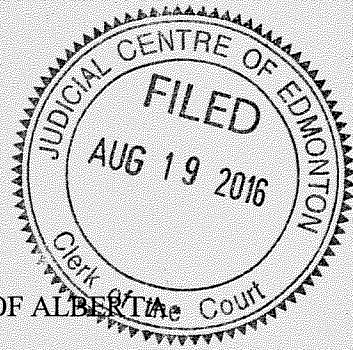


Clerk's Stamp:



COURT FILE NUMBER:

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

ROLAND TWINN,
CATHERINE TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO, as Trustees for the 1985
Sawridge Trust

DOCUMENT

**WRITTEN SUBMISSIONS OF
THE PUBLIC TRUSTEE OF
ALBERTA IN RESPONSE TO
SAWRIDGE FIRST NATION'S
COST SUBMISSIONS**

ADDRESS FOR SERVICES AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Hutchison Law
#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park, AB T8H 2A3

Attention: **Janet L. Hutchison**
Telephone: (780) 417-7871
Fax: (780) 417-7872
File: 51433 JLH

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Attention: Marco Poretti

Solicitor for the Sawridge Trustees

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Attention: Doris Bonora

Solicitor for the Sawridge Trustees

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

Attention: Karen Platten, Q.C. and Crista
Osualdini

Solicitors for Catherine Twinn

Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta
T5J 4K1

Attention: Edward Molstad, Q.C.

Solicitor for the Sawridge First Nation

Clerk's Stamp:

COURT FILE NUMBER:

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

ROLAND TWINN,
CATHERINE TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO, as Trustees for the 1985
Sawridge Trust

DOCUMENT

**WRITTEN SUBMISSIONS OF
THE PUBLIC TRUSTEE OF
ALBERTA IN RESPONSE TO
SAWRIDGE FIRST NATION'S
COST SUBMISSIONS**

ADDRESS FOR SERVICES AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Hutchison Law
#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park, AB T8H 2A3

Attention: **Janet L. Hutchison**
Telephone: (780) 417-7871
Fax: (780) 417-7872
File: 51433 JLH

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Attention: Marco Poretti

Solicitor for the Sawridge Trustees

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Attention: Doris Bonora

Solicitor for the Sawridge Trustees

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

Attention: Karen Platten, Q.C. and Crista
Osualdini

Solicitors for Catherine Twinn

Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta
T5J 4K1

Attention: Edward Molstad, Q.C.

Solicitor for the Sawridge First Nation

I. INTRODUCTION

1. The Office of the Public Trustee of Alberta (“OPGT”) is not liable to pay costs to the Sawridge First Nation (“SFN”), on an enhanced basis or otherwise. *Sawridge #1*,¹ upheld by the Court of Appeal in *Sawridge #2*,² confirmed that:

- i) The OPGT’s terms of appointment in this case include a full and advance indemnity for costs and an exemption from liability for costs of other participants; and
- ii) These terms of appointment were necessary, *inter alia*, to preserve the OPGT’s independence in this proceeding.

2. The SFN was fully involved in *Sawridge #1* and was listed as an “interested party” in the Appeal. The SFN did not participate in *Sawridge #2* to advise any party, or the Court, it regarded the OPGT’s terms of appointment as exempting the SFN. All costs terms set by *Sawridge #1* and *Sawridge #2* apply to the SFN.

3. The OPGT had the statutory prerogative to refuse an appointment in this litigation. The OPGT was explicit in its advice to both this Court and the Court of Appeal that its service as litigation representative was entirely conditional on the costs of its representation being paid from the 1985 Sawridge Trust and being shielded from any liability for any costs in this proceeding.³

4. *Sawridge #1* and *Sawridge #2* gave the OPGT a mandate to represent minor beneficiaries and Candidate Children. *Sawridge #1* rejected the SFN’s position that the rules of the SFN for membership, the SFN application for membership, and the status of outstanding applications for membership were irrelevant to the proceeding. *Sawridge #1*

¹ 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365 (*Sawridge #1*) [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]

² 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2013 ABCA 226 at para. 30 (*Sawridge #2*) [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

³ *Public Trustee Act*, S.A. 2004, P-44.1, s. 6 [Public Trustee’s Brief, filed August 5, 2016, Authorities Tab 1]

gave the OPGT, and indeed the Court, a mandate to “examine the band membership processes, and evaluate, for example, whether or not those processes are discriminatory, biased, unreasonable, delayed without reason, or otherwise breach *Charter* principles and the requirement of natural justice.”⁴

5. In *Sawridge #3*,⁵ the Court identified that what was once relevant to this proceeding was no longer relevant and issued reasons to narrow the scope of relevance on membership issues.

6. The costs award being sought, particularly on an escalated scale, would:

- i) Punish the OPGT for following *Sawridge #1* until December 17, 2015;
- ii) Breach the Court of Appeal’s decision in *Sawridge #2*; and
- iii) Violate the pre conditions set by the OPGT of its acceptance of the role of litigation representative for the minors.⁶

7. The following briefly sets out the relevant facts and then addresses in more detail each of the SFN’s submissions with respect to a costs award against the OPGT.

II. FACTS

8. The OPGT’s involvement in this matter dates back to August 31, 2011 when Justice Thomas directed that it be notified of the proceedings and invited to comment. When no other litigation representative stepped forward for the minors, the OPGT agreed to take on the role, conditional upon “advance costs determined on a solicitor and own client basis are paid to the Public Trustee by the Sawridge Trust; and that the Public Trustee is exempted from liability for the costs of other litigation participants in this

⁴ *Sawridge #1* at para. 43-55 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]

⁵ *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 (*Sawridge #3*) [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

⁶ *Sawridge #2* at para. 19 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

proceeding by an order of this Court.”⁷ (*emphasis added*) Both *Sawridge #1* and the Court of Appeal in *Sawridge #2* confirmed these conditions of the OPGT’s appointment.⁸

9. The SFN was represented by counsel, and made submissions in the hearing leading to *Sawridge #1*. The SFN did not appeal *Sawridge #1* and did not seek leave to appeal *Sawridge #2*.

10. The SFN characterizes its involvement as being since May 2015.⁹ However, the SFN has been involved in this proceeding from the outset. This is a unique proceeding in terms of the SFN being allowed to participate extensively but maintain its “non-party” status. This context must be considered when the SFN describes itself as a non-party and certainly eliminates any question of the SFN’s status as a “participant”.

11. The Trustees did appeal the costs order in *Sawridge #1*. In *Sawridge #2*, the Alberta Court of Appeal confirmed the award of solicitor and own client costs to the OPGT. *Sawridge #2* also confirmed the Chambers Judge did not err in granting an exemption to the OPGT from costs of other “participants”¹⁰

Adjournment of Applications Scheduled for June 30, 2015

12. On June 12, 2015, the OPGT filed an application seeking an Order providing the Court’s advice and direction with respect to:

- i) production of documents relevant to identifying and protecting minor beneficiaries,
- ii) communication between counsel in this matter and Action No. 1403 04885; and

⁷ *Sawridge #1* at para. 34 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]

⁸ *Sawridge #1* at paras. 34 and 42 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]; *Sawridge #2* at para. 19 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

⁹ Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 62.

¹⁰ *Sawridge #2* at para. 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

- iii) confirmation that the cost indemnity order includes agency legal services where required.¹¹

13. On June 12, 2015, the Sawridge Trustees filed an application seeking advice and direction of the Court with respect to:

- i) A litigation plan;
- ii) The offer of settlement from the Trustees dated June 1, 2015; and
- iii) The OPGT's future expenditures including hiring an agent.¹²

14. On June 17, 2015, the SFN requested an adjournment of all matters scheduled for June 30, 2015. The OPGT took no issue with the SFN's request, but requested that due to the subject matter, the production application and the Trustee's Settlement Application to be dealt with at least concurrently and so should both be adjourned.¹³

15. The OPGT was willing to consent to the SFN's adjournment request if the Trustees agreed to adjourn their Settlement Application. The Trustees refused to adjourn their Settlement Application.¹⁴

16. Although unable to consent to the SFN's adjournment request on the basis noted above, the OPGT proposed a compromise solution.¹⁵ The proposed solution sought to address the concerns of all counsel while ensuring valuable party and Court resources were not used for a contested adjournment application. The OPGT proposed in part that:

¹¹ Written Brief of the Applicant, the Public Trustee of Alberta, filed June 12, 2015 at para. 1 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 1]

¹² Brief of the Trustees for Special Chambers Case Management Meeting on June 30, 2015, filed June 12, 2015 at para. 1 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 2]

¹³ Letter to all counsel dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 3]

¹⁴ Letter to all counsel, dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 3]; See also transcript of June 24, 2015 hearing at p. 10, lns. 18-26. [Public Trustee's Reply Brief, filed August 19, 2016, Tab 4]; Email from Dentons, dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 5]

¹⁵ Letter to all counsel dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 3]; Letter to Justice D.R.G. Thomas, dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 6]

- i) the production application and application regarding Action No. 1403 04885 be adjourned;
- ii) the Settlement Application proceed on June 30, 2015 on a limited basis and specifically to seek advice and direction of the Court regarding whether the Settlement Application should be heard before, after, or concurrently with the production application; and
- iii) the substance of the Settlement Application would be adjourned.¹⁶

17. The OPGT also proposed that the June 30, 2015 case management meeting could be used to address:

- i) The OPGT's request for advice and direction regarding communication between all counsel in the within proceeding and Action No. 1403 04885;
- ii) The OPGT's request for advice and direction regarding the scope of the June 12, 2012 costs indemnification order;
- iii) The Trustees' application for advice and direction regarding costs; and
- iv) The Trustees' application for advice and direction on its proposed litigation plan.¹⁷

18. A case management meeting was held June 24, 2015. Justice Thomas granted the SFN's application for an adjournment and the Trustee's Settlement Application was postponed to June 30, 2015, consistent with the OPGT's original request.¹⁸

¹⁶ Letter to all counsel dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 3]; Letter to Justice D.R.G. Thomas, dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 6]

¹⁷ Letter to Justice D.R.G. Thomas, dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 6]

¹⁸ Order of Justice D.R.G. Thomas pronounced June 24, 2015 [Sawridge First Nation Brief, filed August 16, 2016, Tab 4]

June 30, 2015 Case Management Meeting

19. Prior to June 30, 2015 the Trustee's requested an adjournment of their Settlement Application. At the June 30, 2015 hearing, Justice Thomas granted the Trustees' application to adjourn its Settlement Application. The OPGT's production application was scheduled to be heard September 2 and 3, 2015. The Trustees' Settlement Application was scheduled to proceed after the production application.

20. At the September 2-3, 2015 hearing, Thomas J. ordered that the SFN would prepare and serve an Affidavit of Records in accordance with the *Rules*. On September 3, 2015 the Trustees withdrew their Settlement Application entirely. Thus, the impediment to the OPGT's ability to consent to the SFN's original adjournment request was eventually resolved in the manner the OPGT had requested.¹⁹

21. On December 17, 2015, Thomas J. released his decision on the OPGT's production application. (*Sawridge* #3)²⁰ The decision revised and narrowed the role of the OPGT.²¹ *Sawridge* #3 also changed the scope of relevance regarding membership issues set in *Sawridge* #1.

III. ISSUES

22. Can the SFN obtain a costs award against the OPGT without breaching *Sawridge* #2?

23. Can the SFN claim for costs while its legal costs are being paid by the Trustees?

¹⁹ Order of Justice D.R.G. Thomas pronounced June 30, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 7]; Letter to all counsel, dated June 17, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 3]

²⁰ *Sawridge* #3 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

²¹ *Sawridge* #3 at para. 32-33 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

IV. SUBMISSIONS

Costs Indemnity Applies to the SFN

24. The SFN argues for a narrow interpretation of the costs indemnity such that it would not apply to costs claimed by the SFN against the OPGT.²² This interpretation cannot be supported when the full context of the indemnity and exemption order are considered.

25. The OPGT has been firm from the outset that its involvement in this matter was dependent on the costs indemnity. Indeed, its position was explicitly captured in both *Sawridge #1* and *Sawridge #2*:

- i.) The Public Trustee is firm in stating that it will only represent some or all of the potentially affected minors if the costs of its representation are paid from the 1985 Sawridge Trust and that it must be shielded from liability for any costs arising in this proceeding.²³

...

