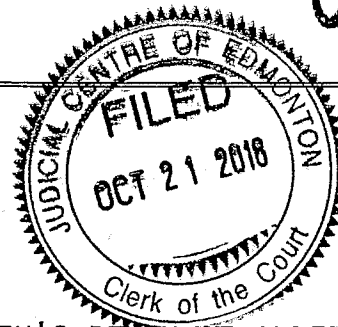


ORIGINAL



COURT FILE NUMBER: 1103 14112

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

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

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS  
SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN,  
OF THE SAWRIDGE INDIAN BAND NO. 19

-----  
QUESTIONING ON AFFIDAVIT

OF

MAURICE STONEY  
-----

P. E. Kennedy, Ms.

For Maurice Stoney

D. C. Bonora, Ms.  
E. M. Lafuente, Ms.

For the Trustees of the  
Sawridge Band Inter Vivos  
Settlement

C. C. Osualdini, Ms.

For Cathrine Twinn

Joanne Lawrence, CSR(A)

Court Reporter

Edmonton, Alberta  
September 23, 2016

A.C.E. Reporting Services Inc.  
Certified Court Reporters

SCANNED

### INDEX OF UNDERTAKINGS

(Undertakings are provided for your assistance.  
Counsel's records may differ. Please check to  
ensure that all undertakings have been listed  
according to your records.)

\*\*\*\*\*

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	To make best efforts to provide a copy of the application for band membership that was submitted in 1985.	40

### INDEX OF EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Letter dated July 2, 1943	17
D-A	Federal Court of Appeal Decision by	28
FOR	Justice Evans on Court Docket Number	
IDENT	docket Number A-326-98	
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# INDEX OF OBJECTIONS

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Counsel's records may differ. Please check to  
ensure that all objections have been listed  
according to your records.)

\*\*\*\*\*

<u>OBJECTION</u>	<u>PAGE</u>
Sir, did you read the Federal Court of Appeal decision?	27
Sir, did you read the decision of Justice Barnes?	32
Sir, when you certified that everything was true on page 8 of the application, were you being truthful?	43
Sir, I'm going to put to you that there were costs in the amount of \$2,995.65 plus interest payable to Sawridge First Nation as a result of the judicial review application and that you have not paid those costs.	48
Did you appeal this to the Federal Court of Appeal?	50
Sir, I'm going to put to you that you were ordered to pay costs in the amount of \$898.70 on June 14th of 2016 to Sawridge First Nation, and these costs are not paid. Would you agree with that?	51

Sir, do you still owe costs to the trustees for 53  
that application to the Court of Appeal?

Okay. And, sir, did you also bring a human 55  
rights complaint against Sawridge First Nation?

Would you agree with me, sir, that you brought 57  
the same matters that you had brought to the  
Federal Court previously to the Canadian Human  
Rights Commission?

Sir, do you understand that, regarding the 1985 58  
trust, "beneficiaries" means all persons who  
qualified as members of the Sawridge Indian  
Band pursuant to the provisions of the *Indian*  
*Act* as of April 15th, 1982?

Did you qualify as a member of the band on 58  
April 15th, 1982?

Had anything changed as of April 15th, 1982, 60  
where you were identified that -- sorry, you  
were advised that you qualified as a member  
after having become enfranchised in 1944?

Sir, do you understand that with respect to the 60  
1986 trust, beneficiary status is restricted to  
members?

Sir, have you ever read the 1985 trust? 61

Sir, have you read the 1986 trust deed? 62

Okay. Sir, going back to paragraph 12 of your 64  
Affidavit, we talked about this first sentence  
here before, "All of our applications for

membership in Sawridge were ignored," and we were focussing on your application. Can you tell me whose applications you mean when you say "our applications," the word O-U-R?

1     MAURICE STONEY, SWORN AT 1:01 P.M.,

2     QUESTIONED BY MS. LAFUENTE:

3     Q     Good afternoon, Mr. Stoney. Do you have your  
4           Affidavit sworn May 17th, 2016, in front of you  
5           this morning (sic)?

6     A     Yes.

7     Q     Okay. I'm just going to start, really, really  
8           simple stuff. Can you just tell me your name,  
9           please? Your full name?

10    A     Maurice Felix Stoney.

11    Q     Okay. And how old are you, sir?

12    A     I'll be 75 here tomorrow.

13    Q     Happy birthday tomorrow. And so, your date of  
14           birth is September 24th --

15    A     1941.

16    Q     1941. Okay. Where do you reside, sir?

17    A     Slave Lake, Alberta.

18    Q     Okay.

19    A     500-4th Street Northwest.

20    Q     Thank you. I'm just going to get you to turn,  
21           then, to page 4 of your Affidavit. Sir, is that  
22           your signature where it -- where it states -- where  
23           the words "Maurice Stoney" appear?

24    A     Yes.

25    Q     Okay. And you swore this Affidavit under oath on  
26           May 17th of 2016; correct?

27    A     Yes.

1 Q Okay. I'm just going to also turn, sir -- do you  
2 have a copy of your application filed on August  
3 12th, 2016?

4 MS. KENNEDY: No.

5 MS. LAFUENTE: Okay. Do you know what your  
6 application filed on August 12th, 2016, is  
7 attempting to seek from the Court? Do you --

8 MS. KENNEDY: No.

9 Q MS. LAFUENTE: Sorry, sir. Do you have an  
10 answer?

11 A No.

12 Q You don't -- you don't know what you're seeking  
13 from the Court?

14 A Well -- put that to me again?

15 Q Okay.

16 A I didn't really understand.

17 Q No problem. And if you don't understand, sir, I'm  
18 happy to repeat the question or ask it in a  
19 different way, if you need.

20 MS. KENNEDY: why don't you show it to him?

21 MS. LAFUENTE: we're just going to try to  
22 grab a copy that doesn't have my writing all over  
23 it.

24 Q MS. LAFUENTE: So I'm showing you now a  
25 document that's filed August 12th of 2016, and this  
26 is your application. Do you see this, sir?

27 A M-hm.



1 Q Okay. Can you -- do you understand where it says,  
2 "Application to be Added as a Party or Intervener  
3 by Maurice Felix Stoney and his Brothers and  
4 Sisters"?

5 A Yes.

6 Q So do you understand, then, sir, that you are  
7 applying to be added as a party to Court of Queen's  
8 Bench Action Number 1103 14112?

9 A Yes.

10 Q Okay.

11 MS. KENNEDY: That's the court number.

12 A Okay.

13 Q MS. LAFUENTE: And, alternatively, you're  
14 seeking to be added as an intervener in that party;  
15 is that correct?

16 A Intervener?

17 MS. KENNEDY: He is not going to understand  
18 that at all.

19 Q MS. LAFUENTE: Okay. Okay. Fair enough,  
20 sir. Okay. Can I just draw your attention, then,  
21 to where it says, under -- beside "document," "By  
22 Maurice Felix Stoney and his brothers and sisters"?

23 A Application... Yeah.

24 Q Okay. You're bringing this application on behalf  
25 of your brothers and sisters?

26 A Yes.

27 Q Okay. And do you have their consent to do that?

1 A Yes.

2 Q Okay. So this application is brought by all 10 of  
3 you?

4 A M-hm. Yes.

5 Q Thank you, sir. And, sir, if I can draw your  
6 attention down to paragraph 2(a) of your  
7 application, and it says, "Addition of Maurice  
8 Stoney, Billy Stoney, Angeline Stoney, Linda  
9 Stoney, Bernie Stoney, Betty-Jean Stoney, Gail  
10 Stoney, Alma Stoney, Alva Stoney, and Brian Stoney  
11 as beneficiaries of these trusts."

12 A Yes.

13 Q Sir, are you also attempting in this application to  
14 have yourself declared a beneficiary of the trusts?

15 A Yes.

16 Q You are. Okay. Sir, I'm going to take you quite a  
17 bit further back, then, and I want to ask you a  
18 question about your grandfather. So I understand  
19 your grandfather's name was Johnny Stoney?

20 A Yes.

21 Q Okay. And Johnny Stoney -- and we can look to  
22 paragraph 2 of your Affidavit. Am I correct in  
23 understanding that Johnny Stoney was originally a  
24 member of the Alexander band?

25 A Originally, yes.

26 Q Okay. And that's under Treaty 6; correct?

27 A Yes.

1 Q Okay. And he was transferred to the Sawridge band;  
2 correct?

3 A In 1895, I believe.

4 Q Okay. Okay. So then turning, sir, to paragraph 6  
5 of your Affidavit. You describe that your father's  
6 name was William Stoney; is that correct?

7 A Yes.

8 Q Okay. And in paragraph 7, you state, "In 1944, my  
9 father William Stoney and all of his family,  
10 including me, along with other members of Sawridge  
11 band were enfranchised because he was working." Do  
12 you see that?

13 A Yes.

14 Q Okay. It's true, though, sir, that your father  
15 voluntarily enfranchised; correct?

16 A Yes.

17 Q Okay. So he -- he personally -- intentionally  
18 brought an application to be made a full citizen of  
19 Canada and relinquished his Indian status; correct?

20 MS. KENNEDY: Just a minute. When you ask  
21 him about being a full citizen of Canada, that's a  
22 false statement because you couldn't be a full  
23 citizen of Canada in 1944.

