

**COURT OF APPEAL OF ALBERTA**

COURT OF APPEAL FILE NUMBER: 1703-0193 AC

TRIAL COURT FILE NUMBER: 1103-14112

REGISTRY OFFICE: Edmonton

PLAINTIFF/APPLICANT: Patrick Twinn, on his behalf, Shelby Twinn and Deborah A. Serafinchon

STATUS ON APPEAL: Appellant

DEFENDANT/RESPONDENT: Roland Twinn, Catherine Twinn, Walter Felix Twin, Berta L'Hirondelle, and Clara Midbo, As Trustees For The 1985 Sawridge Trust (The "1985 Sawridge Trustees" Or "Trustees")

STATUS ON APPEAL: Respondent

DEFENDANT/RESPONDENT: Public Trustee Of Alberta ("OPGT")

STATUS ON APPEAL: Respondent

DEFENDANT/RESPONDENT: Patrick Twinn, on behalf of his infant daughter, Aspen Saya Twinn, and his wife Melissa Megley

STATUS ON APPEAL: Not a party to the Appeal

DOCUMENT: **FACTUM, BOOK OF AUTHORITIES AND EXTRACTS OF KEY EVIDENCE**



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Appeal from the Order of  
The Honourable Mr. Justice D.R.G. Thomas  
Dated the 5<sup>th</sup> day of July, 2017  
Filed the 19<sup>th</sup> day of July, 2017

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**FACTUM, BOOK OF AUTHORITIES AND EXTRACTS OF KEY EVIDENCE  
OF THE RESPONDENT, PUBLIC TRUSTEE OF ALBERTA**

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## PART 1 – FACTS

1. The Office of the Public Guardian and Trustee of Alberta (“OPGT”) is a respondent to this Appeal and a party to Queen’s Bench Action No. 1103 14112 (“the Action”). The OPGT’s position on the Appellants’ standing application in the Action, was set out in correspondence dated October 31, 2016.

Appeal Record filed September 5, 2017, Tab 3, page 000010 [Case Management Decision (Sawridge #5)]

Respondent’s Extracts of Key Evidence, page R1-R2 [Letter dated October 31, 2016, from Hutchison Law to Denise Sutton re: Application by Patrick Twinn et. al.]

2. The OPGT was appointed to act as litigation representative in the Action for affected minors. The scope of the OPGT’s role was refined in *Sawridge #3*.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365 [Appellants’ Authorities, Tab 2]

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2013 ABCA 226 [Appellants’ Authorities, Tab 12]

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 779, at para. 56-57 [Respondent’s Authorities, Tab 1]

3. The OPGT represents Aspen Twinn, the infant child of Patrick Twinn, in the Action.

Respondent’s Extracts of Key Evidence, page R3-R4 [Letter dated June 9, 2017 from Justice Thomas to BLG LLP]

Respondent's Extracts of Key Evidence, page R5 [Letter dated June 16, 2017 from BLG LLP to Justice Thomas]

Respondent's Extracts of Key Evidence, page R6 [Letter dated June 19, 2017 from BLG LLP to Justice Thomas]

Respondent's Extracts of Key Evidence, page R7-R8 [Letter dated June 20, 2017 from Hutchison Law to Justice Thomas]

Respondent's Extracts of Key Evidence, page R11 [Letter dated June 22, 2017 from Justice Thomas to BLG LLP and Hutchison Law]

Consent Order, QB Action No. 1103 14112, filed September 18, 2017 [Respondent's Authorities, Tab 2]

4. The OPGT also represents individuals within the *Sawridge #3* categories who were minors at the commencement of this proceeding but who have since become adults.

Respondent's Extracts of Key Evidence, page R9-R10 [Letter dated June 22, 2017 from Justice Thomas to Hutchison Law]

Respondent's Extracts of Key Evidence, page R12 [Letter dated June 23, 2017 from Hutchison Law to Justice Thomas]

Respondent's Extracts of Key Evidence, page R13-R20 [Letter dated June 27, 2017 from Denton's to Justice Thomas]

Respondent's Extracts of Key Evidence, page R21-R22 [Letter dated June 28, 2017 from McLennan Ross LLP to Justice Thomas]

Respondent's Extracts of Key Evidence, page R23 [Letter dated June 29, 2017 from Justice Thomas to Hutchison Law]

Respondent's Extracts of Key Evidence, page R24-R25 [Letter dated June 30, 2017 from Hutchison Law to Justice Thomas]

Appeal Record filed September 5, 2017, Tab 3, page 000009 [Case Management Decision (Sawridge #5), paragraph 55]

Appeal Record filed September 5, 2017, Tab 4, page 000002-000003 [Order, filed July 19, 2017, paragraph 9]

5. The first order in this proceeding was issued on August 31, 2011.

Appeal Record filed September 5, 2017, Tab 2 [Order by Justice D.R.G. Thomas filed September 6, 2011]

6. Patrick Twinn was born on October 22, 1985 and was 25 years of age at the time of the commencement of this proceeding.

Respondent's Extracts of Key Evidence, page R28 [Affidavit of Patrick Twinn, dated July 26, 2016, paragraph 7]

7. Shelby Twinn was born January 3, 1992 and was 19 years of age at the time of commencement of this proceeding.

Respondent's Extracts of Key Evidence, page R39 Affidavit of Shelby Twinn, dated July 26, 2016, paragraph 9]

## **PART 2 – GROUNDS OF APPEAL**

8. The Appellants' grounds of appeal are set out in paragraph 14 of their factum.

## **PART 3 – STANDARD OF REVIEW**

9. The OPGT concurs with the submissions of the Appellants regarding the applicable standard of review.

## **PART 4 – ARGUMENT**

- i.) Did the Court Below Err in Finding the OPGT Represents Patrick Twinn and Shelby Twinn

10. In relation to paragraph 25 of the Appellants' factum, the OPGT concurs that the denial of standing in *Sawridge #5* is based, at least in part, on the finding that the Appellants, Patrick Twinn and Shelby Twinn, will have their interests looked after by the OPGT.

Appeal Record filed September 5, 2017, Tab 3, page 000006 [Case Management Decision (Sawridge #5), paragraph 34]

11. The Court below received submissions from all counsel, by way of correspondence, regarding whether the OPGT continued to represent minors who had become adults during the course of this litigation.

Respondent's Extracts of Key Evidence, page R9-R10 [Letter dated June 22, 2017 from Justice Thomas to Hutchison Law]

Respondent's Extracts of Key Evidence, page R11 [Letter dated June 22, 2017 from Justice Thomas to BLG LLP and Hutchison Law]

Respondent's Extracts of Key Evidence, page R12 [Letter dated June 23, 2017 from Hutchison Law to Justice Thomas]

Respondent's Extracts of Key Evidence, page R13-R20 [Letter dated June 27, 2017 from Denton's to Justice Thomas]

Respondent's Extracts of Key Evidence, page R21-R22 [Letter dated June 28, 2017 from McLennan Ross LLP to Justice Thomas]

Respondent's Extracts of Key Evidence, page R23 [Letter dated June 29, 2017 from Justice Thomas to Hutchison Law]

Respondent's Extracts of Key Evidence, page R24-R25 [Letter dated June 30, 2017 from Hutchison Law to Justice Thomas]

12. The Court below confirmed the OPGT does represent minors who have become adults since the Action commenced.

Appeal Record filed September 5, 2017, Tab 3, page 000006 and 000009 [Case Management Decision (Sawridge #5) at paragraph 34 and 55]

13. The evidence before the Court below established that Patrick Twinn and Shelby Twinn had become adults before the Trustees commenced this litigation. They are not represented by the OPGT in the within proceeding.

Respondent's Extracts of Key Evidence, page R28 [Affidavit of Patrick Twinn, dated July 26, 2016, paragraph 7]

Respondent's Extracts of Key Evidence, page R39 Affidavit of Shelby Twinn, dated July 26, 2016, paragraph 9]

14. The findings on the standing application should be reviewed by this Court in the context that neither Patrick Twinn nor Shelby Twinn are currently represented in the Action.

ii.) Variation Application

15. The evidence filed, and the findings of the Court below, indicate Patrick Twinn and Shelby Twinn are beneficiaries under the current beneficiary definition in the 1985 Trust.

Respondent's Extracts of Key Evidence, page R28-R29 [Affidavit of Patrick Twinn, dated July 26, 2016, paragraph 9 and 13-14]

Respondent's Extracts of Key Evidence, page R38-R39 Affidavit of Shelby Twinn, dated July 26, 2016, paragraph 4 and 14]

Appeal Record filed September 5, 2017, Tab 3, page 000006 [Case Management Decision (Sawridge #5), paragraphs 32 and 35]

16. In relation to paragraph 22 of the Appellants' factum, the OPGT understands one aspect of the relief the Trustees seek in this matter is a variation to the beneficiary definition of the 1985 Trust. The proposed variation to the Trust has been referenced in the orders and reasons of the Court below.

Appeal Record filed September 5, 2017, Tab 2 [Order by Justice D.R.G. Thomas filed September 6, 2011]

*1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365 at para. 24 [Appellants' Authorities, Tab 2]

17. The Court below would not consider whether beneficiary consent to the relief sought in the Action is required pursuant to the *Trustee Act*. The OPGT shares the Appellants' concerns that this important issue, clearly relevant to matters of standing, was not addressed in *Sawridge #5*.

Appeal Record filed September 5, 2017, Tab 3, page 000006 [Case Management Decision (Sawridge #5) at paragraph 45]

*Trustee Act*, R.S.A. 2000. c. T-8, s.42 [Appellant's Authorities, Tab 1]

18. Notably, the question of whether adult beneficiary consent to the relief the Trustees seek in the Action could be required pursuant to the *Trustee Act* remains a live issue in this proceeding. Deferring a decision about the potential application of s.42 of the *Trustee Act* creates potential for the need to formally involve adult beneficiaries such as the Appellants at a later stage of this proceeding. This creates the risk of future delays in the Action, perhaps on the eve of trial.

Appeal Record filed September 5, 2017, Tab 2 [Order by Justice D.R.G. Thomas filed September 6, 2011]

19. The OPGT submits that the s.42 *Trustee Act* consent issue should be decided and the result on the standing application revisited in the context of this Court's findings on that issue.
20. Further, the OPGT remains of the view that it would be very useful to the Court and all parties to have the perspective of adult beneficiaries more fully represented in this proceeding. Having adult beneficiaries directly represented may also assist in facilitating future discussions about possible resolution should the consent of adult beneficiaries be required to bring a proposal for variation before the Court for approval.

Respondent's Extracts of Key Evidence, page R1-R2 [Letter dated October 31, 2016, from Hutchison Law to Denise Sutton re: Application by Patrick Twinn et. al.]

21. Having reviewed the full record of the proceeding below, the OPGT takes no position on the appeal of the standing decision for the Appellant Deborah Serafinchon.
22. Also, and in accordance with its more neutral role than other parties in this proceeding, the OPGT will refrain from any submissions on the costs issues between the Appellants and the Respondent Trustees.

#### **PART 5 – RELIEF SOUGHT**

23. The OPGT supports the position that Patrick Twinn and Shelby Twinn, as beneficiaries of the 1985 Trust, should be granted standing in Action 1103 14112.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the Hamlet of Sherwood Park, Province of Alberta, this 20<sup>th</sup> day of October, 2017.

**HUTCHISON LAW**

Per: 

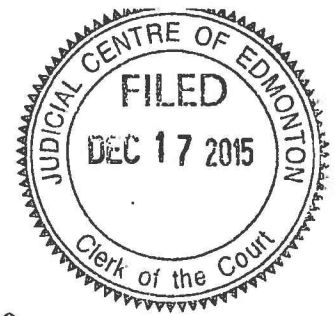
**JANET L. HUTCHISON**  
Solicitors for the Office of the Public  
Guardian and Trustee of Alberta

Estimate of time required for the oral argument: 10 minutes.

## LIST OF AUTHORITIES

Tab	Authority
1	<i>1985 Sawridge Trust v. Alberta (Public Trustee)</i> , 2015 ABQB 799
2	Consent Order of D.R.G. Thomas, J., C.Q.B.A. – dated June 22, 2017 filed September 18, 2017





**Court of Queen's Bench of Alberta**

**Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2015 ABQB 799**

**Date: 20151217**  
**Docket: 1103 14112**  
**Registry: Edmonton**

In the Matter of the *Trustees 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  
the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust")

Between:

**Ronald Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hoirondelle and  
Clara Midbo, As Trustees for the 1985 Sawridge Trust**

Respondents

- and -

**Public Trustee of Alberta**

Applicant

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

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## I Introduction

[1] This is a decision on a production application made by the Public Trustee and also contains other directions. Before moving to the substance of the decision and directions, I review the steps that have led up to this point and the roles of the parties involved. Much of the relevant information is collected in an earlier and related decision, *1985 Sawridge Trust v Alberta (Public Trustee)*, 2012 ABQB 365 [“*Sawridge #1*”], 543 AR 90 affirmed 2013 ABCA 226, 553 AR 324 [“*Sawridge #2*”]. The terms defined in *Sawridge #1* are used in this decision.

## II. Background

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

[3] The 1985 Sawridge Trust is administered by the Trustees [the “Sawridge Trustees” or the “Trustees”]. The Trustees had sought advice and direction from this Court in respect to proposed amendments to the definition of the term “Beneficiaries” in the 1985 Sawridge Trust (the “Trust Amendments”) and confirmation of the transfer of assets into that Trust.

[4] One consequence of the proposed amendments to the 1985 Sawridge Trust would be to affect the entitlement of certain dependent children to share in Trust assets. There is some question as to the exact nature of the effects, although it seems to be accepted by all of those involved on this application that some children presently entitled to a share in the benefits of the 1985 Sawridge Trust would be excluded if the proposed changes are approved and implemented. Another concern is that the proposed revisions would mean that certain dependent children of proposed members of the Trust would become beneficiaries and be entitled to shares in the Trust, while other dependent children would be excluded.

