

[Rule 13.19]

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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

APPLICANTS RONALD TWINN, CATHERINE TWINN, WALTER FELIX TWINN, BERTHA L'HIRONDELLE, AND CLARA MIDBO, 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 Sawridge Trust)

DOCUMENT REPLY BRIEF OF PATRICK TWINN, SHELBY TWINN AND DEBORAH SERAFINCHON

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**TABLE OF CONTENTS**

I. Introduction .....1

II. Melissa Megley and Aspen Saya Twinn .....2

III. Shelby Twinn .....3

IV. Deborah Serafinchon .....4

V. The Applicant Beneficiaries are requesting to be added as parties at the ideal time .....6

VI. Mischaraterizations of the Law .....10

VII. An amicus curiae would not be a more efficient way to proceed .....12

VIII. Conclusion.....15

## I. INTRODUCTION

1. This Reply Brief is submitted on behalf of the Applicants, Patrick Twinn, Shelby Twinn and Deborah Serafinchon (the “Applicant Beneficiaries”) in response to the Reply Brief of the Sawridge Trustees filed on October 31, 2016 (the “Trustees’ Brief”).
2. Unless otherwise defined herein, this Reply adopts and relies upon the defined terms in the Applicant Beneficiaries’ brief filed in support of their application to be named as Parties to the within Action (the “Application”) and for indemnification of costs filed on September 30, 2016 (“Applicant Beneficiaries’ Brief”).
3. The Trustees’ Brief contains mischaracterisations of both the law and the facts which serve only to obscure the facts:
  - Patrick Twinn and Shelby Twinn are “Beneficiaries” as currently defined by the 1985 Trust and accordingly are required by law to have the opportunity to have their opinion on the variation of the definition of the 1985 Trust considered as part of the Action.
  - It is trite law that in this Province a capacitated adult beneficiary’s consent is required to vary a trust.
  - Deborah Serafinchon has clearly stated under oath that she is not attempting, through this Application, to gain membership in the Sawridge First Nation. It is curious that the Sawridge Trustees chose to ignore Deborah Serafinchon’s evidence, instead making sweeping and wholly unsubstantiated allegations relating to collateral attack.
  - Deborah Serafinchon is the biological child of Chief Walter Twinn. Deborah Serafinchon is the only person in this Action who represents a party being excluded as a Beneficiary of the 1985 Trust due to discriminatory language in the 1985 Trust and the 1982 Act. If the Sawridge Trustees wish to vary the definition of Beneficiary because it is discriminatory, it would seem counterintuitive that they would oppose standing of a Party who is clearly excluded for that very reason.

4. It is imperative that the Applicant Beneficiaries be named as Parties in this Action in order to fully participate in this matter which impacts them directly and to which they must consent. It is appropriate and necessary that they be indemnified for their legal costs so as to fully participate in this Action.
5. Further, this is not an adversarial matter. It is an application by Beneficiaries to speak to court directed issues (the “Action”) whereby Trustees are arguing to vary a trust’s terms affecting the Applicant Beneficiaries greatly.

## **II. MELISSA MEGLEY AND ASPEN SAYA TWINN**

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.
7. The OPTG supports the Application of the Applicant Beneficiaries.
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.
9. Patrick Twinn’s Beneficiary status is uncontested in this Action. Patrick Twinn will remain a Beneficiary if the Sawridge Trustees are successful in their request to vary the definition of Beneficiary to Sawridge Members (which is the same small group who are also beneficiaries pursuant to the definition of Beneficiary in the 1986 Trust).
10. The suggestion that because Patrick Twinn will remain a Beneficiary, his interests are not affected by the Action ignores Patrick Twinn’s clear and cogent evidence. Patrick Twinn’s evidence is that the definition of Beneficiary may be discriminatory, and that if it is to be varied it should go “beyond the members today”.