- ii.) The OPGT's willingness to act was conditional on, *inter alia*, the Public Trustee is exempted from liability for the costs of other litigation participants in this proceeding by an order of this Court.²⁴

(emphasis added)

26. Following this, the Court ordered as follows: "Advance costs on a solicitor and own client basis are appropriate in this instance, as well as immunization against costs of other parties"²⁵ and that "the Public Trustee should receive full and advance indemnification for its participation in the proceedings to make revisions to the 1985 Sawridge Trust."²⁶ The Court of Appeal upheld the indemnity order and found Justice Thomas has not erred "in granting an exemption from the costs of other participants".²⁷

²² Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 50.

²³ *Sawridge #1* at para. 14 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]

²⁴ *Sawridge #1* at para. 34 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]; *Sawridge #2* at para. 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

²⁵ *Sawridge #1* at para. 39 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]

²⁶ *Sawridge #1* at para. 42 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]

²⁷ *Sawridge #2* at para. 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

27. The SFN is clearly a participant in this proceeding. Indeed, the SFN participated fully in the hearing which led to *Sawridge #1*. There is no suggestion in either *Sawridge #1* or *Sawridge #2* that the OPGT's cost indemnity or exemption would not apply to the SFN. The SFN did not appeal *Sawridge #1* and *Sawridge #2*.

28. The portions of the Order filed September 20, 2012 cited by the SFN ought to be read in light of the actual Reasons for Judgment in *Sawridge #1*. Also, regardless of the September 20, 2012 Order, the Court of Appeal's decision in *Sawridge #2* governs and clearly deals with a costs exemption in relation to "participants".²⁸

29. The costs indemnity and exemption were also created to ensure independent representation for the minors. The factors requiring the OPGT's independence are unchanged by *Sawridge #3*. Granting the SFN's application would undermine this critical aspect of *Sawridge #1* and *Sawridge #2*.²⁹

30. The SFN's claim that the 1985 Trust could be held responsible for matters entirely out of its control if a costs award is made against the OPGT is also groundless.³⁰ This argument actually supports a broad interpretation of the costs indemnity such that a costs award should not be made against the OPGT.

31. A fair and contextual review of the Court of Appeal decision in *Sawridge #2* makes it clear the Court of Appeal ordered the OPGT would be protected from costs awards against any participant, including the SFN.

No Basis to Revisit Costs Indemnity

32. The SFN further argues that even if the costs exemption applies to it, this Court is not barred from revisiting the issue of costs.³¹ In support of this argument, the SFN refers to Justice Binnie's reasons in *R. v. Caron* with respect to fashioning advance costs

²⁸ *Sawridge #2* at para. 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

²⁹ *Sawridge #1* at para. 40-42 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]; *Sawridge #2* at para. 27-28 and 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

³⁰ Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 53.

³¹ Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 55.

awards. Justice Binnie is actually quoting *British Columbia (Minister of Forests) v Okanagan Indian Band*,³² which was distinguished from the present situation by the Court of Appeal below.³³

33. Notably, *Caron* does not deal with a statutory entity with the right to refuse an appointment as litigation representative unless its costs pre-conditions form part of its terms of appointment.³⁴

34. The OPGT agrees that *Sawridge #2* contemplated ongoing oversight regarding quantum of costs paid to the OPGT under the indemnity, such as “hourly rates, amounts to be paid in advance and other mechanisms for ensuring that the quantum of costs payable by the Trust is fair and reasonable”.³⁵

35. While the Court has discretion regarding quantum of costs, the costs indemnity and the costs exemption themselves became immutable once the limitation to seek leave to appeal from *Sawridge #2* expired.

36. The dangers identified by the SFN of an “absolute” costs indemnity are unfounded. The reasons of the Court of Appeal below remain applicable: “While the possibility of an award of costs against a party can be a deterrent to misconduct in the course of litigation, we are satisfied that the court has ample other means to control the conduct of the parties and the counsel before it.”³⁶

³² *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 referred to in the Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 55. [Sawridge First Nation Brief, filed August 16, 2016, Tab 14]

³³ *Sawridge #2* at para. 17-22 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

³⁴ *Public Trustee Act*, S.A. 2004, P-44.1, s.6 [Public Trustee’s Brief, filed August 5, 2016, Authorities Tab 1]; *Sawridge #1* at para. 34 [Sawridge First Nation Brief, filed March 15, 2016, Tab 6]; *Sawridge #2* at para. 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

³⁵ *Sawridge #2* at para. 29 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

³⁶ *Sawridge #2* at para. 30 [Sawridge First Nation Brief, filed August 16, 2016, Tab 13]

Filing of Written Submissions

37. The SFN states that “the OPGT failed to file written submissions by the January 29, 2016 deadline...”.³⁷ This is misleading as *Sawridge #3* only imposed a deadline of January 29, 2016 to file rule 5.13 applications.³⁸ *Sawridge #3* uses the distinct language “application” versus “submissions” throughout. No deadline was set for January 29, 2016 “submissions” by the OPGT.

38. The OPGT met the Rule 5.13 application deadline and later came to an agreement with the SFN that it would file and serve written submissions by August 5, 2016.³⁹ The OPGT met the agreed upon date of August 5, 2016 for filing its written submissions.

39. The SFN has not established a breach of *Sawridge #3*, nor has it established the deadlines the OPGT and the SFN agreed to for the 5.13 Applications cause the SFN any prejudice.

OPGT’s Questioning Paul Bujold

40. Following questioning of Paul Bujold on May 27 and 28, 2014, Mr. Bujold provided answers to 50 undertakings.

41. The OPGT had scheduled a further questioning of Mr. Bujold on assets documents and Undertakings for May 13, 2015. The questioning was postponed as a result of the need to apply to the Court for advice and direction in May 2015.⁴⁰

42. Questioning of Mr. Bujold prior to receipt of *Sawridge #3* would have been inefficient. After *Sawridge #3*, the OPGT expressed an ongoing concern that there is no proof that all the assets intended to be settled in the 1982 Trust were in fact settled into

³⁷ Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 3.

³⁸ *Sawridge #3* at para. 46 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

³⁹ Letter from E. Molstad to J. Hutchison dated June 27, 2016 [Public Trustee’s Reply Brief, filed August 19, 2016, Tab 8]

⁴⁰ Letter from J. Hutchison dated May 6, 2015 [Public Trustee’s Reply Brief, filed August 19, 2016, Tab 9]

the 1985 Trust.⁴¹ The OPGT invited all parties (thus not including the SFN) to consider a co-operative discussion in February 2016.⁴²

43. While the SFN and Trustees were disputing the relevance of the settlement of assets into the 1982 Trust to the Trustee's application at least discussions began to attempt to resolve this, and other issues.⁴³

44. The OPGT viewed it as most efficient to deal with further questioning of Mr. Bujold when the uncertainty as to the scope of relevance with respect to determining the assets held in the Trust was decided by the Court by way of the 5.13 Assets Application.

45. Ultimately, the co-operative discussions bore fruit and the scope of relevance was, *inter alia*, dealt with by the Consent Order signed by the Trustees and OPGT with respect to the asset transfer. The Consent Order addressed the OPGT's concerns about scope by confirming the Order does not limit an accounting to determine the assets that were transferred into the 1982 Trust.⁴⁴

46. Taken in context, the OPGT's decisions on further questioning of Mr. Bujold provide no basis for a costs award to the SFN.

Adjournment of Applications Scheduled for June 30, 2015

47. The OPGT did not behave improperly in its response to the SFN's adjournment request. Unfortunately, the matter was more complex than merely adjourning the production application, as staging of the applications affected minor's interests. To protect the interests of affected minors, the OPGT needed to ensure production and beneficiary identification were dealt with before the Trustee's Settlement Application.

⁴¹ Letter from J. Hutchison to all counsel dated June 17, 2016 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 10]

⁴² Hutchison Law letter dated February 25, 2016 and RMRF Email dated February 26, 2016 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 12]

⁴³ Sawridge First Nation Brief, March 15, 2016 [Sawridge First Nation Brief, filed August 16, 2016, Tab 1]; Email from Dentons dated May 13, 2016 [Sawridge Trustees Brief, filed August 17, 2016, Tab 2]

⁴⁴ Consent Order on the Asset Transfer Issued signed by the OPGT and Trustees on July 28, 2016 [Sawridge First Nation Brief, filed August 16, 2016, Tab 10]

48. When the Trustee's refused to adjourn their Settlement Application, the OPGT made best efforts to achieve a compromise solution.

49. Such an approach should not meet with a costs award, particularly given the June 24, 2015 case management meeting proved useful to determine what was to be addressed during the hearing scheduled for June 30, 2015. Also, at the June 30, 2015 hearing the Court ordered, among other things, that the Settlement Application was to be heard after the production application.⁴⁵

50. Accordingly, in most respects, the OPGT's June 17, 2015 proposed compromise was ultimately what occurred at the June 24, 2015 meeting and June 30, 2015 hearing.

51. No costs should be ordered against the OPGT with respect to the adjournment of the June 30, 2015 hearing given the OPGT's attempt to reach a solution, the Trustees' refusal to adjourn the Settlement Application, and that all parties (including the SFN) benefitted from the other matters dealt with at the June 24, 2015 case management meeting.

OPGT did not Engage in a Collateral Attack on Membership

52. The SFN argues that the OPGT made reference to Sawridge's membership process and that is inappropriate in light of *Sawridge #3* and should be considered in terms of costs award.

53. *Sawridge #3* states:

- i) "The Public Trustee's role is not to conduct an open-ended inquiry into the membership of the Sawridge Band and historic disputes that relate to that subject."⁴⁶

⁴⁵ Order of Justice D.R.G. Thomas pronounced June 30, 2015 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 7]

⁴⁶ *Sawridge #3* at para. 36 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

- ii) “I stress that the Public Trustee’s role is limited to the representation of potential child beneficiaries of the 1985 Sawridge Trust only. That means litigation, procedures and history that relate to past and resolved membership disputes are not relevant to the proposed distribution of the 1985 Sawridge Trust.”⁴⁷
- iii) “the Public Trustee has no right to engage and shall not engage in collateral attacks on membership processes of the SFN.”⁴⁸

(emphasis added)

54. *Sawridge #3* narrowed the scope of relevance regarding the SFN membership matters from the scope directed in *Sawridge #1*. However, *Sawridge #3* does not represent a unilateral prohibition preventing any reference to anything to do with the SFN Membership. Indeed, given the pending Beneficiary definition change application, it would be impossible to avoid any reference to the SFN Membership.

55. Indeed, it may be difficult for the OPGT to perform Task 3, as directed by *Sawridge #3*, without any reference whatsoever to the SFN membership. For example, it remained unclear pursuant to *Sawridge #3* what constituted an unresolved, unsuccessful, or incomplete application so far as determining who is captured by particular categories.⁴⁹ This has been compounded by the fact that the OPGT has received considerable amounts of generic information (i.e. no names) from various time periods making it difficult to cross-reference and to ensure minor beneficiaries are accurately identified.

56. As recent events demonstrate, beneficiary identification of minors is also an evolving matter.⁵⁰

⁴⁷ *Sawridge #3* at para. 49 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

⁴⁸ *Sawridge #3* at para. 69 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

⁴⁹ *Sawridge #3* at para. 51, 52 and 57 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

⁵⁰ Application by Patrick Twinn, on his behalf and on behalf of his infant daughter, Aspen Saya Twinn, and his wife Melissa Megley; and Shelby Twinn; and Deborah Serafinchon; Shelby Twinn, July 26, 2016

57. Accordingly, the 5.13 membership application has been brought before the Court to ensure the parties have appropriately applied *Sawridge #3* and to confirm the Court is satisfied all evidence required to identify the potential minor beneficiaries has been provided. The OPGT has been responsive to the refocusing of its role as directed in *Sawridge #3*. The OPGT's conduct has been reasonable, in accordance with *Sawridge #3*, and does not warrant any sanction by way of a costs award.

No Other Basis for Costs Award

58. The SFN relies on *Children's Aid Society of the City of St. Thomas and County of Elgin v. L. S.*⁵¹ in support of its argument that costs ought to be awarded against the OPGT. The case is entirely distinguishable from the facts of this case for reasons including, the fact that neither a costs indemnity nor exemption were operative in *L. S.*

59. Also, unlike *L.S.*, the OPGT's conduct in this proceeding have been reasonable and necessary. The following addresses the steps raised by the SFN:

- i) As noted above, the OPGT's inability to consent to the SFN's adjournment request in June 2015 arose from the Trustee's positions on their Settlement Application. The OPGT still worked to achieve compromise, which is omitted from the SFN's brief. The proposed compromise was ultimately similar to the orders eventually made.
- ii) The OPGT did pursue other reasonable avenues for obtaining production from the parties to the Action. Given the SFN's voluntary production to the Trustees of many relevant documents and from the production received by the SFN, the SFN itself made it clear they were the most suitable party to request the additional information from.