24 MS. LAFUENTE: Okay.

25 MS. KENNEDY: Couldn't be a full citizen of  
26 Canada until, at the very earliest, 1955.

27 Q MS. LAFUENTE: Okay. Sir, I stand corrected.

1           He voluntarily sought to relinquish his Indian  
2           status; is that correct?

3       MS. KENNEDY:                   I think you'd better use the  
4           word that's used.

5       Q    MS. LAFUENTE:            Okay. He voluntarily  
6           enfranchised; is that correct?

7       A    Um...

8       MS. KENNEDY:                   Maurice, as I said, you've  
9           got -- this is your opportunity to answer the  
10          questions. You have to answer them. If that's  
11          what you want to say, you say it. Okay?

12      A    well, in my -- my opinion, he wasn't -- he didn't  
13          voluntarily -- volunteer to be enfranchised. He  
14          was forced out of the -- of the band by the Federal  
15          Government, the government of that era or that  
16          particular time.

17      Q    MS. LAFUENTE:            Okay.

18      A    But he did enfranchise --

19      Q    Okay.

20      A    -- because of the residential school scenario.

21      Q    Okay. So just going one step further back, then.  
22          Your father brought the application to be  
23          enfranchised --

24      A    Yes.

25      Q    -- is that correct?

26      A    Yes.

27      Q    Okay. I'm going to turn, then, to your Affidavit,

1 page -- that's numbered page 28 on the bottom. And  
2 so, you have that document in front of you?

3 A Yes.

4 Q Okay. And that is a part of Exhibit I to your  
5 Affidavit?

6 A Yep.

7 Q Okay. Sir, can I ask you, firstly, the copy of  
8 this letter which is dated July 2nd, 1943, at the  
9 top, you see that?

10 A M-hm, yeah.

11 Q The copy that I have in front of me has some  
12 annotations at the bottom that are entitled  
13 "notes." Do you know whose writing that is?

14 A Mine.

15 Q That's your writing?

16 A Yeah.

17 Q Okay. So where it starts at "notes" all the way  
18 down to the word "reserve" --

19 A Yeah.

20 Q -- that's your handwriting?

21 A Yeah. Yes.

22 Q Okay. Okay. So you have provided some commentary  
23 on this document?

24 A Yes.

25 Q Okay. And the initials "M.S." that appear on the  
26 bottom, are those your initials?

27 A Yes.

1 Q Okay. The question marks that appear throughout  
2 the document, are those written by you?

3 A Yes. Yes.

4 Q Okay. And why did you write the question marks?

5 A Well, I didn't understand it, and I don't see why  
6 it was written in the -- in the way that -- like,  
7 if the person was forced to do something, you know.

8 Q Okay. So, sir, the question marks aren't due to  
9 the fact that you can't read on this photocopy  
10 what's written behind the highlighted portions?

11 A Well, I guess I just didn't understand.

12 Q Okay. Fair enough. Sir, I'm going to show you now  
13 a document, and this document was attached as  
14 Exhibit B to an Affidavit of Roland Twinn in a  
15 Federal Court application. I'll show you that  
16 document now.

17 MS. KENNEDY: Just a minute. Before I'm  
18 going to show that to him, you're going to explain  
19 to me how that relates to this Affidavit.

20 MS. LAFUENTE: Well, I'm going to refer to  
21 this document more than once today, but with  
22 respect to this particular instance, I would turn  
23 to page 28 of the document. It's the second-last  
24 page, and it is a better copy of the letter that  
25 you've attached as an exhibit to his Affidavit  
26 where we can read what is behind the highlighting.

27 MS. KENNEDY: Okay. Well, if you're

1 entering it, then we'll just enter this one page.

2 MS. LAFUENTE: We can enter the one page for  
3 now. Okay. So we're going to enter page 28.

4 MS. KENNEDY: I'm going to have a look at  
5 it, first of all.

6 MS. LAFUENTE: As an exhibit.

7 Q MS. LAFUENTE: Sir, do you understand --

8 MS. KENNEDY: Wait.

9 MS. LAFUENTE: Yeah?

10 MS. KENNEDY: We're not finished. We have  
11 to have an opportunity to review it.

12 MS. LAFUENTE: Okay.

13 MS. KENNEDY: We will let you know.

14 MS. LAFUENTE: Go ahead.

15 MS. KENNEDY: Which page was it again under  
16 'J'?

17 MS. BONORA: 28.

18 MS. KENNEDY: 28. Perhaps you might want to  
19 ask Mr. Stoney first if he has ever independently  
20 seen this document in this form.

21 MS. LAFUENTE: Well, I think, firstly, we've  
22 already entered it as an exhibit, but what I'm --

23 MS. KENNEDY: No. You attempted to enter it  
24 as an exhibit. We haven't yet agreed to that.

25 MS. LAFUENTE: Okay. My understanding --

26 MS. KENNEDY: It hasn't been identified by  
27 Mr. Stoney, so --

1 MS. LAFUENTE: Okay.

2 MS. KENNEDY: And your other document hasn't  
3 been identified, so --

4 MS. LAFUENTE: Okay. So my understanding  
5 when you indicated earlier that you were prepared  
6 to put this one page and you ripped the page from  
7 the package was that you were agreeing to this  
8 page --

9 MS. KENNEDY: No.

10 MS. LAFUENTE: -- going in.

11 MS. KENNEDY: When we get to whether this  
12 one goes in or not, it will be this one page alone.

13 Q MS. LAFUENTE: Okay. Sir, I'm going to put  
14 to you that this page, this document, was part of  
15 the package that you submitted to the band in your  
16 application for membership, which application was  
17 submitted on August 30th, 2011. Does that ring  
18 true to you, sir?

19 A I maybe don't understand what you're -- what you're  
20 applying to.

21 Q Sir, did you submit this document as part of your  
22 application for membership in the Sawridge First  
23 Nation?

24 A Well, I guess I did because it's got my initial on  
25 it.

26 MS. LAFUENTE: I'd like to enter this  
27 document as an exhibit, please.



1 MS. KENNEDY: Yeah, that can go in as --  
2 this will be Exhibit 1?

3 EXHIBIT 1:

4 Letter dated July 2, 1943

5 Q MS. LAFUENTE: Sir, I think you were  
6 indicating that the highlighting on the document  
7 you suspect was on the document when you received  
8 it. That's correct?

9 A Pretty sure, yeah.

10 Q Okay. And who did you receive the documents from?

11 A It was from Indian Affairs.

12 Q Okay.

13 A Along with other -- other documents of my  
14 grandfather's, like this history, background, and I  
15 think it was -- there was supposed to have been  
16 32 pages. There was four missing. Somebody got  
17 those four and said they couldn't find them for  
18 some odd reason. Somebody went through them, filed  
19 them, and these four pages were missing, and they  
20 still can't find them, so...

21 Q Okay. Sir, I'm just going to read the last two  
22 paragraphs to you. And it's -- it says: (As read)  
23 I don't intend to ask the Department  
24 for anything at any time in the way  
25 of help, and I do not see any reason  
26 why I should not have full citizen  
27 rights. If you will send --

1                         And I think it says me --  
2                         -- an application form, I would be  
3                         glad to fill it out immediately and  
4                         return it to you. The sooner I can  
5                         complete all arrangements and get  
6                         out of Treaty, the better it would  
7                         please me.

8 And then it is signed, william  
9 J. Stoney.

10 Sir, do you recognize the  
11 signature of your father on this document?

12 A Yes, but he didn't write that.

13 Q Sorry. You recognize the signature?

14 A Yeah.

15 Q Okay. And what did he not write?

16 A This, whatever it is.

17 Q And --

18       A       Because it was written by a justice of the peace in  
19               Slave Lake by the name of Conklin (phonetic), I  
20               think.

21 Q Okay. And what's your information to suggest that?

22       A       Because when I was sent -- I was looking -- I was  
23               searching for stuff too for my -- why they claim  
24               that I'm not a band member, eh, and I've got a pile  
25               so high. Some of this was included when I asked  
26               Indian Affairs different things, and this is why  
27               they sent -- they sent me this, and they said,

1 well, it's been gone through. They didn't tell me  
2 who, and there was four or five pages missing,  
3 so -- and I know he didn't write that because he  
4 couldn't -- his handwriting wasn't -- after  
5 residential school, they come out of there with  
6 two, three -- after 9 years he spent, I think he  
7 had a Grade 4 education.

8 Q Okay.

9 A He can -- he could write. He could -- he was a --  
10 that's his signature as I've seen it before, eh.

11 Q Okay. So you're confirming that that is his  
12 signature on this document?

13 A Yes.

14 Q Thank you. And, sir, you'll agree with me that  
15 your father received payment when he enfranchised?

16 A Yeah, \$600.

17 Q Your recollection is that it was \$600?

18 A That's what it said in a -- I don't know, and some  
19 cents. Okay.

20 Q Okay. But it's your understanding that he did  
21 receive payment?

22 A Yeah. Yeah.

23 Q Thank you.

24 A And if I might add, there was some other people  
25 that were forced out, out of the band. They  
26 received over 750, \$1,000 each as opposed to his  
27 600.

