

COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER: 1703 0239AC

COURT FILE NUMBER 1103 14112

REGISTRY OFFICE: EDMONTON

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

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

APPLICANTS: MAURICE STONEY AND HIS BROTHERS AND  
SISTERS

STATUS ON APPEAL: Interested Party

STATUS ON APPLICATION: Interested Party

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

STATUS ON APPEAL: Respondents

STATUS ON APPLICATION: Respondents

RESPONDENT PUBLIC TRUSTEE OF ALBERTA (the "OPGT")

STATUS ON APPEAL: Not a Party to the Appeal

STATUS ON APPLICATION: Not a Party to the Application

INTERVENOR: SAWRIDGE FIRST NATION

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Respondent

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

STATUS ON APPEAL: Appellant

STATUS ON APPLICATION: Applicant

DOCUMENT RESPONDENT'S OTHER MATERIALS TO BE  
RELIED ON (SAWRIDGE FIRST NATION)

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Parlee McLaws LLP  
1700 Enbridge Centre  
10175 – 101 Street NW  
Edmonton, AB T5J 0H3  
**Attention: Edward H. Molstad, Q.C.**  
Telephone: (780) 423-8500  
Facsimile: (780) 423-2870  
**File Number: 64203-21/EHM**

CONTACT INFORMATION OF ALL  
OTHER PARTIES:

Field LLP  
2500, 10175 – 101 Street  
Edmonton, AB T5J 0H3  
**Attention: P. Jonathan Faulds, Q.C.**  
Telephone: (780) 423-7625  
Facsimile: (780) 429-9329  
**File Number: 65063-1**  
Counsel for the Appellant/Applicant, Priscilla Kennedy

Dentons LLP  
2900 Manulife Place  
10180 – 101 Street NW  
Edmonton, AB T5J 3V5  
**Attention: Doris Bonora & Erin Lafuente**  
Telephone: (780) 423-7188  
Facsimile: (780) 423-7276  
Counsel for the Sawridge Trustees

Maurice Felix Stoney  
500 4<sup>th</sup> Street NW  
Slave Lake, AB T0G 2A1

## **OTHER MATERIALS TO BE RELIED ON**

- Tab A**      Affidavit of Roland Twinn sworn September 21, 2016
- Tab B**      Exhibit "L" to the Affidavit of Maurice Stoney sworn May 17, 2016
- Tab C**      Sawridge's September 28, 2016 submissions with only Tabs 2 and 3 attached
- Tab D**      Ms. Kennedy's October 27, 2016 submissions (no attachments)
- Tab E**      Sawridge's October 31, 2016 submissions with only Tab 2 attached
- Tab F**      Sawridge's November 14, 2016 submissions (no attachments)

**Tab A**

An orange, stylized, upward-pointing arrow or decorative shape located at the bottom right of the text "Tab A".

COURT FILE NUMBER 1103 14112

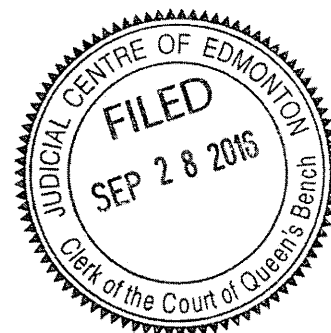
Clerk's Stamp

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

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

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



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

DOCUMENT

**AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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

**AFFIDAVIT OF ROLAND TWINN**

Sworn on September 21, 2016

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

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

**Purpose of this Affidavit**

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

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

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

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

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

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

#### Unpaid Costs Awards of Maurice Stoney

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


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

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

**The Other Stoney Applicants**

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

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

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

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

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

TAB 1



Federal Court  
of Appeal

Cour d'appel  
fédérale

Federal Court of Appeal

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

[Help](#)

## Federal Court of Appeal Decisions

Huzar v. Canada

Court (s) Database: Federal Court of Appeal Decisions

Date: 2000-06-13

File numbers: A-326-98

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY, J.A.

SEXTON, J.A.

EVANS, J.A.

BETWEEN:

This is Exhibit "1" referred to in the  
Affidavit of  
Roland Twinn  
Sworn before me this 21<sup>st</sup> day  
of September A.D. 2016

A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta  
MICHAEL H. MCLEOD J.E.Y. Q.C.  
BARRISTER & SOLICITOR

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

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

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

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

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

**Date:** 20000613

**Docket:** A-326-98

**CORAM:** DÉCARY J.A.

SEXTON J.A.

EVANS J.A.

**BETWEEN:**

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

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

**REASONS FOR JUDGMENT**

*(Delivered from the Bench at Toronto, Ontario*

*on Tuesday, June 13, 2000)*

**EVANS J.A.**

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

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

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

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

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

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

"John M. Evans"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

**DOCKET:**            **A-326-98**

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

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

- and -

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

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

**PLACE OF HEARING:**      **TORONTO, ONTARIO**

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

*Delivered at Toronto, Ontario on*

*Tuesday, June 13, 2000*

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

*For the Defendants*

*(Appellants)*

*Mr. Peter V. Abrametz*

*For the Plaintiffs*

*(Respondents)*

**SOLICITORS OF RECORD:**    **Aird & Berlis**

*Barristers & Solicitors*

*BCE Place, Suite 1800, Box 754*

*181 Bay Street*

*Toronto, Ontario*

*M5J 2T9*

*For the Defendants*

*(Appellants)*

*Eggum, Abrametz & Eggum*

*Barristers & Solicitors*

*101-88-13th Street East*

*Prince Albert, Saskatchewan*

**S6V 1C6**

***For the Plaintiffs***

***(Respondents)***

**FEDERAL COURT OF APPEAL**

**Date: 20000613**

**Docket: A-326-98**

**BETWEEN:**

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

Defendants  
(Appellants)

- and -

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

Plaintiffs  
(Respondents)

**REASONS FOR JUDGMENT**

 Recent additions  Mailing List

Decided by Lexum

---

Date Modified: 2016-09-09

TAB 2

**FEDERAL COURT**

**BETWEEN:**

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

Roland Twinn

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

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

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

**Maurice Felix Stoney**

**Applicant**

- and -

**Sawridge First Nation**

**Respondent**

**AFFIDAVIT**

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

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

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

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

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


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

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

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

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

SWORN BEFORE ME at the Town of )  
Saskatoon, in the Province of Alberta, )  
this 26 day of June, 2012. )

  
A COMMISSIONER FOR OATHS IN AND )  
FOR THE PROVINCE OF ALBERTA

  
ROLAND TWINN

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

# Gowling & Henderson

BARRISTERS & SOLICITORS  
PATENT & TRADE MARK AGENTS

160 ELGIN STREET  
OTTAWA, CANADA  
K1N 8S3

TELEPHONE (613) 232-1781  
TELECOPIER (613) 563-9869  
TELEX 053-4114 "HERSON-OTT"

2 FIRST CANADIAN PLACE  
TORONTO, CANADA  
M5X 1A4

102 BLOOR STREET WEST  
TORONTO, CANADA  
M5S 1W6

HENRY S. BROWN

9 July 1985

## BY COURIER

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

Dear Mr. Rawson:

Re: Sawridge Indian Band

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

*ROLAND TWINN*  
Sworn before me this 26 day  
of JUNE 1985

A Notary Public for the Province of Ontario  
In and for the County of Ottawa  
My Appointment expires 2012

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

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

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

*Gowling & Henderson*

Mr. Bruce Rawson  
9 July 1985

Page 2

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

Yours very truly,

A handwritten signature in dark ink, appearing to read 'H. S. Brown', with a horizontal line extending to the right.

Henry S. Brown

HSB:dm

c.c. Chief Walter Twinn ✓

۷۳

10

## INSTRUCTIONS

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

1. APPLICATION FOR (CHECK ONE)									
APPLICATION BY MEMBER IN THE BAND BY NON-MEMBER								<input checked="" type="checkbox"/>	
APPLICATION BY MEMBER TO SURRENDER MEMBERSHIP IN THE BAND								<input type="checkbox"/>	
2. IDENTIFICATION									
A. NAME		FIRST		MIDDLE		LAST			
		Maurice		E		STOKLEY			
Other Names You Have Used (Maiden/Nicknames/Aliases):									
B. ADDRESS									
MAILING ADDRESS (if different):									
500 - 4th NW SLAVE LAKE AB T09241									
C. PHONE NUMBERS		HOME		786 849 5193		WORK			
D. Sex		MALE		FEMALE		E. BIRTHDATE		Month	
		<input checked="" type="checkbox"/>				Sept.		Day	
						1941		Year	
								Attach Certificate	
								<input checked="" type="checkbox"/>	
F. PLACE OF BIRTH		SLAVE LAKE		G. MARITAL STATUS		Married			
H. YOUR SOCIAL INSURANCE NUMBER		603 862 630							
I. YOUR DRIVERS LICENSE NUMBER		47580-147							
J. WHAT IS YOUR HEIGHT		5'11"		K. WHAT IS YOUR WEIGHT		190 lbs.			
L. IF THIS IS AN APPLICATION FOR MEMBERSHIP PLEASE EXPLAIN THE BASIS OF YOUR APPLICATION									
Reapply									
M. HAVE YOU EVER BEEN A MEMBER OF THE SAWRIDGE BAND?									
YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>									
If yes, HOW DID YOU BECOME A MEMBER?									
Born a Band Member									
WHEN DID YOU BECOME A MEMBER?									
1941									
HOW DID YOU CEASE TO BE A MEMBER?									
Forced Out									
WHEN DID YOU CEASE TO BE A MEMBER?									
approx: 1946									
HOW MUCH OF THE BAND'S MONEY DID YOU RECEIVE?									
none									
WHEN DID YOU RECEIVE IT?									
HOW MUCH IS LEFT?									

1  
This is Exhibit B - returned to me by  
Admiral [redacted]

Sworn before me this 26 day  
JUNE 1962

JUNE 12 1964

DOUGLAS BROWN  
A.C. \_\_\_\_\_ of Dallas  
In a \_\_\_\_\_ of Alberta  
My Appointment Expires on 30, 2012

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

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

<b>5. CHILDREN</b>								
LIST NAMES OF ALL YOUR CHILDREN (USE ADDITIONAL SHEETS IF NECESSARY)								
A. NAME								
B. SEX	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE		
C. BIRTHPLACE								
D. OTHER PARENT'S NAME								
E. BIRTHDATE								
F. YOUR STATUS AT BIRTH OF CHILD	INDIAN	INDIAN	INDIAN					
	NON STATUS	NON STATUS	NON STATUS					
	BAND MEMBER	BAND MEMBER	BAND MEMBER					
	NAME OF BAND	NAME OF BAND	NAME OF BAND					
G. CHILD'S STATUS AT BIRTH	INDIAN	INDIAN	INDIAN					
	NON STATUS	NON STATUS	NON STATUS					
	BAND MEMBER	BAND MEMBER	BAND MEMBER					
	NAME OF BAND	NAME OF BAND	NAME OF BAND					
H. CHILD'S CURRENT STATUS	INDIAN	INDIAN	INDIAN					
	NON STATUS	NON STATUS	NON STATUS					
	BAND MEMBER	BAND MEMBER	BAND MEMBER					
	NAME OF BAND	NAME OF BAND	NAME OF BAND					
	DECEASED	DECEASED	DECEASED					
	DATE OF DEATH	DATE OF DEATH	DATE OF DEATH					
I. REASON FOR CHANGE IN STATUS								
J. RELATIONSHIP TO CHILD	BIOLOGICAL	BIOLOGICAL	BIOLOGICAL					
	ADOPTED	ADOPTED	ADOPTED					
	NON-ADOPTED	NON-ADOPTED	NON-ADOPTED					
	STEP CHILD	STEP CHILD	STEP CHILD					
K. HAVE EACH OF YOUR CHILDREN RESIDED WITH YOU SINCE BIRTH, AND HAVE YOU PROVIDED FOR THE CHILD SINCE BIRTH?							YES	NO
IF NO, PLEASE PROVIDE DETAILS:								
L. HAVE ANY OF YOUR CHILDREN EVER BEEN APPHREHENDED OR PLACED IN CARE?							YES	NO
IF YES, PROVIDE DETAILS								
M. HAVE ANY OF YOUR CHILDREN EVER BEEN THE SUBJECT OF A GUARDIANSHIP ORDER?							YES	NO
IF YES, PROVIDE DETAILS:								

N. HAVE ANY OF YOUR CHILDREN EVERY BEEN ADOPTED OR PUT UP FOR ADOPTION?			
			YES <input type="checkbox"/> NO <input type="checkbox"/>
IF YES,	NAME OF CHILD(REN)		
	BIRTHDATE(S)		
	REASONS FOR ADOPTION		
	DATE OF ADOPTION(S)		
ADOPTING PARENT A RELATIVE			YES <input type="checkbox"/> NO <input type="checkbox"/>
O. NAME OF ADOPTING PARENT(S) (IF KNOWN)			
<b>6. GENEALOGY</b>			
FOR EACH OF YOUR PARENTS AND GRANDPARENTS, PLEASE PROVIDE THE INFORMATION SET OUT BELOW OR, IF YOU HAVE A GENEALOGY WHICH CONTAINS THIS INFORMATION, PLEASE PROVIDE A COPY:			
• FULL NAME <u>William + Margarett Stanley #59</u>			
• ANY ALIASES (INCLUDING MAIDEN NAME)			
• RELATIONSHIP INCLUDING WHETHER BIOLOGICAL, ADOPTED OR STEP <u>Father + Mother</u>			
✓ • BIRTHDATE (COPY OF BIRTH CERTIFICATE) <u>Attached -</u>			
• STATUS AT BIRTH (NON STATUS, INDIAN, BAND MEMBER (NAME OF BAND) OTHER)			
• HOW STATUS ATTAINED (NON-STATUS, INDIAN, BAND MEMBER, ETC.) <u>Father Band Member</u>			
• MARITAL STATUS AT TIME OF YOUR BIRTH <u>married</u>			
• CURRENT STATUS (NON-STATUS, INDIAN, BAND MEMBER, ETC.) <u>Indian</u>			
• IF STATUS CHANGED, EXPLAIN			
• LANGUAGE SPOKEN <u>FREE</u>			
• LEVEL OF EDUCATION ACHIEVED <u>Parents - 4 years + M. Parents - no records</u>			
• CONNECTION OR POSITION HELD IN THE BAND OR COMMUNITY.			
• IF DECEASED, DATE OF DEATH			
<i>Excl siblings will fill out B.M. Form</i>			
<b>7. SIBLINGS (USE ADDITIONAL SHEETS FOR ADDITIONAL BROTHERS AND SISTERS)</b>			
A. HOW MANY BROTHERS DO YOU HAVE?			
B. NAME OF EACH BROTHER #1 #2 #3			
C. BIRTHDATE			
D. BIRTHPLACE			
E. FULL, HALF BROTHER, OR STEP			
F. IF HALF OR STEP, WHICH PARENT IS COMMON			
G. HOW MANY SISTERS DO YOU HAVE?			
H. NAME OF EACH SISTER #1 #2 #3			
I. BIRTHDATE			
J. BIRTHPLACE			
K. FULL, HALF SISTER, OR STEP			
L. IF HALF OR STEP, WHICH PARENT IS COMMON			

## 8. FINANCIAL

- A. WHAT RESOURCES ARE AVAILABLE TO YOU?  
B. WHAT ARE YOUR MEANS AND RESOURCES?  
C. ARE YOU LIVING WITHIN YOUR MEANS?  
D. ARE YOU SELF-SUFFICIENT? (IF NO, PLEASE EXPLAIN) *Pension*  
E. DO YOU HAVE ANY DEPENDANTS? IF SO, HOW MANY? *no*  
F. DO YOU OR ANY DEPENDANTS HAVE SPECIAL NEEDS? IF SO, PLEASE EXPLAIN.

## 9. CRIMINAL AND DRIVERS RECORD

- A. LIST THE OFFENCE(S), OFFENCE DATE(S), CONVICTION DATE(S), AND SENTENCE(S). *N/A* USE ADDITIONAL SHEET IF NECESSARY  
B. HAS YOUR DRIVER'S LICENSE EVEN BEEN SUSPENDED? YES ☐ NO ☒  
IF YES, PLEASE PROVIDE DETAILS INCLUDING DURATION, REASON(S), AND DETAIL(S) OF REINSTATEMENT *N/A* USE ADDITIONAL SHEET IF NECESSARY

## 10. EMPLOYMENT HISTORY

STARTING WITH YOUR MOST RECENT JOB, LIST EVERY JOB (FULL TIME/YEAR ROUND) WHICH YOU HAVE HAD. (USE ADDITIONAL SHEET IF NECESSARY). HAVE YOU BEEN REGULARLY EMPLOYED? ☒

- A. LIST YOUR SIGNIFICANT EMPLOYMENT RELATIONSHIPS, DATES AND REASON FOR LEAVING *N/A*  
B. LIST ANY EXPERTISE AND INTEREST AND ANY EXPERIENCE AND TRAINING IN THESE AREAS *Labour*  
C. WHAT AGE DID YOU ENTER THE WORKPLACE? *15*

## 11. BACKGROUND & PERSONAL INTERESTS (CAN BE DONE IN WRITING ON SEPARATE SHEET OR ORALLY THROUGH RECORDING DEVICE)

- A. WHAT DO YOU KNOW ABOUT THE HISTORY OF THE SAWRIDGE INDIAN BAND (PRE-TREATY AND POST-TREATY)? WHAT ARE THE SOURCES OF YOUR KNOWLEDGE? *my Grand Father had a Role in The Creation of Sawridge Reserve 1896*  
B. WHAT ARE YOUR UNDERSTANDINGS OF THE TREATY AND TREATY LAW? *Read the sawridge Bill 1895*  
C. WHAT DO YOU KNOW ABOUT THE CUSTOMS, THE LAWS, THE CULTURE, TRADITIONS AND PRACTICES VALUES AND PRINCIPLES OF THE SAWRIDGE INDIAN BAND *Read The Sawridge Codes*  
D. WHO DO YOU HAVE A MEANINGFUL RELATIONSHIP WITH SOMEONE WHO IS A MEMBER OF THE SAWRIDGE INDIAN BAND? (PROVIDE NAMES, HOW LONG YOU HAVE KNOWN, AND DESCRIBE YOUR ACTIVITIES AND RELATIONSHIPS WITH EACH PERSON AS WELL AS THE HISTORY OF THAT RELATIONSHIP. ALSO INDICATE IF THAT PERSON IS A RELATIVE AND WHAT RELATION THEY ARE TO YOU). *Grand Father was a mem.*  
E. DO ANY CURRENT BAND MEMBERS SUPPORT YOUR BID FOR MEMBERSHIP? (FOR APPLICATIONS FOR MEMBERSHIP ONLY). IF YES, PLEASE PROVIDE THE NAME OR NAMES OF SUPPORTERS AND A LETTER SETTING OUT THEIR SUPPORT. YES ☒ NO ☐

*Chief + Council,*

F. HOW WOULD YOU DESCRIBE YOUR LIFESTYLE?		Good
G. WHAT IS YOUR CURRENT INVOLVEMENT WITH THE BAND?		C-21
H. WHAT ARE YOUR HOBBIES?		Hunting + Fishing
I. WHAT ARE YOUR OTHER RECREATIONAL ACTIVITIES?		Outdoors
J. WHAT DO YOU HOLD AS MOST IMPORTANT AND VALUABLE? WHY?		Life in General
K. DESCRIBE YOUR ATTITUDE TOWARDS THE BAND, ITS MEMBERS AND THE COUNCIL.		To get along
L. WHAT DO YOU SEE AS YOUR ROLE AND RESPONSIBILITY AS A BAND MEMBER?		undecided?
12. FUTURE PLANS (CAN BE DONE IN WRITING ON SEPARATE SHEETS OR ORALLY THROUGH A RECORDING DEVICE).		
A. WHY DO YOU WISH TO BECOME A MEMBER OF THE SAWRIDGE INDIAN BAND? This is my right		
B. WHAT ARE YOUR PLANS FOR THE FUTURE? (INCLUDING PLANS FOR RESIDENCY, EMPLOYMENT, OCCUPATION, EDUCATION, RETIREMENT, TRAVEL, MARRIAGE, FAMILY, RECREATION, ETC.) Will decide when I am member		
13. EDUCATION		
A. PROVIDE A DETAILED HISTORY OF YOUR EDUCATION BOTH FORMAL AND TRADITIONAL	High School Gr. 9	
B. ARE YOU WILLING UPON REQUEST TO PROVIDE A TRANSCRIPT OF ALL OF YOUR SECONDARY AND POST-SECONDARY EDUCATION, IF ANY.		
C. HONOURS, AWARDS, DISTINCTIONS, SCHOLARSHIPS, MERITS	N/A	
D. IF YOUR LEARNING WAS INTERRUPTED OR YOU WERE UNABLE TO COMPLETE	EXPLAIN N/A	
E. PLEASE PROVIDE A DETAILED HISTORY OF ALL OF YOUR EXTRA CURRICULAR ACTIVITIES	N/A	
F. WHAT ARE YOUR PLANS FOR FUTURE EDUCATION, IF ANY?	N/A	
14. HEALTH AND WELLNESS (PLEASE NOTE THAT YOUR HEALTH IS IMPORTANT TO THE BAND, BUT IT IS NOT A SINGLY DETERMINATIVE FACTOR IN MAKING A DECISION ON MEMBERSHIP). THESE QUESTIONS CAN HELP DETERMINE WHETHER THE BAND NEEDS TO APPLY FOR FUTURE GRANTS, FUNDING, ETC.		
A. WHAT IS THE CONDITION OF YOUR HEALTH?	Good	
B. DO YOU HAVE ANY PROBLEMS?	NO	
C. DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITIES (INCLUDING EMOTIONAL)?		
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
IF YES, EXPLAIN		
D. HAVE YOU EVER HAD ANY ALCOHOL OR DRUG RELATED ADDICTIONS OR ILLNESS?		
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
IF YES PLEASE EXPLAIN Not For approx. 30 years		
E. HAVE YOU EVER SUFFERED FROM MENTAL ILLNESS?		
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
IF YES (PLEASE EXPLAIN)		

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

CERTIFICATION

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

Dated at SLAVE LAKE, this 30 day of Aug., 2011.

Maurice Stoney  
Applicant Name

Maurice Stoney  
Applicant Signature

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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

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

Treaty # 4540011401  
Sawridge Band

m/s

PM 1591

Ministry of Health  
1391, Metcalf Avenue, Toronto  
Tel: 324-3022 TR 1110

1000-1000  
1000-1000

## Baptism Certificate

According to the Rite of the Roman Catholic Church

Michael St. Peter

Born on the 24th day of September 1941

at

St. Peter

St. Peter

Child of Michael St. Peter and Margaret St. Peter

was Baptized

in the name of the Father, Son and Holy Spirit

By Rev. Fr. Edward St. Peter

St. Peter

St. Peter

St. Peter

St. Peter

On the 24th day of September 1941

St. Peter

St. Peter

St. Peter

I have at once placed on file and registered this Baptism Certificate

DATE: Nov. 17, 1941

SIGNED BY:

St. Peter  
St. Peter

# Marriage Certificate

Minister  
of  
Religion



The  
Anglican Church  
of Canada

On the 30th day of June 1903

At St. Peter's Ecumenical Church Slave Lake Alberta

Here Married Eliza Marie Loyd

of the Town of Slave Lake

And Harrison Stoner

of the Town of Slave Lake

By the Pastor Allen Jorgensen

Rector of St. Peter's Ecumenical Church

Slave Lake Alberta

Town Province

This Marriage was solemnized between us

Witnesses

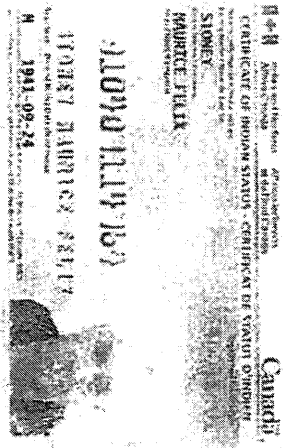
*[Signature]*  
*[Signature]*

*[Signature]*  
By the groom  
Eliza Marie Loyd  
Bride

I do hereby certify the above particulars are duly recorded in the Register  
of Marriages kept in St. Peter's Ecumenical Church

Slave Lake Alberta on 30 day of June 1903

*[Signature]*



109011463

1/2008  
1/2008

310407114364

Registry Group - Group 11 (C) 2008  
454 - Sample

2017-09-24  
2010-01-20

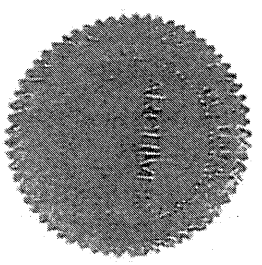
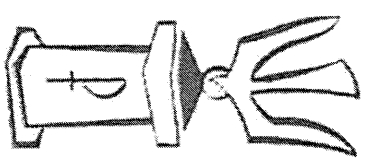
*Maurice Harvey*

# CERTIFICATE of BIRTH and BAPTISM

Church of ..... St. Peter Cathedral .....

..... Stone Lake, Alberta .....

This is to Certify that ..... Janey Willy Stony  
Child of ..... Johnny Stony ..... and ..... Henriette Stinchale .....



born in ..... on the ..... 13th ..... day of ..... April .....  
was Baptized on the ..... 19th ..... day of ..... May ..... 1921 ..... according to  
the Rite of the Roman Catholic Church by the Rev. .... E. Paton, O.M.I. ....  
the Sponsors being: ..... Paul Stinchale & Pauline Stinchale .....  
Confirmed on the ..... day of ..... at .....  
as appears from the Baptismal Register of this Church  
Dated ..... October 21st, 2008 .....  
Secretary .....  
PANKRA

*Janey's Birth Cert.*

*2009 3/11*

Page 10  
nt 8

<b>Alberta</b> CANADA		<b>CERTIFICATE OF DEATH</b>		LD362759	
<b>VITAL STATISTICS</b>					
Name of Deceased		Stoney, William			
Sex		Male			
Age		62 Years			
Date of Death		Dec 18 1983			
Place of Death		Slave Lake			
Marital Status		Married			
Usual Residence		Alberta			
Registration Date		Dec 22 1983		Registration Number	
				1983-08-012118	
Date Issued		Dec 08 2005			
Certified extract from REGISTRATION OF DEATH Filed at Edmonton, Alberta, Canada					
REG 3151 (2001/08)					

Father's Death Cert.  
Band # 89 Sawridge Band,

# CERTIFICATE of BIRTH and BAPTISM

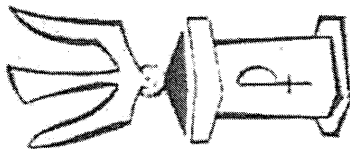
Church of  
St. Charles  
Drevesnan, Alberta

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

born in ..... on the ..... day of .....  
 was Baptized on the 2nd ..... day of June 1872 ..... according to  
 the Rite of the Roman Catholic Church by the Rev. G. Fischer, p.m.i.  
 the Sponsors being: Christine Court-Fovelle  
 Confirmed on the ..... day of ..... at .....

as appears from the Baptismal Register of this Church

Dated ..... January 6th, 2009 .....  
 Signed .....  
 Secretary: J. Ireland



This is my Grandfather's name and Birth, his Treaty<sup>th</sup> 18 sawridge Band,

FILE NO. 8131-38 DORMANT

VOLUME

## INDIAN AFFAIRS BRANCH

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

SUBJECT ENFRANCHISEMENT

WM. J. STONEY

Treaty # 59

(NAME)

DORMANT

(BAND NUMBER)

LESSER SLAVE LAKE

(AGENCY)

(BAND) SAW Ridge

REFERENCE

DISPOSAL

REFERRED TO	BY	REMARKS	DATE	PA OR EX	BY	DATE	For Record
3/22	f	046129	29/6/60	PA	SA2	29/6/60	
T-1	SA2	046129	29/6/60	PA	T-1	21-9-60	
SA2	4	007539	22/9/60	PA	SA2	22/9/60	
T-1	4	1 PER BF 2.13	22/9/60	PA	T-1	21-9-60	

7791

Marriage Certificate?

PUBLIC ARCHIVES  
RECORDS CENTRE

2182

DO NOT WRITE BELOW THIS LINE

8/31-28

# APPLICATION FOR ENFRANCHISEMENT

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

I, William J. Stoney,

of Slave Lake

Province of Alberta,

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

1. That I am a member of the Sault Ste. Marie Band of Indians situated in the County of Saskatchewan in the Province of Alberta;

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

3. That I am at present employed at St. Mary's  
Northern Alberta Railways;

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

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

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

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

My wife

Margaret Stoney

(Name in full)

(over)

My sons	(Names in full)	Dates of birth
Alvin Joseph Stoney		May 7th 1943
Maurice Felix Stoney		Sept 24th 1941

My daughters	(Names in full)	Dates of birth
--------------	-----------------	----------------

DATED at Slave Lake Alberta this nineteenth day  
of April 1944

WITNESS:

*W. C. Bratton*

*William J. Stoney*  
SIGNATURE OF APPLICANT

#### APPROVAL OF APPLICANT'S WIFE

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

WITNESS:

*W. C. Bratton*

X *Margaret M. Stoney*  
SIGNATURE OF WIFE

#### CERTIFICATE OF INDIAN AGENT

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

*P. J. Demura*  
INDIAN AGENT


Ottawa, April 29, 1944.

EX'D.  
A

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

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

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

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

# CERTIFICATE AS TO FITNESS FOR ENFRANCHISEMENT

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

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

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

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

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

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

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

SWORN before me at the Hamlet

of Slave Lake

the County of Alberta

18th day of April

1894

in this } Bertram Watkins

*G. J. Patrick*

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

# RELEASE AND SURRENDER

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

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

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

Band 4

a member of the Sawridge Band  
of Indians, whose reserve is located in the County of

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

Twenty-four dollars and twenty-seven cents (\$24.27)

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

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

My Wife

Margaret Stoney

(Name in full)

(OTHER SDE)



My SONS

(Names in full)

Dates of birth

Alvin Joseph Stoney

May 7th 1943

Maurice Felix Stoney

Sept 8th 1941

My DAUGHTERS

(Names in full)

Dates of birth

Slave Lake Alta.

DATED at ~~nineteenth~~ this 19th day of April 1944

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

William J. Stoney

*[Signature]*

Comm. for Oaths for Prov. Alberta

*Miss Russell*

Ottawa, August 24, 1944.

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

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

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

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

*DJA*

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

Encls.


*Miss Russell*

Ottawa, August 10, 1943.

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

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

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

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

Encls.



TREASURY OFFICE

Ottawa, August 14th, 1945.

*M. J. Stoney*  
MEMORANDUM: SUPT. OF RESERVES AND TRUSTS

William J. Stoney

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

*L. M. Curran*

Chief Treasury Officer.

*for*

Ottawa, July 7, 1944.

P25018.

# 59

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

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

## REQUISITION FOR CHEQUE

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

DEPT. NO.

FILE NO. 2131-38

TREAS. NO.

DEPARTMENT Mines and Resources

BRANCH Indian Affairs

DATE August 12, 1944

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

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

STATE BELOW WITH DETAILS IN EVERY CASE WHETHER A STANDING ADVANCE, OR ADVANCE FOR SPECIFIC JOURNEY—  
ESTIMATING NUMBER OF DAYS, IN OTHER ACCOUNTABLE ADVANCE, OR AN AUTHORIZED PAYMENT.

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

CHARGE TO: VOTE Trust Acct No. 413 Capital - \$313.40  
ALLOTMENT Interest - 63.68  
SUB-ALLOTMENT Vote 53-810 - \$400.00

ENC. NO.

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

HEAD OF BRANCH

TREASURY OFFICE APPROVAL

DEPUTY HEAD



8121-58

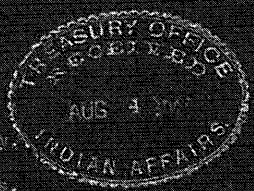
DEPARTMENT OF MINES AND RESOURCES

INDIAN AFFAIRS BRANCH

Ottawa, July 26, 1913.

MEMORANDUM

- 1. *Indic.*
- 2. Treasury.
- 3. Reserves.



*Pop 62 (1912 pl)*

*T.F.*

*1/2*

What amount of band funds would William J. Stoney,  
no. 59 of the Scowridge Band of Indians in the Lacour Slave  
Lake Agency, Province of Alberta, be entitled to receive  
 in the event of enfranchisement?

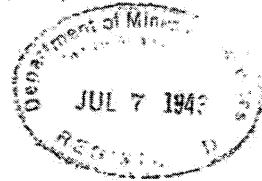
*Stoney*

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

65 1485207	1956 14	
77 35	15 23	* 94.29
<u>24</u>	<u>24</u>	
313.46	63.72	<i>813</i>

Slave Lake, Alberta  
July 2nd 1943

Department of Indian Affairs,  
Ottawa, Canada.



Dear Sir:

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

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

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

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

William J. Stoney

William J. Stoney  
No. 59  
Sawridge Band

Notes

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

No. 9131-38

INDIAN AFFAIRS BRANCH

DEPARTMENT OF MINES AND RESOURCES

LESSER SLAVE LAKE

EMERSON ISEVET

WM. J. STONEY

IN THE FEDERAL COURT OF CANADA  
TRIAL DIVISION

BETWEEN:

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

Plaintiffs

- and -

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

Defendants

AMENDED STATEMENT OF CLAIM

This is Exhibit "C" referred to in the  
Affidavit of RELAND 10/21/11  
Sworn before me this 26 day  
of JUN A.D. 2012  
Donna Brown  
A Commissioner for Oaths in and for  
the Province of Alberta

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

AMENDED NOVEMBER 28TH, 1997

STATEMENT OF CLAIM

FILED on the 20<sup>th</sup> day of July, 1995.  
TO THE HONOURABLE THE FEDERAL COURT OF CANADA:

1. The Plaintiffs, ALINE ELIZABETH HUZAR, WILLIAM BARTHOLOMEW MCGILLIVRAY, JOHN EDWARD JOSEPH MCGILLIVRAY and MARGARET HAZEL ANNE BLAIR are ALL residents of Prince George, in the Province of British Columbia.

2. The Plaintiff, JUNE MARTHA KOLOSKY is a resident of Chetwynd, in the Province of British Columbia.

3. The Plaintiff, CLARA HEBERT is a resident of Leduc, in the Province of Alberta.

4. The Plaintiff, ALLAN AUSTIN McDONALD is a resident of Slave Lake, in the Province of Alberta.

5. The Plaintiffs, MAURICE STONEY, LORNA JEAN ELIZABETH McREE and FRANCES MARY TEES are residents of Slave Lake, in the Province of Alberta, and the Plaintiff, BARBARA VIOLET MILLER (NEE McDONALD) is a resident of Slave Lake, in the Province of Alberta.

6. The Defendant, HER MAJESTY THE QUEEN, IN THE RIGHT OF CANADA, by way of the Department of Indian and Northern Affairs Canada is duly constituted to administer aboriginal affairs in Canada.