Affidavit; Patrick Twinn, July 26, 2016 Affidavit; Deborah Serafinchon, July 26, 2016 Affidavit [Public Trustee Reply Brief, filed August 16, 2016, Appendix I]

⁵¹ *Children's Aid Society of the City of St. Thomas and County of Elgin v. L. S.*, 2004 CanLII 19361 (ON CJ) (*L.S.*) [Sawridge First Nation Brief, filed August 16, 2016, Tab 15]

- iii) The OPGT fully intended to further examine Mr. Bujold on assets issues and his answers to undertakings. Questioning was postponed by the 2015 applications leading to *Sawridge #3*. After *Sawridge #3*, direction of the Court was needed on the asset transfer issue to avoid the expense of a questioning that would be mired down by objections and procedural arguments.
- iv) In 2015, the OPGT proceeded with an application for production in line with fulfilling its duty to the minor beneficiaries as established in *Sawridge #1* and pursued the SFN, a non-party, on the basis it was in the best position to provide that production. The fact that what was relevant changed as of *Sawridge #3* does not make steps taken by the OPGT prior to *Sawridge #3* unreasonable.
- v) The OPGT has continued to review the information received by the SFN and actively narrow the outstanding issues on all its applications. The generic nature of the information covering various time periods has made it difficult to fully identify minor beneficiaries. The OPGT advised the SFN of the remaining narrow scope of its membership application well in advance of the SFN's decision to further examine Paul Bujold. Notably that questioning dealt with almost nothing relevant to the 5.13 Membership application.⁵²
- vi) The OPGT should not be punished for withdrawing its asset Rule 5.13 application. The OPGT initiated co-operative discussions in February 2016.⁵³ The timing of the eventual withdrawal was a result of back and forth required between the various parties to come to an agreement on a consent order. There were significant revisions to the Trustee's first proposal on clarification before the Trustees and OPGT came to an

⁵² Questioning of Paul Bujold held on July 27, 2016

⁵³ Hutchison Law letter dated February 25, 2016 and RMRF Email dated February 26, 2016 [Public Trustee's Reply Brief, filed August 19, 2016, Tab 12]

agreement on a consent order with respect to asset transfer.⁵⁴ The OPGT should not be punished for protecting minor beneficiary rights.

- vii) The OPGT advised the SFN on June 17, 2016 that it would be filing a brief written submission on that application “to ensure that the court is made aware of the information that has been provided by the SFN since January 29, 2016”.⁵⁵ On July 7, 2016, the OPGT provided a list of evidence it intended to rely upon in its submissions and served copies of the evidence or provided links to the Trustee’s website for Court documents. The list consisted entirely of previously filed evidence.⁵⁶ The OPGT did not file any new affidavits or further evidence. To re-file all this material, as suggested by the SFN, would simply be a waste of resources. The OPGT acted in accordance with a litigation plan agreed upon by the parties and no prejudice was caused to the SFN in this regard.
- viii) The OPGT has responded to the narrowed role and scope of relevance set out in *Sawridge #3* and would welcome any further directions in that regard that the Court feels is necessary.

No Costs Payable to the SFN

60. The paramount reason to deny the SFN’s costs application is the OPGT’s costs exemption. However, almost as compelling is the fact that the Trustees have already agreed to pay the legal fees of the SFN.⁵⁷

61. Given the evidence in this regard, the Order the SFN seeks is effectively double recovery and the application should be dismissed.

⁵⁴ Consent Order on the Asset Transfer Issued signed by the OPGT and Trustees on July 28, 2016 [Sawridge First Nation Brief, filed August 16, 2016, Tab 10]

⁵⁵ Letter to all counsel from J. Hutchison dated June 17, 2016 [Public Trustee’s Reply Brief, filed August 19, 2016, Tab 10]

⁵⁶ Hutchison Law letter dated July 7, 2016 [Sawridge First Nation Brief, filed August 16, 2016, Tab 9]

⁵⁷ Catherine Twinn, September 23, 2015 Affidavit, para. 29 (k) [Appendix C to the Brief of the Public Trustee, filed August 5, 2016]; Transcript of Questioning of Paul Bujold held July 27, 2016, pg. 62-63

62. The SFN can also only claim necessary costs. In relation to any costs for the July 27, 2016 questioning of Paul Bujold, the OPGT has serious concerns about usefulness of the majority of the questioning. Certainly, the majority of the evidence should be given little weight or relevance in the applications before this Court. Also, the majority of that questioning was spent on matters relevant to Catherin Twinn or the withdrawn Rule 5.13 assets application.⁵⁸

63. Also, The SFN states that “case law is clear that the Court has the discretion to award costs against a party to a non-party” and cites *Manning v. Epp*⁵⁹ at paras. 18-20 in support of this proposition.⁶⁰ This is a mischaracterization of that decision and is not even applicable in the present matter given the Court of Appeal order on the costs exemption.

64. First, *Manning* is premised on the language of an Ontario statute. Second, the paragraph referenced (para. 18) actually states, “There does not appear to be a case where costs have been awarded in favour of a non-party...” It also states, “The cases involving non-parties mainly address the question of whether costs can be awarded against them.” So while the OPGT does not challenge the Court’s discretion with respect to costs, it is not on as firm ground as the SFN suggests. Awarding costs to a non-party is very rare and as *Manning* states the power to do so was only implicitly recognized.⁶¹

65. In addition to a request for costs, the SFN requests that it should be awarded enhanced costs. In support of this proposition it cites the 1994 B.C. decision of *Francescutto (Guardian ad litem of) v. Strata Plan K227*.⁶² Aside from being a decision based on another province’s *Rules of Court*, very little reliance, if any, should be put on this case because:

⁵⁸ Questioning of Paul Bujold held on July 27, 2016, pg. 71-72

⁵⁹ *Manning v. Epp*, 2006 CanLII 24126 (ON SC) [Sawridge First Nation Brief, filed August 16, 2016, Tab 17]

⁶⁰ Written Submissions of the Sawridge First Nation filed August 16, 2016 at para. 65.

⁶¹ *Manning v. Epp*, 2006 CanLII 24126 (ON SC) at para. 18 [Sawridge First Nation Brief, filed August 16, 2016, Tab 17]

⁶² *Francescutto (Guardian ad litem of) v. Strata Plan K227*, [1994] B.C.J. No. 2076 [Sawridge First Nation Brief, filed August 16, 2016, Tab 18]

- i) the B.C. Court of Appeal overturned the chambers judge's decision on which the costs award was based;⁶³ and
- ii) it addresses proceeding with litigation despite having a minimal chance of success which is not the case in the present matter given that the OPGT was following the direction provided in *Sawridge #3* and that it has acted in pursuit of its "dual objectives of assisting this Court in directing a fair distribution scheme for the assets of the 1985 Sawridge Trust and the representation of potential minor beneficiaries".⁶⁴
- iii) the facts of the Case do not apply in this matter. The allegations of the SFN as against the OPGT are groundless and devoid of merit.

66. As described above, the OPGT's conduct has been reasonable throughout this complex multi-party proceeding. The OPGT has not engaged any conduct which would warrant an award of costs to the SFN, let alone a more enhanced award of costs, even if the option to award costs against the OPGT remained available.

V. RELIEF REQUESTED

67. For the above reasons, the OPGT requests that this Honourable Court dismiss all aspects of the SFN's costs application.

⁶³ *Francescutto (Guardian ad litem of) v. Strata Plan K227*, [1996] B.C.J. No. 308, reasons for judgment by Chief Justice McEachern [Sawridge First Nation Brief, filed August 16, 2016, Tab 18]

⁶⁴ *Sawridge #3* at para. 7 [Sawridge First Nation Brief, filed August 16, 2016, Tab 7]

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the Hamlet of Sherwood Park, in the Province of Alberta, this 19th day of August, 2016

HUTCHISON LAW

Per: 

JANET L. HUTCHISON

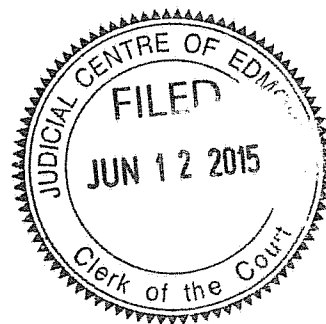
Solicitors for the Public Trustee of Alberta

Estimation of time for Oral Argument: 15 minutes

LIST OF APPENDICIES

- Tab 1** Written Brief of the Applicant, the Public Trustee of Alberta, filed June 12, 2015
- Tab 2** Brief of the Trustees for Special Chambers Case Management Meeting on June 30, 2015, filed June 12, 2015
- Tab 3** Hutchison Law Letter to all counsel dated June 17, 2015
- Tab 4** Transcript of June 24, 2015 hearing
- Tab 5** Email from Dentons dated June 17, 2015
- Tab 6** Hutchison Law Letter to Justice D.R.G. Thomas, dated June 17, 2015
- Tab 7** Order of Justice D.R.G. Thomas pronounced June 30, 2015
- Tab 8** Letter from E. Molstad to J. Hutchison dated June 27, 2016
- Tab 9** Letter from J. Hutchison dated May 6, 2015
- Tab 10** Letter from J. Hutchison to all counsel dated June 17, 2016
- Tab 11** Letter to Justice D.R.G. Thomas, dated June 29, 2015
- Tab 12** Hutchison Law letter dated February 25, 2016 and Email from RMRF dated February 26, 2016

Clerk's Stamp:



COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

ROLAND TWINN,
CATHERINE TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO, as Trustees for the 1985
Sawridge Trust

DOCUMENT

WRITTEN BRIEF OF THE APPLICANT, THE
PUBLIC TRUSTEE OF ALBERTA

ADDRESS FOR SERVICES AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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

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

**WRITTEN BRIEF OF THE APPLICANT, THE PUBLIC TRUSTEE OF
ALBERTA**

Clerk's Stamp:

COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

ROLAND TWINN,
CATHERINE TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO, as Trustees for the 1985
Sawridge Trust

DOCUMENT

WRITTEN BRIEF OF THE APPLICANT, THE
PUBLIC TRUSTEE OF ALBERTA

ADDRESS FOR SERVICES AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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

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

**WRITTEN BRIEF OF THE APPLICANT, THE PUBLIC TRUSTEE OF
ALBERTA**

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Attention: Marco Poretti

Solicitor for the Sawridge Trustees

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Attention: Doris Bonora

Solicitor for the Sawridge Trustees

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

Attention: Karen Platten, Q.C.

Solicitor for Catherine Twinn

DLA Piper
Suite 1201, Scotia Tower 2
10060 Jasper Ave
Edmonton, Alberta
T5J 4E5

Attention: Priscilla Kennedy

Solicitors for June Kolosky and Aline Huzar

Bryan & Company
#2600 Manulife Place
10180 - 101 Street
Edmonton, Alberta
T5J 3Y2

Attention: Nancy Cumming, Q.C.

Solicitor for the Sawridge Trustees

Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta
T5J 4K1

Attention: Edward Molstad, Q.C.

Solicitors for Sawridge First Nation

INDEX

	PAGE
INTRODUCTION	1
PART I STATEMENT OF FACTS	2
PART II ISSUES	14
PART III SUBMISSIONS OF LAW	14
PART IV REMEDY SOUGHT	27
APPENDICIES	
	Appendix A- Table of Similarities and Dissimilarities Between Action No. 1103 14112 and 1403 04885
	Appendix B- Table of Overlapping Roles of Sawridge Trustees
	Appendix C- Table of Potential Minor Beneficiaries
AUTHORITIES	

I. STATEMENT OF FACTS

A. Introduction

1. The Office of the Public Trustee of Alberta seeks an Order providing the Court's advice and direction as regards the following three issues which are directly related to the Public Trustee's ability to fulfill its mandate of identifying and protecting the interests of the minor beneficiaries, including the potential minor beneficiaries ("candidate children"):
 - i.) Production of all documents that are relevant and material;
 - ii.) Addressing the overlap in issues as between the within proceeding and QB 1403 04885, including providing a "green light" for appropriate communications between all counsel involved;
 - iii.) Confirmation that the Order requiring the Public Trustee be indemnified for costs, includes agency legal services, where required.

B. Facts

i.) Background

2. The Sawridge Band is a First Nation located in Northern Alberta. Prior to the coming into effect of amendments to the *Indian Act* in 1985¹ (known as *Bill C-31*) and s.15 (equality) of the *Charter*, the Sawridge Band established Trusts to hold significant portions of the Band's assets.² The goal of the Trusts was to protect the Band assets against individuals, primarily women, that would be restored to Indian status and Band membership by *Bill C-31*. The 1985 Trust is the subject of the main application in this proceeding.