1 Q Okay. So, sir, turning, then, back to paragraph 7  
2 of your Affidavit. Okay. You'll see that it says,  
3 "My father William Stoney and all of his family,  
4 including me," and then it says, "were  
5 enfranchised," but I want to just clarify, sir,  
6 William only had two children that were alive as of  
7 1944, and that would be yourself and Alvin;  
8 correct?

9 A Yeah. Alvin is deceased now.

10 Q Okay. So the parties that were enfranchised at  
11 this time were your mother, your father, your  
12 brother Alvin, and yourself; correct?

13 A Yes.

14 Q Okay. And your other siblings -- and I understand  
15 10 of them are alive today -- or, I'm sorry, nine  
16 of them are alive today. Ten including yourself.  
17 Were not born at the time your father was  
18 enfranchised; is that correct?

19 A Was Angeline born in '44?

20 Q Yes. When is her birthday in 1944? Do you know?

21 A Not offhand.

22 Q Thank you. Sir, if I put to you that on the  
23 documents that related to the enfranchisement that  
24 only yourself and Alvin were listed, would you have  
25 any information to the contrary?

26 MS. KENNEDY: This is the application --

27 MS. LAFUENTE: Yeah.

1 MS. KENNEDY: -- for enfranchisement. It's  
2 not the actual enfranchisement.

3 A No.

4 Q MS. LAFUENTE: So, sir, if you turn to  
5 page 31. In April of 1944, when your father signed  
6 this application, he listed his children as Alvin  
7 and Maurice. Do you see that?

8 A Yes.

9 Q Okay. So it's your information that sometime in  
10 1944, your sister -- I'm sorry. I forgot which  
11 name you said.

12 A Angeline.

13 Q Angeline was born.

14 A I do believe, yes.

15 Q Okay. On the application for enfranchisement, only  
16 Alvin and yourself are listed. Okay. Your other  
17 siblings and the living ones which are listed in  
18 paragraph 8 of the Affidavit were not ever members  
19 of Sawridge band, were they?

20 A I don't recall.

21 Q Okay. Sir, if we leave Angeline aside for a  
22 second, your next sister, Linda, was born in 1948.  
23 Okay? And all the other children that you list in  
24 paragraph 8 of your Affidavit were born after 1948.  
25 You would agree with me, sir, that that is after  
26 your father was enfranchised; correct?

27 A It's when they were born, yeah.

1 Q Okay. So they were not members of Sawridge when  
2 they were born; is that correct?

3 A I don't see how they wouldn't be members because my  
4 father was a member of Sawridge band.

5 Q Okay. Sir, but you understand that your father was  
6 not a member of Sawridge band in 1948; correct?

7 A Yeah.

8 Q Right.

9 A But he enfranchised in 1944.

10 Q Right.

11 A But he was born a band member, making all of his  
12 children eligible and should be members of the  
13 Sawridge band.

14 Q Okay. So you're of the opinion that they should be  
15 members --

16 A Well, they actually are members.

17 Q Okay. I'm going to turn, then, to paragraph 9 of  
18 your Affidavit, and I'll let you read paragraph 9.  
19 It's a little lengthy. Let me know when you're  
20 finished.

21 A Yeah.

22 Q Okay. And you state in that paragraph, "I believe  
23 I am an acquired-rights member." Do you see that?

24 A Could you explain "acquired"?

25 Q Well, sir, those are your words in your Affidavit,  
26 so I'm wondering whether -- did you mean that you  
27 were automatically a member? Is that what you mean

- 1 by "acquired-rights member"? Sorry, sir?
- 2 A Yes.
- 3 Q Thank you. Sir, what makes you believe that you
- 4 are an automatic member?
- 5 A Because I was born a band member in 1941.
- 6 Q Okay.
- 7 A And I am still a band member.
- 8 Q Okay. Sir, you've had an opportunity to bring this
- 9 issue to the courts on a number of occasions; is
- 10 that correct?
- 11 A (No verbal response)
- 12 Q Sorry?
- 13 A Yes.
- 14 Q And has it not been made clear to you by the Courts
- 15 that you are not an automatic member?
- 16 A I don't understand.
- 17 Q Have you been told by the Federal Court that you
- 18 are not an automatic member of Sawridge?
- 19 A No.
- 20 Q Okay. Sir, I'm going to take you to the decision
- 21 of Justice Evans of the Federal Court of Appeal.
- 22 MS. KENNEDY: No.
- 23 MS. LAFUENTE: Pardon me?
- 24 MS. KENNEDY: You can do that, but -- let's
- 25 see it.
- 26 MS. LAFUENTE: Okay.
- 27 A What year is it?

1 Q MS. LAFUENTE: Okay, sir. I've placed before  
2 you a decision of the Federal Court of Appeal,  
3 Docket Number A-326-98. Do you have that in front  
4 of you?

5 A Yes.

6 Q Okay. And when -- sorry, sir. Halfway down the  
7 page, you see the plaintiffs listed. Do you see  
8 your name, Maurice Stoney, listed as a plaintiff in  
9 that action?

10 A Yes.

11 Q Okay. And, sir, were you represented by counsel in  
12 this action? You had a lawyer, I should ask?

13 A Yes.

14 Q Mr. Abrahmets?

15 A Abrahmets, yeah.

16 Q Abrahmets? Thank you. Sir, I'm going to read you  
17 paragraphs 4 and 5 and 6 of this decision, and this  
18 is a decision of Justice Evans of the Federal Court  
19 of Appeal. (As read)

20 It was conceded by counsel for the  
21 respondents --

22 And the front page lists the  
23 respondents as the plaintiffs.

24 -- that without the proposed  
25 amending paragraphs, the unamended  
26 Statement of Claim discloses no  
27 reasonable cause of action insofar



1 as it asserts or assumes that the  
2 respondents are entitled to band  
3 membership without the consent of  
4 the band. It is clear that until  
5 the band's membership rules are  
6 found to be invalid, they govern  
7 membership of the band, and the  
8 respondents have, at best, a right  
9 to apply for the band for  
10 membership -- sorry, to the band for  
11 membership. Accordingly, the  
12 Statement of Claim against the  
13 appellants, Walter Patrick Twinn as  
14 chief of the Sawridge Indian band  
15 and the Sawridge Indian band, will  
16 be struck as disclosing no  
17 reasonable cause of action.

18 Do you see that, sir?

19 MS. KENNEDY: Those are what the words on  
20 the page say, and what the legal argument means and  
21 the intent that it has with respect to this  
22 particular proceeding are legal questions, and I  
23 will be making argument on them.

24 MS. LAFUENTE: Okay.

25 MS. KENNEDY: And Mr. Stoney will not be  
26 answering questions about legal interpretation.

27 MS. LAFUENTE: Okay. I think my question to

1           Mr. Stoney was, had he ever been told by the  
2           Federal Court that he did not have an automatic  
3           right to membership, to which --

4       MS. KENNEDY:                   And --

5       MS. LAFUENTE:                 Just a second, Ms. Kennedy.  
6           To which he indicated he had not been told that.

7       MS. KENNEDY:                 No, and he had not. This is a  
8           judgment. He doesn't read --

9       MS. LAFUENTE:                 Of the Federal Court.

10      MS. KENNEDY:                 -- judgments of the Federal  
11         Court. His lawyer may very well. What his lawyer  
12         says to him is a question of solicitor-client  
13         privilege, and I am telling you that, as his  
14         lawyer, I will be making legal arguments.

15      MS. LAFUENTE:                 Okay.

16      MS. KENNEDY:                 That's the end of the  
17         questions on that.

18      MS. LAFUENTE:                 well, I have a couple more  
19         questions.

20      Q    MS. LAFUENTE:            Sir --

21      MS. KENNEDY:                 Fine, but we're not going to  
22         be answering them.

23      Q    MS. LAFUENTE:            Sir, did you read the Federal  
24         Court of Appeal decision?

25      MS. KENNEDY:                 Don't answer that.

26      MS. LAFUENTE:                 You're objecting to the  
27         question of whether he read it?

- 1 MS. KENNEDY: Yes, I am.
- 2 MS. LAFUENTE: Okay. We'll put your  
3 objection on the record.
- 4 MS. KENNEDY: That's right.
- 5 OBJECTION TO QUESTION:  
6 Sir, did you read the Federal Court of  
7 Appeal decision?
- 8 MS. LAFUENTE: I'd ask that this Federal  
9 Court of Appeal decision be marked for  
10 identification.
- 11 MS. KENNEDY: It doesn't need to be marked  
12 for identification. It's clear what it is, and you  
13 can cite it any time you want.
- 14 MS. KENNEDY: I'm going to ask for it be  
15 marked for identification because we're going to  
16 probably need to proceed with these objections and  
17 deal with them, and it is going to be much easier  
18 for the Court if we can identify what document we  
19 were each looking at. And there is no prejudice to  
20 you of marking it for identification purposes.
- 21 MS. KENNEDY: No, and there is no need to do  
22 it either. Go ahead and do it.
- 23 MS. LAFUENTE: Thank you.
- 24 MS. KENNEDY: You don't need one with an  
25 Exhibit 'D' stamp on it that's from Roland Twinn's  
26 Affidavit --
- 27 MS. LAFUENTE: That's the one that I have, so

1 if you have a better copy today --

2 MS. KENNEDY: Yeah. You can produce a copy  
3 of the decision for the Court itself.

4 MS. LAFUENTE: No, the copy that I showed to  
5 him today is the copy that we're producing for  
6 identification, and that's the one we have. And,  
7 again, there is no prejudice to you for the fact  
8 that it was once an exhibit in Roland Twinn's  
9 Affidavit, and if you think there is, you can mark  
10 that on the transcript, and we can deal with that  
11 later.