7. The Defendant, WALTER PATRICK TWINN is the Chief of the Sawridge Indian Band and the Defendant, the SAWRIDGE INDIAN BAND is a part of the group of Indian Bands known as Treaty 8 Group of Indians whose reserve lands are located in the Province of Alberta. At various dates commencing on June 21st, 1899 representatives of the Sawridge Indian Band or their predecessors signed or executed instruments of adhesion to Treaty No. 8 made with Her Majesty The Queen.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Commencing on June 28th, 1987 large numbers of additional persons who were not prior to April 17th, 1985 members of a band will become entitled to have their names entered in a Band List for that Band maintained in the Department. These include Indian men and their families who voluntarily gave up their Indian status; first generation descendants of persons whose names were omitted or deleted from the Indian Register or from a Band List by virtue of the disqualifying provisions referred to in paragraph(b); first generation descendants of Indian men who voluntarily gave up their Indian status; and first generation descendants of the members of the families of such men who were alive at the time that the men voluntarily gave up their Indian status. (Subsection 11(2) )

(d) A Band may assume control of its own membership if a majority of the electors of the Band consent to its so doing and consent to the establishment by the Band of membership rules. (Section 10)

(e) Membership rules established by the Band may not disqualify from membership in the Band any of the persons described in paragraphs (b) and (c) above by reason only of a situation that existed or an action that was taken before the rules came into force. (Subsections 10(4) and (5) )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended  
Nov. 28th  
1997

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

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

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

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

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

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

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

#### CLAIM

The Plaintiffs therefore claim as follows:

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

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

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

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

ADDRESS FOR SERVICE OF THE PLAINTIFF IS THE OFFICE OF:

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

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

BETWEEN:

ALINE ELIZABETH HUZAR ET AL,

Plaintiffs

- and -

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

Defendants

---

STATEMENT OF CLAIM

---

Notice to the Defendants

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

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

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

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

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

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

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

TRANSMISSION OK

TX/RX NO.	3607
CONNECTION TEL	14038493446
CONNECTION ID	
START TIME	11/28 16:52
USAGE TIME	06'55
PAGES	17
RESULT	OK

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

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY, J.A.

SEXTON, J.A.

EVANS, J.A.

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

ROLAND TWINN

Sworn before me this ... day  
of JUNE 12, 2000

A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 30, 2012

BETWEEN:

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

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

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

Judgment delivered from the Bench at Toronto, Ontario

on Tuesday, June 13, 2000

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

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY J.A.

SEXTON J.A.

EVANS J.A.

BETWEEN:

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

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

**REASONS FOR JUDGMENT**

*(Delivered from the Bench at Toronto, Ontario*

*on Tuesday, June 13, 2000)*

**EVANS J.A.**

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

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

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

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

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

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

"John M. Evans"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

**DOCKET:** A-326-98

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

OF INDIAN AND NORTHERN AFFAIRS CANADA and WALTER

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

SAWRIDGE INDIAN BAND

- and -

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

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

**PLACE OF HEARING:** TORONTO, ONTARIO

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

*Delivered at Toronto, Ontario on*

*Tuesday, June 13, 2000*

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

*For the Defendants*

*(Appellants)*

*Mr. Peter V. Abrametz*

*For the Plaintiffs*

*(Respondents)*

**SOLICITORS OF RECORD:** Aird & Berlis

*Barristers & Solicitors*

*BCE Place, Suite 1800, Box 754*

*181 Bay Street*

*Toronto, Ontario*

*M5J 2T9*

*For the Defendants*

*(Appellants)*

*Eggum, Abrametz & Eggum*

*Barristers & Solicitors*

*101-88-13th Street East*

*Prince Albert, Saskatchewan*

*S6V 1C6*

*For the Plaintiffs*

*(Respondents)*

**FEDERAL COURT OF APPEAL**

*Date: 20000613*

*Docket: A-326-98*

**BETWEEN:**

**HER MAJESTY THE QUEEN, IN RIGHT OF**

**CANADA, DEPARTMENT OF INDIAN AND**

**NORTHERN AFFAIRS CANADA and WALTER**

**PATRICK TWINN, as Chief of the Sawridge Indian**

**Band and the SAWRIDGE INDIAN BAND**

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

*REASONS FOR JUDGMENT*

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

ROLAND TOLIN

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

A Commissioner for Oaths in and for  
the Province of Alberta

[Signature]

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

114-44-4

114-44-4

Driftpile Alberta  
May 12th. 1944.

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

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

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

P.J. Demers

This is Exhibit : F \* referred to in the Affidavit of

ROLAND LEVIN

Sworn before me this 26 day

of JUNE A.D. 20 12

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

**DONNA BROWN**

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 30, 2012

No.		Date		Sex		Age		Color		Measurements		Remarks		Date		Locality		Collector	
1		10/10/1911		M		30		180		1		1		1		1		1	
James Newton																			
Isabelle Newton																			
September - Wood																			
Jean Baptiste Ward																			
John Ward																			
Benjamin Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			
John Ward																			

OCTOBER 7, 1997

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

MAURICE STONEY

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

ANNOUNCER

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

MAURICE STONEY

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

MAURICE STONEY

This questionnaire doesn't even make good ass wipe.

He told me sure you go ahead and fill it out but we won't pass it any way.

ANNOUNCER

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

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

ROLAND TWINN

Sworn before me this 26 day

of JUNE A.D. 2012

A Commissioner for Oaths in and for  
the Province of Alberta

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

on Tuesday, June 13, 2000

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

Date: 20000613

Docket: A-326-98

CORAM: DÉCARY J.A.

SEXTON J.A.

EVANS J.A.

BETWEEN:

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

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

**REASONS FOR JUDGMENT**

*(Delivered from the Bench at Toronto, Ontario*

*on Tuesday, June 13, 2000)*

**EVANS J.A.**

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

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

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

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

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

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

"John M. Evans"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

**DOCKET:** A-326-98

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

OF INDIAN AND NORTHERN AFFAIRS CANADA and WALTER

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

SAWRIDGE INDIAN BAND

- and -

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

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

**PLACE OF HEARING:** TORONTO, ONTARIO

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

*Delivered at Toronto, Ontario on*

*Tuesday, June 13, 2000*

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

*For the Defendants*

*(Appellants)*

*Mr. Peter V. Abrametz*

*For the Plaintiffs*

*(Respondents)*

**SOLICITORS OF RECORD:** Aird & Berlis  
*Barristers & Solicitors*

*BCE Place, Suite 1800, Box 754*

*181 Bay Street*

*Toronto, Ontario*

*M5J 2T9*

*For the Defendants*

*(Appellants)*

*Eggum, Abrametz & Eggum*

*Barristers & Solicitors*

*101-88-13th Street East*

*Prince Albert, Saskatchewan*

*S6V 1C6*

*For the Plaintiffs*

*(Respondents)*

**FEDERAL COURT OF APPEAL**

*Date: 20000613*

*Docket: A-326-98*

***BETWEEN:***

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

Defendants

(Appellants)

- and -

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

Plaintiffs

(Respondents)

***REASONS FOR JUDGMENT***

copy

RECEIVED  
JUN 01 1993  
Sawridge  
HAND

HAND Delivered

We will set up a tent and teepee camp to protest housing and land issues. Being ex band members of the Saddle Band, we know that we have every right to hold a protest rally. We've tried every possible negotiable course and avenue to get <sup>the</sup> said issues settled. To no avail. No one has ever said that they were a part of these matters. Our patience has worn out. We will invite the media and anyone else who wishes to support our cause.

4. Commencement of Code in and for  
the Province of Quebec

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

# Protesters claim right to Sawridge reserve land

By Walt Rieth

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

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

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

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

Ned Gladue, the oldest

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

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

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

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

father was an Indian.

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

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

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

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

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

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

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

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

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

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

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

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

"My sister attempted to meet with the Chief

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

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

preme Court over who has jurisdiction over band membership requirements.

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

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

ROLAND TWINN

Sworn before me this 26

of JUNE A.D. 2012

A Commissioner for Oaths in and for the Province of Alberta



DONNA BROWN

A Commissioner for Oaths

In and for the Province of Alberta

My Appointment Expiry Date is 2012

→ TO: Chief Twinn  
849-3446

## Protesters dare to step on to Sawridge land

JACK DANYLCHUK  
Journal Staff Writer

June 13 '93

Slave Lake

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

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

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

The small group represents more than 300 Twinn persons who regained their Indian status and membership in the Sawridge band through a federal law passed in 1985.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



WALTER A. BROWN

Notary Public for Oaths

Notary Public for the Province of Alberta

My Appointment Expires December 30, 2012

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

ROLAND TWINN

Sworn before me this 26 day

of JUNE A.D. 2012.

W. Brown

A Notary Public for the Province of Alberta

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

ROLAND LIDINN

Sworn before me this 26 day

of JUNE A.D. 2012

A Commissioner of Oaths in and for  
the Province of Alberta

*[Signature]*

**DONNA BROWN**

A Commissioner for Oaths

In and for The Province of Alberta *(over)*

My Appointment Expires December 30, 2012

## Who is a real Indian, anyway?

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

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

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

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

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

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

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

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



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

## The neighbourhood fights back

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

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

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

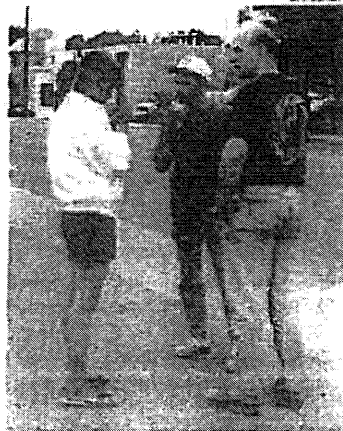
The problems associated with the sex trade have plagued the area north of the city's downtown since the turn of the century. In recent years the business has become bigger and rougher, as the twin perils of drugs and prostitution feed off each other. According to police, nearly every hooker on 107 Avenue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

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

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

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

They agree that the neighbourhood had reached its nadir last January when as many as 40 prostitutes were working a 10-block strip of 107 Avenue. Police were arresting only those who had made themselves a persistent nuisance. After their



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

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

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

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

—Patty Fuller

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

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

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

—Jim Demers

## Good news for natural gas

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

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

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

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

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

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

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

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

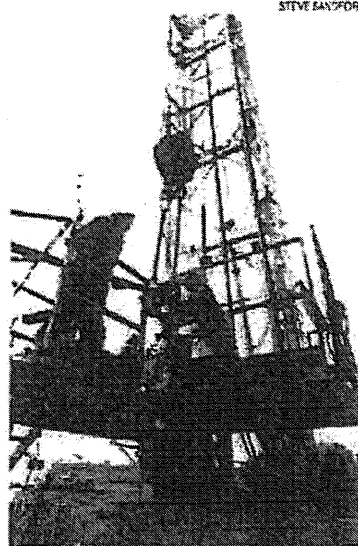
Canadian Hunter Exploration Ltd. president Jim Gray agrees that western

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

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

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

—Tom McFeely



Drilling rig: The rebound has already begun.

This is Exhibit "M" referred to in the  
Affidavit of ROLAND LEVIN  
Sworn before me this 21 day  
of JUNE A.D. 2012  
A Commissioner for Oaths in and for  
the Province of Alberta Donna Brown

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

## Protesters demand entry into band

By David Zuberbier

Armed with placards carrying messages like "All we want is acceptance" and "Time for justice, time for action," a group of 23 protesters marched from the Sawridge administration office to the Sawridge Truck Stop Thursday demanding to meet Chief Walter Twinn to discuss reinstatement within the Sawridge Band.

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

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

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

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

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

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

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

to Twinn for at least two years, trying to get him to meet with them. No response, they say. Last week the group got their

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

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



Protesters march for inclusion

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

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

By David Zuberbier

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

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

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

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

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

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

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

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

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

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

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

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

Margaret Blain, who drove in from Dawson Creek for the protest, says it was the first time she had ever seen the chief. She says it's frustrating he won't meet them.

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

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

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

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

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

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

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

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

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

Protester Billy Hamelin says  
Please see Page A2

## Man dies after falling off truck

By David Zuberbier

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

High Prairie RCMP say 41-year-old LeeRoy Cooper, 49 yrs. of age, was sitting on the tailgate of a pickup truck when he fell off and struck his head

on the pavement.

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

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

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

**PLEASE  
READ  
AND  
RECYCLE  
THIS  
NEWSPAPER**



## Protesters say they've got proof of membership

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

"Our younger generation is

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

"Our native spirituality is

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

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

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

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

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

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

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

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

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

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

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

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

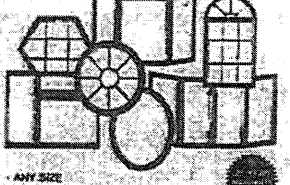
### DURABUILT®

NO NEED TO PAINT OR REPLACE AGAIN

#### DURABUILT®

WINDOW SYSTEMS INC.

CUSTOM MADE UPVC WINDOWS



• ANY SIZE  
• ANY SHAPE  
• ANY GLAZING

DURABUILT BRINGS YOU THE TREND OF TODAY  
BEAUTY AND VERSATILITY IN 100% VINYL

**Your Local Factory Representatives**  
**369-2134**  
Box 1015, Slave Lake, AB T0G 2A0

## Sawridge Plaza



Main Street, Slave Lake  
North Central Alberta's Only ENCLOSED MALL

Shop in climate controlled comfort!  
Parking for over 400 vehicles

# SUPPORT THE 1994 ARCTIC WINTER GAMES!

## FARMERS MARKET Every Sunday

<p>PLAZA FOOD FARE WOOLWORTH FIELDS REITMANS</p>	<p>BANK OF NOVA SCOTIA NRS REALTY WORK WORLD HAIR FX</p>	<p>FOOD COURT: •BURGERS PLUS •FUZZY ORANGE •SANDWICH GRABBERS •THE DINER'S</p>
--	--	--

**For Leasing Information Call 849-2790**

## High Prairie School Division #48 Notes

By Mary Hewson  
for The Lakeside Leader

### Mandatory retirement for teachers unconstitutional

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

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

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

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

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

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

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

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

### Trustee wants support for student council

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

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

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

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

### Trustees approval application for day labor scheme

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

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

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

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

### School alarm systems reduce insurance costs

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

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

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

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

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

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

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

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

ROLAND TWINN

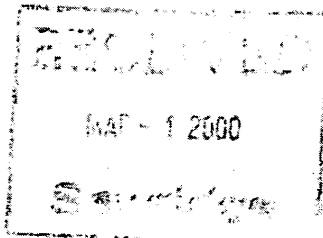
Sworn before me this 24 day

of JUNE A.D. 2012

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

*Handwritten notes:*  
A-10/93  
[unclear]  
[unclear]  
[unclear]

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



Ki-See-Pey-Ga-Mahk (K.C.F.N.)  
Cree First Nation,  
609-12th Street, S.E.,  
Slave Lake, Ab.  
T0G 2A3

Feb. 29, 2000

Re: Band Status and New Reserve.  
Mr. Bob Nault,  
Minister of Indian Affairs.

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

ROLAND TWINN

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

A Commissioner for Oaths in and for  
the Province of Alberta

DONNA PITCHER

A Commissioner for Oaths

In and for The Province of Alberta

My Appointment Expires December 31, 2002

Dear Sir:

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

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

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

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

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

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

Yours Truly,

*Maurice Stoney*

(Maurice Stoney)

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

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

Jan 5/01

Delivered to  
Cory  
Jan 5/01

October 18/2000

Attn: Catherine Twinn, Sawridge Band First Nations

Dear: Chief and Council

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

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

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

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

1. Maurice Stoney -
2. Dicky Twin<sup>2</sup>
3. Frank Ward -
4. Paul Potskin -
5. Henry Sawa -
6. Wilfred Cardinal -
7. Others Pending -

*Maurice Stoney*  
*Dickie (Ronald) Twins*  
*Frank Ward*  
← FOR *Karen Potskin*  
*Henry Sawa*

Yours truly,

Maurice Stoney

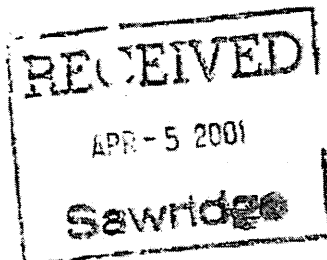
This is Exhibit P referred to in the Affidavit of

*ROLAND TWINN*

Sworn before me this 26 day  
of JUNE A.D. 2002

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

DONNA BROWN  
A Commissioner for Oaths  
in and for The Province of Alberta  
2012



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

Delivered Personally  
By M. STONEY

April 4, 2001

This is Exhibit "a" related to the Affidavit of

ROLAND TWINN

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

A Commissioner for Oaths in and for  
the Province of Alberta

*For*  
Sawridge Band  
Chief & Council

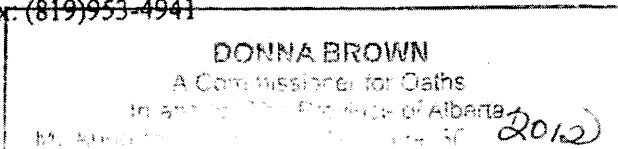
*m/x*

Indian Affairs  
Ottawa, ON

Fax: (819)953-4941

Attention: Daniel Charbonneau

Dear Daniel:



This letter is to confirm our telephone discussion this morning.

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

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

I look forward to hearing from you soon.

Yours truly,

Maurice Stoney

*Maurice Stoney*  
(Spokesperson)

March 21, 2001

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

Dear Cheryl:

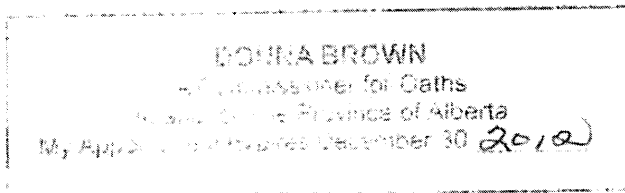
I am writing in regards to our conversation we had on the phone. I would like to know if it is possible for Treaty 8 to assist in our plight to establish a new reserve for our members. These Bill C-31 members are from the Sawridge Band First Nations in Slave Lake. The Federal Government says that they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

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

Sincerely,

Maurice stoney

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



*Maurice Stoney*

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

## MEMBERSHIP PROCESSING FORM

APPLICANT: MAURICE FELIX STONEY

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

PHONE: 780-849-5193

APPLICABLE MEMBERSHIP SECTION #2

APPLICATION REQUIRED? Yes

SPECIFIC RIGHT? No

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

This is Exhibit "S" referred to in the Affidavit of  
**ROLAND TWINN**  
Sworn before me this 21 day  
of JUNE A.D., 2012  
*[Signature]*  
A Commissioner for Oaths in and for  
the Province of Alberta

### APPLICATION

Application satisfactorily completed? Yes

Applicant interviewed by both Councilors? No

Applicant interviewed by Chief? No

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

### SUMMARY OF FIRST NATION COUNCILS JUDGMENTS

#### CONNECTION TO FIRST NATION

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

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

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

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

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

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

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

#### **CHARACTER AND LIFESTYLE**

(Not a Detriment)

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

#### **OTHER CONSIDERATIONS**

Children                      No.

If yes, how many and ages.

---

Spouse                      Yes - Bigstone. No Dependents.

If yes, what is current situation. - Married.

---

**Physical Condition**

Good.

**Decision**

Membership Denied based on

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

**Attachments**

- Application
- Statement of Claim
- Federal Court of Appeal Decision
- May 12, 2944 Letter from P.J. Demers
- 1910 Pay List
- Fifth Estate Transcript
- June 1, 1993 Letter from Maurice Stoney
- June 16, 1993 Lakeside Leader Article
- June 21, 1993 Scope Article
- June 13, 1993 Edmonton Journal Article
- June 21, 1993 Alberta Report Article
- August 18, 1993 Lakeside Leader Article
- August 12, 1993 Protest Handout
- February 29, 2000 Letter from Maurice Stoney
- October 18, 2000 KCFN Declaration
- April 4, 2001 Letter from Maurice Stoney
- March 21, 2001 Letter from Maurice Stoney

# MANN & ROBINSON

Barristers • Solicitors • Notary Publics • Mediator • Collaborative Law

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

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

December 22, 2011

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

VIA FAX - 780-849-3446 and  
REGISTERED MAIL

Dear Sir/Madam:

RE: Sawridge First Nation Applications  
Our File: 27484

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

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

Yours truly,

MANN & ROBINSON

Per:



MONICA A. ROBINSON  
MAR/pm  
Encs.

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

*ROLAND TOWN*

Sworn before me this 26 day

of JUNE 26 A.D. 2012

A Commissioner for Oaths in and for  
the Province of Alberta

DONNA BROWN

A Commissioner for Oaths

9902 - 97 Avenue, Peace River, Alberta T8S 6H5 for The Province of Alberta  
Phone: 780-624-4860 Fax: 780-624-4135 Toll Free: 1-888-624-4861  
email: law@mannrobinson.ca

\*Denotes Professional Corporation

December 30, 2012

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

7806244135

T-095 P0002/0006 F-217

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

7806244135

T-055 P0002/0002 F-144

December 19, 2011

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

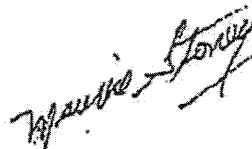
Dear Chief and Council Members:

RE: Appeal of Decision

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

Yours truly,

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



June Kolosky  
Box 25  
Chetwynd, BC T0C 1J0

December 20, 2011

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

Dear Chief Roland Twinn and Council:

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

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

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

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

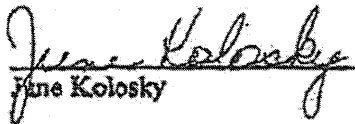
I am involved with my Aboriginal community as the president of our local Friendship Centre. I am a member and an elder of the Chetwynd Community Committee who work with Nenan Dane Zaa Zona. I am an active member of our local community association where my husband and I work towards building and maintaining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

...page two

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

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

Sincerely,

  
Jane Kolosky

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

December 19, 2011

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

Dear Chief Roland Twinn and Council:

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

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

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

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

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

...page two

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

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

Sincerely,



---

Aline Huzar



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

March 23, 2012

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

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

VIA E-MAIL ONLY

Attention: Ms Priscilla Kennedy

Dear Madam:

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

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

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

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

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

The appeal procedure which will be followed is enclosed.

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

Yours truly,

PARLEE McLAWS LLP

  
EDWARD H. MOLSTAD, Q.C.

EHM/ulk  
Encl.

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

ROLAND TWINN  
Sworn before me this 36 day  
of JUNE A.D. 2012

  
A Commissioner for Oaths  
in the Province of Alberta

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

## APPEAL PROCEDURE

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

### COMMENCEMENT OF APPEAL

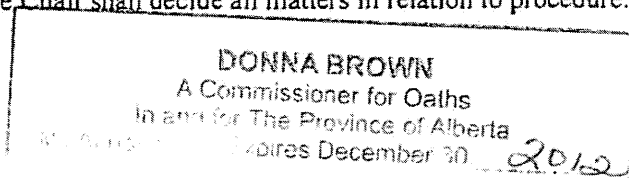
1. The Appeal shall be commenced by the Appellant serving a Notice of Appeal in writing to the First Nation Council at the Office of the First Nation within 15 days after the First Nation has communicated to the Appellant the Decision of the First Nation Council.
2. The Appeal shall be heard by the Electors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

### APPEAL COMMITTEE

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

### HEARING PROCEDURE

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



This is Exhibit "V" referred to in the  
Affidavit of  
ROBERT TWINN  
Sworn before me this 26 day  
JUNE 2012  
[Signature]

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.

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

**BETWEEN:**

**MAURICE FELIX STONEY**

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

**Appellant**

*ROLAND TWINN*  
Sworn before me this *26* day

- and -

of *JUNE* A.D. *2012*

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

**SAWRIDGE FIRST NATION**

**Respondent**

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

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

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

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

I. FACTS

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

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

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

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

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

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

## II. RIGHT TO MEMBERSHIP

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

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

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

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

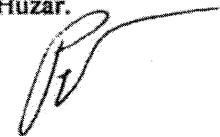
the Constitution: *Sawridge First Nation v. Canada*, 2009 FCA 123 [Tab 9]. Enfranchisement and its removal effective April 17, 1985 entitles Maurice Stoney to membership under section 6(1)(c.1). The Sawridge Membership Rules only apply to the Band List after July 4, 1985.

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

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

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

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



Priscilla E.S.J. Kennedy  
Barrister & Solicitor



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

Date	2004-01-19
Number	A-170-03
Paragraphe(s)	2004 FCA 16 (CanLII); [2004] 2 CNLR 316
URL	<a href="http://canlii.ca/t/1g8b9">http://canlii.ca/t/1g8b9</a>
Text	Sawridge Band v. Canada, 2004 FCA 16 (CanLII), [2004] 3 FCR 274, < <a href="http://canlii.ca/t/1g8b9">http://canlii.ca/t/1g8b9</a> > retrieved on 2012-02-02
Text	<a href="#">Download PDF</a> <a href="#">Share</a>
Text	<a href="#">Search for decisions citing this decision</a>
Other Record	<a href="#">Related decisions, legislation cited and decisions cited</a>

A-170-03

2004 FCA 16

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

**v.**

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

**and**

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

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

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

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

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

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

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

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

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

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

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

*Held*, the appeal should be dismissed.

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

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

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

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

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

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

statutes and regulations judicially

considered

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

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

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

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

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

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

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

cases judicially considered

applied:

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

considered:

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

referred to:

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

authors cited

Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto: Butterworths, 1983.

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

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

appearances:

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

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

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

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

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

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

solicitors of record:

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

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

*Lang Michener LLP*, Ottawa, for intervener Native Council of Canada.

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

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

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

The following are the reasons for judgment rendered in English by

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

## HISTORY

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

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

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

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

#### Irreparable Harm

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

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

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

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

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

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

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

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

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

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

**TABLE OF CONTENTS**

Preface

Historical Background

Terms and Conditions

Treaty Implications

Summary

Bibliography

## PREFACE

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

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

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

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

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

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

#### Treaty Negotiations

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

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

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

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

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

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

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

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

#### Treaty Adhesions and Admissions

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

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

<sup>1</sup> D.J. Hall, "Clifford Sifton and Canadian Indian Administration 1869-1905" in *As Long as the Sun Shines and Water Flows*, edited by Ian A.L. Getty and A.S. Lussier (Vancouver, 1983), p. 123.

<sup>2</sup> D.J. Hall, *Clifford Sifton: Volume 1: The Young Napoleon, 1861-1900* (Vancouver, 1981), p. 271.

<sup>3</sup> PAC, RG10, vol. 3848, file 75, 236-1, Herchmer to Comptroller NWMP, 2 December 1897.

<sup>4</sup> *Ibid.*, Forget to McKenna, 16 April 1898.

<sup>5</sup> *Ibid.*, Sifton to Governor General in Council, 18 June 1898; Order-in-Council P.C. 1703, 27 June 1898.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, Forget to Secretary, Indian Affairs, 12 January 1898.

<sup>9</sup> *Ibid.*, 25 April 1898.

<sup>10</sup> *Ibid.*, Laird, Memorandum Respecting Proposed Treaty No. 8 and Half-breed Claims, 7 January 1899.

<sup>11</sup> *Ibid.*, Sifton to Laird, McKenna, and Ross, 12 May 1899.

<sup>12</sup> PAC, RG10, vol. 4006, file 241, 209-1, Laird to Secretary Indian Affairs, 29 April 1904.

<sup>13</sup> PAC, RG10, vol. 3848, file 75, 236-1, Sifton to His Excellency the Governor General in Council, 30 November 1898.

<sup>14</sup> René Fumoleau, *As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Toronto, 1975), p. 59.

<sup>15</sup> Canada, Privy Council, O.C. No. 2749, 6 December 1898; Department of Indian Affairs and Northern Development (DIAND), *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.* (Ottawa, 1966).

<sup>16</sup> PAC, RG10, file 366, 877, W.E. Ditchburn to Duncan Scott, 19 November 1920; *Ibid.*, Scott to Ditchburn, 4 December 1920; *ibid.*, file 1/11-5, Vol 4, George Brown to D.F. Pearson, 17 May 1974; Wilson Duff, *The Indian History of British Columbia*, Anthropology in B.C. memoir No. 5 (Victoria, 1964), p. 70; J. Bruce Melville, *Report: Indian Reserves and Indian Treaty Problems in Northeastern B.C.*, Prepared for B.C. Hydro and Power Authority (Vancouver, 1981), pp. 13-21.

<sup>17</sup> K.S. Coates, "Best Left as Indians: The Federal Government and the Indians of the Yukon, 1894-1950." Unpublished paper presented to the Canadian Historical Association, Vancouver, June 1983, p. 3; H. Reed to Charles Constantine, RG10, Vol. 1115, Deputy Superintendent's Letter-book, 29 May 1894.

<sup>18</sup> William R. Morrison, "A Survey of the History and Claims of the Native Peoples of Northern Canada" (Ottawa: INAC, 1983), p.33.

<sup>19</sup> William R. Morrison, "Under the Flag: Canadian Sovereignty and the Native People in Northern Canada" (Ottawa: INAC, 1984), p. 52; Coates, "Best Left as Indians," p. 13.

<sup>20</sup> Fumoleau, *As Long As This Land Shall Last*, p. 60.

<sup>21</sup> PAC, RG10, Vol. 3848, file 75, 236-1, Sifton to Governor General in Council, 17 February 1899; Canada Privy Council, O.C. 330, 2 March 1899.

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

<sup>15</sup> Canada, Parliament, Department of the Interior, *Sessional Papers*, No. 13, 1900, Part 8, "Report of the Half-Breed Commissioners," 30 September 1899, p. 3.

<sup>16</sup> *Ibid.* The inadequacy of the government scrip program under Treaty 8 left many of the half-breeds without land. Since most scrip was taken as cash to finance immediate needs, there were no recurring benefits to support them during the depression of the thirties. Moreover, with the transfer of lands from the federal government to the Prairie provinces and B.C. in 1930, the Métis of Alberta anticipated that settlers would move into those areas in which they had been residing as homesteaders. After conveying their concerns to the Alberta government, the Ewing Commission was established in 1934 to enquire into the condition of the Métis of Alberta regarding health, education and general welfare. Its recommendations led to the enactment of the Métis Population Betterment Act five years later. The Act provided a land base for Métis people to become self-sufficient through agriculture by the creation of ten settlements or colonies.

<sup>17</sup> Canada, *Treaty No. 8*, pp. 6-7.

<sup>18</sup> *Ibid.*, p. 5.

<sup>19</sup> *Ibid.*, pp. 7-8.

<sup>20</sup> G. Breynat, *Cinquante Ans au Pays des Neiges*, Vol. 1 (Montreal, 1945), pp. 186-187.

<sup>21</sup> Canada, Privy Council, O.C. No. 460, 2 March 1900.

<sup>22</sup> Canada, *Treaty No. 8*, p. 20.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, p. 21.

<sup>25</sup> *Ibid.*

<sup>26</sup> PAC, RG15, vol. 771, file 518158, McKenna to Sifton, 16 March 1901.

<sup>27</sup> PAC, RG15, Vol. 782, file 555680, McKenna to Sifton, 19 January 1901.

<sup>28</sup> See Joe Sawchuk, Patricia Sawchuk, and Theresa Ferguson, *Métis Land Rights in Alberta: A Political History* (Edmonton, 1981), pp. 125-127.

<sup>29</sup> Canada, *Treaty No. 8*, pp. 20-21.

<sup>30</sup> Richard Daniel, "Land Rights of the Isolated Communities of Northern Alberta." Unpublished paper prepared for the Isolated Communities Advisory Board and Lubicon Lake Band, January 1975, p. 22; Joe Sawchuk et al., *Métis Land Rights in Alberta*, p. 127.

<sup>31</sup> See PAC, RG10, vol. 4006, file 241,109-1; William R. Morrison and K.S. Coates, "Treaty Research Report: Treaty Ten" (Ottawa: INAC, 1985).

<sup>32</sup> DIAND, *Annual Report*, 1915; p. 83, "Report of Henry A. Conroy, Inspector for Treaty No. 8"; William R. Morrison and K.S. Coates, "Treaty Research Report: Treaty Eleven" (Ottawa: INAC, forthcoming).

<sup>33</sup> Treaties 10 and 11 were signed in 1905-1906 and 1921, respectively.

<sup>34</sup> See Wilson Duff, *The Indian History of British Columbia* (Victoria, 1964), p. 71.

- <sup>16</sup> DIAND, *Annual Report*, 1903, p. 235, H.A. Conroy to Superintendent General of Indian Affairs, 5 October 1903.
- <sup>16</sup> DIAND, *Annual Report*, 1907, p. 183, Conroy to Frank Pedley, 5 February 1907.
- <sup>17</sup> DIAND, *Annual Report*, 1909, p. 202, Conroy to Frank Pedley, 19 February 1909. [Note: the editor could not find references to the Indian Act and the role of priests in this reference.]
- <sup>18</sup> PAC, RG10, file 1/1-11-5-1, Vol. 1, "Certified Extract from the Minutes of a Meeting of the Treasury Board," 18 December 1909; *Ibid.*, Conroy to Superintendent General of Indian Affairs, 20 October 1910.
- <sup>19</sup> PAC, RG 10, Privy Council, O.C. 8/2534, 18 December 1909.
- <sup>20</sup> *Ibid.*, Conroy to Superintendent General of Indian Affairs, 29 October 1910.
- <sup>21</sup> PAC, RG10, Vol. 1852, Copy of Fort Nelson Adhesion, 15 August 1910; DIAND, *Annual Report*, 1911, p. 191, Conroy to Pedley, 14 November 1910.
- <sup>22</sup> DIAND, *Annual Report*, 1911, p. 191, Conroy to Pedley, 14 November 1910.
- <sup>23</sup> Canada, Parliament, *Sessional Papers*, No. 28 (Appendix Q), Annual Report of the Royal Northwest Mounted Police for 1912, Sergeant R. Field's Patrol, Fort Chipewyan to Fort Nelson, B.C., and Return, 10 October 1910, p. 172.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> *Ibid.*
- <sup>26</sup> PAC, RG10, vol. 3979, file 156, 710-31, J.D. McLean to Harold Laird, 10 May 1911.
- <sup>27</sup> PAC, RG 10, vol. 8598, file 1/1-11-5-1, vol. 1, David Laird, "Memorandum for the Deputy Minister," 11 January 1910; PAC, RG 10, file 355,726, Vol. 1, "Fort Nelson Adhesion to Treaty 8," n.d.
- <sup>28</sup> *Ibid.*, Conroy to Duncan Scott, 29 December 1913.
- <sup>29</sup> DIAND, *Annual Report*, 1915, p. 84, "Report of Henry A. Conroy, Inspector for Treaty No. 8."
- <sup>30</sup> Originally, some Cree and Saulteaux Indians entered the Northwest in the early 1800s with the westward expansion of the fur trade. There is evidence that some families of the Saulteau Band were involved in the Frog Lake Massacre during the North-West rebellion in 1885. After the rebellion they drifted further west for fear of reprisals from the North West Mounted Police and the federal government. Eventually, the families split into two groups with one settling near Moberly Lake.
- <sup>31</sup> DIAND, *Annual Report*, 1915, p. 84, "Report of Henry A. Conroy, Inspector for Treaty No. 8."
- <sup>32</sup> Daniel, "Land Rights of the Isolated Communities of Northern Alberta," p. 6.
- <sup>33</sup> *Ibid.*, p. 7.
- <sup>34</sup> *Ibid.*, p. 8.
- <sup>35</sup> David M. Smith, *Moose-Deer Island House People: A History of the Native People of Fort Resolution* (Ottawa, 1982), p. 114; Fumoleau, *As Long As This Land Shall Last*, p. 273.
- <sup>36</sup> Smith, *Moose-Deer Island House People*, p. 114.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Reserve Land Entitlement

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

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

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

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

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

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

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

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

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

development of the northern hinterland.<sup>106</sup> During these developments, the rights of settlers and industrialists received more attention. In B.C., for example, provincial involvement in northeastern B.C. has resulted in the establishment of major economic development programs, including the construction of an oil pipeline from the Peace River to supply interior B.C., hydroelectric development, and proposals for the building of the Alaska Highway natural gas pipeline. The Indians have expressed their fears concerning the scale and pace of industrial development in their hunting and trapping lands and have viewed recent developments as a further abrogation of their treaty rights.