**Transcript from Questioning of Patrick Twinn, page 15 lines 5-10 [Extracts of  
Evidence Tab A]**

11. The idea that Patrick Twinn’s interests should be restricted to only his individual Beneficiary status and not those of his spouse, current and future issue, and other family members is inexplicably restrictive.
12. The Applicant Beneficiaries, including Patrick Twinn, agree that the definition of Beneficiary under the 1985 Trust may be discriminatory and seek to be added as Parties

to this Action so as to propose a more inclusive and non-discriminatory definition of Beneficiary.

13. The Sawridge Trustees suggest that because Catherine Twinn may have assisted Patrick Twinn to pay the retainer so that the Applicant Beneficiaries could have legal representation in this matter she supports and fully represents their collective interests. For the same reason that it is inappropriate for the Sawridge Trustees to represent the interests of Applicant Beneficiaries, particularly those that they propose to exclude from the 1985 Trust, when they themselves are and will remain Beneficiaries of the 1985 Trust (the "Trustees Conflict of Interest"), so too is it inappropriate to suggest that Catherine Twinn represents the Applicant Beneficiaries interests.

### III. SHELBY TWINN

14. Shelby Twinn was an adult when the OPTG was appointed to this Action and therefore the OPTG does not represent her.
15. The argument advanced by the Sawridge Trustees that Shelby Twinn's interests are somehow represented by the OPTG through its representation of Shelby Twinn's sister Kaitlin defies logic and is wholly at odds with Sawridge # 3 and the amended mandate of the OPTG.
16. The Sawridge Trustees appear to attempt to distract from the fact that this Action directly impacts Shelby Twinn's status as a Beneficiary by stating that she never wants to be a member and therefore, must only be after money. There is simply no evidence of either statement in the transcript pages cited by the Sawridge Trustees or anywhere else in this Action.
17. Further, the Sawridge Trustees "belief" that the 1985 Trust was created for Sawridge Members is irrelevant to the Applicant Beneficiaries' Application and at odds with the clear definition of "Beneficiary" in the 1985 Trust. In any event, had that been the intent of the 1985 Trust, one would presume that language similar to that found in the definition of the 1986 Trust would have been employed:

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. (as defined on the Sawridge Trustee Website) [*emphasis added*]

18. In contrast, Beneficiaries of the 1985 Trust were defined as:

1985: [...] persons who at the time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15<sup>th</sup> day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15<sup>th</sup> day of April, 1982.

19. As detailed in the Applicant Beneficiaries' Brief, Shelby Twinn is a Beneficiary of the 1985 Trust who would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the provisions of the 1982 Act.

20. Shelby Twinn stands to lose her status as a Beneficiary of the 1985 Trust if the definition of Beneficiary proposed by the Sawridge Trustees is successful. Shelby Twinn's interests are not currently represented by any Party in this Action. It would be wholly prejudicial to deny Shelby Twinn the opportunity to participate in these proceedings with counsel.

#### **IV. DEBORAH SERAFINCHON**

21. The Sawridge Trustees have made the serious allegation that Deborah Serafinchon's application to be added as a Party to the Action is an attempt by her to collaterally attack membership issues in an inappropriate forum. This allegation is categorically false and wholly unsupported by the evidence.

22. The Sawridge Trustees cross-examined Deborah Serafinchon on this very issue:

Q: Have you made any applications to Indian Affairs to be added to the original band list?

A: No.

Q And are you aware that the original band list was set by Indian Affairs?

A: No.

Q: And is that part of what you are seeking in this application, to be added to the original band list?

A: Right now all I want to do is make sure that I am not discriminated against and I can become a beneficiary.

Q: So you are not seeking that in this application?

A: I can't get it in this application. It has nothing to do with band membership, correct?

Q: I am just asking the questions, right. So it is hard to have an answer to a question as another question. So if we just answer the question, you are not seeking to be put on the original band list because you would have had an absolute right from birth to be added to the band list?

A: No.