¹ *An Act to amend the Indian Act*, S.C. 1985, c.27

² Affidavit of Paul Bujold, dated August 30, 2011 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

COURT FILE NUMBER

COURT

JUDICIAL CENTRE

Clerk's stamp:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA

EDMONTON

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

IN THE MATTER OF THE SAWRIDGE BAND
INTER VIVOS SETTLEMENT CREATED BY
CHIEF WALTER PATRICK TWINN, OF THE
SAWRIDGE INDIAN BAND, NO. 19 now known as
SAWRIDGE FIRST NATION ON APRIL 15, 1985

APPLICANTS

ROLAND TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO,
CATHERINE TWINN, as trustees for the 1985
Sawridge Trust

DOCUMENT

**BRIEF OF THE TRUSTEES FOR
SPECIAL CHAMBERS CASE
MANAGEMENT MEETING ON JUNE 30,
2015**

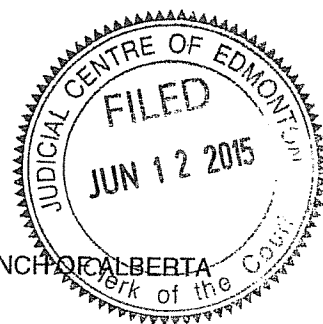
ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

Reynolds Mirth Richards & Farmer LLP
3200, 10180 101 Street
Edmonton AB T5J 3W8

Attention: Marco S. Poretti
Telephone: (780) 497-3325
Fax: (780) 429-3044



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

Attention: Janet L. Hutchison
Solicitors for the Public Trustee of Alberta

TABLE OF CONTENTS

INTRODUCTION	4
PART I – STATEMENT OF FACTS	5
A. Proposed Litigation Plan	5
B. Offer of Settlement	5
C. Hiring of Third Party Agent by Public Trustee	5
PART II – ISSUES	6
PART III – SUBMISSIONS	6
A. Law	6
(a) Rules of Court - Proposed Litigation Plan	6
(b) Statutory Provisions Protecting Minors' Interests	7
(c) The Court's <i>parens patriae</i> Jurisdiction	7
B. Application of Law	8
(a) Proposed Litigation Plan	8
(b) Offer of Settlement	9
(c) Hiring of Third Party Agent by Public Trustee	10
PART IV – REMEDY SOUGHT	11
PART V – LIST OF AUTHORITIES	12

INTRODUCTION

1. This Brief is in support of an application concerning the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the "1985 Sawridge Trust") brought by the trustees of the 1985 Trust (the "trustees"). The trustees seek the advice and direction of the Court with respect to:
 - (a) the litigation plan dated April 30, 2015 and the litigation plan dated June 12, 2015;
 - (b) the offer of settlement from the trustees dated June 1, 2015; and
 - (c) the Public Trustee's future expenditures including hiring a Third Party Agent.
2. The litigation in this action has stalled and the Public Trustee has not responded in a substantive way to the trustees' proposed litigation plan. The trustees have made an offer to the Public Trustee to settle all issues to the unmitigated benefit of the minor children who are affected by a change in definition of the 1985 Sawridge Trust. To the date of this brief the Public Trustee has not responded to the offer. The Public Trustee proposes to retain a third party agent to assist it in ongoing litigation at costs that are of concern to the trustees.
3. Both parties are required to manage this litigation and plan its resolution in a timely and cost-effective way. This obligation derives not only from the *Rules of Court* but also from both parties' roles as trustees, who are obligated to advance this litigation to the benefit and expense of the beneficiaries to the 1985 Sawridge Trust as well as the minors represented by the Public Trustee. As the Public Trustee has unfortunately not responded in a substantive way to the trustees' proposed litigation plan, the Court's advice and direction is required to move this matter expeditiously towards resolution.
4. Further, the Court in its inherent jurisdiction in the protection of minors and its *parens patriae* authority must intervene on behalf of the interested children to review the offer of settlement from the trustees. The Court must consider whether it is appropriate for the Public Trustee to refuse the offer given that it represents a complete success in this matter for the minor children.
5. Finally, the trustees would be remiss in their fiduciary duty if they did not bring to the Court's attention and seek direction with respect to the Public Trustee's proposal to hire a third party agent in Ontario to assist it in its mandate when like services are available from local agents at a fraction of the cost. The trustees require the Court's direction with respect to the retainer of this agent, and the trustees also seek the right to a full audit and review of the Public Trustee's accounts at the conclusion of this matter with all accounts, including those of agents retained by the Public Trustee, produced in full without redaction. In accordance with the direction from the



HUTCHISON LAW

#155 Glenora Gates
10403 122 Street
Edmonton, Alberta
T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

* Janet L. Hutchison, LL.B.
Rebecca C. Warner, B.A., J.D., Student-at-Law

Our File: 51433 JLH

SENT BY EMAIL ONLY

June 17, 2015

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Attention: Marco Poretti

Attention: Doris Bonora

Bryan & Company
#2600 Manulife Place
10180 - 101 Street
Edmonton, Alberta
T5J 3Y2

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

Attention: Nancy Cumming, Q.C.

Attention: Karen Platten, Q.C.

Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta
T5J 4K1

DLA Piper
Suite 1201, Scotia Tower 2
10060 Jasper Ave
Edmonton, Alberta
T5J 4E5

Attention: Edward Molstad, Q.C.

Attention: Priscilla Kennedy

Dear Sirs and Mesdames:

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

I am writing further to our joint teleconference of June 16, 2015. The with prejudice matters discussed in that teleconference included:

* Denotes Professional Corporation

- 1.) Mr. Molstad's request for an adjournment of the Public Trustee's application for further and better production;
- 2.) The willingness of the Public Trustee to consent to that adjournment if the Sawridge Trustees agreed to adjourn their application to approve the June 1, 2015 settlement proposal;
- 3.) The Sawridge Trustees refusal to adjourn the application for approval of the settlement proposal.

Our teleconference yesterday indicated the parties have very different views of the appropriate staging of the next steps in the proceeding. The Public Trustee believes the parties require the Court's assistance to determine what will, and will not, be on the agenda for the June 30, 2015 case management meeting.

The Public Trustee is proposing a compromise solution that would accommodate Mr. Molstad's request and avoid the time and expense associated with a contested adjournment application. A copy of the Public Trustee's correspondence to the Court setting out that proposal, and requesting the Court's direction, is attached for your information.

In relation to two other matters raised this week, Ms. Cumming advised that Public Trustee's application materials were not delivered to her office until the morning of June 15, 2015. We have confirmed the courier did not arrive at Bryan & Co on June 12, 2015 prior to that office closing. The materials were delivered to Bryan & Co on June 15, 2015 at 9:00AM. Mr. Molstad advised that he did not receive the Public Trustee's application materials until June 15, 2015. However, we have confirmed that the materials were delivered to Parlee McLaws LLP, and signed for, on June 12, 2015 at 4:51 PM.

We have no wish to inconvenience either of these two counsel in any way. As you will note in our proposal to the Court, we are suggesting that, to the extent either Ms. Cumming or Mr. Molstad determine that they wish to file reply submissions prior to the June 30, 2015 appearance, we propose that they have until June 23, 2015 to do so, subject to the approval of the Court.

Given the limited time available this week, we would appreciate it if you would advise the Court directly of your position on both of these proposals.

Thank you for your attention to this matter.

Yours truly,

HUTCHISON LAW

PER: JANET L. HUTCHISON

JLH/cm

cc: Client

Action No.: 1103 14112
E-File No.: EVQ15SAWRIDGEBAND
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

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

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees
for the 1985 Sawridge Trust (the "Trustees")

Applicants

P R O C E E D I N G S

Edmonton, Alberta
June 24, 2015

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

TABLE OF CONTENTS

Description	Page
June 24, 2015	
Morning Session	1
Discussion	1
Submissions by Mr. Molstad (Adjournment of Matters Directed at the Sawridge First Nation Only)	4
Submissions by Ms. Hutchison (Adjournment of Matters Directed at the Sawridge First Nation Only)	7
Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge First Nation Only)	10
Submissions by Mr. Kueber (Adjournment of Matters Directed at the Sawridge First Nation Only)	14
Submissions by Ms. Platten (Adjournment of Matters Directed at the Sawridge First Nation Only)	15
Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the Sawridge First Nation Only)	15
Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge First Nation Only)	18
Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the Sawridge First Nation Only)	20
Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge First Nation Only)	21
Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the Sawridge First Nation Only)	23
Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge First Nation Only)	25
Order (Adjournment of Matters Directed at the Sawridge First Nation Only)	25
Further Submissions by Mr. Molstad (Adjournment of Matters Directed at the Sawridge First Nation Only)	25
Further Order (Adjournment of Matters Directed at the Sawridge First Nation Only)	27
Submissions by Mr. Molstad (Costs)	29
Submissions by Ms. Hutchison (Costs)	30
Order (Costs)	30
Certificate of Record	34
Certificate of Transcript	35

1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 June 24, 2015

Morning Session

4

5 The Honourable

Court of Queen's Bench

6 Justice Thomas

of Alberta

7

8 M.S. Poretti/ D.C.E Bonora

For the Trustees of the 1985 Sawridge Trust

9 K.A. Platten, Q.C.

For the Applicant Catherine Twinn

10 E.H. Molstad, Q.C.

For the Sawridge First Nation

11 J.L. Hutchison

For the Office of the Public Trustee

12 J.J. Kueber, Q.C.

For all Trustees (Except Catherine Twinn)

13 M. O'Sullivan

Court Clerk

14

15

16 **Discussion**

17

18 THE COURT:

What is the next number matter you have got

19 on, Madam Clerk?

20

21 Ma'am, what are you on?

22

23 MS. PLATTEN:

I'm -- My Lord, I'm here on the Sawridge

24 matter.

25

26 THE COURT:

Sawridge. Okay.

27

28 So is everybody here on Sawridge? Okay. We will wait for Mr. Molstad to come back.

29

30 MR. PORETTI:

I think we're all here on Sawridge --

31

32 THE COURT:

So come on forward, yes.

33

34 MR. PORETTI:

-- My Lord.

35

36 THE COURT:

Sorry. I did not recognize some of you.

37

38 Okay. Yes, you are excused, thanks, and you are excused too.

39

40 THE SHERIFF'S OFFICER:

Oh.

41

1 THE COURT: I do not --
2
3 THE SHERIFF'S OFFICER: Thank you, My Lord.
4
5 THE COURT: -- think we will need security for this.
6
7 MS. BONORA: My Lord, while we are waiting for
8 Mr. Molstad, do you know everyone?
9
10 THE COURT: Well, actually --
11
12 MS. BONORA: Do you know --
13
14 THE COURT: -- thanks, Ms. Bonora. I was just going to ask
15 you if somebody would not mind doing that.
16
17 MS. BONORA: Not at all, so Doris Bonora from Dentons
18 Canada, Marco Poretti from --
19
20 THE COURT: Mm-hm.
21
22 MS. BONORA: -- Reynolds Mirth --
23
24 THE COURT: Right.
25
26 MS. BONORA: -- Joe Kueber from Bryan & Company --
27
28 THE COURT: Yes.
29
30 MS. BONORA: -- Karen Platten from McLennan Ross, and
31 Janet Hutchison from Hutchison Law --
32
33 THE COURT: Mm-hm.
34
35 MS. HUTCHISON: Good morning, My Lord.
36
37 MS. BONORA: -- and Ed Molstad I think you know.
38
39 THE COURT: Who needs no introduction.
40
41 MS. BONORA: And in the courtroom is also Catherine Twinn.