[5] Representation of the minor dependent children potentially affected by the Trust Amendments emerged as an issue in 2011. At the time of confirming the scope of notices to be given in respect to the application for advice and directions, it was observed that children who might be affected by the Trust Amendments were not represented by independent legal counsel. This led to a number of events:

August 31, 2011 - I directed that the Office of the Public Trustee of Alberta [the “Public Trustee”] be notified of the proceedings and invited to comment on whether it should act in respect of any existing or potential minor beneficiaries of the Sawridge Trust.

February 14, 2012 - The Public Trustee applied:

1. to be appointed as the litigation representative of minors interested in this proceeding;
2. for the payment of advance costs on a solicitor and own client basis and exemption from liability for the costs of others; and
3. for an advance ruling that information and evidence relating to the membership criteria and processes of the Sawridge Band is relevant material.

April 5, 2012 - the Sawridge Trustees and the SFN resisted the Public Trustee's application.

June 12, 2012 - I concluded that a litigation representative was necessary to represent the interests of the minor beneficiaries and potential beneficiaries of the 1985 Sawridge Trust, and appointed the Public Trustee in that role: *Sawridge #1*, at paras 28-29, 33. I ordered that Public Trustee, as a neutral and independent party, should receive full and advance indemnification for its activities in relation to the Sawridge Trust (*Sawridge #1*, at para 42), and permitted steps to investigate "... the Sawridge Band membership criteria and processes because such information may be relevant and material ..." (*Sawridge #1*, at para 55).

June 19, 2013 - the Alberta Court of Appeal confirmed the award of solicitor and own client costs to the Public Trustee, as well as the exemption from unfavourable cost awards (*Sawridge #2*).

April 30, 2014 - the Trustees and the Public Trustee agreed to a consent order related to questioning of Paul Bujold and Elizabeth Poitras.

June 24, 2015 - the Public Trustee's application directed to the SFN was stayed and the Public Trustee was ordered to provide the SFN with the particulars of and the basis for the relief it claimed. A further hearing was scheduled for June 30, 2015.

June 30, 2015 - after hearing submissions, I ordered that:

- the Trustee's application to settle the Trust was adjourned;
- the Public Trustee file an amended application for production from the SFN with argument to be heard on September 2, 2015; and
- the Trustees identify issues concerning calculation and reimbursement of the accounts of the Public Trustee for legal services.

September 2/3, 2015 - after a chambers hearing, I ordered that:

- within 60 days the Trustees prepare and serve an affidavit of records, per the *Alberta Rules of Court*, Alta Reg 124/2010 [the "*Rules*", or individually a "*Rule*"],
- the Trustees may withdraw their proposed settlement agreement and litigation plan, and

- some document and disclosure related items sought by the Public Trustee were adjourned *sine die*.  
("September 2/3 Order")

October 5, 2015- I directed the Public Trustee to provide more detailed information in relation to its accounts totalling \$205,493.98. This further disclosure was intended to address a concern by the Sawridge Trustees concerning steps taken by the Public Trustee in this proceeding.

[6] Earlier steps have perhaps not ultimately resolved but have advanced many of the issues which emerged in mid-2015. The Trustees undertook to provide an Affidavit of Records. I have directed additional disclosure of the activities of the legal counsel assisting the Public Trustee to allow the Sawridge Trustees a better opportunity to evaluate those legal accounts. The most important issue which remains in dispute is the application by the Public Trustee for the production of documents/information held by the SFN.

[7] This decision responds to that production issue, but also more generally considers the current state of this litigation in an attempt to refocus the direction of this proceeding and the activities of the Public Trustee to ensure that it meets the dual objectives of assisting this Court in directing a fair distribution scheme for the assets of the 1985 Sawridge Trust and the representation of potential minor beneficiaries.

### III. The 1985 Sawridge Trust

[8] *Sawridge #1* at paras 7-13 reviews the history of the 1985 Sawridge Trust. I repeat that information verbatim, as this context is relevant to the role and scope of the Public Trustee's involvement in this matter:

[8] In 1982 various assets purchased with funds of the Sawridge Band were placed in a formal trust for the members of the Sawridge Band. In 1985 those assets were transferred into the 1985 Sawridge Trust. [In 2012] the value of assets held by the 1985 Sawridge Trust is approximately \$70 million. As previously noted, the beneficiaries of the Sawridge Trust are restricted to persons who were members of the Band prior to the adoption by Parliament of the *Charter* compliant definition of Indian status.

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

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

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

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

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

#### **IV. The Current Situation**

[9] This decision and the June 30 and September 2/3, 2015 hearings generally involve the extent to which the Public Trustee should be able to obtain documentary materials which the Public Trustee asserts are potentially relevant to its representation of the identified minor beneficiaries and the potential minor beneficiaries. Following those hearings, some of the disagreements between the Public Trustee and the 1985 Sawridge Trustees were resolved by the Sawridge Trustees agreeing to provide a *Rules* Part V affidavit of records within 60 days of the September 2/3 Order.

[10] The primary remaining issue relates to the disclosure of information in documentary form sought by the Public Trustee from the SFN and there are also a number of additional ancillary issues. The Public Trustee seeks information concerning:

1. membership in the SFN,
2. candidates who have or are seeking membership with the SFN,
3. the processes involved to determine whether individuals may become part of the SFN,
4. records of the application processes and certain associated litigation, and
5. how assets ended up in the 1985 Sawridge Trust.

[11] The SFN resists the application of the Public Trustee, arguing it is not a party to this proceeding and that the Public Trustee's application falls outside the *Rules*. Beyond that, the SFN questions the relevance of the information sought.

## V. Submissions and Argument

### A. The Public Trustee

[12] The Public Trustee takes the position that it has not been able to complete the responsibilities assigned to it by me in *Sawridge #1* because it has not received enough information on potential, incomplete and filed applications to join the SFN. It also needs information on the membership process, including historical membership litigation scenarios, as well as data concerning movement of assets into the 1985 Sawridge Trust.

[13] It also says that, without full information, the Public Trustee cannot discharge its role in representing affected minors.

[14] The Public Trustee's position is that the Sawridge Band is a party to this proceeding, or is at least so closely linked to the 1985 Sawridge Trustees that the Band should be required to produce documents/information. It says that the Court can add the Sawridge Band as a party. In the alternative, the Public Trustee argues that *Rules* 5.13 and 9.19 provide a basis to order production of all relevant and material records.

### B. The SFN

[15] The SFN takes the position that it is not a party to the Trustee's proceedings in this Court and it has been careful not to be added as a party. The SFN and the Sawridge Trustees are distinct and separate entities. It says that since the SFN has not been made a party to this proceeding, the *Rules* Part V procedures to compel documents do not apply to it. This is a stringent test: *Trimay Wear Plate Ltd. v Way*, 2008 ABQB 601, 456 AR 371; *Wasylyshen v Canadian Broadcasting Corp.*, [2006] AJ No 1169 (Alta QB).

[16] The only mechanism provided for in the *Rules* to compel a non-party such as the SFN to provide documents is *Rule* 5.13, and its function is to permit access to specific identified items held by the third party. That process is not intended to facilitate a 'fishing expedition' (*Ed Miller Sales & Rentals Ltd v Caterpillar Tractor Co* (1988), 94 AR 17, 63 Alta LR (2d) 189 (Alta QB)) or compel disclosure (*Gainers Inc. v Pocklington Holdings Inc.* (1995), 169 AR 288, 30 Alta LR (3d) 273 (Alta CA)). Items sought must be particularized, and this process is not a form of discovery: *Esso Resources Canada Ltd. v Stearns Catalytic Ltd.* (1989), 98 AR 374, 16 ACWS (3d) 286 (Alta CA).

[17] The SFN notes the information sought is voluminous, confidential and involves third parties. It says that the Public Trustee's application is document discovery camouflaged under a different name. In any case, a document is only producible if it is relevant and material to the arguments pled: *Rule* 5.2; *Weatherill (Estate) v Weatherill*, 2003 ABQB 69, 337 AR 180.

[18] The SFN takes the position that *Sawridge #1* ordered the Public Trustee to investigate two points: 1) identifying the beneficiaries of the 1985 Sawridge Trust; and 2) scrutiny of transfer of assets into the 1985 Sawridge Trust. They say that what the decision in *Sawridge #1* did not do was authorize interference or duplication in the SFN's membership process and its results. Much of what the Public Trustee seeks is not relevant to either issue, and so falls outside the scope of what properly may be sought under *Rule* 5.13.

[19] Privacy interests and privacy legislation are also factors: *Royal Bank of Canada v Trang*, 2014 ONCA 883 at paras 97, 123 OR (3d) 401; *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5. The Public Trustee should not have access to this information

unless the SFN's application candidates consent. Much of the information in membership applications is personal and sensitive. Other items were received by the SFN during litigation under an implied undertaking of confidentiality: *Juman v Doucette; Doucette (Litigation Guardian of) v Wee Watch Day Care Systems*, 2008 SCC 8, [2008] 1 SCR 157. The cost to produce the materials is substantial.

[20] The SFN notes that even though it is a target of the relief sought by the Public Trustee that it was not served with the July 16, 2015 application, and states the Public Trustee should follow the procedure in *Rule 6.3*. The SFN expressed concern that the Public Trustee's application represents an unnecessary and prejudicial investigation which ultimately harms the beneficiaries and potential beneficiaries of the 1985 Sawridge Trust. In *Sawridge #2* at para 29, the Court of Appeal had stressed that the order in *Sawridge #1* that the Public Trustee's costs be paid on a solicitor and own client basis is not a "blank cheque", but limited to activities that are "fair and reasonable". It asks that the Public Trustee's application be dismissed and that the Public Trustee pay the costs of the SFN in this application, without indemnification from the 1985 Sawridge Trust.

### C. The Sawridge Trustees

[21] The Sawridge Trustees offered and I ordered in my September 2/3 Order that within 60 days the Trustees prepare and deliver a *Rule 5.5-5.9* affidavit of records to assist in moving the process forward. This resolved the immediate question of the Public Trustee's access to documents held by the Trustees.

[22] The Trustees generally support the position taken by the SFN in response to the Public Trustee's application for Band documents. More broadly, the Trustees questioned whether the Public Trustee's developing line of inquiry was necessary. They argued that it appears to target the process by which the SFN evaluates membership applications. That is not the purpose of this proceeding, which is instead directed at re-organizing and distributing the 1985 Sawridge Trust in a manner that is fair and non-discriminatory to members of the SFN.

[23] They argue that the Public Trustee is attempting to attack a process that has already undergone judicial scrutiny. They note that the SFN's admission procedure was approved by the Minister of Indian and Northern Affairs, and the Federal Court concluded it was fair: *Stoney v Sawridge First Nation*, 2013 FC 509, 432 FTR 253. Further, the membership criteria used by the SFN operate until they are found to be invalid: *Huzar v Canada*, [2000] FCJ No 873 at para 5, 258 NR 246. Attempts to circumvent these findings in applications to the Canadian Human Rights Commission were rejected as a collateral attack, and the same should occur here.

[24] The 1985 Sawridge Trustees reviewed the evidence which the Public Trustee alleges discloses an unfair membership admission process, and submit that the evidence relating to Elizabeth Poitras and other applicants did not indicate a discriminatory process, and in any case was irrelevant to the critical question for the Public Trustee as identified in *Sawridge #1*, namely that the Public Trustee's participation is to ensure minor children of Band members are treated fairly in the proposed distribution of the assets of the 1985 Sawridge Trust.

[25] Additional submissions were made by two separate factions within the Trustees. Ronald Twinn, Walter Felix Twin, Bertha L'Hoirondelle and Clara Midbo argued that an unfiled affidavit made by Catherine Twinn was irrelevant to the Trustees' disclosure. Counsel for Catherine Twinn expressed concern in relation to the Trustee's activities being transparent and

that the ultimate recipients of the 1985 Sawridge Trust distribution be the appropriate beneficiaries.

## VI. Analysis

[26] The Public Trustee's application for production of records/information from the SFN is denied. First, the Public Trustee has used a legally incorrect mechanism to seek materials from the SFN. Second, it is necessary to refocus these proceedings and provide a well-defined process to achieve a fair and just distribution of the assets of the 1985 Sawridge Trust. To that end, the Public Trustee may seek materials/information from the Sawridge Band, but only in relation to specific issues and subjects.

### A. Rule 5.13

[27] I agree with the SFN that it is a third party to this litigation and is not therefore subject to the same disclosure procedures as the Sawridge Trustees who are a party. Alberta courts do not use proximal relationships as a bridge for disclosure obligations: *Trimay Wear Plate Ltd. v Way*, at para 17.

[28] If I were to compel document production by the Sawridge Band, it would be via Rule 5.13:

5.13(1) On application, and after notice of the application is served on the person affected by it, the Court may order a person who is not a party to produce a record at a specified date, time and place if

- (a) the record is under the control of that person,
- (b) there is reason to believe that the record is relevant and material, and
- (c) the person who has control of the record might be required to produce it at trial.

(2) The person requesting the record must pay the person producing the record an amount determined by the Court.

[29] The modern Rule 5.13 uses language that closely parallels that of its predecessor *Alberta Rules of Court*, Alta Reg 390/1968, s 209. Jurisprudence applying Rule 5.13 has referenced and used approaches developed in the application of that precursor provision: *Toronto Dominion Bank v Sawchuk*, 2011 ABQB 757, 530 AR 172; *H.Z. v Unger*, 2013 ABQB 639, 573 AR 391. I agree with this approach and conclude that the principles in the pre-Rule 5.13 jurisprudence identified by the SFN apply here: *Ed Miller Sales & Rentals Ltd v Caterpillar Tractor Co*; *Gainers Inc. v Pocklington Holdings Inc.*; *Esso Resources Canada Ltd. v Stearns Catalytic Ltd.*

[30] The requirement for potential disclosure is that "there is reason to believe" the information sought is "relevant and material". The SFN has argued relevance and materiality may be divided into "primary, secondary, and tertiary" relevance, however the Alberta Court of Appeal has rejected these categories as vague and not useful: *Royal Bank of Canada v Kaddoura*, 2015 ABCA 154 at para 15, 15 Alta LR (6th) 37.

