in November 2009. This benefit was paid out to indicate that the Trusts were in the process of developing benefits for the beneficiaries.

In order to receive this benefit, a beneficiary has to be an

identified beneficiary who is 18 years of age or older.

Those beneficiaries who reach 18 after the first pay out will receive their disbursement when they reach their 18th birthday.

Only beneficiaries of the 1986 Trust have been identified so

only those beneficiaries have received this benefit. As the beneficiaries for the 1985 Trust are identified, they will also receive this benefit.

The benefit is only paid out once, regardless of whether a beneficiary belongs to both Trusts so only one payment is made.

# Economic Development Based on Reconciliation

## Addressing Lateral Violence in Indigenous Country

"Bosnia is like a reserve across the ocean!" exclaimed Algonquin Verna McGregor at a consultation on Economic Development Based on Reconciliation in Bosnia. She noted that the economic development challenges there after civil war mirrored those in First Nations communities.

Echoing those sentiments, lawyer Catherine Twinn of Sawridge Reserve invited Vern Neufeld Redekop to adapt his research proposal for Bosnia for indigenous peoples in Canada. At the heart of Redekop's approach is the realization that it is virtually impossible for economic development to succeed without good, trusting relationships and healthy structures of governance, conflict resolution and leadership accountability, concepts developed by Manley A. Begay, Jr. of the Harvard project on indigenous economic development. There also need to be values of fairness, honesty, transparency and mutual goodwill.

In many cases, the values and structural conditions needed for economic development are sabotaged by lateral violence. This can be seen in the crab effect — community members pulling down anyone who seems to be getting ahead. Lateral violence can be expressed in the phrase, "If you have something that I desire and I can't have it, I will make (damn well) certain that you can't have it either." The result is destroyed businesses, character assassination through gossip, cheating on an employer, or failure to pay money owed.

Manley A. Begay, Jr. emphasizes the need for capable and effective governance institutions. These include a mechanism, evident in traditional governance structures, whereby the community through clan mothers or some other group can hold leaders responsible if they get onto a wrong path. Related is political piracy whereby a leader is corrupt, plays favourites, or uses community resources for his or her personal benefit. Political piracy is related to lateral violence. Both of these are based on a web of violent

conflict in which various groups within a community justify what they are doing on resentment and hatred born of past victimization.

To address these impediments to economic development, Catherine Twinn, Verna McGregor and Vern Neufeld Redekop have developed a three-day community consultation process. The idea is that no-one but community representatives can turn around a conflict situation. However, many communities are at an impasse and no-one quite knows how to begin a process of change.

The community dialogue does not come in with solutions; rather it provides a framework and a set of questions. Examples are the following:

- What is the relationship between lateral violence and problems with economic development?
- Since economic life works as a system with each part working in relation to others, how can economic development be done strategically so that one initiative will encourage others to get started?
- What values are important if economic life is to flourish and how can they be cultivated?
- What difference would it make to economic development if there was reconciliation?
- What are the dreams, visions and desires of the community for economic development?

During the community dialogue, participants will work in groups of 6 to 8 on the questions. Each working group will have a trained facilitator and a recorder who will write down what is said. At the end of the process the group will have determined some priority items to work on.

A key to the success of the dialogue will be the gathering process. There need to be Elders and youth participating. The group will

need the expertise of people in business and those working on economic development. Since governance structures are key, political leaders as well as representatives from different sub groups within a community need to be there.

Questions of value, goodwill, sharing and generosity call for a return to traditional teachings. As such, it is clear that they are questions of spirituality. One way of putting it is, how can a good spirit be established in the community so that people work together toward the greater good of all? This means that the community consultation is not just about coming up with good ideas, even though they might be important, rather it is about a representative group within a community starting to work together on a common initiative.

CANDO is partnering with Verna McGregor, Catherine Twinn and Vern Neufeld Redekop, Associate Professor of Conflict Studies at Saint Paul University to first test the community dialogue process, then to evaluate and refine it, and finally to start a program to make it broadly available in indigenous country in Canada (and, who knows, perhaps the world). This partnership was greatly strengthened when Victor Buffalo, President, International Organization of Indigenous Resource Development, and Dr. Manley Begay joined the partnership circle. Dr. Manley A. Begay, Jr. is Faculty Chair, Native Nations Institute for Leadership, Management, and Policy; Associate Social Scientist/Senior Lecturer, American Indian Studies Program; and Co-Director, Harvard Project on American Indian Economic Development.

*"...how can a good spirit be established in the community so that people work together toward the greater good of all?"*



### Sawridge Trusts

801, 4445 Calgary Trail  
Edmonton, AB T6H 5R7

Phone: (780) 988-7723

Fax: (780) 988-7724

E-mail: [general@sawridgetrusts.ca](mailto:general@sawridgetrusts.ca)

Web: [www.sawridgetrusts.ca](http://www.sawridgetrusts.ca) (in development)

Established in 1985 and 1986 by the Chief and Council of the Sawridge First Nation under Chief Walter P. Twinn, Sawridge Trusts were set up to provide economic development and potential for employment, and create an avenue for self sufficiency, self assurance, confidence and financial independence for the members of the Sawridge First Nation.

Monies from oil and gas development were invested in a number of businesses owned by the Trusts to provide long-term benefits to the beneficiaries and their descendants.

At the time of their establishment, the Trusts were a unique solution to long-term economic development for First Nations. This speaks highly of the foresight and skill of their prime mover, Chief Walter Twinn.

## Cost of Benefits

The ability of the Trusts to pay out benefits depends largely on the success of the businesses owned by the Trusts. The businesses have to generate a certain rate of return in order to remain viable and provide the money to pay benefits.

For this reason, the Trusts have to move cautiously to implement benefits since the costs of these benefits could easily outstrip the money that is available.

With the economic downturn in 2008, it has become more difficult to plan any large expansions in benefits plans. The businesses the Trusts own in the hospitality sector are especially prone to being affected by the economy.

The Trustees are monitoring the situation carefully and making sure that the most needed and affordable benefits are set up first. This is not an easy process and requires looking at how existing assets can be improved as well as how the Trusts can

develop new assets to provide the best return for the Trusts and the beneficiaries.

Another factor affecting the cost of benefits is the total number of beneficiaries. At this stage, only beneficiaries from the 1986 Trust have been identified. A process is underway to identify the beneficiaries from the 1985 Trust. If additional beneficiaries are identified during this process, the overall cost of benefits could also go up dramatically and the Trusts have a limited resource that has to be developed for this and future generations.

Along with the identification of beneficiaries, the Trusts are also working on a Passing of Accounts. This is a legal process to identify all the assets of the Trusts since their creation and to chart their progress over time. This report will be presented to all the beneficiaries, along with reporting to the Court, so that everyone knows what the Trusts are doing to develop this limited resource.

As more information comes available, it will all be provided to the beneficiaries so that they can work with the Trustees and the trusts Administrator to get the greatest benefit out of this investment for everyone.

### Beneficiary Determination Process!

The Trustees will be going to the Court for the appointment of a tribunal to review the applications that have been sent in to our office over the last several months. If you are one of the applicants, you should know that the Court process is expected to take a few months. The tribunal will then advise all the applicants and will likely begin reviewing the applications over the Winter. The final list will have to be submitted to the Court, probably in Spring 2011 before we can proceed.

### NOTICE OF ERRORS

Page 1 - **Compassionate Care and Death Benefit.** The terms of this benefit have been changed to place an annual maximum of \$6,000 per beneficiary and a lifetime maximum of \$60,000 per beneficiary.

Page 2 - **Personal Development Benefit.** The terms of this benefit have been changed. For the remainder of 2010, the value of the benefit will be \$4,500 but in future years, the maximum benefit will be \$1,000. This amount must be matched by the beneficiary paying 1/3 and the Trusts paying 2/3.

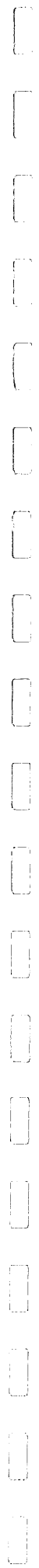




<u>Date of List</u>	<u>Trust</u>	<u>Details:</u>	<u>Provided By</u>	<u>Number of Names Listed</u>
11/30/00	SVIT Beneficiaries	Known Beneficiaries	Mike	37
06/04/01	Affiliates	Does not include (nine illegitimate children plus 5 names)	Mike	51
12/01/08	General	Affiliates	Paul	354
01/06/09		Trust Mailing List	Paul	41
		1985 Band Members	Mike	42
07/10/09		SVIT Beneficiaries (includes possible)	Mike	45
01/24/11		Beneficiary List	Mike	41
		1985 Beneficiary List (includes non beneficiary)	Paul	54
		Non Beneficiary	Paul	43
		Minors	Paul	17
08/15/11	SFN	Non Beneficiary (Minors)	Paul	14
08/26/11		Band Members	Paul	41
08/30/11		Notice List for Application for Advice and Direction	Paul	192
		1985 Minor Beneficiary	Paul	21
09/02/11	Applicants	Non Beneficiary (Minors)	Paul	10
12/12/12		List of Applicants	Paul	136
06/26/12		1985 Beneficiary List	Paul	31
		1985 Beneficiary (includes non beneficiary)	Paul	44
08/24/12		Non Beneficiary	Paul	53
		1985 Beneficiary	Paul	44
		Spouse	Paul	44
		Dependents	Paul	21
09/18/13		1985 Beneficiary (includes non beneficiary)	Paul	36
		Non-Beneficiary	Paul	39
10/02/13	Applicants	Trust Applicants from newspaper	Paul	34
10/02/13		1986 List of Beneficiary	Paul	137
10/03/13	Affiliates	Lists the Trustees created for the 1986 Trust	Paul	44
01/09/14		1985 Trust Beneficiary List	Paul	355
		Non Beneficiary	Paul	39
		Applicants	Paul	34
05/27/14		1985 Minor Beneficiary	Paul	137
		Non Beneficiary (Minors)	Paul	19
08/18/14	SFN	Band Members	Paul	10
11/03/16	SFN	Band Members	Paul	29
			Paul	44
			Paul	45

This is Exhibit "B" referred to in Affidavit of Catharine Twin  
 Sworn before me this 10 day of May A.D., 2016

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



IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

NO. 8503-12228

IN THE MATTER OF MICHELLE WARD AND  
IN THE MATTER OF THE INDIAN ACT

BETWEEN:

SAWRIDGE INDIAN BAND

Applicant

- and -

MICHELLE WARD

Respondent

---

REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE J. C. CAVANAGH

---

In this matter on April 23rd last, I rendered a judgment on a preliminary objection raised by the Respondent. I rejected the objection to my jurisdiction and counsel for both parties have now filed their written argument.

This is a reference to me pursuant to the provisions of s. 9(3) of the Indian Act. The Respondent was born on May 8, 1981 to Georgina Rose Ward, a member of the Sawridge Indian Band. Georgina Rose Ward was not married and she registered

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

Catherine Twiss

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  
My Appointment expires at the Pleasure  
of the Lieutenant Governor

- 2 -

the birth of her daughter and gave no information as to the father of the child. A copy of that live birth registration was given to the Registrar. On May 11, 1982, the Registrar added the Respondent's name to the Sawridge Indian Band List. On July 26, 1982, the Band Council protested this addition pursuant to provisions of s. 12(2) of the Act. The last sentence of their protest reads:

"Further that as the father is non-treaty, that Michelle Danielle Ward be struck from the Sawridge Band Membership List."

On August 22, 1984, the Registrar wrote to the Lesser Slave Lake Regional Council with a copy to the lawyer for the Sawridge Indian Band giving his decision. The text of that letter is as follows:

"Re: Protest of Michelle Danielle Ward  
No. 98 Sawridge Band"

I refer to the protest by the Sawridge Band Council to the addition of Michelle Danielle Ward to their Band List.

In this regard, I have the Registration of Live Birth of Michelle Danielle Ward indicating she was born on May 8, 1981 to Georgina Rose Ward. I also have the letter dated June 2, 1983 from Mrs. Marie Hodam, your Band Membership Clerk, confirming that Georgina Rose Ward No. 98 Sawridge Band has refused to make any statement with regard to the father of her child Michelle Danielle Ward.

- 3 -

In addition, I have the letter dated July 19, 1983 from Mr. David A. Fennell, the lawyer for the Sawridge Band Council, enclosing an Affidavit completed on July 19, 1983 by Bruce McCaffery, a private investigator retained by the Council. According to his Affidavit, Mr. McCaffery, acting on information received, visited the Drumheller Institute where he interviewed an inmate who identified himself as Ron Maglis; that Mr. Maglis replied, "It should be" when asked if he was the natural father of a child named Michelle Danielle Ward born to Ms. Georgina Ward; that Mr. Maglis stated emphatically that he was not prepared to make any sworn Affidavit until he had had the opportunity to discuss this matter with Georgina Ward; that when asked if he himself was an Indian, Mr. Maglis replied, "I might be a bit I guess"; and when asked if he knew the name of the child he replied that he only knew the infant as "The Baby". Furthermore, I have the letter dated January 3, 1984 from Mr. David A. Fennell indicating that he has been advised by the Band Council that it is their information that at the time of the birth of Michelle Danielle Ward, Georgina Ward was a prostitute living in a common-law relationship with Mr. Maglis and had done so for approximately the previous year and also that the child, Michelle Danielle Ward has been given up as a ward to the Alberta Government.

In response to my request for Statutory Declarations completed by individuals having a personal knowledge of the common-law relationship which the Band Council has advised existed between Georgina Ward and Ron Maglis, by his letter dated February 5, 1984, Mr. Fennell confirmed that his clients are unable to provide any further information.

Finally, Mr. John Mould, A/Assistant Director of Child Welfare Delivery, Alberta Social Services and Community Health, has advised in his letter of February 28, 1984 that he has reviewed their child welfare file and can find no information concerning the paternity of Michelle Danielle Ward.

- 4 -

As there is insufficient evidence of non-Indian paternity, the protest by the Sawridge Band Council is not upheld and I hereby declare Michelle Danielle Ward entitled to be registered in membership in the Sawridge Band of Indians.

Would you please notify the mother, Georgina Rose Ward, of this decision.

A copy of this decision is being forwarded to Mr. David A. Fennell, the lawyer for the Sawridge Band Council."

On September 5, 1984, the Sawridge Band Council agreed that:

"The Sawridge Indian Band requested the Registrar of the Department of Indian and Northern Affairs refer his decision of August 22, 1984 disallowing the Band protest of the inclusion of Michelle Danielle Ward as a Sawridge Band member to a Judge of the Court of Queen's Bench of Alberta."

The Registrar then referred the file to me.

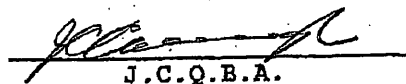
I have examined the file and the allegations of the Applicant are outlined in the Registrar's decision quoted above. There is no new evidence since the Registrar dealt with the matter.

The Applicant argues that because the mother refuses to co-operate and state who the father of the child is, that

- 5 -

that should give rise to an adverse inference against her. That argument then is that an adverse inference against the mother should be used against the child. I do not agree with that argument.

The affidavit of the investigator, Bruce McCaffery, is at best hearsay evidence. Furthermore, the hearsay evidence is not clear and unequivocal. There is the further question whether the circumstances are established that this man could swear to paternity of the child. He may be able to swear to the possible paternity of the child, but I think that is all. There is the further situation that the Applicant has in its material alleged that the mother was working as a prostitute. If that is so, that could well cast doubt on her ability to identify the father of the child. In my view, the Registrar was right. There is no sufficient evidence of non-Indian paternity to justify setting aside the Registrar's decision. I, therefore, dismiss the application by the Applicant Indian Band.

  
J.C.Q.B.A.

DATED AT EDMONTON, ALBERTA  
THIS 21<sup>st</sup> DAY OF MAY,  
A.D. 1985

- 6 -

COUNSEL:

David A. Fennell, Esq.,  
910, 10310 Jasper Avenue,  
EDMONTON, Alberta,  
T5J 2W4.

For the Applicant

J. P. Brumlik, Esq., Q.C.,  
2100 Oxford Tower,  
10235 - 101 Street,  
EDMONTON, Alberta,  
T5J 3Y1.

For the Respondent



Indian and Northern  
Affairs Canada

This is Exhibit 014416 referred to in the 1240-18  
119 Affidavit of Catherine Twinn

Sworn before me this 10 day

of May A.D. 20 17

Crista C. Osualdini

A Notary Public, A Commissioner for Oaths

In and for the Province of Alberta 26000-1 (LH8-4)

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

Halter Patrick Twinn  
Chief  
Sawridge Indian Band  
P.O. Box 326  
SLAVE LAKE, Alberta  
T0G 2A0



Dear Chief Twinn:

Under the provisions of Section 14(1) of an Act to amend the Indian Act assented to on June 28, 1985, I am required to provide the Council of each band with a copy of its band list as it stood immediately prior to that date.

Attached you will find a copy of the membership list for the Sawridge Indian Band as it appeared on June 27, 1985. Would you kindly present this list to your Band Council at your earliest convenience.

Yours sincerely,

L. C. Smith  
Registrar  
OTTAWA, Ontario  
K1A 0H1

Attachment



Canada









**Paul Bujold**

---

**From:** Ward, David [DWard@dwpv.com]  
**Sent:** December-04-09 7:30 AM  
**To:** Paul Bujold  
**Cc:** Youdan, Timothy

Paul:

I'm referring to your email to me of December 1. In your email you have said that the trustees have decided not to use traditional law as part of the process. I don't believe that the trustees are entitled to do that because The Sawridge Trust expressly states that the beneficiaries at any particular time:

"shall mean all persons who at that time qualify as members of the the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada."

The trustees, therefore, have no power to ignore customary laws in determining the beneficiaries. If they do ignore traditional law they do so at their own peril and would invite lawsuits.

In any event, without obtaining any advice in respect of customary law, we cannot give an opinion as to who are the beneficiaries of this trust.

DAVIES

David Ward, Q.C.

**DAVIES WARD PHILLIPS & VINEBERG LLP**

44th Floor  
 1 First Canadian Place  
 Toronto, Ontario M5X 1B1  
[www.dwpv.com](http://www.dwpv.com)

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*This e-mail may contain confidential information which may be protected by legal privilege. If you are not the intended recipient, please immediately notify us by reply e-mail or by telephone (collect if necessary), delete this e-mail and destroy any copies.*

This is Exhibit "E" 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



Paul Bujold

From: Donovan Waters [donovan.waters@shaw.ca]  
 Sent: January-26-11 1:27 PM  
 To: Paul Bujold  
 Subject: Re: Trustees' meeting February 15, 2011

Exhibit: 8  
 Date: March 9, 2011  
 Witness: PAUL BUJOLD  
 Katie McLeod, Court Reporter

Paul,

I would recommend reporting to the Trustees what has been done in furtherance of their decisions at the December meeting. There are two reporting matters.

(1) Our commencement of working with the Band officers, i.e., the Chief, Council and Bertha, and with Band counsel, at the Band's invitation as the legal authority to determine Band membership, to streamline the processes of the Band membership structure (you can probably add data on that matter), and

(2) Implementing the process of an application to the Court to determine the validity and enforceability of the "beneficiaries" definition in the 1985 Trust.

The importance of reporting on the *first item* is to underline for those Trustees who are involved in the Band membership process (Bertha and Roland) that we very much want to assist, and this is because the quality of the Band membership Code process is crucial for the proper operating of the 1986 Trust.

On the *second item* the decision of the Trustees' counsel (Doris and myself), with Mike as a consultant and you as the Trusts' CEO, is to suspend any variation application seeking the merger of the 1985 Trust with the 1986 Trust until we know (a) whether the courts will accept the 1985 Trust definition, and (b), if the Court holds the definition is not enforceable as it stands, what it has to say is needed to put things right. I think the Trustees should be kept abreast of the distinction we are making between correcting, if necessary, the 1985 Trust definition, and the independent elements concerned with the merger of the 1985 and 1986 Trusts. An additional point is not to overload our initial application.

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 2011

Crista C. Osualdini

A Notary Public, A Commissioner for Oaths

In and for the Province of Alberta

Many thanks for the Adobe beneficiary list.

Donovan

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

On 1/25/2011 11:33 AM, Paul Bujold wrote:

Attached is the beneficiary list. It has some reservations but will help you determine how many are affected either way. I have provided the reasons for their inclusion or exclusion to help you understand the reasons for the distribution of the list. Mike and I reviewed the list together and are generally in agreement about who qualifies and who does not qualify under the 1985 Trust rules.

The categories in Doris' schema, as Mike pointed out, are confusing because one person may end up belonging to more than one category. I will redo the 'categories' on a decision tree model starting from birth as the first significant event.

I will share it with you as I work through it. I will consult with Mike on the schematic as I go along so that we have a close-to-complete model in time for the application.

Email: Donovan Waters to Paul Bujold. Re Trustees Meeting  
 15 Feb 2011 11:00

Since I am working on the agenda, are there points that need to be raised with the Trustees at the February meeting (15 February in Slave Lake) for the application?

Paul Bujold  
Trusts Administrator  
Sawridge Trusts  
Office (780) 988-7723

---

From: Donovan Waters [mailto:[donovan.waters@shaw.ca](mailto:donovan.waters@shaw.ca)]  
Sent: January-24-11 2:23 PM  
To: Paul Bujold; Doris Bonora; Mike McKinney  
Subject: Minutes of this morning's conference call  
Importance: High

Doris, Paul and Mike,

Attached you will find the minutes of our meeting, since minutes were called for, I thought. If I have incorrectly understood, recorded or omitted, anything, please let me know.

Paul, thanks for the documentation. I had not before seen the list of enfranchisees, 1939 -1995; that is particularly useful. It reminds us that pre-April, 1985, INs can have become unqualified by subsequent events.

Regards to all,

Donovan



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

This is Exhibit "6" referred to in the Affidavit of

Catherine Twinn

Sworn before me this 10 day

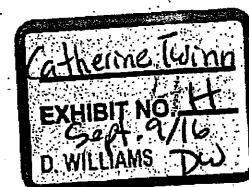
of May A.D., 2017.

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

Email Donovan Waters to Trustees, re Trustees Meeting Dec. 21/10

101223





## TRUSTEE MEETING MINUTES

Sawridge Inn, Edmonton South, Edmonton  
21 December 2010

**Attendees:** Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland Twinn, Walter Felix Twin

**Guests:** Brian Heidecker, Chair, Donovan Waters, Trusts Counsel, Paul Bujold, Trusts Administrator

**Recorder:** Paul Bujold

### 1. OPENING AND PRAYER

Brian called the meeting to order at 10:10 AM and opened the meeting with a prayer led by Walter Felix.

### 2. REVIEW OF AGENDA

Trustees reviewed the agenda for the meeting and added 6.1 Evaluation of Chair's Performance.

**2010-073** Moved by Roland, seconded by Clara that the agenda be accepted as amended.

Carried unanimously.

### 3. REVIEW OF MINUTES 17 NOVEMBER 2010

Minutes from the meeting held 18 October were reviewed.

Under 4. Business Arising, after "Roland indicated that the LSLIRC is having discussions about" add: "problems about" before "continuing with the Federal Services Master Agreement." After this statement add: "This may result in a potential impact on demand for Trust programs by beneficiaries."

Under 5.2 add: "Ardell had indicated that" instead of "Brian indicated that".

Under 5.4 change "...the Trust does not have any way to provide health services..." to "the Trust does not have a program to provide health services..."

Under 6.1.2 insert "impact" in front of "analysis".

Under 6.2.1 add the phrase "...based on the advice of David Ward and Tim Youdan." at the end of the introduction.

**2010-074** Moved by Catherine, seconded by Clara that the Minutes of 17 November 2010 be accepted as presented.

Carried unanimously.

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 20 17

Crista C. Osualdini

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

## Trustee Meeting Minutes, 21 December 2010

### 4. BENEFICIARIES

#### 4.1 Donovan Waters, Merger of Trusts and Certainty of Beneficiaries

Donovan Waters, Legal Counsel to the Trusts, presented options (attached as part of the Minutes) for review by the Trustees on merging the Trusts and on certainty in determining the beneficiaries. These options were developed by Donovan, in consultation with input from Catherine Twinn, Doris Bonora and Mike McKinney at a meeting held in the Trusts Office 10 November 2010 and were further refined in a conference call meeting on 17 November 2010 between the parties including Roland Twinn as Chief of Sawridge First Nation.

Trustees first reviewed the options presented under *Merger of Trusts*. Trustees felt that it was not time yet to consider Option 1 merging the two Trusts as other matters had to be dealt with first. Option 3 presented the problem of placing one Trust in a minority shareholder position compared to the other Trust and therefore was not a favourable option to consider.

Option 2 seemed to present the best possible solution at this time although it would require that an application be made to the Court for advice and direction on the beneficiary determination clause in the 1985 Trust.

Under the *Certainty of Beneficiaries* options, Option 1 and Option 3 presented significant challenges in that the membership and Band Council of the Sawridge First Nation had the ultimate legal responsibility for determining membership.

Option 2 seemed to present the best solution at this time. Trustees discussed the present difficulties with the Band process of determining membership and the long delays involved in making decisions. After Brian made some observations and suggestions including offers to help on both a technical and process basis, Chief Twinn agreed to encourage the Band, Council, and Assembly to work with the Trusts to refine the Band process that would expedite resolving membership applications and questions. This would permit the Trusts to move forward on the question of beneficiary determination. Donovan also offered to assist with advice as a courtesy back to Mike KcKinney for his previous involvement.

2010-075 Moved by Catherine, seconded by Roland that the Trustees resolve:

1. To adopt Option 2 under the Certainty of Beneficiaries in the Sawridge Trustee Options—Trustee Meeting 21 December 2010 document dated 17 December 2010 prepared by Donovan Waters and attached,
2. To proactively work with the Sawridge Membership Committee and the Chief and Council to expedite recommendations to the Legislative Assembly so that applications can be determined within 6 months from the date received,
3. To work with Chief and Council to develop proposed amendments to the Sawridge Citizenship Code including outlining legal standards that the decision-making process must meet, and
4. To adopt Option 2 under the Merger of Trusts and to apply to the Court for advice and direction as to whether the definition of 'beneficiary' in the 1985 Inter Vivos Settlement is valid.

Carried, 4 in favour, Walter Felix abstaining.

## Trustee Meeting Minutes, 21 December 2010

### 5. TRUST MATTERS

#### 5.1 Reports

##### 6.1.1 *Trust Administrator's Report*

Paul reported that most of his time in the last month has been working on determining the beneficiaries and on working out the costs of proposed benefits and savings plans. He has also working on the accounting system to bring matters up to date for the audit and tax preparation.

##### 6.1.2 *Trustee Reports*

Catherine reported that the third community dialogue of the Economic Development through Reconciliation will take place in Hobbema in January 10 - 11, 2011.

Roland reported that the Regional Council has been given limited options on extending the Master Services Agreement by the Federal Government. The First Nations are not willing to be forced into an agreement that they cannot support. If a new agreement or extension is not signed by 20 January 2011, it is unclear how services will be delivered by the Federal Government.

#### 5.2 Legal

Paul presented information on the three tax lawyers under consideration: Cheryl Gibson, Howard Morry and Chris Anderson. Catherine pointed out that it was important not to sever our long-term relationship with Davies Ward Phillips and Vineberg.

**2010-076 Moved by Roland, seconded by Walter that Cheryl Gibson be retained to handle the Trusts' tax matters.**

**Carried, 4 in favour, Catherine Twinn abstaining.**

#### 5.3 Financial

##### 6.5.1 *Financial Reports November 2010*

Trustees reviewed financial reports for November 2010.

**2010-077 Moved by Bertha, seconded by Clara that the November 2010 financial reports be accepted as presented.**

**Carried unanimously.**

#### 5.4 Budget 2011

Trustees reviewed the 2011 Budget Projections, including separate projections for the Phase II benefits. The Phase II benefits will not be implemented until there is more certainty on the identification of beneficiaries.

**2010-078 Moved by Clara, seconded by Roland that the 2011 Budget Projections be approved as presented.**

**Carried unanimously.**

### 6. COMPANY ISSUES

Brian reported that he and Paul had met with Ralph Peterson and John MacNutt on 24 November 2010 to discuss a number of issues of mutual concern.

**Trustee Meeting Minutes, 21 December 2010**

A new severance package offer has been presented to Sunil Lall's lawyer and a response is being awaited from Sunil.