1
2 THE COURT: Mm-hm. And the other gentleman at the back?
3
4 MS. BONORA: And Glenn Godfrey --
5
6 MS. HUTCHISON: Oh --
7
8 MS. BONORA: -- from the Public Trustee's --
9
10 MS. HUTCHISON: -- of the --
11
12 MS. BONORA: -- office.
13
14 MS. HUTCHISON: -- Public Trustee's office.
15
16 THE COURT: Oh, Public Trustee, okay. All right.
17
18 MR. MOLSTAD: This is my application, My Lord.
19
20 THE COURT: All right. Now, I know there was a flurry of
21 material that --
22
23 MR. MOLSTAD: Do you have that, My Lord?
24
25 THE COURT: I saw it --
26
27 MR. MOLSTAD: I --
28
29 THE COURT: -- land on my desk, but --
30
31 MR. MOLSTAD: -- I've got extra --
32
33 THE COURT: -- I do not have --
34
35 MR. MOLSTAD: -- copies if you'd --
36
37 THE COURT: -- of it.
38
39 MR. MOLSTAD: -- like it? I'm not sure that -- I don't even
40 refer to, but others may. This is the package there. This is just the correspondence that
41 has --

1
2 THE COURT: Okay.
3
4 MR. MOLSTAD: -- been exchanged.
5
6 THE COURT: All right. Thanks, Mr. Molstad.
7

8 **Submissions by Mr. Molstad (Adjournment of Matters Directed at the Sawridge First**
9 **Nation Only)**

10
11 MR. MOLSTAD: And briefly, My Lord, I represent Sawridge
12 First Nation who are not a party to these proceedings. If you recall a few years back, we
13 did appear. They were served with notice in relation to the Public Trustee's application,
14 and following that, enquiries were made as to whether we wished to become a party; and
15 we indicated that we did not feel that was necessary and declined.
16

17 But notwithstanding that, on May 15th, 2015, we received a letter from Ms. Hutchinson
18 on behalf of the Public Trustee, and you have a copy of that in material I have provided
19 to you, advising you that I was included in this communication to deal with the
20 possibility, and I emphasize that word, that Sawridge First Nation may wish to participate
21 or take a position in the pending application. There was nothing in this letter indicating
22 that an application would be made with Sawridge First Nation as a respondent and that
23 this application would substantially affect the rights of Sawridge First Nation.
24

25 On June 15th, 2015 -- and I think the correspondence indicates that my friend had it
26 delivered Friday at 4:51, but on June 15th, the following Monday, the box arrived on my
27 desk; and it was a box that was close to being full of material. It included the Public
28 Trustee's application. Sawridge First Nation was not named as a respondent; however, no
29 one was named as a respondent in that application. It did appear obvious that the
30 application intended to request relief directly affecting Sawridge First Nation. It also
31 included a lengthy affidavit of a deponent for the Public Trustee. Mr. Roman Bombak,
32 and excerpts from pleadings, transcripts, exhibits, and answers to undertakings, and the
33 written brief of the Public Trustee.
34

35 The application, in reviewing it, purports to require production from Sawridge First
36 Nation, a non-party, pursuant to Rule 5.13; and included is a request for documents
37 described as, quote:

38
39 Documents produced in Federal Court Action T-66-86.
40

41 In fact, those were two actions in the Federal Court, T-66-86A and 86B, which were

1 commenced in 1986 and over a period of more than 20 years involved two trials in the
2 Federal Court; one of which, the second, I was counsel for part of the proceedings for the
3 Sawridge First Nation and Ms. Hutchison acted for one of the interveners.
4

5 The actions involved a number of parties. It involved Sawridge First Nation, Tsuu T'ina
6 First Nation, the Crown. It involved interveners including the Congress of Aboriginal
7 Peoples, Native Counsel of Canada Alberta, Non-Status Indian Association of Alberta, and
8 the Native Women's Association of Canada. The issue in that action was the
9 constitutionality of certain 1985 amendments to the *Indian Act*, which are referred to as
10 Bill C-31, and the plaintiffs argued that that statutory provision infringed their
11 constitutionally protected right to determine their own citizenship.
12

13 There was no determination on the issue on the merits, in our submission, as the case was
14 dismissed on the basis that no evidence was before the Court. A great deal of evidence
15 was stuck by the trial judge. The plaintiffs closed their case, and there was no evidence
16 upon which he could make a decision; and as a result, it was dismissed.
17

18 We spoke to all counsel on June 16th of 2015, and all counsel, with the exception of
19 Ms. Hutchison on behalf of the Public Trustee, agreed to consent to the adjournment of
20 matters that were directed at the Sawridge First Nation.
21

22 Our submission is trial by ambush is not part of our rules or our procedure, and we do
23 point out that Ms. Hutchison does state that the Public Trustee takes no issue with our
24 request for additional time to prepare a response; however, in the correspondence, you'll
25 see that she proposes conditions or compromise on matters that Sawridge First Nation
26 have no control over or any say in respect to.
27

28 So our request, My Lord, is that this Court order that the application directed at the
29 Sawridge First Nation be adjourned in order to allow a reasonable period of time to
30 respond, and that likely will include questioning on the deponent for the Public Trustee's
31 affidavit. It will include filing of evidence on behalf of the Sawridge First Nation and
32 obviously preparing a written brief on behalf of the First Nation.
33

34 We would also request that, if my friend intends to proceed with this application, that she
35 be directed to file a proper notice setting out precisely the relief requested as against the
36 Sawridge First Nation and the evidence that she relies in support of it in order to allow us
37 the opportunity to respond to it.
38

39 Should you grant the adjournment we request, Sawridge First Nation -- and I understand
40 it's a half day that's scheduled for June 30th, the Sawridge First Nation will not be
41 attending on June 30th as the other matters that our friends intend to deal with have

1 nothing to do with the Sawridge First Nation.

2
3 So essentially, Sir, we're asking of an adjournment. My friend has not yet consented to
4 that. She has put conditions that we don't control; and subject to an opportunity to speak
5 to costs, those are our submissions.
6

7 THE COURT: It sounded to me as if there were some
8 conditions of an adjournment that you were seeking having to do with a more fulsome
9 notice, that sort of thing. Do you want to run those by me again?
10

11 MR. MOLSTAD: From our perspective?
12

13 THE COURT: Yes.
14

15 MR. MOLSTAD: Yeah. Yeah. We had no notice whatsoever
16 that any application involving Sawridge First Nation and the rights of Sawridge First
17 Nation was going to be addressed on June 30th. We had a letter on the 15th of May that,
18 in fact, suggested issues that would be dealt with that had nothing to do, frankly, with the
19 Sawridge First Nation; so we were led to believe that we would be getting a motion
20 involving all of these other parties. We would look at that. We would see, well, you
21 know, same old story. We're not going to show up and be in a position where we're not
22 going to attend; and on the 15th of June, we get served with this box of motion
23 material --
24

25 THE COURT: Mm-hm.
26

27 MR. MOLSTAD: -- where it's clear that my friend is seeking
28 relief as against Sawridge First Nation.
29

30 THE COURT: Yes. But later on in your submission, you
31 referred to if there is an adjournment, you would like the Court to impose some
32 requirements on the Public Trustee at least in respect to their motion for production, right?
33 That is what I am -- I am just trying --
34

35 MR. MOLSTAD: Yeah. No --
36

37 THE COURT: -- to get you to --
38

39 MR. MOLSTAD: -- their motion for production as it relates to
40 Sawridge First Nation, we're asking that anything that they directed at us be adjourned to
41 allow us --

1
2 THE COURT: Mm-hm.
3

4 MR. MOLSTAD: -- to respond to. Now, there are other parties
5 involved in this motion and other relief being sought, and my friend Ms. Bonora probably
6 is better able to respond to their position in relation to that --
7

8 THE COURT: Okay.
9

10 MR. MOLSTAD: -- than I am.
11

12 THE COURT: Okay. But I just want to get clear what you
13 want. If the Public Trustee is going to proceed with his production application, you
14 wanted some more detail with respect to relief --
15

16 MR. MOLSTAD: Well, I --
17

18 THE COURT: -- that --
19

20 MR. MOLSTAD: -- well, yes. In other words, the motion -- if
21 you read the motion, it's a motion that involves a number of issues. She purports to
22 include in that what we interpret to be an application as against the Sawridge First Nation
23 for production of documents and for production of documents that include production in
24 an action that went on for over 20 years that are in the thousands of documents. We want
25 to know precisely what it is she's seeking as against the Sawridge First Nation so that we
26 can respond to it. I mean, if we're left with the motion as it is, we're still in a position
27 that we can prepare a response; however, it would be more efficient to know exactly what
28 she is claiming as against Sawridge First Nation.
29

30 THE COURT: Okay. I get it.
31

32 MR. MOLSTAD: Yeah.
33

34 THE COURT: Thank you.
35

36 MR. MOLSTAD: Okay. Thank you, Sir.
37

38 THE COURT: Ms. Hutchison, or --
39

40 **Submissions by Ms. Hutchison (Adjournment of Matters Directed at the Sawridge First**
41 **Nation Only)**

1

2 MS. HUTCHISON:

My Lord, good morning. My Lord, as my

3 friend, Mr. Molstad, has indicated, the Public Trustee has no objection in principle to an
 4 adjournment of the production application. Where counsel were unfortunately not able to
 5 reach agreement or a consensus was on the question of whether or not the -- or on the
 6 question of prematurity of the Sawridge Trustee's settlement application. It's the position
 7 of the Public Trustee that neither the Public Trustee nor the Court currently has adequate
 8 information or evidence before it to deal with that settlement application. That's a matter,
 9 we're suggesting to the Court, that we argue on June 30th when we have adequate time to
 10 do so. Our proposal to our friends was, given that there's a disagreement, frankly,
 11 about whether or not we can properly deal with the settlement application before we deal
 12 with some of the production issues, that all matters should be adjourned -- sorry, I
 13 shouldn't say all matters, My Lord, that the production application and the settlement
 14 application should both be adjourned to a later date.

15

16 As I understand the position of the Sawridge Trustees, they take the view that the
 17 settlement application can and should proceed in substance on the 30th regardless of
 18 whether the production application is dealt with prior to or concurrently with the
 19 settlement application.

20

21 So as far as I know, My Lord, the only issues that are before the Court today, the parties
 22 need some assistance on staging and scheduling essentially. Can we deal with the
 23 settlement application in substance before we deal with, at least, part of the production
 24 application in substance; and then secondly, given the number of issues that have now
 25 come up in the applications, what is our agenda for June 30th?

26

27 And, My Lord, I'd just refer the Court to our letter of June 17th. What we were proposing
 28 to the Court in terms of what could usefully be done on June 30th would be certainly
 29 adjournment of Part 1 and 2 of the Public Trustee's application, so that's the production
 30 application --

31

32 THE COURT:

Okay. And let me just find that in your letter.

33

34 MS. HUTCHISON:

I am looking right on page 2 of my June 17th

35 letter, My Lord --

36

37 THE COURT:

Right.

38

39 MS. HUTCHISON:

-- under:

40

41 Compromise Solution and Adjournments.

1
2 THE COURT:

Mm-hm.

3
4 MS. HUTCHISON:

So Point 1, that the production application and the application regarding Ms. Platten and Ms. Cumming's action, 140304885, would be adjourned to a later date acceptable to all counsel, that the Sawridge Trustee's settlement application proceed on June 30th but on a limited basis, My Lord, for the Court to provide advice and direction to the parties on prematurity of that application and staging of that application in relation to the production application.

10
11 If the Court determined that that application is not premature, the substance of that settlement application would then be scheduled for, what I would suggest, My Lord, might need to be a half day Special Chambers simply on that issue. The substance of the -- I apologize, I also sought the direction of the Court, My Lord, that in that discussion on prematurity, the parties be able to refer to all filed materials. I think that that will be necessary for the Court to understand the Public Trustee's position on prematurity.

18
19 In terms of setting the agenda for June 30th, My Lord, that would then -- the Public Trustee is suggesting we deal with the prematurity issue. If we can't resolve that in another way today, we deal with the issue around advice and direction about communication between counsel, we deal with the Public Trustee's request for advice and direction on the scope of the indemnity, cost indemnification order which, of course, ties in to the Sawridge Trustee's application on costs, and we deal with the Sawridge Trustee's application for advice and direction on its litigation plan.

26
27 It strikes the Public Trustee, My Lord, that those issues could be usefully dealt with on the 30th and likely within the time allotted. The remaining issues which would be the production application, the application regarding Court of Queen's Bench Action 140304885, and the substance of the settlement application would then be adjourned to appropriate dates with adequate time to argue those issues before the Court, My Lord.

32
33 THE COURT:
34 that next phase?

But the production application would be part of

35
36 MS. HUTCHISON:

Correct, My Lord --

37
38 THE COURT:

Yes.

39
40 MS. HUTCHISON:

-- and to be clear, the Public Trustee is suggesting to the Court that the Court will need to hear the issues on the production

1 application, decide those issues, and frankly see the result of at least part of that
2 production before it can properly deal with the settlement application. If the Court is not
3 amenable to that approach, the Public Trustee would agree to concurrent hearings of the
4 production application and the substance of the settlement application, although frankly,
5 My Lord, we suspect that that will not be a productive use of time; so the proposal is to
6 look at the prematurity issue on the settlement application first, determine that, and then
7 decide appropriate staging of the production and settlement applications.