[31] I conclude that the only documents which are potentially disclosable in the Public Trustee's application are those that are "relevant and material" to the issue before the court.

## **B. Refocussing the role of the Public Trustee**

[32] It is time to establish a structure for the next steps in this litigation before I move further into specific aspects of the document production dispute between the SFN and the Public Trustee. A prerequisite to any document disclosure is that the information in question must be *relevant*. Relevance is tested *at the present point*.

[33] In *Sawridge #1* I at paras 46-48 I determined that the inquiry into membership processes was relevant because it was a subject of some dispute. However, I also stressed the exclusive jurisdiction of the Federal Court (paras 50-54) in supervision of that process. Since *Sawridge #1* the Federal Court has ruled in *Stoney v Sawridge First Nation* on the operation of the SFN's membership process.

[34] Further, in *Sawridge #1* I noted at paras 51-52 that in *783783 Alberta Ltd. v Canada (Attorney General)*, 2010 ABCA 226, 322 DLR (4th) 56, the Alberta Court of Appeal had concluded this Court's inherent jurisdiction included an authority to make findings of fact and law in what would nominally appear to be the exclusive jurisdiction of the Tax Court of Canada. However, that step was based on *necessity*. More recently in *Strickland v Canada (Attorney General)*, 2015 SCC 37, the Supreme Court of Canada confirmed the Federal Courts decision to refuse judicial review of the *Federal Child Support Guidelines*, SOR/97-175, not because those courts did not have potential jurisdiction concerning the issue, but because the provincial superior courts were better suited to that task because they "... deal day in and day out with disputes in the context of marital breakdown ...": para 61.

[35] 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.

[36] It follows that it will be useful to re-focus the purpose of the Public Trustee's participation in this matter. That will determine what is and what is not *relevant*. The Public Trustee's role is not to conduct an open-ended inquiry into the membership of the Sawridge Band and historic disputes that relate to that subject. Similarly, the Public Trustee's function is not to conduct a general inquiry into potential conflicts of interest between the SFN, its administration and the 1985 Sawridge Trustees. The overlap between some of these parties is established and obvious.

[37] Instead, the future role of the Public Trustee shall be limited to four tasks:

1. Representing the interests of minor beneficiaries and potential minor beneficiaries so that they receive fair treatment (either direct or indirect) in the distribution of the assets of the 1985 Sawridge Trust;
2. Examining on behalf of the minor beneficiaries the manner in which the property was placed/settled in the Trust; and
3. Identifying potential but not yet identified minors who are children of SFN members or membership candidates; these are potentially minor beneficiaries of the 1985 Sawridge Trust; and

4. Supervising the distribution process itself.

[38] The Public Trustee's attention appears to have expanded beyond these four objectives. Rather than unnecessarily delay distribution of the 1985 Sawridge Trust assets, I instruct the Public Trustee and the 1985 Sawridge Trustees to immediately proceed to complete the first three tasks which I have outlined.

[39] I will comment on the fourth and final task in due course.

**Task 1 - Arriving at a fair distribution scheme**

[40] The first task for the 1985 Sawridge Trustees and the Public Trustee is to develop for my approval a proposed scheme for distribution of the 1985 Sawridge Trust that is fair in the manner in which it allocates trust assets between the potential beneficiaries, adults and children, previously vested or not. I believe this is a largely theoretical question and the exact numbers and personal characteristics of individuals in the various categories is generally irrelevant to the Sawridge Trustee's proposed scheme. What is critical is that the distribution plan can be critically tested by the Public Trustee to permit this Court to arrive at a fair outcome.

[41] I anticipate the critical question for the Public Trustee at this step will be to evaluate whether any differential treatment between adult beneficiaries and the children of adult beneficiaries is or is not fair to those children. I do not see that the particular identity of these individuals is relevant. This instead is a question of fair treatment of the two (or more) categories.

[42] On September 3, 2015, the 1985 Sawridge Trustees withdrew their proposed distribution arrangement. I direct the Trustees to submit a replacement distribution arrangement by January 29, 2016.

[43] The Public Trustee shall have until March 15, 2016 to prepare and serve a *Rule 5.13(1)* application on the SFN which identifies specific documents that it believes are relevant and material to test the fairness of the proposed distribution arrangement to minors who are children of beneficiaries or potential beneficiaries.

[44] If necessary, a case management meeting will be held before April 30, 2016 to decide any disputes concerning any *Rule 5.13(1)* application by the Public Trustee. In the event no *Rule 5.13(1)* application is made in relation to the distribution scheme the Public Trustee and 1985 Sawridge Band Trustees shall make their submissions on the distribution proposal at the pre-April 30 case management session.

**Task 2 – Examining potential irregularities related to the settlement of assets to the Trust**

[45] There have been questions raised as to what assets were settled in the 1985 Sawridge Trust. At this point it is not necessary for me to examine those potential issues. Rather, the first task is for the Public Trustee to complete its document request from the SFN which may relate to that issue.

[46] The Public Trustee shall by January 29, 2016 prepare and serve a *Rule 5.13(1)* application on the Sawridge Band that identifies specific types of documents which it believes are relevant and material to the issue of the assets settled in the 1985 Sawridge Trust.

[47] A case management hearing will be held before April 30, 2016 to decide any disputes concerning any such *Rule* 5.13(1) application by the Public Trustee.

### **Task 3 - Identification of the pool of potential beneficiaries**

[48] The third task involving the Public Trustee is to assist in identifying potential minor beneficiaries of the 1985 Sawridge Trust. The assignment of this task recognizes that the Public Trustee operates within its Court-ordered role when it engages in inquiries to establish the pools of individuals who are minor beneficiaries and potential minor beneficiaries. I understand that the first category of minor beneficiaries is now identified. The second category of potential minor beneficiaries is an area of legitimate investigation for the Public Trustee and involves two scenarios:

1. an individual with an unresolved application to join the Sawridge Band and who has a child; and
2. an individual with an unsuccessful application to join the Sawridge Band and who has a child.

[49] 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.

[50] As Aalto, J. observed in *Poitras v Twinn*, 2013 FC 910, 438 FTR 264, "[M]any gallons of judicial ink have been spilt" in relation to the gender-based disputes concerning membership in the SFN. I do not believe it is necessary to return to this issue. The SFN's past practise of relentless resistance to admission into membership of aboriginal women who had married non-Indian men is well established.

[51] The Public Trustee has no relevant interest in the children of any parent who has an unresolved application for membership in the Sawridge Band. If that outstanding application results in the applicant being admitted to the SFN then that child will become another minor represented by the Public Trustee.

[52] While the Public Trustee has sought information relating to incomplete applications or other potential SFN candidates, I conclude that an open-ended 'fishing trip' for unidentified hypothetical future SFN members, who may also have children, is outside the scope of the Public Trustee's role in this proceeding. There needs to be minimum threshold proximity between the Public Trustee and any unknown and hypothetical minor beneficiary. As I will stress later, the Public Trustee's activities need to be reasonable and fair, and balance its objectives: cost-effective participation in this process (i.e., not unreasonably draining the Trust) and protecting the interests of minor children of SFN members. Every dollar spent in legal and research costs turning over stones and looking under bushes in an attempt to find an additional, hypothetical minor beneficiary reduces the funds held in trust for the known and existing minor children who are potential beneficiaries of the 1985 Sawridge Trust distribution and the clients of the Public Trustee. Therefore, I will only allow investigation and representation by the Public Trustee of

children of persons who have, at a minimum, completed a Sawridge Band membership application.

[53] The Public Trustee also has a potential interest in a child of a Sawridge Band candidate who has been rejected or is rejected after an unsuccessful application to join the SFN. In these instances the Public Trustee is entitled to inquire whether the rejected candidate intends to appeal the membership rejection or challenge the rejection through judicial review in the Federal Court. If so, then that child is also a potential candidate for representation by the Public Trustee.

[54] 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.

[55] 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.

[56] In summary, what is pertinent at this point is to identify the potential recipients of a distribution of the 1985 Sawridge Trust, which include the following categories:

1. Adult members of the SFN;
2. Minors who are children of members of the SFN;
3. Adults who have unresolved applications to join the SFN;
4. Children of adults who have unresolved applications to join the SFN;
5. Adults who have applied for membership in the SFN but have had that application rejected and are challenging that rejection by appeal or judicial review; and
6. Children of persons in category 5 above.

[57] The Public Trustee represents members of category 2 and potentially members of categories 4 and 6. I believe the members of categories 1 and 2 are known, or capable of being identified in the near future. The information required to identify persons within categories 3 and 5 is relevant and necessary to the Public Trustee's participation in this proceeding. If this information has not already been disclosed, then I direct that the SFN shall provide to the Public Trustee by January 29, 2016 the information that is necessary to identify those groups:

1. The names of individuals who have:
  - a) made applications to join the SFN which are pending (category 3); and
  - b) had applications to join the SFN rejected and are subject to challenge (category 5); and
2. The contact information for those individuals where available.

[58] As noted, the Public Trustee's function is limited to *representing minors*. That means the Public Trustee:

1. shall inquire of the category 3 and 5 individuals to identify if they have any children; and
2. if an applicant has been rejected whether the applicant has challenged, or intends to challenge a rejection by appeal or by judicial proceedings in the Federal Court.

[59] This information should:

1. permit the Public Trustee to know the number and identity of the minors whom it represents (category 2) and additional minors who may in the future enter into category 2 and become potential minor recipients of the 1985 Sawridge Trust distribution;
2. allow timely identification of:
  - a) the maximum potential number of recipients of the 1985 Sawridge Trust distribution (the total number of persons in categories 1-6);
  - b) the number of adults and minors whose potential participation in the distribution has "crystalized" (categories 1 and 2); and
  - c) the number of adults and minors who are potential members of categories 1 and 2 at some time in the future (total of categories 3-6).

[60] These are declared to be the limits of the Public Trustee's participation in this proceeding and reflects the issues in respect to which the Public Trustee has an interest. Information that relates to these issues is potentially relevant.

[61] My understanding from the affidavit evidence and submissions of the SFN and the 1985 Sawridge Trustees is that the Public Trustee has already received much information about persons on the SFN's membership roll and prospective and rejected candidates. I believe that this will provide all the data that the Public Trustee requires to complete Task 3. Nevertheless, the Public Trustee is instructed that if it requires any additional documents from the SFN to assist it in identifying the current and possible members of category 2, then it is to file a *Rule 5.13* application by January 29, 2016. The Sawridge Band and Trustees will then have until March 15, 2016 to make written submissions in response to that application. I will hear any disputed *Rule 5.13* disclosure application at a case management hearing to be set before April 30, 2016.

#### **Task 4 - General and residual distributions**

[62] The Sawridge Trustees have concluded that the appropriate manner to manage the 1985 Sawridge Trust is that its property be distributed in a fair and equitable manner. Approval of that scheme is Task 1, above. I see no reason, once Tasks 1-3 are complete, that there is any reason to further delay distribution of the 1985 Sawridge Trust's property to its beneficiaries.

[63] Once Tasks 1-3 are complete the assets of the Trust may be divided into two pools:

Pool 1: trust property available for immediate distribution to the identified trust beneficiaries, who may be adults and/or children, depending on the outcome of Task 1; and

Pool 2: trust funds that are reserved at the present but that may at some point be distributed to:

- a) a potential future successful SFN membership applicant and/or child of a successful applicant, or
- b) an unsuccessful applicant and/or child of an unsuccessful applicant who successfully appeals/challenges the rejection of their membership application.

[64] As the status of the various outstanding potential members of the Sawridge Band is determined, including exhaustion of appeals, the second pool of 'holdback' funds will either:

- 1. be distributed to a successful applicant and/or child of the applicant as that result crystalizes; or
- 2. on a pro rata basis:
  - a) be distributed to the members of Pool 1, and
  - b) be reserved in Pool 2 for future potential Pool 2 recipients.

[65] A minor child of an outstanding applicant is a potential recipient of Trust property, depending on the outcome of Task 1. However, there is no broad requirement for the Public Trustee's direct or indirect participation in the Task 4 process, beyond a simple supervisory role to ensure that minor beneficiaries, if any, do receive their proper share.

#### **C. Disagreement among the Sawridge Trustees**

[66] At this point I will not comment on the divergence that has arisen amongst the 1985 Sawridge Trustees and which is the subject of a separate originating notice (Docket 1403 04885) initiated by Catherine Twinn. I note, however, that much the same as the Public Trustee, the 1985 Sawridge Trustees should also refocus on the four tasks which I have identified.

[67] First and foremost, the Trustees are to complete their part of Task 1: propose a distribution scheme that is fair to all potential members of the distribution pools. This is not a question of specific cases, or individuals, but a scheme that is fair to the adults in the SFN and their children, current and potential.

[68] Task 2 requires that the 1985 Sawridge Trustees share information with the Public Trustee to satisfy questions on potential irregularities in the settlement of property into the 1985 Sawridge Trust.

[69] As noted, I believe that the information necessary for Task 3 has been accumulated. I have already stated that the Public Trustee has no right to engage and shall not engage in collateral attacks on membership processes of the SFN. The 1985 Sawridge Trustees, or any of them, likewise have no right to engage in collateral attacks on the SFN's membership processes. Their fiduciary duty (and I mean all of them), is to the beneficiaries of the Trust, and not third parties.