### Notes

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

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

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

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

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

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

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

<sup>8</sup> *Ibid.*, p. 95.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Paulette et al.*, Supreme Court of Northwest Territories (1973), testimony of June Helm, pp. 33-34; Daniel, "The Spirit and Terms of Treaty Eight," p. 95.

<sup>11</sup> Walter H. Nelson *et al.*, "Report of the Commission Appointed to Investigate the Unfulfilled Provisions of Treaties 8 and 11 as They Apply to the Indians of the Mackenzie District 1959" (Toronto, 1970), pp. 4-5; Daniel, "The Spirit and Terms of Treaty Eight," pp. 95-96.

<sup>12</sup> Jackson, Presentations to the Northern Pipeline Agency Public Hearings, p. 1936.

<sup>13</sup> *Ibid.*, p. 1937.

<sup>14</sup> *Ibid.*, pp. 1936-1937; Martin O'Malley, *The Past and Future Land: An account of the Berger Inquiry into the Mackenzie Valley pipeline* (Toronto, 1976), pp. 123-124.

<sup>15</sup> Jackson, Presentations to the Northern Pipeline Agency Public Hearings, pp. 19-38.

<sup>16</sup> *Ibid.*; see also Hickey, Lightning and Lee, "T.A.R.R. Interview with Elders Program," pp. 145-160.

<sup>17</sup> Daniel, "The Spirit and Terms of Treaty Eight," p. 96.

<sup>18</sup> Canada, *Treaty No. 8*, p. 6.

<sup>19</sup> *Ibid.*, p. 5.

<sup>20</sup> Keith J. Crowe, *A History of the Original Peoples of Northern Canada* (Montreal, 1974), p. 157.

<sup>21</sup> Canada, *Sessional Paper*, 1915, No. 27, "Report of H.A. Conroy, Inspector for Treaty No. 8," pp. 82-83.

<sup>22</sup> Daniel, "The Spirit and Terms of Treaty Eight," p. 97.

<sup>23</sup> *Ibid.*

<sup>24</sup> See Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," Chapter 5.

<sup>25</sup> Canada, *Sessional Paper*, 1912, No. 27, Report of the Deputy Superintendent General of Indian Affairs, p. xx.

<sup>26</sup> See Fumoleau, *As Long As This Land Shall Last*, p. 235.

<sup>27</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," pp. 141-144.

<sup>28</sup> PAC, RG10, File 191/28-3, Vol 1, McLean to the Commissioner of the RCMP, 20 April 1923, and to C. Bourget, 4 May 1923; *Ibid.*, file 779/28/3, Vol 2, Agent's Diary, Annuity Payments, 13 August 1924.

<sup>29</sup> *Ibid.*, vol. 7777, file 27131-1, Chief and Councillors of Lesser Slave Lake Band to Superintendent General of Indian Affairs, January 1900.

<sup>30</sup> *Ibid.*, J.A.J. McKenna to Deputy Superintendent General of Indian Affairs, 20 February 1900; David Laird to Secretary of Indian Affairs, 5 February 1900; J. Macrae to Secretary of Indian Affairs, 10 November 1900.

<sup>31</sup> *Ibid.*, J. Macrae to Secretary of Indian Affairs, 10 November 1900.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, vol. 7778, file 27131-6, petition of 5 December 1911.

<sup>34</sup> *Ibid.*

- <sup>15</sup> DIAND, file 779/30-10-174, vols. 1 and 2; DIAND, file 779/30-10-174A.
- <sup>16</sup> Daniel, "Indians Rights and Hinterland Resources: The Case of Northern Alberta", p. 137.
- <sup>17</sup> Richard Daniel, "Land Rights of the Isolated Communities of Northern Alberta." Paper prepared for the Isolated Communities Advisory Board and the Lubicon Lake Band, January 1975, p. 11.
- <sup>18</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," p. 149.
- <sup>19</sup> PAC, RG 10, vol. 7535, file 26131-1, Arthur Meighen to Brigadier-General, W.A. Greisack, M.P., 7 May 1919.
- <sup>20</sup> PAC, RG 10, Vol. 1-6.
- <sup>41</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," p. 149.
- <sup>42</sup> *Ibid.*, p. 150.
- <sup>43</sup> *Ibid.*
- <sup>44</sup> *British North America Act*, 1930.
- <sup>45</sup> PAC, RG10, Vol. 7748, file 27001, W.W. Cory, Solicitor, Indian Affairs Branch, to H.W. McGill, Director, Indian Affairs Branch, 25 February 1938.
- <sup>46</sup> See Daniel, "Land Rights of the Isolated Communities of Northern Alberta", and "Indian Rights and Hinterland Resources: The Case of Northern Alberta," pp. 153-158.
- <sup>47</sup> See Canada, Department of Indian Affairs and Northern Development, "Treaty Annuity Paylists."
- <sup>48</sup> PAC, RG10, vol. 7778, file 27131-17, T.R.L. MacInnes, Secretary of Indian Affairs, to H.F. Peters, Surveyor-General of Mines and Resources.
- <sup>49</sup> See J. Sissons, *Judge of the Far North* (Toronto, 1968), pp. 50-51.
- <sup>50</sup> PAC, RG10, Vol. 6811, file 470-3-6, part 2, Report of 7 August 1944 to Hon. T.A. Crerar, Minister of Mines and Resources.
- <sup>51</sup> Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada* (Toronto, 1972), pp. 202-204; DIAND, file 777/28-3, vol. 9, A.G. Leslie to T.R.L. MacInnes, 11 January 1951.
- <sup>52</sup> Daniel, "Land Rights of the Isolated Communities of Northern Alberta," p. 16.
- <sup>53</sup> See Indian and Northern Affairs Canada, Office of Native Claims, *Specific Claims in Canada: Status Report*, August 1984, p. 16.
- <sup>54</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," pp. 159-160.
- <sup>55</sup> Richard T. Price, "Indian Land and Claims Alberta: Politics and Policy-Making (1968-77)," M.A. Thesis, University of Alberta, 1977, pp. 16-17; 217-218.
- <sup>56</sup> Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," p. 159.
- <sup>57</sup> PAC, RG10, file 1/1-11-5-1, vol. 1, Laird to Deputy Minister, 11 January 1910; *ibid.*, D.C. Scott to Deputy Superintendent General, 19 January 1910.

<sup>64</sup> The Peace River block extended west from the Alberta boundary on either side of the Peace River. See report on Peace River block for 1905-06 by J.A. Macdonell in Gordon E. Bowes, ed., *Peace River Chronicles* (Vancouver, 1963), pp. 221-223. In 1930, the Dominion government returned the unalienated portions of the Peace River block to the province (The Railway Belt and Peace River Block Act, Canada, *Statutes*, 1930, 20-21, Geo. 5, C. 37).

<sup>65</sup> DIAND, *Annual Report*, 1915, p. 86, "Survey Report of Donald F. Robertson"; PAC, RG10, Vol. 4065, file 412,786-3, McLean to Robertson, 27 May 1914.

<sup>66</sup> Canada, Privy Council, O.C. NO. 819, 11 April 1916.

<sup>67</sup> Canada, Privy Council, O.C. No. 6506, 16 October 1945.

<sup>68</sup> DIAND, file 975/30-7-204, E.J. Galibois to G.H. Gooderham, 26 September 1951; Canada, Privy Council, O.C. No. 4092, 25 August 1950.

<sup>69</sup> British Columbia, *Report of the Royal Commission on Indian Affairs* (Victoria, 1916), Vol. 1, p. 126 (Interim Report No. 91, 1 February 1916).

<sup>70</sup> *Ibid.*

<sup>71</sup> Canada, Privy Council, O.C. No. 2995, 28 November 1961.

<sup>72</sup> Cumming and Mickenberg, *Native Rights in Canada*, p. 126.

<sup>73</sup> Walter H. Nelson *et al.* "Report of the Commission Appointed to Investigate the Unfulfilled Provisions of Treaties 8 and 11 as they Apply to the Indians of the Mackenzie District." 1959 (Minutes of a meeting of the Committee of the Privy Council, P.C. 799, 25 June 1959).

<sup>74</sup> *Ibid.*, p. 3.

<sup>75</sup> *Ibid.*, p. 2.

<sup>76</sup> *Ibid.*, p. 8.

<sup>77</sup> See Department of Indian Affairs and Northern Development, Report of the Indian Act Consultation Meeting, Yellowknife, Northwest Territories, 25, 26 and 27 July 1968 (Ottawa, 1968).

<sup>78</sup> Ronald Maguire and George Brown, "Indian Treaties in Historical Perspective" (Ottawa, 1979), p. 47.

<sup>79</sup> Canada, *Sessional Paper*, 1915, No. 28, Report of Sergeant A.H.L. Mellor attending treaty payments, p. 197.

<sup>80</sup> Canada, *House of Commons Debates*, 8 June 1920, p. 3280.

<sup>81</sup> See Fumoleau, *As Long as This Land Shall Last*, pp. 124-130; 293-296; David M. Smith, *Moose-Deer Island House People: A History of the Native People of Fort Resolution* (Ottawa, 1982), p. 116.

<sup>82</sup> DIAND, *Annual Report*, 31 March 1929, pp. 7-8.

<sup>83</sup> Brody, *Maps and Dreams*, p. 95.

<sup>84</sup> *Ibid.*, pp. 88-89.

<sup>85</sup> *Ibid.*, p. 92.

<sup>100</sup> See, for example, PAC, RG10, vols. 6735 and 6736.

<sup>101</sup> *Ibid.*, vol. 7779, file 27143-4, J. Allison Glen, Minister of Mines and Resources, to George T. Kenney, Minister of Lands, B.C., 13 August 1945; Kenney to Glen, 21 February 1946; PABC (Public Archives of British Columbia), GR 1085, T. Van Dyk, Inspector, "D" Game Division, to "D" Divisional Office, Prince George, B.C., 9 February 1946.

<sup>102</sup> PAC, RG10, vol. 6732, file 420-2B, Gerald Card, Indian Agent, to D.C. Scott, Superintendent General, 22 May 1924.

<sup>103</sup> *Ibid.*, vol. 6731, file 420-1-2.

<sup>104</sup> *Alberta Natural Resources Act*, 1930.

<sup>105</sup> PAC, RG10, vol. 6733, file 420-2, Vol. 5, C.P. Schmidt to Secretary of Indian Affairs, 9 March 1940.

<sup>106</sup> See Daniel, "Indian Rights and Hinterland Resources: The Case of Northern Alberta," Chapter 5.

401810

Lower Slave Lake Agency -

- Kinnouago's Band, Sawridge -

Band No.	Name	Men	Women	Boys	Girls	Total
1	Francois Renoustasta	1	1	5	3	10
2	Isabelle Renoustasta		1		1	2
3	Lafraimbrouse Ward	1	1	5		7
4	Jean Baptiste Ward	1	1	4	2	8
5	John Ward	1	1			2
6	Benjamin Courtoiselle	1	1	2	3	7
7	Lion Ward	1	1	1		3
8	Louis Ward	1	1	1	1	4
9	Susan		1			1
10	Albert Renoustasta	1				1
11	Jean Baptiste Harlin		1		2	3
12	Peggy Ward Powder		1			1
13	Mary Ward Setts		1			1
14	Edward Renoustasta	1	1	3	2	7
15	St. Germain Renoustasta		1			1
16	St. Pierre Renoustasta	1				1
17	St. Paul Renoustasta	1				1
18	Johnny Stony	1	1	1	4	7
19	Benjamin Potoxin	1	1		2	4
20	Jos. Wandigoo's widow		1		1	2
21	Eustace Ward	1	1	1		3
22	Pierre Giroux	1	1	1		3
						<hr/> 79

Lesser Slave Lake Agency -

Creward, April 22nd, 1913

Indians from Alexander's Band, Edmonton Agency,  
transferred to Lesser Slave Lake Agency

Name	Band No.	No. in family	Date of transfer
✓ Paul Potekin	55	4	1044.24 August 8th, 1910
✓ Thomasia	51	6	1140.36 " " "
✓ Mitchell Bellerose	49	2	1382.12 " " "
✓ Marie Hamelin	31	2	382.12 " " "
✓ Johnny Stony		5	1143.36 Sept. 14th, "
✓ Baptiste Zonn Bag	77	5	953.30 Dec. 13th, "
✓ Mistahay Oukinigue	39	1	191.26 " " "
✓ Benjamin Potekin	139	4	764.27 " " "
✓ Joe. Wendigoo's widow	115	E	382.12 " " "
			8 6713.92

- The above all transferred to Kinnabauye's Band, Lesser Slave Lake. -

✓ Alexander 7 1337.47 Jan'y 10th, 1910  
Transferred to Ambrose Peto Holiz's Band, Fort Vermilion

293.506

Ottawa, July 7th, 1913.

Sir,-

Referring to your letter of the 22nd April last, I beg to state that the share of the Indians, formerly members of Alexander's Band, who were transferred some years ago to Treaty 8, has been deducted from the Capital funds of Alexander's Band and placed to the credit of the Bands into membership in which they have been admitted, as per Sub-Section 2 of Section 17 of the Indian Act.

The accounts transferred are as follows:-

Credit of Minnosaug's Band ---

32 Indians @ \$191.06 per Capita share.....\$6113.92

Credit of Ambrose Pete Hulp's Band, Fort Vermilion ---

7 Indians @ \$191.06 per Capita share .....\$1337.42

The former members of Alexander's Band who have been transferred as above at and have now equal rights in the Reserves they now belong to the original Treaty 8 Indians.

Your obedient servant,

Asst. Deputy and Secretary.

W. B. L. Donald, Esq., M.E.,

Indian Agent,

Grande Prairie, Alta.

10022.

Ottawa, 15th April, 1905.

The Deputy Supt. General,-

With reference to Mr. Ponton's memorandum herounder of the 8th inst., I beg to state that John Stephens being a member of Chief Alexander's band is already provided with land in the reserve of that band, No. 134, at Riviere qui Saut, and holds his land in common with the other members of the band.

It is shown, however, that he has located himself at Lesser Slave Lake, where he has shown considerable energy, is entirely self-supporting, and is filling a necessary public need by providing a good winter stopping place between Athabasca Landing and Lesser Slave Lake. It would appear desirable that he should be encouraged.

If the land on which he <sup>is</sup> now located is not secured to him as an Indian Reserve it will run continual risk of being taken possession of by white men. There appears to be no objection why the said land should not be surveyed and confirmed as an Indian Reserve with the view of allowing John Stephens to continue in possession of it, or to give him eventually a location ticket covering the said land.

I think, however, that an equal area (100 acres) should be surrendered from the said reserve No. 134 and relinquished to the Crown in exchange for the proposed reserve at Lesser Slave Lake for John Stephens, and would recommend that the Indian Agent be instructed to lay the matter before the Indians of the said reserve, in order to obtain from them their consent to give a surrender of the portion for the purpose mentioned.

*Sam L. Gray*  
Chief Clerk

104,587/31



Ottawa, 18th April, 1903.

Memorandum:

Mr. Pedley, -

14.7  
I spoke to Mr. Conroy  
about the matter referred to in Mr. Bray's  
memo. of the 15th instant. He does not  
know anything about the location occupied  
by Stephens, but says that he cannot of  
course be disturbed in his holding so long  
as he is in occupation.

[REDACTED]  
[REDACTED] in Treaty  
[REDACTED]  
[REDACTED]

*For L...*

Secretary.

7m 8m 11m  
Ottawa, 17th April, 1903.

Sir :-

I am directed to inform you that John Stephens, who is a member of Chief Alexander's Band, No. 134, at Riviere aux Barres, and who holds land in common with other members of that Band, has located himself at Lesser Slave Lake and is desirous of securing the land he is located upon. Under the terms of Treaty 8 covering this territory land may be provided in [redacted] to the extent of 160 acres to each Indian to be conveyed with the proviso as to non-alienation without the consent of the Governor in Council.

I am to request that you will be good enough to state whether there will be any objection to the land located ~~to him~~ to the extent of 160 acres being set aside for him under the terms of the Treaty.

Your obedient servant,

J. D. McLean

Secretary.

The Governor

Dept. of the Interior

Ottawa

373806-  
INDIAN AGENT'S OFFICE,

Lennox Slave Lake Agency -

Grouard, 9th December, 1911

IN YOUR OFFICE REFER TO  
No.  
DATE  
NO DATE OF THIS LETTER

401612

\* I beg to call your attention to the case of Johnny Stony, formerly of Alexander's Band, Edmonton Agency, and transferred to this Agency in 1910 and paid under No. 18, Sawridge Band.

Stony came to this district in the fall of 1898. In 1896 he married an Indian woman from the Lennox Slave Lake Band and settled on the Lennox Slave River, not far from Sawridge. He has built houses and stables and has been keeping a "stopping place" for freighters for a number of years. He is an industrious man and has been making a good living, without any assistance from the Government, chiefly from the stopping place referred to.

The land, on which he settled, has since been surveyed and, as he has no title of any kind, he is afraid that some one will locate on it and he will be forced to move, and thus lose his chief source of livelihood.

He requests therefore that the NE  $\frac{1}{4}$  of Section 6, Township No. 73, Range 4, on which he has been residing; and the NW  $\frac{1}{4}$  of Section 1, Township No. 73, Range 5, which he wishes for hay land, be given him for a Reserve for himself and family.

The Secretary,

Department of Indian Affairs,  
Ottawa

Indian Affairs, (S. 1), Volume 772, Page 2711-2

401612

family, which now consists of himself, wife, 1 boy and 4 girls.

If Section 11, Township 30. 73, Range 6, west of the 5th Meridian, is granted to the Sawridge Band as part of their Reserve (as referred to in my letter of the 8th inst.) Stony could cut hay there and it would be unnecessary to give him the latter quarter section as yet.

Your obedient servant,

*Wm. L. Smith*

Asst. Indian Agent

507-800-

1-21131-6

EX-11

Ottawa, April 18, 1913.

Sir:-

*Ex-11*  
With further reference to letter from your Department dated May 9th last No. 228,4208 and to letter from this Department to the Secretary of the Department of the Interior dated September 27th last, I am sending you plans under separate cover showing the lands selected last season by Mr. J. E. McLean S. L. S. for the Sawridge Band of Indians on Lesser Slave Lake in Treaty No. 6.

The said lands are in two reserves:-  
No. 1503 consists of Section 4 Tp. 73, R. 4, W. of 6th N.  
S.E. 1/4 Sec. 1, East 1/2 Sec. 2, S.E. 1/4 Sec. 3, S.E. 1/4 Sec. 4, and the S. R. 1/2 Sec. 5, all in Tp. 73, R. 5  
E. 235 N. and the S.W. 1/4 Sec. 24, East 1/2 of Sec. 25,  
S. W. 1/4 and N.E. 1/4 Sec. 26, all in Tp. 73, R. 5, W.  
6th N.

No. 1504 is in Tp. 73, R. 4, W. 6th N. unsurveyed and consists  
of the S.E. 1/4 Sec. 3, S.E. 1/4 Sec. 4, S.E. 1/4 Sec. 5, Sec. 6  
From Sec. 9, From Sec. 10, From Sec. 15, From Sec.  
17.

\* The above were surveyed, and as these Indians are  
still 500 acres short, application is also made for the N.E. 1/4  
of Sec. 13 and From Sec. 19 in the same township.

I shall feel obliged if you will have the pleasure

H. Daville, Esq.,

Secretary General.

Indian Affairs. (86 10, Volume 777, File 27131-6)

PUBLIC ARCHIVES  
ARCHIVES PUBLIQUES

-R-

necessary action taken to have an Order-in-Council passed  
confirming these Reserves.

Your obedient servant,

*Sd J. D. Hughes*

Assistant Deputy and Secretary.

Indian Affairs. (Pt. 10, Volume 1778, File 1711-5)

PUBLIC ARCHIVES  
ARCHIVES PUBLIQUES

397. 206

373500  
27131-0030250

To Mr. [unclear] [unclear] [unclear]  
Sept 25 1894

SEPT. OF IL. DEPT. A. I. SURVEYS.  
SEP-26 1894

With reference to the lands described by  
the Sauratzy Band at the East end of the  
Saw Lake I beg to state that out of the surveyed  
Townships the following 1/2 sections have been  
allotted: Tp 72 R 5 N of 5<sup>th</sup> M - (Sec 32 NW 1/4)  
(Sec 33 East 1/2) (Sec 34, SW 1/4 and NE 1/4)  
Tp 73 R 5 N of 5<sup>th</sup> M - (Sec on NW 1/4) (Sec 2 N 1/2)  
(Sec 3, SE 1/4) (Sec 4 SE 1/4) (Sec 6 SE 1/4)  
Tp 73 R 4 N of 5<sup>th</sup> M. lands of Sec 6.

As some homesteaders wish to locate and examine  
these lands as regards for the Indians and not taking  
it might be well to notify the Department of the  
Interior what particular sections have been allotted  
I enclose two plans showing the lands mentioned  
and those adjacent and marked with a cross  
covering the 1/2 section. The other marked 1/2 sections  
were allotted but often examinations declined.

I am at present surveying the Sauratzy  
River in Tp 73 R 5 N of 5<sup>th</sup> M. North of and including  
the N 1/2 of Sec 3, 4 and 5. A plan will be sent when  
completed as it is unsurveyed territory.  
This Band also want about 5 sections near  
Saw River to be shown when I reach there  
with my surveyor.

With reference to Sec 6 Tp 73 R 4 I may  
say that Johnny Stony a member of the Sauratzy  
Band has lived on this section near the Sauratzy  
on the East end for about 12 years and that  
he keeps a stopping place which is very well  
known to the Indians.

He is a hard working industrious and energetic  
is spoken of as the best and most prosperous  
Indian in this section of the country.

Shortly after Henry located here a half breed  
named Michel Contrai also located near at  
hand in fact both are on legal subdivisions  
nine in sec 6, the one being on the west half and  
the other on the East.

Contrai has 3 log houses and two stables with  
a small garden and large field, both fenced.

He values his improvements at \$250<sup>00</sup> which  
I consider fair and reasonable.

If he can not be paid for his improvements  
I do not think he should get more land  
than the west 1/2 of the legal subdivision.

He has another house and stables located  
on Martin River where he wishes to have

a full grant as soon as surveyed and  
has no intention of applying for a free grant  
on this sec. I do not think he is entitled to more  
than recompense for his improvements.

Regarding the North West 1/4 of Sec one Tp 73 R 5 N  
named George Bonthead,  
a white man, French, and who speaks no English  
located the half of sec 12 immediately North  
by Scrip. and his brother about 20 acres at  
the North West corner being part legal subdivision  
13, Sec one. The land is mostly only fit for hay  
and this legal subdivision is higher and suitable  
for crop. It requires considerable work to break this  
20 acres as there must have been quite a lot of  
willow scrub on it. He states that it took him  
and 3 men five acres, but I do not think they  
could have worked very hard for the 5 acres.

now I think \$750 an acre or \$1500 would be  
a good price for this Breaking. It will  
not be of much benefit to the Indians unless  
it ~~is~~ forms it. He objected to giving it up.  
The Joseph Bouchard has no legal claim  
as he did not file, but states that he  
went on and broke on being told by  
former Land Agent Tomkins, at Grouard  
that he would be allowed to purchase  
the fractional area north of the Lewis & Clark  
River. However, he made no attempt to purchase  
~~or secure in any way~~  
and now that the land is set apart for Indian  
Reserve purposes offers to purchase the  
breaking at the best legal subdivision  
at \$500 per acre cash, including the 500 in L.S. 12.  
I did not get the date of the Breaking but  
it looks as though it was done during  
the past summer.

Yours obedient servant

Strommen

Joseph Bouchard  
Secretary

Department of Indian Affairs

Winnipeg  
Canada

393506

Ottawa, 19th August 1920.

Sir, -

With reference to your letter of the 14th August No. 1735121, I have to say that Mr. John Stoney (Johanne Stoney) is a Treaty Indian, No. 18 of the Sawridge Band. He can continue to occupy the land referred to in the N.E. 1/4 6-73-4-W. 5. N., which is a part of the Sawridge Indian reserve.

Your obedient servant,

*A. Macdonald*

*For* Assistant Deputy and Secretary.

*S.B.*  
The Secretary,

*W. B. M.*  
Department of the Interior,  
Ottawa, Ont.

Indian Affairs (1110), volume 7738, file 17131-61

PUBLIC ARCHIVES  
ARCHIVES PUBLIQUES  
CANADA

[illegible]



## Indian Act, RSC 1985, c I-5

Current version: In force since Jan 31, 2011.

Link to the latest version: <http://canlii.ca/t/7vhk>

Stable link to this version: <http://canlii.ca/t/10hh>

Citation to this version: Indian Act, RSC 1985, c I-5, retrieved on 2012-04-19

Currency: Last updated from the Justice Laws Web Site on 2012-04-13

Share:



### Indian Act

#### R.S.C., 1985, c. I-5

An Act respecting Indians

#### SHORT TITLE

Short title

1. This Act may be cited as the *Indian Act*.

R.S., c. I-5, s. 1.

#### INTERPRETATION

Definitions

2. (1) In this Act,

"band"  
« bande »

"band" means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act;

"Band List"  
« liste de bande »

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

"child"  
« enfant »

"child" includes a legally adopted child and a child adopted in accordance with Indian custom;

"common-law partner"  
« conjoint de fait »

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"council of the band"  
« conseil de la bande »

"council of the band" means

(a) in the case of a band to which section 74 applies, the council established pursuant to that section,

(b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

"Department"

## Persons entitled to be registered

6. (1) Subject to section 7, a person is entitled to be registered if

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(c.1) that person

(i) is a person whose mother's name was, as a result of the mother's marriage, omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under paragraph 12(1)(b) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions,

(ii) is a person whose other parent is not entitled to be registered or, if no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred prior to September 4, 1951,

(iii) was born on or after the day on which the marriage referred to in subparagraph (i) occurred and, unless the person's parents married each other prior to April 17, 1985, was born prior to that date, and

(iv) had or adopted a child, on or after September 4, 1951, with a person who was not entitled to be registered on the day on which the child was born or adopted;

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

## Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

## Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(e);

(b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision; and

(c) a person described in paragraph (1)(c.1) and who was no longer living on the day on which that paragraph comes into force is deemed to be entitled to be registered under that paragraph.

R.S., 1985, c. I-5, s. 6; R.S., 1985, c. 32 (1st Supp.), s. 4, c. 43 (4th Supp.), s. 1; 2010, c. 18, s. 2.

## Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered.

---

**ENFRANCHISEMENT**

109. to 113. [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 20]

**Twinn v. Poltras, 2012 FCA 47 (CanLII)**

Date: 2012-02-08  
Docket: A-280-10  
URL: <http://canlii.ca/t/fq3w2>  
Citation: Twinn v. Poltras, 2012 FCA 47 (CanLII); <<http://canlii.ca/t/fq3w2>> retrieved on 2012-04-19  
Share:   
Print: PDF Format  
Noteup: Search for decisions citing this decision  
Reflex Record: Related decisions, legislation cited and decisions cited

**Federal Court of  
Appeal****Cour d'appel  
fédérale**

Date: 20120208  
Docket: A-280-10  
Citation: 2012 FCA  
47

CORAM: EVANS  
J.A.

PELLETIER J.A.  
STRATAS J.A.

**BETWEEN:**

**WALTER PATRICK TWINN, THE COUNCIL OF THE  
SAWRIDGE BAND and THE SAWRIDGE BAND**

**and**

**ELIZABETH BERNADETTE POITRAS**

**Appellants****and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT**

**Respondent****Respondent**

Heard at Ottawa, Ontario, on February 8, 2012.  
Judgment delivered from the Bench at Ottawa, Ontario, on February 8, 2012.

**REASONS FOR JUDGMENT OF THE COURT BY:****STRATAS J.A.**

Federal Court of  
AppealCour d'appel  
fédéraleDate: 20120208  
Docket: A-280-10  
Citation: 2012 FCA  
47CORAM: EVANS  
J.A.PELLETIER J.A.  
STRATAS J.A.

BETWEEN:

WALTER PATRICK TWINN, THE COUNCIL OF THE  
SAWRIDGE BAND and THE SAWRIDGE BAND

Appellants

and  
ELIZABETH BERNADETTE POITRAS

Respondent

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
as represented by THE MINISTER OF INDIAN AFFAIRS  
AND NORTHERN DEVELOPMENT

Respondent

**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Ottawa, Ontario, on February 8, 2012)

**STRATAS J.A.**

[1] This is an appeal against the Order dated July 27, 2010 made by a case management judge in the Federal Court (Justice Hugessen). The case management judge ordered that an issue central to an action (the "main action") has become moot.

[2] The circumstances giving rise to the Order are as follows.

[3] Some time ago, the respondent, Ms. Poitras, started the main action against the appellant Band, claiming membership in it. The Band defended, in part, on the basis that it had a right under section 35 of the *Constitution Act, 1982* to determine who was a member of the Band.

[4] The main action was stayed pending the outcome of another action that the Federal Court regarded as being closely related (the "closely related action"). In the closely related action, the Band was challenging amendments to the *Indian Act*, advancing the same argument, namely that it had a right under section 35 of the *Constitution Act, 1982* to determine who was a member of the Band. That action had a long history, including a retrial. In the end result, the closely related action was dismissed: *Sawridge Band v. The Queen*, 2008 FC 322 (CanLII), 2008 FC 322, aff'd 2009 FCA 123 (CanLII), 2009 FCA 123.

[5] With the dismissal of the closely related action, what was to become of the main action and the issue of Ms. Poitras' membership in the Band? To determine this, the Federal Court issued a notice of status review concerning the main action.

[6] As a result of the status review, a case management conference in the Federal Court was held. There, the issue of mootness was discussed, having been raised in the submissions filed.

[7] The case management judge's Order followed. The case management judge ordered that the issue of Ms. Poitras' membership in the Band was moot.

[8] In this Court, the appellants appeal that Order.

[9] The appellate standard of review applies. The appellants must show that the Order is vitiated either by legal error or by palpable and overriding error on some issue of fact or fact-based discretion. In reviewing the exercise of discretion in this case, it must also be borne in mind that this is an Order made by a case management judge who had managed the main action and the closely related action for many years and, as a result, possessed great familiarity with the factual issues and history of the matters: *Sawridge Band v. Canada*, 2001 FCA 338 (CanLII), 2001 FCA 338 at paragraph 11, 2001 FCA 338 (CanLII), [2002] 2 F.C. 346.

[10] In our view, the appellants have not shown any reversible error on the part of the case management judge that would warrant permitting the Band to relitigate the constitutional issues.

[11] There can be circumstances which can prompt the Court to exercise its discretion to allow relitigation, notwithstanding the doctrines of issue estoppel and abuse of process: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII), 2001 SCC 44, [2001] 2 S.C.R. 460; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), 2003 SCC 63, [2003] 3 S.C.R. 77.

[12] But there is nothing in the record of this case showing that the appellants offered to the case management judge any such circumstances. Indeed, the record shows that the appellants deliberately decided, for reasons known to them, to close their case in the closely related action knowing they could have called more evidence and made further submissions. They knew that a dismissal would result after they closed their case. See *Sawridge Band v. Canada*, 2008 FC 322 (CanLII), 2008 FC 322 at paragraphs 10-21 and 60.

[13] For the foregoing reasons, we shall dismiss the appeal and direct the parties to return to the current case management judge to bring the pleadings into line with the issues that remain in light of this Court's decision.

---

"David Stratas"

J.A.

**FEDERAL COURT OF APPEAL**  
**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-280-10

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGESSEN DATED JULY 22, 2010,  
DOCKET NO. T-2655-89**

**STYLE OF CAUSE:**

Walter Patrick Twinn, The Council Of The Sawridge  
Band and The Sawridge Band v. Elizabeth Bernadette  
Poitras and Her Majesty the Queen in her Right of  
Canada as Represented by The Minister of Indian and  
Northern Development

**PLACE OF HEARING:**

Ottawa, Ontario

**DATE OF HEARING:**

February 8, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** Evans, Pelletier and Stratas J.J.A.

**DELIVERED FROM THE BENCH BY:** Stratas J.A.

**APPEARANCES:**

Philip P. Healey

FOR THE APPELLANT

Kevin Kimmis

FOR THE RESPONDENT, Her  
Majesty the Queen in her Right of  
Canada as Represented by The Minister  
of Indian and Northern Development

**SOLICITORS OF RECORD:**

Aird & Berlis LLP  
Toronto, Ontario

FOR THE APPELLANT

Terrence P. Glancy  
Edmonton, Alberta

FOR THE RESPONDENT,  
Elizabeth Bernadette Poitras

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT, Her  
Majesty the Queen in her Right of  
Canada as Represented by The  
Minister of Indian and Northern  
Development

Scope of Databases | Tools | Terms of Use | Privacy | Help | Contact Us | About

by **LEXUM**  for the  Federation of Law Societies of Canada



## Sawridge First Nation v. Canada, 2009 FCA 123 (CanLII)

Date: 2009-04-21  
Docket: A-154-08; A-112-08  
URL: <http://canlii.ca/t/237vj>  
Citation: Sawridge First Nation v. Canada, 2009 FCA 123 (CanLII), <<http://canlii.ca/t/237vj>> retrieved on 2012-02-02  
Share: [36 Tweets](#) [12 Shares](#)  
Print: PDF Format  
Notaup: Search for decisions citing this decision  
Reflex Record: Related decisions, legislation cited and decisions cited

Date: 20090421

Docket: A-154-08

A-112-08

Citation: 2009 FCA 123

CORAM: RICHARD C.J.  
EVANS J.A.  
SHARLOW J.A.