12 MS. KENNEDY: Mark that on the transcript.  
13 It's a Court decision. It should just be going in  
14 as the Court decision. We don't need it from  
15 someone's Affidavit.

16 MS. LAFUENTE: Okay.

17 MS. KENNEDY: Subject to the marking --

18 MS. LAFUENTE: No. It's going to be marked  
19 for identification. She is -- she is making note  
20 of her objection that it's got an exhibit stamp on  
21 the front.

22 EXHIBIT D-A FOR IDENTIFICATION:  
23 Federal Court of Appeal Decision by  
24 Justice Evans on Court Docket Number  
25 docket Number A-326-98

26 Q MS. LAFUENTE: All right. I'm also going to  
27 show you the May 15th, 2013, decision of Justice

1 Barnes.

2 MS. KENNEDY: Same thing. Mark it now.

3 MS. LAFUENTE: Okay. We'll mark this one for  
4 identification, please.

5 I'm still going to ask  
6 questions, so you might as well keep your copy.

7 MS. KENNEDY: Legal decisions speak for  
8 themselves rather than lawyers arguing about them.

9 EXHIBIT D-B FOR IDENTIFICATION:

10 Decision of Justice Barnes in Docket

11 Number T923-12 dated May 15th, 2013

12 Q MS. LAFUENTE: Sir, in front of you marked as  
13 Exhibit B for Identification is Docket T923-12,  
14 which is the decision of Mr. Justice Barnes dated  
15 May 15th, 2013, with respect to an appeal from the  
16 Appeals Committee's decision.

17 MS. KENNEDY: It wasn't an appeal. It's a  
18 judicial review.

19 Q MS. LAFUENTE: Judicial review of the Appeals  
20 Committee's decision to deny membership -- sorry,  
21 to deny your appeal with respect to Sawridge  
22 membership. Sir, I'm going to turn you to  
23 paragraph 8 of that decision, and it states that --  
24 oh, sorry. Backing up. Sir, you are identified on  
25 page 1 as the applicant in this decision. Do see  
26 that on page 1?

27 MS. KENNEDY: It speaks for itself.

1 Q MS. LAFUENTE: Okay. The paragraph --  
2 returning, then, to paragraph 8 of the decision, it  
3 says: (As read)

4 The applicants maintain that they  
5 each have an automatic right of  
6 membership in the Sawridge First  
7 Nation. Mr. Stoney states at  
8 paragraph 8 of his Affidavit of  
9 May 22nd, 2012, that this right  
10 arises from the provisions of Bill  
11 C-31.

12 Turning, then, to paragraph  
13 15. Mr. Justice Barnes states at paragraph 15:  
14 (As read)

15 I also cannot identify anything in  
16 Bill C-31 that would extend an  
17 automatic right of membership in the  
18 Sawridge First Nation to William  
19 Stoney. He lost his right to  
20 membership when his father sought  
21 and obtained enfranchisement for the  
22 family. The legislative amendments  
23 in Bill C-31 do not apply to that  
24 situation. Even if --

25 And, I'm sorry, turning to  
26 paragraph 16.

27 MS. KENNEDY: Let him read it.

1                                   You're not going to be  
2           answering anything on it.

3       MS. LAFUENTE:               Ms. Kennedy, if you could just  
4           wait until I'm finished before you provide your  
5           commentary, that would be appreciated.

6       Q    MS. LAFUENTE:           (As read)  
7           Even if I am wrong in my  
8           interpretation of these legislative  
9           provisions, this application cannot  
10          be sustained, at least in terms of  
11          the applicant's claims to automatic  
12          band membership. All of the  
13          applicants in this proceeding, among  
14          others, were named as plaintiffs in  
15          an action filed in this court on  
16          May 6th, 1998, seeking mandatory  
17          relief requiring that their names be  
18          added to the Sawridge membership  
19          list. This action was struck out by  
20          the Federal Court of Appeal.

21                                   Okay. Turning to paragraph

22       17: (As read)  
23           It is not open to a party to  
24           relitigate the same issue that was  
25           conclusively determined in an  
26           earlier proceeding. The attempt by  
27           these applicants to reargue the

1                   question of their automatic right of  
2                   membership in Sawridge is barred by  
3                   the principle of issue estoppel.

4                               Sir, did you read the decision  
5                   of Justice Barnes?

6       MS. KENNEDY:               He is not answering any of  
7                   these questions. It's a legal decision. You've  
8                   read the portions you want. That's what you want  
9                   on the record.

10      MS. LAFUENTE:               well, what is the basis --

11      MS. KENNEDY:               We can have the legal  
12                   argument.

13      MS. LAFUENTE:               Okay. What's the basis for  
14                   the objection that I cannot ask a question as to  
15                   whether he read this decision?

16      MS. KENNEDY:               I've given it. We'll argue  
17                   about it in court.

18      MS. LAFUENTE:               I'm not asking for his -- any  
19                   legal analysis. I'm asking whether he read the  
20                   decision. There is nothing improper with that  
21                   question.

22                               OBJECTION TO QUESTION:

23                               Sir, did you read the decision of Justice  
24                               Barnes?

25      MS. KENNEDY:               Have you read this decision?

26      A     I won't answer that.

27      Q     MS. LAFUENTE:               Pardon me?



1 A I won't answer that.

2 Q Okay. Turning back, then, to your Affidavit. At  
3 paragraph 11, you reference an action that was  
4 commenced by yourself, along with your cousins,  
5 against Sawridge as well as Chief Walter Twinn? Do  
6 you see that?

7 A Yes.

8 Q Okay. Would you agree with me that you were named  
9 as a plaintiff in that action?

10 A Yes.

11 Q Okay. And --

12 A We've seen this one?

13 MS. KENNEDY: Yeah. We've already gone  
14 through this all.

15 MS. LAFUENTE: Sorry?

16 MS. KENNEDY: We've gone through this all.  
17 You've already put it -- your Exhibit A.

18 A You asked questions on it already.

19 MS. KENNEDY: Yeah.

20 Q MS. LAFUENTE: Well, I -- yes. Exhibit A  
21 refers to a decision in this action, but, sir, my  
22 question for you, would you agree with me that you  
23 sought in that action a right to membership within  
24 the Sawridge First Nation?

25 MS. KENNEDY: He'd agree with you with what  
26 he says in the paragraph 11. In June 2000, the  
27 Federal Court of Appeal, giving the citation,

1           struck this action as a claim for judicial review  
2           improperly brought as an action.

3       MS. LAFUENTE:                    Okay. That wasn't my  
4           question. My question --

5       MS. KENNEDY:                   All right. Fine.

6       MS. LAFUENTE:                   My question is whether he  
7           would agree with me that he sought membership as  
8           one of the things he was claiming in this Statement  
9           of Claim.

10      MS. KENNEDY:                   Court didn't say that.

11      MS. LAFUENTE:                   I'm not asking what the Court  
12           said. I'm asking what did his Amended Statement of  
13           Claim seek. So I'm going to put in front of you  
14           a --

15      MS. KENNEDY:                   No, you're not.

16      MS. LAFUENTE:                   I am putting in front of you a  
17           copy of the Amended Statement of Claim.

18      Q     MS. LAFUENTE:           Sir, do you see the Statement  
19           of Claim in front of you?

20      A     Yes.

21      Q     Okay. And do you see your name on the front page  
22           as a plaintiff in that Statement of Claim?

23      A     Yes.

24      Q     Going to turn, sir, to paragraph 37 of the  
25           Statement of Claim.

26      MS. KENNEDY:                   This is an extraordinarily  
27           poor copy. Don't you have something better than

1           this?

2       MS. LAFUENTE:               Best copy that I have. It's  
3       no different than the copies of the documents that  
4       were attached to your Affidavit. There is --

5       MS. KENNEDY:               well, they're historical  
6       documents.

7       MS. LAFUENTE:               This is the copy of the  
8       document that I have, and it's the copy of the  
9       document that's actually been admitted into  
10      evidence in court prior.

11      Q   MS. LAFUENTE:           So turning to paragraph 37(c),  
12      sir, do you see where it says that you were seeking  
13      a declaration that the plaintiffs are members of  
14      the Sawridge band and entitled to all rights and  
15      benefits of such members?

16      MS. KENNEDY:               That's not paragraph 37.

17      MS. LAFUENTE:               37(c)?

18      MS. KENNEDY:               No.

19      MS. LAFUENTE:               Oh, sorry. It's a claim for  
20      relief. It's not a numbered paragraph. It's just  
21      numbered (c). My apologies, sir.

22      MS. KENNEDY:               Yes.

23      Q   MS. LAFUENTE:           Do you see paragraph (c)? Do  
24      you agree with me, sir, that you sought relief in  
25      the Court wherein you were asking the Court for a  
26      declaration that you were entitled to membership of  
27      Sawridge band?