John stressed that neither he nor anyone from management had worked with Ardell Twinn on his business proposal to the Trusts. In fact, the Companies were awaiting information from Ardell on his proposal to lease space in the Travel Centre but had received nothing yet.

Justin Twin and the Companies are in discussion on a new arrangement since the arrangement for Justin with Fountain Tire did not work out. Indications are that a win-win situation is achievable for all concerned.

The Companies budget is on track to meet or slightly exceed targets. The airport development is going well.

Brian arranged for John MacNutt to meet with the RCMP K Division officials and officials from Alberta Solicitor General about plans to move the RCMP hangar.

Brian is awaiting a proposal from Ron Gilbertson on the Walter Twinn Memorial Foundation. At present, the Companies do not have anything in their budgets for this project.

Also discussed merging the trusts, developing a tax strategy, diversifying investments, the policy on employee/beneficiary access to hotel and restaurant services, featuring the ownership of the Companies by the Trusts, and plans to replace the CFO position with an Analyst and a Controller position.

A joint meeting between the Directors and the Trustees is planned for sometime in late February 2011.

**6.1 Review of Chair Performance**

Trustees met in camera with Brian Heidecker on the issue of his performance evaluation.

**7. NEXT MEETING AND ADJOURNMENT**

**Action 1012-01 Trustees decided to hold the next meeting of the Trustees on 15 February 2011 in Slave Lake at the Sawridge Inn.**

---

Brian Heidecker, Chair

## Trustee Meeting Minutes, 21 December 2010

### SAWRIDGE – TRUSTEE OPTIONS – TRUSTEE MEETING 21 DEC. 2010

*Revised following lawyers' meeting on Friday, December 17*

#### October meeting (proposals then made)

"Beneficiaries" clause is contrary to 1985 (Bill C-31) Charter philosophy. Contrary to public policy? Recommended merge 1985 Trust with 1986 Trust.

Membership code. S. 3(a) of Band Code cannot be enforced against s. 11(1) 1985 *Indian Act* persons. S. 3 of Band code may discriminate (contrary to Charter) against natural children with only one registered parent, and also adopted children.

#### December meeting (options before the Trustees)

##### 1. *Merger of Trusts*

**Option 1** Apply to court to terminate the 1985 Trust and transfer the trust fund to the 1986 Trust trustees.

*[NB. Merger requires in law that all beneficiaries under the 1985 Trust become beneficiaries of the new (or 1986) Trust. Capacitated and sui juris beneficiaries of the 1985 Trust must approve of the merger themselves. Question: can who are beneficiaries of the 1985 Trust be ascertained for this purpose? The court will only consider the minors' legal position under the proposed merger, and the fact that the minors of the 1985 Trust will become members of a larger beneficiary class under the new (or 1986) Trust.]*

**Option 2** Leave each of the 1985 and 1986 Trusts in being, and apply to court to determine whether the "beneficiaries" clause of the 1985 Trust is invalidated by the 1985 *Indian Act* or the Charter.

*[NB. The argument can be made for the Trustees that the definitional trust clause, though referring to the "Band", should be construed as merely descriptive of the settlor intended class, and that the Charter does not therefore apply. If the court rejects this argument, and decides the clause is invalid, however, possibly on grounds of public policy, the Trustees then decide on a new beneficiary clause for the 1985 Trust to put before the court.]*

**Option 3** Leave the two Trusts in being. Value the assets of each Trust as of a determined date, and then the Trustees of each trust transfer the assets of that trust to a corporation, which then administers the assets as a whole. Shares would be issued to each Trust in the proportion that the valuation figures bear to each other, e.g., \$600,000 as the valuation figure of one trust, and \$400,000 of the other, resulting in a shareholding of 6 shares to one and 4 shares to the other out of 10 issued shares.

*[NB. This is a useful way in which to secure the common administration of both Trusts assets. However, trust law requires that the assets of distinct trusts be kept separate, unless there is a statutorily-approved pooling arrangement in place. Moreover, as each of the 1985 Trust and the 1986 Trust is in favour of Sawridge Band members at a different time, the beneficiaries of the two Trusts*

# **Trustee Meeting Minutes, 21 December 2010**

*will be different persons. It cannot therefore be argued that there is a common beneficiary class. If this option is chosen, we shall have to work further on it.]*

## **2. Certainty of beneficiaries**

Both Trust instruments say the beneficiaries are those who "qualify as Band members".

### **Option 1**

Apply to court to replace "beneficiaries" clause of 1985 Trust and the 1986 Trust, if there is to be no merger. There will then be no reference to the Band or Band membership. The new description will be the "Sawridge First Nation", or the customary law description of the Sawridge community. A Trustee appointed tribunal will determine which persons meet this description.

### **Option 2**

**The 1985 Trust**—adopt the Band's view as to which persons are Band members under the 1982 Band membership class description.

**The 1986 Trust**—follow the Band Code and Band decisions as to who are registered members (s. 2 and s. 3(b), (c), (d), and (e) of the Code), and also 'entitled' persons (s. 11(1) of the Act) as yet unregistered, as and when these persons are registered by the Band.

The Trusts and the Band would then be operating with the one Band membership list.

### **Option 3**

**The 1985 Trust**—the Trustees decide by way of a tribunal who are the persons who satisfy the 1982 Band membership class description.

**The 1986 Trust**—the Trustees follow the Band Code but decide for themselves for Trust purposes by way of a tribunal as to who qualifies under that Code as Trust "beneficiaries".

*[NB. It is likely that the Band's ultimate list will largely be the same as the Trustees' list, but the Trustees will require administrative law standards to apply in determining who are "beneficiaries"].*





Trustee Meeting Minutes, at June 2011

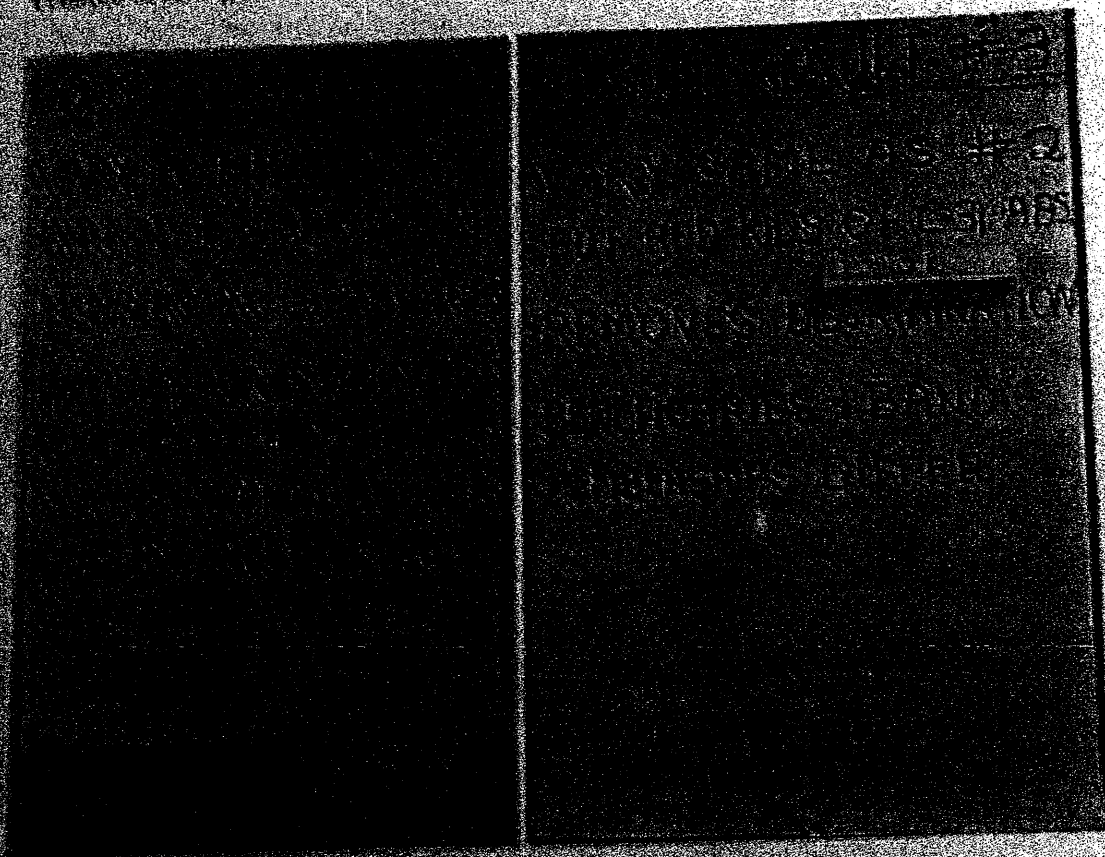
WHY DO THIS?  
WHY NOT HAVE STATUS CODE  
REQUIREMENT TO REPORT  
BUT WHO TO REPORT  
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THE NAME OF THE

## Trustee Meeting Minutes, 21 June 2011

	POSSIBLE RESULT #1
	1985 INFORMATION UPHOLD
	EX-EMPTED TO ALL THE SOUTHERN
	1985 INFORMATION UPHOLD
	TOUGHNESS
	1985 INFORMATION UPHOLD
	1985 INFORMATION UPHOLD



FOR THE UNITED STATES OF AMERICA









21 June 2011

Chief and Council  
Membership Committee  
Sawridge First Nation  
P.O. Box 326  
Slave Lake, AB T0G 2A1

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 20 11

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

Dear Chief, Council and Membership Committee Members,

As you know, after obtaining legal advice the Trustees of the Sawridge Trusts have determined that certainty as to who are the beneficiaries of the Sawridge Trust (1986) can only be achieved by obtaining the current list of members of the First Nation from the Council. This is so because the First Nation list and the Trust beneficiaries are the same persons. For the Sawridge Band Inter Vivos Settlement (1985) the Trustees are currently in the process of asking for the advice and direction of the Court concerning the definition of beneficiaries contained in that Trust.

People who responded to our Notice to Potential Beneficiaries in the newspaper have all now been advised to apply for status under the Indian Act, if they have not already done so, and, since First Nation membership is the only way that anyone can qualify as a beneficiary of the 1986 Trust, to apply for membership in the First Nation. In the course of obtaining advice from various lawyers on the determination of certainty of the beneficiaries for the 1985 Trust, the Trustees have also been advised that the Membership Code and the First Nation's process for reviewing and approving applications for membership in the First Nation may be subject to legal challenges, especially by applicants who have been turned down. That situation could affect both the Sawridge First Nation and the Sawridge Trusts. The Trustees of the Sawridge Trusts are anxious that no legal problems arise as a result of the response to either of these issues, so we are bringing these matters to your attention.

The areas of uncertainty in the Membership Code include the following:

- a. Clause 3(a), and possibly Clause 6, appear to challenge the Indian Act, R.S.C. 1985, c. 1-5 ss. 10(4) and 10(5). They seem to require that any person who has an absolute right under the Act to Band membership, and who is seeking that membership, must either live on the Reserve or satisfy the Band Council that he/she is a suitable person to be granted membership. The advice that we have received, as to those with absolute rights, points out that these clauses have been held invalid by the Court (*Sawridge Band v. R.* [2003] 3 C.N.L.R. 344 (Fed. T.D.) and affirmed by [2004] 2 C.N.L.R. 316 (F.C.A.).
- b. Clause 3(b) states that a natural child both of whose parents are entered on the Band List has a right to be entered, while Clause 3(d)(i) states that a natural child one only of whose parents is a member of the Band, and who is born after 4 July 1985, must apply for membership and have the consent of the Band Council in order to become a member.

# **Sawridge First Nation, Membership Code, 21 June 2011**

- c. There is no mention in the Membership Code of adopted children, either legally adopted or traditionally adopted. A legally adopted child, we understand, becomes by statute a child of the adopting person or persons in the fullest sense. The same may be true of traditional adoptions.
- d. According to the assessments that the Trustees have been given about our beneficiary and First Nation membership process, there are two concerns regarding that process. The first is that no criteria are established with which the Band Council are required to operate in granting or withholding consent with regard to an application, and the second is that there is no stated right of an applicant to a fair hearing or a review of the decision should there be a question as to the decision itself or the fairness of the process. These matters could lead to both the First Nation and the Trusts being subject to litigation, because of an alleged lack of open, fair-minded and just process. We are concerned that litigation is costly for all parties and can be divisive, causing family and community suffering. The same concerns could be said to exist with respect to the selection process that the Membership Committee follows in considering applications for membership.

There are itemised considerations as to process that could protect both the First Nation and the Trusts in dealing with membership issues. The Council and Committee review process has to be seen to be fair and even-handed, as well as being so. These are values that have been cherished traditionally both by First Nations and by many societies around the world. These values include:

- i. Having the jurisdiction (or the authority) to deal with the issues at hand
- ii. Acting only within the powers given by that jurisdiction
- iii. Operating openly (that is, having nothing to hide) and objectively (that is, without bias)
- iv. Affording all parties the opportunity to present their arguments, not only in writing but also in person
- v. Exercising discretionary powers fairly and in good faith (that is, honestly meaning and trying to do the best when making discretionary decisions).
- vi. Exercising those powers with due care and attention to the possible negative impact or damage decisions may have on the applicant

We do hope that you are able to address these issues. To our minds implementation of appropriate action by the First Nation will help considerably in preventing anyone from taking either the First Nation or the Trusts to court, or to the Canadian Human Rights Commission. If such claims were numerous, they would also impose considerable financial stress on the First Nation or the Trusts in having to respond in court or before the Commission.

Cordially,  
The Sawridge Trustees

Per Paul Bujold,  
Trusts Administrator





February 17, 2016

Gina Donald-Potskin  
4324 - 37 Street  
Edmonton, AB T6L 4J7

Dear Madam,

RE: Membership Application

Thank you for your letter dated December 6, 2015. We note in your letter that you state that you "have been waiting over 2 decades for a decision to be made". We find this statement to be misleading and unproductive. We note that we received an application for membership from you on February 27, 2009. That application was reviewed by the Membership Committee in due course, and they determined that it was not complete. The First Nation wrote to you on December 12, 2012 to advise that the application was not complete. On January 24, 2014 you provided an updated application.

We note that the Council has been reviewing the method of processing membership applications and has determined that it will no longer be utilizing its Membership Committee. Once the process review has concluded, the Council will be processing membership applications. We note that there are currently 19 applications before the Council (not including those that have been determined to be incomplete). We also note that the Council is striving to ensure that the growth of the First Nation is sustainable and that the First Nation has enough resources to provide appropriate programs and services for all members. Given the current economic conditions, the First Nation is re-evaluating the level of membership that can be supported.

We understand that you are anxious to become a Member of the Sawridge First Nation, but note that Sawridge takes Membership very seriously and this takes a significant amount of time. We will continue to strive to process all applications in a fair way. We trust that you will understand the position that we are in and will bear with us through this process. Thank you.

Yours truly,  
SAWRIDGE FIRST NATION

Per:

Chief Roland Twinn

This is Exhibit C referred to in the Affidavit of

Catherine Twinn

Sworn before me this 10 day

of May A.D. 2017

Christa C. Osland

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

a Notary Public and Commissioner for Oaths

in and for the Province of Alberta

My Appointment expires at the Pleasure  
of the Lieutenant Governor



Exhibit:

Date: March 9, 2017Witness: PAUL BULDO  
Katie McLeod, Court Reporter

## STATEMENT OF LILLY POTSKIN

I, Lilly Potskin, of the Town of Smith, in the Province of Alberta, Say That:

1. I am the mother of Gina Donald (hereinafter referred to as Gina) born September 17, 1979 and her brothers Jonathon and Brent Potskin. They share the same father, Lyle Donald, who is now a registered Indian.
2. At the time I married Lyle Donald, he was not registered as an Indian. When we married May 1979, I was 5 months pregnant with Gina.
3. After Gina's birth, in October, 1979, I was enfranchised by the Department of Indian and Northern Affairs ("INAC") for marriage to a non-Indian and my name was deleted from the Sawridge Band List maintained by INAC.
4. Gina was not listed on my enfranchisement papers. Attached as Exhibit "A" are copies of my enfranchisement papers.
5. From the time of her birth, I tried to have Gina registered as an Indian and Sawridge Band Member.
6. After the 1985 amendments to the Indian Act ("Bill C-31") I was entitled to be registered as an Indian and Sawridge Band Member. However the Sawridge Band refused to recognize my entitlement. Government lawyers applied to have my name and the names of others added to the Band List. On March 27, 2003 the Court ordered our names added to the Sawridge Band List without having to apply to the Band.
7. When Gina became an adult, she applied to the Band for membership. Her three applications for membership, hand delivered by me, were given to Donna Dahlgren, then Band secretary.
8. The third application was submitted in 2009. To date, no decision has been made and Gina is not on the Band list maintained by the Band.
9. Roland Twinn is the Chief of the Band, a Sawridge Trustee and up until Band Committees were dissolved March 31, 2016, the Chair of the Membership Committee that recommends or dismisses applicants to the Chief and Council and controls the application process. He holds numerous other roles within the Band system including Director and CEO roles and has signing authority. The Band secretary and Membership Registrar, Fern Homa, reports to Roland Twinn as does Mike McKinney, in house legal counsel for the Band.
10. Roland's two sons, Roy and Alexander with a non-Indian woman, first applied to the Band for membership in 2013 and within months their names were on the Band Membership List. Meanwhile, Gina's 3<sup>rd</sup> application for membership has been sitting since 2009 without decision.
11. On December 14, 2015 Gina emailed Mike McKinney attaching a letter dated December 6, 2015, which are attached as Exhibit "B".

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

Catherine Twinn

Sworn before me this 10 day

of March A.D., 2017

Crista C. Osualdini

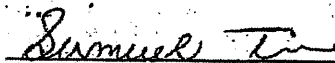
a Notary Public and Commissioner for Oaths  
in and for the Province of Alberta  
My Appointment expires at the Pleasure  
of the Lieutenant GovernorA Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

12. Gina did not receive a response. She then emailed the Band February 5, 2016. A copy of her email is attached as Exhibit "C".
13. Roland Twinn replied by letter dated February 17, 2016, a copy is attached as Exhibit "D".
14. I was stunned by the February 17, 2016 letter and replied with my letter dated and hand delivered March 4, 2016 to the Band office, a copy of which is attached as Exhibit "E".
15. Entering the Band office, I saw Winona Twin, a former Band Councilor speaking with Roland Twinn and felt tension between them. I informed Roland I had a letter for him informing him of the contents of my letter. Gina has been waiting for more than 2 decades for the Band to make a decision on her applications. Winona Twin commented she too felt Roland Twinn had attacked her integrity. She confirmed she had seen Gina's file and applications while on Council and vouched that Gina's applications have been delayed over two decades by the Band's failure to make a decision.
16. After the March 4, 2016 exchange, Roland Twinn wrote me a letter admonishing me for fighting for my daughter, who is an adult and can fight for herself.
17. I'm informed by Gina and do verily believe the Chief Council met the week of May 9<sup>th</sup> then Gina received a call from Fern Homa to meet June 13, 2016 with the Chief and Council about her 3<sup>rd</sup> membership application delayed since 2009.
18. I am prepared to swear this as evidence for the Court and for no improper purpose.

WITNESSED BEFORE ME )  
 At the hamlet of Smith, )  
 In the Province of Alberta, )  
 The 26 day of May, 2016 )



Lilly Potskin



Witness

Exhibit "A"

Orlando, Florida, FLA 328  
 October 21, 1979

District Manager,  
 Eastern Slave Labor Indian District

(117/21-3-101-25 (117-1))

Statement of Marriage to a Non-Indian  
 Plaintiff: Ann Marie Donohue, wife of Plaintiff  
 Defendant: James J. Donohue, Sr., Plaintiff

I, the undersigned, statement of marriage to a Non-Indian, Ann Marie Donohue, wife of Plaintiff, James J. Donohue, Sr., Plaintiff.

I, the undersigned, in your case, a check in the amount of \$222,537.96  
 is being forwarded to the above as a receipt of the amount of \$222,537.96  
 in the amount of \$222,537.96 following her marriage to Plaintiff, James J. Donohue, Sr., Plaintiff, on May 5, 1979. The amount of \$222,537.96 was the  
 amount of \$222,537.96. The amount of \$222,537.96 was the amount of \$222,537.96.  
 The amount of \$222,537.96 was the amount of \$222,537.96.

I, the undersigned, in your case, a check in the amount of \$222,537.96  
 is being forwarded to the above as a receipt of the amount of \$222,537.96  
 in the amount of \$222,537.96 following her marriage to Plaintiff, James J. Donohue, Sr., Plaintiff, on May 5, 1979. The amount of \$222,537.96 was the  
 amount of \$222,537.96. The amount of \$222,537.96 was the amount of \$222,537.96.

Orlando, Florida, FLA 328  
 117/21-3-101-25 (117-1)  
 117/21-3-101-25 (117-1)  
 117/21-3-101-25 (117-1)





Exhibit "B"

From: [gina00120@hotmail.com](mailto:gina00120@hotmail.com)

To: [m.mckinney@sawridgefirstnation.com](mailto:m.mckinney@sawridgefirstnation.com); [jpotskin@hotmail.com](mailto:jpotskin@hotmail.com); [gina00120@hotmail.com](mailto:gina00120@hotmail.com); [poitras-collins@shaw.ca](mailto:poitras-collins@shaw.ca); [sawridge@sawridgefirstnation.com](mailto:sawridge@sawridgefirstnation.com); [ch.rct@sawridgefirstnation.com](mailto:ch.rct@sawridgefirstnation.com)

Subject: Sawridge Application Process

Date: Mon, 14 Dec 2015 13:48:18 -0700

The following letter attached it is from me, I have been waiting for a response back from Sawridge for quite sometime now, and I am asking with great respect from your office to please send me a response back about my application.

I will follow up at the End of January 2016, If I haven't had a response back from your office by then. please respond by my email: [gina00120@hotmail.com](mailto:gina00120@hotmail.com) or by mail.

Thank you,

Gina Donald-Potskin

7809352227

4324 37 St

Edmonton, Ab T6L 4J7

Exhibit  
"B"

Sawridge First Nations

December 6, 2015

Dear Chief and Council,

I would like to kindly ask you to please put forth my application for band membership. As I have been waiting over 2 decades for a decision to be made, but it seems to me that politics play more of a part than common sense. I haven't heard back at all from the reserve at all about my application or my phone request this past summer, or about how the process works? Is there not a deadline to have an application resolved, so there are no loose ends to tie up? I'm sure there are other applications that have to be looked over and not only mine, and that have been sitting over 2-25 years?

I feel there shouldn't be a problem to push through my application, as both of my brothers were born into the reserve in 1975, and 1978. I was born on September 17, 1979 and my mother was disenfranchised in October 1979, because she married a Metis man. I would like to add now my father is a full status Indian from Mikasew First Nations, and he only waited 3 months to have his application approved.

I feel there is no reason to keep my name off of the band list. As it also states in the court order which happen on March 27, 2003, that it is my right to be in the band as a full member. There is to be no judgements on the woman we're Bill-C31, and they had every right to resume as a band member even if they married outside of their reserve.

If you read in:

sections 10.(1)(2)(a,b) that the reserve has to have an appropriate time line to deal with band membership reviews.

Sections 3.A(I,ii,iii) I have proved my culture, I lived on the reserve at my grandmother house, I participated as a jingle dress dancer for many years, and I attended sweats. I would love to share my culture and be a part of a cultural setting.

Section 5. [19] [20] [25] says you cannot refuse a band member that has the right to be on the band list if none of the rules set forth before the judgement has been broken. I have not broken any rules, and my mother hasn't either by marrying out. My only judgement for not being a band member was that my mother married out so I couldn't be a band member, But now my mother is a full band member again. Therefore there is no other reason I cannot be a full band member.

I have been participating in the proceeding's over the summer to see why, Sawridge is fighting future band membership. And it seems to me that everything that is happening is all personal?



Which is very sad. As growing up as a Indian in the city, it has been difficult. Always seeing Native's fighting other Natives over petty stuff, and not being proud to be an Indian.

But I managed to stay Indian with the help of my elders. I value and cherish them. I wouldn't know a lot of about how things are supposed to be handled on the reserve, as it is practiced here in our meetings. An Elder would open up with a prayer, we smudge, and we listen to everything that has to be said. The Chairman/woman would be holding a talking stick, and passing it to whomever needed to speak, or we would have a speaker. Everyone's opinion or expression of interest is taken to consideration and you would leave the meeting feeling good and positive. I would like to ask if the same practices are being held at the band meetings?

I would like to ask this so I know when my application is being looked over as soon as possible. Also that it is being done with an open mind and an open heart. Below are the Citations that have researched by myself off of the internet, that are valid and have to be taken with utmost consideration. Please contact me as soon as you can, as I would like you to tell me when and where my application will be taking place. As it has been 3 years that I have given back both of my applications to your office... both are filled out and accurate to my knowledge.

Have a great day,

Gina Donald-Potskin

4324 37 st

Edmonton, AB T6L4J7

C.7809352227

H.7807052227

<http://reports.fja.gc.ca/eng/2003/2003fct347.html>

**Citation:** Sawridge Band v. Canada (T.D.), 2003 FCT 347, [2003] 4 F.C. 748

**Date:**

March 27, 2003

**Docket:**

T-66-86A

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

3. Each of the following persons shall have a right to have his or her name entered in the Band List:

(a) any person who, but for the establishment of these rule, 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;

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

[19]The question that arises from these provisions and counsel's submissions is whether the Act provides for an automatic entitlement to Band membership for women who had lost it by reason of the former paragraph 12(1)(b). If it does, then the pre-conditions established by the Band violate the legislation.

[20]Paragraph 6(1)(c) of the Act entitles, *inter alia*, women who lost their status and membership because they married non-Indian men to be registered as status Indians.

[25]The meaning to be given to the word "entitled" as it is used in paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, *inter alia*, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

Exhibit "C"

Catherine Twinn

From: Gina D <gina00120@hotmail.com>  
 Sent: Friday, February 5, 2016 11:26 AM  
 To: Catherine Twinn  
 Subject: FW: Bill C-31 concern

---

From: gina00120@hotmail.com  
 To: mls-sli@ainc-inac.gc.ca; m.mckinney@sawridgefirstnation.com; poitras-collins@shaw.ca;  
 sawridge@sawridgefirstnation.com; mindm@aadnc-aandc.gc.ca  
 Subject: Bill C-31 concern  
 Date: Fri, 5 Feb 2016 11:23:46 -0700

Hello,

I am looking for a correspondence back to me with in a reasonable time. Thank you.

My name is Gina Donald, I have been waiting to hear from a Reserve Membership (Sawridge First Nations) in which I have applied to over 2 decades ago, and with a follow-up letter I've written and emailed to the Chief, council, and their lawyer back in December 2015. I have not heard back from any of the members.

They are not following up with a court order from ( mls-sli@ainc-inac.gc.ca ) which clearly states they have to have a timeline into reaching a decision upon my membership and others.

I believe my concern as a Bill C-31, I have to report this as a concern and has to be added to the constant gender equity I have to face. As there is still legislation being broken under the McIvor v. Canada.

Both my mother and father are full status, also my two brothers who were both born as Full Status Indians into Sawridge First Nations, but I wasn't born a status Indian because at the time my father was considered Metis and not a Full Status Indian. either way both of my brothers shouldn't have been put on membership, as I wasn't. But none the less, both my brothers were born Full Status and I was the only one who was not Born a Full Status to the Sawridge Indian Reserve.

There is pretty much no next step for me except just to keep waiting until Sawridge makes a decision upon my application. They have put forward applications that we've filled out and handed in last year, and applications that have been on the waiting list less than 2 years. I feel more needs to be done, and as I continue to wait to hear from Sawridge, I would like you to add my complaint to the growing unresolved memberships that are being ignored.

I look forward to hearing from all included in my email.

Please Contact Me,

Gina Donald

780-935-2227

[gina00120@hotmail.com](mailto:gina00120@hotmail.com)

# Sawridge Exhibit "D"

February 17, 2016

Gina Donald-Potkin  
4324 - 37 Street  
Edmonton, AB T6L 4J7

Dear Madam:

## RE: Membership Application

Thank you for your letter dated December 6, 2015. We noted that you let us know you are a non-Indigenous person over 21 years of age and you are a resident of the City of Edmonton. We noted this information in our database and on January 17, 2016, we received a membership application from you. On January 17, 2016, the application was reviewed by the Membership Committee and they determined that it was not complete. The Chairperson wrote to you on January 17, 2016 to advise that the application was not complete. On January 24, 2016 you provided an updated application.