Docket: A-154-08

BETWEEN:

SAWRIDGE BAND

Appellant  
(Plaintiff)

and

HER MAJESTY THE QUEEN

Respondent  
(Defendant)

and

CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA

Respondents  
(Interveners)

Docket: A-112-08

AND BETWEEN:

TSUU T'INA FIRST NATION  
(formerly the Sarcee Indian Band)

Appellant  
(Plaintiff)

and

**HER MAJESTY THE QUEEN**

**Respondent  
(Defendant)**

and

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

Heard at Ottawa, Ontario, on April 20 and 21, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on April 21, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

Date: 20090421  
Docket: A-154-08  
A-112-08

Citation: 2009 FCA 123

**CORAM: RICHARD C.J.  
EVANS J.A.  
SHARLOW J.A.**

**BETWEEN:**

**Docket: A-154-08**

**BETWEEN:**

**SAWRIDGE BAND**

**Appellant  
(Plaintiff)**

**and  
HER MAJESTY THE QUEEN**

**Respondent  
(Defendant)**

**and**

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

**Docket: A-112-08**

**AND BETWEEN:**

**TSUU T'INA FIRST NATION  
(formerly the Sarcee Indian Band)**

**Appellant  
(Plaintiff)**

**and**

**HER MAJESTY THE QUEEN**

**Respondent  
(Defendant)**

**and**

**CONGRESS OF ABORIGINAL PEOPLES,  
NATIVE COUNCIL OF CANADA (ALBERTA),  
NON-STATUS INDIAN ASSOCIATION OF ALBERTA  
and NATIVE WOMEN'S ASSOCIATION OF CANADA**

**Respondents  
(Interveners)**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on April 21, 2009)**

SHARLOW I.A.

[1] These are appeals of the decision of Justice Russell to dismiss the appellants' action and to award costs totalling approximately \$1.7 million in favour of the Crown and the other respondents (Intervenors at trial). That award includes a substantial amount as increased costs in excess of full indemnity. The reasons for dismissing the action are reported at 2008 FC 322 (CanLII), 2008 FC 322. The reasons for the costs award are reported at 2008 FC 267 (CanLII), 2008 FC 267. The appellants are seeking a retrial.

[2] Despite the thorough and lengthy written and oral submissions of counsel for the appellants, we can discern no error on the part of Justice Russell that warrants the intervention of this Court. We do not consider it necessary to discuss the grounds of appeal in detail. We will offer only the following comments.

[3] The dismissal of the action was the end of the retrial of an action commenced on January 15, 1986. The appellants were seeking an order declaring that certain amendments to the *Indian Act*, R.S.C. 1985, c. 1-5, breached the appellants' rights under section 35 of the *Constitution Act*, 1982. The statutory amendments compelled the appellants, against their wishes, to add certain individuals to the list of band members. The appellants argue that the legislation is an invalid attempt to deprive them of their right to determine the membership of their own bands.

[4] The first trial began in September of 1993 and ended with a dismissal of the action on July 6, 1995 (*Sawridge Band v. Canada (T.D.)*, 1995 CanLII 3521 (FC), [1996] 1 F.C. 3). That decision was set aside by this Court on the basis of a reasonable apprehension of bias (*Sawridge Band v. Canada (C.A.)*, [1997] 3 F.C. 580, application for leave to appeal dismissed December 1, 1997). A new trial was ordered. It began in January of 2007, after almost 10 years of procedural disputes and delays.

[5] The action was dismissed again because, on January 7, 2008, the appellants informed Justice Russell that they would not be calling further evidence. This was in response to Justice Russell's oral ruling on September 11, 2007 striking all of the appellants' past and future lay witnesses because of non-compliant will-says. There being no case for the Crown to answer, the action necessarily failed. The action was formally dismissed on March 7, 2008.

[6] In deciding to call no further evidence on the retrial, the appellants were not abandoning the cause that led them to begin the action in 1986. Rather, they chose to end the action when they did in order to challenge a series of rulings made by Justice Russell precluding the appellants from eliciting any evidence from lay witnesses that had not been disclosed in the will-says for those witnesses, as well as the oral ruling on September 11, 2007. The appellants also argue that Justice Russell's conduct since his appointment as trial judge raises a reasonable apprehension of bias.

[7] It is not necessary to recount the lengthy procedural history of this matter, which is described in detail by Justice Russell. We note, however, that during the process of case management and after the discovery process had become hopeless, Justice Hugesen made an order requiring the appellants to produce will-say statements for all lay witnesses proposed to be called at trial. In June of 2004, Justice Russell found the appellants' first attempt at will-says to be inadequate and ordered new will-says 2004 FC 933 (CanLII), (2004 FC 933). He found the second attempt also to be inadequate 2004 FC 1436 (CanLII), (2004 FC 1436) and ordered a third attempt 2004 FC 1653 (CanLII), (2004 FC 1653). None of these orders was appealed.

[8] In November of 2005 Justice Russell made an order permitting the appellants to call 24 of their 57 potential lay witnesses, but prohibiting them from calling the other 33 because of various failures to comply with the will-say orders 2005 FC 1476 (CanLII), (2005 FC 1476). The appellants' appeal of that order was dismissed 2006 FCA 228 (CanLII), (2006 FCA 228, application for leave to appeal dismissed, February 8, 2007).

[9] The 2006 interlocutory appeal settled a number of issues. One was that the will-says were intended to provide a substitute for oral discovery, which "the parties had shown themselves incapable of conducting in a productive and focused manner" (see paragraph 9 of the reasons of Justice Evans, speaking for the Court). Another was that it was within the discretion of Justice Russell not to permit witnesses to be called because of the appellants' non-compliance with Court orders regarding the filing of will-says (see paragraph 13 of the reasons of Justice Evans).

[10] In oral argument, counsel for the appellants argued that, despite the long history of controversy about will-says and what would constitute a compliant will-say, they were not aware when they prepared the third set of will-says that the evidence they could elicit from a witness for whom a will-say had been served could not include anything not set out in the will-say. Our review of the record discloses that the appellants should have been aware by the commencement of the retrial that they could be precluded from adducing any evidence from a witness for whom no compliant will-say had been produced, and that they could also be limited to eliciting evidence disclosed in the will-

say. If they were confused on those points, however, they did little to clarify the situation when they indicated to Justice Russell that, although they considered their will-says to be compliant with the standard he had set, their ability to make their case would be compromised if they were barred from eliciting any evidence from a witness that did not appear in the will-say for that witness.

[11] The appellants' equivocation when asked if their will-says were compliant led Justice Russell to conclude that if the appellants could not adequately make their case based on what was stated in the will-says, the will-says must necessarily have been non-compliant. The appellants take issue with Justice Russell's interpretation of their submissions and his reasoning. However, based on our review of the record, Justice Russell's understanding of the appellants' position, as expressed many times in his reasons, was reasonably open to him.

[12] In our view, all of the orders and directions which the appellants now seek to challenge were discretionary decisions made by Justice Russell in furtherance of his obligation to control the trial process. He was required to discharge that obligation in circumstances that became increasingly difficult because of the appellants' apparent reluctance to accept that a trial judge may exclude relevant evidence on the basis that it was not properly disclosed in the discovery process or, as in this case, will-say statements that were intended to stand in the place of oral discoveries. A failure to make disclosures required by a court order may and occasionally does result in the exclusion of relevant evidence.

[13] Finally, without endorsing every statement made by Justice Russell in his voluminous reasons, we find no factual foundation in the record for the appellants' argument that there was a reasonable apprehension of bias on the part of Justice Russell. On the contrary, we agree with the other panel of this Court in the 2006 interlocutory appeal that, given the circumstances facing him, Justice Russell displayed an appropriate mix of "patience, flexibility, firmness, ingenuity, and an overall sense of fairness to all parties" (paragraph 22, per Justice Evans).

[14] We express no opinion on the comments of Justice Russell to the effect that he remains seized of matters relating to the possibility of proceedings against appellants' former counsel for contempt of court or professional disciplinary proceedings. No ground of appeal can arise in relation to those matters unless and until Justice Russell makes an order or renders judgment.

[14]

[15] The Crown and other respondents have argued that this appeal is based largely on debates that were decided against the appellants in prior proceedings, some going so far as to say that the appeal itself is abusive. While there is some force in this argument, on balance we have concluded that, after the action was dismissed, it was open to the appellants to appeal the decision of Justice Russell to strike the evidence of the witnesses. While we have concluded that there is no merit in that appeal, it does not follow that the appeal itself is an abuse of process.

[16] As to the appellants' appeal of the costs awarded at trial, we are not persuaded that Justice Russell erred in law or failed to exercise his discretion judicially when he awarded increased costs as he did. In particular, having considered the entire history of the retrial, we can detect no palpable and overriding error in Justice Russell's findings of misconduct on the part of the appellants.

[17] This appeal will be dismissed with costs to the Crown and each of the other respondents (interveners at trial) on the ordinary scale (that is, the mid-range of Column III of Tariff B of the *Federal Courts Rules*). These reasons will be placed in Court file A-154-08 and a copy will be placed in Court file A-112-08.

"K. Sharlow"

J.A.

**FEDERAL COURT OF APPEAL**  
**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-154-08 & A-112-08

(APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED MARCH 7, 2008, FEDERAL COURT DOCKET NUMBER T-66-86)

**STYLE OF CAUSE:**

SAWRIDGE BAND v. HER MAJESTY THE QUEEN et al. (A-154-08)

TSUU T'INA FIRST NATION v. HER MAJESTY THE QUEEN et al. (A-112-08)

**PLACE OF HEARING:**

Ottawa, Ontario

**DATES OF HEARING:**

April 20 and 21, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:**

(RICHARD C.J., EVANS J.A. and SHARLOW J.A.)

**DELIVERED FROM THE BENCH BY:**

Sharlow J.A.

**APPEARANCES:**

Edward H. Molstad, Q.C.  
Marco S. Poretti  
David L. Sharko

FOR THE APPELLANTS

Catherine M. Twinn

FOR THE APPELLANTS

E. James Kindrake  
Kevin Kimmis  
Krista Epton

FOR THE RESPONDENT (HER  
MAJESTY THE QUEEN)

Joseph E. Magnet

FOR THE RESPONDENT  
(CONGRESS OF ABORIGINAL  
PEOPLES)

Janet L. Hutchison

FOR THE RESPONDENT  
(CONGRESS OF ABORIGINAL  
PEOPLES)

Jon Faulds, Q.C.  
Derek A. Cranna

FOR THE RESPONDENT (NATIVE  
COUNCIL OF CANADA  
(ALBERTA))

Michael J. Donaldson

FOR THE RESPONDENT (NON-  
STATUS INDIAN ASSOCIATION  
OF ALBERTA)

Mary Eberts

FOR THE RESPONDENT (NATIVE  
WOMEN'S ASSOCIATION OF  
CANADA)

**SOLICITORS OF RECORD:**

Parice McLaws LLP  
Edmonton, AB

FOR THE APPELLANTS

Barrister & Solicitor  
Slave Lake, AB

FOR THE APPELLANTS

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT (HER  
MAJESTY THE QUEEN)

Joseph E. Magnet & Associates  
Ottawa, ON

FOR THE RESPONDENT  
(CONGRESS OF ABORIGINAL  
PEOPLES)

Chamberlain Hutchison  
Edmonton, AB

FOR THE RESPONDENT  
(CONGRESS OF ABORIGINAL  
PEOPLES)

Field LLP  
Edmonton, AB

FOR THE REpondent (NATIVE  
COUNCIL OF CANADA  
(ALBERTA))

Burnet, Duckworth & Palmer LLP  
Calgary, AB

FOR THE RESPONDENT (NON-  
STATUS INDIAN ASSOCIATION  
OF ALBERTA)

Law Office of Mary Eberts  
Toronto, ON

FOR THE RESPONDENT  
(NATIVE WOMEN'S  
ASSOCIATION OF CANADA)

---

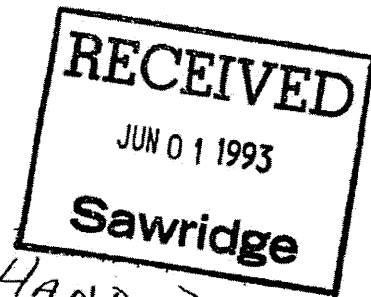
[Scope of Databases](#) | [Tools](#) | [Terms of Use](#) | [Privacy](#) | [Help](#) | [Contact Us](#) | [About](#)

by **LEXUM**  for the  Federation of Law Societies of Canada

June 1-93

copy

attn: Chief Walter Twin,



HAND Delivered

Dear Sir,

The purpose of this letter is to inform you of our intended protest rally, we the band members of (C31) the Kee-sip-iamahk Band of the Lesser <sup>SLAVE</sup> Slave Lake area, are going to organize and hold a protest rally on the Sawridge Reserve.

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

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

ROLAND TWIN

Sworn before me this \_\_\_\_\_ day

of JUNE 1, A.D. 2012

A Commissioner for Oaths in and for  
the Province of Alberta

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

Our legal council will also be present. We are at all times, open for negotiations, with who ever is involved with these issues that we are going to protest. The rally at all times will be peaceful and orderly.

This protest rally is going to be held on June 13-93 at 1:p.m.

We will also elect a Band Council, these councillors are to be elected from approximately twelve different families that make up the Kee-sip-igamahk Band.

One member is to be elected from each family, to establish a twelve member band council. The main leader or leaders are to be elected at a later date. Sitting in as acting leaders at present are Sam Sinclair, Gordon Sinclair, and Maurice Stoney.

As stated earlier we the Kee-sip-igamahk Band members are more than willing to negotiate these very important matters.

Yours truly,

Executive Councillor,

Maurice Stoney

Kee-sip-igamahk Band,

609-12st s.e.

Phone-849-5173

Slave Lake, AB. T0G2a2

*Maurice Stoney*

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

**BETWEEN:**

**MAURICE FELIX STONEY**

**Appellant**

**- and -**

**SAWRIDGE FIRST NATION**

**Respondent**

---

**DECISION**

---

**DAVIS LLP.**  
1201 Scotia 2 Tower  
10060 Jasper Avenue  
Edmonton, AB T5J 4K5  
Attn: Priscilla Kennedy  
Tel: (780) 426-5300  
Fax: (780) 702-4383  
Solicitor for Maurice Felix Stoney

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

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

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

A Commissioner for Oaths in and for  
the Province of Alberta

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

(E6177671.DOCX; 1)

The Appeal of Maurice Felix Stoney (herein referred to as the "Appellant") in relation to his membership application was heard on the Sawridge Reserve in the Sawridge Boardroom on April 21, 2012, before Electors of the Sawridge First Nation (herein referred to as the "First Nation") in attendance at a meeting convened by the First Nation for the purposes of hearing the Appeal.

The Electors of the First Nation in attendance at the meeting who constituted the Appeal Committee were as follows:

Roland Twinn	Bertha L'Hirondelle	Frieda Draney
Vera McCoy	Margaret Claire Ward	Jaclyn Twin
Water F. Twin	Denise Midbo	Yvonne Twin
Justin Twin	Lillian Potskin	Arlene Twinn
Irene Twinn	Darcy Twin	Kristina Midbo
Winona Twin	Catherine Twinn	Sam Twinn
Clara Midbo	Paul Twinn	David Midbo

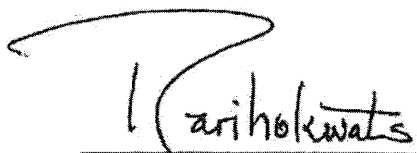
Rarihokwats chaired the Appeal Committee.

The Appellant appeared with Legal Counsel, Priscilla Kennedy of Davis LLP. The First Nation was represented by Legal Counsel, Edward H. Molstad, Q.C. of Parlee McLaws LLP and Michael McKinney, General Counsel for the First Nation.

Written submissions were presented on behalf of the Appellant and oral submissions were made on behalf of the Appellant.

Following the submissions of the Appellant and questions and comments of Members of the Appeal Committee, the Appeal Committee met in camera in order to make its decision.

The unanimous decision of the Appeal Committee is to uphold the decision of Chief and Council and to dismiss the appeal on the grounds that having heard the evidence and the submission of the Appellant and the Appellant's Legal Counsel, there are no grounds to set aside the decision of the Chief and Council.

  
\_\_\_\_\_  
RARIHOKWATS  
CHAIR, APPEAL COMMITTEE

TAB 3

Federal Court



Cour fédérale

Date: 20130515

Docket: T-923-12

Docket: T-922-12

Citation: 2013 FC 509

Ottawa, Ontario, May 15, 2013

PRESENT: The Honourable Mr. Justice Barnes

Docket: T-923-12

BETWEEN:

MAURICE FELIX STONEY

Applicant

and

SAWRIDGE FIRST NATION

Respondent

Docket: T-922-12

BETWEEN:

ALINE ELIZABETH (MCGILLIVRAY)  
HUZAR AND JUNE MARTHA  
(MCGILLIVRAY) KOLOSKY

Applicants

This is Exhibit "3" referred to in the  
Affidavit of

Roland Twinn

and

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

SAWRIDGE FIRST NATION

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

MICHAEL R. MCKINNEY Q.C.  
BARRISTER & SOLICITOR

Respondent

### REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7. The Applicants are all descendants of individuals who were at one time members of the Sawridge First Nation, but who, either voluntarily or by operation of the law at the time, lost their band memberships. As a result the Applicants were excluded from membership in the Sawridge First Nation. They now ask this Court to review the Sawridge First Nation Appeal Committee's decision to uphold the Sawridge Chief and Council's decision which denied their applications for membership.

[2] The father of the Applicant Maurice Stoney was William J. Stoney. William Stoney was a member of the Sawridge First Nation but in April 1944 he applied to the Superintendent General of Indian Affairs to be enfranchised under section 114 of the *Indian Act*, c 98, RSC 1927. In consideration of payments totalling \$871.35, William Stoney surrendered his Indian status and his membership in the Sawridge First Nation. By operation of the legislation, William Stoney's wife, Margaret Stoney, and their two children, Alvin Stoney and Maurice Stoney, were similarly enfranchised thereby losing their Indian status and their membership in the Sawridge First Nation.

[3] The Applicants Aline Huzar and June Kolosky are sisters and, like Mr. Stoney, they are the grandchildren of Johnny Stoney. The mother of Ms. Huzar and Ms. Kolosky was Johnny Stoney's daughter, Mary Stoney. Mary Stoney married Simon McGillivray in 1921. Because of her marriage Mary Stoney lost both her Indian status and her membership in Sawridge by operation of law. When Ms. Huzar and Ms. Kolosky were born in 1941 and 1937 respectively Mary Stoney was

not a member of the Sawridge Band First Nation and she did not reacquire membership before her death in 1979.

[4] In 1985, with the passing of Bill C-31, *An Act to amend the Indian Act*, 33 – 34 Eliz II c 27, and pursuant to section 10 of the *Indian Act*, the Sawridge First Nation delivered its membership rules, supporting documentation and bylaws to the Deputy Minister of Indian and Northern Affairs, who accepted them on behalf of the Minister. The Minister subsequently informed Sawridge that notice would be given pursuant to subsection 10(7) of the *Indian Act* that the Sawridge First Nation had control of its membership. From that point on, membership in the Sawridge First Nation was determined based on the Sawridge Membership Rules.

[5] Ms. Kolosky submitted her application for membership with the Sawridge First Nation on February 26, 2010. Ms. Huzar submitted her application on June 21, 2010. Mr. Stoney submitted his application on August 30, 2011. In letters dated December 7, 2011, the Applicants were informed that their membership applications had been reviewed by the First Nation Council, and it had been determined that they did not have any specific "right" to have their names entered in the Sawridge Membership List. The Council further stated that it was not compelled to exercise its discretion to add the Applicants' names to the Membership list, as it did not feel that their admission would be in the best interests and welfare of Sawridge.

[6] After this determination, "Membership Processing Forms" were prepared that set out a "Summary of First Nation Councils Judgement". These forms were provided to the Applicants and outlined their connection and commitment to Sawridge, their knowledge of the First Nation, their

character and lifestyle, and other considerations. In particular, the forms noted that the Applicants had not had any family in the Sawridge First Nation for generations and did not have any current relationship with the Band. Reference was also made to their involvement in a legal action commenced against the Sawridge First Nation in 1995 in which they sought damages for lost benefits, economic losses, and the "arrogant and high-handed manner in which Walter Patrick Twinn and the Sawridge Band of Indians has deliberately, and without cause, denied the Plaintiffs reinstatement as Band Members...". The 1995 action was ultimately unsuccessful. Although the Applicants were ordered to pay costs to the First Nation, those costs remained unpaid.

[7] In accordance with section 12 of the Sawridge Membership Rules, the Applicants appealed the Council's decision arguing that they had an automatic right to membership as a result of the enactment of Bill C-31. On April 21, 2012 their appeals were heard before 21 Electors of the Sawridge First Nation, who made up the Appeal Committee. Following written and oral submissions by the Applicants and questions and comments from members of the Appeal Committee, it was unanimously decided that there were no grounds to set aside the decision of the Chief and Council. It is from the Appeal Committee's decision that this application for judicial review stems.

[8] The Applicants maintain that they each have an automatic right of membership in the Sawridge First Nation. Mr. Stoney states at para 8 of his affidavit of May 22, 2012 that this right arises from the provisions of Bill C-31. Ms. Huzar and Ms. Kolosky also argue that they "were persons with the right to have their names entered in the [Sawridge] Band List" by virtue of section 6 of the *Indian Act*.

[9] I accept that, if the Applicants had such an acquired right of membership by virtue of their ancestry, Sawridge had no right to refuse their membership applications: see *Sawridge v Canada*, 2004 FCA 16 at para 26, [2004] FCJ no 77.

[10] Ms. Huzar and Ms. Kolosky rely on the decisions in *Sawridge v Canada*, 2003 FCT 347, [2003] 4 FC 748, and *Sawridge v Canada*, 2004 FCA 16, [2004] FCJ no 77 in support of their claims to automatic Sawridge membership. Those decisions, however, apply to women who had lost their Indian status and their band membership by virtue of marriages to non-Indian men and whose rights to reinstatement were clearly expressed in the amendments to the *Indian Act*, including Bill C-31. The question that remains is whether the descendants of Indian women who were also deprived of their right to band membership because of the inter-marriage of their mothers were intended to be protected by those same legislative amendments.

[11] A plain reading of sections 6 and 7 of Bill C-31 indicates that Parliament intended only that persons who had their Indian status and band memberships directly removed by operation of law ought to have those memberships unconditionally restored. The only means by which the descendants of such persons could gain band membership (as distinct from regaining their Indian status) was to apply for it in accordance with a First Nation's approved membership rules. This distinction was, in fact, recognized by Justice James Hugessen in *Sawridge v Canada*, 2003 FCT 347 at paras 27 to 30, 4 FC 748, [2003] 4 FC 748:

27 Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic

entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

28 The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombie stated as follows (*House of Commons Debates*, Vol. II, March 1, 1985, page 2644):

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

29 A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister 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 (*House of Commons Debates*, *idem*, at page 2645):

This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. [page 766]  
While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and residency should be determined by the relationship with the Indian communities to which they belong.

30 Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved (*House of Commons Debates*, *idem*, at page 2646):

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals...

[Emphasis added]

This decision was upheld on appeal in *Sawridge v Canada*, 2004 FCA 16, [2004] FCJ no 77.

[12] The legislative balance referred to by Justice Hugessen is also reflected in the 2010

Legislative Summary of Bill C-3 titled the *Gender Equity in Indian Registration Act*, SC 2010, c 18.

There the intent of Bill C-31 is described as follows:

Bill C-31 severed status and band membership for the first time and authorized bands to control their own membership and enact their own membership codes (section 10). For those not exercising that option, the Department of Indian Affairs would maintain "Band Lists" (section 11). Under the legislation's complex scheme some registrants were granted automatic band membership, while others obtained only conditional membership. The former group included women who had lost status by marrying out and were reinstated under paragraph 6(1)(c). The latter group included their children, who acquired status under subsection 6(2).

[Emphasis added]

[13] While Mary Stoney would have an acquired right to Sawridge membership had she been alive when Bill C-31 was enacted, the same right did not accrue to her children. Simply put neither Ms. Huzar or Ms. Kolosky qualified under section 11 of Bill C-31 for automatic band membership. Their only option was to apply for membership in accordance with the membership rules promulgated by Sawridge.

[14] This second generation cut-off rule has continued to attract criticism as is reflected in the Legislative Summary at p 13, para 34:

34. The divisiveness has been exacerbated by the Act's provisions related to band membership, under which not all new or reinstated registrants have been entitled to automatic membership. As previously mentioned, under provisions in Bill C-31, women who had "married out" and were reinstated did automatically become band members, but their children registered under subsection 6(2) have been eligible for conditional membership only. In light of the high volume of new or returning "Bill C-31 Indians" and the scarcity of reserve land, automatic membership did not necessarily translate into a right to reside on-reserve, creating another source of internal conflict.

Notwithstanding the above-noted criticism, the legislation is clear in its intent and does not support a claim by Ms. Huzar and Ms. Kolosky to automatic band membership.

[15] I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

[16] Even if I am wrong in my interpretation of these legislative provisions, this application cannot be sustained at least in terms of the Applicants' claims to automatic band membership. All of the Applicants in this proceeding, among others, were named as Plaintiffs in an action filed in this Court on May 6, 1998 seeking mandatory relief requiring that their names be added to the Sawridge membership list. That action was struck out by the Federal Court of Appeal in a decision issued on June 13, 2000 for the following reasons:

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

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

See *Huzar v Canada*, [2000] FCJ no 873, 258 NR 246.

[17] It is not open to a party to relitigate the same issue that was conclusively determined in an earlier proceeding. The attempt by these Applicants to reargue the question of their automatic right of membership in Sawridge is barred by the principle of issue estoppel: see *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460.

[18] The Applicants are, nevertheless, fully entitled to challenge the lawfulness of the appeal decision rejecting their membership applications.

[19] The Applicants did not challenge the reasonableness of the appeal decision but only the fairness of the process that was followed. Their argument is one of institutional bias and it is set out with considerable brevity at para 35 of the Huzar and Kolosky Memorandum of Fact and Law:

35. It is submitted that the total membership of Sawridge First Nation is small being in the range of 50 members. Only three applicants have been admitted to membership since 1985 and these three are (were) the sisters of deceased Chief, Walter Twinn. The Appeal Committee consisted of 21 of the members of Sawridge and three of these 21 were the Chief, Roland Twinn and Councillors, Justin Twinn and Winona Twin, who made the original decision appealed from.

[20] In the absence of any other relevant evidence, no inference can be drawn from the limited number of new memberships that have been granted by Sawridge since 1985. While the apparent involvement of the Chief and two members of the Band Council in the work of the Appeal Committee might give rise to an appearance of bias, there is no evidence in the record that would permit the Court to make a finding one way or the other or to ascertain whether this issue was waived by the Applicants' failure to raise a concern at the time.

[21] Indeed, it is surprising that this issue was not fully briefed by the Applicants in their affidavits or in their written and oral arguments. It is of equal concern that no cross-examinations were carried out to provide an evidentiary foundation for this allegation of institutional bias. The issue of institutional bias in the context of small First Nations with numerous family connections is nuanced and the issue cannot be resolved on the record before me: see *Sweetgrass First Nation v Favel*, 2007 FC 271 at para 19, [2007] FCJ no 347, and *Lavalee v Louison*, [1999] FCJ no 1350 at paras 34-35, 91 ACWS (3d) 337.

[22] The same concern arises in connection with the allegation of a section 15 Charter breach. There is nothing in the evidence to support such a finding and it was not advanced in any serious way in the written or oral submissions. The record is completely inadequate to support such a claim to relief. There is also nothing in the record to establish that the Crown was provided with any notice of what constitutes a constitutional challenge to the *Indian Act*. Accordingly, this claim to relief cannot be sustained.

[23] For the foregoing reasons these applications are dismissed with costs payable to the Respondent.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that these applications are dismissed with costs payable to the Respondent.

"R.L. Barnes"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-923-12  
T-922-12

**STYLE OF CAUSE:** STONEY v SAWRIDGE FIRST NATION  
and  
HUZAR ET AL v SAWRIDGE FIRST NATION

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** March 5, 2013

**REASONS FOR JUDGMENT:** BARNES J.

**DATED:** May 15, 2013

**APPEARANCES:**

Priscilla Kennedy FOR THE APPLICANTS  
Edward H. Molstad FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Davis LLP FOR THE APPLICANTS  
Edmonton, Alberta

Parlee McLaws LLP FOR THE RESPONDENT  
Edmonton, Alberta

TAB 4



Courts Administration Service  
Service administratif des  
tribunaux judiciaires

**Facsimile Transmittal Form / Formulaire d'acheminement par télécopieur**

**TO / DESTINATAIRE(S) :**

1. Name / Nom : Ellery Jamison  
Facsimile / Télécopieur : 1-780-423-2870
2. Name / Nom: Priscilla Kennedy  
Facsimile / Télécopieur : 1-780-702-4383

FROM / EXPÉDITEUR : Heather Michaud	DATE : October 22, 2014
Telephone / Téléphone : 416-954-2528	TIME / HEURE : 2:44 PM
Facsimile / Télécopieur : 416-973-2154	Total number of pages (including this page) / Nombre de pages (incluant cette page) : 7

**SUBJECT / OBJET :**

T-922-12 and T-923-12 – Certificates of Assessment (1 for each file). Originals will be sent via registered mail to the attention of Ellery Jamison at Parlee McLaws LLP

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

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

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

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

N.B.: If you do not receive all pages being transmitted, please call the sender at the above telephone number. / Si vous ne recevez pas toutes les pages transmises, prière de communiquer avec l'expéditeur au numéro de téléphone ci-haut.

Federal Court



Cour fédérale

Date: 20141022

Docket: T-923-12

**BETWEEN:**

**MAURICE FELIX STONEY**

**Applicant**

**and**

**SAWRIDGE FIRST NATION**

**Respondent**

**CERTIFICATE OF ASSESSMENT**

**UPON** the Reasons for Judgment and Judgment delivered by the Court on May 15, 2013,  
dismissing the Application for Judicial Review with costs payable to the Respondent;

**AND UPON** the filing of the Bill of Costs;

**AND UPON** the Directions issued and served upon the parties on July 29, 2014,  
informing the parties that the assessment of costs would proceed in writing and of the deadline to  
file representations;

**AND UPON CONSIDERING** the Affidavit of Disbursements of C. Candice  
Cherkowski sworn June 13, 2014;

Page: 2

**AND UPON CONSIDERING** that, no other representations were received by the Registry of the Court, nor were any request to extend the time to file submissions;

**AND UPON CONSIDERING** the decision in *Dahl v Canada*, 2007 FC 192, in which it is stated at paragraph 2:

Effectively, the absence of any relevant representations by the Plaintiff, which could assist me in identifying issues and making a decision, leaves the bill of costs unopposed. My view, often expressed in comparable circumstances, is that the *Federal Courts Rules* do not contemplate a litigant benefiting by an assessment officer stepping away from a position of neutrality to act as the litigant's advocate in challenging given items in a bill of costs. However, the assessment officer cannot certify unlawful items, i.e. those outside the authority of the judgment and the Tariff.

**AND UPON HAVING CONSIDERED** the above referenced comments and the lack of challenge by the opposing party, I have reviewed the file and the materials submitted to ensure that the assessable services are claimed within the authority of the Tariff B of the *Federal Courts Rules*;

**AND UPON HAVING CONCLUDED** that the assessable services claimed under Tariff B of the *Federal Courts Rules* are reasonable;

**AND UPON HAVING CONCLUDED** that the disbursements claimed were all necessary charges for the conduct of this matter and that the amounts claimed are reasonable and necessary;

Page: 3

**I HEREBY CERTIFY** that the Bill of Costs presented by the Respondent is assessed  
and allowed at \$2,995.65.

"Johanne Parent"  
Assessment Officer

CERTIFIED AT TORONTO, ONTARIO, this 22<sup>nd</sup> day of October, 2014.

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the \_\_\_\_\_

day of OCT 22 2014 A.D. 20\_\_\_\_

Dated this \_\_\_\_\_ day of OCT 22 2014 20\_\_\_\_

HEATHER MICHAUD  
REGISTRY OFFICER  
AGENT DU GREFFE

Doris McKenna

---

From: Doris M. McKenna  
Sent: Thursday, October 23, 2014 8:48 AM  
To: 'pkennedy@davis.ca'  
Subject: Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky v. Sawridge First Nation; Action Number: T-922-12; Maurice Felix Stoney v. Sawridge First Nation; Action Number: T-923-12; (Our File: 64203-8/EHM)  
Attachments: 0064203-000008\_5614\_20141023\_07524683071.PDF

***This message is sent on behalf of Ellery Jamison. Please direct any response you may have to Ms. Jamison directly at (780) 423-8536 or [ejamison@parlee.com](mailto:ejamison@parlee.com). Thank you.***

Please see attached correspondence from Ms. Jamison dated October 22, 2014. Should you have any difficulty with the attachment, please immediately advise.

Doris M. McKenna | Legal Assistant



PARLEE McLAWS LLP

1500 Manulife Place, 10180-101 Street Edmonton, AB T5J 4K1  
Direct: 780.423.8500 | Fax: 780.423.2870 | Email: [mckendo@parlee.com](mailto:mckendo@parlee.com)

**LEGAL NOTICE:** The information contained in this email (including any attachments) is: (a) confidential, proprietary and subject to copyright, and may be subject to solicitor/client privilege, all such rights being reserved and not waived, and (b) intended only for the use of the named recipient(s). If you have received this communication in error, please notify us immediately by return email or telephone and delete all copies of the original message. If you are not an intended recipient, you are advised that copying, forwarding or other distribution of this email is prohibited. Thank you



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

October 22, 2014

**ELLERY JAMISON**  
DIRECT DIAL: (780) 423-8536  
DIRECT FAX: (780) 423-2870  
EMAIL: [ejamison@parlee.com](mailto:ejamison@parlee.com)  
OUR FILE #: 64203-S/EHM

**SENT VIA EMAIL: [pkennedy@davis.ca](mailto:pkennedy@davis.ca)**

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

**Attention: Ms. Priscilla Kennedy**

Dear Madam:

**Re: *Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky v. Sawridge First Nation***  
**Action Number: T-922-12**  
  
***Maurice Felix Stoney v. Sawridge First Nation***  
**Action Number: T-923-12**

Further to the Assessment Officer's issuance of the Certificate of Costs in respect of the above noted matters, please advise as to when we can expect to receive payment of our Bills of Costs from your client. We note that the Assessment Officer allowed costs at \$2,995.65 for each action.

I look forward to hearing from you at your earliest convenience.

Yours truly,

**PARLEE McLAWS LLP**



**ELLERY JAMISON**

ELJ/dmm

## Scanning Device

Dev. Name:   
Scan Time: 01/08/15 15:44:00  
Sender's Account: POSSKA

## Sender

RightFax ID: POSSKA  
Name: Karen E. Poss  
Voice Number: 780.423.8517  
Fax Number:

## Destination

Fax Number: 7807024383  
Name: Fax User  
Company:  
Voice Number:

## Consist

Type: Fax  
Coverpage: does not have a cover page  
Body Pages: 8  
Billing Code #1: 64203  
Billing Code #2: 8  
Unique ID: POSS4AEA5FD54DB

## Results

Result: Success  
Submitted at: 01/08/15 15:45:01  
Completed at: 01/08/15 15:45:13  
Remote CSID: 6046871612  
Fax Channel: 6

### PARLEE McLAWS<sup>TM</sup>

1822 Vineyard Place  
18180-521 Street  
Bismarck, ND 58101  
Tel: 701.435.8550 Fax: 701.423.2070  
WWW.PARLEE.COM

Fax

#### TO:

NAME	COMPANY	FAX NUMBER	YOUR FILE
Priscilla Kennedy	Davis LLP	780.702.4383	

#### FROM:

NAME	PHONE NUMBER	DATE	OUR FILE
Erney Janice	(780) 423-8536	January 8, 2015	64203-85104

If all 8 page(s) are not received or transmission problems occur, call  
Karen at 780-423-8517

RE: Hester et al v. Sawbridge First Nation (File No. T-2012-12) and Hester v.  
Sawbridge First Nation (File No. T-2012-12)

#### COMMENTS:

Please see the attached. Original to return via file.  
Thank you.