23. Deborah Serafinchon is seeking to be added as a Party to have her interests heard. She is not applying to be a Sawridge Member through this Application, and is clearly aware that this Action is not the appropriate forum in which to do so.

24. Deborah Serafinchon is the biological daughter of the late Chief Walter Patrick Twinn.

**Paragraph 5 and Exhibit "A" of the Affidavit of Deborah Serafinchon sworn on  
November 24, 2016 [Extracts of Evidence Tab B]**

25. Deborah Serafinchon is excluded as a Beneficiary of the 1985 Trust as a result of having been born an illegitimate female. Deborah Serafinchon is the only person who has come forward in this Action who represents a party that is being excluded as a Beneficiary of the 1985 Trust because of the discriminatory language in the 1985 Trust and the 1982 Act.

26. It is precisely this type of discriminatory exclusion that the Trustees' Action should seek to address. Rather, the Sawridge Trustees seek to vary the definition of Beneficiary under the 1985 Trust to Sawridge Members, which will result in increasing the size of the

pot for their own benefit (with the exception of Bertha L' Hironnelle who we understand is not a Beneficiary of the 1985 Trust).

**Transcript from Questioning of Paul Bujold, page 6 lines 16 to 22 [Extracts of Evidence Tab C]**

**V. THE APPLICANT BENEFICIARIES ARE REQUESTING TO BE ADDED AS PARTIES AT THE IDEAL TIME**

27. It should be noted that the Sawridge Trustees have a specific recollection of serving Patrick Twinn and Deborah Serafinchon with Sawridge #1 according to the sworn Affidavit of Mr. Paul Bujold dated the October 31, 2016. On cross-examination however, Mr. Bujold stated that he did not serve any persons with Sawridge #1.

**Transcript from Questioning of Paul Bujold, page 9 lines 23 to 27 [Extracts of Evidence Tab D]**

28. Mr. Bujold clarified in cross-examination that what was provided to certain persons was a letter (the "2011 Letter") which advised that a website had been created which would contain information in respect of the an advice and direction application yet to be filed (the "Advice and Direction Application"). Nowhere in the Notice do the Sawridge Trustees' inform the recipients that: the Sawridge Trustees are seeking to vary the definition of "Beneficiary" in the 1985 Trust to Sawridge Members; that the rights of Beneficiaries may be impacted; that current Beneficiaries may lose their Beneficiary status as a result of the Advice and Direction Application; or, that if they have an interest in the Advice and Direction Application that they should make that interest known.

**Exhibit 1 from the Questioning of Mr. Paul Bujold [Extracts of Evidence Tab E]**

**Transcript from Questioning of Paul Bujold, page 22 lines 4 to 11 [Extracts of Evidence Tab F]**

29. The 2011 Letter informed recipients that the Sawridge Trustees would be bringing the Advice and Direction Application respecting the administration and management of property held under the 1985 Trust.



30. Had the recipients of the 2011 Letter gone to the Sawridge Website, Mr. Bujold confirmed, they would have seen Sawridge #1 as the first document listed. Paragraph one of which directs the Sawridge Trustees to file an Advice and Direction Application. Again, there is no indication in Sawridge #1 of the variation now proposed by the Sawridge Trustees and no Advice and Direction Application was ever filed.

**Transcript from Questioning of Paul Bujold, page 22 lines 12 to 15 [Extracts of Evidence Tab G]**

31. According to Mr. Bujold, the Sawridge Trustees considered Sawridge #1 to be their Advice and Direction Application. Mr. Bujold's evidence is that this was never explained to the persons on which the 2011 Letter was served because "[n]obody asked the question."