#### **D. Costs for the Public Trustee**

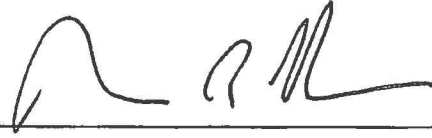
[70] I believe that the instructions given here will refocus the process on Tasks 1 – 3 and will restrict the Public Trustee's activities to those which warrant full indemnity costs paid from the 1985 Sawridge Trust. While in *Sawridge #1* I had directed that the Public Trustee may inquire into SFN Membership 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.

[71] As the Court of Appeal observed in *Sawridge #2* at para 29, the Public Trustee's activities are subject to scrutiny by this Court. In light of the four Task scheme set out above I will not respond to the SFN's cost argument at this point, but instead reserve on that request until I evaluate the *Rule* 5.13 applications which may arise from completion of Tasks 1-3.

Heard on the 2<sup>nd</sup> and 3<sup>rd</sup> days of September, 2015.

**Dated** at the City of Edmonton, Alberta this 17th day of December, 2015.

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

**Appearances:**

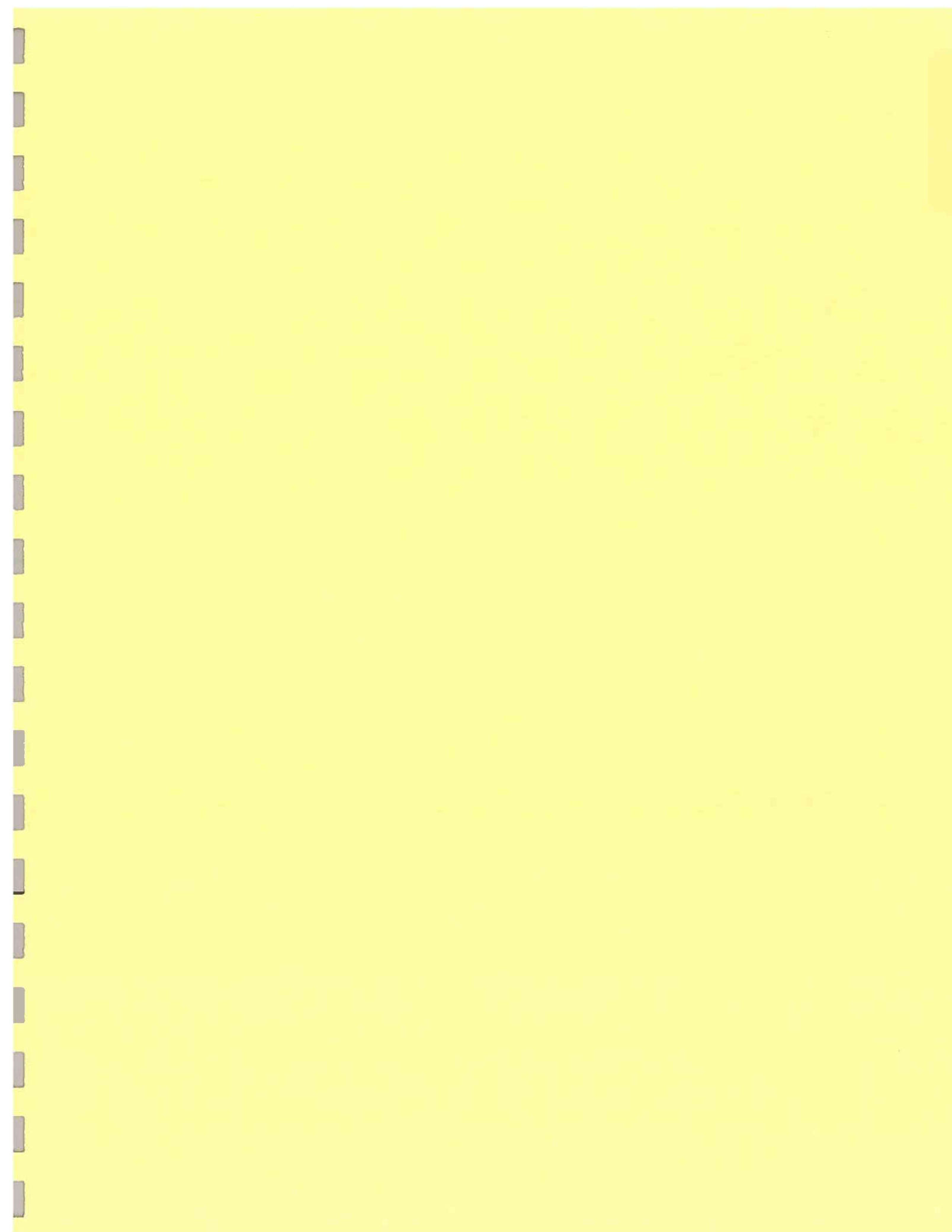
Janet Hutchison  
(Hutchison Law)  
and  
Eugene Meehan, QC  
(Supreme Advocacy LLP)  
for the Public Trustee of Alberta / Applicant

Edward H. Molstad, Q.C.  
(Parlee McLaws LLP)  
for the Sawridge First Nation / Respondent

Doris Bonora  
(Dentons LLP)  
and  
Marco S. Poretti  
(Reynolds Mirth Richards & Farmer)  
for the 1985 Sawridge Trustees / Respondents

J.J. Kueber, Q.C.  
(Bryan & Co.)  
for Ronald Twinn, Walter Felix Twin,  
Bertha L'Hoirondelle and Clara Midbo

Karen Platten, Q.C.  
(McLennan Ross LLP)  
For Catherine Twinn



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 (THE "1985 SAWRIDGE TRUST")

APPLICANTS ROLAND TWINN, CATHERINE TWINN,  
WALTER FELIX TWIN, BERTHA  
L'HIRONDELLE AND CLARA MIDBO,  
AS TRUSTEE FOR THE 1985 SAWRIDGE  
TRUST (THE "SAWRIDGE TRUSTEES")

DOCUMENT CONSENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF  
BORDEN LADNER GERVAIS LLP  
1900, 520 3<sup>rd</sup> Ave. S.W.  
Calgary, AB T2P 0R3  
Attention: Nancy Golding Q.C./Sandi Shannon  
Telephone: (403) 232-9485/9782  
Facsimile: (403) 266-1395  
Email: ngolding@blg.com/sshannon@blg.com  
DOCUMENT File No. 443395.01

DATE ON WHICH ORDER WAS PRONOUNCED: June 22, 2017

LOCATION WHERE ORDER WAS PRONOUNCED:

NAME OF JUSTICE WHO MADE THIS ORDER: Justice

UPON THE APPLICATION of the Applicants, Patrick Twinn, Shelby Twinn and Deborah Serafinchon (the "Applicants"); AND UPON noting that counsel for The Office of the Public Guardian and Trustee and all other counsel in this matter approve this Order as to its form and content;



I hereby certify this to be a  
true copy of the original.  
Clerk of the Court

## IT IS HEREBY CONFIRMED THAT:

1. The Office of the Public Guardian and Trustee represents Aspen Saya Twinn in this Action and the terms of the full and advance costs indemnity and costs exemption set out in *1985 Sawridge Trust v. Alberta (Public Trustee)*, [2012] A.J. No. 621 (Q.B.) and *1985 Sawridge Trust v. Alberta (Public Trustee)*, [2013] A.J. No. 640 (C.A) apply to that representation; and
2. The within Order may be approved by facsimile and in counterpart.

---

 J.C.C.Q.B.A.

## APPROVED AS TO FORM AND CONTENT BY:

DENTONS CANADA LLP

Per: 


---

 Denis C.E. Bonora  
 Counsel for the Sawridge Trustees

McLENNAN ROSS LLP

Per: 


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 Karen Platten, Q.C.  
 Counsel for Catherine Twinn as a  
 Trustee of the 1985 Sawridge Trust

HUTCHISON LAW

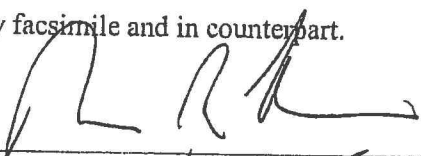
Per: 


---

 Janet Hutchison  
 Counsel for The Office of the Public  
 Guardian and Trustee

**IT IS HEREBY CONFIRMED THAT:**

1. The Office of the Public Guardian and Trustee represents Aspen Saya Twinn in this Action and the terms of the full and advance costs indemnity and costs exemption set out in *1985 Sawridge Trust v. Alberta (Public Trustee)*, [2012] A.J. No. 621 (Q.B.) and *1985 Sawridge Trust v. Alberta (Public Trustee)*, [2013] A.J. No. 640 (C.A.) apply to that representation; and
2. The within Order may be approved by facsimile and in counterpart.

  
 Thomas J. J.C.C.Q.B.A.

**APPROVED AS TO FORM AND CONTENT BY:**

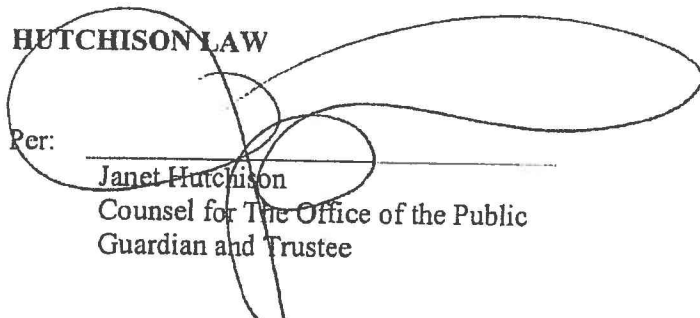
**DENTONS CANADA LLP**

**McLENNAN ROSS LLP**

Per: \_\_\_\_\_  
 Doris C.E. Bonora  
 Counsel for the Sawridge Trustees

Per: \_\_\_\_\_  
 Karen Platten, Q.C.  
 Counsel for Catherine Twinn as a  
 Trustee of the 1985 Sawridge Trust

**HUTCHISON LAW**

Per: \_\_\_\_\_  
  
 Janet Hutchison  
 Counsel for The Office of the Public  
 Guardian and Trustee



## EXTRACTS OF KEY EVIDENCE

<b>EVIDENCE</b>	<b>Page Number</b>
October 31, 2016, Letter from Hutchison Law to Denise Sutton re: Application by Patrick Twinn et. al.	R1-R2
June 9, 2017 Letter from Justice Thomas to BLG LLP	R3-R4
June 16, 2017 Letter from BLG LLP to Justice Thomas	R5
June 19, 2017 Letter from BLG LLP to Justice Thomas	R6
June 20, 2017 Letter from Hutchison Law to Justice Thomas	R7-R8
June 22, 2017 Letter from Justice Thomas to Hutchison Law	R9-R10
June 22, 2017 Letter from Justice Thomas to BLG LLP and Hutchison Law	R11
June 23, 2017 Letter from Hutchison Law to Justice Thomas	R12
June 27, 2017 Letter from Denton's to Justice Thomas	R13-R120
June 28, 2017 Letter from McLennan Ross LLP	R21-R22
June 29, 2017 Letter from Justice Thomas to Hutchison Law	R23
June 30, 2017 Letter from Hutchison Law to Justice Thomas	R24-R25
Affidavit of Patrick Twinn, dated July 26, 2016	R26-R36
Affidavit of Shelby Twinn, dated July 26, 2016	R37-R45



Our File: 51433 JLH

**SENT BY EMAIL ONLY**

October 31, 2016

Court of Queen's Bench of Alberta  
6<sup>th</sup> Floor Law Courts Building  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

**ATTENTION: DENISE SUTTON**

Dear Ms. Sutton:

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust); QB Action No. 1103  
14112**

We are writing in relation to the two pending applications for standing to advise of the OPGT's position on each application:

1. In relation to the standing application filed by Shelby Twinn, Patrick Twinn and Deborah Serafinchon, the OPGT supports the application. The OPGT is of the view that it would be very useful to the Court and all parties to have the perspective of adult beneficiaries more fully represented in this proceeding. Having adult beneficiaries directly represented may also assist in facilitating future discussions about possible resolution where the consent of adult beneficiaries would be required to bring a proposal for variation before the Court.
2. In relation to the standing application filed by Maurice Stoney, the OPGT has no objection to the application.

We would appreciate it if you would provide our comments to Justice Thomas for consideration in these applications.

Thank you for your attention to this matter.

Yours truly,

**HUTCHISON LAW**

**PER: JANET L. HUTCHISON**

JLH/cm

cc: Client

cc: E. Meehan, Q.C., Supreme Advocacy LLP.

cc: D. Bonora and A. Laparco, Dentons LLP

cc: M. Poretti, RMRP LLP

cc: E. Molstad, Q.C. and G. Joshee-Arnal, Parlee McLaws LLP

cc: K. Platten, Q.C. and C. Osualdini, McLennan Ross LLP

cc: N. Cumming, Q.C., Bryan & Co.

cc: N. Golding, Q.C., BLG LLP

cc: P. Kennedy and S. Wanke, DLA Piper

THE HONOURABLE MR. JUSTICE  
DENNIS R. THOMAS



COURT OF QUEEN'S BENCH OF ALBERTA

THE LAW COURTS  
EDMONTON, ALBERTA  
T5J 0R2  
TEL: (780) 422-2200  
FAX: (780) 427-0334

June 9, 2017

**SENT VIA E-MAIL**

Ms. Nancy L. Golding  
Borden Ladner Gervais LLP  
Centennial Place, East Twr.  
1900, 520-3 Ave. S.W.  
Calgary, Alberta T2P 0R3  
Phone: 403-232-9485  
Fax: 403-266-1395  
Email: [ngolding@blg.com](mailto:ngolding@blg.com)

Dear Ms. Golding:

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)**  
**Action No. 1103 14112 (the "Action")**

I am writing a decision on the Application by Patrick Twinn et al. to be added as parties to the above noted Action and for indemnification for costs. I have several questions requiring clarification before I can finalize my decision.