We note that the Council has been reviewing the method of processing membership applications and has determined that it will no longer be utilizing its Membership Committee. Once the process review has concluded, the Council will be processing membership applications. We note that there are currently 19 applications before the Council that include those that have been determined to be incomplete. We also note that the Council is reviewing the sustainability of the First Nation and that the First Nation has enough resources to provide a range of programs and services for all members. Given the current economic conditions, the First Nation is evaluating the level of membership that can be supported.

We understand that you are on the list to become a member of the First Nation and that you are a resident of the City of Edmonton. We note that you are a non-Indigenous person over 21 years of age and you are a resident of the City of Edmonton. We note that you are a non-Indigenous person over 21 years of age and you are a resident of the City of Edmonton. We note that you are a non-Indigenous person over 21 years of age and you are a resident of the City of Edmonton.

Sincerely,

Gina Donald-Potkin

cc:

Gina Donald-Potkin

Exhibit "E"

March 4, 2016  
William Persson  
154 Chicago St

My dear daughter, in response to the  
letter you sent me dated Feb 17 2016

10. Other comments or application Good credit, B-300

[illegible]

There are many things we say in the  
course of our lives that are so simple,  
yet so profound.

I remember we were being visited in 1965  
 by a man who should have been a  
 doctor. He did not sign any documents  
 and he was not Jimmy's doctor.  
 He was a visitor but it is in

1. I have submitted her application  
for the position of Secretary, which has  
been approved by the Board of Trustees.

As far as the meeting goes, I have been  
and all other arrangements, I have  
all the arrangements.

I am happy to hear that you are  
well and longer to W. H. H. H.

Because I feel his memory is very  
much alive and happy.





# Sawridge

Rec'd 12/12/2013  
Reg. mail

**REGISTERED MAIL**

December 10, 2013

Mr. Alfred Joseph Potskin  
P.O. Box 1826  
Slave Lake, AB T0G 2A0

Dear Mr. Potskin,

**RE: Membership Application**

Your application for membership in the Sawridge First Nation has been reviewed by the Council. Please take notice that the Council has denied your application for Membership in the Sawridge First Nation. This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

- 1) You do not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 2) The Council concluded that it would not be compelled to exercise its discretion to add your name to the Membership List as it did not feel, in its judgment, that your admission into Membership of the First Nation would be in the best interests and welfare of the First Nation. The Council considered your commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the First Nation and your character and lifestyle in making this determination.

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,  
SAWRIDGE FIRST NATION  
Per:

  
Michael R. McKinney  
Executive Director

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

Catherine Twinn

Sworn before me this 10 day

of May A.D., 20 12

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



Form 49  
Alberta Rules of Court  
Rule 13.19

COURT FILE NO. 1403 04885

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN 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  
This is Exhibit "N" referred to in the  
Affidavit of  
Catherine Twinn  
Sworn before me this 10 day  
of May A.D. 20 17  
Crista C. Osu  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta  
Crista C. Osu  
a Notary Public and Commissioner for Oaths  
in and for the Province of Alberta  
My Appointment expires at the Pleasure  
of the Lieutenant Governor

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

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

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

McLENNAN ROSS LLP  
#600 West Chambers  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4

Lawyer: Karen A. Platten, Q.C.  
Telephone: (780) 482-9200  
Fax: (780) 482-9102  
Email: kplatten@mross.com  
File No.: 281946

#### **AFFIDAVIT OF ALFRED POTSKIN**

**SWORN ON THE 26<sup>th</sup> DAY OF NOVEMBER, 2014**

I, Alfred Potskin, of the Town of Slave Lake, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am an individual who is resident in the Town of Slave Lake in the Province of Alberta and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born on April 26, 1946.
3. I grew up on the Sawridge First Nation Reserve and was a member of the Sawridge Band through my father's status as a Sawridge Band member. My father was a member of the Sawridge Band until he applied to Indian Affairs to enfranchise in or around 1954 due to the social, legal and other circumstances affecting status Indians at that time. As a result of my father's decision to enfranchise, I lost my status as a Sawridge Band member.
4. As a child, my family moved around between the Sawridge First Nation Reserve and another First Nation Reserve in the Lesser Slave Lake area. I often lived with my Uncle Albert and Jean

Potskin on the Sawridge Indian Reserve, I would sometimes live with my parents and sometimes on my own.

5. From approximately 1990 to 1999, with the permission of late Chief Walter Twinn, I lived in my trailer on the Sawridge First Nation Reserve near my Aunt and Uncle who are Sawridge Band members.
6. In or around 1998 or 1999, about two years after the death of Chief Walter Twinn, I was advised through Mike McKinney, legal counsel for the Sawridge Band Council, that I had to move my trailer off the reserve and leave the Sawridge First Nation Reserve because I was not a Band member.
7. I applied to Sawridge Band Council for membership in the Sawridge Band on or around 2011. My cousin Lilly Potskin dropped off my Band membership application to the Band office. I was never called in for an interview or asked to answer any questions or concerns.
8. I received a letter dated December 10, 2013 from Michael McKinney, Executive Director of the Sawridge First Nation, advising me that my application for membership in the Sawridge First Nation had been declined. Attached as **Exhibit "A"** to my Affidavit is the December 10, 2013 correspondence from Mr. McKinney.
9. 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 26 day of November, 2014

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

Alfred Potskin  
Alfred Potskin

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



Rec'd  
12/12/2013  
Reg. mail

## REGISTERED MAIL

December 10, 2013

Mr. Alfred Joseph Potskin  
P.O. Box 1826  
Slave Lake, AB T0G 2A0

Dear Mr. Potskin,

RE: Membership Application

Your application for membership in the Sawridge First Nation has been reviewed by the Council. Please take notice that the Council has denied your application for Membership in the Sawridge First Nation. This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

- 1) You do not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 2) The Council concluded that it would not be compelled to exercise its discretion to add your name to the Membership List as it did not feel, in its judgment, that your admission into Membership of the First Nation would be in the best interests and welfare of the First Nation. The Council considered your commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the First Nation and your character and lifestyle in making this determination.

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,  
SAWRIDGE FIRST NATION  
Per:

  
Michael R. McKinney  
Executive Director

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

Alfred Potskin  
Sworn before me this 26 day  
of November 20 14

Crista C. Osualdini  
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



### SWORN STATEMENT OF LARRY CARDINAL

I, Larry Cardinal, retiree, and adoptive father of Kieran Cardinal, of the Hamlet of Calling Lake, in the Province of Alberta, do solemnly swear that:

#### Family Background

1. I am the adoptive father of Kieran Trevor Cardinal, (hereinafter referred to as Kieran) born March 20, 1985.
2. Sandy Cardinal nee Schroder (hereinafter referred to as Sandy) is Kieran's adoptive mother.
3. Kieran was the biological son of Ardell Twinn (hereinafter referred to as Ardell) and Pamela Masuda (hereinafter referred to as Pamela) and given up for adoption at birth.
4. Pamela was 15 years old when she became pregnant and 16 years when she gave birth to Kieran.
5. Pamela lived with Sandy and myself for the last 6 months of her pregnancy. Sandy is Pamela's maternal Aunt and sister to Pamela's mother.
6. Pamela thought of giving up her baby to Children Services but asked us to adopt her baby which we were honored to do and did. Kieran is my only and much loved child.
7. Ardell abandoned Pamela shortly after she became pregnant and thereafter engaged in avoidance and denial patterns. He was enabled by leaders of the Sawridge Band (hereinafter referred to as the "Band") that he was the father of Kieran and his lineage entitled Kieran to be on the Band List.

#### Sawridge Band Membership

8. At the time of Kieran's birth the 1970 Indian Act rules were in force and had not yet been amended by Bill C-31, enacted on or about June 27, 1985.
9. Kieran as the illegitimate child of a male Indian should have been on the Band list at birth.
10. Kieran's biological mother Pamela is now a registered Indian. Both of Kieran's biological parents are registered Indians and Ardell Twinn is a member of the Band.
11. On July 4, 1985 the Band was given notice by the Minister of then Indian Affairs (hereinafter referred to as "INAC") that the Registrar was transferring the Band List to the Band, thereafter administratively responsible for maintaining the List.
12. I am aware of others not on the Band List who the Court ordered be put on the Band List without having to apply to the Band. Sandy and I talked about this wondering why Kieran had to apply.
13. In December, 1985 Kieran's adoption was finalized.
14. On or about August 16, 1988 I applied to Indian affairs for Kieran's treaty status. I received a letter from INAC requesting Ardell's declaration he was the biological father of Kieran.

This Exhibit "A" referred to in the Affidavit of  
Catherine Twinn

Sworn before me this 19 day  
of May A.D., 20 17

1  
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

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

### 22 Years of Avoidance, Denial, Uncertainty

15. From 1988-1999 I tried many different ways to get the declaration from Ardell, all of which failed. The avoidance and denial patterns included:
  - a. Ardell being very hard to contact.
  - b. Ardell and the Band not returning calls.
  - c. When I was able to reach Ardell he claimed the Band did not want him to sign the declaration.
  - d. When I contacted the Band, their story was that the Declaration had nothing to do with them and it was Ardell's decision.
16. In June 2000 I hired a lawyer from a law firm, McBean Becker Cochard, to seek a Court order to compel paternity testing.
17. On or about February 15, 2001 the paternity tests were presented to the Court who declared Ardell the biological father.
18. On March 16, 2001 Kieran was finally registered as a Treaty Indian under 6(1)(a) of the Indian Act.
19. In April 2001 I attended the Band office requesting a band membership application form that was some 43 pages long.
20. In May 2001 Sandy had a telephone conversation with then Chief Bertha L'Hirondelle, a Twinn family member, to discuss the membership application form and process. Sandy kept detailed notes which I've reviewed. One topic discussed was the inappropriateness of many questions which requires essays. Kieran was a minor at this time. Bertha L'Hirondelle indicated that the Chief and Council were re-evaluating the application for minors. Bertha L'Hirondelle questioned Kieran's right to membership as he did not know the Twinn family and denied knowledge of occasions when Kieran was in the community. Bertha L'Hirondelle also suggested Kieran did not have a right to be on the Band List, as the Band decides, and we should talk to someone who can inform us of this. Bertha L'Hirondelle refused to offer her support for Kieran's application. Notes of that conversation were documented and retained.
21. In October 24, 2001 I called then Chief Bertha L'Hirondelle about the membership application. I was told we did not need to include the requested passport, birth/death certificates as Chief and Council were familiar with all the parties concerned. That conversation was documented.
22. In February 2003 I hand delivered the completed application and reference letters under a cover letter dated February 24, 2003 signed by Kieran to the Band office. I asked the Band secretary to bring this to Ardell's attention, a Council member, and that it go before the next Council meeting. Attached as **Exhibit A** is Kieran's February 24, 2003 letter to the Band without the enclosures.
23. In July 2003, I spoke to Roland Twinn, now Chief of the Band whose Aunt, Bertha L'Hirondelle, remained on Council, about the status of Kieran's application. Roland Twinn claimed the Band had no knowledge of the application and Ardell did not bring it to Council. I travelled to Slave Lake from Fort McMurray and hand delivered another copy to Roland Twinn.



24. On or about December 10, 2004 Kieran was now an adult and wrote the Band asking for a copy of the Membership Rules and authorizing me to communicate and receive information on his behalf.
25. From July 2003 to May 2006 I and Kieran regularly made inquiries of Ardell, Bertha L'Hirondelle, Roland Twinn and in house lawyer, Mike McKinney about the status of Kieran's application. Again they were virtually impossible to get a hold of. When I did make contact the answer was the same - the Band is busy with other matters and will get to it eventually.
26. In May 2005 I contacted Catherine Twinn out of frustration. She undertook to bring Kieran's application to the attention of Mike McKinney and the Chief and Council and asked a series of questions as to who I had contacted.
27. On or about June 2005 I contacted Catherine Twinn again letting her know I contacted Mike McKinney about a meeting with Kieran and the Chief and Council.
28. From June 2005 forward it was the same pattern - repeated calls and/or communications to the Band with no response.
29. March to April 2006 Kieran and I called the Band many times to check on progress. We always got the same answer - the Chief, Council and Mike McKinney are in meetings or out. We left many messages but not one of them replied. In particular, Kieran called Chief Roland Twinn, his uncle, who did not reply.
30. In April 2006 I again drove to Slave Lake and attended at the Band office. I was told Bertha L'Hirondelle and Roland Twinn were out of town. I ran into Paul Twinn, Ardell's brother, who was on his way to see Ardell. I gave Paul Twinn my card with my cell phone number and asked him to have Ardell call me. Ardell never called me.
31. Kieran had graduated from high school and was interested in taking a management degree and music courses at Mount Royal College, being very talented in music. He was living on his own and discovering how tough it is to be on his own, and simultaneously attend school. I wanted to talk to the Band about what support there might be for Kieran to go to school. I was helping Kieran financially but my capacity to do so was very limited.
32. At this point we were totally frustrated and ready to again take legal action. Four years had passed since the application was submitted. I had incurred significant legal costs in relation to Kieran's paternity and application process. I advised Roland Twinn I did not want to take legal action and was told to "*go ahead, it's just another law suit*".
33. Ardell made no effort to build a relationship with Kieran and had only seen him once, shutting Kieran out, as had influential members of Ardell's family. Kieran tried to communicate with Ardell but gave up. Kieran had lived in Slave Lake for 2 years and no one from the Twinn family talked to him when they saw him.
34. In May, 2006 I again contacted Catherine Twinn apprehensive about involving her but with nowhere else to turn. I was aware Catherine Twinn had invited Kieran to dinner and ordered by Ardell, who had been a Band Councillor, to stay away from Kieran. I explained to her that the Band officials were ignoring us, that we took a lot of time to fill out the 43 page Questionnaire and the Band should have the courtesy of letting Kieran know where he stands. Kieran, Sandy and I fully believed Kieran was entitled to band membership, did not understand why he had to apply and why the process was so difficult. I was ready to go to Court.

35. I was informed by Catherine Twinn she again raised the issue of Kieran's membership with the Band and its advisors.
36. In mid-August, 2006 Kieran got a call from the Band office to set up an interview September 27, 2006. Kieran was now interested in taking an Instrumentation Technologist Program at SAIT.
37. On about September 27, 2006 Kieran was finally granted an interview of about 45 minutes with Mike McKinney, Chief Roland Twinn, Councilor Bertha L'Hirondelle and a male person. Kieran immediately reported to me that he was not impressed, felt it was a waste of his time driving 6 hours one way and taking time off work and was upset at what had occurred:
  - Roland Twinn and Mike McKinney did all the talking, starting off by asking Kieran what he wanted, what he was after, if it was a cheque he wanted;
  - Kieran was also asked many questions about me;
  - Kieran would have to come back for a 2<sup>nd</sup> interview with all the band members.

I immediately called Mike McKinney for clarification on questions asked about me, what happens next and a time line. As usual, I never got a reply back but I kept calling leaving messages.
38. In about the second week of January, 2007 Kieran had his second meeting, again immediately reporting to me about what happened as follows:
  - Present from the Band was Ardell, his sister Arlene Twinn, Elder Walter Felix Twin, and two other people, including possibly Paul Twinn;
  - With the exception of Elder Walter Felix Twinn, Kieran was asked many questions by some of those present. The line of questioning was hurtful and upsetting, rooted in suspicion that he just wanted membership for financial gain;
  - He expressed his anger at how he felt he was being treated without respect or open mindedness, as though he was not a human being and not family in any way;
  - The absence of relationship they blamed on Sandy's family who allegedly limited Kieran's contact with them.
39. Shortly after this 2<sup>nd</sup> interview, in mid to late January, 2007 Kieran was asked by the Band for a copy of his birth certificate which he provided.
40. On April 25, 2007 Kieran received a call from Chief Roland Twinn that his application for membership had been accepted.
41. If we had not persisted, spending time, money and resources including hiring lawyers, Kieran's exclusion from birth to then would undoubtedly have continued. It took 22 years of dogged persistence to have his name added to the Band list.

#### **Aftermath of Band Membership and Healing the Trauma**

42. By the spring of 2007, with Kieran living in Calgary, we decided to sell our home in Fort McMurray. I received a call from David Midbo asking for help to secure an apprenticeship in Fort McMurray and I helped him. David Midbo is the son of Clara Midbo, Bertha L'Hirondelle's sister and Roland Twinn's Aunt. Clara Midbo and her sister Frieda Drahey applied for Band Membership in February 2001 and by April, 2002 were admitted into membership. Their five children applied for band membership in March, 2003 and were admitted into band membership by April, 2003.
43. While Kieran was working as an instrument technician in Calgary, he was taking a fourth class power engineering course on his own and asked the Band for tuition and books fees of \$700. He was denied this assistance.

44. In March, 2010 Kieran was hit with a large tax bill for a web based company he ran selling and producing music. This ate up all his savings for school, delaying an April start until at least October, 2010. Kieran was devastated. He now considered enfranchising from the Band like former members, including his biological paternal grandmother, Terry Auger. It was well known that the Band's per capita payouts to then enfranchising Band members exceeded \$600,000 in today's dollars.
45. I urged him to carefully consider such a drastic step. However Kieran had lost confidence and trust in the Band's leaders who also ran the Trusts and influenced the Lesser Slave Lake Indian Regional Council. To him, they were a source of trauma he needed to remove from his life. They had unreasonably delayed adding his name to the Band List by engaging in administrative exclusion and discrimination. They had demonstrated they had no interest in supporting, knowing, understanding, including and relating to him.
46. To date, there is no relationship between Kieran and Ardell or members of Ardell's family. Kieran deleted Ardell from his Facebook, as have I.
47. By 2012 Kieran was still considering surrendering his band membership. The Band introduced a Repeal of the Per Capita Pay Out on the Surrender of Membership Act, in October, 2013 which was passed in early 2014.
48. I could not understand – and still don't – why Kieran was not simply put on the Band List by the Band leaders' whose actions demonstrated they were incapable of running the Band's membership affairs. I lost confidence and trust in the Band's handling of membership and feel their misconduct limits whatever right they claim to decide membership. There is no certainty or fairness for applicants like Kieran including those with a clear right to be added to the Band List.
49. Kieran has abandonment and trauma issues from the maltreatment he experienced, before and after birth, including denial and rejection by his biological father and other Twinn family members, because his biological mother was too young to keep him and our traumatizing experience having his name included on the Band list which should have been from birth.
50. He has anxiety and anger as a result of this history which is slowly healing. He is determinedly making his own way forward as an adult. He is gainfully employed, in a committed and loving relationship, has many hobbies, works out regularly, takes care of his health and has assumed home ownership. He receives no help from the Band and very little from the Trusts although he is a beneficiary of both Trusts. He was a beneficiary of the 1985 Trust before his name was added to the Band List but never received benefits from that Trust.
51. I swear this as evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the  
Hamlet of Calling Lake,  
in the Province of Alberta  
the 1st day of April, 2015

Clarence Cardinal

A Commissioner for Oaths in and  
for the Province of Alberta

Clarence Cardinal  
A Commissioner for Oaths  
in and for the Province of Alberta  
M.D. of Opportunity No. 17

Councillor  
Expiry Date: October 2017

Signature: [Signature]

[Signature]  
LARRY CARDINAL

February 24, 2003

Chief Bertha Twinn/L'Hirondelle and Council  
Sawridge Band  
Box 326  
Slave Lake, Alberta  
T0G 2A0

Dear Chief and Council

This application for Band Membership was completed by myself (Kieran), my Dad (Larry Cardinal), and my Mom (Linda Cardinal). Being a minor I found that a lot of the questions do not apply to me and are more suited and applicable to adults. We have tried to answer all of the questions that apply to my situation and have noted those that are not applicable to me.

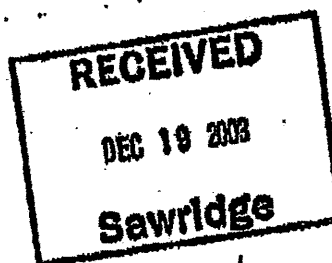
Also to note, that during a telephone conversation between my Dad and Chief Bertha on October 24, 2001, my Dad was directed by Chief Bertha that we did not need to provide a passport, birth, marriage, and death certificates as asked for in the application. Chief Bertha stated that she and the Council are familiar with all the parties (family) on my application. They also concluded that a lot of the questions do not pertain to me as I am a minor and to fill out only those that we can.

I am looking forward to hearing from the Chief and Council on your decision or approval of my application to the Sawridge Band.

Yours sincerely

*[Handwritten signature of Kieran T. Cardinal]*

Kieran T. Cardinal



*Delivered by  
Larry Cardinal*

cc: file

This is Exhibit A returned to in the  
Sworn Statement of  
Larry Cardinal  
Sworn before me this 1st day  
of April, 2003  
Clarence Cardinal  
Attorney Public, A Commissioner for Oaths  
in and for the Province of Alberta

Clarence Cardinal  
A Commissioner for Oaths  
in and for the Province of Alberta  
M.D. of Opportunity No. 17  
Councillor  
Expiry Date: October 2017  
Signature: *[Handwritten signature]*

### **SWORN STATEMENT OF SHELBY TWINN**

I, Shelby Twinn, biological daughter of Paul Twinn, of the City of Edmonton, in the Province of Alberta, do solemnly swear that:

#### **Family Background**

1. I am the biological daughter of Paul Twinn, and my paternal grandfather was the late Walter Patrick Twinn, Settlor 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 former Chief of the Sawridge First Nation (hereinafter called the "Band") and, as such, I have personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. My mother is Kristal, who was married to Paul Twinn and lived on the Sawridge Indian Reserve until I was about 5 years old. She left never to return, except for the funeral of my grandfather on November 4, 1997, taking me and my younger sister, Kaitlin.
3. I was very young when she left but know something about her situation, experience and reasons, including how she had been treated. Her situation was very painful and she chooses not to recall it.
4. My mother avoided all contact with the Twin(n) family and the Band since we moved to Prince George when I was 6 years old.
5. My mother remarried and that man is my father who raised and unconditionally loves and embraces me and my sister Kaitlin, also the biological daughter of Paul Twinn.
6. I have no contact with Paul Twinn who made no effort of any kind to have a relationship with me and my sister Kaitlin. As we were growing up, he did not support us in any way including financially, nor provide support of any kind to my mother. In fact, my mother had to resolve a number of liabilities imposed on her by his conduct such as a motor vehicle accident that saw her sued as a co-defendant.

#### **Sawridge Trusts**

7. I first learned of my beneficiary status under the 1985 Trust during a conversation with Catherine Twinn September 27, 2013.
8. Paul Bujold, who I am informed by Catherine Twinn is the Trust Administrator, never contacted me or my mother to explain the application process, my beneficiary status under the 1985 Trust or the Court application process to change the definition of beneficiary of the 1985 Trust to band membership under the 1986 Trust. I have no resources to consult a lawyer or access the Court to ensure my beneficiary status is not compromised.
9. I first learned of my beneficiary status under the beneficiary definition in the 1985 Trust where you do not have to be a Band Member but descend from a male Indian who is a beneficiary. Specifically, you do not need to be a band member as required under the 1986 Trust.

**Band Membership**

10. Sometime after I moved to Alberta from BC in 2013, I communicated via Facebook with Arlene Twinn, sister to Paul Twinn, who asked me to complete a Membership Application form and indicated I would be admitted into band membership if I applied.
11. I have reservations about applying for band membership and have not acted on Arlene's invitation.
12. I wish to have beneficiary status under the 1985 Trust but not band membership (which gives you beneficiary status under the 1986 Trust). I have educational goals and sponsorship from the 1985 Trust would help greatly.
13. I understand benefits under either Trust are the same and there is no doubling of benefits being a Beneficiary of both Trusts.
14. My reservations about applying for band membership include:
  - a. A need to maintain healthy and clear boundaries for my wellbeing, given the history of the family, the addictions, unstable inter-personal relations, factions and personal animosities and dislikes;
  - b. My unwillingness to be admitted while others of equal entitlement are denied such as Deborah Serafinchon, blood aunt by birth;
  - c. Not alarming my mother and father whose support and love have been unconditional and unwavering;
  - d. The need to carefully screen what I chose to bring into my life;
  - e. It would be premature to apply until and unless I know the situation fully, have my eyes wide open and have established loving, trustful and safe relationships with members which at this point, does not seem probable;
  - f. My lack of commitment to being a participating Band member given my life, interests, relationships and priorities are elsewhere;
15. My sister Kaitlin is three years younger than me. I was born in 1992. Caitlin was born in 1995.
16. I know my sister Kaitlin very well and love her deeply. I would not want her to have to apply for band membership to qualify as a beneficiary of the Trust. She loves to read, enjoys her own company and is more solitary than outgoing and extroverted. She would not want to go through a band membership application process. I know she would not feel comfortable and would never apply.

**No Change to 1985 Trust definition of Beneficiaries**

17. I believe that like me, Kaitlin has goals and aspirations. Having beneficiary status and access to benefits such as Educational funding would be of great benefit and value.

18. I firmly believe my paternal grandfather, the late Walter Patrick Twinn, who settled these Trusts intended to include us as beneficiaries regardless of our connection to the Band, lack thereof, or band membership status. I oppose changing the rules that define beneficiaries of the 1985 Trust to be the same as the 1986 Trust, namely Band membership.
19. The Band has only 44 members suggesting the membership rules and process are skewed. Persons admitted into membership are those chosen by the Chief and Council. Maintaining the 1985 Trust definition of beneficiaries ensures a larger, more inclusive group beyond those with band membership. In particular, it includes women who marry male band members and their children. Based on what I know of the experience of my mother, Shannon Twinn and Catherine Twinn, if it were up to the Chief and Council, they would never be included as beneficiaries.
20. 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 16 day of April, 2015

A Commissioner for Oaths in and  
for the Province of Alberta

Marvin Brown

Barrister Solicitor

SHELBY TWINN

## SWORN STATEMENT OF HEATHER JACQUELINE POITRAS

I, Heather Jacqueline Poitras, of the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

### Family Background and Roots in the Sawridge Band

1. I am an individual who resides in the City of Edmonton in the Province of Alberta and, as such, have personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born July 24, 1970. I have two older sisters, one late older brother, one younger sister, and two adopted younger brothers. We have the same parents. Elizabeth (Potskin) Poitras (hereinafter called "mother") was legally married when she had all of us.
3. My late father, Homer Poitras, could have been a registered Treaty Status Indian and a member of the Kehewin Cree Nation, but chose not to.
4. The effect of my parent's marriage was to enfranchise my mother from being a Treaty Status Indian and Band Member of the Sawridge Band (hereinafter referred to as the "Band") and to exclude all of us from being recognized as Band Members.
5. My grandmother, Jean Potskin proudly lived on the Band reserve for decades until her death, as did many of my relatives including my grandfather who was a Band Councillor.
6. My grandmother sought my inclusion as a Band Member, despite concerns of reprisal. Her efforts for our inclusion were unsuccessful and certain members of the Band made it well-known that they disliked her. She resisted inequality, unfairness, discrimination and hierarchy that demands silent obedience. She was always spirited this way. For example, she told us the story of the police coming to her home on the reserve to take the children to Indian Residential School which she resisted and prevented.

### 1985 Bill C-31

7. When Bill C-31 was passed in 1985 I became a registered Treaty Status Indian and was given the Band number. But the Band had control of its Band List and I was never added to the Band List. During this period, my mother applied for all us to be included as Band Members, but was unsuccessful in accomplishing this while we were minors.
8. I am informed by my mother that other children in the same circumstance as me, such as Vera Twin-McCoy, somehow retained their registration as Treaty Status Indians and full Band Membership even though their mothers married non-Indians. At least two of Vera's children were fathered by a non-Indian man yet all three children are Treaty Status Indians and Band Members. Vera McCoy married Jody McCoy who is the father of two of her children. Jody McCoy was a non-Indian with no aboriginal descent. I



wonder why I am treated differently, especially when both my parents are of Aboriginal descent and Cree speaking.

9. My mother and my older sister, Tracey Poitras-Collins, are Band members. I am a Treaty Status Indian, but do not yet have Band Membership even though I applied to the Band after I became an adult.
10. My mother was Court ordered onto the Band List, along with others, by Justice James Hugessen of the Federal Court by Order dated March 27, 2003.