8
9 THE COURT:

All right.

10
11 MS. HUTCHISON:

Thank you, My Lord.

12
13 THE COURT:

Ms. Bonora?

14
15 **Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge First**
16 **Nation Only)**

17
18 MS. BONORA:

My Lord, with respect to the settlement -- our
19 settlement application, we don't really understand the two-part process that is proposed by
20 Ms. Hutchison. We have a settlement offer. We believe it is a complete settlement.
21 Even if it's seen as a partial settlement, it would narrow the issues. I don't know how we
22 could partially provide it to you or partially argue it. I think that the defence that
23 Ms. Hutchison wants to put forward to the settlement is that it's premature because the
24 Court doesn't have enough information. That may be a complete defence to adjourning
25 the settlement offer because it may have to come before you on another day, but I believe
26 that we should argue the full substance of the settlement. It's not that difficult.

27
28 You appointed an independent party under your previous order because you believed there
29 were 23 minors who may lose their benefits. That was a big part of the reason you
30 appointed an independent party. Over and over in your decision, you said, We're worried
31 that there might be a capital payment and these 23 people would lose their benefits. These
32 23 people may be left out, and they need representation. Well, what we've said in our
33 settlement is that we'll grandfather them. We will give them everything. So all of those
34 concerns that have been raised in terms of appointing the Public Trustee have now, I
35 think, been completely satisfied in the settlement.

36
37 With resp -- and I'm not going to try and argue my complete argument here, but I want
38 you to understand that we believe we've provided a complete settlement. If you agree
39 with us so that we can argue that in front of you, then Mr. Molstad never has to come
40 back. We don't have to do any document production. We will never argue any of the
41 rest of the application. The *Foundational Rules*, I think, require us to try and find

1 shortcuts to litigation, and we believe that our settlement is complete; but at a minimum,
2 it's a partial settlement and perhaps narrows the focus of the people we need to concern
3 ourselves with which may be another group of children which you identified as the
4 candidate children, so children of candidates for membership. And it may be that those
5 are the only people we need to deal with; and if those are the only people we need to deal
6 with, then the document production again is completely narrowed.
7

8 And so my submission to you is we need to focus again on why are we here. We're
9 here -- you recognize in your decision that the assets in this trust were set aside by the
10 Sawridge First Nation for the members of the Sawridge First Nation. You were very bold
11 in that finding. Well, that's all we're here for. We're trying to find a definition for where
12 these assets should -- who these assets should be paid to. It's not going to get different.
13 It's not going to be very complex. Ultimately, these assets belong to a group of members
14 of the Sawridge First Nation.
15

16 Remember that our application is we believe that our definition right now is
17 discriminatory. We're coming to the Court to fix that, to include those people who were
18 discriminated against. We provided lots of information already on process, and that was
19 one of things you said in your decision is that we do need to investigate the membership
20 process and criteria. Those were the words you used over and over again in several
21 paragraphs.
22

23 There's been lots of information provided on process and criteria to date, and so we're
24 saying to you please hear our settlement offer. The briefs have already been written. The
25 settlement offer is put forward. If we can convince you that it's either a full or partial
26 settlement using your *parens patriae* jurisdiction, then we perhaps eliminate a number of
27 issues or at least we can focus them. If Ms. Hutchison convinces you that we need to
28 deal with document production, well now we have our schedule. The settlement offer is
29 put on hold. We'll deal with document production at another application. We'd never be
30 able to deal with it in an afternoon in any event, and then you can make a decision on
31 that; and Ms. Hutchison is right, then documents would need to be produced. We'd come
32 back to you once that enquiry had concluded. So I would say that if you just agree to
33 hear the fulsome settlement offer and the arguments on the settlement, it could narrow the
34 issues. It could decide our plan in terms of what goes next.
35

36 I don't agree with Ms. Hutchison that the issue of communication between counsel should
37 be dealt with before the settlement offer because, again, that issue may come off the table
38 if the settlement is either full or partial. So I would suggest that we hear the settlement
39 discussion on June 30th as planned, and if -- as -- once we have a decision from you on
40 that, we can then go ahead with the litigation plan, the issue of the production of
41 documents, the issue of communication of counsel, all which may be narrowed or dealt

1 with differently --

2

3 THE COURT:

Mm-hm.

4

5 MS. BONORA:

-- because of the decision you may make on the

6 settlement offer.

7

8 The issue of costs is a very narrow one, and perhaps we can deal with that on June 30th
9 as well; but I guess to sum up, my submission is there is no harm in trying to find
10 whether there's a narrowing -- at least a narrowing of the issues in terms of looking at our
11 settlement offer, and we would ask that you would hear that application on June 30th in
12 full, fully understanding Ms. Hutchison can make arguments about the fact that it's
13 premature.

14

15 THE COURT:

I have not have a chance to look at the briefs.

16 I mean, they have --

17

18 MS. BONORA:

Yes, Sir.

19

20 THE COURT:

-- they arrived on my desk this morning as I

21 was about to come down to deal with Family Law Chambers. Is the costs issue dealt
22 with in those briefs?

23

24 MS. BONORA:

Yes.

25

26 THE COURT:

Okay.

27

28 MS. BONORA:

The issue is quite narrow, Sir. I think that we

29 just want some direction that at the end of the day, there would be a fulsome review
30 allowed to Sawridge First Nation. We don't have issues with Ms. Hutchison saying that
31 she needs to hire third-party agents to help her. That is not something we're arguing
32 against. We just want some direction based on what the Court of Appeal said that it's not
33 a blank cheque, that there needs to be some direction before we start hiring lots of agents
34 at expensive rates which, you know, of course, the Trust is paying for. So it's a -- that's
35 why we believe it's a narrow issue because we believe that we're just following up with
36 some specificity on what the Court of Appeal said.

37

38 THE COURT:

Okay. Right. Now, I see there are three law
39 firms involved for the trustees. Can somebody explain to my why that has happened?

40

41 MS. BONORA:

Sir, when I left Reynolds Mirth --

1

2 THE COURT: Mm-hm.

3

4 MS. BONORA: -- we agreed that Reynolds Mirth and Dentons
5 would continue on, so Mr. Poretti and I --

6

7 THE COURT: Okay.

8

9 MS. BONORA: -- added value in terms of having continuing on
10 with the representation of the trustees. Mr. Kueber is on for the trustees in an entirely
11 separate action brought by Catherine Twinn --

12

13 THE COURT: Okay.

14

15 MS. BONORA: -- so -- and Ms. Platten represents Catherine
16 Twinn, so there's a separate action; and that is, in fact, the action where there's a question
17 about the communication between counsel.

18

19 THE COURT: And is there anything -- I mean, those counsel
20 can speak to it, but is that -- are there any issues proposed to be dealt with in that action
21 on June 30th?

22

23 MS. BONORA: Yes. The -- so the issue of communication
24 between counsel is the issue of --

25

26 THE COURT: Okay.

27

28 MS. BONORA: -- can we participate in communications that
29 Ms. Hutchison has had with Karen Platten, so there's those two actions; so the action that
30 involves Catherine Twinn and the other four trustees, that's one action.

31

32 THE COURT: Okay.

33

34 MS. BONORA: Our concern is our ability to attend if there's
35 meetings between counsel in this action and counsel in that action, so that issue is before
36 you and briefs have been filed on that by our office, by --

37

38 THE COURT: Mm-hm.

39

40 MS. BONORA: -- Ms. Hutchison's office, and by Mr. Kueber's
41 office.

1

2 THE COURT:

Okay.

3

4 MS. BONORA:

Karen, have you filed a brief?

5

6 MS. PLATTEN:

We will.

7

8 MS. BONORA:

You'll be filing a brief? Okay.

9

10 THE COURT:

All right. Thank you. I take it you speak for

11 Mr. Poretti or --

12

13 MS. BONORA:

Today, I speak for Mr. Poretti.

14

15 MR. PORETTI:

That's correct, Sir.

16

17 THE COURT:

All right. Mr. Kueber, do you want to say
18 anything about that -- I call it the 2014 action?

19

20 **Submissions by Mr. Kueber (Adjournment of Matters Directed at the Sawridge First**
21 **Nation Only)**

22

23 MR. KUEBER:

Well, I think, Sir, being early -- or just recently
24 involved in this as I read through all the material, I read your decision, I looked at the
25 mandate given the Public Trustee's office, and I questioned if -- why it was not only more
26 appropriate as my friend has pointed out under the *Foundational Rules* but also because
27 we're dealing with trustees and we're dealing with -- you saw a potential conflict, and
28 you said, These minors should have their own independent protection because of the
29 application to define and bring the beneficiaries definition together, whatever my friends
30 are doing.

31

I get that, and I get the mandate the Public Trustee has is to look into the situation and to
32 try to assess the proposal that is now available to this Court; so why would we be trying
33 to deal with issues involving the other action that Ms. Platten and our has going that has
34 nothing to do with this with respect to my friend? Why would we spend the
35 beneficiaries' money dealing with all of that? Instead, why would we not on the 30th
36 deal with the proposal the trustees have, and if the Court -- if you feel that that's an
37 appropriate resolution, everything is done. Mr. Molstad's concerns, subject to costs, are
38 done. Our concerns are done. We don't have to deal with this issue of my friend
39 speaking with Ms. Platten and who should be in attendance. All of that gets resolved
40 when you address the proposal that my friends' have put forth. That's what I think
41

1 should happen on the 30th, and that's all that should happen.

2

3 THE COURT:

Ms. Platten?

4

5 **Submissions by Ms. Platten (Adjournment of Matters Directed at the Sawridge First**
6 **Nation Only)**

7

8 MS. PLATTEN:

Sir, we have understandably a different point of

9 view with respect to that. We believe that the facts in both actions are very, very similar,
10 that the -- and there needs to be information brought before the Court from the one
11 application, and it has to do with the other application.

12

13 Ms. Twinn, as one of the trustees, is of the view that the application for the settlement
14 proposal needs the Court to have all of the information before it; and if Ms. Hutchison's
15 application is not granted today, then the Court will not have all of the information before
16 it in order to properly hear that application.

17

18 Ms. Twinn does not believe that appropriate due diligence has been used with respect to
19 the list that is being offered as part of the settlement offer, and as a trustee, she is very
20 concerned about that; and that is why she brought her original application because as a
21 trustee, she's concerned about the administration of the trust from many perspectives, one
22 of them being the beneficiary designations.

23

24 So she believes that the application should not go forward and that it is important to have
25 information from one of the applications in the other application.

26

27 THE COURT:

Mm-hm. Okay. You want to --

28

29 **Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the**
30 **Sawridge First Nation Only)**

31

32 MS. HUTCHISON:

My Lord, thank you. My Lord, do you have
33 any of the materials filed with you today?

34

35 THE COURT:

None.

36

37 MS. HUTCHISON:

May I pass up a few items to you just so
38 you've got them available to look at? They're --

39

40 THE COURT:

Oh.

41

1 MS. HUTCHISON:

-- in the filed briefs.

2

3 THE COURT:

All right.

4

5 MS. HUTCHISON:

The first item is Exhibit 23 to the Roman

6 Bombak affidavit filed by --

7

8 THE COURT:

Oops.

9

10 MS. HUTCHISON:

-- the Public Trustee.

11

12 THE COURT:

I am going to have a water disaster. Hand

13 them up over here, okay?

14

15 MS. HUTCHISON:

And the second item, My Lord, is your decision
16 from 2012 which is Tab 4 of the Public Trustee's June 12th, 2015, brief.

17

18 I'll start, My Lord, with Exhibit 23 in this regard: My friends and the Public Trustee
19 have a very different view about the importance of the communication issue, My Lord. In
20 fact, it's really the communication issue that first brought the parties, or at least the Public
21 Trustee, to the point where it felt it had to seek the advice and direction of the Court
22 rather than continue to engage in discussion and attempts to resolve things by consent, My
23 Lord; and indeed, you'll see in many of my friends' cor -- items of correspondence in
24 recent times including -- and also in their briefs, there's a certain tone of concern that the
25 Public Trustee is not communicating fully enough or is not canvassing matters with other
26 counsel fully enough. And to be clear, My Lord, that situation to the extent there's any
27 merit to those concerns, that arose after April 27th; and I'm just going to read to you the
28 portions of that email that --

29

30 THE COURT:

Mm-hm.