After many hours of reading the extensive materials on this Application, I came across the following statements in the "Reply Brief of Patrick Twinn, Shelby Twinn and Deborah Serafinchon", filed December 5, 2016 at p 2, para 6:

6. *Aspen Saya Twinn is represented by the OPTG. As the Sawridge Trustees are aware, Patrick Twinn is not seeking to represent Aspen Saya Twinn in this Action at this time.*

And further at p 2, para 8:

8. *As the Sawridge Trustees are aware, Melissa Megley will not be seeking to be added as a Party to this Action at this time nor is Patrick Twinn continuing to seek to represent her.*

Please clarify for me that Patrick Twinn is no longer seeking to be named as a litigation representative for his infant daughter, Aspen Saya Twinn, in this Application, or otherwise in this Action.

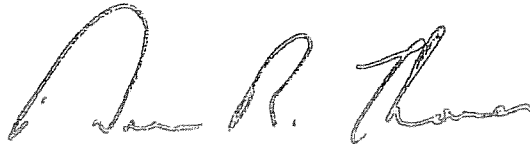
Further, please clarify for me that Patrick Twinn no longer seeks to represent Melissa Megley or to be added as a Party. Further, if you are acting for Melissa Megley, could you please confirm that she will not be seeking to be added as a party to this Action through this Application?

I look forward to a timely response to these requests so that I may finalize my decision on this Application.

I am copying Ms. Hutchison for the OPTG and Ms. Bonora and Ms. Loparco, QC for the Trustees for information only and no response is required from them.

I look forward to hearing from you.

Yours truly

A handwritten signature in dark ink, appearing to read 'D.R.G. Thomas', with a stylized, cursive script.

D.R.G. Thomas

ds

cc: Ms. Janet Hutchison (Hutchison Law) (via email: [jhutchison@jlhlaw.ca](mailto:jhutchison@jlhlaw.ca))  
Ms. Doris Bonora (Dentons LLP) (via email: [doris.bonora@dentons.com](mailto:doris.bonora@dentons.com))  
Ms. Anna Loparco, QC (Dentons LLP) (via email: [anna.loparco@dentons.com](mailto:anna.loparco@dentons.com))

Nancy L. Golding  
T (403) 232-9485  
F (403) 266-1395  
ngolding@blg.com

Borden Ladner Gervais LLP  
Centennial Place, East Tower  
1900, 520 - 3rd Ave SW  
Calgary, AB, Canada T2P 0R3  
T 403.232.9500  
F 403.266.1395  
blg.com



File No. 443395.01

June 16, 2017

Delivered by Email

**The Honourable Justice D.R.G. Thomas**  
Court of Queen's Bench of Alberta  
Edmonton Law Courts  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Dear Sir:

**Re: Sawridge Band Inter Vivos Settlement  
Judicial District – Edmonton  
Court File No. 1103 14112**

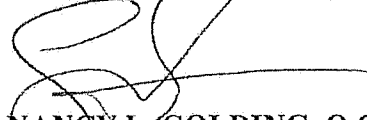
Further to your letter of June 9, 2017, we confirm that Patrick Twinn is seeking to be named as a Party to this Action.

Aspen Saya Twinn is represented by the OPTG. At this time, Patrick Twinn is not seeking to be named as the litigation representative of either Aspen Saya Twinn or Melissa Megley. We have been advised by our client, Patrick Twinn, that Melissa Megley is not seeking to be named in this Application as a Party in this Action.

If you have any questions or concerns please contact the writer.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

  
**NANCY L. GOLDING, Q.C.**  
Per: NLG/ms

cc: Janet Hutchison  
Doris Bonora  
Karen A. Platten, Q.C.  
Anna Loparco

Nancy L. Golding  
T (403) 232-9485  
F (403) 266-1395  
ngolding@blg.com

Borden Ladner Gervais LLP  
Centennial Place, East Tower  
1900, 520 - 3rd Ave S W  
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blg.com



File No. 443395.01

June 19, 2017

**Delivered by Email**

**The Honourable Justice D.R.G. Thomas**  
Court of Queen's Bench of Alberta  
Edmonton Law Courts  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Dear Sir:

**Re: Sawridge Band Inter Vivos Settlement**  
**Judicial District – Edmonton Court File No. 1103 14112**

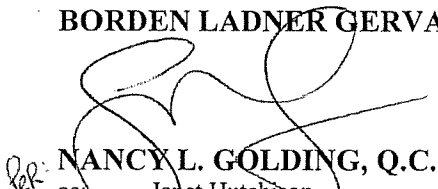
We are writing further to our letter of June 16, 2017 to clarify our client Patrick Twinn's position as it relates to his daughter Aspen Saya Twinn ("Aspen"). We have previously been advised by the Office of the Public Guardian and Trustee ("OPGT") that it represents Aspen. However, following our letter of June 16, 2017, we were contacted by Ms. Janet Hutchison, counsel for the OPGT, with respect to Aspen and she has advised that following the decision in relation to her clients application pursuant to section 5.13, the OPGT is no longer certain that Aspen fits within the categories of minors they represent. The OPGT has suggested that we request clarification from your Lordship if Aspen is within a category of minors now represented by the OPGT.

If the OPGT no longer represents Aspen, Patrick Twinn will seek to be appointed as her litigation representative. We note that given the OPGT's original advice in this regard, Patrick Twinn did inform the Sawridge Trustees that he would not seek to represent Aspen at this time and the Sawridge Trustees accordingly, did not seek to cross-examine Patrick Twinn further on this matter.

If you have any questions or concerns please contact the writer.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

  
**NANCY L. GOLDING, Q.C.**  
cc: Janet Hutchison  
Doris Bonora  
Karen A. Platten, Q.C.  
Anna Loparco



Our File: 51433 JLH

**SENT BY EMAIL ONLY**

June 20, 2017

Court of Queen's Bench of Alberta  
6<sup>th</sup> Floor Law Courts Building  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Attention: The Honourable Mr. Justice D.R.G. Thomas

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust); QB Action No. 1103  
14112; Patrick Twinn Standing Application**

We are writing in response to Borden Ladner Gervais' correspondence of June 19, 2017, to clarify the position of the OPGT in relation to Aspen Twinn.

As indicated in Patrick Twinn's September 30, 2016 written submissions, the OPGT had advised it understood it represented Aspen Twinn under the terms of *Sawridge #3*, but would not oppose an application for Aspen to be represented by Patrick Twinn. We understand from a review of filed submissions no such application is currently before the Court. Based on paragraph 33 of the Trustee's October 31, 2016 submissions, we understood the Trustees were in agreement that the OPGT represented Aspen Twinn.

After the release of this Court's decision on the Rule 5.13 applications, the OPGT was asked by other parties to comment on whether it still represented Aspen Twinn. We understand there were

some questions on the parts of other parties as to whether the April 28, 2017 judgment had affected the OPGT's position on representation of Aspen.

The OPGT remains of the understanding that Aspen Twinn falls into the group of minor beneficiaries it was appointed to represent in this litigation. The OPGT did not state to Ms. Golding's office that the OPGT was "no longer certain that Aspen fits within the categories of minors they represent".

However, the OPGT does not consider itself in a position to suggest to other parties it can bind the parties or the Court by way of its views. As such, we did suggest to Ms. Golding's office that they may wish to seek certainty on the issue directly with the Court, if they determined greater certainty was required.

We trust this clarifies the OPGT's position on the representation of Aspen Twinn. If the OPGT can provide any additional information or assistance to the Court, please do not hesitate to direct us accordingly.

Thank you for your attention to this matter.

Yours truly,

**HUTCHISON LAW**

**PER: JANET L. HUTCHISON**

JLH/cm

cc: Client

cc: K. Platten, and C.Osualdini, McLennan Ross LLP

cc: N.Golding, BLG LLP

cc: D. Bonora, Dentons LLP

cc: E. Molstad, Q.C., Parlee McLaws LLP

THE HONOURABLE MR. JUSTICE  
DENNIS R. THOMAS



THE LAW COURTS  
EDMONTON, ALBERTA  
T5J 0R2  
TEL: (780) 422-2200  
FAX: (780) 427-0334

COURT OF QUEEN'S BENCH OF ALBERTA

June 22, 2017

**SENT VIA E-MAIL**

Ms. Janet Hutchison  
Hutchison Law  
130 Broadway Boulevard  
Sherwood Park, AB T8H 2A3  
Phone: 780-417-7871  
Fax: 780-417-7872  
Email: [jhutchison@jlhlaw.ca](mailto:jhutchison@jlhlaw.ca)

Dear Ms. Hutchison:

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)**  
**Action No. 1103 14112 (the "Action")**

In the course of preparing my decision on the Application by Patrick Twinn et al. to be added as parties and be indemnified for costs, a further request for clarification has occurred to me.

In the Trustees Response Brief filed October 31, 2016, counsel had raised an interesting question in para 26, p 5 of that brief, namely whether the OPTG continues to represent child beneficiaries who have become adults since the commencement of the Action on June 12, 2011.

I am aware from my involvement in other legal proceedings that the OPTG often terminates representation of a child upon that person becoming an adult. I understand that position is driven by cost considerations. However, that sort of consideration does not apply here, because the Trustees must indemnify the OPTG for all reasonable costs of representing an individual who may be affected in this Action.

I request that you confirm on behalf of the OPTG that the OPTG will continue to represent beneficiaries of the 1985 Sawridge Trust who have become adults since the commencement of the Action.

A timely response would be appreciated as that point is something I have under consideration in deciding the outstanding Application by Patrick Twinn et al.

Yours truly

A handwritten signature in black ink, appearing to be 'D.R.G. Thomas', written in a cursive style.

D.R.G. Thomas

/ds

cc Ms. D. Bonora, (Dentons) (via email: [doris.bonora@dentons.com](mailto:doris.bonora@dentons.com))  
Ms. A. Loparco, QC (Dentons) (via email: [anna.loparco@dentons.com](mailto:anna.loparco@dentons.com))  
Ms. N. Golding (Borden Ladner Gervais LLP) (via email: [ngolding@blg.com](mailto:ngolding@blg.com))  
Karen A. Platten, QC (McLennan Ross LLP) via email: [kplatten@mross.com](mailto:kplatten@mross.com)

THE HONOURABLE MR. JUSTICE  
DENNIS R. THOMAS



THE LAW COURTS  
EDMONTON, ALBERTA  
T5J 0R2  
TEL: (780) 422-2200  
FAX: (780) 427-0334

COURT OF QUEEN'S BENCH OF ALBERTA  
June 22, 2017

**SENT VIA E-MAIL**

Ms. Nancy L. Golding, QC  
Borden Ladner Gervais LLP  
Centennial Place, East Twr.  
1900, 520-3 Ave. S.W.  
Calgary, Alberta T2P 0R3  
Phone: 403-232-9485  
Fax: 403-266-1395  
Email: [ngolding@blg.com](mailto:ngolding@blg.com)

Ms. Janet Hutchison  
Hutchison Law  
130 Broadway Boulevard  
Sherwood Park, AB T8H 2A3  
Phone: 780-417-7871  
Fax: 780-417-7872  
Email: [jhutchison@jlhlaw.ca](mailto:jhutchison@jlhlaw.ca)

Dear Counsel:

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust);  
Action No. 1103 14112; Patrick Twinn Standing Application**

I acknowledge receipt of Ms. Golding's letter of June 16 and 19 and Ms. Hutchison's of June 20.

In respect to Melissa Megley I am interpreting the June 16 letter to mean that Patrick Twinn has abandoned that part of his application seeking to be named as her litigation representative.

In respect to Aspen Saya Twinn ("Aspen") I request confirmation that Patrick Quinn is also abandoning his request to be named as her litigation representative. Since there has been some confusion on the question of whether the OPTG represents Aspen in this litigation I suggest that a consent order be prepared to confirm that the OPTG is representing the interests of this child in this Action.

Yours truly

D.R.G. Thomas

DRT/saa

cc: Ms. Doris Bonora (Dentons LLP) (via email: [doris.bonora@dentons.com](mailto:doris.bonora@dentons.com))  
Ms. Anna Loparco, QC (Dentons LLP) (via email: [anna.loparco@dentons.com](mailto:anna.loparco@dentons.com))  
Karen A. Platten, QC (McLennan Ross LLP) via email: [kplatten@mross.com](mailto:kplatten@mross.com)





## HUTCHISON LAW

Our File: 51433 JLH

**SENT BY EMAIL ONLY**

June 23, 2017

Court of Queen's Bench of Alberta  
6<sup>th</sup> Floor Law Courts Building  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Attention: The Honourable Mr. Justice D.R.G. Thomas

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust); QB Action No. 1103  
14112; Patrick Twinn Standing Application**

Thank you for your correspondence of June 22, 2017. I have consulted with my client and can advise I have instructions to confirm that the OPGT will continue to represent beneficiaries of the 1985 Sawridge Trust who have become adults since the commencement of the Action.

If anything further is required, please do not hesitate to contact me.

Thank you for your attention to this matter.

Yours truly,

**HUTCHISON LAW**

**PER: JANET L. HUTCHISON**  
JLH/cm

cc: Client

cc: K. Platten, and C.Osualdini, McLennan Ross LLP

cc: N.Golding, BLG LLP

cc: D. Bonora, Dentons LLP

#190 Broadway Business Square, 130 Broadway Boulevard, Sherwood Park, Alberta, T8H 2A3

Telephone: (780) 417-7871, Fax: (780) 417-7872

Email: [jhutchison@jlhlaw.ca](mailto:jhutchison@jlhlaw.ca) Website: [www.jlhlaw.ca](http://www.jlhlaw.ca)

June 27, 2017

File No.: 551860-1

**DELIVERED VIA EMAIL**

The Honourable Justice D.R.G. Thomas  
Court of Queen's Bench of Alberta  
6th Floor, Law Courts Building  
1A Sir Winston Churchill Square  
Edmonton AB T5J 0R2

**RE: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)**  
**Action No. 1103 14112**

We are writing with respect to the answer provided by the OPGT on their representation of adults. We had not expected the response given by the OPGT and thus thought it was important to provide our submission on this issue. We understand that we were not invited to respond and we ask the Court's indulgence in reviewing our brief submissions.

