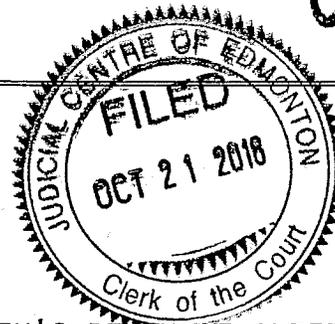


ORIGINAL



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.)

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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 that application to the Court of Appeal? 53

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

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

Sir, do you understand that, regarding the 1985 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? 58

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

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

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

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 Affidavit, we talked about this first sentence here before, "All of our applications for 64

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 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 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 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 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 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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