1 MS. KENNEDY: The words are on the page.  
2 Q MS. LAFUENTE: Sir, is this your Statement of  
3 Claim?  
4 MS. KENNEDY: You've named him as a  
5 plaintiff.  
6 MS. LAFUENTE: I'm just asking him if this is  
7 his Statement of Claim.  
8 MS. KENNEDY: You can read what the  
9 statement of the plaintiffs are, and you understand  
10 what a legal proceeding is.  
11 Q MS. LAFUENTE: Okay. Sir, do you see,  
12 then --  
13 No. So are you objecting --  
14 MS. KENNEDY: No, you --  
15 MS. LAFUENTE: -- to him answering the  
16 question as to whether or not the Statement of  
17 Claim sought a declaration that he was a member?  
18 MS. KENNEDY: That's right, because it's a  
19 question of what the pleading says, which is a  
20 legal question, and you've referred to it, and  
21 that's it. Put it in as your exhibit.  
22 MS. LAFUENTE: Sure. I'm not asking him  
23 for -- as to what -- whether that -- what that  
24 means. I'm not asking for a legal interpretation.  
25 I'm just asking --  
26 MS. KENNEDY: No, but you're --  
27 MS. LAFUENTE: -- whether he saw it.

1 MS. KENNEDY: -- asking him to read the  
2 words on the page and then confirm that the words  
3 are on the page, which is the same thing as just  
4 putting the documents in.

5 MS. LAFUENTE: Okay. So then I'm going to  
6 ask to put this document in as the next exhibit.

7 MS. KENNEDY: For identification.

8 MS. LAFUENTE: Sure.

9 EXHIBIT D-C FOR IDENTIFICATION:  
10 Amended Statement of Claim

11 Q MS. LAFUENTE: Sir, in this Statement of  
12 Claim in this action, were you represented by  
13 counsel?

14 MS. KENNEDY: He has already answered that.

15 MS. LAFUENTE: My apologies if he has already  
16 answered. So his answer previously, he was  
17 represented by counsel in this action?

18 MS. KENNEDY: Yes, he has.

19 MS. LAFUENTE: Okay. Thank you.

20 Q MS. LAFUENTE: Okay, sir. Turning, then,  
21 back to your Affidavit at paragraph 12. You state,  
22 "All of our applications for membership in Sawridge  
23 were ignored." Can you tell me which applications  
24 you're referring to that were ignored?

25 A Applications for membership... Yes. If I recall,  
26 they were ignored.

27 Q Which applications were ignored?

1 A For band membership.

2 Q which application? On what occasion was it  
3 ignored?

4 A I don't understand what you're implying.

5 Q I'm -- sir, I'm not implying anything. I'm trying  
6 to understand what you mean by your sentence, "All  
7 of our applications for membership in Sawridge were  
8 ignored." What -- which applications were ignored?

9 A well, as of today, they're still ignored.

10 Q Sir --

11 A Nothing become (sic) of my request.

12 Q Okay. Sir, do you mean, then, that they were  
13 ignored because they have not yet admitted you to  
14 membership? Is that what you mean?

15 A I don't -- I don't understand.

16 Q Okay. Okay. Sir, you did submit a paper  
17 application for membership; is that correct? To  
18 apply for membership?

19 A 1985, I believe, was it?

20 Q Sir, I don't have any information about an  
21 application made in 1985. Did you make such  
22 application?

23 A 1985, yeah. And I had to wait -- I sent it in in  
24 the spring, and I had to wait until that fall  
25 before I got my response.

26 Q Sir, are you sure that happened in 1985, or are you  
27 referring to the application that you submitted in

1 2011?

2 A 1985, because that's when we got our Treaty rights:  
3 1985.

4 Q Sir, I'm going to ask for you to provide a copy of  
5 the application that you submitted in 1985, as we  
6 don't have any such documents in our possession.

7 A If we have one.

8 MS. KENNEDY: Yeah. I don't know if we do  
9 or not.

10 A Because it was -- I'm pretty sure it was  
11 April 1985. It was in the spring, anyway.

12 Q MS. LAFUENTE: Okay.

13 A Because I was told that I had to do that before the  
14 fall, fall session. I applied, and it took them  
15 6 months before I got a response because they were  
16 waiting for their -- Sawridge were waiting for  
17 their documents they had sent in prior -- prior --  
18 or after I sent mine in. So I had to wait for  
19 whatever was going on then. Then I got my  
20 application in November -- October or November, I  
21 think, 1985 --

22 Q Okay.

23 A -- stating that I am -- got my Treaty rights back  
24 and stuff like that, eh, which should have stated  
25 that I was a band member, a full band member.

26 Q Okay. So I'm going to ask for you to provide a  
27 copy of that, of that application, and the response

1           that you received.

2           MS. KENNEDY:                   we'll do our best if we have a  
3           copy. We may not anymore have a copy.

4           MS. LAFUENTE:                Certainly.

5                           UNDERTAKING NO. 1:

6                           To make best efforts to provide a copy of  
7                           the application for band membership that  
8                           was submitted in 1985.

9           Q   MS. LAFUENTE:            Sir, earlier, I handed your  
10           counsel -- and I believe she still has a copy -- of  
11           your band membership application form which was  
12           submitted -- this was, sorry, signed by you on  
13           August 30th, 2011. Can I ask you to have that in  
14           front of you again?

15          MS. KENNEDY:                what did you say the date was?

16          MS. LAFUENTE:               August 30th, 2011.

17          MS. KENNEDY:                The one that says, "reapply"?

18          A    Reapply.

19          MS. KENNEDY:                If you look on --

20          A    We had to reapply.

21          MS. KENNEDY:                Beginning of the first page:  
22                "If this is an application for membership, please  
23                explain the basis of your application," and it  
24                says, "reapply"?

25          MS. LAFUENTE:               Yes. That is the document  
26                that you have in front of you?

27          Q    MS. LAFUENTE:           Okay. Sir, on the page --



1 page 8, is that your signature there, sir?

2 A Page 8? Yes.

3 Q Okay. And you see above where it says,  
4 "certification"? And do you understand, sir, that  
5 you were certifying that everything in this  
6 application was true? Did you understand that,  
7 sir?

8 MS. KENNEDY: Did you read that before you  
9 signed it?

10 A Oh, right, the appeal. This is the application  
11 form?

12 MS. KENNEDY: Yeah. Did you read this --

13 A Yeah. Yeah.

14 MS. KENNEDY: -- before you signed it?

15 A Yeah.

16 Q MS. LAFUENTE: Yes. So you were --  
17 everything in it that you stated in this  
18 application, sir, was it true?

19 MS. KENNEDY: I don't think that he can  
20 answer that question without going back and reading  
21 every single line.

22 Q MS. LAFUENTE: Okay. Sir, when you certified  
23 that everything was true on page 8 of the  
24 application, were you being truthful?

25 MS. KENNEDY: Do you want to look through  
26 this? Because, you know, they've produced it. You  
27 haven't produced it.

1 A No. No, I won't answer them questions.

2 MS. KENNEDY: Do you remember if --

3 A Leave it for the courts.

4 Q MS. LAFUENTE: Sorry, sir. Did you say that  
5 you won't answer that question and you're going to  
6 leave it for the courts?

7 A Yes.

8 Q Okay.

9 A This last part here, to my knowledge, is biased.  
10 From what I gather, it's biased.

11 Q Sorry. What is biased?

12 A This last certification. It says in one part, "no  
13 right of appeal." That's biased, isn't it?

14 Q well, sir, if you -- if you read before that, it  
15 says that "I understand that if any of the  
16 information provided is found to be false or  
17 misleading, then this shall be sufficient grounds  
18 for the denial of my application, and there shall  
19 be no right of appeal."

20 A Yeah, I read that. Yeah.

21 Q Okay. Sir, you're not going to answer the question  
22 as to whether you were -- you understood this --  
23 or, sorry, that you were certifying this to be  
24 true?

25 A No.

26 Q Okay.

27 OBJECTION TO QUESTION:

1                   Sir, when you certified that everything  
2                   was true on page 8 of the application,  
3                   were you being truthful?

4       Q     MS. LAFUENTE:           Sir, were you truthful, then,  
5             when -- on page 1 when you checked off the box that  
6             said this was an application for membership in the  
7             band by a nonmember?

8       A     It was... Reapply.

9       Q     So you see where you checked off this is an  
10            application in the band by a nonmember?

11      A     Meaning?

12      Q     Did you check that box?

13      A     By a nonmember? Uh...

14      MS. KENNEDY:                It's completely inconsistent  
15            with the rest of the file.

16      Q     MS. LAFUENTE:           Sir --

17      A     I won't answer that.

18      Q     -- by submitting this application, you were  
19            submitting your request to become a member; is that  
20            correct?

21      MS. KENNEDY:                It states that it's an  
22            application to reapply for membership. That's what  
23            it states.

24      A     Yeah.

25      MS. LAFUENTE:                Actually, it says it's an  
26            application for application for membership in the  
27            band by a nonmember. That is checked.

1 MS. KENNEDY: It's --

2 MS. LAFUENTE: where you're referring to the  
3 word "reapply," it says, "If this is an application  
4 for membership, please explain the basis for your  
5 application," and someone has written the word  
6 "reapply" there.

7 MS. KENNEDY: Did you write that word?

8 A No. I don't remember writing that, no. I don't  
9 think so.

10 Q MS. LAFUENTE: Okay. And, sir, you would  
11 agree with me that it -- when you were asked, how  
12 did you cease to be a member, you indicated that  
13 you were forced out?

14 A Yeah.

15 Q So when you submitted this application, sir, was it  
16 your intention that you were applying to become a  
17 member of the Sawridge First Nation?

18 A The one prior to this, yes. I was applying for it  
19 because I had to --

20 Q Okay.

21 A -- apply for the band membership.

22 Q Okay. And, sir, on page 5 of this application,  
23 item number 'E,' at the bottom of the page, it  
24 asks, "Do any current band members support your bid  
25 for membership?" and you ticked the box yes and  
26 wrote "chief and council." That wasn't true, was  
27 it?

- 1       A     Yes, it was.
- 2       Q     You had the support of chief and council at the  
3             time you submitted this application?
- 4       A     Well, not in writing.  Verbally.
- 5       Q     By whom?
- 6       A     By one of the councillors.
- 7       Q     Okay.  And, sir, you would agree with me that in  
8             2011, this is after you had brought the Statement  
9             of Claim suing the band for damages; right?  You  
10            brought -- you brought your application for  
11            membership in 2011; correct?  Sir, this document is  
12            2011?
- 13      A     I won't answer.  I won't answer that.
- 14      Q     Sir, this document was signed in 2011; correct?
- 15      MS. KENNEDY:                   That's when it's dated.
- 16      MS. LAFUENTE:                 Okay.
- 17      MS. KENNEDY:                   The other document is a court  
18             document which has a date on it.
- 19      Q     MS. LAFUENTE:           Okay.  Sir, you were also  
20             involved prior to 2011 in starting a new band; is  
21             that correct?
- 22      MS. KENNEDY:                   Don't answer that.  
23                                       How does that relate to the  
24             Affidavit?
- 25      MS. LAFUENTE:                 It relates to his application  
26             for membership.
- 27      MS. KENNEDY:                   There is nowhere in any of

1           the -- in any application in any court proceeding  
2           that I've ever seen that related to an application  
3           to some other band.

4           (DISCUSSION OFF THE RECORD)

5           MS. LAFUENTE:                   I'd like to identify -- sorry,  
6           mark as an exhibit for identification the full  
7           application document, which was the one -- it's the  
8           one you have in front of you. You had previously  
9           ripped one page off of it, but this is the full  
10          copy.

11          MS. KENNEDY:                   For identification.

12          MS. LAFUENTE:                   For identification.

13                                   EXHIBIT D-D FOR IDENTIFICATION:

14                                   Application for band membership

15          Q    MS. LAFUENTE:            Sir, ultimately, after your  
16               application was submitted in 2011 for membership,  
17               that application was denied. Do you understand  
18               that?

19          A    Yes.

20          Q    Yes? Okay. And you appealed that, did you not?

21          MS. KENNEDY:                   No -- or -- to the --

22          MS. LAFUENTE:                   Appeal --

23          MS. KENNEDY:                   -- Appeal Committee.

24          A    Yes.

25          MS. LAFUENTE:                   Yes.

26          MS. KENNEDY:                   So clarify when you're saying  
27               all the various steps, please.

1 Q MS. LAFUENTE: Okay. Sir, so you appealed  
2 that to the Appeal Committee?

3 A Yes.

4 Q Okay. And that was dismissed; is that correct?

5 A Yes.

6 Q Okay. And we've since referred to the decision of  
7 Justice Barnes, but I understand, sir, that you  
8 brought an application for judicial review of that  
9 decision to the Federal Court; is that correct?

10 A I did that?

11 MS. KENNEDY: Yes.

12 A Yeah.

13 Q MS. LAFUENTE: Yes, you did, sir?

14 A Yes.

15 Q Yes? Okay. Sir, are you aware that when Justice  
16 Barnes's decision was issued that you were ordered  
17 to pay costs to Sawridge First Nation?

18 MS. KENNEDY: He is not answering that  
19 question.

20 A No.

21 MS. LAFUENTE: And what is the basis for  
22 objecting to that?

23 MS. KENNEDY: The issue of the costs and  
24 what happened with that has nothing to do with this  
25 proceeding.

26 MS. LAFUENTE: Are you suggesting that the  
27 fact that he may not have paid costs owing to

1           him -- sorry, owing by him in a previous proceeding  
2           may not be relevant or is not relevant to him being  
3           added to this proceeding?

4       MS. KENNEDY:                   Absolutely. He is claiming as  
5           a beneficiary. That doesn't have to do with the  
6           issue of costs in another proceeding.

7       MS. LAFUENTE:                 Do you mean that he is  
8           claiming to be added as a party or an intervener?

9       MS. KENNEDY:                   He is claiming to be added as  
10          a party because he is a beneficiary.

11      MS. LAFUENTE:                 You allege that he is a  
12          beneficiary.

13      MS. KENNEDY:                   That's right. We allege he is  
14          a beneficiary.

15      Q   MS. LAFUENTE:             Sir, I'm going to put to you  
16          that there were costs in the amount of \$2,995.65  
17          plus interest payable to Sawridge First Nation as a  
18          result of the judicial review application and that  
19          you have not paid those costs.

20      MS. KENNEDY:                   Don't answer the question.

21                   OBJECTION TO QUESTION:

22                   Sir, I'm going to put to you that there  
23                   were costs in the amount of \$2,995.65  
24                   plus interest payable to Sawridge First  
25                   Nation as a result of the judicial review  
26                   application and that you have not paid  
27                   those costs.



1 Q MS. LAFUENTE: Sir, did you appeal the  
2 decision of Justice Barnes to the Federal Court of  
3 Appeal?

4 MS. KENNEDY: You're well aware of whether  
5 or not a court proceeding has been appealed or not.

6 MS. LAFUENTE: And I'm asking your client  
7 whether he appealed it.

8 MS. KENNEDY: And you have no need to  
9 because you can search the court record, and you  
10 know whether he appealed it or not.

11 Q MS. LAFUENTE: Sir, I'm going to ask for your  
12 answer. Did you appeal this to the Federal Court  
13 of Appeal?

14 MS. KENNEDY: Don't answer the question.

15 A I won't answer.

16 MS. LAFUENTE: And the basis for --

17 MS. KENNEDY: And he didn't raise any  
18 question in -- or paragraph in his Affidavit with  
19 respect to any appeal to the Federal Court of  
20 Appeal.

21 MS. LAFUENTE: It's certainly within the  
22 confines of this application as to whether or not  
23 all of the issues he is attempting to raise now  
24 have been previously litigated, and what --

25 MS. KENNEDY: That's right, and the question  
26 of that is a legal question, and we will be arguing  
27 about that in the application.

1 Q MS. LAFUENTE: Sir --

2 MS. KENNEDY: And we will be arguing about  
3 issue estoppel. That's quite correct.

4 OBJECTION TO QUESTION:

5 Did you appeal this to the Federal Court  
6 of Appeal?

7 Q MS. LAFUENTE: Sir, in this matter that you  
8 are attempting now to become a party or an  
9 intervener of, did you seek an appeal of Justice  
10 Thomas's order and then go to -- sorry, and seek an  
11 extension of time to file an appeal of Justice  
12 Thomas's order?

13 MS. KENNEDY: With respect to a point from a  
14 decision in December of 2015?

15 MS. LAFUENTE: Yes.

16 MS. KENNEDY: You have the Court of Appeal  
17 decision of Mr. Justice Watson. You can read it.

18 Q MS. LAFUENTE: Okay. Sir, I'm going to put  
19 to you that you were ordered to pay costs in the  
20 amount of \$898.70 on June 14th of 2016 to Sawridge  
21 First Nation, and these costs are not paid. Would  
22 you agree with that?

23 MS. KENNEDY: Well, that's not entirely  
24 correct because part of those costs are paid by  
25 setoff agreed to this morning with respect to the  
26 conduct money to be here this afternoon.

27 MS. BONORA: Ms. Kennedy, if you listen to

1           the question, it was we didn't set off the costs  
2           against the costs owing to Sawridge First Nation.  
3           We set off the costs owing to the Sawridge  
4           trustees. There were two sets of costs included in  
5           the appeal.

6       MS. KENNEDY:                   well, you're here today, I  
7           assume, asking questions on behalf of the Sawridge  
8           trustees. You're not here on behalf of asking  
9           questions for the Sawridge First Nation, and in  
10          fact, the Sawridge First Nation is not a party or  
11          an intervener to this action yet, and there will be  
12          no question with respect to costs payable to them.

13       MS. LAFUENTE:                Okay. So if you would have  
14           listened carefully to the question I asked, about  
15           costs to the Sawridge First Nation.

16       MS. KENNEDY:                well, then don't answer it  
17           because it's not relevant. They're not a party to  
18           this proceeding or an intervener.