#### **My Experience Applying to the Band for Band Membership**

11. As an adult, in the 90's, I requested a Band Membership application form, but did not complete it or submit it because the form was so long, inappropriate, offensive and invasive. A few years ago, I again requested a new application form, because I was informed that the application form changed. I completed it and couriered it to the Band office in March 2013.
12. I contacted the Band in September 2013 via a registered letter to notify them of my new home address. In that letter I asked for information on the application process and the status of my application to become a recognized full Band Member.
13. On October 2, 2014, my oldest son, Theoren Gregory Poitras, was murdered. I sent another registered letter to the Band to update my Band Membership application. I have not received any response from the Band Chief or Council, or the Band's legal counsel, Mike McKinney.
14. I recently learned from various band members including my mother, that the Chief's son, Roy Twinn, whose mother is a non-Indian and not of Aboriginal descent:
  - o is now a Band member;
  - o voted in the February 17, 2015 election;
  - o applied for Band Membership in 2013, the same year I submitted my application as an Aboriginal person of descent from both parent's;
  - o within months of applying, his application was approved; and,
  - o just months before the February 17, 2015 election, was admitted into Band and now has Band Membership and voting rights;
15. There are only three minor children who are Band members and all three are the children of elected Band officials Roland Twinn and Winona Twin. They admitted their children during their 2011-2015 term as Band Chief and Band Councillor. It appears their children did not have to wait. This preferential space and discriminatory system determines who is admitted into band membership and who isn't;

16. The elected Band Chief and Council have refused and/or failed to make a timely, unbiased and fair decision on my completed application, thus denying me the right to be a Band Member and vote in Band elections like their children.

#### Others In Like Circumstances


17. My two daughters, Anastasia Chanel Poitras (4540019902) and Tamara Jacqueline Poitras (4540019903), are Treaty Status Indians and should belong to the Band. Like my mother, I want my children to be accepted as Band members. I am also proud that my first grand-daughter, Carmella Mary, was born on March 18, 2015. Her father is a Treaty Status Indian, and we want her to become a Band Member too.
18. I am aware of other members of the Potskin family who applied for Band Membership. They too have waited a number of years for a response. During the wait they have received little or no response from the Band or if a decision was made, their application was denied by the Chief and Council.
19. I am aware of at least one case, Alfred Potskin, who was denied membership by the Chief and Council who considered his commitment to and knowledge of the history, customs, traditions, culture and communal life of the Band and his character and lifestyle. The Chief and Council did not give Alfred an interview or any fair process to determine if the subjective criteria they used to deny his application were correct, true and fair. My uncle Alfred was by all accounts a loving, kind, sober and hardworking man. At the time he was denied band membership by the Chief and Council, he was suffering from cancer.
20. I am aware there are 8 or more Potskin family members who have applied including:
- I. Crystal Poitras-John;
  - II. Nicole Poitras;
  - III. Gina Donald;
  - IV. Tracey-Poitras Collins submitted a Band Membership application three times, over a 28 year time-frame before she was finally admitted into Band membership after a grueling and biased process:
    - The first application was submitted to the Band in 1985. The Band did not acknowledge her application, offered no follow up, and failed to respond to Tracey's inquiries, despite her many calls to the Band office.
    - The second application was hand-delivered January 6, 2005 to the Band office with no subsequent response from the Band.

- The third application was submitted in 2012. The Chief and Council denied her application. Tracey's Appeal was heard January 26, 2013, and narrowly succeeded because not enough of the Chief and Council's supporters were present. The Appeal process is limited to members resident on the reserve or who can attend the Appeal in person. This discriminates against members who are not resident, live away from the reserve and do not have the resources to attend the Appeal even though they wish to participate. The Chief and Council participated fully in Tracey's Appeal including the secret voting.

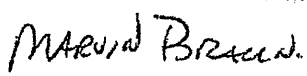
21. Gail O'Connell's Appeal was to be heard with Tracey's Appeal, but Gail's Appeal was adjourned until March 2013. Enough of the Chief and Council's supporters turned out to uphold the decision of the Chief and Council and deny Gail's Appeal. Gail O'Connell is the daughter of Roseina Lindberg, another Court ordered member added to the Band Membership List in March 2003.

22. 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 27th day of April, 2015

  
A Commissioner for Oaths in and  
for the Province of Alberta

  
HEATHER J. POITRAS

 **BARRISTER & SOLICITOR**

### **SWORN STATEMENT OF DEBORAH SERAFINCHON**

I, Deborah Serafinchon, office worker, and daughter of the late Walter Patrick Twinn, of the City of Edmonton, In the Province of Alberta, do solemnly swear that:

#### **Family Background**

1. I am the eldest daughter of the late Walter Patrick Twinn, Settlor 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 former Chief of the Sawridge Band (hereinafter called the "Band") 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 was born on October 2, 1961, the illegitimate daughter of my late father Walter Patrick Twinn (hereinafter called "Father") and Lillian McDermott (hereinafter called "Mother") of Faust. Both were Indians and attended Indian Residential School at Grouard.
3. At birth I was placed into foster care and grew up in that system. I never felt I belonged and struggled with knowing my identity, where I came from, who I came from and what caused me to grow up in foster care. I experienced abuse.
4. After I became an adult, I searched for my birth parents.
5. I discovered my biological mother first; who informed me Walter Patrick Twinn was my Father. Both of my parents died young, shortly after I found them. My Father was born March 29, 1934 and died October 30, 1997.
6. I contacted my Father in 1996, the year before he died and we spoke a number of times, but before we could meet, he died suddenly. The day he died, I fell in my bathroom and have been wheel chair bound since. I've had 3 back surgeries.
7. About a year after his death, I was contacted by Catherine Twinn, my Father's widow. I am informed by Catherine Twinn that my Father told her shortly after they married he had fathered a little girl he had no contact with, wondered about and had offered to marry my Mother. My mother independently confirmed the marriage offer.

#### **Taking Action to Establish Meaning and Recognition, Identity, Security & Connectedness**

8. Catherine Twinn and I began a relationship. However, I was more interested in building a relationship with my Father's five children, closest in age to me, from his first marriage to Theresa Auger. They are Irene Twinn, Roland Twinn, Arlene Twinn, Ardell Twinn and Paul Twinn. Arlene first contacted me by mail in 2000 and I met Irene Twinn and Ardell Twinn around Christmas 2001.
9. Initially, I had a positive reception from Arlene Twinn and Ardell Twinn and a conflicting reaction from Irene Twinn.
10. My primary relationship was with Arlene Twinn and through her, incidental contact with her twin brother, Ardell Twinn with whom no relationship emerged.

11. I have no relationship with Roland Twinn and only met him once, accidentally, in a Toys R Us Store when I was with Arlene Twinn.
12. Paul Twinn refused to be in the same room as me when I was in Arlene Twinn's house. I have never had a relationship or contact with Paul Twinn.
13. I quickly learned they hated Catherine Twinn and had no relationship with her or their young half-brothers.
14. I felt caught in the middle. I felt I had to choose between having a relationship with the first or second family, that the first family would reject me if I had a relationship with the second family.

#### **Irene Twinn**

15. Irene Twinn in particular made it clear I could not fence sit – telling me I had to choose one family or the other. Irene Twinn had an extreme hatred towards Catherine Twinn. This made me wonder what was wrong with Catherine Twinn to be so hated.
16. I chose my siblings from the first family and for years tried to build a stable relationship with those of them who were interested.
17. One Christmas I and my 3 children but not my husband stayed with Irene Twinn and her 2 sons. Christmas Eve, Irene Twinn told me that I am not liked by the Twinn family; I am not and never will be a part of the family; I should stop trying to belong; and she is the oldest sibling and protector of her siblings.
18. Christmas morning my daughter Lisa and her brothers woke up very early, accidentally awakening Irene Twinn, who became very angry. Irene Twinn verbally attacked me, my parenting skills, and my children she called spoiled rotten and inconsiderate for waking her up.
19. My daughter Lisa called her father who quickly came and took us home. I left crying and never spoke to Irene Twinn again. I was shocked at how cruel Irene Twinn could be while coating cruel words with facial smiles and a pretext of friendliness.
20. I had no further contact with Irene Twinn.

#### **Arlene Twinn**

21. My relationship with Arlene Twinn lasted from October 2000 until July 2010.
22. Arlene Twinn was forced to meet me August 2000 before she was ready. I had attended my mother's funeral in August 2000. Elsie Stenstrom was a friend of my mother and Arlene Twinn's mother. At the funeral Elsie Stenstrom gave me a sympathy card from Arlene Twinn. We had corresponded prior but were not ready to meet in person.
23. On October 13, 2000 I went to Slave Lake to put a cross on my father Walter's grave. I stopped at Elsie Stenstrom's home who asked if I wanted to meet Arlene Twinn. I said no, she is not ready. Elsie Stenstrom took me to the restaurant in the Sawridge Truck Stop, left the table and unbeknownst to me, went to the C-Store at the Truck Stop where Arlene Twinn worked and brought her to meet me. That was the first time we met in person.

24. I experienced at least 2 volatile occasions where Arlene Twinn suddenly turned on me, leaving me baffled. Once when Arlene Twinn thought I, unemployed at the time, was trying to get a job with the Sawridge Group of Companies through Catherine Twinn. I had shared with Arlene Twinn that I had given my Resume to Catherine Twinn asking if she knew of any jobs. Arlene Twinn screamed at me assuming I wanted a job with the Sawridge Group. I reassured her I did not want a job with Sawridge Group, had no intention of moving to Slave Lake and was seeking help for a job search in Edmonton, specifically not with the Sawridge Group of Companies.
25. The other occasion I was yelled at by Arlene Twinn remains a mystery. I still do not know what I did but I apologized, and about 1 week later Arlene Twinn called and apologized.
26. In July 2010 I and my family went to Slave Lake on Arlene Twinn's birthday and checked into a Motel. Arlene Twinn's son Chase swam with my children during the day. That night I met Arlene Twinn at the Fairgrounds and watched the fireworks. Arlene Twinn did not sit with me, sitting with Hattina Twinn, Roland Twinn's wife. Arlene Twinn made little effort to spend time with me and I felt rebuffed. The next day I called her to say goodbye and felt coldly and angrily dismissed. It was unpleasant. Thereafter, Arlene Twinn deleted me from Facebook and dismissed me from her life. There has been no contact since.
27. My reaching out to my older half siblings led to challenges with my foster family who, hurt, withdrew from me.
28. Today the only members of the Twinn family I have relationships with are Catherine Twinn and her sons, my half-brothers.

**DNA Testing, Indian Status, Band Membership & Beneficiary Status**

29. During the time Arlene Twinn spoke to me, I had conversations with her whether she, her mother and her siblings would provide blood samples to prove my paternity. I remember washing dishes in Arlene Twinn's kitchen and discussing this. She indicated her Mom was willing however they never acted on it. I bear a striking resemblance to my Father. Because of this, Arlene and Irene Twinn expressed apprehension about me meeting their Mother who they said has negative feelings and thoughts towards my Father.
30. I began to feel it was obvious that the first family would not provide blood samples, so I turned to Catherine Twinn. She and her sons' blood samples proved my paternity, that I am the eldest daughter of Walter Patrick Twinn.
31. Catherine Twinn encouraged me to apply to the Trust and the Band to ascertain my entitlement at birth under the 1970 Indian Act rules that I qualify as a member of the Sawridge Band, being the illegitimate daughter of a male Indian, and a Beneficiary under the 1985 Trust. If I were to apply and be admitted into Band membership I would become a beneficiary of the 1986 Trust.
32. In about 2002 I applied for Indian Status registration through the office of Lesser Slave Lake Indian Regional Council (LSLIRC) governed by a Board of 5 Chiefs, Roland Twinn being one of the Chiefs. The CEO, Al Willier, is Roland Twinn's good friend. I was never registered even though both my parents qualify as Indians. At some point, I was informed by the LSLIRC the DNA result proving Walter was my Father was inadequate and I would need 2 of my Father's sisters to attest I was his daughter. I believed this requirement was impossible and gave up pursuing Indian Status registration.

33. I had raised the issue of applying for Band membership with Arlene Twinn and was led to believe I would never be accepted into membership because the aunties, my Father's sisters, would never allow it. Discouraged, I never applied and/or finalized my application for Indian Status, Band Membership or Beneficiary status. It was evident to me that any application would upset my half siblings and I put relationship ahead of applying.
34. I have not applied to the Trusts and the Trust Administrator has never contacted me. My half siblings, except Cameron Shirt, are members of the Sawridge Band through our Father, Walter Patrick Twinn.
35. I've been informed by Catherine Twinn and do verily believe that Cameron Shirt applied to the Trust for beneficiary status but his status was resisted and he has never received benefits.
36. I have not applied for band membership for the same reason I have not applied to the Trusts. Some of the principal leaders of the Sawridge Band govern the Trusts, and those like Roland Twinn, have made it clear to me I'm not wanted and my application would be denied. I do not have the resources to challenge this and endure a difficult process.
37. As Walter's daughter, I'd like to be equally included as a beneficiary and a band member as are the children of my Father, his brothers and his sisters.
38. Through my Mother, I have direct lineage to the Sawridge Band. My Mother's Indian Registry number had the Sawridge Band 454 number. My Mother and Father were related which is why they did not marry. At the time they became involved, and I was conceived, they did not know they were related. They later learned they were related after my Father offered to marry my Mother. Not knowing they were related was one of many impacts from Indian Residential School, along with addictions and shortened life spans. I am the "*bruised generation*", deeply impacted by Indian Residential School which continues to alter the course of my life and that of my family.

I swear this evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the  
City of Edmonton  
 in the Province of Alberta  
 the 1 day of April, 2015

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

[Signature]  
 DEBORAH SERAFINCHON

MARVIN J. H. BRAUN  
 BARRISTER + SOLICITOR

### SWORN STATEMENT OF GAIL O'CONNEL

I, Gail O'Connell, great daughter of Leon Ward and Josephine Cardinal, granddaughter of Elizabeth Mable Ward and daughter of Roseina Ward, of the City of Red Deer, in the Province of Alberta, do solemnly swear that:

#### Family History and Genealogy

1. I am the daughter of Roseina Lindberg nee Ward (hereinafter referred to as Roseina) who was born October 20, 1935.
2. Roseina, along with others, was Court ordered onto the Band List of the Sawridge First Nation (hereinafter referred to as the "Band") by Justice James Hugessen of the Federal Court by Order dated March 27, 2003. Attached to my Affidavit as **Exhibit A** is a true copy of the Court Order.
3. The reason Roseina was Court ordered onto the Band List is because the Band had not added her to the List they administer even though she was entitled, as the Court found, to be on the Band List without having to apply.
4. The Band appealed the Court Decision ordering Roseina and others be added to the Band List but the Band's Appeal failed. Attached as **Exhibit B** is a true copy of the Decision of the Court of Appeal dated January 19, 2004.
5. Roseina Lindberg was the daughter of Elizabeth Mable Ward. Attached as **Exhibit C** is a copy of the Certificate of Birth for Roseina.
6. Elizabeth Mable Ward, my grandmother, married Harry DeJong July 18, 1938, however, Harry DeJong is not my Grandfather. The Registration of Marriage Certificate of Elizabeth Ward who married Harry DeJong does not show her date of birth. It lists her age as 19 (she turned 20 the following month), her father as Leo Ward of Slave Lake, her mother as Josephine Cardinal and her name as Elizabeth Ward. Attached as **Exhibit D** is a copy of the Registration of Marriage Certificate of Elizabeth Ward and Harry DeJong.
7. Elizabeth Mable Ward had Roseina Ward (Lindberg) out of wedlock before she knew Harry DeJong.
8. Attached as **Exhibit E** is a copy of a letter dated September 6, 2000 from Indian Affairs and Northern Development indicating the reason for Roseina's omission from the Indian Register due to non-Indian paternity. It also notes that her parents are Leon Ward and Josephine Cardinal, registered under #7, Sawridge Band.
9. Elizabeth Mable Ward was born **August 18, 1918** and died September 6, 1951, only 33 years old. Attached as **Exhibit F** are true copies of the Baptismal Certificate dated September 7, 1918 and Birth Certificate for Elizabeth Mable Ward. On both documents her date of birth is August 18, 1918 and her parents are Leon Ward and Josephine Cardinal. Elizabeth's older sister, Philomine Ward, is listed as her godmother on the Certificate of Baptism.
10. Elizabeth Mable Ward is the daughter of Leon Ward and Josephine Cardinal, both Sawridge #7. Attached as **Exhibit G** is a true copy of a two page summary of the Band's Pay Lists from



October 3, 1910 to July 11, 1932 showing only Leon Ward as #7, his wife, their children and one copy of an Original Band Pay List dated June 19, 1931. The Band did not provide copies of any original Band Pay List. Through Access to Information, I obtained a copy of the original Band Pay List dated June 19, 1931. Most of the names on the original Pay List are redacted except for the name #7 Ward and #4 Ward. Under remarks, it states the woman is a duplicate of #51 and two boys not accounted for. I assume #4 must also be related to #7 or the name would have been redacted.

### Who Is Really Elizabeth's Father?

11. The Band admits that Leon Ward, Josephine Cardinal and their children were members of Sawridge and Leon Ward is listed as #7. The Band disputes that Elizabeth Mable Ward is the child of Leon Ward. Attached as **Exhibit H** is a document prepared by or for the Band titled "The Issue Is How Is "Elizabeth Ward" Related to Sawridge" (hereinafter referred to as the "**Band Genealogy**"). It concludes that Elizabeth's father was George Hamelln, #51, from the Driftpile First Nation (hereinafter referred to as Driftpile).
12. I am informed by Sam Twinn and do verily believe that when my Appeal first came to the Electors January 5, 2013 an elected Elder and Trustee, Bertha L'Hirondelle, suggested I belonged to Driftpile. Sam Twinn and others requested that a Genealogy be drafted in collaboration with our family prior to the Appeal being heard. The Genealogy would provide facts and relevant information from both sides on contested facts. My Appeal was rescheduled for March 9, 2013 to enable preparation of the collaborative Genealogy to assist the Electors.
13. There was no follow up or outreach to me to confirm or discuss the Band Genealogy by anyone from the Band.
14. The Band Genealogy prepared for my Appeal heard March 9, 2013, I believe, influenced the outcome of my Appeal. The Electors who attended were mostly supporters of the Chief and Council. The electors upheld the Council's decision denying my application for membership. Many of the members voting on my Appeal believed I belong to Driftpile, not Sawridge, because of the Band Genealogy. I am informed by Catherine Twinn and do verily believe she overheard Paul Twinn say about me, "she belongs to Driftpile."
15. The Band Genealogy refers to "Pay Lists" but not the original Pay Lists. It relies on Analyses prepared by the Lesser Slave Lake Indian Regional Council, Treaty and Aboriginal Rights Research, Genealogical Project, 1999-2000. The Band places inordinate weight on these Band Pay List Analyses. The original Pay Lists are notorious for mistakes and vagueness and I understand there was controversy around Indian Agent Harold Laird (1911-1930) of Lesser Slave Lake and his record keeping.
16. The Band Analyses add researcher comments under the Indian Agent column that do not appear in the original Pay List. Attached as **Exhibit "I"** is a copy of the Driftpile Pay List for George Hamelln dated July 5, 1934 and the Band Analysis of that Pay List showing the addition of the researchers comments under the Indian Agent column.
17. The Band Genealogy disputes my great grandfather Leon Ward's paternity of my grandmother Elizabeth Ward. It says, "Among the possible answers is that she is the daughter of Egbert Ward. Or that she is the daughter of Leon Ward. Or none of the above." It dismisses Elizabeth as the daughter of Egbert Ward and Leon Ward and concludes she is the daughter of George Hamelln, #51, from Driftpile.

18. The Band's reasons for concluding my grandmother is the daughter of George Hamelin #51 appear to rest on the following:
  - a. A Driftpile Pay List for #51 George Hamelin dated October 12, 1920 records "girl born" and the Band researcher's comments are "Elizabeth Ward Hamelin born in 1917";
  - b. The June 19, 1931 Sawridge Pay List for #7 Ward that says the woman is a duplicate of #51;
  - c. On October 12, 1920 the Indian Agent, under #51, records "girl born". She is never given a name while under #51. The Researcher later assumes this girl becomes #101, first appearing on the July 5, 1934 Driftpile Pay List until 1940;
  - d. On June 23, 1939, according to the Driftpile Pay List Analysis, the Indian Agent adds comments to the Driftpile Pay List that #101, Elizabeth Ward Hamelin; age 22, married H. De Gong, a white trader, at Prairie River on June 14, 1938. The 1939 date for the Analysis is incorrect. The actual date for the Pay List is June 23, 1938;
  - e. She remained on the Driftpile Pay List until June 21, 1940, when she was given "commutation authority" Sept 13, 1939;
  - f. Her name never appeared on the Sawridge Pay List;
19. The Band Genealogy states "What is clear is that although Elizabeth Ward Hamelin becomes the wife of Harry DeGong, and while it is likely that they are the parent of Fleury DeJong, she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist....If the woman who is the grandmother of Gaille O'Connell is the same person who married Harry DeGong and is the mother of Fleury Degong/DeJong, then the proper First Nation for Gaille O'Connell to direct her application for membership is Driftpile. There is not and never has been any connection with Sawridge."
20. The authorship of this Band Genealogy was not identified at the time of the Appeal and all supporting sources of information in the possession of the Band were not provided to me.
21. I was informed by Catherine Twinn that Mike McKinney, Executive Director/General Counsel to the Band, recently advised that Rarihokwats, Chair of the Appeal Committee (e.g. the Electors), is believed to have authored the Band Genealogy.
22. To dismiss Elizabeth Mable Ward as Leon Ward's daughter, the Band Genealogy ignores the best evidence, makes unsubstantiated assumptions, fails to disclose all relevant evidence and is inherently speculative and biased in selecting information to support a pre-determined conclusion, particulars of which include:
  - a. The birth and baptismal certificates for Elizabeth Mable Ward, born August 18, 1918 lists her parents as Leon Ward and Josephine Cardinal who are on the Sawridge Pay list;
  - b. The copy of the Birth Certificate provided to Rarihokwats at the March 9, 2013 Appeal;
  - c. I do not believe any proper weight was given by the Electors to the Birth Certificate evidence;
  - d. The Registration of Marriage Certificate for Elizabeth Ward, **Exhibit D**, dated July 18, 1938 naming Leo Ward and Josephine Cardinal as her mother and father;
  - e. The Band Analyses of the Sawridge Pay Lists, Exhibit "G", for Lion/Leon Ward, #7, from October 3, 1910 to July 11, 1932;
  - f. The Band did not produce any original Pay Lists or all its Analyses of Band Pay Lists including past 1932 for Leon Ward and his children with Josephine Cardinal;
  - g. The Band did not produce any birth, baptismal, marriage or other certificates to support its position that George Hamelin, not Leon Ward, fathered Elizabeth Mable Ward;
  - h. The woman listed on the Driftpile Pay lists as Elizabeth Ward Hamelin, appears to not be the same woman as my Grandmother Elizabeth Mable Ward, for a number of reasons including:
    - My Grandmother's Birth and Baptismal certificates list her birth date as August 18, 1918 and her father as Leon Ward, not George Hamelin;

- My Grandmother's Registration of Marriage lists her father as Leo Ward and my Grandmother's name as Elizabeth Ward, not Hamelin;
  - This Marriage Certificate does not identify my Grandmother as Elizabeth Ward Hamelin;
  - My grandmother never had the name "Elizabeth Ward Hamelin";
  - My Grandmother had a child in 1935 and in 1938. No mention is made on the Driftpile Pay List of those children born during that time period;
  - My Grandmother was 19 years old when she married July 18, 1938. The woman named Elizabeth Ward Hamelin is listed as being 22 years old on the June 23, 1939 Driftpile Pay List;
- i. Our family oral history told to me by my mother Roseina is that my Grandmother was raised by Bernard and Louisa Halcrow. Elizabeth lived with them for a long period of time. The Halcrows' took care of my grandmother but they did not adopt her;
  - j. The Band Genealogy says that Leon Ward became #7 Sawridge in 1910. A Sawridge Paylist dated July 14, 1919 showed "Girl Born, Man Died". July 14, 1919 is not the date of Elizabeth Mable Ward's birth. She was, according to her Birth, Baptismal and Marriage Certificates, born August 18, 1918.
  - k. Elizabeth's August 18, 1918 birth occurred one month after the July 20, 1918 entry to the 1918 Pay List. Elizabeth Mable Ward is the last daughter born to Leon Ward. July 14, 1919 is simply the annual date when the Indian Agent recorded notations onto the Pay List as to what has occurred in the year prior, from the previous entries made to the Pay List July 20, 1918. These facts are contrary to the Band Genealogy that 'she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist'.
  - l. The Band assumed that the August 10, 1917 Pay List entry "Girl Born", who is transferred the following year to #5, the widow of John Ward (e.g. Leon Ward's father) eventually becomes Mary DeLorme. The Band says that John's widow dies in 1918, the girl is transferred to #15 St Pierre Nesootasis as "other relative" and that from then until 1936 when St. Pierre dies, the girl becomes Mary DeLorme and paid as a girl, even though she is 19 years of age;
  - m. The Band assumed that the July 14, 1919 entry of "Girl Born" is "Philomene". My mother always stated that Philomene was older than Elizabeth. This is corroborated by Elizabeth's Baptismal Certificate dated September 7, 1918 which names "Philomine Ward" as Elizabeth's godmother;
  - n. From the July 25, 1921 Pay List the Band states that "in 1921 the 2<sup>nd</sup> daughter is transferred to #20, Sucker Creek Reserve" and "This daughter is transferred back to Sawridge #41 in 1930...and the "two daughters of Leon's, one #5 Sawridge and the other #41 Sawridge - and neither of them are Elizabeth Ward". The Band Genealogy fails to provide evidence to support this and other assumption and statements;
  - o. The Band Genealogy assumes that Josephine Cardinal marries George Hamelin, #51 Driftpile, and is listed with a "newborn boy, Norman" on George's Driftpile Pay List July 24, 1918. How could she be giving birth to another newborn, Elizabeth Ward, one month later, August 18, 1918?;
  - p. The Band suggests that Josephine Cardinal, mother to Elizabeth Ward, married George Hamelin. They point to a woman and new born Infant Norman being recorded on the July 24, 1918 Driftpile Pay List under George Hamelin #51. This is one month before Elizabeth Ward was born, while Leon Ward was alive and married to Josephine and both were listed on the Sawridge Pay List;
  - q. The Band Genealogy identifies the wife of George Hamelin as the daughter of William Giroux #13. This cannot be my great grandmother Josephine Cardinal as her parents were Casimir Cardinal and Sophie Masiniyoneb Willier;
  - r. The Band provided Driftpile Pay Lists for the period July 24, 1918 to June 24, 1944 for George Hamelin #51. The June 23, 1939 Driftpile Pay List shows "girl born" to George Hamelin #51. If his wife/the mother is Josephine Cardinal, in 1939 she is 48 years old. Giving birth at this age is an inordinately long fertility period;

- s. The June 23, 1939 Driftpile Pay List lists the names and ages of George Hamelin's family. He and Josephine Cardinal are listed as 44 years old. My great grandmother Josephine Cardinal was born December, 1891 making her 48 years old;
  - t. The Driftpile Pay Lists are problematic. Whoever is accepting Treaty money for "Elizabeth Ward Hamelin" allegedly Elizabeth Mable Ward, does not know the correct date when my grandmother married DeJong or that my grandmother had two children prior to the marriage, including my mother Roseina, born October 20, 1935;
  - u. Pay Lists only indicated where a person was paid at, not where their Band Membership was. If Elizabeth Ward lived near Driftpile her Treaty payments could be made at Driftpile. This does not change her band membership to Driftpile from Sawridge, it just means her Treaty money was paid at Driftpile;
  - v. Because Elizabeth's father is Leon Ward, not George Hamelin #51, under the Indian Act, her membership was in her father's Band, which is Sawridge;
  - w. Elizabeth Ward's father died while she was an infant. Elizabeth Ward was given to Bernard and Louisa Halcrow to raise. They did not adopt Elizabeth;
  - x. The Band failed and/or refused to provide evidence as to which Band Elizabeth Mable Ward, born August 18, 1918, was paid out when she married a non-Indian and was "commuted";
  - y. In 2003 my mother Roseina Ward Lindberg was Court added to the Sawridge Band List. The Crown lawyer relied on evidence the Court accepted in support of Roseina Ward being added to the Sawridge Band List. None of this evidence was successfully appealed, disclosed to me or provided at my March 9, 2013 Appeal. How can the Band now challenge this?
  - z. The Band unsuccessfully challenged the paternity of Elizabeth Courtreille, who was also added to the Band List by the same Court Order that added my mother Roseina;
23. The Band Genealogy confuses, disputes and distorts facts including:
- a. the recorded paternity of Elizabeth Mable Ward on her birth, baptismal and marriage certificates;
  - b. the entitlement of Leon's children and wife to membership in his Band;
  - c. the 1917 and 1919 Sawridge Pay List evidence showing 2 girls born;
  - d. the evidence tendered by the Crown, accepted by the Court, adding my mother to the Band List, upheld on Appeal;
  - e. Other evidence including that set out in paragraph 22;
24. The Band did not produce all the evidence and none of the original Pay Lists it relied on or other evidence including the Band which paid the per capita share to Elizabeth Mable Ward when she was enfranchised for marrying a non-Indian. It selected some Analyses of Pay Lists. There is some evidence showing that researcher comments were later added to the Pay List Analyses as comments of the Indian Agent.
25. The Band did not make timely disclosure of who authored the Band Genealogy and failed to collaborate with us in creating our Ward family genealogy. Were there other Josephine Cardinal's? Our family research suggests that the Josephine Cardinal who was the widow of Leon Ward was born in December 1891 and baptized January 23, 1892. She married Leon Ward September 9, 1906 and gave birth to their first child in 1908-1910. Her parents were Casimir Cardinal and Sophie Masiniyoneb Willier. The Band document identifies the wife of George Hamelin as the daughter of William Giroux #13. This suggests there is more than one Josephine Cardinal.

### **The Appeal Ignored Our Family's Oral History Evidence**

26. At the time of the 1918 Pay Lists, a flu epidemic killed many people in the Lesser Slave Lake area. I do not have a copy of the Death Certificate for Leon Ward but our family oral history evidence suggests he may have died in that epidemic leaving infant Elizabeth fatherless.

27. Our oral history evidence suggests that following the death of Leon Ward, Josephine Cardinal gave Elizabeth Mable Ward to Bernard and Louisa Halcrow to take care of. This was not a legal adoption. According to my mother, Elizabeth Mable Ward lived with Bernard and Louisa Halcrow.
28. Elizabeth Mable Ward was never a part of the George Hamelin family. Elizabeth Mable Ward never was a Hamelin and never lived with the Hamelins nor is George Hamelin listed on her birth, baptism or marriage certificates.
29. Philomene was Elizabeth's older sister.
30. Attached as **Exhibit J**, is an application for admission to St. Andrews Indian Residential School dated September 14, 1931 by Bernard and Louisa Halcrow as Guardians to Elizabeth Ward. On the backside of that document, there is a Certificate of Health for Elizabeth Ward. Both sides of the application states her age as 13 years old. This further corroborates the birth, baptismal and marriage certificate evidence that Elizabeth was born August 18, 1918 and is the daughter of Leon Ward and Josephine Cardinal.
31. Elizabeth Ward is never listed as a Hamelin on her Marriage Certificate, Baptismal or Birth Certificate or application for admission to school. She was always a Ward and never a Hamelin. The lineage of Elizabeth Mable Ward is that she is the daughter of Leon Ward, which the Court confirmed when it recognized her daughter, Roseina, as belonging to the Sawridge Band.
32. The Band has placed much weight on oral history evidence, however, not our family's oral history evidence or the conclusive and best evidence, the Birth, Baptismal, School Application and Marriage Certificates of Elizabeth Mable Ward, all recording her parents as Leon Ward and Josephine Cardinal.
33. Consistent with the Sawridge Pay Lists, we were told that Leon Ward and Josephine Cardinal had three other children besides Elizabeth Mable Ward. These were:
  - a. Norman Ward
  - b. John Ward
  - c. Philomene Ward
34. The Band did not seek our oral history evidence or other evidence nor did its author collaborate with us in creating the Band Genealogy. I believe the Band Genealogy influenced those voting on my Appeal, arguing that I belong at Driftpile, not Sawridge.

### **The Band Membership Application and Process**

35. In December 2003, I requested from the Band an application form for Membership.
36. On January 22, 2004 I received a letter from Mike McKinney, Executive Director/General Counsel for the Band, attached as **Exhibit K** with a membership application form of about 43 pages with instructions to return the form with a copy of my status card. In addition, I was to include numerous essays, letters of character reference, and copies of vital documents.
37. On March 25, 2004 the completed application for membership, with required documentation, was sent via registered mail and received by the Band.
38. On November 25, 2004 I placed a phone call to the Band to ask about the status of my application for membership. I spoke to Lorna at the Chief's office and was told my application

had not been reviewed. She undertook to have someone call me as to when I will receive a response. I never received a return call.

39. Between 2004 and 2010 I periodically called the Band office at least once a year. There was no progress on my application. I always received the same type of response. No one wanted to know who I was. When I would express my concern about how long the process was taking, I was told they had a lot of applications to go through.
40. On December 9, 2010 I placed another phone call to the Band inquiring about the status of my application. I was told the Council was going through applications on Tuesday December 14, 2010. The person I spoke to would not take down my name or give me any further information. I asked if there were some sort of statute of limitations and was informed there was not. She was not concerned that my application was dated 2004.
41. I was never informed or given the opportunity to answer any questions or concerns the Band had or to participate in a meeting or interview with the Chief and Council or it's designate.
42. On November 8, 2012, attached as **Exhibit L**, I received a registered letter signed by Mike McKinney, Executive Director/General Counsel to the Band, dated October 31, 2012 advising me the Council had denied my application for membership. Their reasons were:
  - a. They do not recognize my connection to Sawridge through my mother, Roseina Lindberg, because they do not recognize my mother's connection to Sawridge. Yet my mother is on the Band List, pursuant to the Court Order by Justice James Hugessen dated March 27, 2003;
  - b. I do not have any specific "right" to have my entered on the Band list;
  - c. Even if I had shown a connection, they didn't feel it was in the Band's best interests;
  - d. They took into account my character and lifestyle without any evidence of the standard set by existing band members if judged on the same subjective criteria.
43. My application demonstrates I am of good character and an absolute family oriented person who has worked hard to teach my children values and morals of a higher standard.
44. On November 13, 2012 I sent a Letter of Appeal to the Band via registered mail.
45. On November 21, 2012 I received, via regular mail, a Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. The notice is dated November 21, 2012, the same date I received it. Attached to this my Affidavit is **Exhibit "M"**, a true copy of the November 21, 2012 Notice.
46. The Band, included their membership processing form in **Exhibit M**, and agreed my character and lifestyle was 'not a detriment'. **Exhibit M** was mailed with the Notice of Appeal to be held January 5, 2013. The form indicates the following:
  - I am employed, debt free;
  - own my own home;
  - no criminal record;
  - no driver's license suspension;
  - hardworking and self-sufficient;
  - good student;
  - positive letters of reference from 3 people who have known me – one reference knew me for 25 years);
47. On December 13, 2012 I received, via Registered mail, a second Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. The notice is dated November 21, 2012. The only difference between the two notices, in my view, is that in the mail out received December 13,

2012, the Membership processing form is now marked "Draft". Attached as **Exhibit "N"** is a true copy of the notice I received December 13, 2012.

48. I decided not to attend the Appeal at Slave Lake on January 5, 2013. I felt it was all just a matter of formality, my exclusion from membership a foregone conclusion. Given the time the process had taken, the lack of a fair process, the denial by Chief and Council using subjective criteria without any interview or effort to fairly assess me or afford me a reasonable chance to address their concerns and questions, no discussion of balanced options such as a probationary period, and other factors, all pointed to a foregone conclusion. I believed there was no point in attending.
49. On February 19, 2013 I received a notice of a new date to hear my Appeal, March 9, 2013 Attached as **Exhibit "O"** are true copies of same.
50. On February 21, 2013 I received the Band Genealogy, attached as **Exhibit H**, dated February 19, 2013 from Donna Brown, administrative assistant, and copies of various pay lists. Information in the Band document, as explained elsewhere, was not in the least accurate, fair or balanced.
51. On March 9, 2013 I attended the Appeal with my mother Roseina and my sister Gina. From the moment we arrived, the hostility, unfriendliness, tension, unease and suspicion was palpable. A person named Rarihokwats, who chaired the Appeal, suggested my mother, an elderly Band Member, wait in the waiting room before the voting occurred even though she had a right as a member to be present. The underlying suggestion was that we did not belong to Sawridge and were not welcome. It was clear that minds were made up.
52. At the Appeal I was taken aback by the suggestion we belong to Driftpile. We have no roots or relatives in the Driftpile First Nation.
53. I became so unnerved by the atmosphere I was hindered in speaking to the 5 pages of documents and other information I had. I gave Rarihokwats the Birth Certificate for my grandmother Elizabeth Mable Ward listing her parents as Leon Ward and Josephine Cardinal. I do not know if copies were given to and read by the Band Members. I believe members who voted against allowing my Appeal may have been influenced by the Band document endorsed by their leaders and professional advisors that Elizabeth Mable Ward was not the daughter of Leon Ward but the daughter of George Hamelin #51 and she belonged to Driftpile, not Sawridge.
54. The March 9, 2013 Appeal including the deliberations of the electors lasted the full day. They were unable to reach a consensus. A secret vote was taken and later I learned my Appeal was denied.
55. Sometime in April, 2013, I received from Ed Molstad, of Parlee McLaws LLP, present at my Appeal as one of the paid professionals, a copy of the Decision from the Appeal Committee chaired by Rarihokwats. My Appeal was denied. This Decision is attached as **Exhibit "P"**.

### **My Concerns With the Process and Membership Rules**

56. The Membership Application form I filled out was about 43 pages and extremely invasive.
57. The decision making process took almost 10 years.
58. The Applicant should not have to "prove" they are worthy or meet some other subjective criteria that can easily be abused. If they are the child of a band member this should be of considerable if not decisive weight. Descent should be conclusive of membership and only in rare circumstances be overruled.

59. There is a power imbalance, lack of fairness and impartiality against applicants inherent in the process. Members who reside close to the Band office and their close family may be unlikely to dissent from the decision of Chief and Council and allow an applicant's Appeal.
60. The process did not allow a fair opportunity to know in advance, present and ask questions on all relevant facts, concerns, reasons and principles both prior to the Chief and Council decision or on Appeal.
61. The decision making process for band membership should ensure that applicants are equally entitled to a fair process and equality of the law like other people in Canada.
62. There should be a period of time before the Decision and the Appeal in which the applicant can meet with Chief and Council and electors one on one, and address any questions or concerns.
63. Issues should be clearly identified in advance of the Decision and Appeal with a fair process to address these.
64. All applicants should have timely and full disclosure of all information the Band has gathered relevant to their application and Appeal.
65. Applicants on Appeal should be given the names and contact information for all electors. All electors should be allowed to vote, not just those who live close by to the Band office or their close family who come to support their family members living on reserve. Some members may be dependent on Band resources and the decisions of Chief and Council for their necessities.
66. A period of probation and/or conditional membership should be granted where existing members and the applicant, through no one's fault, do not know one another. Not knowing one another should not be an excuse to deny someone the same birthright members enjoy.
67. The discriminatory provisions of the Membership Rules should be changed particularly as it impacts children. All applicants should be treated equally, not based on who likes, supports or knows who.
68. Discriminatory thinking and mindsets should not determine membership. I should not be discriminated against because of a circumstance that existed or an action that was taken by my mother, grandmother, the Indian Agent, the Band or others.
69. The rules should provide for certainty based on descent and relationship. Subjective factors such as "character", "lifestyle" and "knowledge of the history and customs" should be re-assessed as these are too subjective.
70. The Chief and Council should not decide membership applications. They have a vested interest in satisfying their current political constituency who arguably have an interest in excluding people from membership to retain control and maintain a larger per capita share of resources. The process needs an independent, impartial and unbiased decision maker like a Tribunal or body with security of remuneration and tenure. I am advised by Catherine Twinn and do verily believe she recommended this but it has not been implemented.
71. Despite Sam Twinn specifically requesting such, the Band did not collaborate with me in building the Band Genealogy for my family and did not take into account critical evidence we provided or had.



72. The "Chair" of the Appeal process should in fact be independent, neutral and impartial. Rarihokwats influenced and controlled the Appeal process under the guise of being an impartial, independent, neutral party. I am informed by Catherine Twinn and do verily believe he is a paid consultant to the Chief and Council, has refused to disclose his compensation and performs multiple paid tasks for the Band including:

- Assisting the Band on litigation;
- Conducting Research;
- Drafting Court documents including the Band's Statement of Claim filed March 31, 2015 in the Court of Queen's Bench as Action 1503-04882 contesting compliance with the First Nations Financial Transparency Act;
- Drafting Laws and the Constitution of the First Nation at the direction of the Chief and Council;
- Drafting Policies for the Band;
- Acting as Speaker of the Sawridge Legislative Assembly to push through the laws he has drafted;
- Supporting the Chief in securing speaking opportunities and making presentations;
- Supporting Mike McKinney the in house Band lawyer on issues including drafting Permit forms so Chief and Council control if spouses, children and others can live with a band member on reserve;
- Recommending a legislative strategy and timetable for Band laws;
- Other;

73. There are no objective criteria in the Band's Rules, just vague, subjective and uncertain criteria such as character and lifestyle with no fair process to assess this. Transparency and disclosure well in advance of any decision should be required including disclosure of information that is being considered with a fair and meaningful opportunity to reply. The process must be fair, reasonable, timely, transparent, accountable, unbiased and non-discriminatory.

### **Post Appeal**

74. There was no honest effort to identify and resolve contested facts in advance of the Chief and Council Decision on my application or my Appeal. There was not a clear and balanced presentation of all the evidence at the March 9, 2013 hearing. Band members were not enabled, even if so motivated, to make a fair, unbiased and informed decision on my Appeal.

75. I was not invited or given a fair opportunity to have input into the Band Genealogy about my grandmother's paternity presented to the Band members March 9, 2013 or collaborate in addressing a fair and balanced presentation of contested facts.


76. The Band is very small, only 44 members. The Band imported outside paid professionals for my Appeal. Rarihokwats chaired the Appeal, led the process, controlled information, inappropriately influenced decision making and without disclosure, authored the Band Genealogy. I consider the paid professionals to have played an enabling role in this gross wrongdoing and obvious manipulation of the vote to deny my Appeal. Their combined conduct enabled the Chief and Council in an improper purpose of unfairly considering and excluding my equal entitlement to membership.

77. The Band Genealogy that is supposedly my family genealogy still makes my head spin and I wonder if that was the author's intention. Being a reasonable person, I could see how assumptions could be made from historical entries, however, the assumptions and conclusions in the Band Genealogy are speculative and unreasonable. The Band should disclose all its research and information it uses with regard to membership applications, which it has not.


78. When I reflect on the whole process including the Appeal, I still feel anxiety, frustration and sadness. Especially when I consider my grandmother and her paternity as Leon's daughter. My grandmother suffered violence in life and now in death.
79. I contacted Aboriginal Affairs and Northern Development Canada (AANDC) a number of times after the March 9, 2013 Appeal hearing to confirm and request information but the process is so slow. Without information, I was not in a position to appeal. As a single parent I did not have money to retain a lawyer and appeal. I have no chance against the notorious resources and litigation muscle of the Band that has spent millions of dollars on litigation to exclude people from membership.
80. I've subsequently learned about other Sawridge women who married non-Indian men and the status of their minor children upon their mother's enfranchisement by marrying a non-Indian man.
81. I am aware that Lilly Potskin, a Band member, attended the wedding of Pauline Twin who married a non-Indian man named Hammers in about 1966. Pauline is sister to Bertha L'Hirondelle and Clara Midbo and mother to Vera McCoy. Vera McCoy's son Justin Twin and daughter Winona Twin were Band Councillors who rejected my application for Band membership.
82. I want the Band to confirm that Pauline Twin was enfranchised as a result of her marriage to a non-Indian and the enfranchisement of her minor daughter, Vera McCoy nee Twin, postponed. Vera McCoy is a Band member. I want to understand why people in the same factual circumstances as me and my family are treated differently. Vera McCoy married a non-Indian man, Jody McCoy, and their two children, Jaclyn Twin and Justin Twin, are Band Members. Justin Twin, up until recently, was a Band Councillor and is a Sawridge Trustee. Jaclyn Twin is an elected official of the Band.
83. I swear this as evidence for the Court and for no improper purpose.

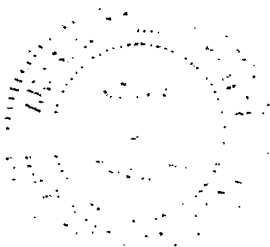
**SWORN BEFORE ME** at the  
City of Red Deer,  
In the Province of Alberta

the 21 day of MAY, 14:43 2015

  
A Commissioner for Oaths in and  
for the Province of Alberta

*Andrew Phipps*  
Barrister & Solicitor

  
GAIL O'CONNELL



Federal Court of Canada  
Trial Division



Section de première instance de  
la Cour fédérale du Canada

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

Gail O'Connell

Date: 20030327

Sworn before me this \_\_\_\_\_ day

Docket: T-66-86A

of \_\_\_\_\_ A.D., 20 \_\_\_\_\_

Neutral citation: 2003 FCT 347

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

**BETWEEN:**

**BERTHA L'HIRONDELLE** suing on her own behalf  
and on behalf of all other members of the Sawridge Band

**Plaintiffs**

- and -

**HER MAJESTY THE QUEEN**

**Defendant**

- and -

**NATIVE COUNCIL OF CANADA,  
NATIVE COUNCIL OF CANADA (ALBERTA)  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Interveners**

**REASONS FOR ORDER AND ORDER**

**HUGESSEN, J.:**

[1] In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the Indian Act, R.S.C. 1985, c. I-5, commonly

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known as Bill C-31, are unconstitutional. While I shall later deal in detail with the precise text of the relevant amendments, I cannot do better here than reproduce the Court of Appeal's brief description of the thrust of the legislation when it set aside the first judgment herein and ordered a new trial:

Briefly put, this legislation, while conferring on Indian bands the right to control their own band lists, obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the 1985 legislation. Such persons included: women who had become disentitled to Indian status through marriage to non-Indian men and the children of such women; those who had lost status because their mother and paternal grandmother were non-Indian and had gained Indian status through marriage to an Indian; and those who had lost status on the basis that they were illegitimate offspring of an Indian woman and a non-Indian man. Bands assuming control of their band lists would be obliged to accept all these people as members. Such bands would also be allowed, if they chose, to accept certain other categories of persons previously excluded from Indian status.

[Sawridge Band v. Canada (C.A.), [1997] 3 F.C. 580 at paragraph 2]

[2] The Crown defendant now moves for the following interlocutory relief:

a. An interlocutory declaration that, pending a final determination of the Plaintiffs' action, in accordance with the provisions of the *Indian Act*, R.S.C. 1985 c. 1-5, as amended, (the "*Indian Act, 1985*") the individuals who acquired the right to be members of the Sawridge Band before it took control of its own Band List, shall be deemed to be registered on the Band List as members of the Sawridge Band, with the full rights and privileges enjoyed by all band members;

b. In the alternative, an interlocutory mandatory injunction, pending a final resolution of the Plaintiffs' action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

[3] The basis of the Crown's request is the allegation that the plaintiff Band has consistently and persistently refused to comply with the remedial provisions of C-31, with the result that 11 women, who had formerly been members of the Band and had lost both their Indian status and their Band membership by marriage to non-Indians pursuant to the former provisions of section 12(1)b of the Act, are still being denied the benefits of the amendments.

[4] Because these women are getting on in years (a twelfth member of the group has already died and one other is seriously ill) and because the action, despite intensive case management over the past five years, still seems to be a long way from being ready to have the date of the new trial set down, the Crown alleges that it is urgent that I should provide some form of interim relief before it is too late.

[5] In my view, the critical and by far the most important question raised by this motion is whether the Band, as the Crown alleges, is in fact refusing to follow the provisions of C-31 or whether, as the Band alleges, it is simply exercising the powers and privileges granted to it by the legislation itself. I shall turn to that question shortly, but before doing so, I want to dispose of a number of subsidiary or incidental questions which were discussed during the hearing.

[6] First, I am quite satisfied that the relief sought by the Crown in paragraph a. above is not available. An interim declaration of right is a contradiction in terms. If a court finds that a right exists, a declaration to that effect is the end of the matter and nothing remains to be dealt with in the final judgment. If, on the other hand, the right is not established to the court's satisfaction, there can be no entitlement to have an unproved right declared to exist. (See *Sankey v. Minister of Transport and Stanley E. Haskins*, [1979] 1 F.C. 134 (F.C.T.D.)) I accordingly treat the motion as though it were simply seeking an interlocutory injunction.

[7] Second, in the unusual and perhaps unique circumstances of this case, I accept the submission that since I am dealing with a motion seeking an interlocutory injunction, the well-known three part test established in such cases as *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *R J R Macdonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 should in effect be reversed. The universally applicable general rule for anyone who contests the constitutionality of legislation is that such legislation must be obeyed unless and until it is either stayed by court order or is set aside on final judgment. Here, assuming the Crown's allegations of non-compliance are correct, the plaintiff Band has effectively given itself an injunction and has chosen to act as though the law which it contests did not exist. I can only permit this situation to continue if I am satisfied that the plaintiff could and should have been given an interlocutory injunction to suspend the effects of C-31 pending trial. Applying the classic test, therefore, requires that I ask myself if the plaintiff has raised a serious issue in its attack on the law, whether the enforcement of the law will result in irreparable harm to the plaintiff, and finally, determine where the balance of convenience lies. I do not accept the proposition that because the injunction sought is of a mandatory nature, the test should in any way be different from that set down in the cited cases. (See *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.*, [1990] F.C.J. No. 514; 32 C.P.R. (3d) 340.)

[8] It is not contested by the Crown that the plaintiff meets the first part of the test, but it seems clear to me that it cannot possibly meet the other two parts. It is very rare that the enforcement of a duly adopted law will result in irreparable harm and there is nothing herein which persuades me that this is such a rarity. Likewise, whatever inconvenience the plaintiff may suffer by admitting 11 old ladies to membership is nothing compared both to the damage to the public interest in having Parliament's laws flouted and to the private interests of the women in question who, at the present rate of progress, are unlikely ever to benefit from a law which was adopted with people in their position specifically in mind.

[9] Thirdly, I reject the proposition put forward by the plaintiff that would deny the Court the power to issue the injunction requested because the Crown has not alleged a cause of action in support thereof in its statement of defence. The Court's power to issue injunctions is granted by section 44 of the *Federal Court Act* and is very broad. Interpreting a similar provision in a provincial statute in the case of *Canadian Pacific Ltd. v. Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation*, [1996] 2 S.C.R. 495, the Supreme Court said at page 505:

Canadian courts since *Channel Tunnel* have applied it for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, wherever that right may fall to be determined. This accords with the more general recognition throughout Canada that the court may grant interim relief where final relief will be granted in another forum.

[10] The Supreme Court of Canada confirmed the Federal Court of Canada's broad jurisdiction to grant relief under section 44 : *Canada (HRC) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626.

[11] Likewise, I do not accept the plaintiff's argument to the effect that the Crown has no standing to bring the present motion. I have already indicated that I feel that there is a strong public interest at play in upholding the laws of Canada unless and until they are struck down by a court of competent jurisdiction. That interest is uniquely and properly represented by the Crown and its standing to bring the motion is, in my view, unassailable.

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

What  
evidence?  
They want  
even all  
women



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[13] This brings me at last to the main question: has the Band refused to comply with the provisions of C-31 so as to deny to the 11 women in question the rights guaranteed to them by that legislation?

[14] I start by setting out the principal relevant provisions.

2.(1) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List.

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

6. (1) Subject to section 7, a person is entitled to be registered if

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(ii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

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(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

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11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; ...

(2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

[15] The amending statute was adopted on June 27, 1985 but was made to take effect retroactively to April 17, 1985, the date on which section 15 of the *Charter* took effect. This fact in itself, without more, is a strong indication that one of the prime objectives of the legislation was to bring the provisions of the *Indian Act* into line with the new requirements of that section, particularly as they relate to gender equality.

[16] On July 8, 1985, the Band gave notice to the Minister that it intended to avail itself of the provisions of section 10 allowing it to assume control of its own Band List and that date, therefore, is the effective date of the coming into force of the Band's membership rules. Because C-31 was technically in force but realistically unenforceable for over two months before it was adopted and because the Band wasted no time in assuming control of its own Band List, none of the 11 women who are in question here were able to have their names

entered on the Band List by the Registrar prior to the date on which the Band took such control.

[17] The relevant provisions of the Band's membership rules are as follows:

3. Each of the following persons shall have a right to have his or her name entered in the Band List:

(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;

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and as such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

[18] Section 3(a)(i) and (ii) clearly create pre-conditions to membership for acquired rights individuals, referred to in this provision by reference to section 11(1) of the Act. Those individuals must either be resident on the reserve, or they must demonstrate a significant commitment to the Band. In addition, the process as described in the evidence and provided for in section 11 of the membership rules requires the completion of an application form

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some 43 pages in length and calling upon the applicant to write several essays as well as to submit to interviews.

[19] The question that arises from these provisions and counsel's submissions is whether the Act provides for an automatic entitlement to Band membership for women who had lost it by reason of the former paragraph 12(1)(b). If it does, then the pre-conditions established by the Band violate the legislation.

[20] Paragraph 6(1)(c) of the Act entitles, *inter alia*, women who lost their status and membership because they married non-Indian men to be registered as status Indians.

[21] Paragraph 11(1)(c) establishes, *inter alia*, an automatic entitlement for the women referred to in paragraph 6(1)(c) to have their names added to the Band List maintained in the Department.

[22] These two provisions establish both an entitlement to Indian status, and an entitlement to have one's name added to a Band List maintained by the Department. These provisions do not specifically address whether bands have the same obligation as the Department to add names to their Band List maintained by the Band itself pursuant to section 10.

[23] Subsection 10(4) attempts to address this issue by stipulating that nothing in a band's membership code can operate to deprive a person of her or his entitlement to registration "by reason only of" a situation that existed or an action that was taken before the rules came into force. For greater clarity, subsection 10(5) stipulates that subsection 10(4) applies to persons automatically entitled to membership pursuant to paragraph 11(1)(c), unless they subsequently cease to be entitled to membership.

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used in paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained

by the Department of Indian Affairs for a band if, *inter alia*, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(o).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively : a band may not create barriers to membership for those persons who are by law already deemed to be members.

[27] Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

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[28] The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombie stated as follows :

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

[Canada, *House of Commons Debates*, March 1, 1985, p. 2644]

[29] A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombie referred to the difference between status and membership. He stated that, while those persons who lost their status and membership should have both restored, the descendants of those persons are only automatically entitled to status:

This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and residency should be determined by the relationship with the Indian communities to which they belong.

[*Debates, supra* at 2645]

[30] Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved:

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may



be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.

This is a difficult issue. It has been for many years. The challenge is striking. The fairest possible balance must be struck and I believe it has been struck in this Bill. I believe we have fulfilled the promise made by the Prime Minister in the Throne Speech that discrimination in the Indian Act would be ended.

[*Debates, supra* at 2646]

[31] At a meeting of the Standing Committee on Indian Affairs and Northern Development, Minister Crombie again made it clear that, while the Bill works towards full Indian self-government, the Bill also has as a goal remedying past wrongs:

Several members of this committee said during the debate on Friday that this bill is just a beginning and not an end in itself, but rather the beginning of a process aimed at full Indian self-government. I completely agree with that view. But before we can create the future, some of the wrongs of the past have to be corrected. That is, in part, the purpose of Bill C-31...

[Canada, House of Commons, *Minutes of the Proceedings of the Special Committee on Indian Affairs and Northern Development*, Issue no. 12, March 7, 1985 at 12:7]

[32] Furthermore, in the Minister's letter to Chief Walter Twinn on September 26, 1985, in which he accepted the membership code, the Minister reminded Chief Twinn of subsections 10(4) and (5) of the Act, and stated as follows:

We are both aware that Parliament intended that those persons listed in paragraph 6(1)(c) would at least initially be part of the membership of a Band which maintains its own list. Read in isolation your membership rules would appear to create a prerequisite to membership of lawful residency or significant commitment to the Band. However, I trust that your membership rules will be read in conjunction with the Act so that the persons who are entitled to reinstatement to Band membership, as a result of the Act, will be placed on your Band List. The amendments were designed to strike a delicate balance between the right of individuals to Band membership and the right of Bands to control their membership. I sponsored the Band control of membership amendments with a strongly held trust that Bands would fulfill their obligations and act fairly and reasonably. I believe you too feel this way, based on our past discussions.