First, we do not believe that there is any statutory authority for the OPGT to represent adults who have no disabilities. We agree that the court can appoint a litigation representative but we are not sure if the adults now need to have notice that they are being represented by the OPGT. I do not believe that these adults were canvassed before the OPGT advised the Court that the OPGT would represent these adults. Traditionally the OPGT excuses itself from proceedings when minors they were representing become adults

The orders of the Court in respect of the role of the OGT have been very particular about the representation of particular minors. We enclose the order filed September 20, 2012 and the order filed August 17, 2016 highlighting the directions of the Court on the role of the OPGT. The August 17, 2016 Order particularly addressed limiting the OPGT role and the Trustees are concerned that the OPGT is attempting to take on an expanded role.

There is finally the issue of full indemnity costs. We believe that the OPGT was specifically appointed to represent minors and awarded advance costs on the basis that they were representing minors who needed to have a voice in this action. We seek the court's direction if the OPGT will now represent adults, whether the order of advance full indemnity costs still applies.

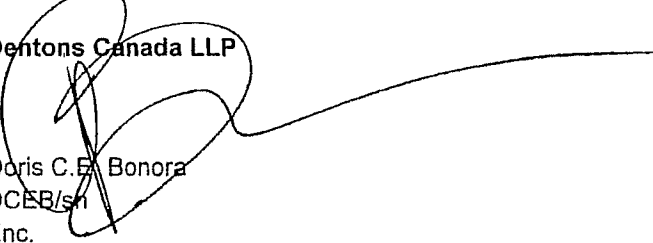
The Trustees may be amenable to consenting to the OPGT representing adults as there may be some efficiency if other applications for party status are denied. However, there would be duplication of efforts and duplication of representation if the OPGT represents adults as Catherine Twinn speaks on behalf of

adult beneficiaries and finally we have other adults who wish to have party status. This is especially concerning for the Trustees when advance full indemnity costs are being sought .

Thus, we are unclear of the authority for the OPGT to represent adults and the authority for the OPGT to be paid advance full indemnity costs to represent adults. We seek the court's direction on this issue.

Dentons Canada LLP

Doris C.E. Bonora  
DCEB/sh  
Enc.



Clerk's Stamp:



COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE

EDMONTON

IN THE MATTER OF THE TRUSTEE  
ACT, R.S.A 2000, C. T-8, AS AMENDED

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

DOCUMENT

ORDER

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Chamberlain Hutchison  
#155, 10403 - 122 Street  
Edmonton, AB T5N 4C1

Attention: Janet Hutchison  
Telephone: (780) 423-3661  
Fax: (780) 426-1293  
File: 51433 JLH

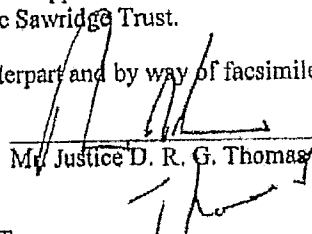
Date on which Judgment Pronounced: June 12, 2012

Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: Justice D.R.G. Thomas

UPON the application of the Public Trustee; AND UPON review of the Affidavits filed in this proceeding; AND UPON review of the filed written submissions; AND UPON hearing the submissions of Counsel for the Public Trustee, Counsel for the Sawridge Trustees and Counsel for the Sawridge First Nation; IT IS HEREBY ORDERED AND DECLARED as follows:

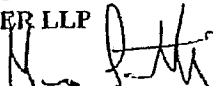
1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.
2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.
3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.
4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.
5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.
6. This Order may be consented to in counterpart and by way of facsimile signature.

  
Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:

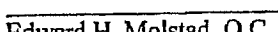
**REYNOLDS MIRTH RICHARDS &  
FARMER LLP**

Per:

  
Marco S. Poretti  
Solicitors for the Trustees

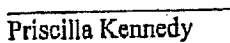
**PARLEE McLAWS LLP**

Per:

  
Edward H. Molstad, Q.C.  
Counsel for Sawridge First Nation

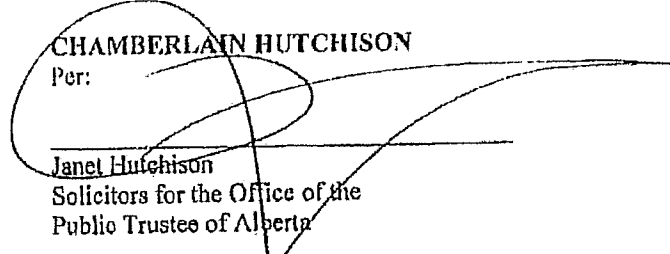
**DAVIS LLP**

Per:

  
Priscilla Kennedy  
Solicitors for Aline Elizabeth Huzar, June  
Martha Kolosky and Maurice Stoney

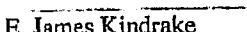
**CHAMBERLAIN HUTCHISON**

Per:

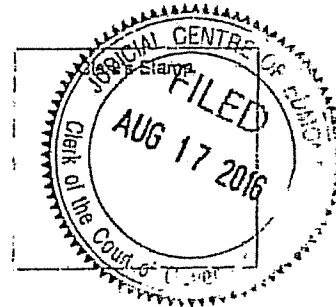
  
Janet Hutchison  
Solicitors for the Office of the  
Public Trustee of Alberta

**MYLES J. KIRVAN - DEPUTY  
ATTORNEY GENERAL OF CANADA**

Per:

  
E. James Kindrake  
Solicitors for the Minister of Indian Affairs and  
Northern Development

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 (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 ORDER

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT Dentons Canada LLP  
2900, 10180 101 Street  
Edmonton, AB T5J 3V5  
Attention: Doris Bonora  
Telephone: (780) 423-7188  
Facsimile: (780) 423-7276  
File No.: 551880 -1

DATE ON WHICH ORDER WAS  
PRONOUNCED:

December 17, 2015

LOCATION WHERE ORDER WAS  
PRONOUNCED:

Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Justice D.R.G. Thomas


UPON THE APPLICATION of the Office of the Public Guardian and Trustee of Alberta ("Public Trustee"), and Upon hearing from the counsel for: Sawridge First Nation, the Public Trustee, Sawridge Trustees and Catherine Twinn; and Upon the decision of The Honourable Mr. Justice Dennis R. Thomas dated December 17, 2015 (2015 ABQB 799);

IT IS HEREBY ORDERED THAT:

1. The Public Trustee's application for production of records/information from the Sawridge First Nation ("SFN") is denied.
2. Document production by SFN shall only be compelled pursuant to Rule 5.13(1) of the *Alberta Rules of Court*, Alta Reg 124/2010.
3. The Public Trustee shall not conduct an open-ended inquiry into the membership of the SFN and the historic disputes that relate to that subject.
4. The Public Trustee shall not conduct a general inquiry into potential conflicts of interest between SFN, its administration and the Sawridge Trustees.
5. The Public Trustee shall be limited to four tasks:
  - (a) Representing the interests of minor beneficiaries and potential minor beneficiaries so that they receive fair treatment (either direct or indirect) in the distribution of the assets of the 1985 Sawridge Trust; and
  - (b) Examining on behalf of the minor beneficiaries the manner in which the property was placed/settled in the Trust; and
  - (c) Identifying potential but not yet identified minors who are children of SFN members or membership candidates as these are potentially minor beneficiaries of the 1985 Sawridge Trust; and
  - (d) Supervising the distribution process itself.

6. The Public Trustee and the Sawridge Trustees are to immediately proceed to complete the first three tasks outlined in paragraph 5 above.
7. The Sawridge Trustees will submit a distribution arrangement by January 29, 2016.
8. The Public Trustee shall have until March 15, 2016 to prepare and serve an application, pursuant to *Rule 5.13(1)*, on SFN identifying specific documents it believes are relevant and material to test the fairness of the proposed distribution arrangement to minors who are children of beneficiaries or potential beneficiaries.
9. If no *Rule 5.13(1)* application is made in relation to the proposed distribution scheme, submissions on the distribution proposal shall be made by the Public Trustee and Sawridge Trustees at a case management meeting held before April 30, 2016.
10. The Public Trustee shall have until January 29, 2016 to prepare and serve an application, pursuant to *Rule 5.13(1)*, on SFN identifying specific documents for production which it believes are relevant and material to the issue of the assets settled in the 1985 Sawridge Trust.
11. If necessary, a case management meeting will be held before April 30, 2016 to decide any disputes concerning any *Rule 5.13(1)* application by the Public Trustee.
12. SFN shall provide the following to the Public Trustee by January 29, 2016:
  - (a) the names of individuals who have:
    - (i) made applications to join the SFN which are pending; and
    - (ii) had applications to join the SFN rejected and are subject to challenge;
  - (b) the contact information for those individuals where available.
13. The Public Trustee is instructed that if it requires any additional documents from the SFN to assist it in identifying the current and possible members of category 2, (Minors who are children of members of the SFN), the Public Trustee shall file a *Rule 5.13(1)* application by January 29<sup>th</sup>, 2016.
14. The SFN and the Sawridge Trustees shall have until March 15, 2016 to make written submissions in response to any application by the Public Trustee described in paragraph 13 above.
15. The Public Trustee shall not engage in collateral attacks on membership processes of the SFN. The Sawridge Trustees shall not engage in collateral attacks on SFN's membership processes.
16. The decision on costs in relation to the Public Trustee's production application is reserved until the Court evaluates any *Rule 5.13(1)* applications brought by the Public Trustee.

-4-

  
Honourable Justice D.R.G. Thomas  
Thomas



MCLENNAN ROSS LLP  
LEGAL COUNSEL

Our File Reference: 144194

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

**Amanda Riboreau, Assistant**  
Direct Line: (780) 482-9281

Fax: (780) 482-9100  
PLEASE REPLY TO EDMONTON OFFICE

June 28, 2017

The Honourable Mr. Justice D.R.G. Thomas  
Court of Queen's Bench, Law Courts  
1A Sir Winston Churchill Square  
Edmonton, AB T5J 0R2

Attention: The Honourable Justice D. Thomas:

**Re: Sawridge Trusts**

To add our voice to the discussion, we believe that the Court has the ability, under section 5(d)(i) of the *Public Trustee Act*, RSA 2005, Chapter D-44.1 to allow the Office of the Public Guardian and Trustee (OPGT) to act for individuals who are no longer minors.

The issue of indemnification arises in any matter where the Court determines it important to allow an individual or group of individuals to be represented. There should not be further costs in advancing the interests of those individuals who, since the beginning of this action, have become adults.

One has to assume that any notice they would have received as minors is not binding on them and, should they not still be represented, they should at the very least be afforded specific notice that they are no longer represented by the OPGT.

We believe that the better course of action is to allow the OPGT to continue to represent minors who have now reached the age of majority.

Contrary to Ms. Bonora's statement in her letter of June 27, Catherine Twinn is acting as a Trustee of the Sawridge Trusts and, as such, represents all beneficiaries but does not represent adult beneficiaries specifically.

We do not believe that there would be duplication of efforts if those beneficiaries who have applied to be added as parties are added, as we believe they are entitled to be added as a

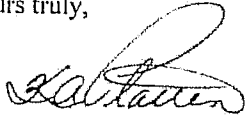
Edmonton Office  
600 McLennan Ross Building  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4  
p. 780.482.9200  
f. 780.482.9100  
tf. 1.800.567.9200

Calgary Office  
1000 First Canadian Centre  
350 - 7th Avenue SW  
Calgary, AB T2P 3N9  
p. 403.543.9120  
f. 403.543.9150  
tf. 1.888.543.9120

Yellowknife Office  
301 Nunasi Building  
5109 - 48th Street  
Yellowknife, NT X1A 1N5  
p. 867.766.7677  
f. 867.766.7678  
tf. 1.888.836.6684

matter of right. Those who choose to be added should be. Those who were represented by the OPGT as minors should continue to be represented by the OPGT or be given the opportunity to be represented by their own counsel without having to apply to be added as parties. At the very least, they should be given notice that they are no longer represented and be given the opportunity to ask the Court to allow the OPGT to continue to represent them or seek to have their own counsel represent them.

Yours truly,

A handwritten signature in cursive script, appearing to read 'K. Platten', written in dark ink.

KAREN A. PLATTEN, Q.C.

KAP/ar

THE HONOURABLE MR. JUSTICE  
DENNIS R. THOMAS



COURT OF QUEEN'S BENCH OF ALBERTA

THE LAW COURTS  
EDMONTON, ALBERTA  
T5J 0R2  
TEL: (780) 422-2200  
FAX: (780) 427-0334

June 29, 2017

**SENT VIA E-MAIL**

Ms. Janet Hutchison  
Hutchison Law  
130 Broadway Boulevard  
Sherwood Park, Alberta T8H 2A3  
Phone: 780-417-7871  
Fax: 780-417-7872  
Email: [jhutchison@jlhlaw.ca](mailto:jhutchison@jlhlaw.ca)

Dear Ms. Hutchison:

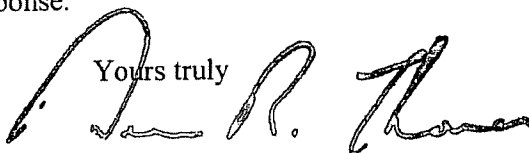
**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)**  
**Action No. 1103 14112**

Thank you for your prompt reply of June 23, 2017.

Since receipt of that letter, I have also received a letter from Ms. Bonora, dated June 27 and a further letter from Ms. Platten, Q.C., dated June 28, 2017, which I assume were copied to you, although that is not apparent from those two pieces of correspondence.

I invite your comment on the assertion by Ms. Bonora that the OPGT does not have authority to represent adults who have no disabilities. Ms. Platten, Q.C., disputes that point and states that I have the ability under s 5(d)(i) of the *Public Trustee Act* to allow the OPGT to act for individuals who are no longer minors.