19                   OBJECTION TO QUESTION:  
20           Sir, I'm going to put to you that you  
21           were ordered to pay costs in the amount  
22           of \$898.70 on June 14th of 2016 to  
23           Sawridge First Nation, and these costs  
24           are not paid. Would you agree with that?

25       Q    MS. LAFUENTE:            Okay. Sir, I just want to  
26           confirm as well there were costs payable to the  
27           trustees as a result of the dismissal of the time

1 to extend -- sorry, the extension of time  
2 application?

3 MS. KENNEDY: And as I just previously  
4 stated, those costs were set off against part of  
5 the moneys owed for conduct money to be here today.

6 Q MS. LAFUENTE: Is it not true that there  
7 are -- there are -- even taking into account --

8 MS. KENNEDY: There are some costs  
9 remaining. Part of those costs have been paid off  
10 by setoff in terms of being here today.

11 Q MS. LAFUENTE: Okay. So, sir, what I'm  
12 asking, then -- and I'm asking for your answer --  
13 there are --

14 MS. KENNEDY: And he is not giving it.

15 MS. LAFUENTE: Ms. Kennedy, I find it very  
16 difficult that you have not heard the question, and  
17 you are already indicating that your client is not  
18 going to answer it.

19 MS. KENNEDY: That's correct.

20 MS. LAFUENTE: I just want to put that on the  
21 record.

22 MS. KENNEDY: That's fine. You go right  
23 ahead and do that.

24 MS. LAFUENTE: Prior to asking it, it's a  
25 little difficult to understand the basis of the  
26 objection.

27 Q MS. LAFUENTE: Sir, do you still owe costs to

1 the trustees for that application to the Court of  
2 Appeal?

3 A I won't answer that.

4 OBJECTION TO QUESTION:

5 Sir, do you still owe costs to the  
6 trustees for that application to the  
7 Court of Appeal?

8 Q MS. LAFUENTE: Okay. Sir, turning, then, to  
9 paragraph 40 -- 4 -- sorry, 14 of your Affidavit,  
10 you indicate, "For 30 years I have been seeking to  
11 have my membership rights in Sawridge be  
12 recognized." Do you see that?

13 A Yes.

14 Q Okay. And would you agree with me, sir, that  
15 includes the filing of the Statement of Claim which  
16 was later struck? Did you do -- did you undertake  
17 those actions?

18 MS. KENNEDY: We've already dealt with that.  
19 You've already --

20 MS. LAFUENTE: I asked him --

21 MS. KENNEDY: -- asked questions on those,  
22 and he has answered, and we've got the --

23 MS. LAFUENTE: Okay.

24 MS. KENNEDY: -- transcript on that.

25 Q MS. LAFUENTE: And you would agree with me,  
26 sir, that you also applied for membership, which  
27 was denied --

1 MS. KENNEDY: Oh --

2 Q MS. LAFUENTE: Excuse me. Appealed to the  
3 Appeals Committee, an application for judicial  
4 review brought and denied; correct?

5 MS. KENNEDY: These questions have already  
6 been answered.

7 Q MS. LAFUENTE: Okay. And, sir, did you also  
8 bring a human rights complaint against Sawridge  
9 First Nation?

10 A I won't answer that.

11 Q You won't answer that?

12 A No.

13 Q On what basis?

14 MS. KENNEDY: Again, that's against the  
15 Sawridge First Nation. What does that have to do  
16 with an action to be added as a party or interested  
17 party as a beneficiary?

18 MS. LAFUENTE: So, again, you keep  
19 characterizing your application as an application  
20 to become a beneficiary.

21 MS. KENNEDY: Yes.

22 MS. LAFUENTE: It's an application to become  
23 a party or an intervener.

24 MS. KENNEDY: As a beneficiary.

25 MS. LAFUENTE: Okay.

26 MS. KENNEDY: And what is the human rights  
27 complaint about?

1 MS. LAFUENTE: Okay. Well, we can go to the  
2 human rights complaint.

3 OBJECTION TO QUESTION:

4 Okay. And, sir, did you also bring a  
5 human rights complaint against Sawridge  
6 First Nation?

7 Q MS. LAFUENTE: Sir, I've put in front of you  
8 a letter addressed to Chief Roland Twinn of the  
9 Sawridge First Nation attaching the decision of the  
10 Canadian Human Rights Commission. This letter is  
11 dated April 29th, 2015. Do you see that in front  
12 of you?

13 A Yes.

14 Q Okay. And I'm going to turn to the last page of  
15 this, which is a -- which is entitled the record of  
16 decision. Okay. And it states at reasons for  
17 decision: (As read)

18 The complainant has been a party to  
19 two different proceedings before the  
20 Federal Court with respect to the  
21 matters raised in this complaint:  
22 an action against respondent which  
23 was struck by the Federal Court of  
24 Appeal in 2000 and an application  
25 for judicial review which was  
26 dismissed in May 2013. The essence  
27 of the complaint, i.e. the

1           respondent's denial of the  
2           complainant's membership in the  
3           band, was central to both  
4           proceedings. The complainant  
5           clearly raised discrimination in his  
6           application for judicial review when  
7           he alleged that the decision  
8           violated the *Charter*; however, he  
9           did not provide adequate evidence  
10          for the Federal Court to overturn  
11          the decision of the respondent. The  
12          Supreme Court in *Figliola* held that  
13          Human Rights Commissions must  
14          respect the finality of decisions  
15          made by other administrative  
16          decisionmakers with concurrent  
17          jurisdiction to apply human rights  
18          legislation when the issues raised  
19          in both processes are the same. In  
20          this instance, the other  
21          decision-makers are judges of the  
22          Federal Court and the Federal Court  
23          of Appeal and could have clearly  
24          considered the human rights  
25          allegations raised. Therefore, it  
26          would not be unfair for the  
27          Commission to decide not to deal



1 with this complaint.

2 would you agree with me, sir,  
3 that you brought the same matters that you had  
4 brought to the Federal Court previously to the  
5 Canadian Human Rights Commission?

6 MS. KENNEDY: The Human Rights Commission  
7 decision clearly states what the facts are.

8 MS. LAFUENTE: So, again, he won't answer  
9 that question.

10 MS. KENNEDY: No.

11 A No.

12 OBJECTION TO QUESTION:  
13 would you agree with me, sir, that you  
14 brought the same matters that you had  
15 brought to the Federal Court previously  
16 to the Canadian Human Rights Commission?

17 MS. LAFUENTE: Okay. I'm going to ask that  
18 we mark this decision as the next exhibit for  
19 identification -- sorry, the next document for  
20 identification.

21 MS. KENNEDY: which is 'E,' correct?  
22 Thanks.

23 EXHIBIT D-E FOR IDENTIFICATION:  
24 Decision of the Canadian Human Rights  
25 Commission

26 Q MS. LAFUENTE: Sir, do you understand that,  
27 regarding the 1985 trust, "beneficiaries" means all

1 persons who qualified as members of the Sawridge  
2 Indian Band pursuant to the provisions of the  
3 *Indian Act* as of April 15th, 1982?

4 A No, I don't --

5 MS. KENNEDY: No, not --

6 A No.

7 MS. KENNEDY: Not 1982. The wording of the  
8 1985 trust beneficiaries does not state that. It  
9 says April the 15th, 1985.

10 (DISCUSSION OFF THE RECORD)

11 MS. KENNEDY: Yeah. He can't answer that  
12 because it's an unconstitutional provision, and  
13 that's a legal argument.

14 OBJECTION TO QUESTION:  
15 Sir, do you understand that, regarding  
16 the 1985 trust, "beneficiaries" means all  
17 persons who qualified as members of the  
18 Sawridge Indian Band pursuant to the  
19 provisions of the *Indian Act* as of  
20 April 15th, 1982?

21 Q MS. LAFUENTE: Sir, were you a member of the  
22 band -- or, sorry, did you qualify as a member of  
23 the band on April 15th, 1982?

24 MS. KENNEDY: Don't answer that because that  
25 as well relates to a constitutional argument.

26 OBJECTION TO QUESTION:  
27 Did you qualify as a member of the band

1                           on April 15th, 1982?

2       Q     MS. LAFUENTE:            Sir, you were enfranchised in  
3            1944; correct?   Correct?

4       A     Correct.

5       Q     Had anything happened that changed that by  
6            April 15th, 1982?

7       MS. KENNEDY:                   Something happened on  
8            April the 17th, 1982, that quite substantially  
9            changed that, and that is that aboriginal rights  
10           and Treaty rights became constitutional rights.

11      MS. LAFUENTE:                 And I think you said April the  
12           17th?

13      MS. KENNEDY:                 I did.

14      MS. LAFUENTE:                 And I asked about April the  
15           15th, 1982.

16      MS. KENNEDY:                 That's right, and after that  
17           date --

18      MS. LAFUENTE:                 Right --

19      MS. KENNEDY:                 -- you cannot refer back to  
20           something previous --

21      MS. LAFUENTE:                 Okay.

22      MS. KENNEDY:                 -- to the changes to the  
23           Constitution.

24      MS. LAFUENTE:                 Okay.   So --

25      MS. KENNEDY:                 And that's a legal argument.

26      Q     MS. LAFUENTE:           So my question was, had any --

27      MS. KENNEDY:                 And he won't be answering it.

1 MS. LAFUENTE: No. Again, just please wait  
2 until I can get it on the record.

3 Q MS. LAFUENTE: Had any --

4 MS. KENNEDY: Sure. You've got it on the  
5 record.

6 Q MS. LAFUENTE: Had anything changed as of  
7 April 15th, 1982, where you were identified that --  
8 sorry, you were advised that you qualified as a  
9 member after having become enfranchised in 1944?