PARLEE McLAWS<sup>TM</sup> is a registered trademark of Parlee McLaws Inc. The company is located only for the use of the trademark or entity in which it is located and does not constitute an offer of insurance, underwriting, or other financial services. If the reader of this document is not the insured, the company is not responsible for the accuracy of the coverage or the amount of the premium. The company is not responsible for the accuracy of the coverage or the amount of the premium. The company is not responsible for the accuracy of the coverage or the amount of the premium. If you have any questions or concerns, please contact your broker or agent. Thank you.



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

1500 Manulife Place  
10180-101 Street  
Edmonton, AB T5J 4K1  
Tel: 780.423.8500 Fax: 780.423.2870  
WWW.PARLEE.COM

**Fax**

**TO:**

NAME	COMPANY	FAX NUMBER	YOUR FILE
Priscilla Kennedy	Davis LLP	780 702-4383	

**FROM:**

NAME	PHONE NUMBER	DATE	OUR FILE
Ellery Jamison	(780) 423-8536	January 8, 2015	64203-8/EHM

**If all <sup>8</sup> page(s) are not received or transmission problems occur, call  
Karen at 780-423-8517**

**RE: Huzar et al v. Sawridge First Nation (File No. T-922-12) and Stoney v.  
Sawridge First Nation (File No. T-923-12)**

**COMMENTS:**

Please see the attached. Original to remain on file.  
Thank you.

{E6772520.DOCX; 1} This message is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential and exempt from disclosure. If the reader of this message is not the intended recipient or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.



**PARLEE McLAWS** LLP  
BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

January 8, 2015

**ELLERY JAMISON**  
DIRECT DIAL: (780) 423-8536  
DIRECT FAX: (780) 423-2870  
EMAIL: [ejamison@parlee.com](mailto:ejamison@parlee.com)  
OUR FILE #: 64203-8/EHM

***SENT VIA FACSIMILE***

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

***Attention: Ms. Priscilla Kennedy***

Dear Madam:

**Re: *Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky v. Sawridge First Nation***  
**Action Number: T-922-12**

***Maurice Felix Stoney v. Sawridge First Nation***  
**Action Number: T-923-12**

Further to our previous correspondence respecting costs payable by your client in respect of the above-noted matter, we note that the costs award given by the Assessment Officer remains outstanding.

We write to demand payment of the costs award in the amount of \$2,995.65 in Action No. T-922-12 and the amount of \$2,995.65 in Action No. T-923-12 within one month of the date of this letter, failing which we will seek instructions from our clients to pursue other judgment enforcement measures against your client. We have enclosed copies of the Assessment Officer's Certificate of Assessment for your reference.

We look forward to hearing from you at your earliest convenience.

Yours truly,

**PARLEE McLAWS LLP**



**ELLERY JAMISON**

ELJ/kp  
Enclosures

TAB 5



Canadian  
human rights  
commission

Commission  
canadienne des  
droits de la personne

Deputy Chief Commissioner  
Vice-president

**PROTECTED B**

Chief Roland Twinn  
Chief of Sawridge First Nation  
PO Box 326  
Slave Lake Alberta T0G 2A0

APR 29 2015

Dear Chief Twinn:

I am writing to inform you of the decision taken by the Canadian Human Rights Commission in the complaint (20140008) of Maurice Stoney against Sawridge First Nation.

Before rendering the decision, the Commission reviewed the report disclosed to you previously and any submission(s) filed in response to the report. After examining this information, the Commission decided, pursuant to paragraph 41(1)(d) of the *Canadian Human Rights Act*, not to deal with the complaint.

The decision of the Commission is attached.

Accordingly, the file on this matter has now been closed.

If you have any questions please do not hesitate to contact Allan Carter, Commission Meeting Unit, at (613) 943-9530 or by email: [allan.carter@chrc-ccdp.gc.ca](mailto:allan.carter@chrc-ccdp.gc.ca).

.../2

This is Exhibit "5" referred to in the  
Affidavit of

Roland Twinn

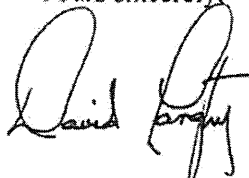
Sworn before me this 21 day  
of September A.D. 2016

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

MICHAEL R. McKINNEY Q.C.  
BARRISTER & SOLICITOR

For your information, either party to a complaint can ask the Federal Court to review a Commission's decision under subsection 18.1(1) of the *Federal Courts Act*. The application to the Court must normally be filed within 30 days of receipt of the Commission's decision. Also, please note that the Court has found that the Commission cannot be a respondent in a judicial review of its own decision. Please refer to Rule 303(1) of the Federal Courts Rules, which indicates that an applicant shall name as a respondent every person directly affected by the order sought in the application, other than the tribunal whose decision is under review. To enquire about the procedures, please contact the Federal Court office in Ottawa at (613) 992-4238 or visit the website at [www.fct-cf.gc.ca](http://www.fct-cf.gc.ca).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Langtry', with a stylized flourish at the end.

David Langtry

Encl.

c.c.: Mr. Edward H. Molstad, Q.C.



Canadian  
human rights  
commission

Commission  
canadienne des  
droits de la personne

**Record of Decision under Sections 40/41**

**PROTECTED**

**Complaint Information**

**File Number(s):** 20140008

**Date of Complaint(s):** January 31, 2014

**Complainant(s):** Maurice Stoney

**Respondent(s):** Sawridge First Nation

**Decision under section 41**

The Commission decided, for the reasons identified below, not to deal with the complaint, under paragraph 41(1)(d) of the *Canadian Human Rights Act*.

The Commission further decided that a decision under paragraph 41(1)(e) of the *Canadian Human Rights Act* is therefore unnecessary.

**Material considered when decision made**

The following documents were reviewed:

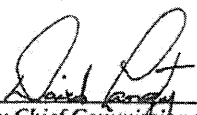
- Complaint form dated January 31, 2014
- Section 40/41 report dated January 21, 2015
- Complainant's submission dated February 6, 2015
- Respondent's submission dated March 23, 2015

**Reasons for decision**

The Commission adopts the following conclusion set out in the Section 40/41 Report:

*The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in his application for judicial review when he alleged that the decision violated the Charter; however, he did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in Figliola held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.*

**Signature**

  
Deputy Chief Commissioner

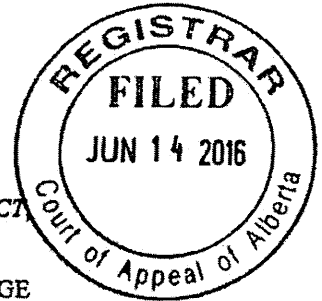
April 15, 2015

Date

TAB 6

I hereby certify this to be a true copy.

For Deputy Registrar  
Court of Appeal of Alberta Form 44  
[Rule 10.35(1)]



COURT OF APPEAL FILE NUMBER 1603-0033AC  
TRIAL COURT FILE NUMBER 1103 14112  
JUDICIAL CENTRE EDMONTON

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

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

APPLICANT: MAURICE STONEY

STATUS ON APPEAL APPELLANT

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

STATUS ON APPEAL RESPONDENTS

RESPONDENT: PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL RESPONDENT

INTERESTED PARTY/  
RESPONDENT:

THE SAWRIDGE FIRST NATION  
Sworn before me this 21 day  
of September A.D. 2016

STATUS ON APPEAL RESPONDENT

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

MICHAEL R. MCKINNEY Q.C.  
BARRISTER & SOLICITOR

DOCUMENT

BILL OF COSTS OF THE SAWRIDGE  
FIRST NATION

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

PARLEE MCLAWS LLP  
Barristers & Solicitors  
Patent & Trademark Agents

1500, 10180-101 Street NW  
Edmonton, AB T5J 4K1  
Attention: Edward H. Molstad, Q.C.  
Phone: (780) 423-8506  
Fax: (780) 423-2870  
File No: 64203.7/EHM

**BILL OF COSTS OF THE SAWRIDGE FIRST NATION**

**Fees claimed:**

ITEM NO.	ITEM	AMOUNT
22	Appearance on contested application before Appeal Court, including brief	\$750.00
<b>TOTAL</b>		<b>\$750.00</b>

**DISBURSEMENTS & OTHER CHARGES:**

DISBURSEMENT & OTHER CHARGES SUMMARY	
<b>DISBURSEMENTS, OTHER CHARGES &amp; GST</b>	
Disbursements:	
Other Charges:	
Copies (67 pages x 8 copies x 0.15/page)	\$80.40
Deliveries	\$25.50
Sub-total:	\$105.90
GST:	\$5.30
TOTAL:	\$111.20

**GST:**

- (a) Amount claimed on fees (5% GST): \$37.50
- (b) Amount claimed on disbursements: \$ nil
- (c) Amount claimed on other charges: \$ 5.30

**TOTAL GST:** \$42.80

By making the above claim for an additional amount on account of goods and services tax, the party entitled to the costs award warrants that it is not entitled under the *Excise Tax Act* (Canada) to a refund or rebate of any goods and services tax paid.

**Total amount claimed:**

Fees: \$750.00  
Disbursements: nil  
Other Charges: \$105.90  
  
**TOTAL GST:** \$42.80  
**TOTAL:** \$898.70

**APPROVED AS BEING THE COSTS  
AWARDED:**

DLA PYPER (CANADA) LLP

PER: 

Priscilla Kennedy  
Solicitors for the Appellant, Maurice  
Stoney

**APPROVED AS BEING THE COSTS  
AWARDED:**

PARLEE MCLAWS LLP

for:  
PER: 

Edward H. Molstad, Q.C.  
Solicitors for the Sawridge First  
Nation

I, Robyn Cochran, certify the following amount that is to be paid

By Applicant \$898.70

To Sawridge First Nation.

Dated: June 14, 2016

Name of Assessment officer: Robyn Cochran

Signature: 

**Tab B**

## EXHIBIT "L"

Received of L the sum of  
in full of  
MAURICE STONEY  
on the 17th  
MAY 1916  
Secretary Public, A.C. Commissioner for Publics  
in and for the Province of Alberta

Wiscilla S.S.J. Kennedy  
Clerk & Solicitor



Rec'd  
Dec 13/11

3

50-17/14

REGISTERED MAIL

December 7, 2011

Mr. Maurice Stoney  
500-4<sup>th</sup> Street NW  
Slave Lake, Alberta  
T0G 2A1

Dear Sir:

**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 did not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 2) The Council was not 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.

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

**Tab C**

COURT FILE NUMBER

1103 14112

COURT:

COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE:

EDMONTON

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

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

APPLICANTS:

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

DOCUMENT

**WRITTEN SUBMISSIONS OF  
THE SAWRIDGE FIRST  
NATION**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

PARLEE McLAWS LLP  
1500 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 4K1  
Attention: Edward H. Molstad, Q.C.  
Telephone: (780) 423-8500  
Facsimile: (780) 423-2870  
File Number: 64203-7/EHM

Clerk's Stamp



**TABLE OF CONTENTS**

I.	Introduction.....	1
II.	Facts .....	2
III.	Issues.....	10
IV.	Analysis.....	11
V.	Relief Requested .....	22

1. **INTRODUCTION**

1. These submissions concern the Sawridge First Nation's ("Sawridge") application to be granted status to intervene in the application by Maurice Felix Stoney and his brothers and sisters (the "Applicants"), filed on August 12, 2016 (the "Stoney Application"), to be added as a party or intervenor to this Action. Additionally, these submissions contain Sawridge's response to the merits of the Stoney Application.

2. These submissions have been submitted along with Sawridge's application for intervenor status, and the Affidavit of Chief Roland Twinn, sworn on September 21, 2016, in accordance with the directions given by Justice D.R.G. Thomas during the case management conference that occurred on August 24, 2016.

3. It is Sawridge's position that the Stoney Application represents the latest in a series of attempts by Maurice Stoney and his family to assert that they have an entitlement to membership in Sawridge. Sawridge has been involved in litigation and administrative hearings with Maurice Stoney for decades. The membership issue that is at the forefront of the Stoney Application has been adjudicated as part of that previous litigation, and has resulted in findings being made on a number of grounds that Maurice Stoney and his family did not have any right to membership in Sawridge. Maurice Stoney and his brothers and sisters are not members of Sawridge and have never been members of Sawridge at any time so as to qualify them as beneficiaries to the 1982 and 1985 Trusts, as alleged in the Stoney Application.

4. In light of the fact that the Stoney Application again raises the issue of Maurice Stoney and his family's entitlement to membership in Sawridge, Sawridge submits that it is appropriate to grant it status to intervene in the Stoney Application. Any findings made in relation to membership would have a direct impact on Sawridge. Furthermore, given Sawridge's prior dealings with Mr. Stoney and his family concerning these membership-related issues, it is able to provide a perspective that is unique to any of the other parties to this Action.

5. With regards to the merits of the Stoney Application, Sawridge submits that the application should be struck, as the basis for Mr. Stoney and his family to request status as a party is directly connected to their assertion that they are or have been members of Sawridge. As

that issue is *res judicata*, the Stoney Application constitutes an abuse of process. In the alternative, the fact that the membership-related matters at the heart of the Stoney Application have already been adjudicated is a basis for dismissing said application.

6. Given Maurice Stoney's zealous approach to litigating his alleged entitlement to membership in Sawridge (notwithstanding the fact that the issue is *res judicata*), it is submitted that it is appropriate to award solicitor and his own client costs against the Applicants. The fact that Maurice Stoney has refused to pay costs awards against him arising from prior proceedings involving Sawridge further supports this position.

## II. FACTS

### A. Background regarding the Stoney family

7. Maurice Stoney ("Maurice") was born in 1941, Maurice's father was William Stoney, and his grandfather was Johnny Stoney.

Affidavit of Maurice Stoney, sworn May 17, 2016 ["*Stoney Affidavit*"], at paras 6 and 8.  
Affidavit of Chief Roland Twinn, sworn September 21, 2016 ["*Twinn Affidavit*"], at para 4.

8. In 1944, William Stoney voluntarily gave up his Indian status and was enfranchised. As a result, William's family (including his wife and their two sons, Maurice and Alvin) were enfranchised and were consequently no longer members of Sawridge. At the time of his and his family's enfranchisement, it is Sawridge's understanding that, based on the enfranchisement documents that were completed, William Stoney only had two sons, being Maurice and Alvin.

*Twinn Affidavit*, at paras 5, 31 and 32.

9. Maurice has alleged that a number of his brothers and sisters were born following his family's enfranchisement. The materials filed in support of the Stoney Application do not contain any records that would serve to verify any of the assertions made regarding his family.

*Stoney Affidavit*, at para 8.

*B. Membership disputes with Maurice Stoney*

10. Bill C-31 was enacted by the Federal Government on April 17, 1985. It gave Maurice the right to have his Indian status restored, but did not give him any rights in relation to membership in Sawridge. At most, he was able to apply for membership in Sawridge. Any such application was to be adjudicated in accordance with Sawridge's own membership rules, as Sawridge had assumed control of its membership process on July 8, 1985, in accordance with section 10 of the *Indian Act*.

*Twin Affidavit*, at paras 6 and 7.

11. Sawridge took the position following the enactment of Bill C-31 that said bill did not grant Maurice or any of his family members an automatic right to membership in Sawridge.

12. Maurice, two of his cousins (Aline Huzar and June Kolosky), and a number of others filed a claim in Federal Court against Sawridge in 1995, wherein they sought damages related to Sawridge's decision to not grant them membership following the enactment of Bill C-31 (the "1995 Action"). The plaintiffs in that action sought an order that their names be added to Sawridge's membership list.

*Twin Affidavit*, at paras 8-10.

13. The plaintiffs in the 1995 Action brought an application to amend their Statement of Claim to include a request for a declaration that Sawridge's membership rules were discriminatory and exclusionary, and were accordingly invalid. The application was initially granted. That decision was appealed by Sawridge to the Federal Court of Appeal.

*Twin Affidavit*, at paras 11 and 12.

14. On June 13, 2000, the Federal Court of Appeal delivered its decision regarding Sawridge's appeal. It agreed with Sawridge, and allowed the appeal of the decision amending the Statement of Claim, with costs payable to Sawridge for both the initial application and the appeal.

*Huzar v Canada*, 2000 CanLII 15589 (FCA), at para 6. [Tab 1]

*Twin Affidavit*, at para 29.

15. One of the arguments that was raised during the 1995 Action was that the plaintiffs were entitled to membership in Sawridge as a result of Bill C-31. Specifically, it was argued that Bill C-31 invalidated Sawridge's membership rules, and that accordingly, Maurice and the other plaintiffs were entitled to membership. In response to that argument, the Federal Court of Appeal noted as follows:

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

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

*Huzar v Canada*, 2000 CarswellNat 1132 (FCA), at paras 4 and 5. [Tab 1]

16. Maurice's next step in relation to his claim for membership in Sawridge was to complete a membership application pursuant to Sawridge's membership rules. His completed application for membership was submitted on August 30, 2011. Contrary to the assertions made in Maurice's Affidavit filed in support of the Stoney Application, that application was never ignored.

*Twinn Affidavit*, at paras 15 and 16

17. Maurice's application for membership was denied on or around December 7, 2011. According to the letter that was sent to Maurice enclosing Sawridge's decision, his application was rejected (i) because he did not have any specific right to membership, and (ii) because Sawridge's Council did not consider that his admission would be in the best interests and welfare of Sawridge and as a result did not see any reason to exercise its discretion under its membership rules to admit him as a member.

*Twinn Affidavit*, at para 16.

*Stoney Affidavit*, at Exhibit "L".

18. In accordance with Sawridge's membership rules and its Constitution, Maurice appealed the decision regarding his membership to Sawridge's Appeal Committee. The hearing of that appeal occurred on April 21, 2012. The committee upheld the initial decision to deny the application for membership.

*Twinn Affidavit*, at para 17.

19. Maurice brought an application for judicial review of the decision to deny him membership. That application was filed on May 11, 2012 (the "2012 Action").

*Twinn Affidavit*, at para 18.

20. As part of the 2012 Action, Maurice advanced a number of grounds which he alleged were cause to overturn the decision to deny him membership. Those grounds are listed in Maurice's Notice of Application that was filed with the Federal Court. They concern his alleged right to membership as a result of the enactment of Bill C-31. Additionally, the submissions filed by Maurice refer to arguments regarding allegations of bias, and arguments pursuant to section 15 of the *Charter*, as well as section 35 of the *Constitution Act, 1982*.

Notice of Application, Federal Court Action No. T-923-12. [Tab 2]

21. Maurice swore an Affidavit as part of the 2012 Action. In that Affidavit, he alleged (much like in the Affidavit sworn in support of the Stoney Application) that he was entitled to automatic membership in Sawridge as a result of the enactment of Bill C-31.

Affidavit of Maurice Felix Stoney, sworn May 22, 2012, Federal Court Action No. T-923-12, at para 8. [Tab 3]

22. Chief Roland Twinn swore an Affidavit on June 26, 2012, in response to the Affidavit sworn by Maurice in the 2012 Action. In his Affidavit, Chief Twinn affirmed, *inter alia*, the following:

- (a) Sawridge did not receive a completed membership application from Maurice until August 30, 2011;

- (b) Sawridge's decision to deny Maurice's application for membership was based on a consideration of a number of records, including his completed membership application, historical documents, and media articles;
- (c) Maurice was given the ability to make both written and oral submissions to Sawridge's Appeal Committee, both of which were done by his counsel; and
- (d) Maurice's father (and as a result his whole family) voluntarily enfranchised in 1944.

*Twinn Affidavit*, at para 19 and at Exhibit "2" at paras 2, 3, 8, 11, 12, and 18.

23. Maurice's application for judicial review in the 2012 Action proceeded on March 5, 2013, before Justice Barnes of the Federal Court (Trial Division). Justice Barnes dismissed Maurice's application, and awarded costs to Sawridge.

*Stoney v Sawridge First Nation*, 2013 FC 509, [Tab 4]

24. In his written reasons, Justice Barnes engaged in a thorough analysis of Mr. Stoney's argument regarding his entitlement to membership under Bill C-31. He found that Bill C-31 did not provide Maurice with an automatic right to membership in Sawridge. Rather, Justice Barnes noted that Maurice lost his right to membership when his father obtained enfranchisement for the entire Stoney family:

I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

*Stoney v Sawridge First Nation*, 2013 FC 509, at paras 11-15, [Tab 4]

25. Additionally, Justice Barnes wrote that the judicial review application that was the subject matter of the 2012 Action was an attempt by Maurice to re-litigate the matters that were in issue in the 1995 Action, being his entitlement to membership as a result of Bill C-31. The Justice accordingly concluded that the arguments related to Bill C-31 were barred under the doctrine of issue estoppel.

*Stoney v Sawridge First Nation*, 2013 FC 509, at para 17. [Tab 4]

26. With regards to a number of the other arguments advanced by Maurice, the Justice wrote that there was a lack of evidence and submissions put forward by Maurice related to same. Accordingly, those arguments were dismissed.

*Stoney v Sawridge First Nation*, 2013 FC 509, at paras 19-22. [Tab 4]

27. Following the issuing of Justice Barnes' reasons in the 2012 Action, Sawridge proceeded to take steps to assess the costs that were payable by Maurice. A Federal Court Assessment Officer determined that Sawridge was entitled to \$2,995.65 in costs. These costs have never been paid.

*Twin Affidavit*, at paras 22 and 29.

28. On January 31, 2014, Maurice filed a complaint with the Canadian Human Rights Commission ("CHRC") regarding Sawridge's decision to deny him membership (the "CHRC Complaint"). Much like in both the 1995 Action and the 2012 Action, Mr. Stoney's complaint was based on an allegation that Sawridge's decision to deny his membership was discriminatory.

*Twin Affidavit*, at para 24.

29. The Deputy Chief Commissioner of the CHRC issued a decision regarding the complaint by Maurice on April 15, 2015. The commissioner refused to address the complaint, as the subject matter of the complaint had already been dealt with as part of the 1995 Action and the 2012 Action:

The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent [Sawridge] which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in his application for judicial review when he alleged that the decision violated the Charter; however, he did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in *Figliola* held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in

both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.

Record of Decision re: File 20140008, dated April 15, 2015: *Twinn Affidavit*, at Exhibit "5".

30. Most recently, Maurice attempted to become involved in this Action in late 2015. Specifically, he attempted to file an appeal of a case management decision made by Justice D.R.G. Thomas, being *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 ("*Sawridge #3*"). Maurice was not a party to this Action at that time. In light of the fact that Maurice's counsel had failed to file a Civil Notice of Appeal within the requisite time under the *Rules of Court*, Mr. Stoney brought an application to extend the time for him to file an appeal of *Sawridge #3*. That application was heard by Justice J. Watson of the Court of Appeal on February 17, 2016.

*Stoney v 1985 Sawridge Trust*, 2016 ABCA 51. [Tab 5]

31. On February 26, 2016, Justice Watson issued his reasons for decision regarding Maurice's application. The Justice dismissed the application, and awarded costs to the parties that participated in that application, which included Sawridge.

*Stoney v 1985 Sawridge Trust*, 2016 ABCA 51, at paras 23 and 24. [Tab 5]

32. In his written reasons, Justice Watson provided an overview of the basis of Maurice's argument that he should participate in this Action:

The application before me now is by a gentleman named Maurice Stoney. Mr. Stoney claims, with some vigour, that he is a member of the First Nation in question and that he has been for a long time, and that as a member of the First Nation, certain legal rights of his follow from this.

[...] As mentioned, Mr. Stoney's position is that he is a member of the Sawridge First Nation and that as a consequence of that he presumably has a right to some share in the distribution of the trust when that is eventually carried out.

*Stoney v 1985 Sawridge Trust*, 2016 ABCA 51, at paras 2 and 3. [Tab 5]

33. With regards to Maurice's allegations regarding his membership in Sawridge, while Justice Watson did not make any findings regarding same, he did note the following:

It therefore follows that in terms of determining reasonable chance of success in the appeal, the embargo against the participation of Mr. Stoney that is or has been created by the various proceedings that have occurred in various courts including the Federal Court as raised by the First Nation, has an enhanced status for the purposes of determining the extension of time here. That is because, on the face of things, Mr. Stoney does not have a participatory right in relation to the proceedings on the trust, does not have standing to appeal within the meaning of the case of Dreco Energy Services Ltd et al v Wenzel Downhole Tools Ltd, 2008 ABCA 36 (CanLII), 429 AR 51 at paras 5 to 8, and is, in fact, a stranger to the proceedings insofar as an appeal from the decision of Mr. Justice Thomas to the Court of Appeal is concerned. [Emphasis Added]

*Stoney v 1985 Sawridge Trust*, 2016 ABCA 51, at para 20. [Tab 5]

34. Pursuant to Justice Watson's decision, Sawridge prepared a Bill of Costs regarding the application. That Bill of Costs was agreed to by Maurice's counsel, and was filed on June 14, 2016. Pursuant to that Bill of Costs, he is required to pay Sawridge \$898.70. To date, he has not paid Sawridge these costs.

*Twinn Affidavit*, at paras 28 and 29

C. Membership disputes with other applicants

35. Sawridge received inquiries regarding membership from William C. Stoney, Bernie Stoney, and Gail Stoney. With regards to William C. Stoney, he submitted two applications for membership, one on January 14, 2009 and the other on January 25, 2011. In both cases, his application was denied. It is not clear if William C. Stoney is the individual referred to as "Billy" in the Affidavit sworn by Maurice in support of the Stoney Application.

*Twinn Affidavit*, at paras 33-35.

36. With regards to Bernie and Gail Stoney, Sawridge provided both of them with membership application forms, but Sawridge has never received a completed application form from either of them.

*Twinn Affidavit*, at paras 34 and 35.

37. None of the other siblings listed in Maurice's Affidavit sworn in support of the Stoney Application have requested a membership application forms from Sawridge or submitted a completed application to Sawridge.

*Twinn Affidavit*, at para 36.

38. In any event, Maurice has deposed that a number of his brothers and sisters were born following his family's enfranchisement in 1944, namely: Angeline, Linda, Bernie, Betty Jean, Gail, Alma, Alva, and Bryan. It is clear from the decisions issued in the 1995 Action and the 2012 Action that any siblings born after his family's enfranchisement were not members of Sawridge and could not become members of Sawridge without applying for and being granted membership by Sawridge. As such, these siblings are not, and have never been, members of Sawridge.

*Stoney Affidavit*, at para 8.

*Twinn Affidavit*, at para 30.

### III. ISSUES

39. Sawridge submits that the issues before this Honourable Court are as follows:

- (a) Should Sawridge be granted the status to intervene in the Stoney Application, pursuant to Rule 2.10 of the *Rules of Court*?
- (b) Should the Stoney Application be struck, in whole or in part, pursuant to Rule 3.68 of the *Rules of Court*?
- (c) In the alternative, should the Stoney Application be dismissed?
- (d) If the Stoney Application is struck and/or dismissed by this Honourable Court, is Sawridge entitled to costs on a solicitor and his own client basis, or, in the alternative, costs on an enhanced basis?

#### IV. ANALYSIS

##### A. Sawridge should be granted intervenor status

40. This Honourable Court's authority to grant intervenor status comes from Rule 2.10 of the *Rules of Court*. That rule simply states that a Court may grant a person status to intervene subject to any terms and conditions deemed appropriate:

2.10 On application, a Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

*Rules of Court*, Alta Reg 124/2010, at 2.10. [Tab 6]

41. In light of the fact that Rule 2.10 does not expressly state how a Court should adjudicate a request for intervenor status, reliance must be placed on the common law that has developed surrounding applications for intervenor status. In *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, Chief Justice Fraser summarized the process for reviewing applications to intervene as follows:

A two-step approach is commonly used to determine an intervenor application. The Court typically first considers the subject matter of the proceeding and second, determines the proposed intervenor's interest in that subject matter.

*Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320, at para 5. [Tab 7]

42. With regards to the second step of the aforementioned two-step approach, Courts have generally held that a party should be given intervenor status if (i) it is specially affected by the decision in a matter, or (ii) it has some special expertise or perspective concerning the issues in a matter.

*Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2014 ABCA 340, at para 8. [Tab 8]

43. Alberta Courts have interpreted Rule 2.10 as allowing them to order that a person may intervene in an application. In *Suncor Energy Inc. v Unifor, Local 707 A*, for example, Chief Justice Wittmann granted intervenor status to two not-for-profit organization in a judicial review application. Specifically, the Chief Justice stated that the intervenors had the ability to make written and oral submissions in relation to the application.

*Suncor Energy Inc. v Unifor, Local 707 A*, 2014 ABQB 555, at paras 4, 7-8 and 21-22. [Tab 9]

44. In the present matter, Sawridge is seeking an order allowing it to respond to the Stoney Application, including (i) the right to question the Applicants on any Affidavits filed as part of this application, (ii) the right to put forward a cross-application to strike the Stoney Application, and (iii) the right to make submissions. With regards to the issue of questioning the Applicants on any Affidavits, Sawridge was advised that it was the position of Maurice that Sawridge was not a party to the Stoney Application and as a result, was not allowed to attend or participate in the questioning of Maurice that occurred on September 23, 2016.

45. Sawridge has a clear direct interest in the Stoney Application, because of the link between the issue of Maurice and his family's entitlement to be named as parties to this Action, and the issue of their membership in Sawridge. As noted above, the basis of the Applicants' argument in the Stoney Application is that they have at all material times been members in Sawridge, and are accordingly beneficiaries under the 1985 Sawridge Trust. A finding that any of the Applicants have standing as beneficiaries of the 1985 Sawridge Trust would accordingly result in some finding being made regarding membership in Sawridge.

46. As a self-governing First Nation who, pursuant to the *Indian Act*, has control of its own membership list, Sawridge has a strong interest in ensuring that it maintains control over who is deemed a member. That interest is particularly pronounced in circumstances such as the present, where some of the Applicants have made applications for membership that have been denied pursuant to Sawridge's membership rules. Any Court decision related to the issue of membership accordingly has a significant effect on Sawridge.

47. Furthermore, Sawridge would be directly affected by a decision in the Stoney Application, as it could negatively impact Sawridge's ability to ensure that the issue of membership is adjudicated in the proper forum. As membership is governed by Sawridge's own membership rules, and given that the operations of First Nations are generally regulated at a Federal level, it is appropriate for determinations regarding membership to be heard in the Federal Court. The importance of preserving the Federal Court's jurisdiction in matters involving membership was addressed by Justice Thomas in *Sawridge #3*:

The same is true for this Court attempting to regulate the operations of First Nations, which are 'Bands' within the meaning of the *Indian Act*. The Federal Court is the better forum and now that the Federal Court has commented on the SFN membership process in *Stoney v Sawridge First Nation*, there is no need, nor is it appropriate, for this Court to address this subject. If there are outstanding disputes on whether or not a particular person should be admitted or excluded from Band membership then that should be reviewed in the Federal Court, and not in this 1985 Sawridge Trust modification and distribution process.

*1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799, at para 35. [Tab 10]

48. In relation to the issue of Sawridge's expertise, it brings a significant amount of expertise forward regarding Maurice and his family's claims regarding their membership in Sawridge. Unlike the other parties to this Action, Sawridge has been directly involved in matters relating to Maurice and his family's allegations of membership. That involvement has spanned over two decades and has necessitated the adjudication of a number of the same claims that are advanced as part of the Stoney Application. Having already responded to many of the Applicants' claims, Sawridge is in a position to offer a significant amount of insight to this Honourable Court regarding the Stoney Application.

49. As eluded to above, Sawridge's perspective is unique from those of the other parties to this Action, given that it has significant experience dealing with both the more general issue of membership in Sawridge and the more specific issue of the Applicants' entitlement to membership.

**B. The Stoney Application should be struck**

50. Rule 3.68 of the *Rules of Court* provides that a Court may take one of a number of actions if a commencement document constitutes an abuse of process. Those actions include striking all or any part of a claim.

*Rules of Court*, Alta Reg 124/2010, at 3.68. [Tab 6]

51. The expression "abuse of process" does not have a fixed definition; as Justice Slatter explained in *Reece v Edmonton (City)*, there are a number of ways to define an abuse of process. Establishing whether conduct constitutes an abuse of process will depend on the particular context of a matter and whether said conduct has a deleterious effect on the

administration of justice. A number of types of conduct have been considered abuses of process, including the re-litigation of settled issues.

*Reeve v Edmonton (City)*, 2011 ABCA 238, at paras 16-20. [Tab 11]

52. With regards to the relationship between the doctrine of abuse of process and the doctrines of issue estoppel and *res judicata*, Justice Slatter noted that all of these doctrines were connected, and that the doctrine of abuse of process could be used to prevent re-litigation of matters that did not fall directly into either of the other tests:

Both parties discussed *Toronto (City) v. Canadian Union of Public Employees Local 79*, 2003 SCC 63 (CanLII), [2003] 3 S.C.R. 77 in some detail. *Toronto v. CUPE* is primarily concerned with limits on the ability to re-litigate settled issues. It sets out the tests for the application of the doctrines of issue estoppel and *res judicata*. The most important aspect of *Toronto v. CUPE*, however, is its confirmation that there is a residual discretion in the courts, using the doctrine of abuse of process, to prevent re-litigation of issues even when the preconditions for issue estoppel and *res judicata* are not present.

*Reeve v Edmonton (City)*, 2011 ABCA 238, at para 17. [Tab 11]

53. In *Stoney Nakoda Nations v Canada (Attorney General)*, Justice McIntyre was faced with an application that is similar in nature to Sawridge's application to strike the Stoney Application. The plaintiffs in that case were members and representatives of the Stoney Nakoda Nation who had brought a claim against the Federal and Provincial governments in relation to their surrender of reserve lands to TransAlta Utilities in 1907, 1914 and 1929. The defendants brought an application to strike the plaintiffs' claim, on the basis that it constituted an abuse of process. The plaintiffs had commenced a number of actions concerning the surrender of the lands and their subsequent sale to TransAlta Utilities. Based on its assessment of the other actions that had been commenced by the plaintiffs, the Justice held that the action before him constituted an abuse of process.

*Stoney Nakoda Nations v Canada (Attorney General)*, 2015 ABQB 565, at paras 1, 16-25, 77-79. [Tab 12]

54. In coming to his decision in *Stoney Nakoda*, Justice McIntyre affirmed that a litigant's court history was relevant to establishing if an abuse of process existed. Furthermore,

he noted the following regarding the burden of establish that an action constituted an abuse of process:

The Plaintiffs argue that to strike the claim in its entirety, the Defendants must show that the Dixon action is the same as or is a duplication of the previous actions or the Wesley action. The case law above shows that the test is not so strict. Rather, the overall integrity of the administration of justice, including the principles of fairness, judicial economy, consistency, and finality are at the heart of the doctrine of abuse of process. [Emphasis Added]

*Stoney Nakoda Nations v Canada (Attorney General)*, 2015 ABQB 565, at para 25. [Tab 12]

55. Much like the plaintiff's in *Stoney Nakoda*, Maurice has commenced a number of proceedings related to his entitlement to membership in Sawridge. A review of the decisions and the materials in each of those proceedings indicates that he argued that he and his family should be granted automatic membership in Sawridge as a result of the enactment of Bill C-31. Additionally, he advanced constitutional arguments that appear to be similar to what is being put forward in the Stoney Application.