Before I express my conclusion on this point, I wanted to give you an opportunity to comment. I look forward to your response.

Yours truly  


D.R.G. Thomas

ds  
cc

D. Bonora (Dentons) (via e-mail: [doris.bonora@dentons.com](mailto:doris.bonora@dentons.com))  
C.K.A. Platten, Q.C. (McLennan Ross LLP) (via e-mail: [kplatten@mross.com](mailto:kplatten@mross.com))  
N.L. Golding Q.C. (Borden Ladner Gervais LLP) (via e-mail: [ngolding@blg.com](mailto:ngolding@blg.com))



Our File: 51433 JLH

**SENT BY EMAIL ONLY**

June 30, 2017

Court of Queen's Bench of Alberta  
6<sup>th</sup> Floor Law Courts Building  
1A Sir Winston Churchill Square  
Edmonton, AB T5J OR2

Attention: The Honourable Mr. Justice D.R.G. Thomas

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust); QB Action No. 1103  
14112; Patrick Twinn Standing Application**

We are writing in response to the Court's correspondence of June 29, 2017 inviting comments on Ms. Bonora's letter of June 27, 2017 and Ms. Platten, Q.C.'s letter of June 28, 2017. The OPGT's understanding on these matters is as follows:

- 1.) The OPGT is not participating in this litigation as litigation representative based solely on its statutory mandates. Rather, the Court chose to appoint the OPGT as litigation representative for the categories of minors the Court has identified as requiring representation, and as specifically set out in *Sawridge #3*.
- 2.) Pursuant to section 5(d)(i) of the *Public Trustee Act*, the Court can allow the OPGT to act for individuals who are no longer minors. Rule 2.21 of the *Alberta Rules of Court* also gives the Court the power to terminate, replace or impose terms and conditions on a litigation representative.

- 3.) The OPGT has no objection to continuing to act as litigation representative for minors it represented but whom have become adults. The OPGT would similarly have no objection to an order appointing an alternative litigation representative for those minors who have become adults.
- 4.) The OPGT has been consistent in its position that its participation in this proceeding is conditional upon the full and advance indemnity and costs exemption orders. That position arises, at least in part, from the fact that the OPGT has never had a statutory obligation to act in this matter and thus has no associated budget to fund its participation.
- 5.) The OPGT understood the Court's correspondence of June 22, 2017 to indicate that the OPGT could continue to act for minors who had become adults, in part, because the indemnity order would apply to that representation. The OPGT also understands the costs exemption order would apply to that representation. If the OPGT's representation of the minors who have become adults would not be subject to the indemnity and costs exemption orders, the OPGT will have no option but to request the Court issue an order discharging it as litigation representative for those individuals.

We trust these comments are of assistance. However, if we can provide any additional clarification on behalf of the OPGT, please do not hesitate to contact us.

Thank you for your attention to this matter.

Yours truly,

**HUTCHISON LAW**

**PER: JANET L. HUTCHISON**

JLH/cm

cc: Client

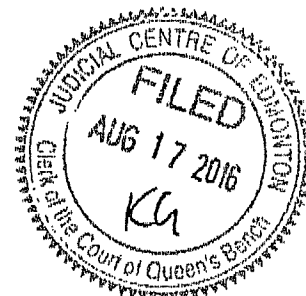
cc: K. Platten, and C. Osualdini, McLennan Ross LLP

cc: N. Golding, BLG LLP

cc: D. Bonora, Dentons LLP

Form 49  
[Rule 13.19]

COURT FILE NUMBER 1103 14112 ✓  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
APPLICANTS ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, AND CLARA MIDO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST  
RESPONDENT IN THE MATTER OF THE TRUSTEE ACT R.S.A. 2000, CT-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  
DOCUMENT AFFIDAVIT OF PATRICK TWINN  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT BORDEN LADNER GERVAIS LLP  
Centennial Place, East Tower  
1900, 520 - 3 Avenue SW  
Calgary, Alberta T2P 0R3  
Attention: Nancy Golding Q.C./Sandi Shannon  
Tel: (403) 232-9485/9782  
Fax: (403) 266-1395  
Email: ngolding@blg.com  
sshannon@blg.com  
File no. 443395/01



**AFFIDAVIT OF  
PATRICK TWINN  
Sworn (or Affirmed) on July 26, 2016**

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

1. I am one of the Applicant Beneficiaries herein, and as such have knowledge of the matters hereinafter disposed to.
2. This matter involving the Sawridge Band Intervivos Settlement (the "1985 Trust") has been brought forward to the Court by its five trustees: Bertha Twin- L'Hirondelle, Clara Twin-Midbo, Catherine Twinn, Roland C. Twinn, and Walter Felix Twin (hereinafter referred to as the "Sawridge Trustees"). I understand that Justin Twin and Margaret Ward, have replaced Walter Felix Twin who resigned and Clara Midbo, deceased as Sawridge Trustees.
3. I understand that the Sawridge Trustees are seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust (the "Advice and Direction Application") in respect to:
  - a. the definition of the term "Beneficiaries" contained in the 1985 Trust and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries"; and
  - b. the transfer of assets into the 1985 Trust.
4. I make this Affidavit in support of a motion:
  - (i) to be added as a party in the Advice and Direction Application and to have my counsel participate in the Court proceedings relating to the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application;
  - (ii) for an order compelling the Sawridge Trustees to provide an accounting and pass their accounts for the 1985 and 1986 Trusts; and
  - (iii) for advance costs and full indemnification of costs from the 1985 Trust and the 1986 Trust.

**The Trusts**

5. In 1985, my father, Walter Patrick Twinn established the 1985 Trust to hold certain properties in trust for members of the Sawridge First Nation. I understand that the Beneficiaries of the 1985 Trust were defined as all persons who qualified as a member of the Sawridge First Nation pursuant to the provisions of the *Indian Act* as existed on April 15, 1982. The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time

as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985.

6. In 1986, my Father established the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively with the 1985 Trust, the "Sawridge Trusts"). The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of the Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada

Attached hereto and marked as Exhibit "A" is a true copy of the Sawridge Trust website "Beneficiaries" tab viewed on July 25, 2016.

### **Background**

7. I was born into the Sawridge First Nation on October 22, 1985. My Father, was the Canadian Chief of the Sawridge First Nation from 1966 to his death, October 30, 1997 ("Chief Walter Twinn").
8. My mother, Catherine Twinn, is a Trustee of the Sawridge Trusts and is a current member of the Sawridge First Nation.
9. I am a recognized member of the Sawridge First Nation (the "Sawridge Band") and have been absolutely entitled as a Beneficiary, without exception, since my birth.
10. I am cohabitating with and on July 30, 2016 will formalize my marriage to my partner and the mother of my daughter, Melissa Megley. Melissa Megley, under the current rules, qualifies as a Beneficiary of the 1985 Trust in her own right. I have been informed by Melissa Megley that she does not consent to the Sawridge Trustees' proposed variation. I do not believe that Melissa will ever be admitted by the Sawridge Band into membership under the current membership process and Membership Rules and therefore will never be a Beneficiary through band membership. Melissa will be excluded as a Beneficiary of the 1985 Trust if the definition of Beneficiary is varied to be band membership as proposed by the Sawridge Trustees in the Advice and Direction Application.
11. My newborn daughter, Aspen Saya Twinn, is the youngest Beneficiary of the 1985 Trust. She is not a Sawridge Band member nor do I believe she will ever be one under the current Sawridge Band leadership. Accordingly, my daughter will be excluded as a Beneficiary of the 1985 Trust if the definition of Beneficiary is varied to be band membership as proposed by the Sawridge Trustees in the Advice and Direction Application. On her behalf, Melissa and I do not consent to this proposed variation.
12. In addition to Melissa Megley and our newborn daughter, my brothers, Sam, Isaac and Cameron have informed me they do not consent, on their own behalf and on behalf of their present or future spouses and issue, to this proposed variation of the definition of Beneficiary in the 1985 Trust.

13. As a descendant and listed member of the Sawridge First Nation, I am a Beneficiary of the 1985 Trust under the current definition of "Beneficiary" and I am directly affected by the Advice and Direction Application being brought forward involving the 1985 Trust.
14. I will continue to be a Beneficiary under the 1985 Trust if the Sawridge Trustees Advice and Direction Application succeeds as I am currently a Sawridge Band member subject to a decision of the Chief and Council, who under the Membership Rules, purport to be able to revoke band membership. The Membership Rules give the Chief and Council what appears to be an absolute discretion over accepting, rejecting and revoking any persons as Sawridge Band members.
15. I also have concerns with the administration of the Trusts. In addition to these concerns outlined below, I believe that there is a conflict of interest between the duties of Sawridge Trustees who were or are elected Band officials and the powers that they held or hold to determine membership in the Sawridge First Nation. I am aware that other First Nation Trusts prohibit elected Band officials, employees and agents to act as Trustees to avoid conflicts of interest and ensure an equality amongst the Trustees. I believe a Trustee must represent all Beneficiaries, past, present and future, not just their political constituency. I believe this does not happen when the Chief is a Trustee and a majority of Trustees are or were elected Band officials, as is the case here.
16. I do not believe that appropriate steps have been taken to properly ascertain all of persons who are Beneficiaries of the 1985 Trust. I and other 1985 Beneficiaries I know of have not been consulted by the Trustees to grandfather us and our issue. Nor have we been asked to consent to substituting the existing Beneficiary definition with band membership. Nor have we been asked to consent to the variation they seek.
17. Further, I believe that vested and potential Beneficiaries are being excluded from Sawridge Band membership as a result of personal animosities and that others are being accepted based on their personal relationships with some of the Sawridge Trustees.
18. I do verily believe that the Trustees' proposed amendment to the definition of "Beneficiary" under the 1985 Trust will result in the exclusion of many of the current 1985 Trust Beneficiaries and many potential Beneficiaries and their issue.

#### **Request for Accounting**

19. On April 12, 2016, as a Beneficiary under the 1985 Trust and the 1986 Trust, I sent a request to Paul Bujold requesting an accounting of the 1985 and 1986 Trusts as soon as was practicable.
20. To the best of my knowledge, since September 9, 2009, Mr. Bujold has been the Administrator of the Trusts. This is a salaried position that is contracted for by the Trusts at the discretion of a majority of Trustees.
21. On April 29, 2016, Mr. Bujold responded to my request as follows:

Thank you for your request for an accounting. Unfortunately, we are unable to address your request at this time.
22. On May 3, 2016, I responded to Mr. Bujold requesting further information as to why the Trusts did not feel that they had to account to their beneficiaries. Both the 1985 Trust and the 1986 Trust explicitly require the Trustees to "keep accounts in acceptable manner of all receipts, disbursements, investments and other transactions in the administration of the Trusts." I also

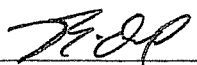
explained to Mr. Bujold that my understanding is that a trustee must be ready to provide an accounting to a Beneficiary at any time.

23. On May 4, 2016, Mr. Bujold confirmed that the Trustees have kept accounts as required by the Sawridge Trusts and informed me that the Trustees did have plans to account to the Beneficiaries. However, according to Mr. Bujold, an accounting would only be provided after the determination of the Advice and Direction Application and other related Actions. Attached hereto and marked as Exhibit "B" is the email correspondence referred to in paragraphs 20-24 of this my Affidavit.
24. Mr. Bujold further informed me that it was the Trustees' position that "[r]eporting to the beneficiaries is not a simple process and requires some preparation which the Trusts do not have time for at this time because of the many legal actions, apart from the Trusts' own application for Advice and Direction for the 1985 Trust, that need to be managed and responded to." Mr. Bujold also informed me that "[c]urrent Trustee direction is not to do an accounting until the beneficiaries for both Trusts have been ascertained and the transfer of assets for the 1985 Trust is complete, that is impossible at the moment since the matter is currently before the courts."
25. My father now deceased, created the 1985 Trust. My mother is a current Trustee and is a member of the Sawridge First Nation. I am and always have been a recognized member of the Sawridge First Nation. Accordingly, I have always been considered to be a Beneficiary under both the 1985 Trust and the 1986 Trust and I am therefore entitled to an accounting, which to date the Sawridge Trustees have refused to provide.

#### **Need for Advance Costs and Indemnity**

26. I am seeking advance costs and full indemnification for costs of this action from the 1985 Trust. Absent this award, there is no other realistic option for me to bring this issue to Court. Without this financial assistance, there is simply no way that I can proceed.
27. Further, I represent interests, including those of my partner and my infant daughter, that are currently not represented in this matter. The interests I represent are of broader public import and I do not believe that they have been previously determined.
28. I am a member of the Sawridge First Nation, born into it by my father, Chief Walter Twinn and my mother, Catherine Twinn. As I was a Sawridge First Nation member at the time the 1985 Trust was created and I remain one today, I should be included as a Party in the Advice and Direction Application presented before the Court regarding the definition of "Beneficiaries" and the transfer of assets with the 1985 Trust, particularly as my consent would be required in a trust variation application.
29. As a Beneficiary under both Sawridge Trusts, I am entitled to an accounting from the Trustees without delay.

SWORN (OR AFFIRMED) BEFORE ME at  
St. Albert., Alberta, this 26<sup>th</sup> day of July, 2016.

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

**BALRAJ DEOL**  
Barrister & Solicitor

CAL01: 1951745: v6

  
\_\_\_\_\_  
**PATRICK TWINN**

# Exhibit A

## Beneficiaries

Beneficiaries must presently meet the following requirements set out in the Trust Deeds of the two Trusts:

### The Sawridge Band Inter-Vivos Settlement, 15 April 1985

"The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985."

### The Sawridge Trust, 15 August 1986

"The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of The Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada."