**Transcript from Questioning of Paul Bujold, page 26 lines 14 to 27 and page 27 lines 1 to 6 [Extracts of Evidence Tab H]**

32. It is inconceivable how Beneficiaries or potential Beneficiaries (or the Applicant Beneficiaries) could have been expected to know that their rights may be impacted by this Action and to what extent based on the 2011 Letter and Sawridge #1. Given the language of both, it is completely reasonable that the average person would have read them to indicate that the Sawridge Trustees would be filing an Advice and Direction Application and that they would receive notice once this was done.
33. Further, both before and after the 2011 Letter and Sawridge #1, Mr. Bujold, as Trust Administrator and CEO, was informing persons, including the 120 persons who filled out Beneficiary Application Forms, such as Deborah Serafinchon, that they were required to be Sawridge Members and have Indian Status to qualify as Beneficiaries of the 1985 Trust.

**Transcript from Questioning of Paul Bujold, page 37 lines 11 to 27 and page 38 lines 1 to 9 [Extracts of Evidence Tab I]**

**Exhibit 5 from the Questioning of Mr. Paul Bujold [Extracts of Evidence Tab J]**

**Answer to Undertaking 22 of Mr. Bujold to Questioning held May 27 and 28, 2014, at Tab 22 pdf pages 16, 50, 69 and 72 [Extracts of Evidence Tab K]**

34. It simply is not reasonable to expect Beneficiaries and potential Beneficiaries (and the Applicant Beneficiaries) to have known to bring their interests forward in this Action given the absence of the Advice and Direction Application and the Sawridge Trustees proliferation of their position that all persons had to be Sawridge Members to qualify as Beneficiaries of the Trusts in any event.
35. In any event, Patrick Twinn denies having ever received a copy of the 2011 Letter from the Sawridge Trustees.

**Transcript from Questioning of Patrick Twinn, page 69 lines 7-12 [Extracts of Evidence Tab L]**

36. The question was never directly posed to Deborah Serafinchon. The Sawridge Trustees do not allege to have ever notified Shelby Twinn.
37. It is difficult to reconcile the Sawridge Trustees lack of transparency with the Beneficiaries and potential Beneficiaries (including the Applicant Beneficiaries) in respect of their request to vary the definition of Beneficiary in the 1985 Trust and their duties to act in the best interest of the Beneficiaries.
38. The prejudice to the Applicant Beneficiaries by excluding them from participating in the Action far outweighs any perceived prejudice to the Sawridge Trustees. For example, Shelby Twinn is not a Sawridge Member under the current membership rules. Should a definition of Beneficiary tied to Sawridge Band membership, as currently proposed by the Sawridge Trustees, be decided by the Court to be the proper definition, Shelby Twinn stands to lose her entitlement altogether. The only prejudice asserted by the Sawridge Trustees is that they may need to be subjected to questioning by an additional party and meet arguments put forward by these Parties.

**Trustees Brief at paragraph 17**

39. The argument of the Sawridge Trustees that the Applicant Beneficiaries, those whose rights are actually in issue in this Action, should not be added as Parties to this Action, because the Sawridge Trustees may have to sit for an additional day of questioning or respond to briefs filed is untenable.

40. Equally untenable, is the Sawridge Trustees argument that the interests that the Applicant Beneficiaries represent are without merit. Those whose rights are at stake in this Action are the Beneficiaries, not the Sawridge Trustees. The Applicant Beneficiaries deserve to participate in a matter that may determine whether they maintain those rights or not.
41. Contrary to the Trustees' Brief, the Applicant Beneficiaries are seeking to be added at the ideal time in these proceeding. As the Applicant Beneficiaries have previously stated, this Action has a protracted procedural history, none of which directly addressed the actual matter that impacts the Applicant Beneficiaries interests.
42. As outlined above, in the Action, pursuant to Sawridge #1, the Sawridge Trustees were instructed to bring an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Sawridge Trust and to specifically seek:
  - a. Direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary to vary the 1985 Trust to clarify the definition of "Beneficiary"
43. Contrary to Sawridge #1, no application to vary the definition of Beneficiary in the 1985 Trust has ever been filed by the Sawridge Trustees. The Sawridge Trustees appear to argue that the Applicant Beneficiaries should have come forward earlier to protect their interests in an application that the Sawridge Trustees never actually brought.
44. The same can be said of the Sawridge Trustees repeated statements to the effect that adding the Applicant Beneficiaries as Parties, specifically Deborah Serafinchon, "will cloud the well-defined issues" (Trustees Brief at para 44). In the absence of the Advice and Direction Application, it is unclear what exactly the well-defined issues could be. A review of the numerous filings in this matter indicates that the Sawridge Trustees believe the definition of Beneficiary in the 1985 Trust to be discriminatory and therefore seek to vary the definition of Beneficiary in the 1985 Trust to limit it to Sawridge Members. As stated above, Deborah Serafinchon is the only person who has come forward in this Action who represents a Party that is being excluded as a Beneficiary of the 1985 Trust because of the discriminatory language in the 1985 Trust and the 1982 Act.