31

32 MS. HUTCHISON:

-- were a concern. This is an email from

33 Mr. Poretti to myself, to Ms. Platten, Ms. Cummings, and Ms. Bonora; and Mr. Poretti
34 states:

35

36 We act for the trustees of the Sawridge Trust including Catherine
37 Twinn. Obviously it would be improper for Ms. Hutchison to
38 meet directly with our client without our consent. Ms. Hutchison
39 proposes to meet with Ms. Platten who acts for Catherine Twinn.
40 Our concern is that through such a meeting, Ms. Hutchison is
41 accomplishing, indirectly, what she cannot do directly. To the

1 extent that as a result of any such meeting Ms. Hutchison is in
2 receipt of any relevant confidential information that is prejudicial
3 to our client, it may be that Ms. Hutchison could no longer act
4 against our client.
5

6 Those are the words of counsel for the Sawridge Trustee, My Lord. It was at that point
7 that out of an abundance of caution and in recognition that the Public Trustee must
8 operate at a high standard that it was determined the Public Trustee would come to the
9 Court to seek advice and direction on proper communication. And when the Court has an
10 opportunity to review the briefs, My Lord, you will note that there has not been anything
11 in the briefs where the Sawridge Trustees resiled from those concerns. Indeed, there's
12 been further assertion that communications between the Public Trustee and Ms. Platten
13 should be limited.
14

15 So that's a central issue, My Lord, in terms of the ability of counsel to meet the purposes
16 of the rules. Normally counsel in litigation can communicate to one another openly,
17 clearly, with or without prejudice. That's all established as between counsel, but there are
18 no other concerns pending. The Public Trustee has to operate at a different level, My
19 Lord, and can't operate under the potential taint of those kinds of allegations until they're
20 cleared up with the Court or with the parties, and it has not been cleared up with the
21 parties.
22

23 So to be clear, My Lord, the Public Trustee takes the position that it's rather essential that
24 those particular issues about communication be addressed on the 30th.
25

26 Turning then, My Lord, to our friend's comments about settlement, and that was in
27 response, of course, to the Public Trustee's submissions about the settlement application
28 being premature and our submissions about the need for staging on those issues.
29

30 The concern is -- the concern about the settlement application is multiple, My Lord, and
31 we're not here to argue the substance; but I do want to take the Court to its decision, that
32 would be Tab 4 of the authorities of the Public --
33

34 THE COURT:

Mm-hm.
35

36 MS. HUTCHISON:

-- Trustee, paragraph 46 and 47, where it's
37 quite clear that the Court was aware of and agreed that the need to investigate or examine
38 the Sawridge band membership process and its efficacy related not only to identification
39 of candidate children, My Lord, but to certainty of objects. So -- and again, without
40 getting into some of the reply submissions, there's a suggestion that we've now gotten
41 into Federal Court jurisdiction. The Court also dealt with that in its June 2012 decision,

1 My Lord, and was very clear in saying that this Court has jurisdiction to examine the
2 membership process to the extent that it effects certainty of objects. The reality, My
3 Lord, and the Court, although you've been told by counsel that there's been much
4 evidence filed about membership process and membership information, you don't have
5 that before you. Some of it is in Roman Bombak's affidavit.
6

7 As you'll gather from our submissions, the Public Trustee is strongly of the view that the
8 information obtained through the questioning process to date has likely raised as may
9 questions as it has answered about that membership process, My Lord. It has not put the
10 Public Trustee or the Court in a position of identifying candidate children. It has not put
11 the Public Trustee or the Court in the position the Court sought to be in in paragraph 54
12 of your decision where you state:
13

14 Put another way, this Court has authority to examine the band
15 membership processes and evaluate, for example, whether or not
16 those processes are discriminatory, biased, unreasonable, delayed
17 without reason, or otherwise breach *Charter* principles in the
18 requirements of natural justice.
19

20 We do not have that information, My Lord. That information will not be available to you
21 in considering a settlement application. It's not available to the Public Trustee to evaluate
22 a settlement application and take a position on it. So while my friends are characterizing
23 the settlement as a complete victory, that's only true, My Lord, if this Court can grant a
24 final order without regard for at least one of the three certainties.
25

26 So the Public Trustee isn't coming before the Court to ask for staging to try and overuse
27 resources or to take up more time, My Lord, but actually to be efficient and to ensure that
28 we deal with the issues that have to be dealt with first up front and then deal with the
29 issues that rely on those determinations second.
30

31 THE COURT: Thank you.

32
33 MS. HUTCHISON: Thank you, My Lord.

34
35 THE COURT: Ms. Bonora?

36
37 **Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge**
38 **First Nation Only)**
39

40 MS. BONORA: My Lord, I think that obviously an adjournment
41 application won't hear all the evidence, but I do believe that when you hear the evidence

1 of what is happening at the Sawridge First Nation in respect of its membership process,
2 the fact that decisions have come from the Federal Courts that have gone to judicial
3 review and come from the Federal Court, that all processes of the appeal process are
4 working, that that may be sufficient for you and it may not be; but what we're asking you
5 to do is to hear it.

6
7 Secondly -- and again, without getting into the full substance, I think that what
8 Ms. Platten made reference to and what Ms. Hutchison made reference to is a very narrow
9 group of people. It's the candidate children because we've identified who we believe are
10 the children who would be excluded, and we're giving them full status.

11
12 Another part of our settlement is that in the event that any other child comes forward who
13 would have -- who can prove that they would have been a beneficiary and they -- we
14 didn't identify them at this point, we believe we've done our due diligence; but let's say
15 there is one, we would grant them the ability to make an application and we would fund
16 legal counsel for them to make that application. So we have identi -- set -- dealt with that
17 that, you know, maybe there was a ping pong ball loose, and we didn't identify it. We're
18 prepared to provide funding to make sure that happens.

19
20 But even if that isn't the case and that isn't acceptable to the Court, I believe the
21 arguments you've heard this morning show that there is a narrowing of the issue because
22 we have identified that we can grandfather these 20 -- it's now down to 20 because some
23 of them have become members. Some of the minors have become members. That will
24 be part of our evidence in respect of the membership process working. So these 20, now,
25 children will be grandfathered, and maybe all we need to investigate is the candidate
26 children. Well, if all we're investigating is the candidate children, that entirely narrows
27 the scope in terms of document production, and then it narrows the scope in terms of
28 what we need to deal with.

29
30 Let's look at the -- who the candidates are and who the candidates children are. We don't
31 even know if there are any. We don't have that evidence, but that could be something
32 that we could just narrow the focus on; so that's why we're asking you to hear that
33 settlement proposal and have a decision about whether it at least narrows the focus. I
34 think that's so important at this point rather than just embarking on a crazy document
35 production as Mr. Molstad told you encompasses thousands of documents, why would we
36 do that if we could narrow that focus? So I'm ask you to -- we're asking you to hear that
37 settlement application in full; and as we said, this argument about the fact that it's not
38 ready to go ahead is absolutely the defence that can be argued at that time.

39
40 THE COURT:

At that time as in?

1 MS. BONORA: June 30th.

2

3 THE COURT: June 30th, okay.

4

5 MS. BONORA: A few days from now.

6

7 THE COURT: Okay. All right.

8

9 MS. BONORA: Thank you.

10

11 THE COURT: Thank you.

12

13 MS. HUTCHISON: My Lord, may I make one --

14

15 THE COURT: Sure.

16

17 MS. HUTCHISON: -- brief comment?

18

19 **Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the**
20 **Sawridge First Nation Only)**

21

22 MS. HUTCHISON: I -- and it's as much as anything to make sure
23 that regardless of what we do, we all -- that we actually have all the materials that would
24 be before the Court on June 30th. My friend referred to when the Court hears all the
25 evidence about the membership process and what's happening, and that raises a bit of a
26 concern for me because as far as I'm aware, there is no evidence submitted by the
27 Sawridge Trustees in that regard for the June 30th hearing to support their application to
28 approve the settlement application. There were no affidavits filed by the Sawridge
29 Trustees since 2011, I believe. So that's a question and a concern I think we should all
30 clarify before we know what we're doing on the 30th.

31

32 The other point I would just make, My Lord, in terms of the Public Trustee isn't asking
33 the Court to embark on a crazy document production. We've actually proposed a staged
34 production in -- and My Lord has not had an opportunity to read reply submissions, but
35 we've proposed a staged production that would allow the issues the Court -- and the
36 evidence the Court will have to have access to to assess a settlement application. Give
37 the Court access to that evidence first, and if there is still outstanding production issues,
38 we can embark on the broader issues.

39

40 So the Public Trustee is very open to an appropriately staged process here. The concern,
41 however, My Lord, remains this Court has already decided that having full evidence about

1 the Sawridge membership process is relevant and material to dealing with at least one
 2 certainty of this trust, the certainty of objects. It's also relevant to the interest of the
 3 candidate children. The certainty of objects is relevant to the interests of all of the minor
 4 beneficiaries including the ones that may be grandfathered or not.

5
 6 So to ask the Court to proceed forward and deal with the settlement application without
 7 that evidence, I would submit to the Court, is going to quite literally waste the Court's
 8 time on the 30th when we obviously have a great deal -- a great many other issues that do
 9 require the Court's time and the Court's attention and direction so that we can move
 10 forward with the application.

11
 12 So, My Lord, the Public Trustee would refer you back to the June 17th, 2015, letter. We
 13 would suggest that the list on page 3 of that letter is an appropriate and manageable
 14 agenda for the time we had allocated on June 30th with the addition of arguing the
 15 prematurity of the settlement application, My Lord.

16
 17 Subject to questions, My Lord --

18
 19 THE COURT: All right.

20
 21 MS. HUTCHISON: -- that -- those are my submissions.

22
 23 THE COURT: Thanks. What about this point of there is no
 24 evidence or fresh --

25
 26 **Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge**
 27 **First Nation Only)**

28
 29 MS. BONORA: Well, My Lord, certainly we had expected that
 30 our transcripts, which are examinations on affidavits, are evidence before the Court as are
 31 the undertaking responses; and that is the evidence that will show the membership process
 32 and criteria, and so that is the evidence that will be before you.

33
 34 Not -- I've just -- Mr. Poretti and I were talking about whether it's been filed yet. We'll
 35 obviously have it filed before June 30th, but we don't believe the evidence is that
 36 extensive for you to review in terms of making sure that the process and criteria is
 37 ascertainable and working.

38
 39 THE COURT: Am I to understand then that, at this stage,
 40 insofar as the briefs are concerned, you have not tied that evidence from the transcripts
 41 and undertakings back into your submissions in the briefs?

1
2 MS. BONORA: We certainly have made representations about
3 the membership process and the membership criteria and the fact that that evidence has
4 been produced in our brief.
5
6 THE COURT: Okay, and are those submissions tied into
7 specific transcript -- excerpts from transcripts and undertakings?
8
9 MS. BONORA: Yes. I'm trying to remember our brief.
10
11 THE COURT: Mm-hm.
12
13 MS. BONORA: Certainly we've made reference to how the
14 membership process works, the fact that it's gone to the Fed -- three decisions have --
15
16 THE COURT: Mm-hm.
17
18 MS. BONORA: -- gone to the Federal Court of Appeal, the fact
19 that four members -- four minors have been made members, so I think that we have made
20 reference to the evidence. I don't know --
21
22 THE COURT: Okay.
23
24 MS. BONORA: -- about the specificity --
25
26 THE COURT: Okay.
27
28 MS. BONORA: -- of -- blah, blah, blah, anyway, of the actual
29 references to it, but I believe that evidence is there and not extensive; so we didn't file
30 another affidavit because, of course, the evidence is already there. There would be no
31 need to file another --
32
33 THE COURT: Mm-hm.
34
35 MS. BONORA: -- affidavit.
36
37 THE COURT: It is there in the sense of in transcripts and in
38 undertakings?
39
40 MS. BONORA: Yes, and the -- and --
41

1 THE COURT: The responses?

2

3 MS. BONORA: -- and we've made the submissions in our brief
4 about the fact that that information is available and shows that that membership process is
5 working. The way we interpreted your decision was you had to look at process and
6 criteria, so we provided the criteria. We've shown that the process works for the 20
7 people, I think, who've been --

8

9 THE COURT: Mm-hm.

10

11 MS. BONORA: -- admitted so far and that, because it's gone to
12 the Court of Appeal, it addresses all those issues of bias and all those things because the
13 Court of Appeal could have looked at that in terms of saying this process didn't work
14 under judicial review -- sorry, not the Court of Appeal, the Federal Court, and so we
15 believe that evidence is all there in terms of dealing with our settlement offer and the fact
16 that there is enough evidence before this Court to say that that membership process is
17 working.