10 MS. KENNEDY: Don't answer that.

11 A I won't answer it.

12 MS. LAFUENTE: Okay.

13 OBJECTION TO QUESTION:  
14 Had anything changed as of April 15th,  
15 1982, where you were identified that --  
16 sorry, you were advised that you  
17 qualified as a member after having become  
18 enfranchised in 1944?

19 Q MS. LAFUENTE: Sir, do you understand that  
20 with respect to the 1986 trust, beneficiary status  
21 is restricted to members?

22 A Won't answer it.

23 Q Why not?

24 MS. KENNEDY: Well, first of all, because he  
25 doesn't even have a document in front of him.

26 OBJECTION TO QUESTION:  
27 Sir, do you understand that with respect

1                   to the 1986 trust, beneficiary status is  
2                   restricted to members?

3       Q     MS. LAFUENTE:            Okay.  Sir, have you ever read  
4             the 1985 trust?

5       A     I won't answer that.

6       Q     Why won't you answer that question?  It's factual,  
7             sir.  Have you read it?

8       MS. KENNEDY:                 No.

9       MS. LAFUENTE:                 Sorry --

10      A     No.

11      MS. LAFUENTE:                 -- Ms. Kennedy, are you  
12             saying "no" as in he shouldn't answer the question,  
13             or are you providing him an answer?

14      MS. KENNEDY:                 I'm telling him no because  
15             it's a legal -- we're talking about legal arguments  
16             with respect to these documents.

17      MS. LAFUENTE:                 So your word "no" is meant to  
18             advise him not to answer the question, the factual  
19             question, as to whether he has read the trust deed?

20      MS. KENNEDY:                 That's right.

21      MS. LAFUENTE:                 Okay.

22                   OBJECTION TO QUESTION:

23                   Sir, have you ever read the 1985 trust?

24      Q     MS. LAFUENTE:            Sir, have you read the 1986  
25             trust deed?

26      A     I won't answer that.

27

1                   OBJECTION TO QUESTION:

2                   Sir, have you read the 1986 trust deed?

3       Q     MS. LAFUENTE:           Sir, going back to your  
4             Affidavit -- just for clarity on the record, I just  
5             want to confirm that our earlier discussions as to  
6             whether the trust deed referred to April 15th,  
7             1985, or April 15th, 1982, we were able to clarify  
8             by reading into the record the exact wording of the  
9             1985 trust deed.

10    MS. KENNEDY:                    You didn't read in the whole  
11            trust deed.

12    MS. LAFUENTE:                   Correct.

13    MS. KENNEDY:                    And the wording of the whole  
14            trust deed is significant in order to determine  
15            what those provisions mean.

16    MS. LAFUENTE:                   Okay. But, Ms. Kennedy, the  
17            concern that you raised earlier was you were quite  
18            certain that it said April 15th, 1985, and we've  
19            just clarified that it says April 15th, 1982.  
20            That's the part that I'm saying we've clarified.

21    MS. KENNEDY:                    But the part that I'm saying  
22            is that it relates to all of the words related to  
23            that trust deed.

24    MS. LAFUENTE:                   Okay.

25    MS. KENNEDY:                    And --

26    MS. LAFUENTE:                   But you don't agree with me  
27            that it says April 15th, 1982?

1 MS. KENNEDY: In one particular portion,  
2 yes.

3 MS. LAFUENTE: Okay.

4 MS. KENNEDY: And what it says with respect  
5 to the rest of it is the wording in the trust deed  
6 which is what we're arguing about before the Court.

7 MS. LAFUENTE: And that's what you're  
8 attempting to bring before this Court by being  
9 added as a party.

10 MS. KENNEDY: That's what we're arguing in  
11 terms of our ability to be before the Court as a  
12 beneficiary.

13 Q MS. LAFUENTE: Okay. Sir, going back to  
14 paragraph 12 of your Affidavit, we talked about  
15 this first sentence here before, "All of our  
16 applications for membership in Sawridge were  
17 ignored," and we were focussing on your  
18 application. Can you tell me whose applications  
19 you mean when you say "our applications," the word  
20 O-U-R?

21 A I won't answer it.

22 Q Why won't you answer that, sir? It's your  
23 Affidavit, and I want to know what you mean when  
24 you say, "Our applications were ignored."

25 A Did you ask that question before?

26 Q No. I'm asking what you mean by the word, "Our" --  
27 the words, "our applications." Whose applications?

1 A No, I won't answer that.

2 Q Sir, why aren't you answering that question?

3 A I'll leave it up to the courts.

4 Q You -- I'm going to point out that your counsel did  
5 not put an objection on the record but that you are  
6 refusing the answer the question because you want  
7 to leave it up to the courts.

8 MS. KENNEDY: That's what he said.

9 Q MS. LAFUENTE: Okay. So, sir --

10 MS. KENNEDY: You don't have to repeat it.

11 Q MS. LAFUENTE: -- how is the Court supposed  
12 to -- how is the Court supposed to understand what  
13 you mean by the word "our" if you won't tell us  
14 what you mean?

15 MS. KENNEDY: Okay. Now, let's not get into  
16 arguments with him, and that's what you're doing by  
17 characterizing the way he has made an answer. He  
18 has made an answer. You may not like it, but he  
19 has made an answer.

20 MS. LAFUENTE: Okay.

21 OBJECTION TO QUESTION:

22 Okay. Sir, going back to paragraph 12 of  
23 your Affidavit, we talked about this  
24 first sentence here before, "All of our  
25 applications for membership in Sawridge  
26 were ignored," and we were focussing on  
27 your application. Can you tell me whose



1                    applications you mean when you say "our  
2                    applications," the word O-U-R?

3        Q        MS. LAFUENTE:        Sir, do you have any  
4                    information as to whether your siblings have  
5                    applied for membership in Sawridge First Nation?

6        A        Siblings? Yes, some of them -- some of them did,  
7                    but they were all denied.

8        Q        Who -- who made application?

9        A        Uh, brothers.

10      Q        Which brothers?

11      A        Bill.

12      Q        Okay.

13      A        And... I just can't recall right now. I'd have  
14                    to -- I'd have to look at their response and stuff  
15                    like that.

16      Q        But you've brought this application --

17      A        They did --

18      Q        -- on behalf of all of you.

19      A        They were supposed to send in their applications  
20                    because we talked about this before, and -- and I  
21                    told them that maybe you should do -- maybe you  
22                    should be sending in your applications.

23      Q        Okay.

24      A        But -- now, whether it's -- they've done it or not,  
25                    I'm not really sure. I can't answer that.

26      Q        Okay. Okay.

27      A        And another thing, if they did, they were -- it

1           would be automatically thrown out anyways. Their  
2           point of view would be, what is the use?

3       MS. LAFUENTE:               Sir, I probably only have a  
4           few more questions for you, so I'm going to suggest  
5           we just take a 10-minute break, if that's okay with  
6           you, and then we'll reconvene and hopefully finish  
7           up quite quickly. Okay?

8       (ADJOURNMENT)

9       Q     MS. LAFUENTE:           Sir, earlier, you had  
10           indicated that you were bringing this application  
11           and representing your brothers and sisters in doing  
12           so. Can you tell me, are any of them incapacitated  
13           and unable to represent themselves in this  
14           litigation, in this application?

15      A     I won't answer that.

16      MS. KENNEDY:                I'm going to tell you that I  
17           have done a number of actions in QB and in the  
18           Federal Court as representative actions where one  
19           brother or sister acts for the entire family, and  
20           that is the standard method of proceeding, and that  
21           is the method of proceeding that's been used since  
22           1997.

23      MS. LAFUENTE:               So is the answer that they are  
24           incapacitated or this is the choice?

25      MS. KENNEDY:                This is the choice.

26      MS. LAFUENTE:               And this is a representative  
27           action?

1 MS. KENNEDY: Yes. On behalf of a family,  
2 yes. That's the way you go. Each of them have  
3 exactly the same characteristics. They're all  
4 members of the same family. They all have the same  
5 interest.

6 MS. LAFUENTE: Okay. In going through what  
7 we've asked and what's been answered and what has  
8 been objected to today, it's clear that we have a  
9 very different view as to what's relevant and what  
10 ought to be answered, and so, today, we're going to  
11 adjourn --

12 MS. KENNEDY: Sure.

13 MS. LAFUENTE: -- this questioning, and  
14 we'll proceed after we deal with the application --  
15 sorry, the objections --

16 MS. KENNEDY: Sure.

17 MS. LAFUENTE: -- and get some further Court  
18 direction as to that.

19 MS. KENNEDY: Yeah. Okay. Good.

20

21 PROCEEDINGS ADJOURNED SUBJECT TO UNDERTAKINGS 2:47 P.M.

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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 26th day of September, 2016.

Joanne Lawrence

Joanne Lawrence, CSR(A)  
Court Reporter

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