## VI. MISCHARACTERIZATIONS OF THE LAW

45. In addition to the mischaracterization of the evidence, many of the cases on which the Sawridge Trustees rely are wholly inapplicable to the Applicant Beneficiaries' Application, for example:

- a) The *British Columbia (Workers' Compensation Board) v. British Columbia (Human Rights Tribunal)*, 2011 SCC 52 and *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 799 are cited for the law on collateral attack. As stated above, the evidence does not support the Sawridge Trustees' allegations of collateral attack against Deborah Serafinchon and accordingly, the law on this matter is inapplicable to this Application.

**Trustees Brief Tabs 13-14**

- b) The Sawridge Trustees rely on *McCorkill v. McCorkill Estate*, 2014 NBQB 148 ("*McCorkill*") to support their argument that the Court can intervene and vary a trust to be compliant with public policy without the consent of the beneficiaries. The *McCorkill* decision does not stand for the proposition espoused by the Sawridge Trustees. In the *McCorkill* decision, the application judge invalidated a residual bequest to the beneficiary, which was an American Neo-Nazi organization on the basis that the purposes of the beneficiary and the activities and communications it undertakes to promote its purposes, were illegal and contrary to the public policy of Canada and New Brunswick. This case has no application to the facts in issue in the Applicant Beneficiaries' Application. It was an application to invalidate a specific bequest based on the activities of a particular beneficiary.

**Trustees Brief Tab 29**

- c) The Sawridge Trustees rely on *Canada Trust Co. v. Ontario Human Rights Commission*, [1990] O.J. No. 615 (ONCA) ("*Canada Trust*") to support their argument that it is well established law that a Court may intervene in discriminatory trusts without beneficiary consent despite the fact that the matter of consent is not addressed in the decision. The *Canada Trust* decision does not stand for the proposition espoused by the Sawridge Trustees.

**Trustees Brief Tab 30**

The *Canada Trust* case concerned a charitable purpose trust which by definition has a charitable purpose and no set named beneficiaries. If this case stands for any legal principle with respect to the circumstances in which consent of beneficiaries to vary is required, it is that in the case of charitable purpose trusts, where there is no set named beneficiary, consent by such non-existent beneficiaries is not required. Charitable trusts and discretionary trusts are distinct entities. As stated by the Court in *Canada Trust*:

This decision does not affect private, family trusts. By that I mean that it does not affect testamentary dispositions or outright gifts that are not also charitable trusts. Historically, charitable trusts have received special protection: (1) they are treated favourably by taxation statutes; (2) they enjoy an extensive exemption from the rule against perpetuities; (3) they do not fail for lack of certainty of objects; (4) if the settlor does not set out sufficient directions, the court will supply them by designing a scheme; (5) courts may apply trust property cy-pres providing they can discern a general charitable intention. This preferential treatment is justified on the ground that charitable trusts are dedicated to the benefit of the community (Waters, *Law of Trusts*, p. 502). (para 100)

The law in this Province with respect to non-charitable purpose trusts, where the beneficiaries are ascertainable, is clearly set out in the *Trustee Act*.