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[33] Sadly, it appears from the Band's subsequent actions that the Minister's "trust" was seriously misplaced. The very provisions of the Band's rules to which the Minister drew attention have, since their adoption, been invoked by the Band consistently and persistently to refuse membership to the 11 women in question. In fact, since 1985, the Band has only admitted three acquired rights women to membership, all of them apparently being sisters of the addressee of the Minister's letter.

[34] The quoted excerpts make it abundantly clear that Parliament intended to create an automatic right to Band membership for certain individuals, notwithstanding the fact that this would necessarily limit a band's control over its membership.

[35] In a very moving set of submissions on behalf of the plaintiff, Mrs. Twinn argued passionately that there were many significant problems with constructing the legislation as though it pits women's rights against Native rights. While I agree with Mrs. Twinn's concerns, the debates demonstrate that there existed at that time important differences between the positions of several groups affected by the legislation, and that the legislation was a result of Parliament's attempt to balance those different concerns. As such, while I agree wholeheartedly with Mrs. Twinn that there is nothing inherently contradictory between women's rights and Native rights, this legislation nevertheless sets out a regime for membership that recognizes women's rights at the expense of certain Native rights.

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Specifically, it entitles women who lost their status and band membership on account of marrying non-Indian men to automatic band membership.

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive *Charter* protected persons of those rights.

[37] As a result, I find that the Band's application of its membership rules, in which pre-conditions have been created to membership, is in contravention of the *Indian Act*.

[38] While not necessarily conclusive, it seems that the Band itself takes the same view. Although on the hearing of the present motion, it vigorously asserted that it was in compliance with the Act, its statement of claim herein asserts without reservation that C-31

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has the effect of imposing on it members that it does not want. Paragraph 22 of the Fresh as Amended Statement of Claim reads as follows:

22. The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection. Furthermore, such membership rights were granted to individuals without regard for their actual connection to or interest in the First Nation, and regardless of their individual desires or that of the First Nation, or the circumstances pertaining to the First Nation. This exercise of power by Parliament was unprecedented in the predecessor legislation.

[39] I shall grant the mandatory injunction as requested and will specifically order that the names of the 11 known acquired rights women be added to the Band List and that they be accorded all the rights of membership in the Band.

[40] I reserve the question of costs for the Crown. If it seeks them, it should do so by moving pursuant to Rule 369 of the *Federal Court Rules, 1998*. While the interveners have made a useful contribution to the debate, I would not order any costs to or against them.

#### ORDER

The plaintiff and the persons on whose behalf she sues, being all the members of the Sawridge Band, are hereby ordered, pending a final resolution of the plaintiff's action, to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

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Without restricting the generality of the foregoing, this Order requires that the following persons, namely, Jeannette Nancy Boudreau, Elizabeth Courtoreille, Fleury Edward DeJong, Roseina Anna Lindberg, Cecile Yvonne Loyie, Elsie Flora Loyie, Rita Rose Mandel, Elizabeth Bernadette Poitras, Lillian Ann Maric Potskin, Margaret Ages Clara Ward and Mary Rachel L'Hirondelle be forthwith entered on the Band List of the Sawridge Band and be immediately accorded all the rights and privileges attaching to Band membership.

"James K. Hugessen"

Judge

Edmonton, Alberta  
March 27, 2003

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**FEDERAL COURT OF CANADA**  
**Names of Counsel and Solicitors of Record**

**DOCKET:** T-66-86

**STYLE OF CAUSE:** Bertha L'Hirondelle et al v. Her Majesty The Queen et al

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 19 AND 20, 2003

**REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE HUGESSEN.**

**DATED:** March 27, 2003

**APPEARANCES BY:**

Mr. Martin J. Henderson	For the Plaintiffs
Ms. Lori A. Mattis	For the Plaintiffs
Ms. Catherine Twinn	For the Plaintiffs
Ms. Kristina Midbo	For the Plaintiffs
Mr. E. James Kindrake	For the Defendant
Ms. Kathleen Kohlman	For the Defendant
Mr. Kenneth S. Purchase	For the Intervener, Native Council of Canada
Mr. P. Jon Faulds	For the Intervener, Native Council of Canada (Alberta)
Mr. Michael J. Donaldson	For the Intervener, Non-Status Indian Association of Alberta
Ms. Mary Eberts	For the Intervener, Native Women's Association of Canada

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WOMEN'S ASSOCIATION OF  
CANADA

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TOTAL P.22



Federal Court  
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Cour d'appel  
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## il Court of Appeal

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# Federal Court of Appeal Decisions

Case name: L'Hirondelle v. Canada  
Court (s) Database: Federal Court of Appeal Decisions  
Date: 2004-01-19  
Neutral citation: 2004 FCA 16  
File numbers: A-170-03

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_ A.D., 20\_\_\_\_

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

Date: 20040119

Docket: A-170-03

Citation: 2004 FCA 16

CORAM: ROTHSTEIN J.A.

**NOËL J.A.**

**MALONE J.A.**

BETWEEN:

BERTHA L'HIRONDELLE, suing on her own behalf  
and on behalf of all other members of the Sawridge Band

Plaintiffs (Appellants)

and

**HER MAJESTY THE QUEEN**

Defendant (Respondent)

and

NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA),  
NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN  
ASSOCIATION OF ALBERTA

Intervenors (Respondents)

Heard at Calgary, Alberta, on December 15 and 16, 2003.

REASONS FOR JUDGMENT BY:  
ROTHSTEIN J.A.



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Legislation, Rules and Practice Directions	CORAM: ROTHSTEIN J.A.	
Publications	NOËL J.A.	
	MALONE J.A.	
	BETWEEN:	
	BERTHA L'HIRONDELLE, suing on her own behalf	
	and on behalf of all other members of the Sawridge Band	
		Plaintiffs
	(Appellants)	
	and	
	HER MAJESTY THE QUEEN	

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Defendant

(Respondent)

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Legal

NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN

Profession

ASSOCIATION OF ALBERTA

Self-

Represented

(Respondents)

Interveners

Litigants

Media &amp;

Heard at Calgary, Alberta, on December 15 and 16, 2003.

Public

REASONS FOR JUDGMENT BY:

ROTHSTEIN J.A.

CONCURRED IN BY:

NOËL

J.A.

MALONE

J.A.

Date: 20040119

Docket: A-170-03

Citation: 2004 FCA 16

CORAM: ROTHSTEIN J.A.

NOËL J.A.

MALONE J.A.

BETWEEN:

BERTHA L'HIRONDELLE, suing on her own behalf

and on behalf of all other members of the Sawridge Band

Plaintiffs

(Appellants)

and

HER MAJESTY THE QUEEN

Defendant

(Respondent)

and

NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA),

NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN

ASSOCIATION OF ALBERTA

Interveners

(Respondents)

#### REASONS FOR JUDGMENT

ROTHSTEIN J.A.

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

#### HISTORY

[2] The background to this appeal may be briefly stated. An Act to amend the Indian Act, R.S.C. 1985, c. 32 (1st Supp.) [Bill C-31], was given Royal Assent on June 28, 1985. However, the relevant provisions of Bill C-31 were made retroactive to April 17, 1985, the date on which section 15, the equality guarantee, of the Canadian Charter of Rights and Freedoms [the Charter] came into force.

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

by provisions that Parliament considered to be discriminatory on account of gender. The former provisions read:

- |   |  |
|---|--|
| <p>12. (1) The following persons are not entitled to be registered, namely,</p> <p>(a) a person who</p> <p>...</p> <p>(iii) is enfranchised, or</p> <p>(iv) is born of a marriage entered into after September 4, 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),</p> <p>unless, being a woman, that person is the wife or widow of a person described in section 11; and</p> <p>(b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.</p> <p>(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if on the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.</p> | <p>12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites :</p> <p>a) une personne qui, selon le cas :</p> <p>...</p> <p>(iii) est émancipée,</p> <p>(iv) est née d'un mariage célébré après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a, b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e,</p> <p>sauf si, étant une femme, cette personne est l'épouse ou la veuve de quelqu'un décrit à l'article 11;</p> <p>b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11.</p> <p>(2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e peut faire l'objet d'une protestation dans les douze mois de l'addition; si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa.</p> |
|---|--|

[4] Bill C-31 repealed these disqualifications and enacted the following provisions to allow those who had been stripped of their status to regain it:

6. (1) Subject to section 7, a person is entitled to be registered if

...

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

...

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph;

6. (1) Sous réserve de l'article 7, une personne a le droit d'être inscrite si elle remplit une des conditions suivantes\_:

...

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

...

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes\_:

...

c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

[5] By an action originally commenced on January 15, 1986, the appellants claim a declaration that the provisions of Bill C-31 that confer an entitlement to Band membership are inconsistent with section 35 of the Constitution Act, 1982 and are, therefore, of no force and effect. The appellants say that an Indian Band's right to control its own membership is a constitutionally protected Aboriginal and treaty right and that legislation requiring a Band to admit persons to membership is therefore unconstitutional.

[6] This litigation is now in its eighteenth year. By Notice of Motion dated November 1, 2002, the Crown applied for:

an interlocutory mandatory injunction, pending a final resolution of the Plaintiff's action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

[7] The basis of the Crown's application was that until legislation is found to be unconstitutional, it must be complied with. The mandatory injunction application was brought to require the Band to comply with the provisions of the Act unless and until they are determined to be unconstitutional. By Order dated March 27, 2003, Hugessen J. granted the requested injunction.

[8] This Court was advised that, in order for the Band to comply with the Order of Hugessen J., the eleven individuals in question were entered on the Sawridge Band list. Nonetheless, the appellants submit that Hugessen J.'s Order was made in error and should be quashed.

#### ISSUES

[9] In appealing the Order of Hugessen J., the appellants raises the following issues:

1. Does the Band's membership application process comply with the requirements of the Act?
2. Even if the Band has not complied with the Act, did Hugessen J. err in granting a mandatory interlocutory injunction because the Crown lacks standing and has not the met the test for granting interlocutory injunctive relief.

#### APPELLANTS' SUBMISSIONS

[10] The appellants say that the Band's membership code has been in effect since July 8, 1985 and that any person who wishes to become a member of the Band must apply for membership and satisfy the requirements of the membership code. They say that the eleven individuals in question have never applied for membership. As a result, there has been no refusal to admit them. The appellants submit that the code's requirement that all applicants for membership go through the application process is in accordance with the provisions of the Act. Because the Band is complying with the Act, there is no basis for granting a mandatory interlocutory injunction.

[11] Even if the Band has not complied with the Act, the appellants say that Hugessen J. erred in granting a mandatory interlocutory injunction because the Crown has no standing to seek such an injunction. The appellants argue that there is no lis between the beneficiaries of the injunction and the appellants. The Crown has no interest or, at least, no sufficient legal interest in the remedy. Further, the Crown has not brought a proceeding seeking final relief of the nature sought in the mandatory interlocutory injunction application. In the absence of such a proceeding, the Court is without jurisdiction to grant a mandatory interlocutory injunction. Further, there is no statutory authority for the Crown to seek the relief in question. The appellants also argue that the Crown has not met the three-part test for the granting of an interlocutory injunction.

#### ARE THE APPELLANTS COMPLYING WITH THE INDIAN ACT?

##### The Appropriateness of Deciding a Legal Question in the Course of an Interlocutory Injunction Application

[12] The question of whether the Sawridge Band membership code and application process are in compliance with the Act appears to have been first raised by the appellants in response to the Crown's injunction application. Indeed, the appellants' Fresh As Amended Statement of Claim would seem to acknowledge that, at least when it was drafted, the appellants were of the view that certain individuals could be entitled to membership in an Indian Band without the consent of the Band. Paragraph 22 of the Fresh as Amended Statement of Claim states in part:

The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection.

[13] There is nothing in the appellants' Fresh As Amended Statement of Claim that would suggest that an issue in the litigation was whether the appellants were complying with the Act. The entire Fresh As Amended Statement of Claim appears to focus on challenging the constitutional validity of the Bill C-31 amendments to the Indian Act.

[14] The Crown's Notice of Motion for a mandatory interlocutory injunction was based on the appellants' refusal to comply with the legislation pending determination of whether the legislation was constitutional. The Crown's assumption appears to have been that there was no dispute that, barring a finding of unconstitutionality, the legislation required the appellants to admit the eleven individuals to membership.

[15] Be that as it may, the appellants say that the interpretation of the legislation

and whether or not they are in compliance with it was always in contemplation in and relevant to this litigation. It was the appellants who raised the question of whether or not they were in compliance in response to the Crown's motion for Injunction. It, therefore, had to be dealt with before the injunction application itself was addressed. The Crown and the interveners do not challenge the need to deal with the question and Hugessen J. certainly accepted that it was necessary to interpret the legislation and determine if the appellants were or were not in compliance with it.

[16] Courts do not normally make determinations of law as a condition precedent to the granting of an interlocutory injunction. However, that is what occurred here. In the unusual circumstances of this case, I think it was appropriate for Hugessen J. to have made such a determination.

[17] Although rule 220 was not expressly invoked, I would analogize the actions of Hugessen J. to determining a preliminary question of law. Rules 220(1) and (3) read as follows:

220. (1) A party may bring a motion before trial to request that the Court determine

(a) a question of law that may be relevant to an action;

...

(3) A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

220. (1) Une partie peut, par voie de requête présentée avant l'instruction, demander à la Cour de statuer sur :

a) tout point de droit qui peut être pertinent dans l'action;

...

(3) La décision prise au sujet d'un point visé au paragraphe (1) est définitive aux fins de l'action, sous réserve de toute modification résultant d'un appel.

[18] Although the appellants did not explicitly bring a motion under Rule 220, the need to determine the proper interpretation of the Act was implicit in their reply to the respondent's motion for a mandatory interlocutory injunction. It would be illogical for the appellants to raise the issue in defence to the injunction application and the Court not be able to deal with it. There is no suggestion that the question could not be decided because of disputed facts or for any other reason. It was raised by the appellants who said it was relevant to the action. Therefore, I think that Hugessen J. was able to, and did, make a preliminary determination of law that was final and conclusive for purposes of the action, subject to being varied on appeal.

**Does the Band's Membership Application Process Comply with the Requirements**



of the Indian Act?

[19] I turn to the question itself. Although the determination under appeal was made by a case management judge who must be given extremely wide latitude (see *Sawridge Band v. Canada*, [2002] 2 F.C. 346 at paragraph 11 (C.A.)), the determination is one of law. Where a substantive question of law is at issue, even if it is decided by a case management judge, the applicable standard of review will be correctness.

[20] The appellants say there is no automatic entitlement to membership and that the Band's membership code is a legitimate means of controlling its own membership. They rely on subsections 10(4) and 10(5) of the Indian Act which provide:

10(4) Membership rules established 10(4) Les règles d'appartenance  
by a band under this section may fixées par une bande en vertu du  
not deprive any person who had présent article ne peuvent priver  
the right to have his name entered quiconque avait droit à ce que son  
in the Band List for that band, nom soit consigné dans la liste de  
immediately prior to the time the bande avant leur établissement du  
rules were established, of the right droit à ce que son nom y soit  
to have his name so entered by consigné en raison uniquement  
reason only of a situation that d'un fait ou d'une mesure  
existed or an action that was taken antérieurs à leur prise d'effet.  
before the rules came into force.

(5) Il demeure entendu que le  
(5) For greater certainty, paragraphe (4) s'applique à la  
subsection (4) applies in respect of personne qui avait droit à ce que  
a person who was entitled to have son nom soit consigné dans la liste  
his name entered in the Band List de bande en vertu de l'alinéa  
under paragraph 11(1)(c) 11(1)c) avant que celle-ci n'assume  
immediately before the band la responsabilité de la tenue de sa  
assumed control of the Band List if liste si elle ne cesse pas  
that person does not subsequently ultérieurement d'avoir droit à ce  
cease to be entitled to have his que son nom y soit consigné.  
name entered in the Band List.

[21] The appellants say that subsections 10(4) and (5) are clear and unambiguous and Hugessen J. was bound to apply these provisions. They submit the words "by reason only of" in subsection 10(4) mean that a band may establish membership rules as long as they do not expressly contravene any provisions of the Act. They assert that the Band's code does not do so. The code only requires that if an individual is not resident on the Reserve, an application must be made demonstrating, to the satisfaction of the Band Council, that the individual:

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 (paragraph 3(a)(ii)).

[22] With respect to subsection 10(5), the appellants say that the words "if that person does not subsequently cease to be entitled to have his name entered in the Band List" mean that the Band is given a discretion to establish membership rules that may disentitle an individual to membership in the Band. They submit that nothing in the Act precludes a band from establishing additional qualifications for membership.

[23] The Crown, on the other hand, says that persons in the position of the individuals in this appeal have "acquired rights." I understand this argument to be that paragraph 11(1)(c) created an automatic entitlement for those persons to membership in the Indian Band with which they were previously connected. The Crown submits that subsection 10(4) prohibits a band from using its membership rules to create barriers to membership for such persons.

[24] Hugessen J. was not satisfied that subsections 10(4) and (5) are as clear and unambiguous as the appellant suggests. He analyzed the provisions in the context of related provisions and agreed with the Crown.

[25] The appellants seem to object to Hugessen J.'s contextual approach to statutory interpretation. However, all legislation must be read in context. Driedger's well known statement of the modern approach to statutory construction, adopted in countless cases such as *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 21, reads:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87).

Hugessen J. interpreted subsections 10(4) and (5) in accordance with the modern approach and he was correct to do so.

[26] I cannot improve on Hugessen J.'s statutory construction analysis and I quote the relevant portions of his reasons, which I endorse and adopt as my own:

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does

not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used by paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, inter alia, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively: a band may not create barriers to membership for those persons who are by law already deemed to be members.

[27] Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

...

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual [sic] to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's

membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

[27] I turn to the appellants' arguments in this Court.

[28] The appellants assert that the description "acquired rights" used by Hugessen J. reads words into the Indian Act that are not there. The term "acquired rights" appears as a marginal note beside subsection 10(4). As such, it is not part of the enactment, but is inserted for convenience of reference only (Interpretation Act, R.S.C. 1985, c. I-21, s. 14). However, the term is a convenient "shorthand" to identify those individuals who, by reason of paragraph 11(1)(c), became entitled to automatic membership in the Indian Band with which they were connected. In other words, the instant paragraph 11(1)(c) came into force, i.e. April 17, 1985, these individuals were entitled to have their names entered on the membership list of their Band.

[29] The appellants say that the words "by reason only of" in subsection 10(4) do not preclude an Indian Band from establishing a membership code, requiring persons who wish to be considered for membership to make application to the Band. I acknowledge that the words "by reason only of" could allow a band to create restrictions on continued membership for situations that arose or actions taken after the membership code came into force. However, the code cannot operate to deny membership to those individuals who come within paragraph 11(1)(c).

[30] A band may enact membership rules applicable to all of its members. Yet subsections 10(4) and (5) restrict a band from enacting membership rules targeted only at individuals who, by reason of paragraph 11(1)(c), are entitled to membership. That distinction is not permitted by the Act.

[31] The appellants raise three further objections. First, they say that their membership code is required because of "band shopping." However, in respect of persons entitled to membership under paragraph 11(1)(c), the issue of band shopping does not arise. Under paragraph 11(1)(c), the individuals in question are only entitled to membership in the band in which they would have been a member but for the pre-April 17, 1985 provisions of the Indian Act. In this case, those individuals would have been members of the Sawridge Band.

[32] Second, the appellants submit that the opening words of subsection 11(1), "commencing on April 17, 1985," indicate a process and not an event, i.e. that there is no automatic membership in a band and that indeed some persons may not wish to be members; rather, the word "commencing" only means that a person may apply at any time on or after April 17, 1985. I agree that there is no automatic membership. However, there is an automatic entitlement to membership. The words "commencing on April 17, 1985" only indicate that subsection 11(1) was not retroactive to before April 17, 1985. As of that date, the individuals in question in this appeal acquired an automatic entitlement to membership in the Sawridge Band.

[33] Third, the appellants say that the individuals in question have not made application for membership. Hugessen J. dealt with this argument at paragraph 12 of his reasons:

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

[34] The appellants submit, contrary to Hugessen J.'s finding, that there was no evidence that the individuals in question here wanted to become members of the Sawridge Band. A review of the record demonstrates ample evidence to support Hugessen J.'s finding. For example, by Sawridge Band Council Resolution of July 21, 1988, the Band Council acknowledged that "at least 164 people had expressed an interest in writing in making application for membership in the Band." A list of such persons was attached to the Band Council Resolution. Of the eleven individuals in question here, eight were included on that list. In addition, the record contains applications for Indian status and membership in the Sawridge Band made by a number of the individuals.

[35] For these persons entitled to membership, a simple request to be included in the Band's membership list is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant. As Hugessen J. found, requiring acquired rights individuals to comply with the Sawridge Band membership code, in which preconditions had been created to membership, was in contravention of the Act

[36] Of course, this finding has no bearing on the main issue raised by the appellants in this action, namely, whether the provisions entitling persons to membership in an Indian band are unconstitutional.

#### THE INJUNCTION APPLICATION

##### Standing

[37] I turn to the injunction application. The appellants say that there was no lis between the Band and the eleven persons ordered by Hugessen J. to be included in the Band's Membership List. The eleven individuals are not parties to the main action. The appellants also say that the Crown is not entitled to seek interlocutory relief when it does not seek the same final relief.

[38] I cannot accept the appellants' arguments. The Crown is the respondent in an application to have validly enacted legislation struck down on constitutional grounds. It is seeking an injunction, not only on behalf of the individuals denied the benefits of that legislation but on behalf of the public interest in having the laws of Canada obeyed. The Crown, as represented by the Attorney General, has traditionally had standing to seek injunctions to ensure that public bodies, such as an Indian band council, follow the law (see Robert J. Sharpe, *Injunctions and Specific Performance*, looseleaf (Aurora, ON: Canada Law Book, 2002) at paragraph 3.30; *Ontario (Attorney General) v. Ontario Teachers' Federation* (1997), 36 O.R. (3d) 367 at 371-72 (Gen. Div.)). Having regard to the Crown's standing at common law, statutory authority, contrary to the appellants' submission, is unnecessary. Hugessen J. was thus correct to find that the Crown had standing to seek the injunction.

[39] I also cannot accept the argument that the Crown may not seek interlocutory relief because it has not sought the same final relief in this action. The Crown is defending an attack on the constitutionality of Bill C-31 and is seeking an interlocutory injunction to require compliance with it in the interim. If the Crown is successful in the main action, the result will be that the Sawridge Band will have to enter or register on its membership list the individuals who are the subject of the injunction application. The Crown therefore is seeking essentially the same relief on the injunction application as in the main action.

[40] Further, section 44 of the Federal Courts Act, R.S.C. 1985, c. F-7, confers jurisdiction on the Federal Court to grant an injunction "in all cases in which it appears to the Court to be just or convenient to do so." The jurisdiction conferred by section 44 is extremely broad. In *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998]

1 S.C.R. 626, the Supreme Court found that the Federal Court could grant injunctive relief even though there was no action pending before the Court as to the final resolution of the claim in issue. If section 44 confers jurisdiction on the Court to grant an injunction where it is not being asked to grant final relief, the Court surely has jurisdiction to grant an injunction where it will itself make a final determination on an interconnected issue. The requested injunction is therefore sufficiently connected to the final relief claimed by the Crown.

#### The Test for Granting an Interlocutory Injunction

[41] The test for whether an interlocutory injunction should be granted was set out in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) and adopted by the Supreme Court in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 where, at 334, Sopinka and Cory JJ. summarized the test as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[42] The appellants submit that Hugessen J. erred in applying a reverse onus to the test. Since, as will be discussed below, the Crown has satisfied the traditional test, I do not need to consider whether the onus should be reversed.

#### Serious Question

[43] In *RJR-Macdonald* at 337-38, the Court indicated that the threshold at the first branch is low and that the motions judge should proceed to the rest of the test unless the application is vexatious or frivolous.

[44] The appellants say that in cases where a mandatory injunction is sought, the older pre-American Cyanamide test of showing a strong prima facie case for trial should continue to apply. They rely on an Ontario case, *Breen v. Farlow*, [1995] O.J. No. 2971 (Gen. Div.), in support of this proposition. Of course, that case is not binding on this Court. Furthermore, it has been questioned by subsequent Ontario decisions in which orders in the nature of a mandatory interlocutory injunction were issued (493680 Ontario Ltd. v. Morgan, [1996] O.J. No. 4776 (Gen. Div.); *Samoila v. Prudential of America General Insurance Co. (Canada)*, [1999] O.J. No. 2317 (S.C.J.)). In *Morgan*, Hockin J. stated that *RJR-Macdonald* had modified the old test, even for mandatory interlocutory injunctions (paragraph 27).

[45] The Jurisprudence of the Federal Court on this issue in recent years is divided. In *Relais Nordik Inc. v. Secunda Marine Services Ltd.* (1988), 24 F.T.R. 256 at paragraph 9, Pinard J. questioned the applicability of the American Cyanamide test to mandatory interlocutory injunctions. On the other hand, in *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.* (1990), 36 F.T.R. 98 at paragraph 15, MacKay J. accepted that the American Cyanamide test applied to mandatory injunctions in the same way as to prohibitory ones. Both of these cases were decided before the Supreme Court reaffirmed its approval of the American Cyanamide test in *RJR-Macdonald*. More recently, in *Patriquen v. Canada (Correctional Services)*, 2003 FC 927 at paragraphs 9-16, Blais J. followed the *RJR-Macdonald* test and found that there was a serious issue to be tried in an application for a mandatory interlocutory injunction (which he dismissed on the basis that the applicant had not shown irreparable harm).

[46] Hugessen J. followed *Ansa International* and held that the *RJR-Macdonald* test should be applied to an interlocutory injunction application, whether it is prohibitory or mandatory. In light of Sopinka and Cory JJ.'s caution about the difficulties of engaging in an extensive analysis of the constitutionality of legislation at an interlocutory stage (*RJR-Macdonald* at 337), I think he was correct to do so. However, the fact that the Crown is asking the Court to require the appellants' to take positive action will have to be considered in assessing the balance of convenience.

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

#### Irreparable Harm

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

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

[50] Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it (*Metropolitan Stores* at 143, quoting *Morgentaler v. Ackroyd* (1983), 42 O.R. (2d) 659 at 666-68 (H.C.)).



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

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

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

#### Balance of Convenience

[54] In *Metropolitan Stores* at 149, Beetz J. held that interlocutory injunctions should not be granted in public law cases, "unless, in the balance of convenience, the public interest is taken into consideration and given the weight it should carry." In this case, the public interest in seeing that laws are obeyed and that prior discrimination is remedied weighs in favour of granting the injunction requested by the Crown.

[55] As discussed above and as Hugessen J. found, there is a clear public interest in seeing that legislation is obeyed until its application is stayed by court order or the legislation is set aside on final judgment. As well, Bill C-31 was designed to remedy the historic discrimination against Indian women and other Indians previously excluded from status under the Indian Act and band membership. There is therefore a public interest in seeing that the individuals in this case are able to reap the benefits of those amendments.

[56] On the other hand, the Sawridge Band will suffer little or no damage by admitting nine elderly ladies and one gentleman to membership (the Court was advised that one of the eleven individuals had recently died). It is true that the Band is being asked to take the positive step of adding these individuals to its Band List but it is difficult

to find hardship in requiring a public body to follow a law that, pending an ultimate determination of its constitutionality, is currently in force. Even if the Band provides the individuals with financial assistance on the basis of their membership, that harm can be remedied by damages against the Crown if the appellants subsequently succeed at trial. Therefore, as Hugessen J. found, the balance of convenience favours granting the injunction.

#### CONCLUSION

[57] The appeal should be dismissed.

#### COSTS

[58] The Crown has sought costs in this Court and in the Court below. The interveners have sought costs in this Court only.

[59] In his Reasons for Order, Hugessen J. reserved the question of costs in favour of the Crown, indicating that the Crown should proceed by way of a motion for costs under rule 369. He awarded no costs to the interveners. It is not apparent from the record that the Crown made a costs motion under rule 369 and in the absence of an order for costs and an appeal of that order, I would not make any award of costs in the Court below.

[60] As to costs in this Court, the Crown and interveners are to make submissions in writing, each not exceeding 3 pages, double-spaced, on or before 7 days from the date of these reasons. The appellants shall make submissions in writing, not exceeding 10 pages, double-spaced, on or before 14 days from the date of these reasons. The Court will, if requested, consider the award of a lump sum of costs inclusive of fees, disbursements, and in the case of the interveners, GST (See *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, [2003] 2 F.C. 451 (C.A.)).