56. A review of the materials filed in support of the Stoney Application confirms that the Applicants are trying to insert themselves into this Action based on past arguments relating to their purported rights to membership. Maurice's Affidavit, for example, in paragraph 9, asserts that he and his family have "acquired rights" to membership pursuant to Bill C-31. That Affidavit also refers on a number of occasions to some of the aforementioned proceedings involving Maurice (i.e., the 1995 Action and the 2012 Action). Similarly, the Application filed by the Applicants addresses the issue of Maurice and his family's membership in Sawridge. These points, as noted above, have already been adjudicated, and have resulted in findings that Maurice and his family did not have any entitlement to membership.

57. In summary, the Stoney Application is an attempt by Maurice and his family to re-litigate matters that have previously been decided regarding membership. Taking into account these previous proceedings, it is clear that the Stoney Application constitutes an abuse of process. Accordingly, it is submitted that this Honourable Court should strike the Stoney Application in its entirety.

C. The Stoney Application should be dismissed

58. If this Honourable Court is not prepared to grant Sawridge's request for an order striking the Stoney Application, then it is submitted that the Application should be dismissed, on the basis that the membership-related matters addressed therein are (i) barred under the doctrine of issue estoppel, (ii) barred under the doctrine of cause of action estoppel, and (iii) are an abuse of process.

a. Issue estoppel

59. Much like the doctrine of abuse of process, issue estoppel is a doctrine that aims to stop a party from re-litigating a matter that was previously decided. In order to find that a party is estopped from advancing an action based on this doctrine, a Court must find that the following three preconditions have been met:

- Has the same question been decided?
- Was the judicial decision which is said to create the estoppel final?
- Were the parties to the decision or their privies were the same in both proceedings?

*Penner v Niagara (Regional Police Services Board)*, 2013 SCC 19, at paras 28-29, and 36. [Tab 13]

*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, at para 25. [Tab 14]

60. With regards to the first of the three above-listed preconditions, case law is clear that issue estoppel applies where a right, question or fact has been put into issue and determined.

*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, at paras 23 and 24. [Tab 14]

61. In relation to the third precondition, case law is clear that issue estoppel can apply where the parties to a subsequent action are not the exact same as the parties involved in the previous matter upon which the estoppel claim is based. As noted above, the test for finding issue estoppel requires that parties or their privies are involved in both proceedings. The Supreme Court of Canada has affirmed that this precondition is, "somewhat elastic." In *Banque Nationale de Paris (Canada) v Canadian Imperial Bank of Commerce*, the Ontario Court of Appeal, quoting the often-cited House of Lords case of *Carl-Zeiss-Stiftung v Rayner & Keeler*

*Ltd. (No. 2)*, affirmed that the requisite privity would exist where there is, "privity of either blood, of title or of interest." The third of these types of privity refers to the fact that there is a strong link between the interests of a party involved in prior proceedings and another party involved in later proceedings.

*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, at paras 59 and 60. [Tab 14]

*Banque Nationale de Paris (Canada) v Canadian Imperial Bank of Commerce*, 2001 CarswellOnt 25 (CA), at paras 26-29. [Tab 15]

62. Once the above three preconditions have been met, then a Court is required to determine if it should exercise its discretion to apply the doctrine. Case law has affirmed that the discretion to not apply issue estoppel once all of the preconditions are met is very limited. That discretion should only be relied upon where applying the doctrine would lead to an injustice.

*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, at paras 33, 62-64. [Tab 14]

63. Sawridge submits that the three preconditions under the test for issue estoppel are met in this case. In relation to the first precondition, the arguments raised by Maurice and his family regarding their entitlement to membership have already been decided in the context of the aforementioned proceedings. Those proceedings involved identical allegations regarding the effect of the Constitution and Bill C-31 on the Stoney family's right to membership. Furthermore, the record before the Court in those cases was very similar to the record that has been put forward by Maurice in this application.

64. Insofar as the second precondition, it is clear that the decisions taken in the 1995 Action, the 2012 Action, the CHRC Complaint, and the Alberta Court of Appeal are all final. Maurice and the other parties are not able to advance any further appeals of these decisions, as the relevant appeal periods have lapsed.

65. The third precondition regarding the privity of the parties is also met in this case. As noted above, only certain of the Stoney Applicants have been directly involved in membership-related proceedings. Furthermore, Maurice is the only one of the Applicants who has been involved in the various court proceedings regarding membership. As is clear from the Ontario Court of Appeal's decision in *Banque Nationale de Paris*, the fact that the Applicants are

all purportedly blood relatives is sufficient to establish the requisite privity / mutuality. Furthermore, the Applicants' interests in obtaining membership in Sawridge are identical to the interest that was advanced by Maurice as part of the earlier proceedings, because in both cases, the claims for membership are being advanced based on identical arguments. Accordingly, there are two grounds upon which to find that the third precondition is met in the circumstances.

66. Finally, it is submitted that there is nothing that militates in favour of not applying the doctrine of issue estoppel. Maurice and various members of his family have spent years advancing similar or identical arguments regarding their entitlement to membership in Sawridge. Dismissing the Stoney Application based on the doctrine of issue estoppel would fall in line directly with the objective of that doctrine, as it would stop any further judicial resources being wasted on addressing something that has long been resolved.

*b. Cause of action estoppel*

67. Much like issue estoppel, cause of action estoppel is a doctrine that looks to prevent the re-litigation of matters that have already been before a Court. Unlike issue estoppel however, cause of action estoppel targets a party's cause of action as a whole, and not just particular issues. The test for establishing cause of action estoppel is a four-part test that was initially articulated by Justice Ritchie in *Grandview v Doering*, [1976] 2 SCR 621, and was re-articulated as follows:

- There must be a final decision of a court of competent jurisdiction in the prior action;
- The parties to the subsequent litigation must have been parties to or in privity with the parties to the prior action (mutuality);
- The cause of action in the prior action must not be separate and distinct; and
- The basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence.

*Bjarnanson v Manitoba*, 1987 CarswellMan 193 (QB), at paras 6-7. [Tab 16]

68. Determining whether a cause of action in a new action is separate and distinct from a previous action requires an analysis of the substance of the two actions. In *Scherer v Price Waterhouse Ltd.*, the Court provided the following description of the test for establishing whether a cause of action was separate and distinct:

That certainly does not mean that parties should have to join in one action all causes of action that they may have against one another, or risk being met with the defence of res judicata. There are many situations, probably the majority of situations, where traditional criteria based upon the distinctness causes of action are quite appropriate as the basis for deciding whether a matter is res Judicata. Examples abound, including claims with respect to different motor accidents, or based on quite different contracts, or based on claims arising out of quite different transactions not part of a longer whole or related series of transactions. But where the prior litigation and the subsequent litigation arise out of the same transaction a claimant should not, particularly in a bankruptcy situation where there is an imperative about settling all claims because, for practical purposes, one of the parties may be going to disappear, be able after failing with a contract claim to bring, with no new evidence, a claim in tort to recover substantially the same amount in respect of the same transaction, or, having failed with a legal claim to bring in the same circumstances a claim based on equity, in each case attempting to rely on the fact that different causes of action are involved. In such circumstances the different cause of action should be treated as if it were no more than a different argument advanced to achieve essentially the same recovery, and the above-quoted dictum from *Hoystead v. Commissioner of Taxation* should be applied. That would be to treat the real confrontation and issues between the parties as the res or the substance or matter of the prior litigation and make it unnecessary to attempt to apply to issue estoppel the expanded scope of res judicata established in *Henderson v. Henderson*. [Emphasis Added]

*Scherer v Price Waterhouse Ltd.*, 1985 CarswellOnt 3839 (HCJ), at para 73. [Tab 17]

69. In the present action, Maurice and the other Applicants are all attempting to advance a cause of action that is, as the Court described in *Scherer*, a different argument to achieve the result that was sought in the previous proceedings involving Maurice (i.e., membership in Sawridge). The Applicants are using the beneficiary designation issue in this Action as a vehicle for advancing the same cause of action that was dealt with in the 1995 Action, the 2012 Action, and the CHRC Complaint. While there may be some nuances to the Stoney Application that differ from these proceedings, it is clear that at their core, all of these proceedings (including the Stoney Application) ultimately concern the same cause of action.

70. A review of the materials filed to date by the Applicants confirms that their attempt to become involved in this Action is a means of re-arguing the issue of their entitlement to membership. The Applicants are again relying on Bill C-31, the effect of their family's enfranchisement, and the Constitution as a basis for advancing arguments in relation to them having an automatic right to membership. The fact that these arguments are being made in the context of trust-related litigation does not detract from the fact that all of the arguments are connected to a cause of action that has been dealt with on three previous occasions.

71. Furthermore, even if the Applicants are advancing some new basis for arguing that they are members of Sawridge, there is no indication that said argument could not or should not have been argued as part of the earlier proceedings.

72. Finally, with regards to the other two parts of the test for finding cause of action estoppel, Sawridge submits that (much like its submissions regarding issue estoppel) there have been final decisions that involved parties with the requisite level of mutuality. As such, it is Sawridge's position that the doctrine of cause of action estoppel would be a bar to the Applicants' claim that they are beneficiaries under the 1985 Sawridge Trust, and would be grounds to dismiss their application.

c. Abuse of process

73. The law regarding the doctrine of abuse of process was summarized in the previous section of these written submissions. Sawridge submits that, for the reasons cited in that section, the doctrine could also be relied upon as a basis for defeating the Stoney Application if this Honourable Court is not prepared to strike the application pursuant to Rule 3.68.

D. Sawridge should be awarded enhanced costs

74. According to the *Rules of Court*, a Court has significant discretion concerning awards of costs. Rule 10.33 outlines a list of considerations that can be taken into account when assessing costs. That list includes the following considerations:

- The conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action;

- Whether any application, proceeding or step in an action was unnecessary, improper or a mistake; and
- Whether a party has engaged in misconduct.

*Rules of Court*, Alta Reg 124/2010, at 10.29, 10.31 and 10.33. [Tab 6]

75. Courts have recognized that solicitor-clients costs should be awarded against a losing party where that party's conduct was, "reprehensible, scandalous or outrageous."

*Young v Young*, [1993] 4 SCR 3, at paras 260 and 261 [Tab 18]

76. In *Jackson v Trimac Industries Ltd.*, the Court provided an overview of the various circumstances in which it is appropriate to award solicitor-client costs. Among other circumstances, it noted that solicitor-client costs were appropriate in the following instance:

...where there is evidence that the plaintiff did something to hinder, delay or confuse the litigation, where there was no serious issue of fact or law which required these lengthy, expensive proceedings, where the positively misconducting party was "contemptuous" of the aggrieved party in forcing that aggrieved party to exhaust legal proceedings to obtain that which was obviously his;...

*Jackson v Trimac Industries Ltd.*, (1993) 8 Alta LR (3d) 403 (QB), at paras 28 and 31. (Aff'd in 1994 ABCA 199, at para 29). [Tab 19]

77. The Applicants have unnecessarily delayed this Action by bringing the Stoney Application. This action has been ongoing since 2011. Rather than bringing an application at the early stages of this matter to be added as parties, the Applicants waited until essentially the final pre-trial moment in this Action to make their application. Their decision to wait until the last minute to make this application has resulted in the parties expending time and resources addressing which could have been utilized to advance this Action to trial.

78. The Applicants have also engaged in conduct which could clearly be considered unnecessary and improper. This Application represents the most recent step in a longstanding pattern of Maurice and his family using any and all judicial means to try and assert some entitlement to membership. Maurice has not brought anything new forward to the Stoney Application; rather, he is using the issue of the beneficiary definition under the 1985 Sawridge Trust to engage in a collateral attack of the issue of membership.

79. Taking into account all of Maurice's prior conduct, as well as the fact that he has consistently refused to pay any costs arising from proceedings, Maurice's attempt to involve himself in this Action falls into the type of conduct that the above-cited cases indicated was worthy of an award of solicitor and his own client costs, or, at the very least, of an award for enhanced costs.

V. RELIEF REQUESTED

80. For the above reasons, Sawridge prays that this Honourable Court order that Sawridge be granted the status to intervene in the Stoney Application, pursuant to Rule 2.10 of the *Rules of Court*, on terms which include the following:

- (a) Sawridge shall have the right to question the Applicants on any Affidavits filed as part of the Stoney Application;
- (b) Sawridge shall have the right to apply to strike the Stoney Application and/or to have the Stoney Application dismissed;
- (c) Sawridge shall have the right to make submissions in response to the Stoney Application; and
- (d) Sawridge shall have the right to seek costs as against Maurice with respect to the Stoney Application.

81. If Sawridge is granted the status to intervene in the Stoney Application, then Sawridge prays that this Honourable Court orders as follows:

- (a) That the Stoney Application be struck pursuant to Rule 3.68 of the *Rules of Court*;
- (b) In the alternative, that the Stoney Application be dismissed; and
- (c) That costs be paid to Sawridge by the Applicants on a solicitor and his own client basis, or on an enhanced basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of September, 2016.

PARLEE McLAWS LLP



EDWARD H. MOLSTAD, Q.C.  
Solicitors for the Sawridge First Nation

## LIST OF AUTHORITIES

- Tab 1     *Huzar v Canada*, 2000 CarswellNat 1132 (FCA)
- Tab 2     Notice of Application, Federal Court Action No. T-923-12
- Tab 3     Affidavit of Maurice Felix Stoney, sworn May 22, 2012, Federal Court Action No. T-923-12
- Tab 4     *Stoney v Sawridge First Nation*, 2013 FC 509
- Tab 5     *Stoney v 1985 Sawridge Trust*, 2016 ABCA 51
- Tab 6     *Rules of Court*, Alta Reg 124/2010 [Excerpts]
- Tab 7     *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320
- Tab 8     *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2014 ABCA 340
- Tab 9     *Suncor Energy Inc. v Unifor, Local 707 A*, 2014 ABQB 555
- Tab 10    *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799
- Tab 11    *Reece v Edmonton (City)*, 2011 ABCA 238 [Excerpts]
- Tab 12    *Stoney Nakoda Nations v Canada (Attorney General)*, 2015 ABQB 565
- Tab 13    *Penner v Niagara (Regional Police Services Board)*, 2013 SCC 19 [Excerpt]
- Tab 14    *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44
- Tab 15    *Banque Nationale de Paris (Canada) v Canadian Imperial Bank of Commerce*, 2001 CarswellOnt 25 (CA)
- Tab 16    *Bjarnarson v Manitoba*, 1987 CarswellMan 193 (QB)
- Tab 17    *Scherer v Price Waterhouse Ltd.*, 1985 CarswellOnt 3839 (HCJ)
- Tab 18    *Young v Young*, [1993] 4 SCR 3 [Excerpt]
- Tab 19    *Jackson v Trimac Industries Ltd.*, (1993) 8 Alta LR (3d) 403 (QB) and 1994 ABCA 199

# Tab 2

No. T-923-12

**FEDERAL COURT**

**BETWEEN:**

**Maurice Felix Stoney**

Applicant

- and -

**Sawridge First Nation**

Respondent

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:** Sawridge First Nation

A PROCEEDING HAS BEEN COMMENCED by the Applicant, Maurice Felix Stoney. The relief claims by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this Application be heard at Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application or to be served with any documents in the application, you or a solicitor acting for you, must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules*, and serve it on the Applicant's Solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this Notice of Application.

- 2 -

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 11, 2012.

**ORIGINAL SIGNED BY  
G. CHAMPAGNE  
A SIGNÉ L'ORIGINAL**

ISSUED BY:

Registry Officer

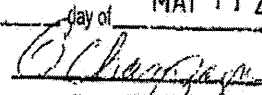
Address of Local Office: Edmonton  
Scotia Place Tower 1  
Suite 530, 10060 Jasper Avenue  
Edmonton, AB, T5J 3R8

TO: Sawridge First Nation

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the \_\_\_\_\_

day of MAY 11 2012, A.D. 20\_\_\_\_

Dated this \_\_\_\_\_ day of MAY 11 2012 20\_\_\_\_

  
**G. CHAMPAGNE  
REGISTRY OFFICER  
AGENT DU GREFFE**

- 3 -

### APPLICATION

This is an Application for Judicial Review pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. 41 (1<sup>st</sup> Supp.) as am., for judicial review of the Decision dated May 7, 2012, of Appeal Committee of Sawridge First Nation of the appeal of Maurice Felix Stoney regarding his membership in Sawridge First Nation, heard together, and denied.

The Applicant, Maurice Felix Stoney makes application for the following relief:

1. An Order that the Appeal Committee acted beyond their jurisdiction;
2. An Order that the Appeal Committee erred in law in their application of the Membership Rules to the Applicant, in making their decision dated May 7, 2012;
3. An Order that the Appeal Committee acted with a reasonable apprehension of bias in making their decision dated May 7, 2012;
4. An Order quashing the decision of the Appeal Committee on the grounds that it is contrary to the *Charter of Rights and Freedoms*, section 15, and contrary to the *Indian Act*, as amended by Bill C-31 and Bill C-3, contrary to the *Constitution Act, 1982*, section 35 and contrary to *Treaty No. 8*;
5. An Order quashing the decision of the Appeal Committee on the grounds that the Membership Rules for the Sawridge First Nation were not approved by the Minister of Indian Affairs and Northern Development until September 26, 1985 which is their effective date and were approved only on the basis that the Membership Rules must respect and comply with acquired membership as set out in Bill C-31 amending the *Indian Act*;
6. An Order quashing the decision of the Appeal Committee on the grounds that it breaches procedural fairness and that it lacks reasons for its decision;
7. Costs of this proceeding to the Applicant on a solicitor-client basis;
8. Such further and other orders as this Honourable Court shall deem just and convenient in the circumstances.

The grounds for this application are:

1. Johnny Stoney, grandfather of the Applicant, was a member of the Alexander Band under *Treaty No. 6*, who married Henrietta Sinclair, and became a member of what was known as the Lesser Slave Lake Band with Chief Kinosayoo;
2. Chief Kinosayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band;
3. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These lands were initially considered to be held in severalty under *Treaty No. 8*.

- 4 -

4. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised that his lands would be part of the Sawridge Reserve.
5. William Stoney, father of Maurice, was the son of Johnny Stoney, and a member of the Sawridge Band. William Stoney lived in Slave Lake. The Sawridge Indian Reserve is located on the northeast boundary of Slave Lake. In 1944, William Stoney and his family, along with other members of Sawridge Band, were enfranchised because he was working.
6. Maurice Stoney applied to Sawridge in 1985 for recognition of his membership which was automatic as a result of Bill C-31 on April 17, 1985 to correct the discrimination under the *Indian Act* membership provisions. The Sawridge Membership Rules did not become effective until September 26, 1985 and these Rules required recognition of all "acquired rights" members including Maurice;
7. Sawridge refused to review the membership application of Maurice submitted in 1985 until December 7, 2011 when Maurice was advised that the Council of Sawridge First Nation had denied his application for membership. On December 19, 2011, Maurice appealed this decision. The Appeal Committee heard this appeal for Maurice's membership on April 21, 2012 and provided their decision on May 7, 2012 upholding the decision of Chief and Council denying his membership.
8. Such further and other matters as this Honourable Court shall permit;

This application will be supported by the following materials:

- i. The Resolution Adopting Membership Rules dated July 4, 1985;
- ii. Notice from the Minister of Indian Affairs and Northern Development to Sawridge Indian Band dated September 26, 1985;
- iii. The Decision of the Sawridge First Nation for Maurice Felix Stoney;
- iv. The Membership Application Decision of the Sawridge First Nation for Maurice Stoney dated December 7, 2011;
- v. Appeal of Maurice Stoney dated December 19, 2011;
- vi. Such further and other materials as may be filed.

- 5 -

Notice pursuant to Rule 317

The Applicant requests that the Appeal Committee provide all material relevant to his application on April 21, 2012 including:

- (a) All documents related to the membership application of Maurice Stoney and to the decision of Chief and Council and the Appeal Committee.

May 11, 2012.

DAVIS, LLP.

Per: 

Priscilla Kennedy

DAVIS, LLP.

Barristers and Solicitors

1201 Scotia Tower 2

10060 Jasper Avenue

Edmonton, AB, T5J 4E5

Tel: (780) 429-6830

Fax: (780) 702-4383

# Tab 3

8

Federal Court No. T-923-12

FEDERAL COURT

BETWEEN:

Maurice Felix Stoney

Applicant

- and -

Sawridge First Nation

Respondent

AFFIDAVIT OF MAURICE STONEY

I, MAURICE STONEY, of Slave Lake, Alberta, MAKE OATH AND SAY:

1. I was born a member of the Sawridge First Nation and as such I have knowledge of the matters deposed to in this Affidavit unless stated to be made on information and belief, in which case, I do verily believe them to be true.
2. My grandfather, Johnny Stoney (also known as John Stephens), was a member of the Alexander Band under *Treaty No. 6*, who married Henrietta Sinclair, and became a member of what was known as the Lesser Slave Lake Band with Chief Kinossayoo in or about 1895.
3. Chief Kinossayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band.
4. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These lands were initially considered to be held by him in severalty under *Treaty No. 8*. Attached as Exhibit "A" is the list of Kinossayoo's Band, Sawridge showing Johnny Stoney as number 18 and showing that Johnny Stoney transferred from Alexander's Band on September 14, 1910. Attached as Exhibit "B" is a letter dated April 15, 1903 to the Deputy Superintendent General; attached as Exhibit "C" is a letter dated April 16, 1903 from Indian Affairs; attached as Exhibit "D" is a letter dated April 17, 1903 from Indian Affairs; attached as Exhibit "E" is a letter dated December 9, 1911 from the Assistant Indian Agent; attached as Exhibit "F" is a copy of a letter dated April 13, 1913; attached as Exhibit "G" is a copy of a letter dated September 23, 1912(?); and as Exhibit "H" is a copy of a letter dated August 19, 1920.
5. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be part of the Sawridge Reserve.

6. My father was William Stoney, the son of Johnny Stoney, and a member of the Sawridge Band. William Stoney lived in Slave Lake. The Sawridge Indian Reserve is located on the northeast boundary of Slave Lake.
7. In 1944, my father William Stoney and all of his family including me, along with other members of Sawridge Band, were enfranchised because he was working. This meant that I did not have to attend Residential School but I have been involved with the Sawridge First Nation all of my life.
8. I applied to Sawridge First Nation in 1985 for recognition of my membership which was automatic as a result of Bill C-31 on April 17, 1985 to correct the discrimination under the *Indian Act* membership provisions. The Sawridge Membership Rules did not become effective until September 26, 1985 and these Rules required recognition of all "acquired rights" members. Attached as Exhibit "I" is a copy of a letter dated September 26, 1985 from the Minister of Indian Affairs and Northern Development to Chief Walter Twinn.
7. Sawridge refused to review my membership application submitted in 1985 until December 7, 2011 when I was advised that the Council of Sawridge First Nation had denied my application for membership. On December 19, 2011, I appealed this decision. The Appeal Committee heard this appeal for my membership on April 21, 2012 and provided their decision on May 7, 2012 upholding the decision of Chief and Council denying my membership. I filed a judicial review of this appeal decision in the Federal Court on May 11, 2012.
8. I make this Affidavit in support of my application for judicial review.

SWORN BEFORE ME at the City )  
of Slave Lake, in the Province of Alberta, )  
this 22 day of May, 2012. )

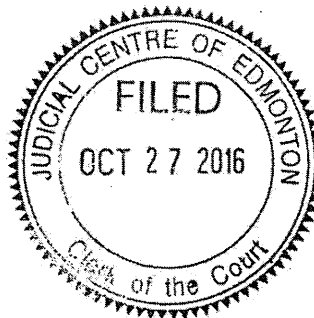
  
A COMMISSIONER FOR OATHS IN AND  
FOR THE PROVINCE OF ALBERTA

COLLEEN G. GHOSTKEEPER  
A COMMISSIONER FOR OATHS  
IN AND FOR THE PROVINCE OF ALBERTA  
MY COMMISSION EXPIRES JUNE 25, 20 14

  
Maurice Stoney

Davis LLP  
1201 Scotia Tower 2,  
10060 Jasper Ave  
Edmonton, Alberta T5J 4E5  
Attention: Priscilla Kennedy  
Phone: 780-429-6830  
Fax: 780-702-4383  
File No.: 84021-00001

**Tab D**



Clerk's Stamp

COURT FILE NO.: 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA  
2000, c. T-8, as am.

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

APPLICANT MAURICE STONEY ON HIS OWN BEHALF AND  
THAT OF HIS LIVING SISTERS AND BROTHERS

DOCUMENT: WRITTEN RESPONSE ARGUMENT ON  
APPLICATION OF SAWRIDGE FIRST NATION  
TO BE INTERVENER - VOLUME ONE

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT:

DLA Piper (Canada) LPP  
1201 Scotia 2 Tower  
10060 Jasper Avenue NW  
Edmonton, AB, T5J 4E5  
Attn: Priscilla Kennedy  
Tel: 780.429.6830  
Fax: 780.702.4383  
Email: [priscilla.kennedy@dlapiper.com](mailto:priscilla.kennedy@dlapiper.com)  
File: 84021-00001

CONTACT INFORMATION OF  
ALL OTHER PARTIES:  
Sawridge Trustees

Reynolds Mirth Richards & Farmer LLP  
3200 10180 - 101 Street NW  
Edmonton, AB, T5J 3W8  
Attn: Marco Poretti  
Tel: 780.425.9510  
Fax: 780.425.9510

And

Dentons Canada LLP  
2900 10180 - 101 Street NW  
Edmonton, AB, T5J 3W8  
Attn: Doris Bonora  
Tel: 780.423.7100

And Catherine Twinn, Trustee

Fax: 780.423.7276

McLennan, Ross LLP  
600 12220 Stony Plain Road  
Edmonton, AB, T5N 3Y4  
Attn: Karen Platten, Q.C.  
Tel: 780.482.9200  
Fax: 780.482.9100

Public Trustee

Hutchison Law  
#190 Broadway Business Square  
130 Broadway Boulevard  
Sherwood Park, AB, T8H 2A3  
Attn: Janet Hutchison  
Tel: 780.417.7871  
Fax: 780.417.7872

Supreme Court Advocacy  
340 Gilmour Street #100  
Ottawa, ON, K2P 0R3  
Attn: Eugene Meehan, Q.C.  
Tel: 613.695.8855  
Fax: 613.695.8580

Justice Canada

Indigenous Affairs and Northern Development  
Attn: Linda Maj  
300, 10423 - 101 Street NW Epcor Tower  
Edmonton, AB, T5H 0E7

Applicant for Intervener Status  
Sawridge First Nation

Parlee McLaws LLP  
1700 Enbridge Centre  
10175 - 101 Street NW  
Edmonton, AB, T5J 0H3  
Attn: Edward Molstad, Q.C.  
Tel: 780.423.8500  
Fax: 780.423.2870

WRITTEN RESPONSE ARGUMENT ON APPLICATION OF SAWRIDGE FIRST  
NATION TO BE ADDED AS AN INTERVENER IN THE 1985 SAWRIDGE TRUST

I. OVERVIEW

1. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1<sup>st</sup> Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement of Indians. Indian Affairs knew that these provisions of the *Indian Act* were unconstitutional under the *Constitution Act, 1982*.  
  
*Indian Act*, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1]
2. Canada brought a motion for a mandatory injunction against Sawridge First Nation in 2003 and obtained a mandatory injunction compelling Sawridge First Nation to record the memberships of persons whose memberships in Sawridge were required by Bill C-31 ("acquired rights") effective April 17, 1985 to be included as Sawridge First Nation members. Sawridge First Nation has not fully complied with this Mandatory Injunction to this day.  
  
*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 2]  
  
*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 3]
3. Sawridge First Nation assumed control of its membership at some point in the summer of 1985 several months after April 17, 1985, having given notice to the Minister of Indian Affairs on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn, Sawridge First Nation, of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge First Nation, in a letter dated September 26, 1985. These decisions were noted at paragraph 9 of this Court's 2012 decision:

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

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365. [Tab 4]

4. Maurice Stoney and his brothers and sisters are persons whose membership in the Sawridge Band was restored by Bill C-31 effective April 17, 1985.
5. QB Action 1103 14112 was commenced by the Trustees of the 1985 Sawridge Trust seeking Advice and Directions with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust in the Matter of the Sawridge Band Inter Vivos Settlement Created by Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19. Maurice Stoney was previously listed as a party in this action.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, paras. 2, 22. and 29 [Tab 4]

6. An appeal was brought by the Trustees of the 1985 Sawridge Trust to the Alberta Court of Appeal with, *inter alia*, Maurice Stoney named as an Interested Party.

*1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC. [Tab 5]

7. On August 12, 2016, Maurice Stoney brought an Application for himself and his living brothers and sisters, to be named as a Party or as an Intervenor on the ground of being beneficiaries to the 1985 Sawridge Trust, in this Action 1103 14112.
8. On August 24, 2016 an Order consented to by the Trustees and the Office of the Public Guardian and Trustee for Alberta, was granted. This Order permits the 1982 Trust to be moved into the 1985 Sawridge Trust however this Consent Order cannot be used as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust. Direction was issued for the filing of argument on the issue of whether or not Maurice Stoney et al. should be granted status as parties or interveners in this Action.

Consent Order August 24, 2016. [Tab 6]

## II. FACTS

9. Sawridge First Nation brings an application to be made an Intervener to the 1985 Sawridge Trust. They have explicitly argued that they are not a party to the 1985 Sawridge Trust before the Court and this Court has found that they are not a party and are "distinct and separate" from the Sawridge Trustees. However there are only 41 persons in the Sawridge First Nation and from these 41 persons, the 5 Trustees of the 1985 Sawridge Trust have been chosen. The Trustees, although "distinct and separate" consist of 5 of these 41 persons including the Chief of the Sawridge First Nation.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 799, paras. 8, 15 to 20. [Tab 7]

10. Maurice Stoney and all of his brothers and sisters were born to parents William and Margaret Stoney who were both members of the Sawridge Band. Maurice and his brother (no longer living) were both listed on the pay list for the Sawridge Band prior to being removed on their father's enfranchisement.

Affidavit of Maurice Stoney. [Tab 8]

11. Their grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895, and Johnny Stony is shown on the list of Kinodayoo's Band as number 18. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band which included what became known as the Sawridge Band.

Affidavit of Maurice Stoney. [Tab 8]

*Treaty No. 8*. [Tab 9]

12. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* as shown in letters dated April 6, 1903, April 15, 1903, April 16, 1903, April 17, 1903 December 9, 1911, September 9, 1912, April 18, 1913 and August 19, 1920 to and from Indian Affairs.

Affidavit of Maurice Stoney. [Tab 8]

13. In or about 1912, Johnny Stoney and his family, including William Stoney, his son, were recognized on the first pay list for the Sawridge Band. He was a member of Sawridge Band, on the pay list until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8*, where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920.

Affidavit of Maurice Stoney. [Tab 8]

14. Maurice's mother was also a member of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Indian Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.

Affidavit of Maurice Stoney. [Tab 8]

15. In 1944, William Stoney and all of his family, along with other members of Sawridge Band, were enfranchised because William was working. Enfranchisement removed the names of persons from the *Indian Act*, R.S.C. 1927, c. 98, section 114 and treated them as not being Indians under the *Indian Act*. They were not Canadian 'Citizens' since Canadian citizenship did not exist until at the earliest, January 1, 1947 with the first *Canadian Citizenship Act*, S.C. 1946 which provided Canadian citizenship to British subjects born in or resident in Canada.

Affidavit of Maurice Stoney. [Tab 8]

16. William Stoney had 15 children, 10 are still alive today: Billy born in 1940; Maurice born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty

Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. Each of these children were or would have been on the pay list but for enfranchisement. These are the Respondents to this Application by the Sawridge First Nation to be an intervener.

Affidavit of Maurice Stoney. [Tab 8]

17. On April 17, 1982, the *Constitution Act, 1982*, amended the *Constitution*, and recognized and affirmed treaty and aboriginal rights in section 35:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

*Constitution Act, 1982*, section 35. [Tab 10]

18. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1<sup>st</sup> Supp.)) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, for discrimination by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement. Indian Affairs knew before 1985 that these provisions were unconstitutional under the *Constitution Act, 1982*.

*Indian Act*, R.S.C. 1970, c. I-6, ss. 109-112 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1]

19. Canada brought a motion for a mandatory injunction against Sawridge in 2003 and obtained a mandatory injunction compelling Sawridge Band to record the memberships of persons whose memberships in Sawridge Band were required by Bill C-31 ("acquired rights") effective April 17, 1985 to be included as Sawridge Band members. Sawridge First Nation assumed control of its membership at some point in the summer of 1985, having given notice to the Minister on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge, in a letter dated September 26, 1985.

*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 3]

*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 4]

20. As the Federal Court of Appeal in January, 2004 held Sawridge First Nation cannot enact membership rules that "operate to deny membership to those individuals who come within paragraph 11 (1) (c). ... That distinction is not permitted by the Act". Further, the Order of Mr. Justice Hugessen, affirmed by the Federal Court of Appeal, applies to all:

...individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this order requires that the following persons, ...

21. Maurice Stoney's membership in Sawridge was properly recorded on the Sawridge Band List when he was born in 1941. It was removed when his family was enfranchised but Sawridge Band has refused to comply with Bill C-31 and Sawridge First Nation has refused to comply with the Mandamus Order of the Federal Court in 2003, confirmed on appeal, to restore Maurice and his brothers and sisters as members of Sawridge. Nevertheless, under this Federal Court Order of Mandamus still in effect today, Maurice Stoney and all of his living brothers and sisters are members of Sawridge Band so that they are beneficiaries of the 1985 Sawridge Trust.

Affidavit of Maurice Stoney, Exhibit I, pp. 34-5. [Tab 8]

### III. SHOULD SAWRIDGE FIRST NATION BE AN INTERVENER

22. Sawridge First Nation has consistently argued that they are not a party to the 1985 Sawridge Trust.

*1985 Sawridge Trust, supra*, paras 15-20. [Tab 7]

23. Sawridge now argues that they should be permitted to intervene.

24. Rule 2.10 provides:

On application, a court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

25. Interpretation of Rule 2.10 often starts with the decision of the Alberta Court of Appeal in *Pedersen v. Alberta* where the factors for granting intervener status are set out:

...The case authorities on granting leave have considered the following questions as factors in determining whether to grant intervener status:

1. Will the intervener be directly affected by the appeal;
2. Is the presence of the intervener necessary for the court to properly decide the matter;
3. Might the intervener's interest in the proceedings not be fully protected by the parties;
4. Will the intervener's submission be useful and different or bring particular expertise to the subject matter of the appeal;
5. Will the intervention unduly delay the proceedings;
6. Will there possibly be prejudice to the parties if intervention is granted;
7. Will intervention widen the *lis* between the parties; and
8. Will the intervention transform the court into a political arena?