Even if *Canada Trust* did apply, it is further distinguished on the facts. In *Canada Trust*, the Court deleted the discriminatory language, they did not vary the terms of the charitable trust to exclude those who would already qualify. The Sawridge Trustees seek to vary the terms of a discretionary trust in a manner that would exclude certain individuals who are currently Beneficiaries.

In any event, in *Canada Trust* the actual defined residual beneficiaries were directed to be and were served with one appearing as a party.

- d) As previously stated, the three part test established in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71 and confirmed in *Little Sister Book & Art Emporium v. Canada (Commissioner of Customs & Revenue Agency)*, 2007 SCC 2 does not apply to this Action. All parties have characterised this matter as an application for Advice and Direction as it relates to the construction and variation of a trust. As

outlined in the Applicant Beneficiaries' Brief, the law supports that in such circumstances, the Applicant Beneficiaries' costs should be covered by the 1985 Trust.

**Trustees Brief Tabs 16-17**

In any event, as outlined in the Applicant Beneficiaries Brief, the Applicant Beneficiaries can establish the requisite elements of the three part test.

**VII. AN AMICUS CURIAE WOULD NOT BE A MORE EFFICIENT WAY TO PROCEED**

46. The cases that the Sawridge Trustees cite to support their argument that the Applicant Beneficiaries, and all Beneficiaries of the 1985 Trust, be represented by an amicus curiae and/or treated as interveners with a number of conditions placed on their participation, are also inapplicable to the Applicant Beneficiaries' Application.
47. Intervener status may be granted when the proposed interveners will be specially affected by the decision facing the Court or has some special expertise or insight to bring to bear on the issues facing the Court. The Applicant Beneficiaries are more than specially impacted by this matter, as this matter impacts them directly. Further, the Applicant Beneficiaries have special insight to bring to bear as they represent persons who qualify as Beneficiaries under different sections of the 1982 Act and who are each uniquely impacted by this Action: Patrick Twinn is a Beneficiary and a Sawridge Member, yet his wife and daughter may lose their Beneficiary status as a result of this Action; Shelby Twinn is a Beneficiary of the 1985 Trust, she is not a Sawridge Member and will lose her entitlement if the Sawridge Trustees are successful; Deborah Serafinchon is the daughter of Chief Walter Twinn, she is excluded as a Beneficiary of the 1985 Trust due to the discriminatory language of the 1985 Trust and the 1982 Act, the Sawridge Trustees proposed variation does not address Deborah Serafinchon's discriminatory exclusion, or people like her.
48. None of the cases cited by the Sawridge Trustees involve parties seeking to become intervenors because their rights are directly in issue. That is because unless the court grants full participatory rights, including the right to file evidence and make submissions, intervener status is not appropriate in such circumstances.

49. Often, interveners are institutional organizations whose rights were not directly at issue in the proceeding but where the decision may by extension impact how they operate. For example, *Suncor Energy Inc v Unifor (Local 707 A)*, 2014 ABQB 555, which is cited by the Sawridge Trustees, related to an application for judicial review from the decision of a three member panel that a Random Alcohol and Drug Testing Policy was an unreasonable exercise of Suncor Energy Inc.'s management rights. The Mining Association of Canada ("MAC") and Enform Canada ("Enform") sought leave to attain intervener status, jointly, in the judicial review application. MAC was a non-profit national organization purporting to be the voice of the Canadian mining and mineral processing industry. Enform was similarly a not for profit organization which promoted workplace safety in the upstream oil and gas industry. The Applicant Beneficiaries are more akin to the employees in this scenario, whose rights were directly in issue and who were a party to the action (represented by the union).

**Trustees Brief Tab 28**

50. Intervenors may also have some special expertise and insight that will assist the Court in determining the outcome of an appeal on certain issues. For example, *Papaschase Indian Band v. Canada (Attorney General)*, 2005 ABCA 320 ("*Papaschase*"), which is cited by the Sawridge Trustees, concerned Aboriginal rights on behalf of the descendants of the Papaschase Indian Band. The parties to the action were the Papaschase Indian Band No. 136, and the Attorney General; Papaschase Indian Band No. 136 obviously being the party involved whose rights were in directly in issue. The court determined that Federation of Saskatchewan Indian Nations possessed some special expertise and insight that would assist this Court in determining the outcome of the appeal on certain issues. Again, the rights of the Applicant Beneficiaries are more akin to those of the Papaschase Indian Band No. 136 whose rights were directly in issue and who was a party to the action.

**Trustees Brief Tab 27**

51. The *Alberta (Minister of Justice) v. Metis Settlements Appeal Tribunal*, 2005 ABCA 143 (*Metis Settlements*) case, which is also cited by the Sawridge Trustees, involved an appeal by the Attorney General from a decision of the Metis Settlement Appeal Tribunal,



Order No. 160. On appeal, the Settlement asserted that it had a special interest in the appeal and would be affected by it because the Tribunal's decision changed the criteria the Settlement was required to use when admitting members. The facts of this case are wholly distinguishable from those currently in issue.

**Trustees Brief Tab 25**

52. Further it should be noted that all three decisions cited by the Sawridge Trustees relate to applications brought for intervener status at the appellant court. The conditions placed on interveners at the appellant level should not be applied here.
53. The Applicant Beneficiaries are ready willing and able to proceed in this matter. The Applicant Beneficiaries rights are directly in issue.
54. Contrary to the assertions of the Sawridge Trustees, an amicus curiae, would not be a more time or cost efficient means in which to proceed. It is inconceivable that an amicus curiae would not first be required to assess who the Beneficiaries of the 1985 Trust are and then canvass their interests to present those interests to the Court. It is difficult to see how this would not forestall and delay the hearing of this Action.
55. Further, the Sawridge Trustees have cited no applicable case law to support their argument that the Applicant Beneficiaries should be represented by an amicus curiae. With respect to the decision in *Metis Settlements* to appoint an amicus curiae to represent Ms. Willier's interests, Ms. Willier was unrepresented. The Applicant Beneficiaries have representation.
56. The Sawridge Trustees appear to envision the amicus curiae's role as one of solely adducing evidence. This would not be sufficiently representing the interests of the Applicant Beneficiaries. It is the Applicant Beneficiaries whose rights are in issue, not the Sawridge Trustees; this is precisely why the case law supports that it is beneficiaries, not the trustees, who should be applying to vary trusts.

**Authorities Tabs 3 and 4 of the Reply of Catherine Twinn for Special Chambers  
Case Management Meeting filed on October 31, 2016**

57. The Applicant Beneficiaries have requested such further and other relief as this Court may deem appropriate. If the Court deems it appropriate that the Applicant Beneficiaries



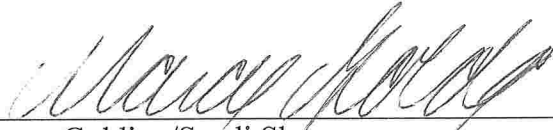
be named as Interveners as opposed to full Parties to this Action, than the Applicant Beneficiaries, as Intervenors, seek to be granted full participatory rights, including the right to file evidence and make submissions as persons who are directly affected by the Action.

## VIII. CONCLUSION

58. As stated at the outset, it is imperative that the Applicant Beneficiaries be named as Parties in this Action in order to fully participate in this matter which impacts them directly and to which they must consent.
59. It is appropriate and necessary that they be indemnified for their legal costs so as to fully participate in this Action.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5<sup>TH</sup> DAY OF DECEMBER, 2016.

**BORDEN LADNER GERVAIS LLP**



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Nancy Golding/Sandi Shannon  
Counsel for the Patrick Twinn, Shelby Twinn and  
Deborah Serafinchon