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

PATRICK TWINN

Sworn before me this 26<sup>th</sup>

Day of July A.D. 20 16

[Signature]

A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

# Exhibit B

This is exhibit "B" referred to  
in the Affidavit of  
PATRICK TWINN  
Sworn before me this 26<sup>th</sup>  
Day of July A.D. 20 16  
B. Deol  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

**From:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Date:** May 4, 2016 at 4:21:17 PM MDT  
**To:** Patrick Twinn <[patricktwinn77@hotmail.com](mailto:patricktwinn77@hotmail.com)>  
**Subject:** RE: Accounting of Trusts

Patrick,

The Trusts do have plans to account to the beneficiaries of both Trusts after the determination of the beneficiary definition for the 1985 Trust, and the transfer of assets to the 1985 Trusts, currently before the courts, is complete.

Trustees have kept "accounts in acceptable manner of all receipts, disbursements, investments and other transactions in the administration of the Trusts" and these will be shared at the time of the accounting.

Reporting to the beneficiaries is not a simple process and requires some preparation which the Trusts do not have time for at this time because of the many legal actions, apart from the Trusts' own application for Advice and Direction for the 1985 Trust, that need to be managed and responded to.

Your characterisation that "the Trust Administrator and the Chair feel they do not have to account to a beneficiary" is inaccurate. The Trusts' Administrator and Chair can only act on the direction of the Trustees. Current Trustee direction is not to do an accounting until the beneficiaries for both Trusts have been ascertained and the transfer of assets for the 1985 Trust is complete, that is impossible at the moment since the matter is currently before the courts.

Your request will be raised with the Trustees at their June meeting.

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

**Notice of Confidentiality:**

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dissemination, distribution, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please destroy the original document.

**From:** Patrick Twinn [<mailto:patricktwinn77@hotmail.com>]  
**Sent:** Tuesday, May 03, 2016 1:46 PM  
**To:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Cc:** Brian Heidecker <[brian@sawridgetrusts.ca](mailto:brian@sawridgetrusts.ca)>  
**Subject:** RE: Accounting of Trusts

Paul

While I appreciate you responding in a timely and professional manner, I am interested in knowing why the Trusts feel they do not have to account as the trustees must be ready to provide at any time to provide accounts to a beneficiary. Common Law suggests that accounts must be show the amount at inception, the amounts received and the amounts expended. In both the 85 and 86 Trusts, the Trustees are required to keep "keep accounts in acceptable manner of all receipts, disbursements, investments and other transactions in the administration of the Trusts."

With that said, there is no direction to account to beneficiaries but there also is no prohibition from doing so, therefore common law requirements to accounts should be apply.

I am curious to know why the Trust Administrator and the Chair feel they do not have to account to a beneficiary.

**W. Patrick Twinn**  
**(780) 718-9661**  
**P.O. Box 1460**  
**Slave Lake, Alberta T0G 2A0**

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---

**From:** [paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)  
**To:** [patricktwinn77@hotmail.com](mailto:patricktwinn77@hotmail.com)  
**CC:** [brian@sawridgetrusts.ca](mailto:brian@sawridgetrusts.ca)  
**Subject:** RE: Accounting of Trusts  
**Date:** Fri, 29 Apr 2016 14:01:09 +0000

Patrick,  
Thank you for your request for an accounting. Unfortunately, we are unable to address your request at this time.

**Paul Bujold**  
**Trusts Administrator**

Sawridge Trusts  
Office (780) 988-7723

**Notice of Confidentiality:**

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**From:** Patrick Twinn [<mailto:patricktwinn77@hotmail.com>]  
**Sent:** Tuesday, April 12, 2016 4:42 PM  
**To:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Subject:** Accounting of Trusts

Paul,

I am a beneficiary of the 1985 and 1986 Trusts and I'm requesting an accounting of the Trusts as soon as practicable.

Patrick

W. Patrick Twinn  
Ph: (780) 718-9661  
Mailing Address: P.O. Box 1460  
Slave Lake, Alberta  
TOG 2A0

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Form 49  
[Rule 13.19]

COURT FILE NUMBER 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, AND CLARA MIDO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST

RESPONDENT IN THE MATTER OF THE TRUSTEE ACT R.S.A. 2000, CT-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 Trust")

DOCUMENT AFFIDAVIT OF SHELBY TWINN

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

BORDEN LADNER GERVAIS LLP  
Centennial Place, East Tower  
1900, 520 - 3 Avenue SW  
Calgary, Alberta T2P 0R3

Attention: Nancy Golding Q.C./Sandi Shannon  
Tel: (403) 232-9485/9782  
Fax: (403) 266-1395  
Email: ngolding@blg.com  
sshannon@blg.com  
File no. 443395/01

**AFFIDAVIT OF  
SHELBY TWINN**  
Sworn (or Affirmed) on July 26, 2016

I, Shelby Twinn, of the City of Edmonton, in the Province of Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am one of the Applicant Beneficiaries herein, and as such have knowledge of the matters hereinafter disposed to.
2. This matter involving the 1985 Trust has been brought forward to the Court by its five trustees: Bertha Twin- L'Hirondelle, Clara Twin-Midbo, Catherine Twinn, Roland C. Twinn, and Walter Felix Twin (hereinafter referred to as the "Sawridge Trustees"). I understand that Justin Twin and Margaret Ward are now Sawridge Trustees and that they replaced Walter Felix Twin, who resigned, and Clara Midbo who is now deceased.
3. I understand that the Sawridge Trustees are seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust (the "Advice and Direction Application") in respect to:
  - a. the definition of the term "Beneficiaries" contained in the 1985 Trust, and, if necessary, to vary the 1985 Trust to clarify the definition of "Beneficiaries"; and
  - b. the transfer of assets to the 1985 Trust.
4. I am a beneficiary under the current definition of the 1985 Trust. I understand that the Sawridge Trustees, with the exception of Catherine Twinn, are seeking to amend the definition of "Beneficiary" under the 1985 Trust on the basis that it is discriminatory. I understand that they seek to amend the definition of "Beneficiary" to band members only as determined by Chief and Council. Although I am currently a Beneficiary under the 1985 Trust, if the Sawridge Trustees application for Advice and Direction succeeds, I will no longer be a Beneficiary as I am not one of the 44 Sawridge Band members on the Sawridge Band List controlled by Chief and Council.
5. I make this Affidavit in support of a motion:
  - (i) to be added as a party in the Advice and Direction Application and to have my counsel participate in the Court proceedings relating to the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application;
  - (ii) for an order compelling the Sawridge Trustees to provide an accounting and pass their accounts for the 1985 Trust; and
  - (iii) for advance costs and full indemnification of costs from the 1985 Trust and 1986 Trust.

**The Trusts**

6. In 1985, my Paternal Grandfather, Walter Patrick Twinn established the 1985 Trust to hold certain properties in trust for members of the Sawridge First Nation the ("Sawridge Band"). I understand that the Beneficiaries of the 1985 Trust were defined as all persons who qualified as a member of the Sawridge First Nation pursuant to the provisions of the Indian Act as they existed on April 15, 1982. The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985.

7. In 1986, my paternal grandfather established the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively with the 1985 Trust, the "Sawridge Trusts"). The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of the Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada

8. Attached hereto and marked as Exhibit "A" is a true copy of the Sawridge Trusts website "Beneficiaries" tab viewed on July 25, 2016.

#### **Background**

9. I was born January 3, 1992, and was raised on the Sawridge First Nation Reserve for the first 5 years of my life. I am entitled to and am registered as an Indian. I am not on the Sawridge Band list, and do not receive any benefits from the Sawridge First Nation.
10. My biological father, Paul Twinn is recognized as a Status Indian with the Canadian Federal Government under the *Indian Act* and is a member of the Sawridge First Nation. My paternal grandfather, Walter Patrick Twinn, was the Canadian Chief of the Sawridge First Nation from 1966 to his date of death, October 30, 1997 ("Chief Walter Twinn").
11. My mother, Kristal Schreiber, was married to Paul Twinn and lived on the Sawridge Indian Reserve until I was 5 years old. She returned only once with my sister and me, in November 1997, for my paternal grandfather's funeral.
12. Around 1998, when I was 6 years old my mother moved us to Prince George, British Columbia and to the best of my knowledge it was around that time that she ceased all contact with the Twin(n) family and the Sawridge First Nation.
13. My biological father has made no effort to have any type of relationship with either myself or my sister. He has never supported us financially, nor did he provide any support to my mother. My mother re-married and although I consider her husband to be my father I was never formally adopted.
14. Despite being the daughter of Paul Twinn and the granddaughter of Chief Walter Twinn, and therefore a Beneficiary of the 1985 Trust under the current definition, I have never been contacted about my being a Beneficiary by any Trust Administrator. The first time that I learned that I was a Beneficiary under the 1985 Trust was in September 2013 through Catherine Twinn.

15. I moved to Alberta in 2013. At that time I contacted Arlene Twinn, my biological father's sister, and was asked to complete a membership application form. I have a number of educational goals and would benefit greatly from being a Beneficiary of the Sawridge Trusts. However, at this time I have a number of reservations about applying to be a member.
16. I am very close with my sister Kaitlin who is three years younger than me, and know her very well and love her deeply. Like myself, my sister is a Beneficiary of the 1985 Trust under its current definition. Kaitlin was included for "grandfathering" in the Trustees' Offer to the Court filed June 12, 2016. I was not. My sister has never been contacted by the Trusts.
17. I do verily believe that my paternal grandfather, who settled the Trusts, would have wanted my sister and me to be Beneficiaries, regardless of our Sawridge Band membership status. I strongly oppose the proposal to change the rules that define Beneficiary in the 1985 Trust to band members as controlled by the Chief and Council as that we would not be Beneficiaries.
18. I believe that the purpose of the 1985 Trust was to ensure that a larger and more inclusive family group beyond that of individual members picked by the Chief and Council. This would include women, who marry male Band members and their children. I believe it is essentially impossible to marry within the Sawridge Band as there are only 44 Sawridge Band members.

#### **Request for Accounting**

19. On March 2, 2016 I emailed Paul Bujold, Trusts Administrator the following request:

I am a beneficiary of the 1985 Trust. I qualify under section 11 (1) (d) of the Indian Act, as it stood April 17, 1982. I write on behalf of myself and others who qualify under these Indian Act provisions. We are entitled to an accounting of the 1985 Trust assets. To start we will need copies of all legal accounts by March 8, 2016, received by the Trust, whether paid or not, arising in relation to the 1985 Trust. We want the full accounting on or before April 4, 2016.
20. On March 18, 2016 Paul Bujold replied saying:

We cannot provide you with this information at the moment.

Attached hereto and marked as Exhibit "B" is a true copy of my correspondence to Paul Bujold dated March 2, 2016, and Paul Bujold's correspondence to me dated March 18, 2016.
21. As a beneficiary of the 1985 Trust, I am entitled to an accounting which to date the Sawridge Trustees have refused to provide. I am concerned about the legal fees paid by the Trusts.

#### **Need for Advance Costs and Indemnity**

22. I am seeking advance costs and full indemnification for costs of this action from the 1985 Trust. Absent this award, there is no other realistic option for me to bring this issue to Court. Without this financial assistance, there is simply no way that I can proceed.
23. I do not believe that my sister and I are the only children of the Sawridge First Nation who would qualify as Beneficiaries of the 1985 Trust under the current definition and who would lose their entitlement under the Sawridge Trustees' proposed amendment. I believe that my interests are of

24. As outlined above, under the current definition of “Beneficiary”, my sister and I are Beneficiaries of the 1985 Trust. If the Sawridge Trustees are successful in their application, my sister and I will lose that entitlement. There are no other Parties to this Action at present that I am aware of, like myself and my sister. Accordingly, my opinion, advice and direction for the definition of “Beneficiaries” contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application is critical to reaching a fair and just determination.

) \_\_\_\_\_  
 ) \_\_\_\_\_  
 ) \_\_\_\_\_  
 ) Shelby Twinn

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# Exhibit A

## Beneficiaries

Beneficiaries must presently meet the following requirements set out in the Trust Deeds of the two Trusts:

### The Sawridge Band Inter-Vivos Settlement, 15 April 1985

"The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985."

### The Sawridge Trust, 15 August 1986

"The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of The Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada."

This is exhibit "A" referred to  
in the Affidavit of  
SHELBY TWINN  
Sworn before me this 26<sup>th</sup>  
Day of July A.D. 2016  
[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

# Exhibit B

Begin forwarded message:

**From:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Date:** March 18, 2016 at 7:58:40 AM MDT  
**To:** Shelby Twinn <[S.Twinn@LIVE.CA](mailto:S.Twinn@LIVE.CA)>  
**Subject:** RE: 1985 Trust Accounting

Shelby,  
We cannot provide you with this information at the moment.  
Thanks,

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

**Notice of Confidentiality:**

This message, transmitted by electronic mail, is intended only for the use of the individual or entity to whom it is addressed and may contain information which is confidential and privileged. Confidentiality and privilege are not lost by this e-mail having been sent to the wrong person. Any dissemination, distribution, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please destroy the original document.

**From:** Shelby Twinn [<mailto:S.Twinn@LIVE.CA>]  
**Sent:** Wednesday, March 02, 2016 9:29 AM  
**To:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Subject:** 1985 Trust Accounting

March 2, 2016

Good Morning Paul,

I am a beneficiary of the 1985 Trust. I qualify under section 11 (1) (d) of the Indian Act, as it stood April 17, 1982. I write on behalf of myself and others who qualify under these Indian Act provisions. We are entitled to an accounting of the 1985 Trust assets. To start we will need copies of all legal accounts by March 8, 2016, received by the Trust, whether paid or not, arising in relation to the 1985 Trust. We want the full accounting on or before April 4, 2016.

Sincerely,

Shelby Twinn

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

SHELBY TWINN

Sworn before me this 26<sup>th</sup>

Day of July A.D. 20 16

B. Deol

A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor