

Clerk's Stamp

COURT FILE NO.: 1103 14112
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA
2000, c. T-8, as am.

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

APPLICANT MAURICE STONEY ON HIS OWN BEHALF AND
THAT OF HIS LIVING SISTERS AND BROTHERS

DOCUMENT: WRITTEN RESPONSE ARGUMENT ON
APPLICATION OF SAWRIDGE FIRST NATION
TO BE INTERVENER - VOLUME ONE

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WRITTEN RESPONSE ARGUMENT ON APPLICATION OF SAWRIDGE FIRST NATION TO BE ADDED AS AN INTERVENER IN THE 1985 SAWRIDGE TRUST

I. OVERVIEW

1. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1st Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement of Indians. Indian Affairs knew that these provisions of the *Indian Act* were unconstitutional under the *Constitution Act, 1982*.

Indian Act, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1]

2. **Canada** brought a motion for a mandatory injunction against Sawridge First Nation in 2003 and obtained a mandatory injunction compelling Sawridge First Nation to record the memberships of persons whose memberships in Sawridge were required by Bill C-31 (“acquired rights”) effective April 17, 1985 to be included as Sawridge First Nation members. Sawridge First Nation has not fully complied with this Mandatory Injunction to this day.

Sawridge Band v. Canada, [2003] 4 FCR 748, paras. 31-40. [Tab 2]

Sawridge Band v. Canada, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 3]

3. Sawridge First Nation assumed control of its membership at some point in the summer of 1985 several months after April 17, 1985, having given notice to the Minister of Indian Affairs on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn, Sawridge First Nation, of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge First Nation, in a letter dated September 26, 1985. These decisions were noted at paragraph 9 of this Court’s 2012 decision:

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

1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365. [Tab 4]

4. Maurice Stoney and his brothers and sisters are persons whose membership in the Sawridge Band was restored by Bill C-31 effective April 17, 1985.
5. QB Action 1103 14112 was commenced by the Trustees of the 1985 Sawridge Trust seeking Advice and Directions with respect to the definition of “Beneficiaries” contained in the 1985 Sawridge Trust in the Matter of the Sawridge Band Inter Vivos Settlement Created by Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19. Maurice Stoney was previously listed as a party in this action.

1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365, paras. 2, 22. and 29 [Tab 4]

6. An appeal was brought by the Trustees of the 1985 Sawridge Trust to the Alberta Court of Appeal with, *inter alia*, Maurice Stoney named as an Interested Party.

1985 Sawridge Trust Civil Notice of Appeal, Appeal No. 1203 0230 AC. [Tab 5]

7. On August 12, 2016, Maurice Stoney brought an Application for himself and his living brothers and sisters, to be named as a Party or as an Intervenor on the ground of being beneficiaries to the 1985 Sawridge Trust, in this Action 1103 14112.
8. On August 24, 2016 an Order consented to by the Trustees and the Office of the Public Guardian and Trustee for Alberta, was granted. This Order permits the 1982 Trust to be moved into the 1985 Sawridge Trust however this Consent Order cannot be used as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust. Direction was issued for the filing of argument on the issue of whether or not Maurice Stoney et al. should be granted status as parties or interveners in this Action.

Consent Order August 24, 2016. [Tab 6]

II. FACTS

9. Sawridge First Nation brings an application to be made an Intervener to the 1985 Sawridge Trust. They have explicitly argued that they are not a party to the 1985 Sawridge Trust before the Court and this Court has found that they are not a party and are “distinct and separate” from the Sawridge Trustees. However there are only 41 persons in the Sawridge First Nation and from these 41 persons, the 5 Trustees of the 1985 Sawridge Trust have been chosen. The Trustees, although “distinct and separate” consist of 5 of these 41 persons including the Chief of the Sawridge First Nation.

1985 Sawridge Trust v. Alberta (Public Trustee), 2015 ABQB 799, paras. 8, 15 to 20. [Tab 7]

10. Maurice Stoney and all of his brothers and sisters were born to parents William and Margaret Stoney who were both members of the Sawridge Band. Maurice and his brother (no longer living) were both listed on the pay list for the Sawridge Band prior to being removed on their father’s enfranchisement.

Affidavit of Maurice Stoney. [Tab 8]

11. Their grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinosayoo in or about 1895, and Johnny Stony is shown on the list of Kinno Mayo’s Band as number 18. Chief Kinosayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band which included what became known as the Sawridge Band.

Affidavit of Maurice Stoney. [Tab 8]

Treaty No. 8. [Tab 9]

12. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* as shown in letters dated April 6, 1903, April 15, 1903, April 16, 1903, April 17, 1903 December 9, 1911, September 9, 1912, April 18, 1913 and August 19, 1920 to and from Indian Affairs.

Affidavit of Maurice Stoney. [Tab 8]

13. In or about 1912, Johnny Stoney and his family, including William Stoney, his son, were recognized on the first pay list for the Sawridge Band. He was a member of Sawridge Band, on the pay list until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8*, where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920.

Affidavit of Maurice Stoney. [Tab 8]

14. Maurice's mother was also a member of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Indian Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.

Affidavit of Maurice Stoney. [Tab 8]

15. In 1944, William Stoney and all of his family, along with other members of Sawridge Band, were enfranchised because William was working. Enfranchisement removed the names of persons from the *Indian Act*, R.S.C. 1927, c. 98, section 114 and treated them as not being Indians under the *Indian Act*. They were not Canadian 'Citizens' since Canadian citizenship did not exist until at the earliest, January 1, 1947 with the first *Canadian Citizenship Act*, S.C. 1946 which provided Canadian citizenship to British subjects born in or resident in Canada.

Affidavit of Maurice Stoney. [Tab 8]

16. William Stoney had 15 children, 10 are still alive today: Billy born in 1940; Maurice born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty

Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. Each of these children were or would have been on the pay list but for enfranchisement. These are the Respondents to this Application by the Sawridge First Nation to be an intervener.

Affidavit of Maurice Stoney. [Tab 8]

17. On April 17, 1982, the *Constitution Act, 1982*, amended the *Constitution*, and recognized and affirmed treaty and aboriginal rights in section 35:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Constitution Act, 1982, section 35. [Tab 10]

18. Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1st Supp.) amended the provisions of the *Indian Act*, R.S.C. 1985, I-5 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, for discrimination by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement. Indian Affairs knew before 1985 that these provisions were unconstitutional under the *Constitution Act, 1982*.

Indian Act, R.S.C. 1970, c. I-6, ss. 109-112 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1]

19. Canada brought a motion for a mandatory injunction against Sawridge in 2003 and obtained a mandatory injunction compelling Sawridge Band to record the memberships of persons whose memberships in Sawridge Band were required by Bill C-31 (“acquired rights”) effective April 17, 1985 to be included as Sawridge Band members. Sawridge First Nation assumed control of its membership at some point in the summer of 1985, having given notice to the Minister on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge, in a letter dated September 26, 1985.

Sawridge Band v. Canada, [2003] 4 FCR 748, paras. 31-40. [Tab 3]

Sawridge Band v. Canada, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 4]

20. As the Federal Court of Appeal in January, 2004 held Sawridge First Nation cannot enact membership rules that “operate to deny membership to those individuals who come within paragraph 11 (1) (c). ... That distinction is not permitted by the Act”. Further, the Order of Mr. Justice Hugessen, affirmed by the Federal Court of Appeal, applies to all:

...individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this order requires that the following persons, ...

21. Maurice Stoney’s membership in Sawridge was properly recorded on the Sawridge Band List when he was born in 1941. It was removed when his family was enfranchised but Sawridge Band has refused to comply with Bill C-31 and Sawridge First Nation has refused to comply with the Mandamus Order of the Federal Court in 2003, confirmed on appeal, to restore Maurice and his brothers and sisters as members of Sawridge. Nevertheless, under this Federal Court Order of Mandamus still in effect today, Maurice Stoney and all of his living brothers and sisters are members of Sawridge Band so that they are beneficiaries of the 1985 Sawridge Trust.

Affidavit of Maurice Stoney, Exhibit I, pp. 34-5. [Tab 8]

III. SHOULD SAWRIDGE FIRST NATION BE AN INTERVENER

22. Sawridge First Nation has consistently argued that they are not a party to the 1985 Sawridge Trust.

1985 Sawridge Trust, supra, paras 15-20. [Tab 7]

23. Sawridge now argues that they should be permitted to intervene.

24. Rule 2.10 provides:

On application, a court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

25. Interpretation of Rule 2.10 often starts with the decision of the Alberta Court of Appeal in *Pedersen v. Alberta* where the factors for granting intervener status are set out:

...The case authorities on granting leave have considered the following questions as factors in determining whether to grant intervener status:

1. Will the intervener be directly affected by the appeal;
2. Is the presence of the intervener necessary for the court to properly decide the matter;
3. Might the intervener's interest in the proceedings not be fully protected by the parties;
4. Will the intervener's submission be useful and different or bring particular expertise to the subject matter of the appeal;
5. Will the intervention unduly delay the proceedings;
6. Will there possibly be prejudice to the parties if intervention is granted;
7. Will intervention widen the *lis* between the parties; and
8. Will the intervention transform the court into a political arena?

Pederson v. Alberta, 2008 ABCA 192, paras. 3-4. [Tab 11]

26. Leave may be granted using a more lenient standard in cases that involve constitutional issues however this is not such a matter. This case is concerned with who are and who are not beneficiaries to the 1985 Sawridge Trust.

Pedersen, supra, para. 4. [Tab 11]

27. In *Pedersen*, leave to intervene was denied on the basis that:

...it could not be said that the proposed intervener was going to contribute usefully to the appeal by providing "fresh information or a fresh perspective on an important constitutional or public law issue".

R. v. J.L.A., 2009 ABCA 324, para. 16. [Tab 12]

28. Chief Justice Wittmann followed *Papaschase Indian Band v. Canada (Attorney General)* which Sawridge First Nation relies on in their Application, in *R. v. Hirsekorn*, following the two step approach where the court must consider the subject matter prior to considering whether the proposed intervenor has a direct interest in the matter.

R. v. Hirsekorn, 2011 ABQB 156, paras. 12-15. [Tab 13]

29. Intervener status is discretionary and should be exercised sparingly. This requires that the interest to be provided by an intervener, should provide a fresh or different perspective or special expertise. Traditionally, private rights must be at stake to be permitted to intervene however there are no private rights at issue here.

R. v. S.C.A., 2013 ABCA 80, paras. 7-9. [Tab 14]

30. It is submitted that Sawridge First Nation does not provide any fresh or different perspective than the Trustees of the 1985 Sawridge Trust. These Trustees include the Chief of Sawridge First Nation and the 1985 Sawridge Trustees are already represented by at least three law firms: Roland Twinn, Chief of the Sawridge First Nation and Trustee of the 1985 Sawridge Trust; Walter Twin, Bertha L'Hirondelle and Clara Midbo, Trustees of the 1985 Sawridge Trust, all represented by Doris Bonora of Dentons and Marco Poretti of Reynolds Mirth; and Catherine Twinn is represented by Karen Platten, Q.C. of McLellan Ross.

Canada Aboriginal Affairs and Northern Development Canada. Governance of Sawridge First Nation. List of Chief and Council [Tab 15]

31. The issue of who was part of the Sawridge Band is a matter within the jurisdiction of Canada as determined by the Federal Court in 2003 when the mandatory injunction was granted and this mandatory injunction was upheld by the Federal Court of Appeal. Canada is the responsible party for membership in the Sawridge Band prior to the approval by the Minister of the status to control membership that he granted to Sawridge First Nation when they received his approval at some point between July 8, 1985 and the end of September, 1985. At the end of September, 1985, the Minister of Indian Affairs advised Sawridge First Nation that they must comply with the provisions of Bill C-31. They continue 31 years later to not comply.
32. Sawridge First Nation has a long history of applications against every effort of Bill C-31 acquired rights members to be properly dealt with. In 2009 in *Sawridge Band v. Canada*, the Federal Court of Appeal dismissed the appeal brought by Sawridge and stated:

The dismissal of the action was the end of the retrial of an action commenced on January 15, 1986. The appellants were seeking an order declaring that certain amendments to the

Indian Act, R.S.C. 1985, c. I-5, breached the appellants' rights under section 35 of the *Constitution Act, 1982*. The statutory amendments compelled the appellants, against their wishes, to add certain individuals to the list of band members. The appellants argue that the legislation is an invalid attempt to deprive them of their right to determine the membership of their own bands.

The first trial began in September 1993 and ended with a dismissal of the action on July 6, 1995 (*Sawridge Band v. Canada (T.D.)*, [1996] 1 F.C. 3). That decision was set aside by this Court on the basis of a reasonable apprehension of bias (*Sawridge Band v. Canada (C.A.)*, [1997] 3 F.C. 580, application for leave to appeal dismissed December 1, 1997). A new trial was ordered. It began in January of 2007, after almost 10 years of procedural disputes and delays.

The action was dismissed again because, on January 7, 2008, the appellants informed Justice Russell that they would not be calling further evidence. ... The action was formally dismissed on March 7, 2008.

Sawridge Band v. Canada, 2009 FCA 123, paras. 3-5. [Tab 16]

33. Sawridge First Nation has consistently failed to comply with the orders of the Federal Court since Mr. Justice Hugessen granted the Mandatory Injunction against them in 2003 and it was upheld by the Federal Court of Appeal in 2004.

Sawridge Band v. Canada, [2003] 4 FCR 748, paras. 31-40. [Tab 3]

Sawridge Band v. Canada, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 4]

34. In 1989, an action was commenced by Elizabeth Bernadette Poitras to be recognized as a member of Sawridge First Nation pursuant to the provisions of Bill C-31 (and consistent with the Mandamus given in 2003 and upheld in 2004) and these proceedings still continue after 24 years. In 2013, the Federal Court concluded that the constitutional issues were determined by the Sawridge Band action described above. In 2003, Mr. Justice Hugessen had issued the mandatory injunction against Sawridge and this was affirmed by the Federal Court of Appeal. This did not, however, stop Sawridge First Nation from denying Elizabeth Poitras' membership although Sawridge First Nation has no legal ability or constitutional right to do so.
35. In 2010, Mr. Justice Hugessen ordered that "the issue of Ms. Poitras' membership in the band is now moot" because Sawridge had lost its lawsuit to have the provisions of Bill C-31 declared to be unconstitutional. Sawridge First Nation appealed this Order and the

Federal Court of Appeal dismissed the appeal. Sawridge First Nation still today continues with its actions denying membership to Elizabeth Poitras, who is one of the persons covered by the 2003 Mandatory Injunction although a 3 day mediation conference is scheduled to commence on January 17, 2017 in the Federal Court to resolve the issues of damages.

Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras, 2012 FCA 47. [Tab 17]

Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al., 2013 FC 910, paras. 1-19. [Tab 18]

Recorded entries for Federal Court Action No. T-2655-89. [Tab 19]

36. Like Elizabeth Poitras, Maurice Stoney and his brothers and sisters have faced a tortuous long process with no success in persuading Sawridge First Nation to abide by the Mandatory Injunction issued by the Federal Court, confirmed by the Federal Court of Appeal and as stated by the Case Management Judge Aalto, at paragraph 29, “[n]ot to put too fine a tautological point on it - moot is moot is moot is moot”.

Elizabeth Bernadette Poitras, supra. para. 29. [Tab 18]

37. The desperation of trying to resolve this matter before they die, has led Maurice Stoney to try to persuade Sawridge First Nation to accept him as a member under their scheme created after the summer of 1985, even though this scheme does not apply to him and he and his brothers and sisters are already members of Sawridge Band as required by Bill C-31. In 2011 he applied under the Sawridge First Nation membership rules and was refused, as have all but 2 applicants, one who is the sister of Walter Twinn.

Stoney v. Sawridge First Nation, 2013 FC 509. [Tab 20]

38. The first Federal Court proceeding referred to by the Sawridge First Nation was an action brought by Aline Huzar which was struck on procedural grounds not substantive grounds. It related to a claim of the children and grandchildren of women who were excluded on marriage from Sawridge. The primary ground argued by the Plaintiffs in that proceeding was discrimination under the *Charter* related to these children and grandchildren.

Maurice Stoney and his brothers and sisters' claim is different than this because they are members of Sawridge Band.

Huzar v. Canada, [2000] FCJ 873, paras. 1-3. [Applicant Sawridge First Nation Tab 1]

39. Maurice Stoney and his brothers and sisters are not re-litigating anything. The Mandatory Injunction of the Federal Court from 2003 affirmed by the Federal Court of Appeal in 2004 applies to them. A previous decision from 2000 by the Federal Court or Federal Court of Appeal (although on a procedural matter) is 'overruled' by the decision on the Mandatory Injunction granted in 2003 and confirmed on appeal in 2004.
40. Maurice was registered as a member of Sawridge Band when he was born and until 1944. Bill C-31 placed him back on the Sawridge Band list on April 17, 1985. Since 2003, this Mandatory Injunction has been re-litigated by Sawridge First Nation over and over again and they continue to fail to comply with it. Desperation of Maurice Stoney as his brothers and sisters, all members of Sawridge Band since April 17, 1985, die, does not equate to abuse of process.
41. Abuse of process applies to the actions of the Sawridge First Nation in the Federal Court and now in this Court where they have strongly argued that they are not a party to this proceeding but expect to now be an "intervener" because they allege that they have a clear direct interest. Canada is the party who has a 'clear direct interest' in the persons who were recognized as members of Sawridge Band on April 17, 1985, Sawridge First Nation does not. Sawridge First Nation has no control over its members prior to the date it removed itself from the provisions of membership in the *Indian Act* in the summer of 1985.
42. Sawridge First Nation blazingly argues that its ability to have the issue "adjudicated in the proper forum" is breached by dealing with Maurice Stoney's application for himself and his brothers and sisters yet they have breached a Mandatory Injunction granted by the Federal Court in 2003, confirmed by the Federal Court of Appeal in 2004 and reiterated continuously since that date by the Federal Court including Prothonotary Aalto who

noted in 2013 in *Poitras v. Twinn*, at paragraph 29 “Not to put too fine a tautological point on it - moot is moot is moot is moot”.

43. Sawridge First Nation is plainly in breach of the Federal Court Orders but it’s perspective is not unique.
44. Sawridge First Nation does not have a direct and fresh perspective to offer in this application and they should not be granted intervener status.

IV. SAWRIDGE FIRST NATIONS’ IMPROPER APPLICATION TO STRIKE/DISMISS

45. Until Sawridge First Nations’ application to be added as an Intervener in this proceeding is granted, Sawridge First Nation’s application to dismiss Maurice Stoney and his brothers and sisters application is improper and not permitted by the Order of August 24, 2016. Nor is it consistent with the judgment of this Court in December 2015 where Sawridge First Nation plainly argued that it was not a party and was only present because of the application under Rule 5.13 for questioning. Sawridge First Nation has no right to be submitting anything on this question.
46. As the Court of Appeal stated in *Piikani Nation v. Kostic*, “the parties to a lawsuit control how it runs, and non-parties can take no steps whatever in it, without permission of the court, obtained after notice to all the parties”. Here the permission of the Court only allows an application by Sawridge First Nation to be added as an intervener to this application on the 1985 Sawridge Trust.

1985 Sawridge Trust, supra, paras. 15-20. [Tab 7]

Piikani Nation v. Kostic, 2015 ABCA 60, para. 1. [Tab 21]

See also *Kohler v. Apotex Inc.*, 2015 ABQB 610. para. 7. [Tab 22]

47. Submission of argument by Sawridge First Nation, from paragraphs 50 to 73 should be struck.

48. In the alternative, as Mr. Justice Slatter stated in *Reece v. Edmonton (City)*, that abuse of process may be used to control misuses of the judicial system. Sawridge First Nation's actions are a misuse of the judicial system.

Reece v. Edmonton (City), 2011 ABCA 238, paras. 16-20. [Tab 23]

49. As the decision of Case Management Judge Aalto in *Poitras v. Twinn*, at paragraph 29 "Not to put too fine a tautological point on it - moot is moot is moot is moot". But Sawridge First Nation does not give up, even after 13 years, but instead alleges that matters prior to its independent right to determine membership, (that are governed entirely by Bill C-31) make the application by Maurice Stoney and his brothers and sisters, an abuse of process. Sawridge First Nation openly applies to this Court for re-litigation of a settled issue - settled by the Federal Court, numerous times over the years without Sawridge First Nation ever complying with the Federal Courts' rulings.
50. The question determined by prior proceedings which have involved Maurice Stoney are matters under the membership provisions of the Sawridge First Nation only applicable to matters after the summer of 1985, and with no application to events arising because of Bill C-31 on April 17, 1985. These are matters which are entirely the responsibility of Canada not Sawridge First Nation.
51. Issue Estoppel is a doctrine of public policy which Mr. Justice Binnie noted in *Danyluk v. Ainsworth Technologies Inc.*, prevents re-litigation by the same parties. Sawridge First Nation, as noted above, continues even here, to re-litigate the question of membership for persons who are members because of Bill C-31 which corrected unconstitutional matters as of April 17, 1985, prior to the Sawridge First Nation having any jurisdiction to address these membership issues.
52. Sawridge Band is not Sawridge First Nation for the purpose of this question and this proceeding. The key date here is April 17, 1985 but for Sawridge First Nation the first date that they can have anything to say about is in the summer of 1985. Canada is the only entity that may speak to this issue.

Danyluk v. Ainsworth Technologies Inc., [2001] 2 SCR 460, paras. 18-25, 59-60, 62-64. [Sawridge First Nation Brief Tab 14]

53. It is submitted that the issue - acquired rights - and the right of unspecified persons including Maurice Stoney and all of his brothers and sisters to membership in Sawridge Band on April 17, 1985, was already determined by the Federal Court of Appeal in January, 2004. Maurice Stoney and his brothers and sisters are beneficiaries under the 1985 Sawridge Trust. The Sawridge First Nation does not have a direct interest such that it can be granted status as an intervener.

V. ORDER REQUESTED

54. It is respectfully submitted that the application by Sawridge First Nation to be granted intervener status should be dismissed with costs.
55. It is submitted that the improper application of Sawridge First Nation, with no standing whatsoever, to strike the application by Maurice Stoney and his brothers and sisters, should be struck with increased costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of October, 2016.

DLA Piper (Canada) LLP.

Per: 

Priscilla Kennedy
Solicitor for Maurice Stoney and
his brothers and sisters

TABLE OF AUTHORITIES

1. *Indian Act*, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act.
2. *Sawridge Band v. Canada*, [2003] 4 FCR 748.
3. *Sawridge Band v. Canada*, 2004 FCA 16.
4. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365.
5. *1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC.
6. *1985 Sawridge Trust Consent Order*, August 24, 2016.
7. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2015 ABQB 799, paras. 8, 15-20.
8. Affidavit of Maurice Stoney.
9. *Treaty No. 8*.
10. *Constitution Act, 1982*.
11. *Pederson v. Alberta*, 2008 ABCA 192, paras. 3-4.
12. *R. v. J.L.A.*, 2009 ABCA 324, para. 16.
13. *R. v. Hirsekorn*, 2011 ABQB 156, paras. 12-15.
14. *R. v. S.C.A.*, 2013 ABCA 80, paras. 7-9.
15. Canada Aboriginal Affairs and Northern Development Canada. Governance of Sawridge First Nation. List of Chief and Council.
16. *Sawridge Band v. Canada*, 2009 FCA 123, paras. 3-5.
17. *Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras*, 2012 FCA 47.
18. *Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al.*, 2013 FC 910, paras. 1-19.
19. Recorded entries for Federal Court Action No. T-2655-89.
20. *Stony et al. v. Sawridge First Nation*, 2013 FC 509.
21. *Piikani Nation v. Kostic*, 2015 ABCA 60, para. 1.

22. See also *Kohler v. Apotex Inc.*, 2015 ABQB 610, para. 7.
23. *Reece v. Edmonton (City)*, 2011 ABCA 238, paras. 16-20.

TAB 1



CHAPTER I-6

An Act respecting Indians

SHORT TITLE

Short title

1. This Act may be cited as the *Indian Act*.
R.S., c. 149, s. 1.

INTERPRETATION

Definitions

"band"
«bande»

2. (1) In this Act
"band" means a body of Indians
(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after the 4th day of September 1951,
(b) for whose use and benefit in common, moneys are held by Her Majesty, or
(c) declared by the Governor in Council to be a band for the purposes of this Act;
"child" includes a legally adopted Indian child;

"child"
«enfant»

"council of the band"
«conseil...»

"council of the band" means
(a) in the case of a band to which section 74 applies, the council established pursuant to that section,
(b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

"Department"
«Ministère»

"Department" means the Department of Indian Affairs and Northern Development;
"elector" means a person who

"elector"
«electeur»

(a) is registered on a Band List,
(b) is of the full age of twenty-one years, and
(c) is not disqualified from voting at band elections;

CHAPITRE I-6

Loi concernant les Indiens

TITRE ABRÉGÉ

1. La présente loi peut être citée sous le titre : *Loi sur les Indiens*. S.R., c. 149, art. 1.

INTERPRÉTATION

Définitions

2. (1) Dans la présente loi
«bande» signifie un groupe d'Indiens,
a) à l'usage et au profit communs desquels, des terres, dont le titre juridique est attribué à Sa Majesté, ont été mises de côté avant ou après le 4 septembre 1951,
b) à l'usage et au profit communs desquels, Sa Majesté détient des sommes d'argent, ou
c) que le gouverneur en conseil a déclaré être une bande aux fins de la présente loi;
«biens» comprend les biens réels et personnels et tout intérêt dans un terrain;

«bande»
"band"

«conseil de la bande» signifie
a) dans le cas d'une bande à laquelle s'applique l'article 74, le conseil établi conformément audit article;

«biens»
"estate"

b) dans le cas d'une bande à laquelle l'article 74 n'est pas applicable, le conseil choisi selon la coutume de la bande ou, en l'absence d'un conseil, le chef de la bande choisi selon la coutume de la bande;

«conseil de la bande»
"council..."

«deniers des Indiens» signifie toutes les sommes d'argent perçues, reçues ou détenues par Sa Majesté à l'usage et au profit des Indiens ou des bandes;

«deniers des Indiens»
"Indian moneys"

«électeur» signifie une personne qui

«électeur»
"elector"

a) est inscrite sur une liste de bande,
b) a vingt et un ans révolus, et
c) n'a pas perdu son droit de vote aux élections de la bande;

"estate" «biens»	"estate" includes real and personal property and any interest in land;	«enfant» comprend un enfant indien légalement adopté;	«enfant» "child"
"Indian" «Indien»	"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;	«Indien» signifie une personne qui, conformément à la présente loi, est inscrite à titre d'Indien ou a droit de l'être;	«Indien» "Indian"
"Indian moneys" «deniers...»	"Indian moneys" means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands;	«Indien mentalement incapable» signifie un Indien qui, conformément aux lois de la province où il réside, a été déclaré mentalement déficient ou incapable, aux fins de toute loi de cette province régissant l'administration des biens de personnes mentalement déficientes ou incapables;	«Indien mentalement incapable» "mentally..."
"intoxicant" «spiritueux»	"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;	«inscrit» signifie inscrit comme Indien dans le registre des Indiens;	«inscrit» "registered"
"member of a band" «membre...»	"member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;	«membre d'une bande» signifie une personne dont le nom apparaît sur une liste de bande ou qui a droit à ce que son nom y figure;	«membre d'une bande» "member..."
"mentally incompetent Indian" «Indien mentalement incapable»	"mentally incompetent Indian" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;	«ministère» signifie le ministère des Affaires indiennes et du Nord canadien;	«ministère» "Department"
"Minister" «Ministre»	"Minister" means the Minister of Indian Affairs and Northern Development;	«Ministre» désigne le ministre des Affaires indiennes et du Nord canadien;	«Ministre» "Minister"
"registered" «inscrit»	"registered" means registered as an Indian in the Indian Register;	«registraire» désigne le fonctionnaire du ministère qui est préposé au registre des Indiens;	«registraire» "Registrar"
"Registrar" «registraire»	"Registrar" means the officer of the Department who is in charge of the Indian Register;	«réserve» signifie une parcelle de terrain dont le titre juridique est attribué à Sa Majesté et qu'Elle a mise de côté à l'usage et au profit d'une bande;	«réserve» "reserve"
"reserve" «réserve»	"reserve" means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;	«spiritueux» comprend l'alcool, une liqueur ou une combinaison de liqueurs alcooliques, spiritueuses, vineuses, à base de malt fermenté ou autrement enivrantes et une liqueur mélangée dont une partie est spiritueuse, vineuse, fermentée ou autrement enivrante, et tous les breuvages ou boissons et tous les mélanges ou préparations susceptibles de consommation par l'homme, qui sont enivrants;	«spiritueux» "intoxicant"
"superintendent" «surintendant»	"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;	«surintendant» comprend un commissaire, un surveillant régional, un surintendant des Indiens, un surintendant adjoint des Indiens et toute autre personne que le Ministre a déclarée un surintendant aux fins de la présente loi, et, relativement à une bande ou une réserve, signifie le surintendant de cette bande ou réserve;	«surintendant» "superintendent"
"surrendered lands" «terres...»	"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit	«terres cédées» signifie une réserve ou partie d'une réserve, ou tout intérêt y afférent, dont le titre juridique demeure attribué à Sa Majesté et que la bande à l'usage et au profit de laquelle il avait été mis de côté a abandonné ou cédé.	«terres cédées» "surrendered..."

and may by proclamation revoke any such declaration.

et peut par proclamation révoquer toute semblable déclaration.

Certain sections
inapplicable to
Indians living
off reserves

(3) Sections 114 to 123 and, unless the Minister otherwise orders, sections 42 to 52 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province. R.S., c. 149, s. 4; 1956, c. 40, s. 1.

(3) Les articles 114 à 123 et, sauf si le Ministre en ordonne autrement, les articles 42 à 52 ne s'appliquent à aucun Indien, ni à l'égard d'aucun Indien, ne résidant pas ordinairement dans une réserve ou sur des terres qui appartiennent à Sa Majesté du chef du Canada ou d'une province. S.R., c. 149, art. 4; 1956, c. 40, art. 1.

Certains articles
ne s'appliquent
pas aux Indiens
vivant hors des
réserves

DEFINITION AND REGISTRATION OF INDIANS

DÉFINITION ET ENREGISTREMENT DES INDIENS

Indian Register

5. An Indian Register shall be maintained in the Department, which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian. R.S., c. 149, s. 5.

5. Est maintenu au ministère un registre des Indiens, lequel consiste dans des listes de bande et des listes générales et où doit être consigné le nom de chaque personne ayant droit d'être inscrite comme Indien. S.R., c. 149, art. 5.

Registre des
Indiens

Band Lists and
General Lists

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List. R.S., c. 149, s. 6.

6. Le nom de chaque personne qui est membre d'une bande et a droit d'être inscrite doit être consigné sur la liste de bande pour la bande en question, et le nom de chaque personne qui n'est pas membre d'une bande et a droit d'être inscrite doit apparaître sur une liste générale. S.R., c. 149, art. 6.

Listes de bande
et listes
générales

Deletions and
additions

7. (1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

7. (1) Le registraire peut en tout temps ajouter à une liste de bande ou à une liste générale, ou en retrancher, le nom de toute personne qui, d'après la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.

Additions et
retranchements

Date of change

(2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom. R.S., c. 149, s. 7.

(2) Le registre des Indiens doit indiquer la date où chaque nom y a été ajouté ou en a été retranché. S.R., c. 149, art. 7.

Date du
changement

Existing lists to
constitute
Register

8. The band lists in existence in the Department on the 4th day of September 1951 shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that serves the band or persons to whom the List relates and in all other places where band notices are ordinarily displayed. R.S., c. 149, s. 8.

8. Les listes de bande dressées au ministère le 4 septembre 1951 constituent le registre des Indiens et les listes applicables doivent être affichées à un endroit bien en vue dans le bureau du surintendant qui dessert la bande ou les personnes visées par la liste et dans tous les autres endroits où les avis concernant la bande sont ordinairement affichés. S.R., c. 149, art. 8.

Les listes
existantes
constituent le
registre

Deletions and
additions may
be protested

9. (1) Within six months after a list has been posted in accordance with section 8 or within three months after the name of a person has been added to or deleted from a Band List or a General List pursuant to section 7

9. (1) Dans les six mois de l'affichage d'une liste conformément à l'article 8 ou dans les trois mois de l'addition du nom d'une personne à une liste de bande ou à une liste générale, ou de son retranchement d'une telle liste, en vertu de l'article 7,

Les
retranchements
et les additions
peuvent être
l'objet d'une
protestation

all the powers of a commissioner under Part I of the *Inquiries Act*; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive.

les pouvoirs d'un commissaire en vertu de la Partie I de la *Loi sur les enquêtes*. Le juge doit décider si la personne qui a fait l'objet de la protestation a ou n'a pas droit, selon le cas, d'après la présente loi, à l'inscription de son nom au registre des Indiens, et la décision du juge est définitive et péremptoire.

One reference only

(5) Not more than one reference of a Registrar's decision in respect of a protest may be made to a judge under this section.

(5) La décision du registraire à l'égard d'une protestation ne peut être renvoyée qu'une seule fois devant un juge aux termes du présent article.

Un seul renvoi

Burden of proof

(6) Where a decision of the Registrar has been referred to a judge for review under this section, the burden of establishing that the decision of the Registrar is erroneous is on the person who requested that the decision be so referred. R.S., c. 149, s. 9; 1956, c. 40, s. 2.

(6) Lorsque la décision du registraire a été renvoyée devant un juge, pour révision, aux termes du présent article, il incombe à la personne qui a demandé ce renvoi d'établir que la décision du registraire est erronée. S.R., c. 149, art. 9; 1956, c. 40, art. 2.

Fardeau de la preuve

Wife and minor children

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be. R.S., c. 149, s. 10.

10. Lorsque le nom d'une personne du sexe masculin est inclus dans une liste de bande ou une liste générale, ou y est ajouté ou omis, ou en est retranché, les noms de son épouse et de ses enfants mineurs doivent également être inclus, ajoutés, omis ou retranchés, selon le cas. S.R., c. 149, art. 10.

L'épouse et les enfants mineurs

Persons entitled to be registered

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

11. (1) Sous réserve de l'article 12, une personne a droit d'être inscrite si

Personnes ayant droit à l'inscription

(a) on the 26th day of May 1874 was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;

a) elle était, le 26 mai 1874, aux fins de la loi alors intitulée: *Acte pourvoyant à l'organisation du Département du Secrétaire d'Etat du Canada, ainsi qu'à l'administration des Terres des Sauvages et de l'Ordonnance*, chapitre 42 des Statuts du Canada de 1868, modifiée par l'article 6 du chapitre 6 des Statuts du Canada de 1869 et par l'article 8 du chapitre 21 des Statuts du Canada de 1874, considérée comme ayant droit à la détention, l'usage ou la jouissance des terres et autres biens immobiliers appartenant aux tribus, bandes ou groupes d'Indiens au Canada, ou affectés à leur usage;

(b) is a member of a band

b) elle est membre d'une bande

(i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May 1874, have been agreed by treaty to be set apart, or

(i) à l'usage et au profit communs de laquelle des terres ont été mises de côté ou, depuis le 26 mai 1874, ont fait l'objet d'un traité les mettant de côté, ou

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;

(ii) que le gouverneur en conseil a déclarée une bande aux fins de la présente loi;

(c) is a male person who is a direct descendant in the male line of a male

c) elle est du sexe masculin et descendante directe, dans la ligne masculine, d'une personne du sexe masculin décrite à l'alinéa

person described in paragraph (a) or (b);

(d) is the legitimate child of

(i) a male person described in paragraph (a) or (b), or

(ii) a person described in paragraph (c);

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

(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

Exception

(2) Paragraph (1)(e) applies only to persons born after the 13th day of August 1956. R.S., c. 149, s. 11; 1956, c. 40, s. 3.

Persons not entitled to be registered

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

(a) a person who

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

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

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

Protest re illegitimate child

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

Certificate

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

Exception

(4) Subparagraphs (1)(a)(i) and (ii) do not apply to a person who

a) ou b);

d) elle est l'enfant légitime

(i) d'une personne du sexe masculin décrite à l'alinéa a) ou b), ou

(ii) d'une personne décrite à l'alinéa c);

e) elle est l'enfant illégitime d'une personne du sexe féminin décrite à l'alinéa a), b) ou d); ou

f) elle est l'épouse ou la veuve d'une personne ayant le droit d'être inscrite aux termes de l'alinéa a), b), c), d) ou e).

(2) L'alinéa (1)e) s'applique seulement aux personnes nées après le 13 août 1956. S.R., c. 149, art. 11; 1956, c. 40, art. 3.

Exception

12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites, savoir:

Personnes n'ayant pas droit à l'inscription

a) une personne qui

(i) a reçu, ou à qui il a été attribué, des terres ou certificats d'argent de métis,

(ii) est un descendant d'une personne décrite au sous-alinéa (i),

(iii) est émancipée, ou

(iv) est née d'un mariage contracté après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a), b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e),

sauf si, étant une femme, cette personne est l'épouse ou la veuve de quelqu'un décrit à l'article 11, et

b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11.

(2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e) peut faire l'objet d'une protestation en tout temps dans les douze mois de l'addition et si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa.

Protestation au sujet d'un enfant illégitime

(3) Le Ministre peut délivrer à tout Indien auquel la présente loi cesse de s'appliquer, un certificat dans ce sens.

Certificat

(4) Les sous-alinéas (1)a)(i) et (ii) ne s'appliquent pas à une personne qui,

Exception

Department relating to Indian affairs, are *ex officio* commissioners for the taking of oaths. R.S., c. 149, s. 107.

tionnaire en chef préposé à la division du ministère relative aux affaires indiennes, sont d'office des commissaires autorisés à recevoir les serments. S.R., c. 149, art. 107.

ENFRANCHISEMENT

Enfranchisement of Indian and wife and minor children

109. (1) On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

- (a) is of the full age of twenty-one years,
- (b) is capable of assuming the duties and responsibilities of citizenship, and
- (c) when enfranchised, will be capable of supporting himself and his dependants,

the Governor in Council may by order declare that the Indian and his wife and minor unmarried children are enfranchised.

Enfranchisement of married women

(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and, on the recommendation of the Minister may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify.

Where wife living apart

(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and the minor children are enfranchised.

Order of enfranchisement

(4) A person is not enfranchised unless his name appears in an order of enfranchisement made by the Governor in Council. R.S., c. 149, s. 108; 1956, c. 40, s. 26.

Enfranchised person ceases to be Indian

110. A person with respect to whom an order for enfranchisement is made under this Act shall, from the date thereof, or from the date of enfranchisement provided for therein, be deemed not to be an Indian within the meaning of this Act or any other statute or law. 1956, c. 40, s. 27.

ÉMANCIPATION

109. (1) Lorsque le Ministre signale, dans un rapport, qu'un Indien a demandé l'émancipation et qu'à son avis, ce dernier

- a) est âgé de vingt et un ans révolus,
- b) est capable d'assumer les devoirs et les responsabilités de la citoyenneté, et
- c) pourra, une fois émancipé, subvenir à ses besoins et à ceux des personnes à sa charge,

le gouverneur en conseil peut déclarer par ordonnance que l'Indien, son épouse et ses enfants mineurs célibataires sont émancipés.

(2) Sur le rapport du Ministre, indiquant qu'une Indienne a épousé un non-Indien, le gouverneur en conseil peut, par ordonnance, déclarer que la femme en question est émancipée à compter de son mariage et, sur la recommandation du Ministre, peut, par ordonnance, déclarer que tous les enfants ou certains d'entre eux sont émancipés à compter de la date du mariage ou de telle autre date que l'ordonnance peut spécifier.

(3) Lorsque, de l'avis du Ministre, l'épouse d'un Indien vit séparée de son mari, les noms de son épouse et de ses enfants mineurs qui demeurent avec l'épouse, ne doivent pas être inclus dans une ordonnance, prévue par le paragraphe (1), qui émancipe l'Indien à moins que l'épouse n'ait demandé l'émancipation, mais quand le gouverneur en conseil est convaincu que ladite épouse n'est plus séparée de son mari, il peut déclarer par ordonnance que l'épouse et les enfants mineurs sont émancipés.

(4) Une personne n'est émancipée que si son nom apparaît dans une ordonnance d'émancipation rendue par le gouverneur en conseil. S.R., c. 149, art. 108; 1956, c. 40, art. 26.

110. Une personne à l'égard de laquelle une ordonnance d'émancipation est rendue selon la présente loi est censée, à compter de la date de cette ordonnance ou de la date d'émancipation y prévue, ne pas être un Indien au sens de la présente loi ou de quelque autre statut ou loi. 1956, c. 40, art. 27.

Émancipation d'un Indien, de son épouse et de ses enfants mineurs

Émancipation dans le cas d'une femme mariée

Épouse séparée de son mari

Ordonnance d'émancipation

La personne émancipée cesse d'être un Indien

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Indian Act (R.S.C. (Revised Statutes of Canada), 1985, c. I-5)

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Indian Act

R.S.C. (Revised Statutes of Canada), 1985, c. I-5

An Act respecting Indians

Short Title

Short title

1 This Act may be cited as the *Indian Act* ([/eng/acts/I-5](#)).

R.S., c. I-6, s. 1.

Interpretation

Definitions

2 (1) In this Act,

band means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act; (*bande*)

Band List means a list of persons that is maintained under section 8 by a band or in the Department; (*liste de bande*)

child includes a legally adopted child and a child adopted in accordance with Indian custom; (*enfant*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

council of the band means

(a) in the case of a band to which section 74 applies, the council established pursuant to that section,

(b) in the case of a band that is named in the schedule to the *First Nations Elections Act* ([/eng/acts/F-11.65](#)), the council elected or in office in accordance with that Act,

(c) in the case of a band whose name has been removed from the schedule to the *First Nations Elections Act* ([/eng/acts/F-11.65](#)) in accordance with section 42 of that Act, the council elected or in office in accordance with the community election code referred to in that section, or

(d) in the case of any other band, the council chosen according to the custom of the band, or, if there is no council, the chief of the band chosen according to the custom of the band; (*conseil de la bande*)

Department means the Department of Indian Affairs and Northern Development; (*ministère*)

designated lands means a tract of land or any interest therein the legal title to which remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, otherwise than absolutely, released or surrendered its rights or interests, whether before or after the coming into force of this definition; (*terres désignées*)

elector means a person who

(a) is registered on a Band List,

(b) is of the full age of eighteen years, and

(c) is not disqualified from voting at band elections; (*électeur*)

estate includes real and personal property and any interest in land; (*biens*)

Indian means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian; (*Indien*)

Indian moneys means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands; (*argent des Indiens*)

(b) superintendents, and

(c) the Minister, Deputy Minister and the chief officer in charge of the branch of the Department relating to Indian affairs, are commissioners for the taking of oaths.

R.S., c. I-6, s. 108.

Enfranchisement

109 to 113 [Repealed, R.S., 1985, c. 32 (1st Supp.), s. 20]

Schools

Agreements with provinces, etc.

114 (1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with

- (a) the government of a province;
- (b) the Commissioner of Yukon;
- (c) the Commissioner of the Northwest Territories;
- (c.1) the Commissioner of Nunavut; and
- (d) a public or separate school board.
- (e) [Repealed, 2014, c. 38, s. 14]

Schools

(2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children.

R.S., 1985, c. I-5, s. 114; 1993, c. 28, s. 78; 2002, c. 7, s. 184; 2014, c. 38, s. 14.

[Previous Version \(/eng/acts/I-5/section-114-20030401.html\)](#)

Regulations

115 The Minister may

- (a) provide for and make regulations with respect to standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools; and
- (b) provide for the transportation of children to and from school.
- (c) and (d) [Repealed, 2014, c. 38, s. 15]

R.S., 1985, c. I-5, s. 115; 2014, c. 38, s. 15.

[Previous Version \(/eng/acts/I-5/section-115-20021231.html\)](#)

Attendance

116 (1) Subject to section 117, every Indian child who has attained the age of seven years shall attend school.

Idem

(2) The Minister may

- (a) require an Indian who has attained the age of six years to attend school; and
- (b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term.
- (c) [Repealed, 2014, c. 38, s. 16]

R.S., 1985, c. I-5, s. 116; 2014, c. 38, s. 16.

[Previous Version \(/eng/acts/I-5/section-116-20021231.html\)](#)

When attendance not required

117 An Indian child is not required to attend school if the child

- (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school; or
- (b) is under efficient instruction at home or elsewhere.

R.S., 1985, c. I-5, s. 117; 2014, c. 38, s. 17.

[Previous Version \(/eng/acts/I-5/section-117-20021231.html\)](#)

118 [Repealed, 2014, c. 38, s. 17]

[Previous Version \(/eng/acts/I-5/section-118-20021231.html\)](#)

119 [Repealed, 2014, c. 38, s. 17]

[Previous Version \(/eng/acts/I-5/section-119-20021231.html\)](#)

120 [Repealed, 2014, c. 38, s. 17]

[Previous Version \(/eng/acts/I-5/section-120-20021231.html\)](#)

33-34 ELIZABETH II

CHAPTER 27

An Act to amend the Indian Act

[Assented to 28th June, 1985]

R.S., c. I-6; c.
10 (2nd Supp.);
1974-75-76, c.
48; 1978-79, c.
11; 1980-81-82-
83, cc. 47, 110;
1984, c. 4

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. (1) The definitions "child", "elector" and "Registrar" in subsection 2(1) of the *Indian Act* are repealed and the following substituted therefor in alphabetical order within the subsection:

"child"
«enfant»

"child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;

"elector"
«électeur»

"elector" means a person who

(a) is registered on a Band List,

(b) is of the full age of eighteen years, and

(c) is not disqualified from voting at band elections;

"Registrar"
«registraire»

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department;"

(2) Subsection 2(1) of the said Act is further amended by adding thereto, in alphabetical order within the subsection, the following definitions:

"Band List"
«liste...»

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

33-34 ELIZABETH II

CHAPITRE 27

Loi modifiant la Loi sur les Indiens

[Sanctionnée le 28 juin 1985]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, décrète :

S.R., c. I-6; ch.
10 (2^e suppl.);
1974-75-76, ch.
48; 1978-79, ch.
11; 1980-81-
82-83, ch. 47,
110; 1984, ch. 4

1. (1) Les définitions de «électeur», «enfant» et «registraire», au paragraphe 2(1) de la *Loi sur les Indiens*, sont abrogées et respectivement remplacées par ce qui suit :

«électeur» signifie une personne qui

«électeurs»
"elector"

a) est inscrite sur une liste de bande,

b) a dix-huit ans révolus, et

c) n'a pas perdu son droit de vote aux élections de la bande;

«enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté, ainsi qu'un enfant adopté selon la coutume indienne;

«enfant»
"child"

«registraire» désigne le fonctionnaire du ministère responsable du registre des Indiens et des listes de bande tenus au ministère;»

«registraire»
"Registrar"

(2) Le paragraphe 2(1) de la même loi est modifié par insertion, suivant l'ordre alphabétique, de ce qui suit :

«liste de bande» signifie une liste de personnes tenue en vertu de l'article 8 par une bande ou au ministère;»

«liste de bandes»
"Band List"

«registre des Indiens» signifie le registre de personnes tenu en vertu de l'article 5;»

«registre des Indiens»
"Indian Register"

"Indian Register"
«registre...»

"Indian Register" means the register of persons that is maintained under section 5;"

2. Section 4 of the said Act is amended by striking out subsection (2) and substituting the following therefor:

Act may be declared inapplicable

"(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 5 to 14.3 or sections 37 to 41, shall not apply to

(a) any Indians or any group or band of Indians, or

(b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

Authority confirmed for certain cases

(2.1) For greater certainty, and without restricting the generality of subsection (2), the Governor in Council shall be deemed to have had the authority to make any declaration under subsection (2) that he has made in respect of section 11, 12 or 14, or any provision thereof, as each section or provision read immediately prior to April 17, 1985."

3. The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section:

Application of certain provisions to all band members

"4.1 A reference to an Indian in the definitions "band", "Indian moneys" and "mentally incompetent Indian" in section 2 or a reference to an Indian in subsection 4(2) or (3), subsection 18(2), section 20, sections 22 to 25, subsection 31(1) or (3), subsection 35(4), section 51, section 52, subsection 58(3), subsection 61(1), section 63, section 65, subsection 66(2), subsection 70(1) or (4), section 71, paragraph 73(g) or (h), subsection 74(4), section 84, paragraph 87(a), section 88, subsection 89(1) or paragraph 107(b) shall be deemed to include a reference to any person who is entitled to have his name entered in a Band List and whose name has been entered therein."

2. L'article 4 de la même loi est modifié par retranchement du paragraphe (2) et son remplacement par ce qui suit :

«(2) Le gouverneur en conseil peut, par proclamation, déclarer que la présente loi, ou toute partie de celle-ci, sauf les articles 5 à 14.3 et 37 à 41, ne s'applique pas

a) à des Indiens ou à un groupe ou une bande d'Indiens, ou

b) à une réserve ou à des terres cédées, ou à une partie y afférente,

et peut par proclamation révoquer toute semblable déclaration.

Pouvoir de déclarer la loi inapplicable

(2.1) Sans qu'en soit limitée la portée générale du paragraphe (2), il demeure entendu que le gouverneur en conseil est réputé avoir eu le pouvoir de faire en vertu du paragraphe (2) toute déclaration qu'il a faite à l'égard des articles 11, 12 ou 14 ou d'une de leurs dispositions, dans leur version précédant immédiatement le 17 avril 1985.»

Confirmation de la validité de certaines déclarations

3. La même loi est modifiée par insertion, après l'article 4, de ce qui suit :

«4.1 La mention d'un Indien dans les définitions de «bande», «deniers des Indiens» ou «Indien mentalement incapable» à l'article 2 et cette mention aux paragraphes 4(2) ou (3), au paragraphe 18(2), à l'article 20, aux articles 22 à 25, aux paragraphes 31(1) ou (3), au paragraphe 35(4), à l'article 51, à l'article 52, au paragraphe 58(3), au paragraphe 61(1), à l'article 63, à l'article 65, au paragraphe 66(2), aux paragraphes 70(1) ou (4), à l'article 71, aux alinéas 73g) ou h), au paragraphe 74(4), à l'article 84, à l'alinéa 87a), à l'article 88, au paragraphe 89(1) ou à l'alinéa 107b) sont réputées comprendre la mention de toute personne qui a droit à ce que son nom soit consigné dans une liste de bande et dont le nom y a effectivement été consigné.»

Application de certaines dispositions à tous les membres d'une bande

1974-75-76, c.
48, s. 25;
1978-79, c. 11,
s. 10

4. Sections 5 to 14 of the said Act are repealed and the following substituted therefor:

"Indian Register

Indian Register

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

Existing Indian Register

(2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985.

Deletions and additions

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

Date of change

(4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.

Application for registration

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

Persons entitled to be registered

6. (1) Subject to section 7, a person is entitled to be registered if

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act

4. Les articles 5 à 14 de la même loi sont abrogés et remplacés par ce qui suit :

1974-75-76, ch.
48, art. 25;
1978-79, ch. 11,
art. 10

«Registre des Indiens

Tenue du registre

5. (1) Est tenu au ministère un registre des Indiens où est consigné le nom de chaque personne ayant droit d'être inscrite comme Indien en vertu de la présente loi.

Registre des Indiens existant

(2) Les noms figurant au registre des Indiens immédiatement avant le 17 avril 1985 constituent le registre des Indiens au 17 avril 1985.

Additions et retranchements

(3) Le registraire peut ajouter au registre des Indiens, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans ce registre.

Date du changement

(4) Le registre des Indiens indique la date où chaque nom y a été ajouté ou en a été retranché.

Demande

(5) Il n'est pas requis que le nom d'une personne qui a droit d'être inscrite soit consigné dans le registre des Indiens, à moins qu'une demande à cette effet soit présentée au registraire.

Personnes ayant droit à l'inscription

6. (1) Sous réserve de l'article 7, une personne a droit d'être inscrite si elle remplit une des conditions suivantes :

a) elle était inscrite ou avait droit de l'être immédiatement avant le 17 avril 1985;

b) elle est membre d'un groupe de personnes déclaré par le gouverneur en conseil après le 16 avril 1985 être une bande pour l'application de la présente loi;

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version précédant immédiatement

relating to the same subject-matter as any of those provisions;

(d) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(1), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

d) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(1), dans leur version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

e) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande :

(i) soit en vertu de l'article 13, dans sa version précédant immédiatement le 4 septembre 1951, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

(ii) soit en vertu de l'article 111, dans sa version précédant immédiatement le 1^{er} juillet 1920, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article;

f) ses parents ont tous deux droit d'être inscrits en vertu du présent article ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a); and

(2) Sous réserve de l'article 7, une personne a droit d'être inscrite si l'un de ses parents a droit d'être inscrit en vertu du paragraphe (1) ou, s'il est décédé, avait ce droit à la date de son décès.

Idem

(3) Pour l'application de l'alinéa (1)f) et du paragraphe (2) :

Présomption

a) la personne qui est décédée avant le 17 avril 1985 mais qui avait droit d'être inscrite à la date de son décès est réputée avoir droit d'être inscrite en vertu de l'alinéa (1)a);

b) la personne visée aux alinéas (1)c), d) ou e) qui est décédée avant le 17 avril

(b) a person described in paragraph (1)(c), (d) or (e) who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that paragraph.

Persons not
entitled to be
registered

7. (1) The following persons are not entitled to be registered:

(a) a person who was registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act; or

(b) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered.

Exception

(2) Paragraph (1)(a) does not apply in respect of a female person who was, at any time prior to being registered under paragraph 11(1)(f), entitled to be registered under any other provision of this Act.

Idem

(3) Paragraph (1)(b) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1)(f), entitled to be registered under any other provision of this Act.

Band Lists

Band Lists

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

Band Lists
maintained in
Department

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

1985 est réputée avoir droit d'être inscrite en vertu de ces alinéas.

7. (1) Les personnes suivantes n'ont pas droit d'être inscrites :

a) celles qui étaient inscrites en vertu de l'alinéa 11(1)f), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et dont le nom a ultérieurement été omis ou retranché du registre des Indiens en vertu de la présente loi;

b) celles qui sont les enfants d'une personne qui était inscrite ou avait droit de l'être en vertu de l'alinéa 11(1)f), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et qui sont également les enfants d'une personne qui n'a pas droit d'être inscrite.

Personnes
n'ayant pas
droit à
l'inscription

Exception

(2) L'alinéa (1)a) ne s'applique pas à une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)f), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi.

Idem

(3) L'alinéa (1)b) ne s'applique pas à l'enfant d'une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)f), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi.

Listes de bande

8. Est tenue conformément à la présente loi la liste de chaque bande où est consigné le nom de chaque personne qui en est membre.

Tenue de la
liste

9. (1) Jusqu'à ce que la bande assume la responsabilité de sa liste, celle-ci est tenue au ministère par le registraire.

Liste de bande
tenue au
ministère

Existing Band Lists	(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.	(2) Les noms figurant à une liste d'une bande immédiatement avant le 17 avril 1985 constituent la liste de cette bande au 17 avril 1985.	Listes de bande existantes
Deletions and additions	(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.	(3) Le registraire peut ajouter à une liste de bande tenue au ministère, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.	Additions et retranchements
Date of change	(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom.	(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché.	Date du changement
Application for entry	(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.	(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné à moins qu'une demande à cet effet soit présentée au registraire.	Demande
Band control of membership	10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.	10. (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.	Pouvoir de décision
Membership rules	(2) A band may, pursuant to the consent of a majority of the electors of the band, (a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and (b) provide for a mechanism for reviewing decisions on membership.	(2) La bande peut, avec l'autorisation de la majorité de ses électeurs : a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs; b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs.	Règles d'appartenance
Exception relating to consent	(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.	(3) Lorsque le conseil d'une bande établit un statut administratif en vertu de l'alinéa 81(1)p.4 mettant en vigueur le présent paragraphe à l'égard d'une bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande qui ont dix-huit ans révolus.	Statut administratif sur l'autorisation requise
Acquired rights	(4) Membership rules established by a band under this section may not deprive any person who had the right to have his	(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce	Droits acquis

name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

Idem

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

Idem

que son nom soit consigné dans la liste de bande immédiatement avant la fixation des règles du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet.

(5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)c) immédiatement avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné.

Notice to the Minister

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

Avis au Ministre

(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre du fait que celle-ci décide désormais de l'appartenance à ses effectifs et lui transmet le texte des règles d'appartenance.

Notice to band and copy of Band List

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

Transmission de la liste

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le Ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies :

(a) give notice to the band that it has control of its own membership; and

a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs;

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

Effective date of band's membership rules

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

Date d'entrée en vigueur des règles d'appartenance

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au Ministre a été donné en vertu du paragraphe (6); les additions ou retranchements de la liste de la bande effectués par le registraire après cette date ne sont valides que s'ils ont été effectués conformément aux règles d'appartenance fixées par la bande.

Band to maintain Band List

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section

Transfert de responsabilité

(9) À compter de la réception de l'avis prévu à l'alinéa (7)b), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le ministère, à compter de

13.2, the Department shall have no further responsibility with respect to that Band List from that date.

cette date, est dégagé de toute responsabilité à l'égard de cette liste.

Deletions and
additions

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste.

Additions et
retranchements

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché.

Date du
changement

Membership
rules for
Departmental
Band List

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes :

Règles
d'appartenance
pour une liste
tenue au
ministère

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have his name entered in the Band List for that band, immediately prior to April 17, 1985;

a) son nom a été consigné dans cette liste, ou elle avait droit à ce qu'il le soit immédiatement avant le 17 avril 1985;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

b) elle a droit d'être inscrite en vertu de l'alinéa 6(1)b) comme membre de cette bande;

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

c) elle a droit d'être inscrite en vertu de l'alinéa 6(1)c) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

d) elle est née après le 16 avril 1985 et a droit d'être inscrite en vertu de l'alinéa 6(1)f) et ses parents ont tous deux droit à ce que leur nom soit consigné dans la liste de bande ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Additional
membership
rules for
Departmental
Band List

(2) Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(2) À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, lorsque la bande n'a pas la responsabilité de la tenue de sa liste prévue à la présente loi, une personne a droit à ce que son nom soit consigné dans la liste de bande tenue au ministère pour cette dernière :

Règles
d'appartenance
supplémentaires
pour les listes
tenues au
ministère

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

Deeming provision

(3) For the purposes of paragraph (1)(d) and subsection (2), a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(c), (d) or (e) who was no longer living on the first day on which he would otherwise be entitled to have his name entered in the Band List of the band of which he ceased to be a member shall be deemed to be entitled to have his name so entered.

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be.

Entitlement with consent of band

12. Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, any person who

(a) is entitled to be registered under section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or

(b) is a member of another band, is entitled to have his name entered in the Band List maintained in the Department

a) soit si elle a droit d'être inscrite en vertu des alinéas 6(1)d) ou e) et qu'elle a cessé d'être un membre de la bande en raison des circonstances prévues à l'un de ces alinéas;

b) soit si elle a droit d'être inscrite en vertu de l'alinéa 6(1)f) ou du paragraphe 6(2) et qu'un de ses parents visés à l'une de ces dispositions a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès.

Présomption

(3) Pour l'application de l'alinéa (1)d) et du paragraphe (2), la personne dont le nom a été omis ou retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné.

Fusion ou division de bandes

(4) Lorsqu'une bande fusionne avec une autre ou qu'elle est divisée pour former de nouvelles bandes, toute personne qui aurait par ailleurs eu droit à ce que son nom soit consigné dans la liste de la bande en vertu du présent article a droit à ce que son nom soit consigné dans la liste de la bande issue de la fusion ou de celle de la nouvelle bande à l'égard de laquelle ses liens familiaux sont les plus étroits.

Inscription sujette au consentement du conseil

12. À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, la personne qui,

a) soit a droit d'être inscrite en vertu de l'article 6 sans avoir droit à ce que son nom soit consigné dans une liste de bande tenue au ministère en vertu de l'article 11,

b) soit est membre d'une autre bande, a droit à ce que son nom soit consigné dans la liste d'une bande tenue au ministère

	for a band if the council of the admitting band consents.	pour cette dernière si le conseil de la bande qui l'admet en son sein y consent.	
Limitation to one Band List	13. Notwithstanding sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department.	13. Par dérogation aux articles 11 et 12, nul n'a droit à ce que son nom soit consigné en même temps dans plus d'une liste de bande tenue au ministère.	Nom consigné dans une seule liste
Decision to leave Band List control with Department	13.1 (1) A band may, at any time prior to the day that is two years after the day that an Act entitled <i>An Act to amend the Indian Act</i> , introduced in the House of Commons on February 28, 1985, is assented to, decide to leave the control of its Band List with the Department if a majority of the electors of the band gives its consent to that decision.	13.1 (1) Une bande peut, avant le jour qui suit de deux ans le jour où la loi intitulée <i>Loi modifiant la Loi sur les Indiens</i> , déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, décider de laisser la responsabilité de la tenue de sa liste au ministère à condition d'y être autorisée par la majorité de ses électeurs.	Première décision
Notice to the Minister	(2) Where a band decides to leave the control of its Band List with the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect.	(2) Si la bande décide de laisser la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision.	Avis au Ministre
Subsequent band control of membership	(3) Notwithstanding a decision under subsection (1), a band may, at any time after that decision is taken, assume control of its Band List under section 10.	(3) Malgré la décision visée au paragraphe (1), la bande peut, en tout temps après cette décision, assumer la responsabilité de la tenue de sa liste en vertu de l'article 10.	Seconde décision
Return of control to Department	13.2 (1) A band may, at any time after assuming control of its Band List under section 10, decide to return control of the Band List to the Department if a majority of the electors of the band gives its consent to that decision.	13.2 (1) La bande peut, en tout temps après avoir assumé la responsabilité de la tenue de sa liste en vertu de l'article 10, décider d'en remettre la responsabilité au ministère à condition d'y être autorisée par la majorité de ses électeurs.	Transfert de responsabilités au ministère
Notice to the Minister and copy of membership rules	(2) Where a band decides to return control of its Band List to the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect and shall provide the Minister with a copy of the Band List and a copy of all the membership rules that were established by the band under subsection 10(2) while the band maintained its own Band List.	(2) Lorsque la bande décide de remettre la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision et lui transmet une copie de la liste et le texte des règles d'appartenance fixées par la bande conformément au paragraphe 10(2) pendant qu'elle assumait la responsabilité de la tenue de sa liste.	Avis au Ministre et texte des règles
Transfer of responsibility to Department	(3) Where a notice is given under subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11.	(3) Lorsqu'est donné l'avis prévu au paragraphe (2) à l'égard d'une liste de bande, la tenue de cette dernière devient la responsabilité du ministère à compter de la date de réception de l'avis. Elle est tenue, à compter de cette date, conformément aux règles d'appartenance prévues à l'article 11.	Transfert de responsabilités au ministère

Entitlement
retained

13.3 A person is entitled to have his name entered in a Band List maintained in the Department pursuant to section 13.2 if that person was entitled to have his name entered, and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under subsection 13.2(2), whether or not that person is also entitled to have his name entered in the Band List under section 11.

13.3 Une personne a droit à ce que son nom soit consigné dans une liste de bande tenue par le ministère en vertu de l'article 13.2 si elle avait droit à ce que son nom soit consigné dans cette liste, et qu'il y a effectivement été consigné, immédiatement avant qu'une copie en soit transmise au Ministre en vertu du paragraphe 13.2(2), que cette personne ait ou non droit à ce que son nom soit consigné dans cette liste en vertu de l'article 11.

Maintien du
droit d'être
consigné dans
la liste

Notice of Band Lists

Copy of Band
List provided to
band council

14. (1) Within one month after the day an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, the Registrar shall provide the council of each band with a copy of the Band List for the band as it stood immediately prior to that day.

Affichage des listes de bande

14. (1) Au plus tard un mois après la date où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, le registraire transmet au conseil de chaque bande une copie de la liste de la bande dans son état précédant immédiatement cette date.

Copie de la liste
de bande
transmise au
conseil de
bande

List of
additions and
deletions

(2) Where a Band List is maintained by the Department, the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under subsection (1), provide the council of the band with a list of the additions to or deletions from the Band List not included in a list previously provided under this subsection.

(2) Si la liste de bande est tenue au ministère, le registraire, au moins une fois tous les deux mois après la transmission prévue au paragraphe (1) d'une copie de la liste au conseil de la bande, transmet à ce dernier une liste des additions à la liste et des retranchements de celle-ci non compris dans une liste antérieure transmise en vertu du présent paragraphe.

Listes des
additions et des
retranchements

Lists to be
posted

(3) The council of each band shall, forthwith on receiving a copy of the Band List under subsection (1), or a list of additions to and deletions from its Band List under subsection (2), post the copy or the list, as the case may be, in a conspicuous place on the reserve of the band.

(3) Le conseil de chaque bande, dès qu'il reçoit copie de la liste de bande prévue au paragraphe (1) ou la liste des additions et des retranchements prévue au paragraphe (2), affiche la copie ou la liste, selon le cas, en un lieu bien en évidence dans la réserve de la bande.

Affichage de la
liste

Inquiries

Inquiries
relating to
Indian Register
or Band Lists

14.1 The Registrar shall, on inquiry from any person who believes that he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein.

Demandes

14.1 Le registraire, à la demande de toute personne qui croit qu'elle-même ou que la personne qu'elle représente a droit à l'inclusion de son nom dans le registre des Indiens ou une liste de bande tenue au ministère, indique sans délai à l'auteur de la demande si ce nom y est inclus ou non.

Demandes
relatives au
registre des
Indiens ou aux
listes de bande

Protests

Protests

14.2 (1) A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar, containing a brief statement of the grounds therefor.

Protest in respect of Band List

(2) A protest may be made under this section in respect of the Band List of a band by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative.

Protest in respect of Indian Register

(3) A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative.

Onus of proof

(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest.

Registrar to cause investigation

(5) Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision.

Evidence

(6) For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just.

Decision final

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive.

Appeal

14.3 (1) Within six months after the Registrar renders a decision on a protest under section 14.2,

(a) in the case of a protest in respect of the Band List of a band, the council of the band, the person by whom the protest was made, or the person in respect

Protestations

Protestations

14.2 (1) Une protestation peut être formulée, par avis écrit au registraire renfermant un bref exposé des motifs invoqués, contre l'inclusion ou l'addition du nom d'une personne dans le registre des Indiens ou une liste de bande tenue au ministère ou contre l'omission ou le retranchement de son nom de ce registre ou d'une telle liste dans les trois ans suivant soit l'inclusion ou l'addition, soit l'omission ou le retranchement.

(2) Une protestation peut être formulée en vertu du présent article à l'égard d'une liste de bande par le conseil de cette bande, un membre de celle-ci ou la personne dont le nom fait l'objet de la protestation ou son représentant.

(3) Une protestation peut être formulée en vertu du présent article à l'égard du registre des Indiens par la personne dont le nom fait l'objet de la protestation ou son représentant.

(4) La personne qui formule la protestation prévue au présent article a la charge d'en prouver le bien-fondé.

(5) Lorsqu'une protestation lui est adressée en vertu du présent article, le registraire fait tenir une enquête sur la question et rend une décision.

(6) Pour l'application du présent article, le registraire peut recevoir toute preuve présentée sous serment, sous déclaration sous serment ou autrement, si celui-ci, à son appréciation, l'estime indiquée ou équitable, que cette preuve soit ou non admissible devant les tribunaux.

(7) Sous réserve de l'article 14.3 la décision du registraire visée au paragraphe (5) est finale et péremptoire.

14.3 (1) Dans les six mois suivant la date de la décision du registraire sur une protestation prévue à l'article 14.2 :

a) soit, s'il s'agit d'une protestation formulée à l'égard d'une liste de bande, le conseil de la bande, la personne qui a formulé la protestation ou la personne

Protestation relative à la liste de bande

Protestation relative au registre des Indiens

Charge de la preuve

Le registraire fait tenir une enquête

Preuve

Décision finale

Appel

of whose name the protest was made or his representative, or

(b) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may, by notice in writing, appeal the decision to a court referred to in subsection (5).

Copy of notice of appeal to the Registrar

(2) Where an appeal is taken under this section, the person who takes the appeal shall forthwith provide the Registrar with a copy of the notice of appeal.

Material to be filed with the court by Registrar

(3) On receipt of a copy of a notice of appeal under subsection (2), the Registrar shall forthwith file with the court a copy of the decision being appealed together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings related thereto that were held before the Registrar.

Decision

(4) The court may, after hearing an appeal under this section,

(a) affirm, vary or reverse the decision of the Registrar; or

(b) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation.

Court

(5) An appeal may be heard under this section

(a) in the Province of Prince Edward Island, the Yukon Territory or the Northwest Territories, before the Supreme Court;

(b) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the Court of Queen's Bench;

(c) in the Province of Quebec, before the Superior Court for the district in which the band is situated or in which the person who made the protest resides, or for such other district as the Minister may designate; or

(d) in any other province, before the county or district court of the county or district in which the band is situated or in which the person who made the pro-

dont le nom fait l'objet de la protestation ou son représentant,

b) soit, s'il s'agit d'une protestation formulée à l'égard du registre des Indiens, la personne dont le nom a fait l'objet de la protestation ou son représentant,

peuvent, par avis écrit, interjeter appel de la décision à la cour visée au paragraphe (5).

(2) Lorsqu'il est interjeté appel en vertu du présent article, l'appelant transmet sans délai au registraire une copie de l'avis d'appel.

Copie de l'avis d'appel au registraire

(3) Sur réception de la copie de l'avis d'appel prévu au paragraphe (2), le registraire dépose sans délai à la cour une copie de la décision en appel, toute la preuve documentaire prise en compte pour la décision, ainsi que l'enregistrement ou la transcription des débats devant le registraire.

Documents à déposer à la cour par le registraire

(4) La cour peut, à l'issue de l'audition de l'appel prévu au présent article :

Décision

a) soit confirmer, modifier ou renverser la décision du registraire;

b) soit renvoyer la question en appel au registraire pour réexamen ou nouvelle enquête.

(5) L'appel prévu au présent article peut être entendu :

Cour

a) dans la province de l'Île-du-Prince-Édouard, le territoire du Yukon et les territoires du Nord-Ouest, par la Cour suprême;

b) dans la province du Nouveau-Brunswick, du Manitoba, de la Saskatchewan ou d'Alberta, par la Cour du Banc de la Reine;

c) dans la province de Québec, par la Cour supérieure du district où la bande est située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre district désigné par le Ministre;

d) dans les autres provinces, par un juge de la cour de comté ou de district du comté ou du district où la bande est

test resides, or of such other county or district as the Minister may designate."

5. Subsections 15(1) to (4) of the said Act are repealed and the following substituted therefor:

"Payments in Respect of Persons Ceasing to be Band Members"

6. (1) Subsection 16(1) of the said Act is repealed.

(2) Subsection 16(3) of the said Act is repealed.

7. (1) Subsection 17(1) of the said Act is repealed and the following substituted therefor:

"New Bands"

Minister may
constitute new
bands

17. (1) The Minister may, whenever he considers it desirable,

(a) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated; and

(b) constitute new bands and establish Band Lists with respect thereto from existing Band Lists, or from the Indian Register, if requested to do so by persons proposing to form the new bands."

(2) Subsection 17(3) of the said Act is repealed and the following substituted therefor:

No protest

"(3) No protest may be made under section 14.2 in respect of the deletion from or the addition to a Band List consequent on the exercise by the Minister of any of his powers under subsection (1)."

8. The said Act is further amended by adding thereto, immediately after section 18 thereof, the following section:

Children of
band members

"18.1 A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom he has custody."

située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre comté ou district désigné par le Ministre.»

5. Les paragraphes 15(1) à (4) de la même loi sont abrogés et remplacés par ce qui suit :

« Paiements aux personnes qui cessent d'être membres d'une bande »

6. (1) Le paragraphe 16(1) de la même loi est abrogé.

(2) Le paragraphe 16(3) de la même loi est abrogé.

7. (1) Le paragraphe 17(1) de la même loi est abrogé et remplacé par ce qui suit :

« Nouvelles bandes »

17. (1) Le Ministre peut, lorsqu'il l'estime à propos :

a) fusionner les bandes qui, par un vote majoritaire de leurs électeurs, demandent la fusion;

b) constituer de nouvelles bandes et établir à leur égard des listes de bande à partir des listes de bande existantes, ou du registre des Indiens, s'il lui en est fait la demande par des personnes proposant la constitution de nouvelles bandes.»

(2) Le paragraphe 17(3) de la même loi est abrogé et remplacé par ce qui suit :

Constitution de
nouvelles
bandes par le
Ministre

«(3) Aucune protestation ne peut être formulée en vertu de l'article 14.2 à l'égard d'un retranchement d'une liste de bande ou d'une addition à celle-ci qui découle de l'exercice par le Ministre de l'un de ses pouvoirs prévus au paragraphe (1).»

Aucune
protestation

8. La même loi est modifiée par insertion, après l'article 18, de ce qui suit :

«18.1 Le membre d'une bande qui réside sur la réserve de cette dernière peut y résider avec ses enfants à charge ou tout enfant dont il a la garde.»

Enfants des
membres d'une
bande

9. (1) Subsections 48(13) and (14) of the said Act are repealed.

(2) Subsection 48(16) of the said Act is repealed and the following substituted therefor:

Definition of
"child"

"(16) In this section, "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom."

10. (1) Section 64 of the said Act is renumbered as subsection 64(1).

(2) Section 64 of the said Act is further amended by adding thereto the following subsection:

Expenditure of
capital moneys
in accordance
with by-laws

"(2) The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys."

11. The said Act is further amended by adding thereto, immediately after section 64 thereof, the following section:

Limitation in
respect of
paragraphs
6(1)(c), (d) and
(e)

"64.1 (1) A person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of a band in the circumstances set out in paragraph 6(1)(c), (d) or (e) is not entitled to receive an amount under paragraph 64(1)(a) until such time as the aggregate of all amounts that he would, but for this subsection, have received under paragraph 64(1)(a) is equal to the amount by which the amount that he received under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that

9. (1) Les paragraphes 48(13) et (14) de la même loi sont abrogés.

(2) Le paragraphe 48(16) de la même loi est abrogé et remplacé par ce qui suit :

Définition
d'«enfant»

«(16) Au présent article, «enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté et un enfant adopté conformément aux coutumes indiennes.»

10. (1) Le numéro d'article 64 de la même loi est remplacé par le numéro de paragraphe 64(1).

(2) L'article 64 de la même loi est modifié par adjonction de ce qui suit :

Dépenses sur
les deniers au
compte de
capital

«(2) Le Ministre peut effectuer des dépenses sur les deniers au compte de capital d'une bande conformément aux statuts administratifs établis en vertu de l'alinéa 81(1)p.3) en vue de faire des paiements à toute personne dont le nom a été retranché de la liste de la bande pour un montant n'excédant pas une part per capita des deniers au compte de capital.»

11. La même loi est modifiée par insertion, après l'article 64, de ce qui suit :

Réserve relative
aux alinéas
6(1)c), d) ou e)

«64.1 (1) Une personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)a), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, du fait qu'elle a cessé d'être membre d'une bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) n'a pas droit de recevoir de montant en vertu de l'alinéa 64(1)a) jusqu'à ce que le total de tous les montants qu'elle aurait reçus en vertu de l'alinéa 64(1)a), n'eût été le présent paragraphe, égale la part du montant qu'elle a reçu en vertu de l'alinéa 15(1)a), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que

paragraph, exceeds one thousand dollars, together with any interest thereon.

Additional
limitation

(2) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect, a person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(c), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(b) to (k), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band.

Regulations

(3) The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of subsections (1) and (2)."

12. Section 66 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

Idem

"(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys."

13. Section 68 of the said Act is repealed and the following substituted therefor:

Maintenance of
dependants

"68. Where the Minister is satisfied that an Indian

(a) has deserted his spouse or family without sufficient cause,

(b) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or

celui de ce paragraphe, en excédant de mille dollars, y compris les intérêts.

Réserve
additionnelle

(2) Lorsque le conseil d'une bande établit des statuts administratifs en vertu de l'alinéa 81(1)p.4) mettant en vigueur le présent paragraphe, la personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)a) dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute autre disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, parce qu'elle a cessé d'être membre de la bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) n'a droit de recevoir aucun des avantages offerts aux membres de la bande à titre individuel résultant de la dépense de deniers des Indiens au titre des alinéas 64(1)b) à k), du paragraphe 66(1) ou du paragraphe 69(1) jusqu'à ce que l'excédent du montant ainsi reçu sur mille dollars, y compris l'intérêt sur celui-ci, ait été remboursé à la bande.

(3) Le gouverneur en conseil peut prendre des règlements prévoyant la façon de déterminer les intérêts pour l'application des paragraphes (1) et (2)."

Règlements

12. L'article 66 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Idem

"(2.1) Le Ministre peut effectuer des dépenses sur les derniers de revenu de la bande conformément aux statuts administratifs visés à l'alinéa 81(1)p.3) en vue d'effectuer des paiements à une personne dont le nom a été retranché de la liste de bande jusqu'à concurrence d'un montant n'excédant pas une part *per capita* des fonds de revenu."

13. L'article 68 de la même loi est abrogé et remplacé par ce qui suit :

"68. Lorsque le Ministre est convaincu qu'un Indien :

Entretien des
personnes à
charge

a) a abandonné son conjoint ou sa famille sans raison suffisante,

b) s'est conduit de façon à justifier le refus de son conjoint ou de sa famille de vivre avec lui, ou

(c) has been separated by imprisonment from his spouse and family,

the Minister may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the spouse or family or both the spouse and family of that Indian."

14. Subsections 77(1) and (2) of the said Act are repealed and the following substituted therefor:

Eligibility of voters for chief

"77. (1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

Councillor

(2) A member of a band who is of the full age of eighteen years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section."

15. Section 81 of the said Act is amended by adding thereto, immediately after paragraph (p) thereof, the following paragraphs:

"(p.1) the residence of band members and other persons on the reserve;

(p.2) to provide for the rights of spouses and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;

(p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;

(p.4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band;"

15.1 (1) Paragraph 81(r) of the said Act is repealed and the following substituted therefor:

c) a été séparé de son conjoint et de sa famille par emprisonnement,

il peut ordonner que les paiements de rentes ou d'intérêts auxquels cet Indien a droit soient appliqués au soutien du conjoint ou de la famille ou du conjoint et de la famille de ce dernier.»

14. Les paragraphes 77(1) et (2) de la même loi sont abrogés et remplacés par ce qui suit :

«77. (1) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans la réserve, a qualité pour voter en faveur d'une personne présentée comme candidat au poste de chef de la bande et, lorsque la réserve, aux fins d'élection, ne comprend qu'une section, pour voter en faveur de personnes présentées aux postes de conseillers.

Qualités exigées des électeurs au poste de chef

(2) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans une section établie aux fins de votation, a qualité pour voter en faveur d'une personne présentée au poste de conseiller pour représenter cette section.»

Conseiller

15. L'article 81 de la même loi est modifié par insertion, après l'alinéa p), de ce qui suit :

«p.1) la résidence des membres de la bande ou des autres personnes sur la réserve;

p.2) l'adoption de mesures relatives aux droits des conjoints ou des enfants qui résident avec des membres de la bande dans une réserve pour toute matière au sujet de laquelle le conseil peut établir des statuts administratifs à l'égard des membres de la bande;

p.3) l'autorisation du Ministre à effectuer des paiements sur des deniers au compte de capital ou des deniers de revenu aux personnes dont les noms ont été retranchés de la liste de la bande;

p.4) la mise en vigueur des paragraphes 10(3) ou 64.1(2) à l'égard de la bande;»

15.1 (1) L'alinéa 81(r) de la même loi est abrogé et remplacé par ce qui suit :

"(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section."

(2) Section 81 of the said Act is renumbered as subsection 81(1).

(3) Section 81 of the said Act is further amended by adding thereto the following subsections:

Power to
restrain by
order where
conviction
entered

"(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Power to
restrain by
court action

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council."

16. The said Act is further amended by adding thereto, immediately after section 85 thereof, the following section:

By-laws
relating to
intoxicants

"85.1 (1) Subject to subsection (2), the council of a band may make by-laws

- (a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;
- (b) prohibiting any person from being intoxicated on the reserve;
- (c) prohibiting any person from having intoxicants in his possession on the reserve; and
- (d) providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c).

«r) l'imposition, sur déclaration sommaire de culpabilité, d'une amende n'excédant pas mille dollars ou d'un emprisonnement d'au plus trente jours, ou de l'amende et de l'emprisonnement à la fois, pour violation d'un statut administratif établi aux termes du présent article.»

(2) L'article 81 de la même loi devient le paragraphe 81(1).

(3) L'article 81 de la même loi est modifié par adjonction de ce qui suit :

Pouvoir de
prendre une
ordonnance

«(2) Lorsqu'un statut administratif d'une bande est violé et qu'une déclaration de culpabilité est prononcée, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, le tribunal dans lequel a été prononcée la déclaration de culpabilité, et tout tribunal compétent par la suite, peut rendre une ordonnance interdisant la continuation ou la répétition de l'infraction par la personne déclarée coupable.

Pouvoir
d'intenter une
action en justice

(3) Lorsqu'un statut administratif d'une bande est violé, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, cette violation peut être refrénée par une action en justice à la demande du conseil de bande.»

16. La même loi est modifiée par insertion, après l'article 85, de ce qui suit :

«85.1 (1) Sous réserve du paragraphe (2), le conseil d'une bande peut établir des statuts administratifs :

Statuts
administratifs
sur les
spiritueux

- a) interdisant de vendre, de faire le troc, de fournir ou de fabriquer des spiritueux sur la réserve de la bande;
- b) interdisant à toute personne d'être en état d'ivresse sur la réserve;
- c) interdisant à toute personne d'avoir en sa possession des spiritueux sur la réserve;
- d) prévoyant des exceptions aux interdictions établies en vertu des alinéas b) ou c).

Consent of
electors

(2) A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law.

(2) Les statuts administratifs prévus au présent article ne peuvent être établis qu'avec le consentement préalable de la majorité des électeurs de la bande ayant voté à l'assemblée spéciale de la bande convoquée par le conseil de cette dernière pour l'étude de ces statuts.

Consentement
des électionsCopies of
by-laws to be
sent to Minister

(3) A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made.

(3) Le chef ou un membre du conseil de la bande doit envoyer par courrier au Ministre une copie de chaque statut administratif prévu au présent article dans les quatre jours suivant son établissement.

Copie des
statuts
administratifs
au Ministre

Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction

(4) Toute personne qui enfreint un statut administratif établi en vertu du présent article commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

Infraction

(a) in the case of a by-law made under paragraph (1)(a), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and

a) dans le cas d'un statut administratif établi en vertu de l'alinéa (1)a), une amende maximale de mille dollars et un emprisonnement maximal de six mois, ou une de ces peines;

(b) in the case of a by-law made under paragraph (1)(b) or (c), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both."

b) dans le cas d'un statut administratif établi en vertu des alinéas (1)b) ou c), une amende maximale de cent dollars et un emprisonnement maximal de trois mois, ou l'une de ces peines."

17. Sections 94 to 100 of the said Act are repealed and the following substituted therefor:

17. Les articles 94 à 100 de la même loi sont abrogés et remplacés par ce qui suit :

"OFFENCES"

«PEINES»

18. Subsection 103(1) of the said Act is repealed and the following substituted therefor:

18. Le paragraphe 103(1) de la même loi est abrogé et remplacé par ce qui suit :

Seizure of
goods

"103. (1) Whenever a peace officer, a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 85.1, 90 or 93 has been committed, he may seize all goods and chattels by means of or in relation to which he believes on reasonable grounds the offence was committed."

«103. (1) Chaque fois qu'un agent de la paix, un surintendant ou une autre personne autorisée par le Ministre a des motifs raisonnables de croire qu'une infraction aux articles 33, 85.1, 90 ou 93 a été commise, il peut saisir toutes les marchandises et tous les biens meubles au moyen ou à l'égard desquels il a des motifs raisonnables de croire que l'infraction a été commise.»

Saisie des
marchandises

19. Sections 109 to 113 of the said Act are repealed.

19. Les articles 109 à 113 de la même loi sont abrogés.

20. (1) All that portion of subsection 119(2) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

Powers

"(2) Without restricting the generality of subsection (1), a truant officer may, subject to subsection (2.1),"

(2) Section 119 of the said Act is further amended by adding thereto, immediately after subsection (2) thereof, the following subsections:

Warrant required to enter dwelling-house

"(2.1) Where any place referred to in paragraph (2)(a) is a dwelling-house, a truant officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (2.2).

Authority to issue warrant

(2.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

(a) that the conditions for entry described in paragraph (2)(a) exist in relation to a dwelling-house,

(b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

he may issue a warrant under his hand authorizing the truant officer named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

Use of force

(2.3) In executing a warrant issued under subsection (2.2), the truant officer named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant."

Saving from liability

21. For greater certainty, no claim lies against Her Majesty in right of Canada, the Minister, any band, council of a band or member of a band or any other person or body in relation to the omission or deletion of

20. (1) Le passage du paragraphe 119(2) de la même loi qui précède l'alinéa a) est abrogé et remplacé par ce qui suit :

«(2) Sans qu'en soit restreinte la portée générale du paragraphe (1), un agent de surveillance peut, sous réserve du paragraphe (2.1) :»

(2) L'article 119 de la même loi est modifié par insertion, après le paragraphe (2), de ce qui suit :

«(2.1) Lorsque l'endroit visé à l'alinéa (2)a) est une maison d'habitation, l'agent de surveillance ne peut y pénétrer sans l'autorisation de l'occupant qu'en vertu du mandat prévu au paragraphe (2.2).

(2.2) Sur demande *ex parte*, le juge de paix peut délivrer sous son seing un mandat autorisant l'agent de surveillance qui y est nommé, sous réserve des conditions éventuellement fixées dans le mandat, à pénétrer dans une maison d'habitation s'il est convaincu, d'après une dénonciation sous serment, de ce qui suit :

a) les circonstances prévues à l'alinéa (2)a) dans lesquelles un agent peut y pénétrer existent;

b) il est nécessaire d'y pénétrer pour l'application de la présente loi;

c) un refus d'y pénétrer a été opposé ou il y a des motifs raisonnables de croire qu'un tel refus sera opposé.

(2.3) L'agent de surveillance nommé dans le mandat prévu au paragraphe (2.2) ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix.»

21. Il demeure entendu qu'il ne peut être présenté aucune réclamation contre Sa Majesté du chef du Canada, le Ministre, une bande, un conseil de bande, un membre d'une bande ou autre personne ou organisme

Pouvoirs

Mandat : maison d'habitation

Pouvoir de délivrer un mandat

Usage de la force

Aucune réclamation

the name of a person from the Indian Register in the circumstances set out in paragraph 6(1)(c), (d) or (e) of the *Indian Act*.

Report of
Minister to
Parliament

22. (1) The Minister shall cause to be laid before each House of Parliament, not later than two years after this Act is assented to, a report on the implementation of the amendments to the *Indian Act*, as enacted by this Act, which report shall include detailed information on

(a) the number of people who have been registered under section 6 of the *Indian Act*, and the number entered on each Band List under subsection 11(1) of that Act, since April 17, 1985;

(b) the names and number of bands that have assumed control of their own membership under section 10 of the *Indian Act*; and

(c) the impact of the amendments on the lands and resources of Indian bands.

Review by
Parliamentary
committee

(2) Such committee of Parliament as may be designated or established for the purposes of this subsection shall, forthwith after the report of the Minister is tabled under subsection (1), review that report and may, in the course of that review, undertake a review of any provision of the *Indian Act* enacted by this Act.

Commence-
ment

23. (1) Subject to subsection (2), this Act shall come into force or be deemed to have come into force on April 17, 1985.

Idem

(2) Sections 17 and 18 shall come into force six months after this Act is assented to.

relativement à l'omission ou au retranchement du nom d'une personne du registre des Indiens dans les circonstances prévues aux alinéas 6(1)c), d) ou e) de la *Loi sur les Indiens*.

22. (1) Au plus tard deux ans après la sanction royale de la présente loi, le Ministre fait déposer devant chaque chambre du Parlement un rapport sur l'application des modifications de la *Loi sur les Indiens* prévues dans la présente loi. Le rapport contient des renseignements détaillés sur :

a) le nombre de personnes inscrites en vertu de l'article 6 de la *Loi sur les Indiens* et le nombre de personnes dont le nom a été consigné dans une liste de bande en vertu du paragraphe 11(1) de cette loi, depuis le 17 avril 1985;

b) les noms et le nombre des bandes qui décident de l'appartenance à leurs effectifs en vertu de l'article 10 de la *Loi sur les Indiens*;

c) l'effet des modifications sur les terres et les ressources des bandes d'Indiens.

(2) Le Comité du Parlement que ce dernier peut désigner ou établir pour l'application du présent paragraphe doit examiner sans délai après son dépôt par le Ministre le rapport visé au paragraphe (1). Le comité peut, dans le cadre de cet examen, procéder à la révision de toute disposition de la *Loi sur les Indiens* prévue à la présente loi.

Rapport du
Ministre au
Parlement

Examen par un
comité
parlementaire

Entrée en
vigueur

Idem

23. (1) Sous réserve du paragraphe (2), la présente loi entre en vigueur ou est réputée être entrée en vigueur le 17 avril 1985.

(2) Les articles 17 et 18 entrent en vigueur six mois après que la présente loi a reçu la sanction royale.

TAB 2



Sawridge Band v. Canada, [2003] 4 FCR 748, 2003 FCT 347 (CanLII)

Date: 2003-03-27

Docket: T-66-86A

Other [2003] 3 CNLR 344; 232 FTR 54

citations:

Citation: Sawridge Band v. Canada, [2003] 4 FCR 748, 2003 FCT 347 (CanLII),
<<http://canlii.ca/t/hbq>>, retrieved on 2016-09-05

T-66-86 A

2003 FCT 347

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

v.

Her Majesty the Queen (Defendant)

and

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

Indexed as: Sawridge Band v. Canada (T.D.)

Trial Division, Hugessen J.--Toronto, March 19 and 20; Edmonton, March 27, 2003.

Native Peoples -- Registration -- Crown motion for interlocutory declaration or mandatory injunction requiring registration on Band List of persons having acquired rights under 1985 amendments to Indian Act -- Crown says Band has refused to comply with Bill C-31 remedial provisions -- Interim relief necessary due to old age of women seeking registration, protracted litigation -- Band's argument: doing only what empowered by legislation -- Interim declaration could not be granted -- Band having effectively given itself injunction to which not entitled in terms of irreparable harm, balance of convenience -- Public interest damaged by Band's flouting of law enacted by Parliament -- Court having power to grant injunction -- Crown not lacking standing -- Irrelevant that some of 11 women in question not having applied under Band membership rules as implicitly refused -- Amendments intended to bring Indian Act into line with Charter guarantee of gender equality -- Band having imposed onerous membership application rules for acquired rights persons --

Whether acquired rights persons entitled to automatic membership, inclusion in Band's own List -- As of date assumed control of List, Band obliged to include names of acquired rights women -- Could not create membership barriers for those deemed members by law -- Intention of Parliament revealed by House of Commons debates -- Amendments recognized women's rights at expense of certain Native rights -- Mandatory injunction granted.

Administrative Law -- Judicial Review -- Injunctions -- Interlocutory mandatory injunction sought by Crown requiring registration on Indian Band List of persons having acquired rights under 1985 Indian Act amendments -- Crown says Band refused to comply with remedial legislation -- Interim relief needed as litigation protracted, women seeking registration aged -- Band says just exercising powers conferred by legislation -- Band having, in effect, given itself injunction, disregarding law -- Three-part test reversed in unusual circumstances: has Band raised serious issue, will it suffer irreparable harm if law enforced, where lies balance of convenience? -- Band not meeting last two parts of test -- Enforcement of law rarely causes irreparable harm -- Flouting of law damaging to public interest -- Private interests of women seeking registration -- Delegated, subordinate Band legislation (membership rules) insufficient to abrogate Charter-protected rights -- Mandatory injunction granted.

Some 17 years ago, plaintiff commenced litigation against the Crown seeking a declaration that the 1985 amendments to the *Indian Act*--Bill C-31--were unconstitutional. That legislation, while conferring on bands the right to control their own band lists, obliged them to include certain persons in their membership.

This motion by the Crown was for an interlocutory declaration, pending final determination of plaintiff's action, that those who acquired the right of membership in the Sawridge Band before it took control of its List, be deemed to be registered thereon or, in the alternative, an interlocutory mandatory injunction requiring plaintiffs to register such persons. The Crown alleged that the Band has refused to comply with the remedial provisions of Bill C-31 and that 11 women who lost Band membership due to marriage to non-Indians continue to be denied the benefits of the amendments. Interim relief is needed since these women are getting on in years and it may still be a long time before a trial date is fixed. The Band argued that it is merely exercising the powers conferred upon it by the legislation.

Held, a mandatory injunction should be granted.

An interim declaration of right could not be granted for that is a contradiction in terms. A declaration of right puts an end to a matter. On the other hand, there can be no entitlement to have an unproved right declared to exist. Therefore the motion was considered as one for an interlocutory injunction.

In the unusual--perhaps unique--circumstances of this case, the three-part test was, in effect, reversed. If the allegations of non-compliance are true, the Band has effectively given itself an injunction, choosing to act as if the law did not exist. Would the Band have been entitled to an interlocutory injunction suspending the effects of Bill C-31 pending trial? The classic test required that the Court determine (1) whether the Band had raised a serious issue, (2) whether it will suffer irreparable harm if the law is enforced, and (3) where lay the balance of convenience. The test was not altered in that the injunction sought was mandatory in nature.

While the Band met the first part of the test, it could not possibly meet the other two parts. Rarely will the enforcement of a law cause irreparable harm. Any inconvenience to the

Band in admitting 11 elderly women to membership is nothing compared to the damage to the public interest caused by the flouting of a law enacted by Parliament and to the private interests of these women who are unlikely to benefit from a statute adopted with persons such as them in mind.

The argument that the Court lacked power to grant the injunction in that the Crown had not alleged a cause of action in support thereof in its statement of defence, was rejected. The Court's power to issue injunctions is granted by *Federal Court Act*, section 44 and is very broad. Nor could the Court agree that the Crown lacked standing. It is the Crown which represents the public interest in upholding the laws of Canada unless and until struck down by a court of competent jurisdiction.

It was irrelevant that only some of these women had applied in accordance with the Band's membership rules. They were refused, at least implicitly, because they could not fulfil the onerous application requirements.

The amending statute was made retroactive to the date Charter, section 15 took effect. That was an indication that the amendments were intended to bring the legislation into line with the Charter guarantee of gender equality.

The Band lost no time in taking control of its List and none of these 11 women were able to have their names entered by the Registrar before the Band took control. Under the Band's membership rules, to secure membership acquired rights individuals must either be resident on the reserve or demonstrate a significant commitment to the Band and they must also complete a 43-page application form requiring the composition of several essays. In addition, they must submit to interviews. If the legislation provides for automatic membership entitlement, these requirements would violate it. The Act does entitle women who lost status for marrying non-Indians to be registered as status Indians and to have their names automatically added to the Departmental Band List. The question remains as to whether a band is obliged to add names to its own Band List. Unfortunately, subsections 10(4) and 10(5) do not make it absolutely clear that acquired rights persons are entitled to automatic membership and that a band may not establish pre-conditions for membership. But the use of "shall" in section 8 makes it clear that a band must enter the names of all entitled persons on the list, which it maintains. As of the date the Sawridge Band assumed control of its List, it was obliged to include therein the names of the acquired rights women. A band may not create barriers to membership for those deemed by law to be members. By reference to certain debates in the House of Commons and what was said by the Minister to the Standing Committee on Indian Affairs and Northern Development, it was clear that Parliament's intention was to create an automatic right to Band membership even though this would restrict a band's control over membership. The legislation establishes a membership regime that recognizes women's rights at the expense of certain Native rights.

Subsection 10(5) states, by reference to paragraph 11(c), that nothing can deprive an acquired rights individual of automatic membership entitlement unless the entitlement is subsequently lost. The Band's membership rules fail to make specific provision for the subsequent loss of membership and establishment of the application requirements was not enough to abrogate the rights of Charter-protected persons. The Band's application of its membership rules in which pre-conditions were created to membership, is in contravention of the *Indian Act*.

A mandatory injunction should be granted and the names of these 11 acquired rights women shall be added to the Band List. They shall be accorded all the rights of Band membership.

statutes and regulations judicially

considered

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

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

Federal Court Act, R.S.C., 1985, c. F-7, s. 44.

Federal Court Rules, 1998, SOR/98-106, r. 369.

Indian Act, R.S.C., 1985, c. I-5, ss. 2(1) "member of a band", 5 (as am. by R.S.C., 1985 (1st Supp.), c. 32, s. 4), 6 (as am. *idem*), 8 (as am. *idem*), 9 (as am. *idem*), 10 (as am. *idem*), 11 (as am. *idem*), 12 (as am. *idem*).

cases judicially considered

applied:

Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd., 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495; (1996), 136 D.L.R. (4th) 289; 21 B.C.L.R. (3d) 201; 45 Admin. L.R. (2d) 95; 50 C.P.C. (3d) 128; 198 N.R. 161.

considered:

Sawridge Band v. Canada, 1997 CanLII 5294 (FCA), [1997] 3 F.C. 580; (1997), 3 Admin. L.R. (3d) 69; 215 N.R. 133 (C.A.); *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110; (1987), 38 D.L.R. (4th) 321; [1987] 3 W.W.R. 1; 46 Man. R. (2d) 241; 25 Admin. L.R. 20; 1986 CanLII 5 (SCC), 87 CLLC 14,015; 18 C.P.C. (2d) 273; 73 N.R. 341; *RJR -- MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311; (1994), 111 D.L.R. (4th) 385; 54 C.P.R. (3d) 114; 164 N.R. 1; 60 Q.A.C. 241.

referred to:

Sankey v. Minister of Transport, [1979] 1 F.C. 134 (T.D.); *Ansa International Rent-a-Car (Canada) Ltd. v. American International Rent-a-Car Corp.* (1990), 32 C.P.R. (3d) 340; 36 F.T.R. 98 (F.C.T.D.); *Canada (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC), [1998] 1 S.C.R. 626; (1998), 157 D.L.R. (4th) 385; 6 Admin. L.R. (3d) 1; 22 C.P.C. (4th) 1; 224 N.R. 241.

authors cited

Canada. *House of Commons Debates*, Vol. II, 1st Sess., 33rd Parl., March 1, 1985, p. 2644.

Canada. House of Commons. *Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development*, Issue No. 12 (March 7, 1985).

MOTION for an interlocutory declaration or an interlocutory mandatory injunction with respect to the registration of names on an Indian Band List. Mandatory injunction granted.

appearances:

Martin J. Henderson, Lori A. Mattis, Catherine M. Twinn and Kristina Midbo for plaintiffs.

James E. Kindrake and Kathleen Kohlman for defendant.

Kenneth S. Purchase for intervener Native Council of Canada.

P. Jonathan Faulds for intervener Native Council of Canada (Alberta).

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

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

solicitors of record:

Aird & Berlis LLP, Toronto, for plaintiffs.

Deputy Attorney General of Canada for defendant.

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

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

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

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

The following are the reasons for order and order rendered in English by

[1] Hugessen J.: In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the *Indian Act*, R.S.C., 1985, c. 1-5, commonly known as Bill C-31 [*An Act to amend the Indian Act*, R.S.C., 1985 (1st Supp.), c. 32], are unconstitutional. While I shall later deal in detail with the precise text of the relevant amendments, I cannot do better here than reproduce the Court of Appeal's brief description of the thrust of the legislation when it set aside the first judgment herein and ordered a new trial [*Sawridge Band v. Canada*, 1997 CanLII 5294 (FCA), [1997] 3 F.C. 580 (C.A.), at paragraph 2]:

Briefly put, this legislation, while conferring on Indian bands the right to control their own band lists, obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the 1985 legislation. Such persons included: women who had become disentitled to Indian status through marriage to non-Indian men and the children of such women; those who had lost status because their mother and paternal grandmother were non-Indian and had gained Indian status through marriage to an Indian; and those who had lost status on the basis that they were illegitimate offspring of an Indian woman and a non-Indian man. Bands assuming control of their band lists would be obliged to accept all these people as members. Such bands would also be allowed, if they chose, to accept certain other categories of persons previously excluded from Indian status.

[2] The Crown defendant now moves for the following interlocutory relief:

a. An interlocutory declaration that, pending a final determination of the Plaintiff's action, in accordance with the provisions of the *Indian Act*, R.S.C. 1985 c. 1-5, as amended, (the

"Indian Act, 1985") the individuals who acquired the right to be members of the Sawridge Band before it took control of its own Band List, shall be deemed to be registered on the Band List as members of the Sawridge Band, with the full rights and privileges enjoyed by all band members;

b. In the alternative, an interlocutory mandatory injunction, pending a final resolution of the Plaintiffs' action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

[3]The basis of the Crown's request is the allegation that the plaintiff Band has consistently and persistently refused to comply with the remedial provisions of Bill C-31, with the result that 11 women, who had formerly been members of the Band and had lost both their Indian status and their Band membership by marriage to non-Indians pursuant to the former provisions of paragraph 12(1)(b) of the Act, are still being denied the benefits of the amendments.

[4]Because these women are getting on in years (a twelfth member of the group has already died and one other is seriously ill) and because the action, despite intensive case management over the past five years, still seems to be a long way from being ready to have the date of the new trial set down, the Crown alleges that it is urgent that I should provide some form of interim relief before it is too late.

[5]In my view, the critical and by far the most important question raised by this motion is whether the Band, as the Crown alleges, is in fact refusing to follow the provisions of Bill C-31 or whether, as the Band alleges, it is simply exercising the powers and privileges granted to it by the legislation itself. I shall turn to that question shortly, but before doing so, I want to dispose of a number of subsidiary or incidental questions which were discussed during the hearing.

[6]First, I am quite satisfied that the relief sought by the Crown in paragraph a. above is not available. An interim declaration of right is a contradiction in terms. If a court finds that a right exists, a declaration to that effect is the end of the matter and nothing remains to be dealt with in the final judgment. If, on the other hand, the right is not established to the court's satisfaction, there can be no entitlement to have an unproved right declared to exist. (See *Sankey v. Minister of Transport*, [1979] 1 F.C. 134 (T.D.).) I accordingly treat the motion as though it were simply seeking an interlocutory injunction.

[7]Second, in the unusual and perhaps unique circumstances of this case, I accept the submission that since I am dealing with a motion seeking an interlocutory injunction, the well-known three-part test established in such cases as *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110 and *RJR--MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 should in effect be reversed. The universally applicable general rule for anyone who contests the constitutionality of legislation is that such legislation must be obeyed unless and until it is either stayed by court order or is set aside on final judgment. Here, assuming the Crown's allegations of non-compliance are correct, the plaintiff Band has effectively given itself an injunction and has chosen to act as though the law which it contests did not exist. I can only permit this situation to continue if I am satisfied that the plaintiff could and should have been given an interlocutory injunction to suspend the effects of Bill C-31 pending trial. Applying the classic test, therefore, requires that I ask myself if the plaintiff

has raised a serious issue in its attack on the law, whether the enforcement of the law will result in irreparable harm to the plaintiff, and finally, determine where the balance of convenience lies. I do not accept the proposition that because the injunction sought is of a mandatory nature, the test should in any way be different from that set down in the cited cases. (See *Ansa International Rent-a-Car (Canada) Ltd. v. American International Rent-a-Car Corp.* (1990), 32 C.P.R. (3d) 340 (F.C.T.D.).)

[8] It is not contested by the Crown that the plaintiff meets the first part of the test, but it seems clear to me that it cannot possibly meet the other two parts. It is very rare that the enforcement of a duly adopted law will result in irreparable harm and there is nothing herein which persuades me that this is such a rarity. Likewise, whatever inconvenience the plaintiff may suffer by admitting 11 elderly ladies to membership is nothing compared both to the damage to the public interest in having Parliament's laws flouted and to the private interests of the women in question who, at the present rate of progress, are unlikely ever to benefit from a law which was adopted with people in their position specifically in mind.

[9] Thirdly, I reject the proposition put forward by the plaintiff that would deny the Court the power to issue the injunction requested because the Crown has not alleged a cause of action in support thereof in its statement of defence. The Court's power to issue injunctions is granted by section 44 of the *Federal Court Act* [R.S.C., 1985, c. F-7] and is very broad. Interpreting a similar provision in a provincial statute in the case of *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495, the Supreme Court said at page 505:

Canadian courts since *Channel Tunnel* have applied it for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, wherever that right may fall to be determined. . . . This accords with the more general recognition throughout Canada that the court may grant interim relief where final relief will be granted in another forum.

[10] The Supreme Court of Canada confirmed the Federal Court of Canada's broad jurisdiction to grant relief under section 44: *Canada (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC), [1998] 1 S.C.R. 626.

[11] Likewise, I do not accept the plaintiff's argument to the effect that the Crown has no standing to bring the present motion. I have already indicated that I feel that there is a strong public interest at play in upholding the laws of Canada unless and until they are struck down by a court of competent jurisdiction. That interest is uniquely and properly represented by the Crown and its standing to bring the motion is, in my view, unassailable.

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

[13] This brings me at last to the main question: has the Band refused to comply with the provisions of Bill C-31 so as to deny to the 11 women in question the rights guaranteed to them by that legislation?

[14] I start by setting out the principal relevant provisions.

2. (1) . . .

"member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;

. . .

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

. . .

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

. . .

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

6. (1) Subject to section 7, a person is entitled to be registered if

. . .

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

. . .

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

. . .

(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry

therein is made to the Registrar.

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

...

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

...
 11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...
 (c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; ...

...
 (2) Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

[15]The amending statute was adopted on June 28, 1985 but was made to take effect retroactively to April 17, 1985, the date on which section 15 of the Charter [*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] took effect. This fact in itself, without more, is a strong indication that one of the prime objectives of the legislation was to bring the provisions of the *Indian Act* into line with the new requirements of that section, particularly as they relate to gender equality.

[16]On July 8, 1985, the Band gave notice to the Minister that it intended to avail itself of the provisions of section 10 allowing it to assume control of its own Band List and that date, therefore, is the effective date of the coming into force of the Band's membership rules. Because Bill C-31 was technically in force but realistically unenforceable for over two months before it was adopted and because the Band wasted no time in assuming control of its own Band List, none of the 11 women who are in question here were able to have their names entered on the Band List by the Registrar prior to the date on which the Band took such control.

[17]The relevant provisions of the Band's membership rules are as follows:

3. Each of the following persons shall have a right to have his or her name entered in the Band List:

(a) any person who, but for the establishment of these rule, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band List required to be maintained in the Department and who, at any time after these rules come into force, either

(i) is lawfully resident on the reserve; or

(ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

...

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

...

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and as such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

[18]Subparagraphs 3(a)(i) and (ii) clearly create pre-conditions to membership for acquired rights individuals, referred to in this provision by reference to subsection 11(1) of the Act. Those individuals must either be resident on the reserve, or they must demonstrate a significant commitment to the Band. In addition, the process as described in the evidence and provided for in section 11 of the membership rules requires the completion of an application form some 43 pages in length and calling upon the applicant to write several essays as well as to submit to interviews.

[19]The question that arises from these provisions and counsel's submissions is whether the Act provides for an automatic entitlement to Band membership for women who had lost it by reason of the former paragraph 12(1)(b). If it does, then the pre-conditions established by the Band violate the legislation.

[20]Paragraph 6(1)(c) of the Act entitles, *inter alia*, women who lost their status and membership because they married non-Indian men to be registered as status Indians.

[21]Paragraph 11(1)(c) establishes, *inter alia*, an automatic entitlement for the women referred to in paragraph 6(1)(c) to have their names added to the Band List maintained in the Department.

[22]These two provisions establish both an entitlement to Indian status, and an entitlement to have one's name added to a Band List maintained by the Department. These provisions do not specifically address whether bands have the same obligation as the Department to add names to their Band List maintained by the Band itself pursuant to section 10.

[23]Subsection 10(4) attempts to address this issue by stipulating that nothing in a band's membership code can operate to deprive a person of her or his entitlement to registration "by reason only of" a situation that existed or an action that was taken before the rules came into force. For greater clarity, subsection 10(5) stipulates that subsection 10(4) applies to persons automatically entitled to membership pursuant to paragraph 11(1)(c), unless they subsequently cease to be entitled to membership.

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used in paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, *inter alia*, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see subsection 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively: a band may not create barriers to membership for those persons who are by law already deemed to be members.

[27] Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

[28] The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombie stated as follows (*House of Commons Debates*, Vol. II, March 1, 1985, page 2644):

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

[29] A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombie referred to the difference between status and membership. He stated that, while those persons who lost their status and membership should have both restored, the descendants of those persons are only automatically entitled to status (*House of Commons Debates*, *idem*, at page 2645):

This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and residency should be determined by the relationship with the Indian communities to which they belong.

[30] Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved (*House of Commons Debates, idem*, at page 2646):

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.

This is a difficult issue. It has been for many years. The challenge is striking. The fairest possible balance must be struck and I believe it has been struck in this Bill. I believe we have fulfilled the promise made by the Prime Minister in the Throne Speech that discrimination in the Indian Act would be ended.

[31] At a meeting of the Standing Committee on Indian Affairs and Northern Development, Minister Crombie again made it clear that, while the Bill works towards full Indian self-government, the Bill also has as a goal remedying past wrongs (*Minutes of Proceedings and Evidence on the Standing Committee on Indian Affairs and Northern Development*, Issue No. 12, March 7, 1985, at page 12:7):

Several members of this committee said during the debate on Friday that this bill is just a beginning and not an end in itself, but rather the beginning of a process aimed at full Indian self-government. I completely agree with that view. But before we can create the future, some of the wrongs of the past have to be corrected. That is, in part, the purpose of Bill C-31.

[32] Furthermore, in the Minister's letter to Chief Walter Twinn on September 26, 1985, in which he accepted the membership code, the Minister reminded Chief Twinn of subsections 10(4) and (5) of the Act, and stated as follows:

We are both aware that Parliament intended that those persons listed in paragraph 6(1)(c) would at least initially be part of the membership of a Band which maintains its own list. Read in isolation your membership rules would appear to create a prerequisite to membership of lawful residency or significant commitment to the Band. However, I trust that your membership rules will be read in conjunction with the Act so that the persons who are entitled to reinstatement to Band membership, as a result of the Act, will be placed on your Band List. The amendments were designed to strike a delicate balance between the right of individuals to Band membership and the right of Bands to control their membership. I sponsored the Band control of membership amendments with a strongly held trust that

Bands would fulfill their obligations and act fairly and reasonably. I believe you too feel this way, based on our past discussions.

[33] Sadly, it appears from the Band's subsequent actions that the Minister's "trust" was seriously misplaced. The very provisions of the Band's rules to which the Minister drew attention have, since their adoption, been invoked by the Band consistently and persistently to refuse membership to the 11 women in question. In fact, since 1985, the Band has only admitted three acquired rights women to membership, all of them apparently being sisters of the addressee of the Minister's letter.

[34] The quoted excerpts make it abundantly clear that Parliament intended to create an automatic right to Band membership for certain individuals, notwithstanding the fact that this would necessarily limit a band's control over its membership.

[35] In a very moving set of submissions on behalf of the plaintiff, Mrs. Twinn argued passionately that there were many significant problems with constructing the legislation as though it pits women's rights against Native rights. While I agree with Mrs. Twinn's concerns, the debates demonstrate that there existed at that time important differences between the positions of several groups affected by the legislation, and that the legislation was a result of Parliament's attempt to balance those different concerns. As such, while I agree wholeheartedly with Mrs. Twinn that there is nothing inherently contradictory between women's rights and Native rights, this legislation nevertheless sets out a regime for membership that recognizes women's rights at the expense of certain Native rights. Specifically, it entitles women who lost their status and band membership on account of marrying non-Indian men to automatic band membership.

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individuals of their automatic entitlement to membership unless they subsequently lose that entitlement. The Band's membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

[37] As a result, I find that the Band's application of its membership rules, in which pre-conditions have been created to membership, is in contravention of the *Indian Act*.

[38] While not necessarily conclusive, it seems that the Band itself takes the same view. Although on the hearing of the present motion, it vigorously asserted that it was in compliance with the Act, its statement of claim herein asserts without reservation that Bill C-31 has the effect of imposing on it members that it does not want. Paragraph 22 of the fresh as amended statement of claim reads as follows:

22. The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection. Furthermore, such membership rights were

granted to individuals without regard for their actual connection to or interest in the First Nation, and regardless of their individual desires or that of the First Nation, or the circumstances pertaining the First Nation. This exercise of power by Parliament was unprecedented in the predecessor legislation.

[39] I shall grant the mandatory injunction as requested and will specifically order that the names of the 11 known acquired rights women be added to the Band List and that they be accorded all the rights of membership in the Band.

[40] I reserve the question of costs for the Crown. If it seeks them, it should do so by moving pursuant to rule 369 of the *Federal Court Rules, 1998* [SOR/98-106]. While the interveners have made a useful contribution to the debate, I would not order any costs to or against them.

ORDER

The plaintiff and the persons on whose behalf she sues, being all the members of the Sawridge Band, are hereby ordered, pending a final resolution of the plaintiff's action, to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this order requires that the following persons, namely, Jeannette Nancy Boudreau, Elizabeth Courtoreille, Fleury Edward DeJong, Roseina Anna Lindberg, Cecile Yvonne Loyie, Elsie Flora Loyie, Rita Rose Mandel, Elizabeth Bernadette Poitras, Lillian Ann Marie Potskin, Margaret Ages Clara Ward and Mary Rachel L'Hirondelle be forthwith entered on the Band List of the Sawridge Band and be immediately accorded all the rights and privileges attaching to Band membership.

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By **LEXUM**

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Federation of Law Societies of Canada

TAB 3

Case Name:
Sawridge Band v. Canada

Between
Bertha L'hirondelle, suing on her own behalf and on
behalf of all other members of the Sawridge Band,
plaintiffs (appellants), and
Her Majesty the Queen, defendant (respondent), and
Native Council of Canada, Native Council of Canada
(Alberta), Native Women's Association of Canada, and
Non-status Indian Association of Alberta, interveners
(respondents)

[2004] F.C.J. No. 77

[2004] A.C.F. no 77

2004 FCA 16

2004 CAF 16

[2004] 3 F.C.R. 274

[2004] 3 R.C.F. 274

316 N.R. 332

[2004] 2 C.N.L.R. 316

128 A.C.W.S. (3d) 856

Docket A-170-03

Federal Court of Appeal
Calgary, Alberta

Rothstein, Noël and Malone JJ.A.

Heard: December 15 and 16, 2003.
Judgment: January 19, 2004.

(61 paras.)

Counsel:

Martin J. Henderson and Catherine Twinn, for the appellant.
E. James Kindrake and Kathleen Kohlman, for the respondent.
Kenneth Purchase, for the intervener, Native Council of Canada.
P. Jon Faulds, for the intervener, Native Council of Canada, Alberta.
Mary Eberts, for the intervener, Native Women's Association of Canada.
Michael J. Donaldson, for the intervener, Non-status Indian Association of Alberta.

The judgment of the Court was delivered by

1 **ROTHSTEIN J.A.:**-- By Order dated March 27, 2003, Hugessen J. of the Trial Division (as it then was) granted a mandatory interlocutory injunction sought by the Crown, requiring the appellants to enter or register on the Sawridge Band List the names of eleven individuals who, he found, had acquired the right to be members of the Sawridge Band before it took control of its Band list on July 8, 1985, and to accord the eleven individuals all the rights and privileges attaching to Band membership. The appellants now appeal that Order.

HISTORY

2 The background to this appeal may be briefly stated. An Act to amend the Indian Act, R.S.C. 1985, c. 32 (1st Supp.) [Bill C-31], was given Royal Assent on June 28, 1985. However, the relevant provisions of Bill C-31 were made retroactive to April 17, 1985, the date on which section 15, the equality guarantee, of the Canadian Charter of Rights and Freedoms [the Charter] came into force.

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

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

(a) a person who

...

(iii) is enfranchised, or

- (iv) is born of a marriage entered into after September 4, 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

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

- (b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.
- (2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if on the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

* * *

- 12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites :

- a) une personne qui, selon le cas :

...

- (iii) est émancipée,
- (iv) est née d'un mariage célébré après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a, b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e),

sauf si, étant une femme, cette personne est l'épouse ou la veuve de qu'un décrit à l'article 11;

- b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11.
- (2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e) peut faire l'objet d'une protestation dans les douze mois de l'addition; si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa.

4 Bill C-31 repealed these disqualifications and enacted the following provisions to allow those who had been stripped of their status to regain it:

- 6(1) Subject to section 7, a person is entitled to be registered if

...

- (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

...

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

- (c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph;

* * *

6. (1) Sous réserve de l'article 7, une personne a le droit d'être inscrite si elle remplit une des conditions suivantes :

...

- c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

...

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit enregistré dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes :

...

- c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

5 By an action originally commenced on January 15, 1986, the appellants claim a declaration that the provisions of Bill C-31 that confer an entitlement to Band membership are inconsistent with section 35 of the Constitution Act, 1982 and are, therefore, of no force and effect. The appellants say that an Indian Band's right to control its own membership is a constitutionally protected Abo-

original and treaty right and that legislation requiring a Band to admit persons to membership is therefore unconstitutional.

6 This litigation is now in its eighteenth year. By Notice of Motion dated November 1, 2002, the Crown applied for:

an interlocutory mandatory injunction, pending a final resolution of the Plaintiffs' action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

7 The basis of the Crown's application was that until legislation is found to be unconstitutional, it must be complied with. The mandatory injunction application was brought to require the Band to comply with the provisions of the Act unless and until they are determined to be unconstitutional. By Order dated March 27, 2003, Hugessen J. granted the requested injunction.

8 This Court was advised that, in order for the Band to comply with the Order of Hugessen J., the eleven individuals in question were entered on the Sawridge Band list. Nonetheless, the appellants submit that Hugessen J.'s Order was made in error and should be quashed.

ISSUES

9 In appealing the Order of Hugessen J., the appellants raise the following issues:

1. Does the Band's membership application process comply with the requirements of the Act?
2. Even if the Band has not complied with the Act, did Hugessen J. err in granting a mandatory interlocutory injunction because the Crown lacks standing and has not met the test for granting interlocutory injunctive relief.

APPELLANTS' SUBMISSIONS

10 The appellants say that the Band's membership code has been in effect since July 8, 1985 and that any person who wishes to become a member of the Band must apply for membership and satisfy the requirements of the membership code. They say that the eleven individuals in question have never applied for membership. As a result, there has been no refusal to admit them. The appellants submit that the code's requirement that all applicants for membership go through the application process is in accordance with the provisions of the Act. Because the Band is complying with the Act, there is no basis for granting a mandatory interlocutory injunction.

11 Even if the Band has not complied with the Act, the appellants say that Hugessen J. erred in granting a mandatory interlocutory injunction because the Crown has no standing to seek such an injunction. The appellants argue that there is no lis between the beneficiaries of the injunction and the appellants. The Crown has no interest or, at least, no sufficient legal interest in the remedy. Further, the Crown has not brought a proceeding seeking final relief of the nature sought in the mandatory interlocutory injunction application. In the absence of such a proceeding, the Court is without jurisdiction to grant a mandatory interlocutory injunction. Further, there is no statutory authority for the Crown to seek the relief in question. The appellants also argue that the Crown has not met the three-part test for the granting of an interlocutory injunction.

ARE THE APPELLANTS COMPLYING WITH THE INDIAN ACT?

The Appropriateness of Deciding a Legal Question in the Course of an Interlocutory Injunction Application

12 The question of whether the Sawridge Band membership code and application process are in compliance with the Act appears to have been first raised by the appellants in response to the Crown's injunction application. Indeed, the appellants' Fresh As Amended Statement of Claim would seem to acknowledge that, at least when it was drafted, the appellants were of the view that certain individuals could be entitled to membership in an Indian Band without the consent of the Band. Paragraph 22 of the Fresh as Amended Statement of Claim states in part:

The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection.

13 There is nothing in the appellants' Fresh As Amended Statement of Claim that would suggest that an issue in the litigation was whether the appellants were complying with the Act. The entire Fresh As Amended Statement of Claim appears to focus on challenging the constitutional validity of the Bill C-31 amendments to the Indian Act.

14 The Crown's Notice of Motion for a mandatory interlocutory injunction was based on the appellants' refusal to comply with the legislation pending determination of whether the legislation was constitutional. The Crown's assumption appears to have been that there was no dispute that, barring a finding of unconstitutionality, the legislation required the appellants to admit the eleven individuals to membership.

15 Be that as it may, the appellants say that the interpretation of the legislation and whether or not they are in compliance with it was always in contemplation in and relevant to this litigation. It was the appellants who raised the question of whether or not they were in compliance in response to the Crown's motion for injunction. It, therefore, had to be dealt with before the injunction application itself was addressed. The Crown and the interveners do not challenge the need to deal with the question and Hugessen J. certainly accepted that it was necessary to interpret the legislation and determine if the appellants were or were not in compliance with it.

16 Courts do not normally make determinations of law as a condition precedent to the granting of an interlocutory injunction. However, that is what occurred here. In the unusual circumstances of this case, I think it was appropriate for Hugessen J. to have made such a determination.

17 Although rule 220 was not expressly invoked, I would analogize the actions of Hugessen J. to determining a preliminary question of law. Rules 220(1) and (3) read as follows:

220. (1) A party may bring a motion before trial to request that the Court determine

(a) a question of law that may be relevant to an action;

...

- (3) A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

* * *

220. (1) Une partie peut, par voie de requête présentée avant l'instruction, demander à la Cour de statuer sur :

- a) tout point de droit qui peut être pertinent dans l'action;

...

- (3) La décision prise au sujet d'un point visé au paragraphe (1) est définitive aux fins de l'action, sous réserve de toute modification résultant d'un appel.

18 Although the appellants did not explicitly bring a motion under Rule 220, the need to determine the proper interpretation of the Act was implicit in their reply to the respondent's motion for a mandatory interlocutory injunction. It would be illogical for the appellants to raise the issue in defence to the injunction application and the Court not be able to deal with it. There is no suggestion that the question could not be decided because of disputed facts or for any other reason. It was raised by the appellants who said it was relevant to the action. Therefore, I think that Hugessen J. was able to, and did, make a preliminary determination of law that was final and conclusive for purposes of the action, subject to being varied on appeal.

Does the Band's Membership Application Process Comply with the Requirements of the Indian Act?

19 I turn to the question itself. Although the determination under appeal was made by a case management judge who must be given extremely wide latitude (see *Sawridge Band v. Canada*, [2002] 2 F.C. 346 at paragraph 11 (C.A.)), the determination is one of law. Where a substantive question of law is at issue, even if it is decided by a case management judge, the applicable standard of review will be correctness.

20 The appellants say there is no automatic entitlement to membership and that the Band's membership code is a legitimate means of controlling its own membership. They rely on subsections 10(4) and 10(5) of the Indian Act which provide:

10(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

- (5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.

* * *

10(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce que son nom soit consigné dans la liste de bande avant leur établissement du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet.

- (5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)c) avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné.

21 The appellants say that subsections 10(4) and (5) are clear and unambiguous and Hugessen J. was bound to apply these provisions. They submit the words "by reason only of" in subsection 10(4) mean that a band may establish membership rules as long as they do not expressly contravene any provisions of the Act. They assert that the Band's code does not do so. The code only requires that if an individual is not resident on the Reserve, an application must be made demonstrating, to the satisfaction of the Band Council, that the individual:

has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band (paragraph 3(a)(ii)).

22 With respect to subsection 10(5), the appellants say that the words "if that person does not subsequently cease to be entitled to have his name entered in the Band List" mean that the Band is given a discretion to establish membership rules that may disentitle an individual to membership in the Band. They submit that nothing in the Act precludes a band from establishing additional qualifications for membership.

23 The Crown, on the other hand, says that persons in the position of the individuals in this appeal have "acquired rights." I understand this argument to be that paragraph 11(1)(c) created an automatic entitlement for those persons to membership in the Indian Band with which they were previously connected. The Crown submits that subsection 10(4) prohibits a band from using its membership rules to create barriers to membership for such persons.

24 Hugessen J. was not satisfied that subsections 10(4) and (5) are as clear and unambiguous as the appellant suggests. He analyzed the provisions in the context of related provisions and agreed with the Crown.

25 The appellants seem to object to Hugessen J.'s contextual approach to statutory interpretation. However, all legislation must be read in context. Driedger's well known statement of the modern approach to statutory construction, adopted in countless cases such as *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 21, reads:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of

Parliament (Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87).

Hugessen J. interpreted subsections 10(4) and (5) in accordance with the modern approach and he was correct to do so.

26 I cannot improve on Hugessen J.'s statutory construction analysis and I quote the relevant portions of his reasons, which I endorse and adopt as my own:

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used by paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, inter alia, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively: a band may not create barriers to membership for those persons who are by law already deemed to be members.

[27] Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially

leaves to the band's discretion the admission of the descendants of women who "married out."

...

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual [sic] to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

27 I turn to the appellants' arguments in this Court.

28 The appellants assert that the description "acquired rights" used by Hugessen J. reads words into the Indian Act that are not there. The term "acquired rights" appears as a marginal note beside subsection 10(4). As such, it is not part of the enactment, but is inserted for convenience of reference only (Interpretation Act, R.S.C. 1985, c. I-21, s. 14). However, the term is a convenient "shorthand" to identify those individuals who, by reason of paragraph 11(1)(c), became entitled to automatic membership in the Indian Band with which they were connected. In other words, the instant paragraph 11(1)(c) came into force, i.e. April 17, 1985, these individuals were entitled to have their names entered on the membership list of their Band.

29 The appellants say that the words "by reason only of" in subsection 10(4) do not preclude an Indian Band from establishing a membership code, requiring persons who wish to be considered for membership to make application to the Band. I acknowledge that the words "by reason only of" could allow a band to create restrictions on continued membership for situations that arose or actions taken after the membership code came into force. However, the code cannot operate to deny membership to those individuals who come within paragraph 11(1)(c).

30 A band may enact membership rules applicable to all of its members. Yet subsections 10(4) and (5) restrict a band from enacting membership rules targeted only at individuals who, by reason of paragraph 11(1)(c), are entitled to membership. That distinction is not permitted by the Act.

31 The appellants raise three further objections. First, they say that their membership code is required because of "band shopping." However, in respect of persons entitled to membership under paragraph 11(1)(c), the issue of band shopping does not arise. Under paragraph 11(1)(c), the individuals in question are only entitled to membership in the band in which they would have been a member but for the pre-April 17, 1985 provisions of the Indian Act. In this case, those individuals would have been members of the Sawridge Band.

32 Second, the appellants submit that the opening words of subsection 11(1), "commencing on April 17, 1985," indicate a process and not an event, i.e. that there is no automatic membership in a

band and that indeed some persons may not wish to be members; rather, the word "commencing" only means that a person may apply at any time on or after April 17, 1985. I agree that there is no automatic membership. However, there is an automatic entitlement to membership. The words "commencing on April 17, 1985" only indicate that subsection 11(1) was not retroactive to before April 17, 1985. As of that date, the individuals in question in this appeal acquired an automatic entitlement to membership in the Sawridge Band.

33 Third, the appellants say that the individuals in question have not made application for membership. Hugessen J. dealt with this argument at paragraph 12 of his reasons:

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

34 The appellants submit, contrary to Hugessen J.'s finding, that there was no evidence that the individuals in question here wanted to become members of the Sawridge Band. A review of the record demonstrates ample evidence to support Hugessen J.'s finding. For example, by Sawridge Band Council Resolution of July 21, 1988, the Band Council acknowledged that "at least 164 people had expressed an interest in writing in making application for membership in the Band." A list of such persons was attached to the Band Council Resolution. Of the eleven individuals in question here, eight were included on that list. In addition, the record contains applications for Indian status and membership in the Sawridge Band made by a number of the individuals.

35 For these persons entitled to membership, a simple request to be included in the Band's membership list is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant. As Hugessen J. found, requiring acquired rights individuals to comply with the Sawridge Band membership code, in which preconditions had been created to membership, was in contravention of the Act

36 Of course, this finding has no bearing on the main issue raised by the appellants in this action, namely, whether the provisions entitling persons to membership in an Indian band are unconstitutional.

THE INJUNCTION APPLICATION

Standing

37 I turn to the injunction application. The appellants say that there was no lis between the Band and the eleven persons ordered by Hugessen J. to be included in the Band's Membership List. The eleven individuals are not parties to the main action. The appellants also say that the Crown is not entitled to seek interlocutory relief when it does not seek the same final relief.

38 I cannot accept the appellants' arguments. The Crown is the respondent in an application to have validly enacted legislation struck down on constitutional grounds. It is seeking an injunction, not only on behalf of the individuals denied the benefits of that legislation but on behalf of the pub-

lic interest in having the laws of Canada obeyed. The Crown, as represented by the Attorney General, has traditionally had standing to seek injunctions to ensure that public bodies, such as an Indian band council, follow the law (see Robert J. Sharpe, *Injunctions and Specific Performance*, loose-leaf (Aurora, ON: Canada Law Book, 2002) at paragraph 3.30; *Ontario (Attorney General) v. Ontario Teachers' Federation* (1997), 36 O.R. (3d) 367 at 371-72 (Gen. Div.)). Having regard to the Crown's standing at common law, statutory authority, contrary to the appellants' submission, is unnecessary. Hugessen J. was thus correct to find that the Crown had standing to seek the injunction.

39 I also cannot accept the argument that the Crown may not seek interlocutory relief because it has not sought the same final relief in this action. The Crown is defending an attack on the constitutionality of Bill C-31 and is seeking an interlocutory injunction to require compliance with it in the interim. If the Crown is successful in the main action, the result will be that the Sawridge Band will have to enter or register on its membership list the individuals who are the subject of the injunction application. The Crown therefore is seeking essentially the same relief on the injunction application as in the main action.

40 Further, section 44 of the Federal Courts Act, R.S.C. 1985, c. F-7, confers jurisdiction on the Federal Court to grant an injunction "in all cases in which it appears to the Court to be just or convenient to do so." The jurisdiction conferred by section 44 is extremely broad. In *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, the Supreme Court found that the Federal Court could grant injunctive relief even though there was no action pending before the Court as to the final resolution of the claim in issue. If section 44 confers jurisdiction on the Court to grant an injunction where it is not being asked to grant final relief, the Court surely has jurisdiction to grant an injunction where it will itself make a final determination on an interconnected issue. The requested injunction is therefore sufficiently connected to the final relief claimed by the Crown.

The Test for Granting an Interlocutory Injunction

41 The test for whether an interlocutory injunction should be granted was set out in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) and adopted by the Supreme Court in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 where, at 334, Sopinka and Cory JJ. summarized the test as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

42 The appellants submit that Hugessen J. erred in applying a reverse onus to the test. Since, as will be discussed below, the Crown has satisfied the traditional test, I do not need to consider whether the onus should be reversed.

Serious Question

43 In *RJR-Macdonald* at 337-38, the Court indicated that the threshold at the first branch is low and that the motions judge should proceed to the rest of the test unless the application is vexatious or frivolous.

44 The appellants say that in cases where a mandatory injunction is sought, the older pre-American Cyanamide test of showing a strong prima facie case for trial should continue to apply. They rely on an Ontario case, *Breen v. Farlow*, [1995] O.J. No. 2971 (Gen. Div.), in support of this proposition. Of course, that case is not binding on this Court. Furthermore, it has been questioned by subsequent Ontario decisions in which orders in the nature of a mandatory interlocutory injunction were issued (493680 Ontario Ltd. v. Morgan, [1996] O.J. No. 4776 (Gen. Div.); *Samoila v. Prudential of America General Insurance Co. (Canada)*, [1999] O.J. No. 2317 (S.C.J.)). In *Morgan*, Hockin J. stated that *RJR-Macdonald* had modified the old test, even for mandatory interlocutory injunctions (paragraph 27).

45 The jurisprudence of the Federal Court on this issue in recent years is divided. In *Relais Nordik Inc. v. Secunda Marine Services Ltd.* (1988), 24 F.T.R. 256 at paragraph 9, Pinard J. questioned the applicability of the American Cyanamide test to mandatory interlocutory injunctions. On the other hand, in *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.* (1990), 36 F.T.R. 98 at paragraph 15, MacKay J. accepted that the American Cyanamide test applied to mandatory injunctions in the same way as to prohibitory ones. Both of these cases were decided before the Supreme Court reaffirmed its approval of the American Cyanamide test in *RJR-Macdonald*. More recently, in *Patriquen v. Canada (Correctional Services)*, [2003] F.C.J. No. 1186, 2003 FC 927 at paragraphs 9-16, Blais J. followed the *RJR-Macdonald* test and found that there was a serious issue to be tried in an application for a mandatory interlocutory injunction (which he dismissed on the basis that the applicant had not shown irreparable harm).

46 Hugessen J. followed *Ansa International* and held that the *RJR-Macdonald* test should be applied to an interlocutory injunction application, whether it is prohibitory or mandatory. In light of *Sopinka* and *Cory JJ.*'s caution about the difficulties of engaging in an extensive analysis of the constitutionality of legislation at an interlocutory stage (*RJR-Macdonald* at 337), I think he was correct to do so. However, the fact that the Crown is asking the Court to require the appellants' to take positive action will have to be considered in assessing the balance of convenience.

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

Irreparable Harm

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

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

50 Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it (*Metropolitan Stores* at 143, quoting *Morgentaler v. Ackroyd* (1983), 42 O.R. (2d) 659 at 666-68 (H.C.)).

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

preventing discrimination by public bodies will be irreparably harmed if the requested injunction is denied and the appellants are able to continue to ignore their obligations under Bill C-31, pending a determination of its constitutionality.

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

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

Balance of Convenience

54 In *Metropolitan Stores* at 149, Beetz J. held that interlocutory injunctions should not be granted in public law cases, "unless, in the balance of convenience, the public interest is taken into consideration and given the weight it should carry." In this case, the public interest in seeing that laws are obeyed and that prior discrimination is remedied weighs in favour of granting the injunction requested by the Crown.

55 As discussed above and as Hugessen J. found, there is a clear public interest in seeing that legislation is obeyed until its application is stayed by court order or the legislation is set aside on final judgment. As well, Bill C-31 was designed to remedy the historic discrimination against Indian women and other Indians previously excluded from status under the Indian Act and band membership. There is therefore a public interest in seeing that the individuals in this case are able to reap the benefits of those amendments.

56 On the other hand, the Sawridge Band will suffer little or no damage by admitting nine elderly ladies and one gentleman to membership (the Court was advised that one of the eleven individuals had recently died). It is true that the Band is being asked to take the positive step of adding these individuals to its Band List but it is difficult to find hardship in requiring a public body to follow a law that, pending an ultimate determination of its constitutionality, is currently in force. Even if the Band provides the individuals with financial assistance on the basis of their membership, that harm can be remedied by damages against the Crown if the appellants subsequently succeed at trial. Therefore, as Hugessen J. found, the balance of convenience favours granting the injunction.

CONCLUSION

57 The appeal should be dismissed.

COSTS

58 The Crown has sought costs in this Court and in the Court below. The interveners have sought costs in this Court only.

59 In his Reasons for Order, Hugessen J. reserved the question of costs in favour of the Crown, indicating that the Crown should proceed by way of a motion for costs under rule 369. He awarded no costs to the interveners. It is not apparent from the record that the Crown made a costs motion under rule 369 and in the absence of an order for costs and an appeal of that order, I would not make any award of costs in the Court below.

60 As to costs in this Court, the Crown and interveners are to make submissions in writing, each not exceeding 3 pages, double-spaced, on or before 7 days from the date of these reasons. The appellants shall make submissions in writing, not exceeding 10 pages, double-spaced, on or before 14 days from the date of these reasons. The Court will, if requested, consider the award of a lump sum of costs inclusive of fees, disbursements, and in the case of the interveners, GST (See *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, [2003] 2 F.C. 451 (C.A.)).

61 The Judgment of the Court will be issued as soon as the matter of costs is determined.

ROTHSTEIN J.A.

NOËL J.A.:-- I agree.

MALONE J.A.:-- I agree.

cp/e/qw/qlklc/qlhcs

TAB 4

Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365

Date: 20120612
Docket: 1103 14112
Registry: Edmonton

2012 ABQB 365 (CanLII)

In the Matter of the *Trustee Act*, R.S.A. 2000, c. T-8, as amended; and

In the Matter of The Sawridge Band *Inter Vivos* Settlement Created by
Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known as
the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust")

Between:

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

Respondent

- and -

Public Trustee of Alberta

Applicant

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

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I. Introduction

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

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

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

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

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

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

II. The History of the 1985 Sawridge Trust

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

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

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

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

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

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

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

III. Application by the Public Trustee

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

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

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

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

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

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

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

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

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

A. Is a litigation representative necessary?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Which minors should the Public Trustee represent?

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

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

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

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

V. The Costs of the Public Trustee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Exclusive jurisdiction of the Federal Court of Canada

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

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

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

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

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

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

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

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

VII. Conclusion

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

Heard on the 5th day of April, 2012.

Dated at the City of Edmonton, Alberta this 12th day of June, 2012.

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

Appearances:

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

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

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

TAB 5

FORM N

Appeal Number: 1203-0230 AC

Q.B. Number: 1103 14112

IN THE COURT OF APPEAL OF ALBERTA

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")

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

APPELLANTS
(Respondents)

-AND-

PUBLIC TRUSTEE OF ALBERTA

RESPONDENT
(Applicant)

-AND-

SAWRIDGE FIRST NATION,
MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT,
ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY and MAURICE STONEY

INTERESTED PARTIES
(Interested Parties)

CIVIL NOTICE OF APPEAL

1. **APPEAL FROM:** Order

PORTION BEING APPEALED (R. 511): Paragraphs 2, 3 and 5.

DESCRIPTION OF THE ISSUES:

The appeal involves a decision of Justice Thomas to award full, and advance, indemnification of costs to the Public Trustee of Alberta to be paid out of the 1985 Sawridge Trust. In making the award, Justice Thomas concluded that the strict criteria for an award of advance costs as set out by the Supreme Court of Canada is not applicable in these proceedings. The Public Trustee was also exempted from liability to pay costs of other parties, and without argument and without reasons the Chambers Judge awarded the Public Trustee solicitor and client costs of the application.

The issues to be addressed are:

- (a) Did the Chambers Judge err in awarding full, and advance, indemnification for its costs on a solicitor and its own client basis to the Public Trustee of Alberta ("Public Trustee")?
- (b) Did the Chambers Judge err in exempting the Public Trustee of any responsibility to pay costs of the other parties in the proceeding?
- (c) Did the Chambers Judge err in granting the Public Trustee costs of the application on a solicitor and its own client basis?
- (d) Did the Chambers Judge err in concluding that the strict criteria set by the Supreme Court of Canada for the awarding of advance costs does not apply in these proceedings?
- (e) Did the Chambers Judge err in considering facts not properly before him in evidence?
- (f) Did the Chambers Judge err in concluding that the property of the 1985 Sawridge Trust is the equivalent of the assets under control of the Court in an insolvency?
- (g) Did the Chambers Judge err in awarding advance costs without any restriction or guidelines with respect to the amount of costs or the reasonableness of the same?

WHERE ORDER ORIGINATED:

The Order originated in the Court of Queen's Bench:

File Number: 1103 14112

Location: Edmonton

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

2. PARTICULARS OF ORDER APPEALED FROM:

Date Pronounced: June 12, 2012
Date Entered: September 20, 2012
Date Served: September 24, 2012
Attach Copy: Attached

3. **IF THE ORDER ORIGINATED IN THE COURT OF QUEEN'S BENCH, INDICATE THE TYPE OF ORDER THAT IS UNDER APPEAL:**

Interim order made in chambers, appointing Public Trustee as litigation representative and awarding Public Trustee with full, and advance, indemnification for its costs on a solicitor and its own client basis, exempting the Public Trustee with any responsibility to pay costs of the other parties in the proceeding and granting the Public Trustee costs of the application on a solicitor and its own client basis.

4. (a) **IS THIS APPEAL ABOUT PROCEDURE OR CUSTODY OR ACCESS ONLY UNDER PART J. OF THE CONSOLIDATED PRACTICE DIRECTIONS?**

Yes.

- (b) **IS THIS A FAMILY LAW APPEAL?**

No.

5. **HAS THIS FILE BEEN UNDER CASE MANAGEMENT IN THE COURT OF QUEEN'S BENCH?**

No formal case management Order has been issued however Justice Thomas has given a number of Procedural Orders to assist with determining the main issues in the action.

6. **IS THIS CASE RELATED TO ANY CASE PRESENTLY BEFORE OR ABOUT TO BE FILED IN THIS COURT?**

No.

7. **IS THE CONSTITUTIONAL VALIDITY OF AN ACT OR REGULATION BEING CHALLENGED AS A RESULT OF THIS APPEAL?**

No.

8. **HAS MEDIATION BEEN ATTEMPTED IN THE TRIAL COURT?**

No.

9. **ARE YOU WILLING TO PARTICIPATE IN JUDICIAL DISPUTE RESOLUTION WITH A VIEW TO SETTLEMENT OR CRYSTALLIZING OF ISSUES?**

Yes.

10. **WOULD CASE MANAGEMENT BE BENEFICIAL?**

To the extent we already have limited case management it is beneficial and we wish to continue.

11. **COULD THIS MATTER BE DECIDED WITHOUT ORAL ARGUMENT?**

No.

12. **SHOULD THE APPEAL BE EXPEDITED?**

No.

13. **IS THERE A STATUTORY BAN, BAN ON PUBLICATION OR AN ORDER OF THE COURT WHICH AFFECTS THE PRIVACY STATUS OF THIS FILE?**

No.

14. **APPELLANT'S ESTIMATED TIME OF ARGUMENT:**

45 minutes

15. **LIST RESPONDENT(S) OR COUNSEL FOR THE RESPONDENT(S):**

Ms. Janet L. Hutchison
Chamberlain Hutchison
Suite 155, Glenora Gates
10403 – 122 Street
Edmonton, Alberta T5N 4C1
Telephone: (780) 423-3661
Fax: (780) 426-1293
Solicitors for the Office of the
Public Trustee of Alberta

LIST INTERESTED PARTIES OR COUNSEL FOR THE INTERESTED PARTIES:

Mr. Edward H. Molstad, Q.C.
Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta T5J 4K1
Telephone: (780) 423-8506
Fax: (780) 423-2870
Counsel for Sawridge First Nation

Mr. E. James Kindrake
Department of Justice Canada
Prairie Region
EPCOR Tower
300, 10423 – 101st Street
Edmonton, Alberta T5H 0E7
Telephone: (780) 495-6427
Fax: (780) 495-6427
Solicitors for the Minister of Indian
Affairs and Northern Development


Ms. Priscilla Kennedy
Davis LLP
1201 Scotia Tower
10060 Jasper Avenue
Edmonton, AB T5J 4E5
Telephone: (780) 429-6830
Fax: (780) 702-4383
Solicitors for Aline Elizabeth Huzar,
June Martha Kolosky and
Maurice Stoney

NOTE: The address set out in section 15 will be considered the Respondent's address for service until such time as the Respondent files documentation specifying otherwise.

All parties listed in section 15 must be served with a filed copy of the Notice of Appeal within the prescribed appeal period. (*Rule* 510(1)).

Signed by Appellants' counsel on October 10, 2012.

REYNOLDS MIRTH RICHARDS & FARMER LLP

Per: 

MARCO S. PORETTI
Solicitors for the Appellants

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

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

ORDER

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

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

for Clerk of the Court

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

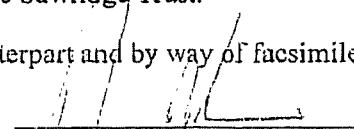
Date on which Judgment Pronounced: June 12, 2012

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

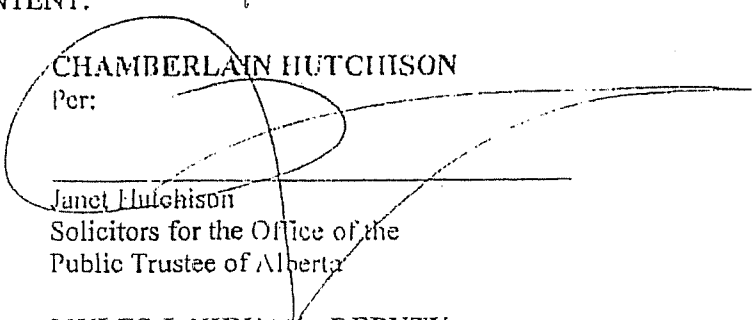
DAVIS LLP

Per:

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

CHAMBERLAIN HUTCHISON

Per:

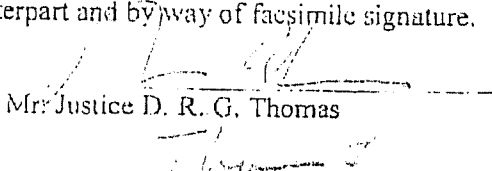

Janet Hutchison
Solicitors for the Office of the
Public Trustee of Alberta

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

Per:

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

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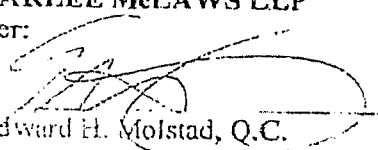
**REYNOLDS MIRTH RICHARDS &
FARMER LLP**

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

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Per:

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Solicitors for the Trustees

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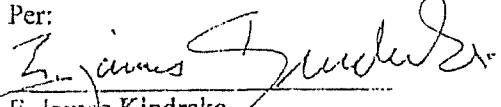
PARLEE McLAWS LLP

Per:

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

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

Per:



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

DAVIS LLP

Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June
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Mr. Justice D. R. G. Thomas

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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

Notice to the Respondent:

A Respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

Failure to appear at the appeal hearing may also lead to an order or judgment being made against the respondent in their absence.

Notice to all Parties:

Parties are required to provide an address for service if it is different than the address set out in this document.

Parties are also required to notify the Registrar of any change of address throughout the proceedings, to ensure that they can be contacted at all times.

An address for service within 30 kilometres of the office of the Registrar must be provided (R. 5(1)(b)(i)).



Appeal Number: 1203-0230 AC
Q.B. Number: 1103 14112

IN THE COURT OF APPEAL OF ALBERTA

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")

BETWEEN:

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

APPELLANTS
(Respondents)

-AND-

PUBLIC TRUSTEE OF ALBERTA

RESPONDENT
(Applicant)

-AND-

SAWRIDGE FIRST NATION, MINISTER OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT, ALINE ELIZABETH
HUZAR, JUNE MARTHA KOLOSKY and MAURICE STONEY

INTERESTED PARTIES
(Interested Parties)

CIVIL NOTICE OF APPEAL

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TAB 6

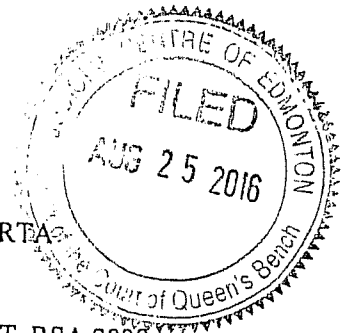
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COURT OF QUEEN'S BENCH OF ALBERTA
EDMONTON

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

Clerk's Stamp:



APPLICANTS

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")

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

DOCUMENT

CONSENT ORDER

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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DATE ON WHICH ORDER WAS PRONOUNCED: August 24, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, AB

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

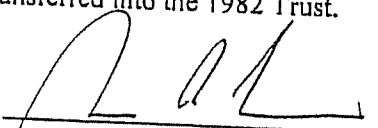
CONSENT ORDER

UPON HEARING representations from counsel for the Sawridge Trustees that the Sawridge Trustees have exhausted all reasonable options to obtain a complete documentary record regarding the transfer of assets from the 1982 Trust to the 1985 Trust; AND that the parties to this Consent Order have been given access to all documents regarding the transfer of assets from the 1982 Trust to the 1985 Trust that the Trustees have reviewed; AND that the Trustees are not

seeking an accounting of the assets transferred into the 1982 Trust; AND that the Trustees are not seeking an accounting of the assets transferred into the 1985 Trust; AND UPON noting that assets from the 1982 Trust were transferred into the 1985 Trust; AND UPON noting that little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.
2. Without limiting the generality of the foregoing, the Trustees' application and this Consent Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust.

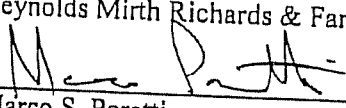

The Honourable Mr. Justice D.R.G. Thomas
Thomas J

CONSENTED TO BY:

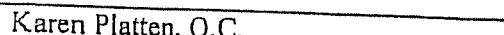

Dentons Canada LLP

Doris Bongra
Counsel for Sawridge Trustees

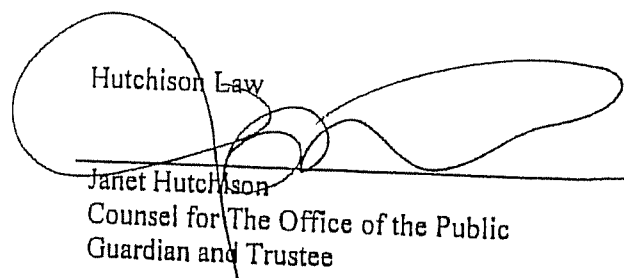
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McLennan Ross LLP


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

Hutchison Law


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

seeking an accounting of the assets transferred into the 1982 Trust; AND that the Trustees are not seeking an accounting of the assets transferred into the 1985 Trust; AND UPON noting that assets from the 1982 Trust were transferred into the 1985 Trust; AND UPON noting that little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.
2. Without limiting the generality of the foregoing, the Trustees' application and this Consent Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust.

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

CONSENTED TO BY:

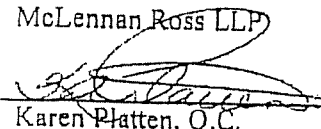

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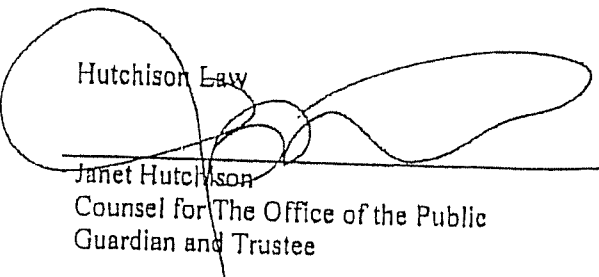
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Guardian and Trustee

TAB 7

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

2015 ABQB 799 (CanLII)

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

**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.*; *Eso 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 “crystallized” (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 2nd and 3rd 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.

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

TAB 8

COURT FILE NO.:

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

EDMONTON



IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c. T-8, as am.

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY
CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND NO. 19

DOCUMENT:

AFFIDAVIT OF Maurice Felix Stoney

ADDRESS FOR
SERVICE AND
CONTACT INFORMATION
OF PARTY FILING THIS
DOCUMENT

DLA PIPER (CANADA) LLP
1201 Scotia 2 Tower
10060 Jasper Avenue NW
Edmonton, AB, T5J 4E5
Attn: Priscilla Kennedy
Tel: 780.429.6830
Fax: 780.702.4383

Sworn May 17, 2016.

I, Maurice Stoney, of Slave Lake in the Province of Alberta MAKE OATH AND SAY:

1. All of my brothers and sisters were born to our parents William and Margaret Stoney who were both members of the Sawridge First Nation, and as such I have knowledge of the matters deposed to in this Affidavit unless stated to be made on information and belief, in which case, I do verily believe them to be true.
2. Aline Huzar and June Kolowsky are my cousins. Our grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895, attached as Exhibit "A" is the list of Kinodayoo's Band, Sawridge showing Johnny Stony as number 18. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band.

3. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* and attached as **Exhibit "B"** are letters dated April 6, 1903 and April 15, 1903 to the Deputy Superintendent General of Indian Affairs; attached as **Exhibit "C"** is a letter dated April 16, 1903 from Indian Affairs; attached as **Exhibit "D"** is a letter dated April 17, 1903 from Indian Affairs; attached as **Exhibit "E"** is a letter dated December 9, 1911 from the Assistant Indian Agent; attached as **Exhibit "F"** is a copy of a letter dated April 18, 1913; attached as **Exhibit "G"** is a copy of a letter dated September 9, 1912; and as **Exhibit "H"** is a copy of a letter dated August 19, 1920.
4. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8* where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920. It does not appear that Johnny Stoney agreed to this.
6. My father was William Stoney, was the son of Johnny Stoney, and he and my mother were members of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.
7. In 1944, my father William Stoney and all of his family including me, along with other members of Sawridge Band, were enfranchised because he was working and attached as **Exhibit "I"** is a copy of enfranchisement documents.
8. My parents had 15 children, 10 are still alive today: Billy born in 1940; myself born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. I have been involved with the Sawridge First Nation all of my life.
9. I applied to Sawridge in 1985 for recognition of my membership because I had been removed from membership by Canada after the enfranchisement of my father. I remained

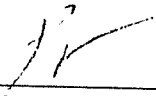
a descendant of the signatories to *Treaty No. 8* throughout all of the years when Canada treated me as "enfranchised". In 1982 when section 35 was passed as part of the *Constitution*, all of our family's *treaty rights* were recognized. I believe I am an acquired rights member recognized as an Registered Indian in 1985 when Sawridge's membership was governed by Indian Affairs. The Sawridge Membership Rules did not become effective until September 26, 1985 when the Minister of Indian Affairs and Northern Development wrote to Chief Walter Twinn reminding him that he must comply with recognition of all "acquired rights" members.

10. In March 1993, the Lesser Slave Lake Indian Regional Council, which included Sawridge Band, passed a Band Council Resolution, attached as **Exhibit "J"** to require Canada to provide lands in severalty as provided in *Treaty No. 8*, attached as **Exhibit "K"**, to all persons reinstated as Indians under Bill C-31.
11. In July, 1995, my cousins Aline Huzar and June Kolowsky, myself, and a number of other persons filed a Federal Court proceeding against Canada and Chief Walter Twinn *Huzar v. Canada*, Federal Court File No. T-1529-95, seeking to have our membership in the Sawridge Band be recognized and seeking a declaration that the membership application and rules of Sawridge were discriminatory and exclusionary. In *Huzar v. Canada*, [1997] F.C.J. 1556, Prothonotary Hargrave found that Sawridge had only accepted two individuals into band membership, both sisters of the Chief Walter Twinn, although there had been more than 200 applications. In June 2000, the Federal Court of Appeal (2000 CanLII 15589) struck this action as a claim for judicial review improperly brought as an action.
12. All of our applications for membership in Sawridge were ignored. On June 22, 2010 we submitted new applications and I called Sawridge many times thereafter to find out what was happening on my application. Finally in December, 2011 I was advised that the Council of Sawridge First Nation had denied my application for membership and attached as **Exhibit "L"** is the Registered letter from Sawridge. On December 19, 2011, I appealed this decision.
13. The Appeal Committee heard the appeal for my membership on April 21, 2012 with the appeal brought by my cousins Aline and June and provided their decision on May 7, 2012

upholding the decision of Chief and Council denying our membership. We filed a judicial review of this appeal decision in the Federal Court on May 11, 2012. This judicial review was denied.

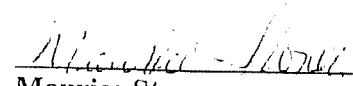
14. For thirty years, I have been seeking to have my membership in Sawridge be recognized. I was born on the Sawridge Reserve and was a member until at least 1944 when my father was enfranchised. All aboriginal and treaty rights were recognized and affirmed in 1982 and enfranchisement was removed in 1985 in Bill C-31 in order to have the *Indian Act* comply with the *Constitution Act, 1982*. I have lived beside the Sawridge Reserve all of my life. My grandfather's lands are now part of the Reserve.

SWORN BEFORE ME at the City)
of Edmonton, in the Province of Alberta)
this 17 day of May, 2016 .)
)
)
)



A Commissioner for Oaths in and for the
Province of Alberta

Patricia E.S.J. Kennedy
Barrister & Solicitor



Maurice Stoney

TAB A

401810
- Lesser Slave Lake Agency -

- Kinnonayo's Band, Sawridge -

Band No.	Name	Men	Women	Boys	Girls	Total
1	Francois Nesootasis	1	1	5	3	10
2	Isabelle Nesootasis		1		1	2
3	Lafrancoise Ward	1	1	5		7
4	Jean Baptiste Ward	1	1	4	2	8
5	John Ward	1	1			2
6	Benjamin Quarterville	1	1	2	3	7
7	Lion Ward	1	1	1		3
8	Louis Ward	1	1	1	1	4
9	Susan		1			1
10	Albert Nesootasis	1				1
11	Jean Baptiste Ward		1		2	3
12	Peggy Ward Powder		1			1
13	Mary Ward Potts		1			1
14	Edward Nesootasis	1	1	3	2	7
15	St. Germain Nesootasis		1			1
16	St. Pierre Nesootasis	1				1
17	St. Paul Nesootasis	1				1
18	Johnny Stony	1	1	1	4	7
19	Benjamin Petakin	1	1		2	4
20	Jos. Wenigoo's widow		1		1	2
21	Eustace Ward	1	1	1		3
22	Pierre Giroux	1	1	1		3
						79

TAB B

EXHIBIT "B"

Exhibit B
MAURICE STONEY
MAY 17 1964
[Signature]

Miscilla E. Kennedy
Prosecutor & Solicitor

Memorandum

No. 164027 /31.

Ottawa, 6th April, 1903.

The Deputy Supt. General,-

Referring to Mr. McKenna's letter of the 12th November, 1901, and to John Stephens mentioned therein, I beg to inform you that this man, generally known as Johnny Stony, asked me last season to survey a reserve for him at a point on Lesser Slave Lake River, about ten miles below the head of the River. The location he has selected, and built upon, is suitable in every respect for a reserve, the land being first class, and plenty of hay and timber is available. This Indian was formerly a member of Chief Alexander's band of Riviere qui Barre Reserve, No. 134, but now receives his Treaty money with Chief Kinsosayoo's band. As land has already been provided for this man at Riviere qui Barre the question arises has he the right to take up land elsewhere.

This man is an enterprising character, and is entirely self supporting, and his house is said to be the best winter stopping place between Athabasca Landing and Lesser Slave Lake. I would recommend that his wish to have a separate claim for himself and family should be favourably considered by the Department.

A. W. Ponton

No. 164027/S1.

Memo.

Ottawa, 15th April, 1903.

The Deputy Supt. General,-

With reference to Mr. Panton's memorandum hereunder of the 6th inst., I beg to state that John Stephens being a member of Chief Alexander's band is already provided with land in the reserve of that band, No. 134, at Riviere qui Barre, and holds his land in common with the other members of the band.

It is shown, however, that he has located himself at Lesser Slave Lake, where he has shown considerable energy, is entirely self-supporting, and is filling a necessary public need by providing a good winter stopping place between Athabasca Landing and Lesser Slave Lake. It would appear desirable that he should be encouraged.

If the land on which he ^{is} now located is not secured to him as an Indian Reserve it will run continual risk of being taken possession of by white men. There appears to be no objection why the said land should not be surveyed and confirmed as an Indian Reserve with the view of allowing John Stephens to continue in possession of it, or to give him eventually a location ticket covering the said land.

I think, however, that an equal area (240 acres) should be surrendered from the said reserve No. 134 and relinquished to the Crown in exchange for the proposed reserve at Lesser Slave Lake for John Stephens, and would recommend that the Indian Agent be instructed to lay the matter before the Indians of the said reserve, in order to obtain from them their consent to give a surrender of the portion for the purpose mentioned.

Samuel May
Chief of the Band

TAB C

EXHIBIT "C"

Exhibit "C" to the Affidavit
of
MAURICE STONEY
dated and made by 17th
MAY, 1912
at ✓
and for the Province of Ontario

Priscilla E.S.J. Kennedy
Registrar & Notarary

184, GP7/21



Ottawa, 18th April, 1903.

MEMORANDUM:

Mr. Forley, -

184-21
I spoke to Mr. Conroy about the matter referred to in Mr. Bray's memo. of the 15th instant. He does not know anything about the location occupied by Stephens, but says that he cannot of course be disturbed in his holding so long as he is in occupation. ~~and~~ that if he is granted a reserve in Treaty 8 he should relinquish his claim to land in reserve No. 134.

Forley
Secretary.

TAB D

EXHIBIT "D"

YD
MAURICE STONEY
MAY 16
1972

MAURICE STONEY
MAURICE STONEY

134, 02-11

Exd.

Ottawa, 17th April, 1905.

Sir :-

I am directed to inform you that John Stephens, who is a member of Chief Alexander's Band, No. 134, at Riviere du Barre, and who holds land in common with other members of that Band, has located himself at Lesser Slave Lake and is desirous of securing the land he is located upon. Under the terms of Treaty 8 covering this territory land may be provided in ~~accordance with~~ to the extent of 160 acres to each Indian to be conveyed with the proviso as to non-alienation without the consent of the Governor in Council.

I am to request that you will be good enough to state whether there will be any objection to the land located ~~to him~~ to the extent of 160 acres being set aside for him under the terms of the Treaty.

Your obedient servant,

J. D. McLean

Secretary.

The Secretary,

Dept. of the Interior,

Ottawa.

Indian Affairs. (RG 10, Volume 4007, file 244,593)

PUBLIC ARCHIVES

TAB E

EXHIBIT "E"

Official Exhibit - E
MAURICE STONEY.
17th
MAY 16
Secretary of the Public Accounts Commission for Canada
and for the Province of Alberta
Missella B.S.A. Kennedy
Registrar & Collector

~~393-506~~

INDIAN AGENT'S OFFICE,

Lower Slave Lake Agency -

Grouard, 9th December, 1911

401612

I beg to call your attention to the case of Johnny Stony, formerly of Alexander's Band, Edmonton Agency, and transferred to this Agency in 1910 and paid under No. 10, Sawridge Band.

Stony here to this district in the fall of
1895. In 1896 he married an Indian woman from the
Lesser Slave Lake Band and settled on the Lesser
Slave River, near Fort Ross-Sanridge. He has built
houses and stables and has been keeping a "stopping
place" for freighters for a number of years. He is
an enterprising man and has been making a good living,
without any assistance from the Government, chiefly
from the stopping place referred to.

The land, on which he settled, has since been surveyed and, as he has no title of any kind, he is afraid that some one will locate on it and he will be forced to move, and thus doom his chief source of livelihood.

He requests therefore that the NE $\frac{1}{4}$ of Section 6, Township No. 73, Range 4, on which he has been residing; and the NW $\frac{1}{4}$ of Section 1, Township No. 73, Range 6, which he wishes for hay land, be ~~given him for a Reserve for himself and family.~~

The Secretary,

Department of Indian Affairs,
Ottawa

401612

family, which now consists of himself, wife, 1 boy and 4 girls.

If Section 11, Township No. 73, Range 6, west of the 8th Meridian, is granted to the Sawridge Band as part of their Reserve (as referred to in my letter of the 8th inst.) Stony could cut hay there and it would be unnecessary to give him the latter quarter section 3-1 for.

Your obedient servant,

Wm. H. H. H.

Asst. Indian Agent

Indian Affairs, ()

TAB F

EXHIBIT "F"

MAURICE STONEY
17th
MAY 16
Secretary of the Board of Directors
and for the Province of Alberta
Miss M. J. Kennedy
Secretary & Solicitor

1. 2 1131-6

EX-11

Ottawa, April 18, 1915.

Sir:-

*Rich
8/11/15*

With further reference to letter from your Department dated May 9th last No. 226,4255 and to letter from this Department to the Secretary of the Department of the Interior dated September 27th last, re amending your plans under separate cover showing the lands selected last season by Mr. J. K. McLean D. E. S. for the Sarridge Band of Indians on Lesser Slave Lake in Treaty No. 8.

The said lands are in two reserves, -
No. 1800 consists of Section 6 Tp. 73, R. 4, W of 5th M. N.W. 1/4 Sec. 1, West 1/2 Sec. 2, N.E. 1/4 Sec. 3, S.E. 1/4 Sec. 4, and the S. E. 1/4 Sec. 6, all in Tp. 73, R. 5 W. 5th M. and the N.W. 1/4 Sec. 32, East 1/2 of Sec. 33, S. W. 1/4 and N.E. 1/4 Sec. 34, all in Tp. 72, R. 5, W. 5th M.

No. 1801 is in Tp. 73, R. 6, W. 5th M. unsurveyed and consists of the N. 1/4 Sec. 2, N. 1/4 Sec. 4, N. 1/4 Sec. 5, Sec. 6, Prac. Sec. 9, Prac. Sec. 10, Prac. Sec. 16, Prac. Sec. 17.

* The above were surveyed, and as these Indians are still in possession application is also made for the N. 1/4 of Sec. 18 and Prac. Sec. 19 in the same township.

I shall feel obliged if you will have the necessary

S. Deville, Esq.,

Surveyor General,

Indian Affairs (S. D.), Volume 777, File 2111-6

-2-

necessary action taken to have an Order-in-Council passed
confirming these Reserves.

Your obedient servant,

Ed. J. D. [Signature]

Assistant Deputy and Secretary.

Indian Affairs. (C) D. 1000. 1000. 1000. 1000. 1000.

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES

TAB G

EXHIBIT "G"

Placed Exhibit 6
MAURICE STONEY
17th
MAY 16
in and for the Province of Quebec
Christella B.S.J. Kennedy
Barrister & Solicitor

39506

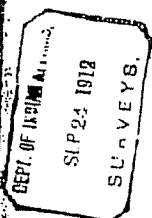
393506

F. 27131-602234

Sawridge, Alberta

9th Sept 1912

To



With reference to the lands reserved for
the Sawridge Band at the East End of Lesser
Slave Lake I beg to state that out of the surveyed
Townships the following $\frac{1}{4}$ sections have been
selected, Tp 72 R 5 N of 5th M - (Sec 32 N.W. $\frac{1}{4}$)
(Sec 33 East $\frac{1}{4}$) (Sec 34, S.W. $\frac{1}{4}$ and N.E. $\frac{1}{4}$)
Tp 73 R 5 N of 5th M - (Sec one N.W. $\frac{1}{4}$) (Sec 2 N.E. $\frac{1}{4}$)
(Sec 3, S.E. $\frac{1}{4}$) (Sec 4 S.E. $\frac{1}{4}$) (Sec 6 S.E. $\frac{1}{4}$)
Tp 73 R 4 N of 5th M, whole of Sec 6.

As some individuals wish to locate and examine
these lands reserved for the Indians but not taken,
it might be well to notify the Department of the
Interior what quarter sections have been selected.
I enclose two plans showing the lands reserved
and those selected are marked with a cross
covering the $\frac{1}{4}$ section. The other marked $\frac{1}{4}$ section
were selected but after examination declined.

I am at present surveying the triangular
block in Tp 73 R 6 W of 5th M, north of and including
the N.E. $\frac{1}{4}$ of Sec 3, 4, and 5. A plan will be sent when
completed as it is unsurveyed Territory.

This Band also want about 5 sections near
Swan River to be chosen when I reach there
with my surveys.

With reference to Sec 6 Tp 73 R 4 I may
say that ~~Indian~~ a member of the Sawridge
Band has lived on this section near the $\frac{1}{4}$ section
on the East limit for about ~~20 years~~ and that
he keeps a stopping place which is very well

Shortly after Stony located here a half breed named Michel Proulx also located near and fixed in fresh cloth was on Level Subdivision mine in Sec 6. The one being on the west half was the other on the East.

Regarding the North West 1/4 of Sec one T^p 73 R²⁵ N⁹
a white man ^{named George H. Smith} who operates no interest
located the half of said 12 acres etc. North
by Strip. and then broken about 20 acres at
the North West corner being tract legal described
13. Sec one. The timber stripped was only fish forkay
and this legal But timber is higher and valuable
for crop. It requires considerable work to break this
20 acres as there must have been quite a lot of
willow scrub on it he states that it took 2 horses
and 3 men five weeks but I do not think they
could have worked very hard from the above made.

3

now I think \$750 an acre or \$15000 would be
a good price for this Breach. It will
not be of much benefit to the Indians unless
they form it. He objected to giving it up.
The Joseph Bouchard has no legal claim
as he did not file, but states that he
went on and broke on being told by
former land agent Tomkins, at Graven
that he would be allowed to purchase
the Breach area north of the Lewis & Clark
River. However, he made no attempt to purchase
and now that the land is set apart for Indian
purposes, offers to purchase the
Breach as the first legal subdivision
at \$750 per acre including the 15.12
I did not get the title of the Breach but
it looks as though it was done during
the last session.

Yours obedient servant

Joseph Bouchard
Secretary

Department of Indian Affairs

Ottawa
Canada

TAB H

EXHIBIT "H"

Subscribed and sworn to before me this 17th day of MAY 1964
at New York City, New York
My commission expires _____
Notary Public in and for the Province of New York
Margaretta B. J. Kennedy
Barister & Solicitor

393506

Ottawa, 19th August 1922.

Sir,-

With reference to your letter of the 14th August No. 1735121, I have to say that Mr. John Stoney (Johanne Stoney) is a Treaty Indian, No. 12 of the Sawridge Band. He can continue to occupy the land referred to in the N.E. 1/4 6-73-4-45.4., which is a part of the Sawridge Indian reserve.

Your obedient servant,

L. M. Macdonald

For Assistant Deputy and Secretary.

L.B.
The Secretary,

W. B. 200
Department of the Interior,
Ottawa, Ont.

Indian Affairs. (N. 10, Volume 7778, File 10131-4)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

TAB I

EXHIBIT "I"

Subscribed and sworn to before me at the
County of _____
City of _____
MAURECE STONEY
MAY 17th 1962
Attest my Public Seal and hand this _____
day of _____ 1962
in and for the Province of Alberta

Priscilla E.S.J. Kennedy
Barrister & Solicitor

FILE NO. 8131-38 DORMANT

VOLUME

INDIAN AFFAIRS BRANCH

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

SUBJECT ENFRANCHISEMENT

WM. J. STONEY (NAME) Treaty # 59

(BAND) 5A2 8189

DORMANT

LESSER SLAVE LAKE

(BAND NUMBER)

(AGENCY)

DORMANT

VOL.

FILE NO. 8131-38

BAND NUMBER

REFERRED TO	BY	REMARKS	DATE	DISPOSAL			Vic Record
				PA OR BP	BY	DATE	
21/2	f	046129	28/8/60	PA	SA2	21/8/60	
T1	SA2	046129	27/8/60	PA	T-1	21-1-60	
SA2	4	021539	22/8/60	PA	SA2	22/8/60	
T1	4	1 PER BE 21/3	22/7/60	PA	T-1	23-9-60	
<div style="border: 1px solid black; border-radius: 50%; width: 150px; height: 100px; display: flex; align-items: center; justify-content: center; margin: 0 auto;"> <p>7291</p> </div> <p>Discharge Certificate</p>							
							2189

PUBLIC ARCHIVES
RECORDS CENTRE

DO NOT WRITE BELOW THIS LINE

7131-21

Department of Mines
JUL 7 1942
RECEIVED

⑦

?

William J. Stoney
No. 59
Sawridge Sand

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

8131-39

Ottawa, August 10, 1943.

END

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

An application for enfranchisement has been received from William J. Stoney, No. 89 of the Sawridge Band of Indians, presently residing in Slave Lake, Alberta.

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



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

↑
Encls.

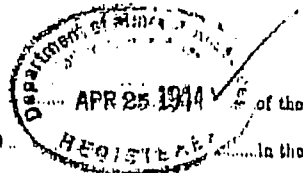
8131 - 38

APPLICATION FOR ENFRANCHISEMENT

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

I, William J. Stoney,

Slave Lake



of the

Province of

Alberta,

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

1. That I am a member of the Sawridge Band of
Indians situate in the County of in the Province
of Alberta;

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

3. That I am at present employed at Mitsem

Northern Alberta Railways

~~and that I am not a member of any other band or tribe of Indians~~
~~and that I am not a member of any other band or tribe of Indians~~ — ?

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

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

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

My wife

Margaret Stoney

(Name in full)

My SONS

(Names in full)

Dates of birth

Alvin Joseph Stoney May 7th 1943
Maurice Felix Stoney Sept 24th 1941

My DAUGHTERS

(Names in full)

Dates of birth

DATED at Slave Lake Alberta this nineteenth day of April 1948

WITNESS:

W. J. Stoney } *William J. Stoney*
SIGNATURE OF APPLICANT

APPROVAL OF APPLICANT'S WIFE

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

WITNESS:

W. J. Stoney } X *Margaret M. Stoney*
SIGNATURE OF WIFE

CERTIFICATE OF INDIAN AGENT

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

P. J. Deemer
INDIAN AGENT

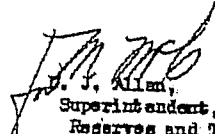
Ottawa, April 29, 1944.

EX'D.
A

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

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

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


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

CERTIFICATE AS TO FITNESS FOR ENFRANCHISEMENT

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

County of

I, Bertram Watkins

of the

Hamlet

of Slave Lake

in the

County of

in the

To wit

Province of Alberta

Make oath and say

1. That I am a ~~Resident of the Hamlet of Slave Lake~~ residing in the Hamlet of Slave Lake in the County of in the Province of Alberta

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

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

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

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

SWORN before me at the Hamlet

of Slave Lake

the County of Alberta

18th day of April

1944

in
this

Bertram Watkins

G. E. H. Patrick, J. P.

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

Form No. 211.

RELEASE AND SURRENDER

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

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

Knows all men by these presents that I, William T. Stoney, 759

Band 4

....., a member of the Sawridge Band

of Indians, whose reserve is located in the County of

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

..... Ninety-four dollars and twenty-seven cents (\$94.27)

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

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

Mr Wier

Margaret Stoney
(Name in full)

(OTHER SIDE)

Form No. 312



Mr Sons

(Names in full)

Dates of birth

Alvin Joseph Stoney

May 7th 1943

Maurice Felix Stoney

Sept 24th 1941

My DAUGHTERS

(Names in full)

Dates of birth

Slave Lake Alta.

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

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

William J. Stoney

Robert Stoney

Comm. for Oaths for Prov. Alberta

Ottawa, July 7, 1944.

PRECIS.

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

59

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

(2) Miss Ruggie

Ottawa, August 24, 1944.

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

With reference to the application of William J. Stoney of the Sewridge Band of Indians for enfranchisement, I wish to inform you that by Order in Council dated August 1, 1944, this man was declared enfranchised in pursuance of the provisions of Section 14 of the Indian Act. (7)

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

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

DA

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

Encls.

with response to Stoney
Stoney

REPORT

No. 8131-38

INDIAN AFFAIRS BRANCH

DEPARTMENT OF MINES AND RESOURCES

LESSER SLAVE LAKE

EMBRANCHISEMENT

WM. J. STONEY

8, 10

TAB J

EXHIBIT "J"

Attest to the fact that the
MARIE STONEY
of MAY 17th 1916
A Notary Public in and for the Province of Alberta

Phyllis E.S.J. Kennedy
Notary Public



Indian and Northern
Affairs Canada
Indien et Inuit Affairs

Affaires indiennes
et du Nord Canada
Affaires indiennes et inuit

BAND COUNCIL RESOLUTION
RÉSOLUTION DE CONSEIL DE BANDE

Chronological No. - Numéro consécutif

File Reference - N° de réf. du dossier

NOTE: The words "From our Band Funds", "Capita", or "Revenue", whichever is the case, must appear in all resolutions requesting expenditures from Band Funds.
NOTA: Les mots "des fonds de notre bande", "Capita", ou "revenu", selon le cas doivent paraître dans toutes les résolutions portant sur des dépenses à même les fonds des bandes.

THE COUNCIL OF THE LE CONSEIL DE LA BANDE INDIENNE		Current Capital Balance Solde de capital	\$ _____
AGENCY DISTRICT Lesser Slave Lake Indian Regional Council		Committed - Engagé	\$ _____
PROVINCE Alberta		Current Revenue balance Solde de revenu	\$ _____
PLACE NOM DE L'ENDROIT High Prairie		Committed - Engagé	\$ _____
DATE 1st March AD 19 93 DAY - JOUR MONTH - MOIS YEAR - ANNÉE			

DO HEREDY RESOLVE;
DÉCIDE, PAR LES PRÉSENTES:

WHEREAS pursuant to Bill C-31 (1985) the Government of Canada has entitled certain individuals to be reinstated to Indian Status; and

WHEREAS these individuals represent a significant and substantial increase in the Indian population in Canada; and

WHEREAS these individuals are seeking land; and

NOW THEREFORE BE IT RESOLVED that the Lesser Slave Lake Indian Regional Council supports the requests by persons who have legitimately and lawfully been reinstated to Indian Status pursuant to Bill C-31 (1985) for lands. Provided that:

1. Any lands given to such individuals shall be set apart by the Government of Canada out of government owned lands and not out of any lands reserved for Indians;
2. Such lands must be separate and apart from any lands reserved for Indians and not connected or attached in any way to any reserve now in existence.
3. The persons taking such lands are prohibited from taking the names of any Bands now in existence in Cree or English.

A quorum for this Bande
Pour cette bande le quorum est

consists of
fixé à

Council Members
Membres du Conseil

Frank Halcyon
(Councillor - conseiller)
[Signature]
(Councillor - conseiller)

[Signature]
(Chief - Chef)
[Signature]
(Councillor - conseiller)
[Signature]
(Councillor - conseiller)

(Councillor - conseiller)

(Councillor - conseiller)

TAB K

EXHIBIT "K"

Witnessed by K
MAURICE STONEY
17th
MAY 16
A Notary Public, A Commissioner for Oaths,
in and for the Province of Alberta
Rosalie E.S.J. Kennedy
Barrister & Solicitor

TREATY No. 8

STATEMENT of Indians paid Annuity and Gratuity, &c.,—Concluded.

	Chiefs	Headmen	Other Indians	Cash Paid each Band	Total Cash Paid
FORT MANUWRAY.				\$ etc.	\$ etc.
Cree and Chipewyan Bands—					
Headmen		2		44 00	
Other Indians			130	1,560 00	1,604 00
WABESCOU.					
Cree Band—					
Chief	1			32 00	
Headmen			191	2,292 00	2,412 00
Other Indians					
Total	7	23	2,187		26,974 00

SUMMARY.

7 Chiefs at \$32	\$ 224 00
23 Headmen at \$22	506 00
2,187 Other Indians at \$12	26,224 00
2,217	\$ 26,974 00

Certified correct,

DAVID LAIRD,
J. H. ROSS,
J. A. J. McKENNA,
Indian Treaty Commissioners.

Treaty No. 8

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, between Her most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners the Honourable David Laird, of Winnipeg, Manitoba, Indian Commissioner for the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honourable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part; and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honourable Superintendent General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in this present year 1899, to deliberate upon certain matters of interest of Her Most Gracious Majesty, of the one part, and the said Indians of the other.

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty, and arrange with them, so that

there may be peace and good will between them and Her Majesty's other subjects, and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by Her Majesty's Commissioners to name certain Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to Her Majesty for the faithful performance by their respective bands of such obligations as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and Headmen who have subscribed hereto.

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say:

Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northeasterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.

AND ALSO the said Indian rights, titles and privileges whatsoever to all other lands wherever situated in the Northwest Territories, British Columbia, or in any other portion of the Dominion of Canada.

TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors for ever.

And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid

reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.

It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.

And with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-two dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.

Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to each Chief twenty-five dollars, each Headman, not to exceed four to a large Band and two to a small Band, fifteen dollars, and to every other Indian, of whatever age, five dollars, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent, DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.

THEY PROMISE AND ENGAGE that they will, in all respects, obey and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of the said ceded

territory; and that they will not molest the person or property of any Inhabitant of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.

IN WITNESS WHEREOF Her Majesty's said Commissioners and the Cree Chief and Headmen of Lesser Slave Lake and the adjacent territory, HAVE HEREUNTO SET THEIR HANDS at Lesser Slave Lake on the twenty-first day of June, in the year herein first above written.

Signed by the parties
hereto, in the
presence of the
undersigned wit-
nesses, the same having
been first
explained to the Indians
by
Albert Tate and Samuel
Cun-
ningham, Interpreters.

Father A. LACOMBE,
GEO. HOLMES,
E. GROUARD, O.M.I.
W. G. WHITE,
JAMES WALKER,
J. ARTHUR COTÉ,
A. E. SNYDER, Insp.
N.W.M.P.,
H. B. ROUND,
HARRISON S. YOUNG,
J. F. PRUD'HOMME,
J. W. MARTIN,
C. MAIR,
H. A. CONROY
PIERRE
DESCHAMBEAULT,
J. H. PICARD,
RICHARD SECORD,
M. MCCAULEY.

DAVID LAIRD, Treaty
Commissioner,
J.A.J. MCKENNA, Treaty
Commissioner,
J. H. ROSS, Treaty
Commissioner,
his
KEE NOO SHAY OO x
Chief,
mark
his
MOOSTOOS x
Headman,
mark
his
FELIX GIROUX x
Headman,
mark
his
WEE CHEE WAY SIS x
Headman,
mark
his
CHARLES NEE SUE TA
SIS x Headman,
mark
his
CAPTAIN x Headman,
from Sturgeon
mark Lake.

In witness whereof the Chairman of Her Majesty's Commissioners and the Headman of the Indians of Peace River Landing and the adjacent territory, in behalf of himself and the Indians whom he represents, have hereunto set their hands at the said Peace River Landing on the first day of July in the year of Our Lord one thousand eight hundred and ninety-nine.

Signed by the parties
hereto, in the
presence of the
undersigned wit-
nesses, the same having
been first

DAVID LAIRD, *Chairman
of Indian
Treaty Commissioners,*
his
DUNCAN x TASTAOOSTS,

explained to the Indians
by
Father A. Lacombe and
John
Boucher, Interpreters.

*Headman of
mark Crees*

Father A. LACOMBE,
E. GROUARD, O.M.I., Ev.
d'Ibora,
GEO. HOLMES,
HENRY MCCORRISTER,
K. F. ANDERSON, SGT.,
N.W.M.P.
PIERRE
DESCHAMBEAULT,
H. A. CONROY
T.A. BRICK,
HARRISON S. YOUNG,
J. W. MARTIN,
DAVID CURRY.

In witness whereof the Chairman of Her Majesty's Commissioners and the Chief and Headmen of the Beaver and Headman of the Crees and other Indians of Vermillion and the adjacent territory, in behalf of themselves and the Indians whom they represent, have hereunto set their hands at Vermillion on the eighth day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Signed by the parties
hereto, in the
presence of the
undersigned wit-
nesses, the same having
been first
explained to the Indians
by
Father A. Lacombe and
John
Boucher, Interpreters.

Father A. LACOMBE,
E. GROUARD, O.M.I., Ev.
d'Ibora,
MALCOLM SCOTT,
F.D. WILSON, H.B. Co.,
H. A. CONROY
PIERRE
DESCHAMBEAULT,
HARRISON S. YOUNG,
J. W. MARTIN,
K. F. ANDERSON, SGT.,
N.W.M.P.
A.P. CLARKE,
CHAS. H. STUART WADE,
K. F. ANDERSON, SGT.,
N.W.M.P.

DAVID LAIRD, *Chairman of
Indian Treaty Coms.,*
his
AMBROSE x TETE NOIRE,
Chief Beaver
mark *Indians.*
his
PIERROT x FOURNIER,
Headman Beaver
mark *Indians.*
his *Headman*
KUIS KUIS KOW CA
POOHOO x Cree
mark *Indians.*

TAB L

EXHIBIT "L"

MAURICE STONEY
MAY 17th 1964
Secretary Public, A Commission for Public
in and for the Province of Ontario
Coscilia G.S.J. Kennedy
Barrister & Solicitor



Rec'd
Dec 12/11

(3)

50-17/14

REGISTERED MAIL

December 7, 2011

Mr. Maurice Stoney
500-4th Street NW
Slave Lake, Alberta
T0G 2A1

Dear Sir:

RE: Membership Application

Your application for membership in the Sawridge First Nation has been reviewed by the Council. **Please take notice that the Council has denied your application for Membership in the Sawridge First Nation.** This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

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

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,

SAWRIDGE FIRST NATION

Per:

Michael R. McKinney
Executive Director