*Pederson v. Alberta*, 2008 ABCA 192, paras. 3-4. [Tab 11]

26. Leave may be granted using a more lenient standard in cases that involve constitutional issues however this is not such a matter. This case is concerned with who are and who are not beneficiaries to the 1985 Sawridge Trust.

*Pedersen, supra*, para. 4. [Tab 11]

27. In *Pedersen*, leave to intervene was denied on the basis that:

...it could not be said that the proposed intervener was going to contribute usefully to the appeal by providing "fresh information or a fresh perspective on an important constitutional or public law issue".

*R. v. J.L.A.*, 2009 ABCA 324, para. 16. [Tab 12]

28. Chief Justice Wittmann followed *Papaschase Indian Band v. Canada (Attorney General)* which Sawridge First Nation relies on in their Application, in *R. v. Hirsekorn*, following the two step approach where the court must consider the subject matter prior to considering whether the proposed intervenor has a direct interest in the matter.

*R. v. Hirsekorn*, 2011 ABQB 156, paras. 12-15. [Tab 13]

29. Intervener status is discretionary and should be exercised sparingly. This requires that the interest to be provided by an intervener, should provide a fresh or different perspective or special expertise. Traditionally, private rights must be at stake to be permitted to intervene however there are no private rights at issue here.

*R. v. S.C.A.*, 2013 ABCA 80, paras. 7-9. [Tab 14]

30. It is submitted that Sawridge First Nation does not provide any fresh or different perspective than the Trustees of the 1985 Sawridge Trust. These Trustees include the Chief of Sawridge First Nation and the 1985 Sawridge Trustees are already represented by at least three law firms: Roland Twinn, Chief of the Sawridge First Nation and Trustee of the 1985 Sawridge Trust; Walter Twin, Bertha L'Hirondelle and Clara Midbo, Trustees of the 1985 Sawridge Trust, all represented by Doris Bonora of Dentons and Marco Poretti of Reynolds Mirth; and Catherine Twinn is represented by Karen Platten, Q.C. of McLellan Ross.

Canada Aboriginal Affairs and Northern Development Canada. Governance of Sawridge First Nation. List of Chief and Council [Tab 15]

31. The issue of who was part of the Sawridge Band is a matter within the jurisdiction of Canada as determined by the Federal Court in 2003 when the mandatory injunction was granted and this mandatory injunction was upheld by the Federal Court of Appeal. Canada is the responsible party for membership in the Sawridge Band prior to the approval by the Minister of the status to control membership that he granted to Sawridge First Nation when they received his approval at some point between July 8, 1985 and the end of September, 1985. At the end of September, 1985, the Minister of Indian Affairs advised Sawridge First Nation that they must comply with the provisions of Bill C-31. They continue 31 years later to not comply.
32. Sawridge First Nation has a long history of applications against every effort of Bill C-31 acquired rights members to be properly dealt with. In 2009 in *Sawridge Band v. Canada*, the Federal Court of Appeal dismissed the appeal brought by Sawridge and stated:

The dismissal of the action was the end of the retrial of an action commenced on January 15, 1986. The appellants were seeking an order declaring that certain amendments to the

*Indian Act*, R.S.C. 1985, c. I-5, breached the appellants' rights under section 35 of the *Constitution Act, 1982*. The statutory amendments compelled the appellants, against their wishes, to add certain individuals to the list of band members. The appellants argue that the legislation is an invalid attempt to deprive them of their right to determine the membership of their own bands.

The first trial began in September 1993 and ended with a dismissal of the action on July 6, 1995 (*Sawridge Band v. Canada (T.D.)*, [1996] 1 F.C. 3). That decision was set aside by this Court on the basis of a reasonable apprehension of bias (*Sawridge Band v. Canada (C.A.)*, [1997] 3 F.C. 580, application for leave to appeal dismissed December 1, 1997). A new trial was ordered. It began in January of 2007, after almost 10 years of procedural disputes and delays.

The action was dismissed again because, on January 7, 2008, the appellants informed Justice Russell that they would not be calling further evidence. ... The action was formally dismissed on March 7, 2008.

*Sawridge Band v. Canada*, 2009 FCA 123, paras. 3-5. [Tab 16]

33. Sawridge First Nation has consistently failed to comply with the orders of the Federal Court since Mr. Justice Hugessen granted the Mandatory Injunction against them in 2003 and it was upheld by the Federal Court of Appeal in 2004.

*Sawridge Band v. Canada*, [2003] 4 FCR 748, paras. 31-40. [Tab 3]

*Sawridge Band v. Canada*, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 4]

34. In 1989, an action was commenced by Elizabeth Bernadette Poitras to be recognized as a member of Sawridge First Nation pursuant to the provisions of Bill C-31 (and consistent with the Mandamus given in 2003 and upheld in 2004) and these proceedings still continue after 24 years. In 2013, the Federal Court concluded that the constitutional issues were determined by the Sawridge Band action described above. In 2003, Mr. Justice Hugessen had issued the mandatory injunction against Sawridge and this was affirmed by the Federal Court of Appeal. This did not, however, stop Sawridge First Nation from denying Elizabeth Poitras' membership although Sawridge First Nation has no legal ability or constitutional right to do so.
35. In 2010, Mr. Justice Hugessen ordered that "the issue of Ms. Poitras' membership in the band is now moot" because Sawridge had lost its lawsuit to have the provisions of Bill C-31 declared to be unconstitutional. Sawridge First Nation appealed this Order and the

Federal Court of Appeal dismissed the appeal. Sawridge First Nation still today continues with its actions denying membership to Elizabeth Poitras, who is one of the persons covered by the 2003 Mandatory Injunction although a 3 day mediation conference is scheduled to commence on January 17, 2017 in the Federal Court to resolve the issues of damages.

*Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras*, 2012 FCA 47. [Tab 17]

*Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al.*, 2013 FC 910, paras. 1-19. [Tab 18]

Recorded entries for Federal Court Action No. T-2655-89. [Tab 19]

36. Like Elizabeth Poitras, Maurice Stoney and his brothers and sisters have faced a tortuous long process with no success in persuading Sawridge First Nation to abide by the Mandatory Injunction issued by the Federal Court, confirmed by the Federal Court of Appeal and as stated by the Case Management Judge Aalto, at paragraph 29, "[n]ot to put too fine a tautological point on it - moot is moot is moot is moot".

*Elizabeth Bernadette Poitras, supra.* para. 29. [Tab 18]

37. The desperation of trying to resolve this matter before they die, has led Maurice Stoney to try to persuade Sawridge First Nation to accept him as a member under their scheme created after the summer of 1985, even though this scheme does not apply to him and he and his brothers and sisters are already members of Sawridge Band as required by Bill C-31. In 2011 he applied under the Sawridge First Nation membership rules and was refused, as have all but 2 applicants, one who is the sister of Walter Twinn.

*Stoney v. Sawridge First Nation*, 2013 FC 509. [Tab 20]

38. The first Federal Court proceeding referred to by the Sawridge First Nation was an action brought by Aline Huzar which was struck on procedural grounds not substantive grounds. It related to a claim of the children and grandchildren of women who were excluded on marriage from Sawridge. The primary ground argued by the Plaintiffs in that proceeding was discrimination under the *Charter* related to these children and grandchildren.

Maurice Stoney and his brothers and sisters' claim is different than this because they are members of Sawridge Band.

*Huzar v. Canada*, [2000] FCJ 873, paras. 1-3. [Applicant Sawridge First Nation Tab 1]

39. Maurice Stoney and his brothers and sisters are not re-litigating anything. The Mandatory Injunction of the Federal Court from 2003 affirmed by the Federal Court of Appeal in 2004 applies to them. A previous decision from 2000 by the Federal Court or Federal Court of Appeal (although on a procedural matter) is 'overruled' by the decision on the Mandatory Injunction granted in 2003 and confirmed on appeal in 2004.
40. Maurice was registered as a member of Sawridge Band when he was born and until 1944. Bill C-31 placed him back on the Sawridge Band list on April 17, 1985. Since 2003, this Mandatory Injunction has been re-litigated by Sawridge First Nation over and over again and they continue to fail to comply with it. Desperation of Maurice Stoney as his brothers and sisters, all members of Sawridge Band since April 17, 1985, die, does not equate to abuse of process.
41. Abuse of process applies to the actions of the Sawridge First Nation in the Federal Court and now in this Court where they have strongly argued that they are not a party to this proceeding but expect to now be an "intervener" because they allege that they have a clear direct interest. Canada is the party who has a 'clear direct interest' in the persons who were recognized as members of Sawridge Band on April 17, 1985, Sawridge First Nation does not. Sawridge First Nation has no control over its members prior to the date it removed itself from the provisions of membership in the *Indian Act* in the summer of 1985.
42. Sawridge First Nation blazingly argues that its ability to have the issue "adjudicated in the proper forum" is breached by dealing with Maurice Stoney's application for himself and his brothers and sisters yet they have breached a Mandatory Injunction granted by the Federal Court in 2003, confirmed by the Federal Court of Appeal in 2004 and reiterated continuously since that date by the Federal Court including Prothonotary Aalto who

noted in 2013 in *Poitras v. Twinn*, at paragraph 29 “Not to put too fine a tautological point on it - moot is moot is moot is moot”.

43. Sawridge First Nation is plainly in breach of the Federal Court Orders but it's perspective is not unique.
44. Sawridge First Nation does not have a direct and fresh perspective to offer in this application and they should not be granted intervener status.

#### IV. SAWRIDGE FIRST NATIONS' IMPROPER APPLICATION TO STRIKE/DISMISS

45. Until Sawridge First Nations' application to be added as an Intervener in this proceeding is granted, Sawridge First Nation's application to dismiss Maurice Stoney and his brothers and sisters application is improper and not permitted by the Order of August 24, 2016. Nor is it consistent with the judgment of this Court in December 2015 where Sawridge First Nation plainly argued that it was not a party and was only present because of the application under Rule 5.13 for questioning. Sawridge First Nation has no right to be submitting anything on this question.
46. As the Court of Appeal stated in *Piikani Nation v. Kostic*, “the parties to a lawsuit control how it runs, and non-parties can take no steps whatever in it, without permission of the court, obtained after notice to all the parties”. Here the permission of the Court only allows an application by Sawridge First Nation to be added as an intervener to this application on the 1985 Sawridge Trust.

*1985 Sawridge Trust, supra*, paras. 15-20. [Tab 7]

*Piikani Nation v. Kostic*, 2015 ABCA 60, para. 1. [Tab 21]

See also *Kohler v. Apotex Inc.*, 2015 ABQB 610, para. 7. [Tab 22]

47. Submission of argument by Sawridge First Nation, from paragraphs 50 to 73 should be struck.

48. In the alternative, as Mr. Justice Slatter stated in *Reece v. Edmonton (City)*, that abuse of process may be used to control misuses of the judicial system. Sawridge First Nation's actions are a misuse of the judicial system.

*Reece v. Edmonton (City)*, 2011 ABCA 238, paras. 16-20. [Tab 23]

49. As the decision of Case Management Judge Aalto in *Poitras v. Twinn*, at paragraph 29 "Not to put too fine a tautological point on it - moot is moot is moot is moot". But Sawridge First Nation does not give up, even after 13 years, but instead alleges that matters prior to its independent right to determine membership, (that are governed entirely by Bill C-31) make the application by Maurice Stoney and his brothers and sisters, an abuse of process. Sawridge First Nation openly applies to this Court for re-litigation of a settled issue - settled by the Federal Court, numerous times over the years without Sawridge First Nation ever complying with the Federal Courts' rulings.
50. The question determined by prior proceedings which have involved Maurice Stoney are matters under the membership provisions of the Sawridge First Nation only applicable to matters after the summer of 1985, and with no application to events arising because of Bill C-31 on April 17, 1985. These are matters which are entirely the responsibility of Canada not Sawridge First Nation.
51. Issue Estoppel is a doctrine of public policy which Mr. Justice Binnie noted in *Danyluk v. Ainsworth Technologies Inc.*, prevents re-litigation by the same parties. Sawridge First Nation, as noted above, continues even here, to re-litigate the question of membership for persons who are members because of Bill C-31 which corrected unconstitutional matters as of April 17, 1985, prior to the Sawridge First Nation having any jurisdiction to address these membership issues.
52. Sawridge Band is not Sawridge First Nation for the purpose of this question and this proceeding. The key date here is April 17, 1985 but for Sawridge First Nation the first date that they can have anything to say about is in the summer of 1985. Canada is the only entity that may speak to this issue.

*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, paras. 18-25, 59-60, 62-64.  
[Sawridge First Nation Brief Tab 14]

53. It is submitted that the issue - acquired rights - and the right of unspecified persons including Maurice Stoney and all of his brothers and sisters to membership in Sawridge Band on April 17, 1985, was already determined by the Federal Court of Appeal in January, 2004. Maurice Stoney and his brothers and sisters are beneficiaries under the 1985 Sawridge Trust. The Sawridge First Nation does not have a direct interest such that it can be granted status as an intervenor.

**V. ORDER REQUESTED**

54. It is respectfully submitted that the application by Sawridge First Nation to be granted intervenor status should be dismissed with costs.
55. It is submitted that the improper application of Sawridge First Nation, with no standing whatsoever, to strike the application by Maurice Stoney and his brothers and sisters, should be struck with increased costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of October, 2016.

DLA Piper (Canada) LLP.

Per: 

Priscilla Kennedy  
Solicitor for Maurice Stoney and  
his brothers and sisters

## TABLE OF AUTHORITIES

1. *Indian Act*, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act.
2. *Sawridge Band v. Canada*, [2003] 4 FCR 748.
3. *Sawridge Band v. Canada*, 2004 FCA 16.
4. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365.
5. *1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC.
6. *1985 Sawridge Trust Consent Order*, August 24, 2016.
7. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 799, paras. 8, 15-20.
8. Affidavit of Maurice Stoney.
9. *Treaty No. 8*.
10. *Constitution Act, 1982*.
11. *Pederson v. Alberta*, 2008 ABCA 192, paras. 3-4.
12. *R. v. J.L.A.*, 2009 ABCA 324, para. 16.
13. *R. v. Hirsekorn*, 2011 ABQB 156, paras. 12-15.
14. *R. v. S.C.A.*, 2013 ABCA 80, paras. 7-9.
15. Canada Aboriginal Affairs and Northern Development Canada. Governance of Sawridge First Nation. List of Chief and Council.
16. *Sawridge Band v. Canada*, 2009 FCA 123, paras. 3-5.
17. *Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras*, 2012 FCA 47.
18. *Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al.*, 2013 FC 910, paras. 1-19.
19. Recorded entries for Federal Court Action No. T-2655-89.
20. *Stony et al. v. Sawridge First Nation*, 2013 FC 509.
21. *Piikani Nation v. Kostic*, 2015 ABCA 60, para. 1.

22. See also *Kohler v. Apotex Inc.*, 2015 ABQB 610. para. 7.
23. *Reece v. Edmonton (City)*, 2011 ABCA 238, paras. 16-20.

# Tab E

COURT FILE NUMBER 1103 14112

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

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

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

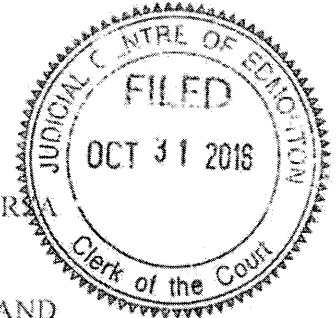
APPLICANTS: ROLAND TWINN, CATHERINE TWINN,  
WALTER FELIX TWIN, BERTHA  
L'HIRONDELLE and CLARA MIDBO, as Trustees  
for the 1985 Sawridge Trust

DOCUMENT **WRITTEN SUBMISSIONS OF THE  
SAWRIDGE FIRST NATION IN  
RESPONSE TO THE APPLICATION BY  
THE STONEY APPLICANTS TO BE  
ADDED AS PARTIES OR  
INTERVENORS**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

PARLEE McLAWS LLP  
1500 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 4K1  
Attention: Edward H. Molstad, Q.C.  
Telephone: (780) 423-8500  
Facsimile: (780) 423-2870  
File Number: 64203-7/EHM

Clerk's Stamp



## TABLE OF CONTENTS

II.	INTRODUCTION .....	1
III.	ISSUES .....	2
IV.	ANALYSIS .....	2
A.	The Stoney Applicants' submissions contain factual inaccuracies and little to no weight should be given to the Affidavit evidence of Maurice Stoney.....	2
B.	The Stoney Applicants have mischaracterized or misinterpreted previous Federal Court and Federal Court of Appeal decisions.....	4
C.	The arguments of the Stoney Applicants have already been advanced and determined through litigation between Maurice Stoney and Sawridge.....	8
D.	The Stoney Applicants have failed to address the merits of their application for intervenor status, which ought to be dismissed in any event.....	10
E.	The Stoney Applicants' submissions further justify Sawridge's claim to entitlement to solicitor and client or enhanced costs for this Application.....	11
V.	RELIEF REQUESTED.....	12

## I. INTRODUCTION

1. All submissions by Sawridge First Nation ("Sawridge") on the merits of the Stoney Application are to be considered by this Honourable Court only if Sawridge is granted leave to intervene in the Stoney Application.
2. On September 28, 2016, Sawridge filed its written submissions setting out its position that it should be granted status to intervene in the Stoney Application, along with its response to the merits of the Stoney Application.
3. On September 28, 2016, the Stoney Applicants also filed their written submissions on the merits of the Stoney Application.
4. These submissions are intended to supplement the September 28, 2016 written submissions of Sawridge dealing with the merits of the Stoney Application by responding to the arguments put forth by the Stoney Applicants in their written submissions.
5. Sawridge's intends to address the merits of the Stoney Applicants' submissions by addressing each of the following areas of concern:
  - (a) There are a number of factual inaccuracies in the Stoney Applicants' submissions, many of which stem from the inaccuracies in the Affidavit of Maurice Stoney filed in support of the Stoney Application. This Honourable Court should give little, if any, weight to Maurice Stoney's Affidavit, as his counsel effectively refused to permit cross-examination on the substance of the Affidavit and refused to permit Sawridge to participate in the cross-examination.
  - (b) The Stoney Applicants have mischaracterized or misinterpreted the decisions of the Federal Court and the Federal Court of Appeal concerning "acquired rights" membership and the impact of those decisions on the Stoney Applicants. The Stoney Applicants are not acquired rights members of Sawridge.
  - (c) There is a clear relationship between the arguments advanced by the Stoney Applicants in the Stoney Application and the previous litigation between Maurice Stoney and Sawridge concerning membership.

- (d) The Stoney Applicants have failed to make any submissions on why they should be granted intervenor status in accordance with the well-recognized legal test for same.
- (e) The Stoney Applicants' submissions further justify Sawridge's request for costs on a solicitor and his own client basis, as Sawridge has yet again been required to respond to identical arguments previously advanced by Maurice Stoney regarding the Stoney Applicants' alleged entitlement to automatic membership in Sawridge.

## II. ISSUES

- 6. The issues before this Honourable Court are as follows:
  - (a) Should the Stoney Application be struck, in whole or in part, pursuant to Rule 3.68 of the *Rules of Court*?
  - (b) In the alternative, should the Stoney Application be dismissed?
  - (c) If the Stoney Application is struck and/or dismissed by this Honourable Court, is Sawridge entitled to costs on a solicitor and his own client basis, or, in the alternative, costs on an enhanced basis?
- 7. Sawridge's submits that all of these questions should be answered in the affirmative, for the reasons set out in its submissions of September 28, 2016 and for the additional reasons set out below.

## III. ANALYSIS

- A. **The Stoney Applicants' submissions contain factual inaccuracies and little to no weight should be given to the Affidavit evidence of Maurice Stoney.**
- 8. The Stoney Applicants' submissions are rife with factual inaccuracies, the most notable of which is an assertion that Maurice Stoney and his siblings are members of Sawridge and are beneficiaries of the 1985 Trust. None of the Stoney Applicants are members of Sawridge or beneficiaries of the 1985 Trust.

9. As discussed below and in Sawridge's submissions of September 28, 2016, the issue of Maurice Stoney's (and therefore his siblings') alleged membership in Sawridge, on the basis of "acquired rights" or an automatic entitlement to membership under Bill C-31, has been adjudicated and is *res judicata*. Further litigation of this membership is barred by the doctrine of issue estoppel.
10. The Stoney Applicants are not acquired rights members. They are not members of Sawridge. They have never been members of Sawridge at any time so as to make them beneficiaries of the 1985 Trust.
11. Sawridge takes issue with many other statements presented as "fact" in the Stoney Applicants' submissions and Maurice Stoney's Affidavit, such as the following:
  - (a) The Stoney Applicants assert that Maurice Stoney and all of his brothers and sisters were born to William and Margaret Stoney; however, there is no corroborating evidence to support this finding. On his enfranchisement documents, William Stoney only listed two minors, Alvin and Maurice, while the Stoney Applicants assert that Billy Stoney was also a son of William Stoney at the time of his enfranchisement.
  - (b) The Stoney Applicants assert that William Stoney enfranchised because he was working; however, the enfranchisement documents indicate that William Stoney voluntarily applied for enfranchisement and was paid \$777.08 for his, his wife's and his two minor son's (Alvin and Maurice) share of the band funds upon their enfranchisement on August 1, 1944.
12. Sawridge need not address these and other inaccuracies in detail, as they are ultimately irrelevant. The Stoney Applicants' position depends upon on a finding that they are members of Sawridge, which finding cannot be made in light of prior judicial determinations.
13. Additionally, the Stoney Application and the Stoney Applicants' written submissions are based on the Affidavit of Maurice Stoney. Maurice Stoney's counsel refused to permit counsel for Sawridge to attend at the Questioning of Maurice Stoney on his Affidavit.

Furthermore, the transcript from that Questioning shows that his counsel effectively interrupted, obstructed, and refused to permit any Questioning on the substance of the Application and Affidavit. As such, the truth of the evidence contained in Maurice Stoney's Affidavit has not been tested. Accordingly, his evidence should be given little to no weight.

**B. The Stoney Applicants have mischaracterized or misinterpreted previous Federal Court and Federal Court of Appeal decisions.**

14. The Stoney Applicants incorrectly assert that the Federal Court issued an Order of Mandamus in *Sawridge Band v Canada*, [2003] 4 FCR 748, compelling Sawridge to restore the Stoney Applicants as members of Sawridge on the basis that the Stoney Applicants are "acquired rights" members under Bill C-31.
15. In *Sawridge Band v Canada*, [2003] 4 FCR 748, Justice Hugessen considered an application by the Crown for a interlocutory injunction requiring Sawridge to enter and record the memberships of persons whose membership in Sawridge were required by Bill C-31. In particular, the Crown sought to have the names of 11 women, who had lost their membership status in Sawridge due to their marriages to non-Indian men, restored to the membership list pursuant to Bill C-31.
16. Justice Hugessen summarized the intention of Bill C-31, as follows:

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 [*Sawridge Band v. Canada*, 1997 CanLII 5294 (FCA), [1997] 3 F.C. 580 (C.A.), at paragraph 2]:

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*, 2003 FCT 347, [2003] 4 FCR 748, at para 1 [Tab 1] [Emphasis added]

17. Justice Hugessen reviewed the relevant provisions of Bill C-31 and turned to the legislative debates surrounding its enactment in order to clarify that its purpose and intention was to create an automatic entitlement to membership to women who had lost their status because they married non-Indian men:

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."

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 (House of Commons Debates, Vol. II, March 1, 1985, page 2644):

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

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 (House of Commons Debates, *idem*, at page 2645):

This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. 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.

Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved (House of Commons Debates, *idem*, at page 2646):

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.

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.

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 (Minutes of Proceedings and Evidence on the Standing Committee on Indian Affairs and Northern Development, Issue No. 12, March 7, 1985, at page 12:7):

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.

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.

*Sawridge Band v Canada*, 2003 FCT 347, [2003] 4 FCR 748, at paras 27-32 [Tab 1] [Emphasis added]

18. Ultimately, Justice Hugessen ordered that Sawridge enter or register the names of the 11 woman, and any others who were acquired rights members, on its membership list. His order was upheld on appeal in *Sawridge Band v. Canada*, 2004 FCA 16, [2004] 3 FCR 274.
19. The key here is the distinction between entitlement to status as an Indian under Bill C-31 and entitlement to membership in Sawridge, as noted by Minister Crombie in the excerpts of the legislative debates referenced by Justice Hugessen.
20. Maurice Stoney and his siblings are not acquired rights members of Sawridge by virtue of Bill C-31, and the order of Justice Huggesen does not apply to them. While Maurice Stoney was entitled to status as an Indian by virtue of Bill C-31, he did not fall within the categories of persons entitled to have his name entered on Sawridge's membership list.
21. The Stoney Applicants' assertion that the issue of acquired rights, and the rights of unspecified persons *including* Maurice Stoney and his siblings to membership in Sawridge, was determined by the Federal Court of Appeal in *Sawridge Band v. Canada*, 2004 FCA 16, [2004] 3 FCR 274 is, therefore, misleading and incorrect.

C. The arguments of the Stoney Applicants have already been advanced and determined through litigation between Maurice Stoney and Sawridge.

22. In fact, Maurice Stoney's current counsel advanced this very argument, that he is an acquired rights member of Sawridge under Bill C-31, when she represented him in Federal Court on the judicial review of Sawridge's denial of his membership application from 2012 through 2013. She relied upon Justice Hugessen's decision in *Sawridge Band v. Canada*, [2003] 4 FCR 748 and the Federal Court of Appeal's decision in *Sawridge Band v. Canada*, 2004 FCA 16, [2004] 3 FCR 274, in support of her position during the judicial review.

Stoney's Memorandum of Fact and Law filed in Federal Court Action No. T-923-12, at paras 14 - 20 [Tab 2]

23. In his decision dismissing Maurice Stoney's application for judicial review, Justice Barnes recognized that if Maurice Stoney (and the other applicants) were acquired rights members, then Sawridge could not refuse their membership applications pursuant to the decision of Justice Hugessen which was upheld by the Federal Court of Appeal:

I accept that, if the Applicants had such an acquired right of membership by virtue of their ancestry, Sawridge had no right to refuse their membership applications: see *Sawridge v. Canada*, 2004 FCA 16 (CanLII) at para 26, [2004] FCJ no 77.

*Stoney v Sawridge First Nation*, 2013 FC 509, at para 9 [Tab 3]

24. Justice Barnes determined that Maurice Stoney was not an acquired rights member. He engaged in a thorough analysis of Mr. Stoney's argument regarding his entitlement to membership under Bill C-31. He found that Bill C-31 did not provide Maurice with an automatic right to membership in Sawridge. Rather, Justice Barnes noted that Maurice lost his right to membership when his father obtained enfranchisement for the entire Stoney family:

...

The legislative balance referred to by Justice Hugessen is also reflected in the 2010 Legislative Summary of Bill C-3 titled the Gender Equity in Indian

Registration Act, SC 2010, c 18. There the intent of Bill C-31 is described as follows:

Bill C-31 severed status and band membership for the first time and authorized bands to control their own membership and enact their own membership codes (section 10). For those not exercising that option, the Department of Indian Affairs would maintain "Band Lists" (section 11). Under the legislation's complex scheme some registrants were granted automatic band membership, while others obtained only conditional membership. The former group included women who had lost status by marrying out and were reinstated under paragraph 6(1)(c). The latter group included their children, who acquired status under subsection 6(2).

I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

*Stoney v Sawridge First Nation*, 2013 FC 509, at paras 11-15 [Tab 3] [Emphasis in original]

25. Justice Barnes also noted that the judicial review application was an attempt by Maurice Stoney to re-litigate the matters that were in issue in the 1995 Action which was brought by counsel on behalf of Maurice Stoney and others, relating to his entitlement to membership as a result of Bill C-31. In the 1995 Action, the Federal Court of Appeal determined that "[i]t is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents [including Maurice Stoney] have, at best, a right to apply to the Band for membership." Justice Barnes accordingly concluded that the arguments related to Bill C-31 were barred under the doctrine of issue estoppel.

*Huzar v Canada*, 2000 CarswellNat 1132 (FCA), at paras 4 and 5. [Tab 4]

*Stoney v Sawridge First Nation*, 2013 FC 509, at para 17 [Tab 3]

26. As such, the Stoney Applicants' assertion that this matter is unrelated to the judicial review application (or for that matter the 1995 Action) is disingenuous. Having regard to the definition of "Beneficiaries" in the 1985 Trust, which is tied to membership, the

Stoney Applicants' position that they are beneficiaries pre-supposes and is conditional upon their assertion that they are members of Sawridge.

27. This very issue of automatic entitlement to membership was at the heart of the 2012 Action, as is demonstrated by a review of the memorandums of fact and law filed by the parties in the 2012 Action.

Stoney's Memorandum of Fact and Law filed in Federal Court Action No. T-923-12, at paras 14 - 20 [Tab 2]

Sawridge's Memorandum of Fact and Law filed in Federal Court Action No. T-923-12, at paras 21-30 [Tab 5]

28. For the reasons set out in Sawridge's written submissions filed on September 28, 2016 and the reasons set out above, it is clear that Maurice Stoney and his siblings are not members of Sawridge and have not been members of Sawridge at any point in time which would make them beneficiaries of the 1985 Trust.
29. Sawridge submits that the Stoney Application should be struck, as the basis for Mr. Stoney and his family to request status as a party is directly connected to their assertion that they are or have been members of Sawridge.
30. As that issue is *res judicata*, the Stoney Application constitutes an abuse of process. In the alternative, the fact that the membership-related matters at the heart of the Stoney Application have already been adjudicated is a basis for dismissing said application.

**D. The Stoney Applicants have failed to address the merits of their application for intervenor status, which ought to be dismissed in any event.**

31. The Stoney Application purports to be an "Application to be added as a party or intervenor"; however, the Stoney Applicants' submissions do not address the merits of their application for intervenor status.
32. The two-step approach for reviewing applications to intervene was set out in Sawridge's September 28, 2016 brief. In short, a person should be given intervenor status if they are specially affected by the decision in a matter or have some special expertise or perspective concerning the issues in a matter.

33. The Stoney Applicants are not members of Sawridge and are not beneficiaries of the 1985 Trust, such that they are not specially affected by any of the issues in the within Action. In any event, they have provided no evidence as to any special expertise or perspective concerning the issues in the within Action which would warrant them being granted intervenor status.

E. The Stoney Applicants' submissions further justify Sawridge's claim to entitlement to solicitor and client or enhanced costs for this Application.

34. In its September 28, 2016 written submissions, Sawridge noted that the following may provide grounds for an award of solicitor and client costs:

- (a) Conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action;
- (b) Any application, proceeding or step in an action that was unnecessary, improper or a mistake;
- (c) A person has engaged in misconduct or conduct that is reprehensible, scandalous or outrageous; and
- (d) A person has done something to hinder, delay, or confuse the litigation, where there was no serious issue of fact or law which required the lengthy, expensive proceedings.

35. It has become abundantly clear from a review of the Stoney Applicants' written submissions that the Stoney Application is, at base, the most recent attempt in a longstanding pattern of Maurice Stoney (and his family) using any and all judicial means to try to assert some entitlement to membership in Sawridge.

36. The Stoney Applicants' attempt to phrase the issue as one relating to the definition of "Beneficiaries" under the 1985 Trust, as opposed to one of membership, is disingenuous. A determination that Maurice Stoney and his siblings are beneficiaries of the 1985 Trust is conditional on a determination that they were members of Sawridge in 1982.

37. The Stoney Applicants are not members of Sawridge and have never been members of Sawridge at any time so as to make them beneficiaries of the 1985 Trust. This membership issue has been litigated in the 1995 Action with representation from counsel.

It was re-litigated in the 2012 Action (judicial review) by the very same counsel who now purports to make the same arguments in support of the Stoney Application.

38. Sawridge has yet again had to respond to the same arguments advanced by Maurice Stoney in the 1995 Action and the 2012 Action. Justice Barnes noted in the 2012 Action that the attempt to re-litigate Maurice Stoney's entitlement to automatic membership in Sawridge was barred by the doctrine of issue estoppel having regard to the decision of the Federal Court of Appeal in the 1995 Action. Maurice Stoney, who was represented by the very same counsel in the 2012 Action, did not appeal Justice Barnes' decision.
39. It is not open to the Stoney Applicants to now attempt to litigate the membership afresh in the within Action, when the membership issue is *res judicata* and barred by the doctrine of issue estoppel.
40. The Stoney Applicants' attempt to re-litigate the membership issue in this forum is, in the least, conduct that was unnecessary and that unnecessarily lengthened and delayed an already lengthy action. At worst, the Stoney Applicants' conduct is reprehensible and outrageous having regard to the history of litigation between Maurice Stoney and Sawridge concerning membership.
41. Furthermore, while purporting to bring an application which sought intervenor status as an alternative to party status, the Stoney Applicants failed to even address the merits of their application for intervenor status in their written submissions.
42. Sawridge submits that, for the foregoing reasons and those reasons set out in its submissions of September 28, 2016, the Stoney Applicants' conduct warrants an award of solicitor and his own client costs being made in Sawridge's favour in respect of the Stoney Application.

#### IV. RELIEF REQUESTED

43. If Sawridge is granted the status to intervene in the Stoney Application, then for the above reasons and those set out in its September 28, 2016 submissions, Sawridge prays that this Honourable Court orders as follows:

- (a) That the Stoney Application be struck pursuant to Rule 3.68 of the *Rules of Court*;
- (b) In the alternative, that the Stoney Application be dismissed; and
- (c) That costs be paid to Sawridge by the Applicants on a solicitor and his own client basis, or on an enhanced basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of October, 2016.

PARLEE McLAWS LLP



---

EDWARD H. MOLSTAD, Q.C.  
Solicitors for the Sawridge First Nation

## LIST OF AUTHORITIES

- Tab 1     *Sawridge Band v Canada*, 2003 FCT 347, [2003] 4 FCR 748
- Tab 2     Stoney's Memorandum of Fact and Law filed in Federal Court Action No. T-923-12
- Tab 3     *Stoney v Sawridge First Nation*, 2013 FC 509
- Tab 4     *Hizar v Canada*, 2000 CarswellNat 1132 (FCA)
- Tab 5     Sawridge's Memorandum of Fact and Law filed in Federal Court Action  
No. T-923-12

# Tab 2

## MEMORANDUM OF FACT AND LAW

### I. FACTS

1. The Applicant, Maurice Stoney, was born a member of the Sawridge First Nation.

Affidavit of Maurice Stoney. [Tab B]

2. His grandfather, Johnny Stoney (also known as John Stephens), was a member of the Alexander Band under *Treaty No. 6*, who married Henrietta Sinclair, a member of what was then known as the Lesser Slave Lake Band, and became a member the Lesser Slave Lake Band with Chief Kinosayoo in or about 1895. The list of Kinosayoo's Band, Sawridge, showing Johnny Stony as number 18 shows that Johnny Stony formally transferred from Alexander's Band on September 14, 1910.

Affidavit of Maurice Stoney. [Tab B]

3. Chief Kinosayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band, recognized as a Band for that *Treaty* signing.

Affidavit of Maurice Stoney. [Tab B]

4. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These lands were initially considered to be held by him in severalty under *Treaty No. 8*.