[61] The Judgment of the Court will be issued as soon as the matter of costs is determined.

"Marshall Rothstein"

J.A.

"I agree Marc Noël J.A."

"I agree B. Malone J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-170-03

STYLE OF CAUSE: BERTHA L'HIRONDELLE ET AL. v.

THE QUEEN ET AL.

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: December 15 and 16, 2003

REASONS FOR JUDGMENT

BY: ROTHSTEIN J.A.

CONCURRED IN BY: NOËL J.A.

MALONE J.A.

DATED: January 19, 2004

APPEARANCES:

Mr. Martin J. Henderson

Ms. Catherine Twinn FOR THE APPELLANT

Mr. E. James Kindrake

Ms. Kathleen Kohlman FOR THE RESPONDENT

Mr. Kenneth Purchase FOR INTERVENER, NATIVE COUNCIL OF CANADA

Mr. P. Jon Faulds FOR INTERVENER, NATIVE COUNCIL OF CANADA, ALBERTA

Ms. Mary Eberts FOR INTERVENER, NATIVE WOMEN'S ASSOCIATION OF CANADA

Mr. Michael J. Donaldson FOR INTERVENER, NON-STATUS INDIAN  
ASSOCIATION OF ALBERTA

SOLICITORS OF RECORD:

AIRD & BERLIS, Toronto, ON

TWINN LAW OFFICE

FOR THE APPELLANT

Morris Rosenberg

Deputy Attorney General of Canada

FOR THE RESPONDENT

LANG MICHENER

Ottawa, ON  
CANADA

FOR INTERVENER, NATIVE COUNCIL OF

FIELD ATKINSON PERRATON,

Edmonton, AB  
CANADA, ALBERTA

FOR INTERVENER, NATIVE COUNCIL OF

EBERTS SYMES STREET & PALMER LLP FOR INTERVENER, NATIVE

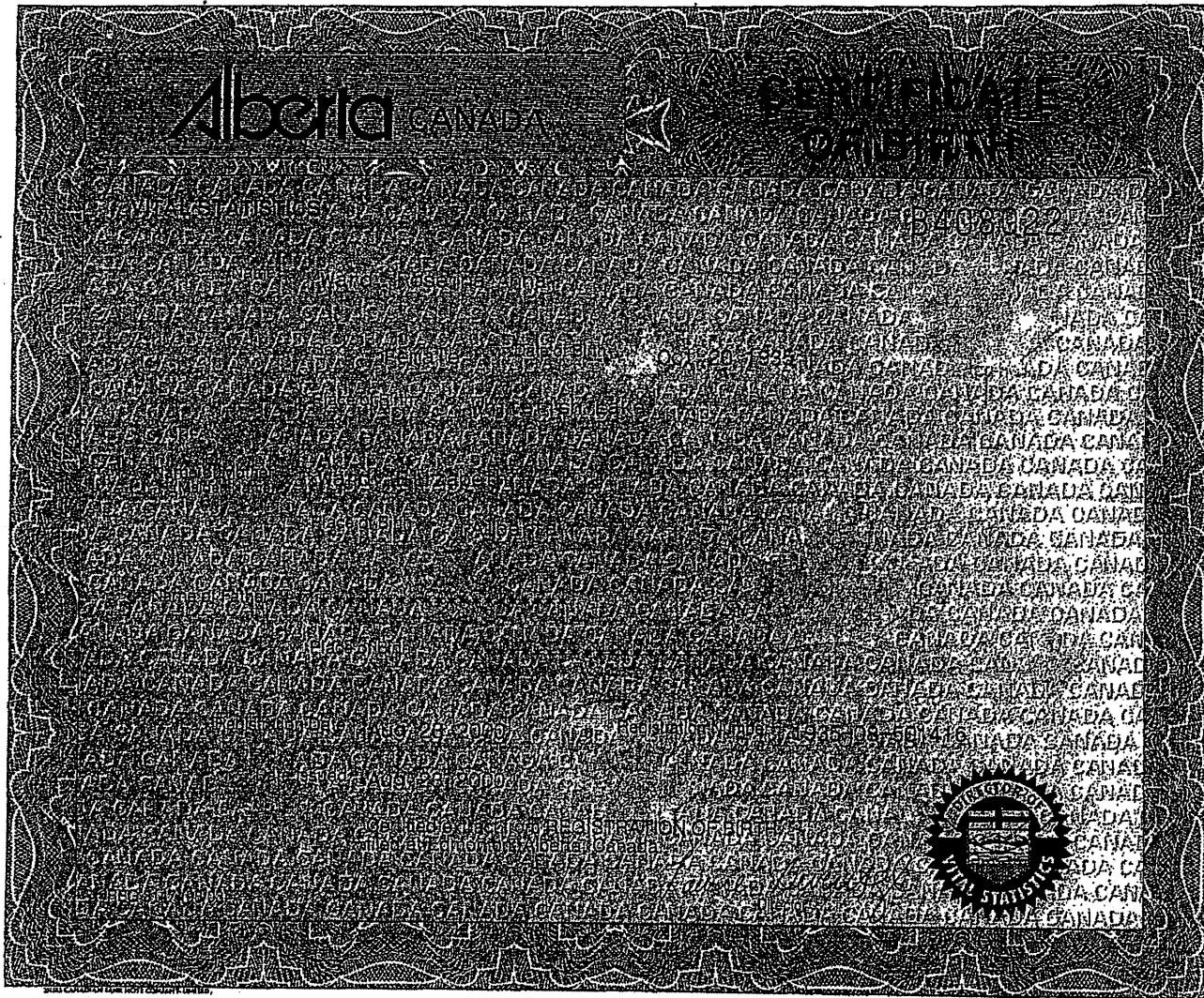
Toronto, ON

WOMEN'S ASSOCIATION OF CANADA

BURNET DUCKWORTH & PALMER LLP FOR INTERVENER,

Calgary, AB  
ALBERTA

NON-STATUS INDIAN ASSOCIATION OF



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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day

of \_\_\_\_\_ A.D., 20 \_\_\_\_\_

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

Form 2

USE BLACK INK

This form is placed in the margin of the original Marriage License and is to be filled in by the Registrar of the District of the Province of Alberta. It is to be filled in by the Registrar of the District of the Province of Alberta. It is to be filled in by the Registrar of the District of the Province of Alberta.

PROVINCE OF ALBERTA

FOR THE YEAR OF THE DEPARTMENT ONLY  
Record No. 711 of 1938

## REGISTRATION OF MARRIAGE

BRIDEGROOM

Name in Full Harry S. Jorg  
Occupation Trader  
Age 34  
Place of Birth Three Rivers  
Name of Father Peter S. Jorg  
Signature of Father [Signature]  
Name of Mother before Marriage Hettie Hellinga  
Can Bridegroom Read? yes

BRIDE

Name in Full Elizabeth Ward  
Occupation Housekeeper  
Age 19  
Place of Birth Atikameg (Manitoba)  
Name of Father Walter Ward  
Signature of Father [Signature]  
Name of Mother before Marriage Louise Lake  
Can Bride Read? yes  
Date of Marriage August 18th 1938  
Place of Marriage St. Andrew's Church of England Atikameg  
Name of Minister of the Gospel R. J. [Signature]  
Name of Witnesses [Signature] [Signature]  
Signature of [Signature]  
By License of [Signature] 50.696

NOTE: This form must not be mutilated. All information asked for should be given, including the Christian names and surname of all parties.

ACTUAL  
MONITORING  
NECESSARY

I certify the foregoing to be true and correct to the best of my knowledge and belief.

Atikameg August 18th 1938

This is Exhibit "L" referred to in the

Affide

Gail O'Connell

Sworn before me this day

of A.D. 20

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

This is Exhibit "E" referred to in the

Affidavit of

Gail O'Connell

Page 1 of 1

Sworn before me this \_\_\_\_\_ day

of \_\_\_\_\_ A.D., 20 \_\_\_\_\_

Indian and Northern  
Affairs Canada  
www.inac.gc.caAffaires indiennes  
et du Nord Canada  
www.aic.gc.caA Notary Public, A Commissioner for Oaths  
In and for the Province of Alberta

SEP - 6, 2000

Your file - votre référence

Our file - votre référence

E6000-434(Dowsley)  
LD928Membership Administrator  
Lesser Slave Lake Indian Registration Council  
P.O. Box 269  
SLAVE LAKE, Alberta  
T0G 2A0Date of Application: June 22, 2000  
Date of Receipt: June 30, 2000**REGISTRATION PARTICULARS:**

Name: Rosina Ann Lindberg

Date of Birth: October 20, 1935

Entitlement under the *Indian Act* to:

Registration: Section 6(1)(c)

Band Code: 454

Name of Registry Group: Sawridge

Rationale: Omitted from the Indian Register due to non-Indian paternity.

REGISTRY NO.: 4540040701

Mother: Elizabeth Ward, born August 18, 1918, entitled to be registered under section 6(1)(c) of the *Indian Act*. Married Harry Dejong, a non-Indian, on July 18, 1938. Her parents, Leon Ward and Josephine Cardinal, were registered under No. 7 Sawridge Band, (454) Sawridge Registry Group.

Father: Douglas McMullen, non-Indian

Remark: The applicant is affiliated with the (454) Sawridge Registry Group.

Name added to Register: Rosina Anna Ward

Canada

.../2

Printed on recycled paper - imprimé sur papier recyclé

-2-

I hereby enter the above particulars in the Indian Register. For your information, the applicant has been advised of her registry number.

*Suzanne Labelle*  
M. M. MacDonald  
Registrar  
OTTAWA, Ontario  
K1A 0H4

c.c. Manager, Indian Registration  
Lands and Trust Services  
Alberta Region



# Alberta CANADA

## DIVISION OF VITAL STATISTICS

B184734

This is to Certify that the particulars of the undernoted birth which is on record in this Department are as follows:

Name **WARD, ELIZABETH MABLE**

Sex

FEMALE

Date of Birth **AUG 18, 1918**

Place of Birth **KINUSO**

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_

Name of Father **WARD, LEON**

His Birthplace

\*\*\*\*\*

Name of Mother **CARDINAL, JOSEPHINE**

(before birth)

Her Birthplace

\*\*\*\*\*

Registered at **EDMONTON**

on **NOV 02, 1989**  
(Month) (Day) (Year)

Registration No.

1918-08-019120

Given under my hand and seal of the Director.

This

22

Day of

NOV 19

89

Certified Extract From  
Registration of Birth  
Issued at Edmonton,  
Alberta, Canada.

*Bill Gilroy*  
Director

446298



D.V.S. 24

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

## CERTIFICATE OF BAPTISM

## CERTIFICAT DE BAPTÊME

Paroisse de *Kinuso, Alberta*  
 Parish of .....

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

CECI CERTIFIE - THIS CERTIFIES

Que *Elizabeth Marie Ward*  
 That .....

Sworn before me this ..... day  
 of ..... A.D., 20 .....

Enfant de *Leon Ward*  
 Child of .....

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

et de *Josephine Cardinal*  
 and of .....

qui est né(e) le *18<sup>th</sup>* jour de *August* ..... 19 *18*.  
 Born on the ..... day of .....

a été baptisé(e) - was Baptized

le *7<sup>th</sup>* jour de *September* ..... 19 *18*.  
 the ..... day of .....

Conformément aux Rites de l'Eglise Catholique Romaine  
 According to the Rites of the Roman Catholic Church

par le Rév. *A. Pitaru, omi.*  
 by the Rev. ....

Parrain *Philomène Ward*  
 Sponsors }  
 Marraine }

Confirmé(e) à .....  
 Confirmed at .....

par .....  
 by .....

le ..... jour de ..... 19 .....  
 the ..... day of .....

Conformément au Régistre de la dite Paroisse  
 As appears from the Baptismal Register of said Church

daté le *September 7<sup>th</sup>* ..... 19 *18*.  
 Dated .....  
*Rev. Raphael Leonard, omi.*

This is Exhibit "G" referred to in the Affidavit of  
Gail O'Connell  
 Sworn before me this \_\_\_\_\_ day  
 of \_\_\_\_\_ A.D., 20\_\_\_\_

## SAWRIDGE FIRST NATION ANNUITY PAYLIST ANALYSIS

\*Notary Public & Commissioner for Oaths  
 in and for the Province of Alberta

SAWRIDGE FIRST NATION ANNUITY PAYLISTS 1910-55 LESSER SLAVE LAKE DISTRICT												PAGE 1 of 4
BAND NAME	DATE/YEAR	NO.	HEAD OF FAMILY	M	W	B	G	M	F	TOTAL PAID	RESEARCHER'S COMMENTS	ANNUITY & GRATUITY
	OCT 3, 1910	7	LION WARD	1	1	1				3	PAID SELF	15.00
	SEPT 10, 1911	7	LION WARD	1	1	1				3	PAID TO FATHER, NO. 5	15.00
	SEPT 24, 1912	7	LION WARD	1	1	1				3		15.00
	SEPT 18, 1913	7	LION WARD	1	1	1				3	ADVANCED 5.00 (NORMAN)	15.00
	SEPT 21, 1914	7	LION WARD	1	1	2				4		20.00
	AUG 14, 1915	7	LEON WARD	1	1	2				4	PAID TO SELF	20.00
	AUG 14, 1916	7	LEON WARD	1	1	2				4		20.00
	AUG 10, 1917	7	LEON WARD	1	1	2	1			5	GIRL BORN (PHILOMINE)	25.00
	JULY 20, 1918	7	LEON WARD	1	1	3				5	GIRL TRANSFERRED TO NO. 5 (BOY BORN)	25.00
	JULY 14, 1919	7	LEON WARD	1	1	3	1			5	GIRL BORN. MAN DIED (ELIZABETH MARBLE WARD)	25.00
	SEPT 10, 1920	7	LEON WARD	1	1	3	1			5	GIRL TRANSFERRED TO 20, SICKER CREEK RESERVE	25.00
	JULY 25, 1921	7	LEON WARD	1	1	3				4	PAID AT GROUNDER	20.00
	JULY 23, 1922	7	LEON WARD	1	1	3				4	PAID AT DUNKER CREEK	20.00
	AUG 9, 1923	7	LEON WARD	1	1	3				4		20.00
	JUNE 21, 1924	7	LEON WARD	1	1	3				4		20.00
	JUNE 10, 1925	7	LEON WARD	1	1	3				4	At SICKER CREEK	20.00
	AUG 2, 1926	7	LEON WARD	1	1	3				4		20.00
	AUG 4, 1927	7	LEON WARD	1	1	3				4		20.00
	JUNE 28, 1928	7	LEON WARD	1	1	3				4	PAID TO JUNE AT GROUNDER	20.00
	JUNE 21, 1929	7	LEON WARD	1	1	3				4		20.00
	JUNE 20, 1930	7	LEON WARD	1	1	2				3	GIRL TRANSFERRED TO NO. 5 (WHAT GIRL)	15.00

LESSER SLAVE LAKE INDIAN REGIONAL COUNCIL TREATY AND ABORIGINAL RIGHTS RESEARCH GENEALOGICAL PROJECT 1999 - 2000

## SAWRIDGE FIRST NATION ANNUITY PAYLIST ANALYSIS

[illegible]

LESSER SLAVE LAKE INDIAN REGIONAL COUNCIL TREATY AND ABORIGINAL RIGHTS RESEARCH GENEALOGICAL PROJECT 1999 - 2000



**The Issue Is How Is "Elizabeth Ward" Related to Sawridge**

The issue is Elizabeth Ward's (Mother of Rosina Ward, Grandmother of Gail O'Connell) relationship to Sawridge. Among the possible answers is that she is the daughter of Egbert Ward. Or that she is the daughter of Leon Ward. Or none of the above.

**Egbert Ward, Son of John Baptiste Ward #4**

John Baptiste Ward #4 was placed on the Sawridge paylist in 1910 with wife, five boys and two girls. He died, likely in the flu epidemic, in 1918/1919. In 1922, one of the boys was "transferred to #32, Egbert Ward."

In 1938, Egbert's age is given as 39, his wife 30. That would mean Egbert was born in 1899. He gets his own Sawridge number, #32, at age 23, married with no children. His first daughter is born in 1939, name given as [Marie Rose]. It would be impossible for that daughter to be Elizabeth, since Elizabeth is the mother of Rosina (b. 1935).

**Leon Ward, son of John Baptiste Ward:**

Leon Ward became #7 Sawridge in 1910. He has three sons (b. 1910, 1914, and 1918). A daughter is born 1917. In 1918-1919, Leon dies, likely in the flu epidemic. The baby girl is transferred to #5, her grandmother, the widow of John Ward. The widow died in 1918 and the baby girl is transferred to #15, St. Pierre Nesootasis and appears on his paylist as "other relative". She continues as such until 1936. In that year, two things happened: Headman St. Pierre Nesootasis died, and the relative is "now paid as a girl" – but her name is given as "Mary Delorme".

A second daughter of John Ward is born in 1919, apparently Leon's widow having been pregnant at the time of her husband's death. In 1921, the second daughter is transferred to #20 Sucker Creek Reserve (Leon's wife Josephine Oubichon Cardinal was from Sucker Creek). This daughter was transferred back to Sawridge #41 in 1930 -- Philomene ("Flemming") Ward \ Loyer. So, to summarize to this point, there are two daughters of Leon's, one #5 Sawridge and the other #41 Sawridge – and neither of them are "Elizabeth Ward."

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_ A.D., 20\_\_\_\_

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

## NEW INFORMATION FROM DRIFTPILE PAYLISTS

### George Hamelin #51 Driftpile

George Hamelin appears on 24 July 1918 as #51 Driftpile, with a woman and a newborn boy, Norman (he later becomes #97). George is from #30 (Leo Chalifoux), she is from #13 (William Giroux).<sup>1</sup> A daughter is added to the payroll in 1920, with a note that she was born in 1917. A second daughter (Mary Jane) in 1923 and 1924. One of the daughters died in 1926. A daughter was born in 1928, another in 1929. Another daughter died in 1930, and still another in 1931. A girl Bertha is born in 1932.

### Elizabeth Hamelin Ward, Driftpile #101

On 5 July 1934, one "Elizabeth Ward Hamelin" was added to the Driftpile Cree Nation annuity list as #51. It is likely she was just 18, giving her a birthdate of about 1916 (this is confirmed in 1939 when her age is given as 22, and 1917 is given on her father's payroll as her birthdate). In 1932, Elizabeth is paid at Whitefish Lake, and a child is born (Elie Walker Hemelin) - he is apparently "adopted" and appears later as #115 Elie Badger. Elizabeth's annuity is paid to the priest, Father Falher. In 1939, it is indicated that she is "wife of Harry de Gong, W.M. ("white male"). A "comment by Indian Agent" states, "Prairie Lake. H. DeGong is a white trader at Prairie River. Were married June 14 1938 ('8?)." "Woman given commutation [authority] 25-131 Sept 13 1939". Elizabeth remained on the Driftpile list until 21 June 1940.

*What is clear is that although Elizabeth Ward Hamelin becomes the wife of Harry DeGong, and while it is likely that they are the parents of Fleury deJong, she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist. This Elizabeth Hamelin Ward deGong ceased to be an Indian pursuant to the Indian Act on 13 September 1939. It is also clear that this Elizabeth cannot be the same person as the "Elizabeth Ward" who appeared on the Sawridge list as #65. In fact, "Ward" appears to be only a given middle name and her proper name is Elizabeth Hamelin.*

*If the woman who is the grandmother of Gail O'Connell is the same person who married Harry DeGong and is the mother of Fleury DeGong\DeJong, then the proper First Nation for Gail O'Connell to direct her application for membership is Driftpile. There is not and never has been any connection with Sawridge.*

---

<sup>1</sup> For further research if more Driftpile annuity paylists or summaries are available. +

Elizabeth Ward #65

There is also "Elizabeth Ward #65." She is placed on the Sawridge payroll in 1941 "Girl Trans. from No. 118 D'pile [Age 20, which would make her born around 1920.]

Although she is described as a "girl", she enters as a "woman". She married Colin Courtoreille (half-breed) on August 5, 1947, and is dropped from the payroll.

An examination of the Drifpile paylists indicates that she became #118 when she was moved from the list of Johnny Chalifoux. This fits the theory that at the time of her birth, the then unmarried parents (Egbert Ward and Mary Chalifoux) placed the paper with a family in Drifpile. If the parent of Felix Chalifoux is Johnny Chalifoux, and Felix is actually the natural father of Elizabeth (as the payroll implies), this would explain why Elizabeth was raised in the Chalifoux family, but when it was time to have her own number, she was moved to the First Nation of her legal father, Egbert Ward, namely Sawridge First Nation. None of this has anything to do with the Elizabeth Ward who is the grandmother of Gaile O'Connell.



## DRIFTPILE CREE NATION ANNUITY PAYLIST ANALYSIS

D.B. 1918  
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BAND NAME	DATE YEAR	NO.	HEAD OF FAMILY	M	W	B	G	M	F	TOTAL PAID	ARREARS PAID	RESEARCHER'S COMMENTS BY INDIAN AGENT	RESEARCHER'S COMMENTS	PAGE 1 of 2
JULY 28 1918	51	GEORGE HAMELIN	1	1	1					3		201 FROM 20 Girl From 13	15.00	15.00
JULY 10 1919	51	GEORGE HAMELIN	1	1	1					3		201 FROM 20 Girl From 13	15.00	15.00
OCT 12 1920	51	GEORGE HAMELIN	1	1	1					4		201 FROM 20 Girl From 13	20.00	20.00
JULY 28 1921	51	GEORGE HAMELIN	1	1	1					4		201 FROM 20 Girl From 13	20.00	20.00
JULY 20 1922	51	GEORGE HAMELIN	1	1	1					4		201 FROM 20 Girl From 13	20.00	20.00
AUG 2 1923	51	GEORGE HAMELIN	1	1	1					5		201 FROM 20 Girl From 13	25.00	25.00
JUNE 18 1924	51	GEORGE HAMELIN	1	1	1					6		201 FROM 20 Girl From 13	30.00	30.00
AUG 20 1925	51	GEORGE HAMELIN	1	1	1					6		201 FROM 20 Girl From 13	30.00	30.00
JULY 29 1926	51	GEORGE HAMELIN	1	1	1					5		201 FROM 20 Girl From 13	25.00	25.00
AUG 8 1927	51	GEORGE HAMELIN	1	1	1					5		201 FROM 20 Girl From 13	25.00	25.00
JUNE 27 1928	51	GEORGE HAMELIN	1	1	1					6		201 FROM 20 Girl From 13	30.00	30.00
JUNE 17 1929	51	GEORGE HAMELIN	1	1	1					7		201 FROM 20 Girl From 13	35.00	35.00
JUNE 16 1930	51	GEORGE HAMELIN	1	1	1					6		201 FROM 20 Girl From 13	30.00	30.00
JUNE 15 1931	51	GEORGE HAMELIN	1	1	1					5		201 FROM 20 Girl From 13	25.00	25.00
JULY 6 1932	51	GEORGE HAMELIN	1	1	1					6		201 FROM 20 Girl From 13	30.00	30.00
JULY 7 1933	51	GEORGE HAMELIN	1	1	2					7		201 FROM 20 Girl From 13	35.00	35.00
JULY 5 1934	51	GEORGE HAMELIN	1	1	1					5		201 FROM 20 Girl From 13	25.00	25.00
JUNE 20 1935	51	GEORGE HAMELIN	1	1	1					5		201 FROM 20 Girl From 13	25.00	25.00
JUNE 18 1936	51	GEORGE HAMELIN	1	1	1					4		201 FROM 20 Girl From 13	20.00	20.00
JUNE 17 1937	51	GEORGE HAMELIN	1	1	1					4		201 FROM 20 Girl From 13	20.00	20.00
JUNE 20 1938	51	GEORGE HAMELIN	1	1	1					4		201 FROM 20 Girl From 13	20.00	20.00

577

LESSER SLAVE LAKE INDIAN REGIONAL COUNCIL TREATY AND ABORIGINAL RIGHTS RESEARCH GENEALOGICAL PROJECT 1999-2000

This is Exhibit "I"

referred to in the

Affidavit of

Gail O'Connell

Sworn before me this

of

A.D., 20

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

S.19(1)

TREATY		No. 2857	
379		380	
Band Paid at Shippegan		July 5, 1924	
NAME	Signature of Recipient	AMOUNT	DATE
14	Amos, James	10 00 00	1924
51	Amos, James	1 1 2	5.35.7
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s.19(1)

[illegible]

Indian Affairs. Treaty Annuity Payments  
Treaties 4, 5, 7, 8, 11 and 12, Part 2, 191.  
(H.S. 10, Volume 592)

**PUBLIC ARCHIVES**  
**ARCHIVES PUBLIQUES**  
**CANADA**

## APPLICATION FOR ADMISSION



To the  
Deputy Superintendent General  
of Indian Affairs,  
Ottawa, Canada

September 14<sup>th</sup> 1915

Sir,

I hereby make application for admission of the undermentioned child into the St. Andrews Indian Residential School; to remain therein under the guardianship of the Principal for such term as the Department of Indian Affairs may deem proper.

Indian name of child

English name Elizabeth Ward

Age 13

Name of Band Kinnear Reserve

No. of ticket under which child's annuity is paid 2

Father's full name and No. 2

Mother's full name and No. 2

Parents living or dead

State of child's health

Religion

Does applicant speak English?

Previously attended

school for years

Bernard Watson (Guardian)  
(Signature of Father)

Note—If mother or guardian signs, agent must forward full explanatory note.

I hereby certify that the above application for admission has been read over and interpreted to the parent or guardian and that the contents were understood by him or her and that I witnessed his or her signature to this document.

I recommend the admission of the above child, who is of good moral character and is eligible to be admitted as a grant-earning pupil.

(Signature of Agent or other witness)

Agent

\*Principal or other official of the school must not sign as witness.

Note—All the above particulars must be fully given, especially the "Name of Band", "No. of ticket under which child's annuity is paid" and "Religion". The minimum age for admission is seven (7) years, except in the case of an orphan, destitute or neglected child. When application is made for the admission of such cases, full particulars should accompany the application.

Form No. 21

(over)

This is Exhibit "J" referred to in  
Affidavit of

Gail O'Connell

Sworn before me this

of September 14<sup>th</sup> A.D., 1915

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

U48-071195 [000-000]

WFL-071195/1

A0223724\_2-000021

s.19(1)

Agency  
School  
198

## CERTIFICATE OF HEALTH

Annually Ticket, Name and Number and Bond of Parent or Guardian:—

Candidate's Name Elizabeth Ward

Age 13

Height 5 feet 1 inch

Weight 117 lbs

State defects of limbs, if any None

State defects of eyesight, if any None

State defects of hearing, if any None

State signs of scrofula or other forms of tubercular disease, if any None

Describe what cutaneous disease, if any None

State whether subject to fits no

State whether child has had small-pox no

State whether vaccinated, and if so, in what year yes / vaccinated today 10/23/1913

Is this candidate generally of sound and healthy constitution, and fitted to enter an Indian School?

Candidate generally of sound and healthy constitution and fitted to enter an Indian school.

I certify that I have made a personal examination of the above-named applicant, and that the answers set down by me are correct.

M.D.

N.B.—No child suffering from scrofula or any form of tubercular disease is to be admitted to school; if in any special case it is thought that this rule should be relaxed, a report should be made to the Department setting forth the facts.

# Sawridge

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_ A.D., 20\_\_\_\_

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

January 22, 2004

Ms. Gail O'Connell  
3 Dodge Avenue  
Red Deer, Alberta  
T4R 3H6

Dear Madam:

**RE: Band Membership Application**

Further to your request of December 19<sup>th</sup>, 2003 and January 14<sup>th</sup>, 2004, enclosed please find the Sawridge Indian Band Membership Application form. Upon completion please forward same along with a copy of your status card.

If you should have any questions or concerns, please do not hesitate to contact us.