Affidavit of Maurice Stoney. [Tab B]

5. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll of the Sawridge Band until his death in 1956.

Affidavit of Maurice Stoney. [Tab B]

6. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be part of the Sawridge Reserve.

Affidavit of Maurice Stoney. [Tab B]

7. Maurice's father was William Stoney, son of Johnny Stoney. William Stoney and his family lived in Slave Lake on the edge of the Sawridge Indian Reserve.

Affidavit of Maurice Stoney. [Tab B]

8. In 1944, William Stoney and his family were enfranchised.

Affidavit of Maurice Stoney. [Tab B]

9. Maurice Stoney applied to Sawridge for recognition of his membership which was automatic as a result of Bill C-31 on April 17, 1985.

Affidavit of Maurice Stoney. [Tab B]

10. The Sawridge Membership Rules did not become effective until September 26, 1985 and these Rules are stated to require recognition of all "acquired rights" members. On September 26, 1985 the Minister of Indian Affairs and Northern Development wrote to Chief Walter Twinn to advise him of this.

Affidavit of Maurice Stoney. [Tab B]

11. Sawridge refused to review the membership applications submitted in the years since 1985 until they 'concluded' that they had a 'completed membership form' from Maurice Stoney. Throughout the years since he first approached Sawridge until December 7, 2011, he was advised that Sawridge was not considering membership applications. On December 7, 2011, he was advised that the Council of Sawridge First Nation had denied his application for membership.

Affidavit of Maurice Stoney. [Tab B]

Completed Application of Maurice Stoney from Exhibit B to the Affidavit of Roland Twinn. [Tab C].

Exhibits C, D, G, H, I, J, K, L, M, N, O, P, Q, and R to the Affidavit of Roland Twinn. [Tab C]

12. On December 19, 2011, he appealed this decision denying his Membership in Sawridge.

Affidavit of Maurice Stoney. [Tab B]

Exhibit T to Affidavit of Roland Twinn. [Tab C]

13. The Appeal Committee heard the appeal regarding Maurice's membership on April 21, 2012 and provided their decision on May 7, 2012 upholding the decision of Chief and Council denying his membership. The wording used was the same as the wording for denying his cousins membership, Aline Huzar and June Kolosky T-922-12. A judicial review of this appeal decision was filed in the Federal Court on May 11, 2012.

Affidavit of Maurice Stoney. [Tab B]

Exhibits W and Y to the Affidavit of Roland Twinn. [Tab C]

**II. Beyond Jurisdiction: Requirements of Section 10(4) and 10(5) of the *Indian Act***

14. It is submitted that section 10, subsections 1, 4, 6, and 7 of the *Indian Act* provide the basis for determining membership in a band.

(1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership,

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of this membership rules for the band.

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

*Indian Act*, S.C. 1985, c. 27. [Tab 1]

15. On July 9, 1985, Sawridge First Nation submitted membership rules however this did not complete the process for acceptance and effectiveness of these membership rules. Two points are clear from the letter of the Minister of Indian Affairs to Chief Walter Twinn dated September 26, 1985: first, membership consent did not occur until August 29, 1985, at the earliest, with the decision of the Minister being made as stated in his letter of September 26, 1985; and second, that these membership rules must "respect acquired rights" as set out in that letter from the Minister.

Affidavit of Maurice Stoney, Exhibit I. [Tab B]

16. Accordingly, it is submitted that on April 15, 1985, pursuant to Bill C-31, Maurice was a person with the right to have his name entered in the Band List under section 6 of the *Indian Act*. The passage of time did not remove this right and did not permit Sawridge Band to refuse to accept this "acquired rights".

*Twinn et al. v. Poitras et al.*, 2012 FCA 47 [Tab 2]; Leave to Appeal to the Supreme Court of Canada dismissed July 19, 2012, Supreme Court of Canada Bulletin of Proceedings July 20, 2012, #34760. [Tab 3]

17. In 2003, Mr. Justice Hugessen granted a mandatory injunction to Bertha L'Hirondelle and 11 other women whose membership in Sawridge had been denied prior to passage of Bill C-31. He found that the Sawridge had refused membership to Bertha L'Hirondelle and the other 11, on the grounds that they were not resident on Reserve or had not demonstrated a significant commitment to the Band and submit to interviews by the Band. He found that these provisions violated the requirement for automatic membership provided by Bill C-31. Sawridge argued that these women had not applied for membership by completing the 43 page application form but Mr. Justice Hugessen held that this was a "red herring" because the issue was "whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled".

*L'Hirondelle v. Canada*, 2003 FCT 347, paras. 12, 18, 23-27, 32-34 and 39. [Tab 4]; appeal dismissed 2004 FCA 16 [Tab 5]

18. At that time, Sawridge had an action alleging that Bill C-31 was unconstitutional however that action has now been concluded and Bill C-31 is constitutional.

*Twinn et al. v. Pottras et al.*, 2012 FCA 47 [Tab 2]; Leave to Appeal to the Supreme Court of Canada dismissed July 19, 2012, Supreme Court of Canada Bulletin of Proceedings July 20, 2012, #34760. [Tab 3].

19. Here, Sawridge argues as it did before, that "completed" applications were not submitted until 2011 however it is clear that the Applicant had been seeking to have his name added throughout the period since 1985 just as Bertha L'Hirondelle and all others had done.

*Twinn et al. v. Pottras et al.*, *supra* 2012 FCA 47 [Tab 2]; SCC Proceedings July 20, 2012, #34760. [Tab 3]

*L'Hirondelle*, *supra*, paras. 1, 3-5, and 12. [Tab 4]; para. 35 [Tab 5]

Affidavit of Roland Twinn, paras. 3-5. [Tab C]

20. Finally, it is settled law that the provisions of Bill C-31 recognized membership effective April 17, 1985 of a number of classes of persons who had been excluded. Maurice was a member of Sawridge who was disentitled to Indian status from 1943 on because of the enfranchisement of his family. On April 17, 1985 all of these enfranchised persons were entitled to have their names added to the Band list. Sawridge had no ability to exclude their names from membership when they formulated their membership rules in July, August and September, 1985.

*Sawridge*, *supra*, para. 1. [Tab 4]

*Canada v. Sawridge Band*, 2009 FCA 245, paras. 7-10. [Tab 6]

*Attorney General of Canada v. Larkman*, 2012 FCA 204, paras. 2, 10-14. [Tab 7]

**IV. Contrary to the Charter of Rights, Section 15 and to Section 35 of the Constitution Act, 1982.**

21. Sawridge has disputed the ability of enfranchised members to be Band members since the passage of Bill C-31 based on the argument that it had a right under section 35 of the *Constitution Act, 1982*, to determine who was a member of the Band. The matter of Bill C-31 has been argued in the Courts for a very lengthy period of time and was conclusively dismissed. Constitutional arguments based on section 35 and treaty rights can no longer be argued.

*Sawridge Band v. The Queen*, 2008 FC 322 [Tab 8]; aff'd 2009 FCA 123 [Tab 9]; leave to appeal to the Supreme Court of Canada dismissed December 10, 2009 [Tab 10].

22. In any event, it is clear that Johnny Stoney, the grandfather of Maurice, was accepted by Lesser Slave Lake Band based on the membership of his wife, Henrietta Sinclair, in or about 1895 and formally in 1910 by the Sawridge Band. His lands became part of the Reserve for Sawridge.

Affidavit of Maurice Stoney. [Tab B]

23. It is submitted that the actions of Sawridge in refusing to acknowledge the membership of Maurice is contrary to the aboriginal and *Treaty* rights recognized by section 35 of the *Constitution Act, 1982*.
24. The actions of Sawridge are without an aboriginal and treaty basis and are discriminatory under section 15 of the *Charter*.

*A.G. v. Larkman, supra*. para. 13. [Tab 7]

#### V. Procedural Fairness

25. The Appeal Committee held that there "are no grounds to set aside the decision of the Chief and Council". The decision of the Sawridge Chief and Council refused the applications of Maurice because he did not have "any specific "right" to have name entered in the Membership List" and the Council did not feel that it was "in the best interests and welfare of the First Nation".

Affidavit of Roland Twinn, Tabs S and Y. [Tab C]

26. As stated above, Maurice is entitled to membership as provided by Bill C-31 prior to the establishment and recognition of the Sawridge membership provisions and he is and has been entitled to be a member since April 17, 1985. There are no grounds to deny the membership of Maurice.

27. The Sawridge First Nation Appeal Committee has a duty of procedural fairness requiring an unbiased tribunal who must apply the law fairly. An institutional problem will violate the principles of the rule against bias.

*R. v. Lippe*, [1991] 2 S.C.R. 114, pp. 32-38 and 47-52. [Tab 11]

*Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3, paras. 61-85. [Tab 12]

28. It is submitted that the total membership of Sawridge First Nation is small being in the range of 50 members and noted by the Federal Court of Appeal as 44 members. Only three applicants have been admitted to membership since 1985 and these three are (were) the sisters of the deceased Chief, Walter Twinn. The Appeal Committee consisted of 21 of the members of Sawridge and three of these 21 were the Chief, Roland Twinn and Councillors, Justin Twin and Winona Twin, who made the original decision appealed from.

*Sawridge, supra.*, paras. 10. [Tab 6]

Affidavit of Roland Twinn, Tab Y. [Tab C]


29. It is submitted that there was institutional bias and this decision must be set aside.

**VI. Order Requested.**

30. It is respectfully submitted that a Declaration should issue declaring that Maurice Stoney is a member of Sawridge, with solicitor-client costs.

ALL OF WHICH IS SUBMITTED this 1<sup>st</sup> day of August, 2012.

DAVIS LLP.

Per:   
Priscilla Kennedy  
Solicitor for Maurice Stoney

Time: 1.5 hours.

TABLE OF AUTHORITIES

1. *Indian Act*, S.C. 1985, c. 27.
2. *Twinn et al. v. Poitras et al.*, 2012 FCA 47.
3. *Twinn et al. v. Poitras et al.*, Leave to Appeal to the Supreme Court of Canada dismissed July 19, 2012, Supreme Court of Canada Bulletin of Proceedings July 20, 2012, #34760.
4. *L'Hirondelle v. Canada*, 2003 FCT 347.
5. *Sawridge Band v. Canada*, 2004 FCA 16.
6. *Canada v. Sawridge Band*, 2009 FCA 245.
7. *Attorney General of Canada v. Larkman*, 2012 FCA 204.
8. *Sawridge Band v. The Queen*, 2008 FC 322.
9. *Sawridge Band v. The Queen*, 2009 FCA 123.
10. *Sawridge Band v. The Queen*, Leave to Appeal December 10, 2009.
11. *R. v. Lippe*, [1991] 2 S.C.R. 114.
12. *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3.

**Tab F**

COURT FILE NUMBER

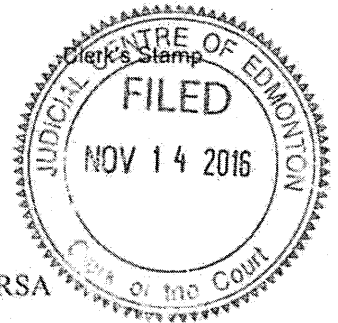
1103 14112

COURT:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

EDMONTON



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

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

APPLICANTS:

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

DOCUMENT

**REPLY OF THE SAWRIDGE FIRST  
NATION TO THE STONEY  
APPLICANTS' RESPONSE TO THE  
SAWRIDGE FIRST NATION'S  
APPLICATION TO INTERVENE IN THE  
STONEY APPLICATION**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

PARLEE McLAWS LLP  
1500 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 4K1  
**Attention:** Edward H. Molstad, Q.C.  
Telephone: (780) 423-8500  
Facsimile: (780) 423-2870  
**File Number:** 64203-7/EHM

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ISSUES .....	3
III.	ANALYSIS .....	3
	A. The Stoney Applicants' repeated, unfounded, and incorrect assertion that they are acquired rights members of Sawridge demonstrates precisely why Sawridge ought to be granted intervenor status and solicitor client costs on the Stoney Application.....	3
	B. The Stoney Applicants have falsely accused Sawridge of failing to comply with Justice Hugessen's Order in respect of Elizabeth Poiras, which is of no relevance to the subject Applications.....	7
	C. The Stoney Applicants' repeated misstatement of facts and law relating to membership issues and previous litigation with Sawridge is egregious and demonstrates why the Sawridge Application for intervenor status should be granted with costs payable to Sawridge on a solicitor and client basis.....	10
	D. By failing to object to the Stoney Application despite the history of litigation involving Maurice Stoney and the determination that he (and his siblings) are not acquired rights members, the OPGT has failed to heed the direction of this Honourable to refocus its role in the within Action on the representation of potential minor beneficiaries and away from membership.....	11
IV.	RELIEF REQUESTED.....	13

## 1. INTRODUCTION

1. On September 28, 2016, Sawridge filed its written submissions setting out its position that it should be granted status to intervene in the Stoney Application ("Sawridge Application"), along with its response to the merits of the Stoney Application.
2. On October 27, 2016, the Stoney Applicants filed their Response to the merits of the Sawridge Application seeking intervenor status on the Stoney Application.
3. On October 31, 2016, the Office of the Public Guardian and Trustee ("OPGT"), as representative of the minor beneficiaries of the 1985 Trust filed a one page letter indicating it has no objection to the Stoney Application.
4. These submissions are filed as a Reply to the Stoney Applicants' response to the Sawridge Application seeking status and in response to the OPGT's October 31, 2016 letter. These submissions are intended to supplement the written submissions filed by Sawridge on September 28, 2016 and October 31, 2016.
5. With respect to the Stoney Applicants' October 27, 2016 Response to the Sawridge Application, Sawridge is compelled to address the following issues:
  - (a) The Stoney Applicants continue to assert, incorrectly and without merit, that they are acquired rights members in Sawridge by virtue of Bill C-31. This assertion has been rejected by the Federal Court and is clearly incorrect based on the plain wording of the subject legislation and the circumstances of the Stoney family.
  - (b) By extension, the Stoney Applicants go on to assert, incorrectly and without merit, that Sawridge has failed to comply, and continues to fail to comply, with the Order of Justice Hugessen in *Sawridge Band v Canada*, [2003] 4 FCR 748 requiring Sawridge to add the names of acquired rights women to its membership pursuant to Bill C-31, including Elizabeth Poitras ("Ms. Poitras"). Sawridge has complied with the Order and has recognized Ms. Poitras as a member since 2003. Sawridge's litigation with Ms. Poitras is of no relevance to the Stoney Application or the Sawridge Application. Yet, the Stoney Applicants have

misstated the status of that litigation and mischaracterized and misapplied decisions arising from that litigation in a futile attempt to suggest that Sawridge has repeatedly re-litigated or failed to comply with Justice Hugessen's Order.

- (c) The Stoney Applicants haven't taken liberties in misstating or misinterpreting facts and case law, asserting rights which have been judicially determined not to exist, and raising issues of no relevance to the Stoney Application or the Sawridge Application. The Stoney Applicants' conduct demonstrates precisely why Sawridge should be granted intervenor status in the Stoney Application, so that Sawridge can set the record straight on membership issues raised by the Stoney Applicants, which issues specially affect Sawridge and to which Sawridge brings a unique perspective.
6. With respect to the OPGT's October 31, 2016 letter indicating it has no objection to the Stoney Application, Sawridge submits that it is improper for the OPGT to take such a position given this Honourable Court's decision in *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 ("*Sawridge #3*"). In *Sawridge #3*, Your Lordship's directed that the OPGT refocus its role in the within Action on the representation of minor and potential minor beneficiaries of the 1985 Trust and away from past and resolved membership issues between third parties and Sawridge.
  7. The Stoney Application is plainly an attempt by the Stoney Applicants to re-litigate past and resolved membership issues which have determined that the Stoney Applicants are not acquired rights members of Sawridge. The Stoney Applicants seek to be named as beneficiaries to the 1985 Trust and to have their costs payable from the 1985 Trust, which ought to be of concern to the OPGT having regard to its fiduciary duties to the minor beneficiaries.
  8. The OPGT's position on the Stoney Application flies in the face of this Court's direction in *Sawridge #3*. It is particularly concerning given that the costs incurred to respond to the Stoney Application reduce the funds held in trust for the minor and potential minor beneficiaries whose interests the OPGT has been appointed to protect.

9. Sawridge submits, that the OPGT's position on the Stoney Application is unnecessary and improper.

## II. ISSUES

10. The issues before this Honourable Court are as follows:

- (a) Should Sawridge be granted the status to intervene in the Stoney Application, per Rule 2.10 of the *Rules of Court*?
- (b) Should the Stoney Application be struck, in whole or in part, pursuant to Rule 3.68 of the *Rules of Court*?
- (c) In the alternative, should the Stoney Application be dismissed?
- (d) If the Stoney Application is struck and/or dismissed by this Honourable Court, is Sawridge entitled to costs on a solicitor and his own client basis, or, in the alternative, costs on an enhanced basis?

11. Sawridge submits that all of these questions should be answered in the affirmative, for the reasons set out in its submissions of September 28, 2016 and October 31, 2016 and for the additional reasons set out below.

## III. ANALYSIS

- A. The Stoney Applicants' repeated, unfounded, and incorrect assertion that they are acquired rights members of Sawridge demonstrates precisely why Sawridge ought to be granted intervenor status and solicitor client costs on the Stoney Application.

12. Sawridge has addressed this issue in its submissions of September 28, 2016 and October 31, 2016 by thoroughly reviewing the history and intention of Bill C-31 and the history of litigation between Maurice Stoney and Sawridge concerning membership.

13. The Stoney Applicants are not acquired rights members of Sawridge by virtue of Bill C-31. This issue is *res judicata*, having been decided by the Federal Court. Yet, at every

opportunity, the Stoney Applicants continue to assert entitlement to acquired rights membership in Sawridge before this Honourable Court.

14. The Stoney Applicants assertion that they fall within the category of persons contemplated by Justice Hugessen's Order in *Sawridge Band v Canada*, [2003] 4 FCR 748 is based on their argument that the Stoney Applicants fall within the category of persons contemplated in section 11(1)(c) of Bill C-31.
15. As noted in Sawridge's previous written submissions, Maurice Stoney advanced this exact same argument in Federal Court proceedings before Justice Barnes, and the argument was rejected.
16. To date, Sawridge has not re-iterated the legal reasons why Maurice Stoney's position was rejected before the Federal Court. As the Stoney Applicants continue to assert entitlement to acquired rights membership, Sawridge believes it is necessary to now review the wording of the relevant legislation which supports Sawridge's position and forms the basis of Justice Barnes' decision. The Stoney Applicants' position is untenable based on the plain wording of the relevant legislation.
17. When Bill C-31 came into effect on April 17, 1985, it did not grant Maurice Stoney (or his siblings) acquired rights membership in Sawridge. Section 6 of Bill C-31 only granted Maurice Stoney the right to have his Indian status restored, pursuant to section 6(1)(d):

6. (1) Subject to section 7, a person is entitled to be registered [as an Indian] if

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subsection 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions.

*An Act to amend the Indian Act ["Bill C-31"], s 6 [Tab 1]*

18. Section 11(1) specifically provides that a person has a right to have his name entered onto a band membership list if: (a) his name was on the band's membership list "immediately prior to April 17, 1985"; (b) he is a member of a new band created on or after April 17, 1985; (c) he was entitled to be restored to "Indian" status under section 6(1)(c) and he himself had ceased to be a member of the band and lost his status by reason of the discriminatory circumstances set out in that section; or (d) he was born on or after April 17, 1985 to parents who had or were entitled to have their names entered on the band's membership list.

Bill C-31, s 11(1) [Tab 1]

19. Maurice Stoney's personal history does not bring him within either sections 11(1)(a), (b) or (d); nor does he fall with section 11(1)(c).
20. Maurice Stoney ceased to be a member of Sawridge and lost his status under section 114 of the 1927 *Indian Act* through the voluntary enfranchisement of his father by Order in Council dated August 1, 1944. Accordingly, his name had been removed from Sawridge's membership list "prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985". As such his right to be reinstated to the Indian Register was under section 6(1)(d), not section 6(1)(c) of Bill C-31 (section 6(i)(c.1) was only enacted under 58 Eliz II (2010), c.18, s. 2(3), which only came into force after April 5, 2012). He does not fall within section 11(1)(c), which only provides for the reinstatement of women involuntarily enfranchised "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".

*Indian Act*, RSC 1927 c 98, s 114 [Tab 2]

*Indian Act*, RSC 1985 c I-5 (unamended), ss 12 and 109(2) [Tab 3]

*Gender Equity in Indian Registration Act*, 59 Eliz II (2010), c 18 [Tab 4]

Bill C-31, ss 6 and 11 [Tab 1]

21. Section 11(1)(c) therefore does not give Maurice Stoney any "acquired" right to have his name put on Sawridge's membership list as of April 17, 1985, or at all.

22. Indeed, it is section 11(2) of Bill C-31 that specifically addresses the restoration of Maurice Stoney's band membership and the band membership of all children and wives of Indian men who were voluntarily enfranchised by orders under section 109(1). And, in enacting section 11(2), Parliament only create a conditional right to membership in a band, by delaying entitlement for two years until June 28, 1987 (2 years from the enactment of Bill C-31) and by only given that conditional right to persons seeking membership in bands that had not, before June 28, 1987, taken control of their own membership lists.

Bill C-31, s 11(2) [Tab 1]

23. Sawridge took control of its membership list effective July 8, 1985 so section 11(2) did not and does not give Maurice Stoney any right to membership in Sawridge.
24. Maurice Stoney had and has, therefore, no "acquired" right under Bill C-31 to membership in Sawridge either on April 17, 1985 or April 17, 1987 or December 7, 2011 or April 22, 2012.
25. This determination is *res judicata* and is not open for reconsideration, having been decided by the Federal Court and Federal Court of Appeal:

I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

*Stoney v Sawridge First Nation*, 2013 FC 509, at para 15 [Emphasis added] [Tab 5]

It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents [including Maurice Stoney] have, at best, a right to apply to the Band for membership.

*Huzar v Canada*, 2000 CarswellNat 1132 (FCA), at paras 4 and 5 [Tab 6]

26. The Stoney Applicants are therefore incorrect in asserting that Sawridge has failed to comply with Justice Hugessen's Order by failing to add the Stoney Applicants to its

membership list. The Stoney Applicants are not within the category of person contemplated as acquired rights members under Bill C-31 and Justice Hugessen's Order,

27. The Stoney Applicants' assertion that the Government of Canada is the only party with a clear and direct interest in the persons who were recognized members of Sawridge on April 17, 1985, and that Sawridge has no such interest, is devoid of merit.

28. The Stoney Applicants' suggestion that previous judicial considerations of Maurice Stoney's membership status in Sawridge only have application to matters after Sawridge assumed control of its membership on July 8, 1985, is similarly devoid of merit.

**B. The Stoney Applicants have falsely accused Sawridge of failing to comply with Justice Hugessen's Order in respect of Elizabeth Poitras, which is of no relevance to the subject Applications.**

29. Ms. Poitras' litigation with Sawridge is of no relevance to the Applications before this Honourable Court. Yet, the Stoney Applicants have misstated the status of that litigation and misapplied decisions arising from that litigation in an attempt to suggest that Sawridge has repeatedly re-litigated or failed to comply with Justice Hugessen's Order.

30. Ms. Poitras fell within the category of persons contemplated by Justice Hugessen's Order, and she was in fact named as one of the 11 women he ordered to be added to Sawridge's membership list in 2003.

31. The Stoney Applicants assert that Sawridge thereafter continued to deny Ms. Poitras membership and that Sawridge continues with actions denying membership to Ms. Poitras today.

32. These statements are false.

33. In fact, Elizabeth Poitras swore an Affidavit on December 7, 2011 which was filed in this Action on December 9, 2011. In that Affidavit, Ms. Poitras herself deposed to the fact that she was a member of Sawridge.

Affidavit of Elizabeth Poitras (without exhibits) at para 1 [Tab 7]

34. In her Questioning on Affidavit on April 16, 2015, Ms. Poitras testified that she became a member of Sawridge pursuant to the Order of Justice Hugessen and that Sawridge has recognized her as a member since 2003:

Q: And I think we looked at this earlier. On March 27, 2003 Justice Hugessen granted an order whereby you became a member of the Sawridge First Nation, correct?

A: I and several other people.

Q: Thank you. And those individuals that were included in the order have sometimes been referred to as the acquired-rights people, correct?

A: Yes.

Q: And as of today you are recognized as a member of the Sawridge First Nation, correct?

A: Yes, I am.

Q: And you indicated this morning, in reference to your [membership] application form, that you still had not received a response from the Sawridge First Nation. And I think what you have since told us you never received a yes or a no?

A: M-hm.

Q: Now since becoming a member pursuant to court order on March 27, 2003 is there some reason why you would expect a response from Sawridge First Nation in relation to your application?

A: I don't really expect a response. I am just saying that it still was never dealt with, that it does not have to be dealt with now because I am a full band member.

Q: Fair enough. You have been a member for the last 12 years or so?

A: Already, yeah.

Q: So you don't expect a response at this point in time?

A: No, no.

Q: Correct?

A: No, I don't.

Transcript from the Questioning on Affidavit of Elizabeth Poitras, April 16, 2015  
at 114:18 to 115:22 [Emphasis added] [Tab 8]

35. Ms. Poitras in fact testified that not only is she a member of Sawridge, she was elected an Elder Commissioner for Sawridge on March 24, 2015. She is one of two members of the Elders Commission which provides advice to Chief and Council, the membership committee, and anyone else who may require some advice in relation to matters of interest to the community.

Transcript from the Questioning on Affidavit of Elizabeth Poitras, April 16, 2015  
at 150:18 to 152:7 [Tab 8]

36. At this time, the ongoing litigation with Ms. Poitras is confined solely to the issue of damages. Membership is not in dispute as suggested by the Stoney Applicants.
37. The facts stand in direct contradiction to the assertions made by the Stoney Applicants in their written submissions filed on October 27, 2016 to the effect that Sawridge has failed to comply with the Order of Justice Hugessen ordering that it add the names of acquired rights members, including Ms. Poitras, to its membership list.
38. Furthermore, the Stoney Applicants assert, incorrectly, that the Order of Justice Hugessen as it relates to the Stoney Applicants is "moot". This is not the case, as the Order of Justice Hugessen plainly does not apply to the Stoney Applicants, as set out above and determined by Justice Barnes in *Stoney v Sawridge First Nation*, 2013 FC 509.
39. As the Order of Justice Hugessen does not apply to the Stoney Applicants, their attempt to draw a parallel between their position and that of Ms. Poitras is flawed and ineffective.
40. It is absurd for the Stoney Applicants to suggest that this is a case where Sawridge is openly applying to the Court for re-litigation of a settled issue, namely the Order of Justice Hugessen, and that Sawridge has misused the judicial system such that its conduct amounts to an abuse of process.
41. In fact, the opposite is true: the Stoney Applicants are attempting to re-litigate the finding of Justice Barnes in *Stoney v Sawridge First Nation*, 2013 FC 509, that section 11(1) of Bill C-31 and Justice Hugessen's Order do not apply to Maurice Stoney (or, by extension, his siblings).

C. The Stoney Applicants' repeated misstatement of facts and law relating to membership issues and previous litigation with Sawridge is egregious and demonstrates why the Sawridge Application for intervenor status should be granted with costs payable to Sawridge on a solicitor and client basis.

42. At every opportunity, the Stoney Applicants are attempting to re-litigate and advance arguments that their very same counsel, Priscilla Kennedy, made before Justice Barnes in the judicial review application in Federal Court. These arguments were rejected by Justice Barnes.
43. Sawridge does not wish to belabour this point further, having exhaustively set out its position in this regard in its submissions of September 28, 2016 and October 31, 2016.
44. Sawridge should be granted intervenor status in the Stoney Application. Sawridge is uniquely situated to address the membership issues raised by the Stoney Applicants. This issue is at the centre of the Stoney Application, given that a finding that the Stoney Applicants are members in Sawridge is a pre-condition to finding they are beneficiaries of the 1985 Trust. Their alleged entitlement to membership has been at the centre of prior litigation between Sawridge and Maurice Stoney in Federal Court and has been subject to a complaint by Maurice Stoney against Sawridge to the Canadian Human Rights Commission.
45. The Stoney Applicants are not members of Sawridge, and Sawridge is clearly specially affected by any suggestion to the contrary.
46. Upon a thorough review of the applicable case law, Bill C-31, and the evidence before this Court, it is clear that the Stoney Applicants are attempting to re-litigate their entitlement to membership in Sawridge under Bill C-31, which entitlement does not exist. This issue is *res judicata* and barred by the doctrine of issue estoppel.
47. The Stoney Applicants' conduct amounts to an abuse of process. It has unnecessarily delayed an already lengthy action by burdening this Honourable Court with a consideration of issues which have already been judicially determined in Federal Court.

48. Sawridge submits that, for the foregoing reasons and for those reasons set out in its submissions of September 28, 2016 and October 31, 2016, the Stoney Applicants' conduct warrants an award of solicitor and his own client costs being made in Sawridge's favour in respect of the Stoney Application and the Sawridge Application.

D. By failing to object to the Stoney Application despite the history of litigation involving Maurice Stoney and the determination that he (and his siblings) are not acquired rights members, the OPGT has failed to heed the direction of this Honourable to refocus its role in the within Action on the representation of potential minor beneficiaries and away from membership.

49. Sawridge submits that the OPGT's October 31, 2016 letter stating that it does not object to the Stoney Application is improper in light of this Honourable Court's decision in *Sawridge #3*, wherein Your Lordship's directed that the OPGT refocus its role in the within Action on the representation of minor and potential minor beneficiaries of the 1985 Trust and away from past and resolved membership issues:

I stress that the Public Trustee's role is limited to the representation of potential child beneficiaries of the 1985 Sawridge Trust only. That means litigation, procedures and history that relate to past and resolved membership disputes are not relevant to the proposed distribution of the 1985 Sawridge Trust. As an example, the Public Trustee has sought records relating to the disputed membership of Elizabeth Poitras. As noted, that issue has been resolved through litigation in the Federal Court, and that dispute has no relation to establishing the identity of potential minor beneficiaries. The same is true of any other adult Sawridge Band members.

...

This Court's function is not to duplicate or review the manner in which the Sawridge Band receives and evaluates applications for Band membership. I mean by this that if the Public Trustee's inquiries determine that there are one or more outstanding applications for Band membership by a parent of a minor child then that is not a basis for the Public Trustee to intervene in or conduct a collateral attack on the manner in which that application is evaluated, or the result of that process.

I direct that this shall be the full extent of the Public Trustee's participation in any disputed or outstanding applications for membership in the Sawridge Band. This Court and the Public Trustee have no right, as

a third party, to challenge a crystalized result made by another tribunal or body, or to interfere in ongoing litigation processes. The Public Trustee has no right to bring up issues that are not yet necessary and relevant.

...  
I believe that the instructions given here will refocus the process on Tasks 1 – 3 and will restrict the Public Trustee's activities to those which warrant full indemnity costs paid from the 1985 Sawridge Trust. While in Sawridge #1 I had directed that the Public Trustee may inquire into SFN Membership processes at para 54 of that judgment, the need for that investigation is now declared to be over because of the decision in Stoney v Sawridge First Nation. I repeat that inquiries into the history and processes of the SFN membership are no longer necessary or relevant.

*1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 at paras 49 and 54-55, and 70 [Emphasis added] [Tab 9]

50. Maurice Stoney's membership dispute with Sawridge has been resolved through litigation in Federal Court. By extension, his siblings assertion to membership, which is premised on identical grounds (as evidenced by Maurice Stoney bringing this application in a representative capacity), is also resolved. Further inquiry into this issue is no longer necessary or relevant.
51. The Stoney Applicants are not members of Sawridge and are not beneficiaries of the 1985 Trust, and the Stoney Application amounts to a collateral attack on prior decisions of the Federal Courts.
52. By voicing that it has no objection to the Stoney Application (instead of opposing it or taking no position), the OPGT effectively lends support to the Stoney Applicants' position. The OPGT has, therefore, again proceeded unnecessarily in supporting further consideration of the membership issues at the heart of the Stoney Application, which issues have been resolved and are no longer of relevance to the within Action.
53. The role of the OPGT as litigation representative of the minor beneficiaries is to advocate for the best interests of the children.

*1985 Sawridge Trust v Alberta (Public Trustee)*, 2013 ABCA 226 at para 19 [Tab 10]

54. Sawridge submits that the OPGT has failed to fulfill its duty to the minor beneficiaries by entertaining the Stoney Applicants' attempt to re-litigate past and resolved membership issues. Furthermore, the Stoney Applicants seek advance costs payable from the 1985 Trust, which ought to be of particular concern to the OPGT. Any such an award would reduce the funds held in trust for the minor and potential minor beneficiaries and thereby prejudice their interests.

#### IV. RELIEF REQUESTED

55. For the above reasons and those reasons set out in its submissions of September 28, 2016 and October 31, 2016, Sawridge prays that this Honourable Court order that Sawridge be granted the status to intervene in the Stoney Application, pursuant to Rule 2.10 of the *Rules of Court*, on terms which include the following:

- (a) Sawridge shall have the right to question the Applicants on any Affidavits filed as part of the Stoney Application;
- (b) Sawridge shall have the right to apply to strike the Stoney Application and/or to have the Stoney Application dismissed;
- (c) Sawridge shall have the right to make submissions in response to the Stoney Application;
- (d) Sawridge shall have the right to seek costs as against Maurice with respect to the Stoney Application.

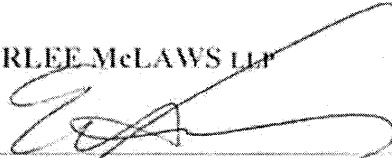
56. If Sawridge is granted the status to intervene in the Stoney Application, then Sawridge prays that this Honourable Court orders as follows:

- (a) That the Stoney Application be struck pursuant to Rule 3.68 of the *Rules of Court*;
- (b) In the alternative, that the Stoney Application be dismissed; and

- (c) That costs be paid to Sawridge by the Stoney Applicants on a solicitor and his own client basis, or on an enhanced basis, in respect of both the Stoney Application and the Sawridge Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of November, 2016.

PARLEE McLAWS LLP



EDWARD H. MOLSTAD, Q.C.  
Solicitors for the Sawridge First Nation

## LIST OF AUTHORITIES

- Tab 1     *An Act to amend the Indian Act* ["Bill C-31"]
- Tab 2     *Indian Act*, RSC 1927 c 98
- Tab 3     *Indian Act*, RSC 1985, c I-5 (unamended)
- Tab 4     *Gender Equity in Indian Registration Act*, 59 Eliz II (2010), c 18
- Tab 5     *Stoney v Sawridge First Nation*, 2013 FC 509
- Tab 6     *Huzar v Canada*, 2000 CarswellNat 1132 (FCA)
- Tab 7     Affidavit of Elizabeth Poitras (without exhibits) sworn December 7, 2011
- Tab 8     Transcript from the Questioning on Affidavit of Elizabeth Poitras, April 16, 2015
- Tab 9     *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799
- Tab 10    *1985 Sawridge Trust v Alberta (Public Trustee)*, 2013 ABCA 226