Yours truly,

**SAWRIDGE BAND**

Per:



Michael R. McKinney, B. Comm., LL.B.  
Executive Director





## REGISTERED MAIL

October 31, 2012

Gail E. O'Connell  
3 Dodge Avenue  
Red Deer, Alberta  
T4R 3H6

Dear Ms. O'Connell:

**RE: Membership Application**

Your application for membership in the Sawridge First Nation has been reviewed by the Council. Please take notice that the Council has denied your application for Membership in the Sawridge First Nation. This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

- 1) You claim a connection to the Sawridge First Nation through Rosina Lindberg. No information was provided about Rosina Lindberg that would establish that she was ever a Member of the Sawridge First Nation before Bill C-31, or if she was a Member of the Sawridge First Nation, how she ceased to be a Member of the Sawridge First Nation. We do not have information about Rosina that would connect her to Sawridge. Rosina was born in 1935. Your Application indicates that Rosina Lindberg's mother was Elizabeth Ward and that she lost her status when she got married. Elizabeth Ward appears to have been on the Sawridge Pay list once in 1920, but then appears on the Sucker Creek and Driftpile pay lists. We believe that your connection is with the Sucker Creek or Driftpile First Nation.
- 2) You do not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 3) Even if you had shown a connection to the Sawridge First Nation the Council concluded that it would not be compelled to exercise its discretion to add your name to the Membership List as it did not feel, in its judgment, that your admission into Membership of the First Nation would be in the best interests and welfare of the First Nation. The Council considered your commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the First Nation and your character and lifestyle in making this determination.

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,  
SAWRIDGE FIRST NATION  
Per:

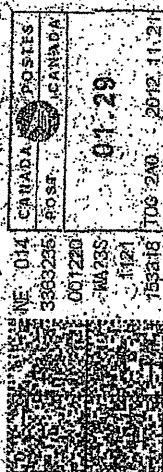
  
Michael R. McKinney  
Executive Director

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_, A.D., 20 \_\_\_\_\_

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



# NOTICE OF MEETING TO HEAR APPEAL JAN 5/13

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day

of \_\_\_\_\_ A.D., 20 \_\_\_\_\_

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

Ms. Gail O'Connell  
3 Dodge Avenue  
Red Deer, Alberta  
T4R 3H6



C-326  
CE, ALBERTA  
5-2A0



## SAWRIDGE FIRST NATION

## NOTICE OF MEETING OF ELECTORS

TO: GAIL O'CONNELL

AND TO: ALL ELECTORS OF THE SAWRIDGE FIRST NATION

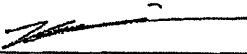
PLEASE TAKE NOTICE THAT A MEETING OF THE ELECTORS OF THE SAWRIDGE FIRST NATION WILL BE HELD AT THE HOUR OF 10:00 A.M. ON JANUARY 5, 2013 AT THE SAWRIDGE FIRST NATION OFFICE BOARDROOM (IN THE SAWRIDGE BAND ADMINISTRATION BUILDING LOCATED AT 806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, ALBERTA).

THIS MEETING WILL BE HELD TO HEAR THE APPEAL OF GAIL O'CONNELL IN RESPECT OF A DECISION OF THE SAWRIDGE FIRST NATION COUNCIL TO DENY THE MEMBERSHIP APPLICATION OF GAIL O'CONNELL. THE MEETING WILL BE HELD IN ACCORDANCE WITH THE APPEAL PROCEDURE, MEMBERSHIP RULES AND CONSTITUTION OF THE SAWRIDGE FIRST NATION.

AT THIS MEETING GAIL O'CONNELL WILL BE PERMITTED TO BE PRESENT AND TO MAKE REPRESENTATIONS EITHER IN PERSON OR THROUGH AN AGENT OR COUNSEL. A DECISION MAY BE MADE WHETHER YOU ARE PRESENT OR NOT.

THE ELECTORS PRESENT AT THE MEETING ARE EMPOWERED TO DISPOSE OF THE APPEAL AND MAY DO SO AFTER DELIBERATING *IN CAMERA*. IT IS POSSIBLE THAT THE MEETING WILL NOT BE CONCLUDED ON THE DATE SCHEDULED AND WILL HAVE TO BE ADJOURNED TO ANOTHER DAY BY THE ELECTORS. ONCE A DECISION IS MADE NOTICE WILL BE PROVIDED TO THE PERSON MAKING THE APPEAL. THE DECISION OF THE ELECTORS SHALL BE FINAL.

THIS NOTICE IS PROVIDED BY THE SAWRIDGE FIRST NATION ON  
THE 21 DAY OF NOVEMBER 2012

  
\_\_\_\_\_

MEMBERSHIP PROCESSING FORM

APPLICANT: Gail Elizabeth O'Connell

ADDRESS: 3 Dodge Ave, Red Deer, AB

PHONE: (403) 348-0201

APPLICABLE MEMBERSHIP SECTION # - 2

APPLICATION REQUIRED? Yes

SPECIFIC RIGHT No

BECAUSE: Applicant is the Daughter of a Bill C-31 and registered as a 6(2) under the Indian Act.

Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father. Elizabeth Ward appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.

APPLICATION

Application satisfactorily completed? Yes  
 Applicant interviewed by both Councillors? Yes \_\_\_\_\_ No x  
 Applicant interviewed by Chief? Yes \_\_\_\_\_ No x

SUMMARY OF FACTS CONSIDEREDCONNECTION TO FIRST NATION

- Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father.
- Applicant's Grandmother, Elizabeth Ward, appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.
- Applicant fails to explain how mother lost her status. But indicates that her mother had Registry 4540040701 at the time of applicants birth. This cannot be true.

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

- No current knowledge or ties to the First Nation.
- Would like to learn more.
- Has never lived in or participated in the Community or the First Nation.
- No contact with any active First Nation Members except two recently reinstated members who are not active.
- No stated interest to get involved in community or First Nation.
- Applicant not known to First Nation members
- Not believed that applicant has any opportunity to contribute to First Nation

**SIGNIFICANT KNOWLEDGE OF FIRST NATION**  
(History, Customs, Traditions, Culture and Communal Life)

- No Cree
- Knows Nothing about the First Nation's History, Customs, Traditions or Culture.
- Knows her Mom and Uncle Fleury Dejong

**CHARACTER AND LIFESTYLE**

(Not a Detriment)

- Employed – Dental Receptionist/Office Administrator
- Debt Free
- Owns own home
- No Criminal Record
- No Drivers License Suspension
- Hardworking and self sufficient
- Good Student
- Positive letters of reference from three people who have known her for 1-2 years – one reference knew her 25 years.

**OTHER CONSIDERATIONS**

Children	Yes - Has 3 Adult Children
Spouse	No - Divorced

**Physical Condition**

Good Health.

**Decision**

Membership Denied based on

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

### APPEAL PROCEDURE

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

#### COMMENCEMENT OF APPEAL

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

#### APPEAL COMMITTEE

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

#### HEARING PROCEDURE

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

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

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

#### DELIBERATIONS

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

#### DECISION BASED ON CONSENSUS

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

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

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

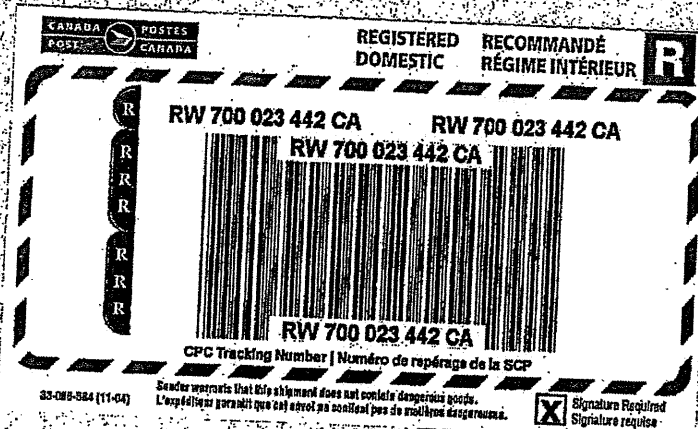
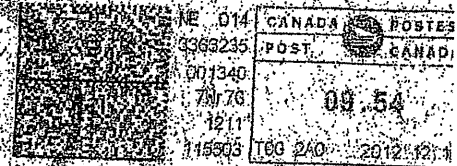
#### DECISIONS

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

BOX 326  
LAKE LAKE, ALBERTA  
T0G 2A0

NOTICE OF MEETING  
OF ELECTORS TO HEAR  
MY APPEAL ON JAN 5/13

"MARKED DRAFT ON MEMBERSHIP PROCESSING FORM"



Ms. Gail O'Connell  
3 Dodge Avenue  
Red Deer, Alberta  
T4R 3H6

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

Gail O'Connell

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_ A.D., 20 \_\_\_\_\_

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



100897 479 570 586

DEERPARK POSTAL OUTLET  
RED DEER CO-OP  
2 69 DUNLOP STREET  
RED DEER AB  
T4R 2H0  
(403) 341-5700





*Rec'd Dec 13, 2012***SAWRIDGE FIRST NATION****NOTICE OF MEETING OF ELECTORS**

**TO: GAIL O'CONNELL  
AND TO: ALL ELECTORS OF THE SAWRIDGE FIRST NATION**

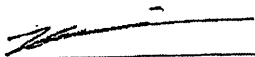
**PLEASE TAKE NOTICE THAT A MEETING OF THE ELECTORS OF THE SAWRIDGE FIRST NATION WILL BE HELD AT THE HOUR OF 10:00 A.M. ON JANUARY 5, 2013 AT THE SAWRIDGE FIRST NATION OFFICE BOARDROOM (IN THE SAWRIDGE BAND ADMINISTRATION BUILDING LOCATED AT 806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, ALBERTA).**

**THIS MEETING WILL BE HELD TO HEAR THE APPEAL OF GAIL O'CONNELL IN RESPECT OF A DECISION OF THE SAWRIDGE FIRST NATION COUNCIL TO DENY THE MEMBERSHIP APPLICATION OF GAIL O'CONNELL. THE MEETING WILL BE HELD IN ACCORDANCE WITH THE APPEAL PROCEDURE, MEMBERSHIP RULES AND CONSTITUTION OF THE SAWRIDGE FIRST NATION.**

**AT THIS MEETING GAIL O'CONNELL WILL BE PERMITTED TO BE PRESENT AND TO MAKE REPRESENTATIONS EITHER IN PERSON OR THROUGH AN AGENT OR COUNSEL. A DECISION MAY BE MADE WHETHER YOU ARE PRESENT OR NOT.**

**THE ELECTORS PRESENT AT THE MEETING ARE EMPOWERED TO DISPOSE OF THE APPEAL AND MAY DO SO AFTER DELIBERATING *IN CAMERA*. IT IS POSSIBLE THAT THE MEETING WILL NOT BE CONCLUDED ON THE DATE SCHEDULED AND WILL HAVE TO BE ADJOURNED TO ANOTHER DAY BY THE ELECTORS. ONCE A DECISION IS MADE NOTICE WILL BE PROVIDED TO THE PERSON MAKING THE APPEAL. THE DECISION OF THE ELECTORS SHALL BE FINAL.**

**THIS NOTICE IS PROVIDED BY THE SAWRIDGE FIRST NATION ON  
THE 21 DAY OF NOVEMBER 2012**

  
\_\_\_\_\_

MEMBERSHIP PROCESSING FORM

APPLICANT: Gail Elizabeth O'Connell

ADDRESS: 3 Dodge Ave, Red Deer, AB

PHONE: (403) 348-0201

APPLICABLE MEMBERSHIP SECTION # - 2

APPLICATION REQUIRED? Yes

SPECIFIC RIGHT No

BECAUSE: Applicant is the Daughter of a Bill C-31 and registered as a 6(2) under the Indian Act.

Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father. Elizabeth Ward appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.

APPLICATION

Application satisfactorily completed? Yes  
 Applicant interviewed by both Councillors? Yes No x  
 Applicant interviewed by Chief? Yes No x

SUMMARY OF FACTS CONSIDEREDCONNECTION TO FIRST NATION

- Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father.
- Applicant's Grandmother, Elizabeth Ward, appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.
- Applicant fails to explain how mother lost her status. But indicates that her mother had Registry 4540040701 at the time of applicants birth. This cannot be true.

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

- No current knowledge or ties to the First Nation.
- Would like to learn more.
- Has never lived in or participated in the Community or the First Nation.
- No contact with any active First Nation Members except two recently reinstated members who are not active.
- No stated interest to get involved in community or First Nation.
- Applicant not known to First Nation members
- Not believed that applicant has any opportunity to contribute to First Nation

**SIGNIFICANT KNOWLEDGE OF FIRST NATION**  
(History, Customs, Traditions, Culture and Communal Life)

- No Cree
- Knows Nothing about the First Nation's History, Customs, Traditions or Culture.
- Knows her Mom and Uncle Fleury Dejong

**CHARACTER AND LIFESTYLE**

(Not a Detriment)

- Employed – Dental Receptionist/Office Administrator
- Debt Free
- Owns own home
- No Criminal Record
- No Drivers License Suspension
- Hardworking and self sufficient
- Good Student
- Positive letters of reference from three people who have known her for 1-2 years – one reference knew her 25 years.

**OTHER CONSIDERATIONS**

Children	Yes - Has 3 Adult Children
Spouse	No - Divorced

**Physical Condition**

Good Health.

**Decision**

Membership Denied based on

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

### APPEAL PROCEDURE

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

#### COMMENCEMENT OF APPEAL

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

#### APPEAL COMMITTEE

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

#### HEARING PROCEDURE

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

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

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

#### DELIBERATIONS

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

#### DECISION BASED ON CONSENSUS

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

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

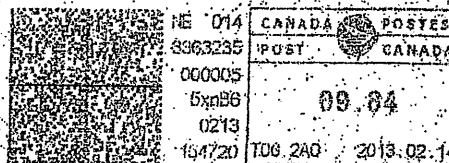
25. If the deliberations continue for more than two hours and the Appeal Committee has failed to reach a consensus, the Appeal Committee may continue to deliberate however, after this time has expired, the deliberation shall end if any Member of the Appeal Committee makes a motion to end the deliberations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

#### DECISIONS

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

BOX 326  
LAKE LAKE, ALBERTA  
T0G 2A0

ADDRESS  
DATE & TIME  
APPEALS PROCEDURE  
NOTICE OF  
APPEAL



Rec'd Feb 19/13  
→ FOR MAR 9 MEETING  
(18 DAYS NOTICE)



104374 484 256 066

CLEARVIEW RPO  
SHOPPERS DRUG MART  
7 CLEARVIEW MARKET WAY  
RED DEER AB  
T4P 0M6  
(403) 342-8548



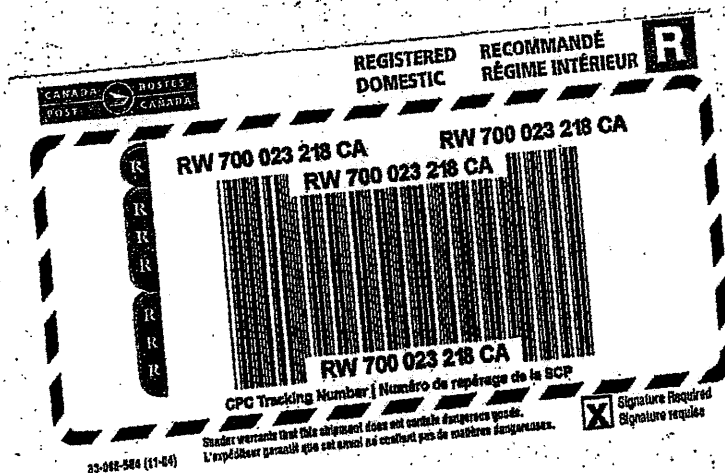
This is Exhibit "O" referred to in the  
Affidavit of

Gail O'Connell

Sworn before me this \_\_\_\_\_ day  
of \_\_\_\_\_ A.D., 20\_\_\_\_\_

Ms. Gail E. O'Connell  
3 Dodge Avenue  
Red Deer, Alberta  
T4R 3H6

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





Rec'd FEB 19/13

## SAWRIDGE FIRST NATION

## NOTICE OF MEETING OF ELECTORS

TO: GAIL O'CONNELL

AND TO: ALL ELECTORS OF THE SAWRIDGE FIRST NATION

PLEASE TAKE NOTICE THAT A MEETING OF THE ELECTORS OF THE SAWRIDGE FIRST NATION WILL BE HELD AT THE HOUR OF 10:00 A.M. ON MARCH 9, 2013 AT THE SAWRIDGE FIRST NATION OFFICE BOARDROOM (IN THE SAWRIDGE BAND ADMINISTRATION BUILDING LOCATED AT 806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, ALBERTA).

THIS MEETING WILL BE HELD TO HEAR THE APPEAL OF GAIL O'CONNELL IN RESPECT OF A DECISION OF THE SAWRIDGE FIRST NATION COUNCIL TO DENY THE MEMBERSHIP APPLICATION OF GAIL O'CONNELL. THE MEETING WILL BE HELD IN ACCORDANCE WITH THE APPEAL PROCEDURE, MEMBERSHIP RULES AND CONSTITUTION OF THE SAWRIDGE FIRST NATION.

AT THIS MEETING GAIL O'CONNELL WILL BE PERMITTED TO BE PRESENT AND TO MAKE REPRESENTATIONS EITHER IN PERSON OR THROUGH AN AGENT OR COUNSEL. A DECISION MAY BE MADE WHETHER YOU ARE PRESENT OR NOT.

THE ELECTORS PRESENT AT THE MEETING ARE EMPOWERED TO DISPOSE OF THE APPEAL AND MAY DO SO AFTER DELIBERATING *IN CAMERA*. IT IS POSSIBLE THAT THE MEETING WILL NOT BE CONCLUDED ON THE DATE SCHEDULED AND WILL HAVE TO BE ADJOURNED TO ANOTHER DAY BY THE ELECTORS. ONCE A DECISION IS MADE NOTICE WILL BE PROVIDED TO THE PERSON MAKING THE APPEAL. THE DECISION OF THE ELECTORS SHALL BE FINAL.

THIS NOTICE IS PROVIDED BY THE SAWRIDGE FIRST NATION ON  
THE 6 DAY OF FEBRUARY 2013



### APPEAL PROCEDURE

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28. If the decision of the Appeal Committee is to dismiss the Appeal, the Appellant shall have no further right to apply for Membership in the First Nation.
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IN THE MATTER OF THE APPEAL OF THE MEMBERSHIP APPLICATION OF  
GAIL O'CONNELL TO THE SAWRIDGE FIRST NATION

BETWEEN:

GAIL O'CONNELL

Appellant

- and -

SAWRIDGE FIRST NATION

Respondent

---

DECISION

---

GAIL O'CONNELL  
3 Dodge Avenue  
Red Deer, AB T4R 3H6

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

This is Exhibit "P" referred to in the

Affidavit of

Gail O'Connell

Sworn before me this \_\_\_\_\_ day

of \_\_\_\_\_, A.D., 20 \_\_\_\_\_

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

R.

The Appeal of Gail O'Connell (herein referred to as the "Appellant") in relation to her membership application was heard on the Sawridge Reserve in the Sawridge Boardroom on March 9, 2013, before Electors of the Sawridge First Nation (herein referred to as the "First Nation") in attendance at a meeting convened by the Council of the First Nation for the purposes of hearing the Appeal.

The Electors of the First Nation in attendance when the appeal was heard who constituted the Appeal Committee were as follows:

Brenda Anne Draney	Frieda Draney
Bertha L'Hirondelle	Roseina A. Lindberg
Vera I. McCoy	Clara Midbo
David Paul Midbo	Kristina Gayle Midbo
Tracey Poitras Collins	Darcy A Twin
E. Justin Twin	Jaclyn D. Twin
Walter F. Twin	Winona N. Twin
Yvonne D. Twin	Arlene T. Twinn
Catherine M Twinn	Irene M. Twinn
Isaac F. Twinn	Paul H. Twinn
Roland C. Twinn	Samuel L. Twinn
Margaret C. Ward	

Rarihokwats chaired the Appeal Committee.

The Hearing of the Appeal Committee was called to order at 10:00 A.M. and the Appeal Committee was questioned as to whether they were of the view that the number of Electors of the First Nation in attendance was sufficient to conduct business. The majority of the Electors in attendance were of the view that there were not sufficient Electors in attendance to conduct business and as a result, the Chair adjourned the hearing for 15 minutes.

The Appeal Committee reconvened at 10:15 A.M. The Appellant was in attendance with her sister and her mother.

The Chair introduced himself and all Members of the Appeal Committee introduced themselves. In addition, in attendance and introduced were Edward H. Molstad, Legal Counsel on behalf of the Sawridge First Nation and Michael McKinney, in-house Legal Counsel on behalf of the Sawridge First Nation.

The Appeal Committee and the Appellant were provided with the following documentation:

1. The Application Form of the Appellant;
2. The Membership Processing Form;
3. Letter dated October 31, 2012 from the First Nation to the Appellant advising of the decision of Council with respect to the Appellant's Application for Membership;
4. Notice of Appeal of the Appellant dated November 13, 2012, received by the First Nation on November 15, 2012;
5. Document entitled "Appeal Procedure";
6. Membership Rules of the First Nation entitled "Sawridge Membership Rules".
7. Document entitled "Driftpile Cree Nation Annuity Paylist Analysis";
8. Three page document entitled "The Issue is How is 'Elizabeth Ward' related to Sawridge".

The Appellant was asked by the Chair as to whether there was any objection to the Appeal Procedure or the Appeal Committee as it was constituted. No objection was registered.

Submissions were made on behalf of the Appellant and the Appellant tendered a document which was the birth certificate of Elizabeth Mable Ward.

Following the submissions of the Appellant and questions and comments of members of the Appeal Committee, the Appellant, her sister, Legal Counsel Edward H. Molstad and Legal Counsel Mike McKinney were excused and the Appeal Committee met in camera in order to consider the matter.

The Appeal Committee deliberated for more than two hours and was unable to reach a consensus.



A Motion was made that the deliberations of the Appeal Committee should end and to proceed with a vote by secret ballot. The motion was carried.

A vote was then conducted by way of secret ballot.

The ballots were counted by the Chair and Michael McKinney and following the counting of the ballots, the Chair advised the Appeal Committee that based upon the secret ballot vote the appeal was denied.

The secret ballots were put into an envelope by the Chair and Michael McKinney, sealed and the envelope was delivered to Legal Counsel Edward H. Molstad.

The proceedings before the Appeal Committee were concluded.



Rarihokwats

RARIHOKWATS  
CHAIR, APPEAL COMMITTEE

**SWORN STATEMENT OF GINA DONALD**

I, Gina Donald, of the City of Edmonton in the Province of Alberta, SWEAR AND SAY THAT:

**Family Background and Roots in the Sawridge Band**

1. I am an individual who is resident in the City of Edmonton in the Province of Alberta and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born September 17, 1979. I have two older brothers. We have the same parents. My mother, Lillian Potskin (hereinafter called "mother") was 5 months pregnant with me when she married my father, Lyle Donald, now a registered Indian and a member of the Mikisew First Nation. At the time, he was not recognized as an Indian.
3. The effect of their marriage was to enfranchise my mother from Indian status and membership in the Sawridge Band (hereinafter referred to as the "Band") and to exclude me from being registered as an Indian and Band Member like my older brothers Jonathon and Brent, who were registered and retained their status and membership despite the marriage of our parents.
4. After my birth, my mother received and signed enfranchisement papers and later upon her enfranchisement, a per capita payment after my birth.
5. Following my birth and before 1985, my mother applied for my band membership many times but these efforts were unsuccessful.
6. I am informed by my mother that other children in the same circumstance as me, such as Vera Twin-McCoy, somehow retained their registration as an Indian and membership in the Band even though our mothers married non-Indians and our fathers were non-Indian. Vera Twin-McCoy's three children are registered Indians and Band members even though the two children fathered by Vera's husband, Jody McCoy, is a non-Indian. I wonder why I am treated differently.
7. My mother and brother, Jonathon Potskin, are presently Band members. My brother, Brent, was a Band Member until he enfranchised his membership in or around 1995. I am a status Indian, but do not have membership in any Band.

**1985 Bill C-31**

8. The Band passed Membership Rules in 1985 and took control of its Band List. My mother was not added to the Band List by the Band.
9. After Bill C-31 my mother applied to the Band for me to have Band Membership while I was still a minor. The form used by the Band was for adults and not appropriate for children.

10. My mother was Court ordered onto the Sawridge Band List, along with others, by Justice James Hugessen of the Federal Court by Order dated March 27, 2003.

**My Experience Applying to the Band for Band Membership**

11. When I became an adult I first applied to the Band Council in the 1990s for membership in the Band. Sometime later, the Band advised me they had lost my application. I reapplied for membership in the Band in 2005. Once again, I was advised that my application had been lost by the Band.
12. My grandmother, Jean Potskin, who lived until her death on the Band reserve, was a Band Member and sought my inclusion as a Band Member despite concerns of reprisal. Her efforts were unsuccessful and certain members of the Band made it well known that they disliked her.
13. I applied yet again to the Band Council for membership on February 27, 2009. On September 9, 2013 and again on December 30, 2013. The Band Council requested that I modify my application. I complied with these requests and modified my application as requested. To my knowledge, my application is complete per the Band's requested modifications since at least 2013.
14. Since December 2013, I have not heard from the Band Council in regards to my application for membership in the Band.
15. I've called the Band office many times seeking an update on the status of my application, but have not received any information. I have not received a return phone call from the Chief or Council, or the Band's legal counsel, Mike McKinney.
16. I recently learned from my mother that the Chief's son, Roy Twinn, whose mother is a non-Indian:
- o is now a Band member;
  - o voted in the February 17, 2015 election;
  - o applied for Band Membership in 2013;
  - o within months of applying, his application was approved; and,
  - o just months before the February 17, 2015 election, was admitted into Band membership;
17. There are only three minor children who are Band members and all three are the children of elected Band officials Roland Twinn and Winona Twin. They admitted their children while they held office as Chief and Councilor. It appears their children do not have to wait. This preferential space and system determines who is admitted into band membership and who isn't;
18. I've been denied the right to vote in many Band elections by the refusal or failure of the Chief and his Council to make a decision on my completed application.


### Others in Like Circumstances as Me

19. My brother Brent Potskin has a daughter, Elizabeth, born Aug 4, 1994. My brothers Brent and Jonathon Potskin went to the Band office to apply for Elizabeth's band membership. At the time of Elizabeth's birth her father Brent was a band member. Yet Elizabeth was not added to the Band List. Since she turned 18 years of age, in 2012, I believe Elizabeth applied for membership but is still not a member.
20. The children of two women, members of the Twin family, were admitted without delay into Band membership. These are the children of Frieda Draney and Clara Midbo.
21. Other members of the Potskin family have applied for Band Membership. They too have waited a number of years for a response. During the wait they have received little or no response from the Band or if a decision was made, their application was denied by the Chief and Council.
22. I am aware of at least one case, Alfred Potskin, who was denied membership by the Chief and Council who considered his commitment to and knowledge of the history, customs, traditions, culture and communal life of the Band and his character and lifestyle. The Chief and Council did not give Alfred an interview or any fair process to determine if the subjective criteria they used to deny his application were correct, true and fair. My uncle Alfred was by all accounts a loving, kind, sober and hardworking man. At the time of his denial, he was suffering from cancer.
23. I am aware there are other Potskin family members who have applied including:
  - i. Crystal Poitras-John;
  - ii. Nicole Poitras;
  - iii. Heather Poitras;
  - iv. Tracey-Poitras Collins submitted a Band Membership application three times, over a 28 year time-frame before she was finally admitted into Band membership after a grueling and biased process:
    - The first application was submitted to the Band in 1985. The Band did not acknowledge her application, offered no follow up, and failed to respond to Tracey's inquiries, despite her many calls to the Band office.
    - The second application was hand-delivered January 6, 2005 to the Band office with no subsequent response from the Band.
    - The third application was submitted in 2012. The Chief and Council denied her application. Tracey's Appeal was heard January 26, 2013, and narrowly succeeded because not enough of the Chief and Council's supporters were present. The Chief and Council participated fully in Tracey's Appeal including the secret voting.

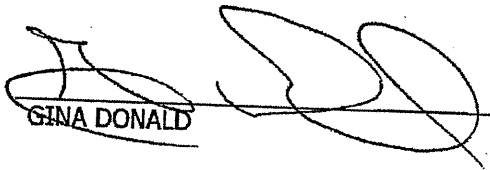
24. Gail O'Connell's Appeal was to be heard with Tracey's Appeal, but Gail's Appeal was adjourned until March 2013. Enough of the Chief and Council's supporters turned out to uphold the decision of the Chief and Council and deny Gail's Appeal. Gail O'Connell is the daughter of Roseina Lindberg, another Court ordered member added to the Band Membership List in March 2003.

25. 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 16<sup>th</sup> day of April, 2015

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

*Matthew Besner*  
*Procurator & Solicitor*

  
\_\_\_\_\_  
GINA DONALD