18

19 THE COURT: Okay.

20

21 MS. BONORA: And it is -- you know, I don't think we should
22 lose sight of the fact that the grandfathering of these 23 children is not automatic. That
23 is, I think, a very significant offer. It could be that the Court would simply decide that
24 the membership definition changes from what it is now to members which excludes those
25 23. It's the very reason you appointed the Public Trustee because they could be excluded,
26 and so that's why our settlement offer is so significant to include those 23 people and
27 then provide a process in case anybody was missed, I think, is a very significant offer
28 which we have difficulty that the Public Trustee does not want to address it and that's
29 why we felt the need to bring it to the Court because of the significant dollars that are
30 being spent now and the significant dollars that will certainly be spent if we embark on
31 this document production and all the other issues.

32

33 THE COURT: Okay. Thanks.

34

35 **Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the**
36 **Sawridge First Nation Only)**

37

38 MS. HUTCHISON: My Lord, I apologize.

39

40 THE COURT: Mm-hm.

41

1 MS. HUTCHISON: I prom -- I told you I was done. I'm handing
2 you my friend's application, and I'm handing you my friend's brief. My friend's
3 application makes not a single reference to any of the evidence filed in this proceeding as
4 evidence that will be relied on. The two pages of my friend's June 12th, 2015, brief that
5 deals with the settlement application contains not one single evidentiary reference, My
6 Lord. It would come as a significant surprise to the Office of the Public Trustee if, on
7 June 30th, we were expected to deal with particular excerpts from transcripts, particular
8 portions of the undertakings. My Lord, we're not -- sorry. I thought you were handing
9 those back now.

10

11 THE COURT: No. Well, I am going to.

12

13 MS. HUTCHISON: That would be quite a surprise, My Lord, to --

14

15 THE COURT: Okay.

16

17 MS. HUTCHISON: -- say the least; and just to finish that point, My
18 Lord, if anything, my friend's submissions today suggest to me an even greater need to
19 adjourn the substance of the settlement application to another date. It tells me that the
20 Sawridge Trustees are now intending to put before the Court the limited evidence, but
21 there's still evidence, that's been obtained through the questioning process, through Paul
22 Bujold's answers to undertakings, and the only portions of those evidence that were file --
23 that was filed on June 12th or June 19th are found in the excerpts of the Public
24 Trustee's -- excerpts of evidence of the Public Trustee's brief and Roman Bombak's
25 affidavit, and that is certainly not a complete record.

26

27 Furthermore, My Lord, we are less than a week away from that hearing, and the Public
28 Trustee has no information regarding what the Sawridge Trustees would actually propose
29 to rely on in terms of specific evidence; so I -- one of my friends has used the term trial
30 by ambush which is not a term I like to use, but I would be using it on June 30th if that
31 was what we were facing in the course of this application, My Lord.

32

33 In terms of -- My Lord, I think I'm about to start chatting with you again about your own
34 decision on candidate children and the relevance of the evidence. I think I've covered
35 that. I'll limit my concerns to my friend's submissions suggest to me an extremely --

36

37 THE COURT: Mm-hm.

38

39 MS. HUTCHISON: -- great need to adjourn the substance of the
40 settlement application to a later date, My Lord, so that there can be full disclosure of the
41 materials that will actually be relied on by the applicant.

1
2 Thank you.
3

4 **Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge**
5 **First Nation Only)**
6

7 MS. BONORA:

My Lord, the -- I think my friend is -- it's
8 interesting because she's told us we have such limited information, and it's true, the
9 information is not that great. Just -- the -- she examined Mr. Bujold. She's clearly aware
10 of the transcripts. She sought the undertakings. Those undertakings have been answered.
11 It's not an ambush in any way. That's the evidence that's the before the Court. She has
12 an obligation to file those things as the examining party, and so it never occurred to me
13 that those things could not be relied upon. Certainly if it was necessary to provide her
14 with a list of the things that relate to membership which I think would be obvious, we
15 could certainly do that and we could do it before the afternoon was out. It's not
16 something that will be at all a surprise because it's something she questioned on. It's
17 something that was provided to her in the undertakings, I'm going to say, months ago.
18

19 And so I don't think this is something that is an ambush. I don't believe that we should
20 adjourn, but let's say we -- you know, if you believe that there needs to be further notice,
21 we certainly don't want to be unfair; then we still have the issue of if we're going to
22 adjourn to give us time to provide her with our list of evidence that we're going to refer
23 to, it still comes down to you making a decision about the settlement offer going ahead as
24 a full application. So I think that's still --
25

26 THE COURT:

Mm-hm.
27

28 MS. BONORA:

-- a decision before you. I really think that the
29 evidence is well-known to my friend.
30

31 **Order (Adjournment of Matters Directed at the Sawridge First Nation Only)**
32

33 THE COURT:

All right. Well, here is what I am going to do.
34 I mean, it started with Mr. Molstad and his application for an adjournment, so that
35 adjournment is granted. I am just going to adjourn it sine die. You can work out a date
36 between counsel if it is necessary to get back on the production application. Does that --
37

38 **Further Submissions by Mr. Molstad (Adjournment of Matters Directed at the Sawridge**
39 **First Nation Only)**
40

41 MR. MOLSTAD:

Yeah, and --

1
2 THE COURT: -- make sense?
3
4 MR. MOLSTAD: -- and I just want to make sure that we're clear
5 that the adjournment relates to all matters to which have been directed at the Sawridge
6 First Nation?
7
8 THE COURT: That is it. I am just --
9
10 MR. MOLSTAD: Yeah.
11
12 THE COURT: -- talking about --
13
14 MR. MOLSTAD: Yeah.
15
16 THE COURT: -- as I understand --
17
18 MR. MOLSTAD: Yeah.
19
20 THE COURT: -- it, it is the so-called production application.
21
22 MR. MOLSTAD: Yeah, I -- you know, I believe that's what it
23 includes. There are --
24
25 THE COURT: Mm-hm.
26
27 MR. MOLSTAD: -- a number of other matters that these counsel
28 will be dealing with, and we will not be there on the 30th; so if something comes up and
29 says -- someone says, Sawridge First Nation has to take a position, we want to have that
30 matter put over to be able to do that.
31
32 THE COURT: So you are not able to come on the 30th just as
33 an observer?
34
35 MR. MOLSTAD: Well, I could send someone, My Lord, but the
36 point is that there's no need for Sawridge First Nation to be there because these issues do
37 not -- you know, they're issues between the trustees and the Public Trustee.
38
39 THE COURT: Okay.
40
41 MR. MOLSTAD: And they have to be dealt with and the other

1 parties.

2

3 **Further Order (Adjournment of Matters Directed at the Sawridge First Nation Only)**

4

5 THE COURT:

All right. Well, your adjournment application

6 is granted.

7

8 MR. MOLSTAD:

Thank you.

9

10 THE COURT:

With respect -- now, while it is tempting to

11 adjourn everything because there is some efficiency from the Court's perspective in
12 dealing with everything at one time, Ms. Bonora has convinced me that that is not
13 appropriate; and so on June 30th, we will deal with the application for the approval of the
14 settlement. I do not see any particular prejudice to any other participant and particularly
15 the Public Trustee. The Public Trustee is still open to argue at that time that there is
16 deficiencies or reasons why the settlement application should not be approved at that time,
17 so the prematurity issue can still be alive. It is still a live issue on June 30th, but it may
18 well be that the trustees can convince me that the settlement proposal is an appropriate
19 resolution, and it may very well narrow the issues which, in turn, will save the trusts the
20 costs of ongoing litigation.

21

22 So we will deal with the approval of the proposed settlement on June 30th. The only
23 condition I am going to impose is that the trustees provide to everyone, including the
24 Court, by close of business on Friday, whatever Friday is, the 26th, a list of just
25 references to the evidence you are going to rely on, tie it back into the paragraphs in your
26 briefs, and I think that it is that simple; but you do not need to reproduce a whole bunch
27 of paper. Just get those transcripts filed, and make sure I have got copies of them so I
28 can read them on Monday. I am not going to have time to prepare for this till Monday in
29 any event.

30

31 If any of the responding parties wish to raise evidentiary -- or references to evidence, by
32 all means prepare a short memo on it and hand it up to me when we argue it just so I can
33 track if there is any other evidence that anybody wants to rely on.

34

35 I think that will do it; otherwise, that will be the first order of business will be to deal
36 with the approval of the proposed settlement, and then the other items, I take it, there is
37 no issue with dealing with the other issues that are outlined in page 3 of Ms. Hutchison's
38 letter of June 17th? There are four items there, and that would pick up this
39 communication issue, the costs issue, a litigation plan. Everybody okay with that?

40

41 MS. HUTCHISON:

Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

THE COURT:

All right.

MR. MOLSTAD:

Just two matters, My Lord: I'd ask that Your Lordship consider directing my friend to provide me with a proper notice of motion or a proper application that addresses and is directed to the Sawridge First Nation so we know what really she's seeking against us, and I'm not sure if you've dealt with that.

THE COURT:

Well, as part of the adjournment order and you are going to prepare the order -- we will document this by order of this adjournment, so that adjournment order will include a direction and I make the direction that there be more detail provided with respect to the specific relief which is sought around this production --

MR. MOLSTAD:

And the --

THE COURT:

-- requirement. Is that basically what you are --

MR. MOLSTAD:

Yeah. The relief and the evidence that she relies upon, yeah. If it's just the affidavit --

THE COURT:

Yes.

MR. MOLSTAD:

-- of Mr. Bombak, that's fine.

THE COURT:

Mm-hm.

MR. MOLSTAD:

I'll deal with that, but I just want to know what it is she's seeking and the grounds upon which --

THE COURT:

So --

MR. MOLSTAD:

-- she seeks them.

THE COURT:

-- particularize --

MR. MOLSTAD:

Yeah.

THE COURT:

-- that.

MR. MOLSTAD:

Yeah.

1 THE COURT: All right. And the preparation of that revised
2 pleading, that revised motion can wait until after the June 30 -- or until after I have
3 pronounced, one way or another, on June 30th. Does that --
4

5 MR. MOLSTAD: Agreed.
6

7 THE COURT: -- make sense?
8

9 MR. MOLSTAD: Yeah. I agree with that.
10

11 THE COURT: Because it probably narrows the --
12

13 MR. MOLSTAD: Yeah, makes --
14

15 THE COURT: -- scope of --
16

17 MR. MOLSTAD: -- makes sense. Yeah.
18

19 **Submissions by Mr. Molstad (Costs)**
20

21 MR. MOLSTAD: And the last issue I did want to speak to is the
22 issue of costs for today, and my submissions are brief.
23

24 In paragraph 39 of your reasons of June 12th, 2012, you stated that the Public Trustee is a
25 neutral, quote:
26

27 Agent,
28

29 Unquote, or, quote:
30

31 Officer of the Court,
32

33 Unquote, and that the Public Trustee will hold that position only by appointment by the
34 Court. You ordered, at that time, as we know, that the Public Trustee's legal fees be paid
35 from the trust and that they be indemnified for costs awarded against them from the trust.
36 Our respectful submission is that agents of the Court should not be allowed to conduct
37 themselves in ways that are unreasonable, and this Court, with the greatest of respect,
38 would have never said to Sawridge First Nation having been served with this material
39 when they were on the Friday before the 15th that we will not consent to an adjournment
40 of this matter to allow you to prepare. We're here today, I'm here today because the
41 Public Trustee would not consent to our request for an adjournment. We ask that you

1 consider awarding costs on the basis that the Public Trustee pay for those costs without
2 indemnification because we submit that the children and the beneficiaries of this trust
3 should not pay costs; and should you decide to award costs, we ask that you fix an
4 amount in that regard.

5

6 THE COURT:

Ms. Hutchison?

7

8 **Submissions by Ms. Hutchison (Costs)**

9

10 MS. HUTCHISON:

My Lord, to be clear, the Public Trustee made
11 every effort it could within the scope of its mandate to protect the interests of the minors
12 to accommodate Mr. Molstad.

13

14 The Public Trustee is very much of the view that the production application and the
15 settlement application are interre -- linked and could not be dealt with separately. There
16 was no intention to put Mr. Molstad in an awkward position. The Public Trustee was
17 attempting to ensure the interests of the minors were protected.

18

19 And, with respect, My Lord, the Sawridge Trustees refused, one could say, to cooperate in
20 that regard and made it -- and left the Public Trustee in a position where it could not give
21 an unconditional consent to an adjournment. I would submit to the Court that's not
22 unreasonable. This is a rather complicated set of applications. They're interrelated. It's
23 difficult to separate them out individually, and furthermore, My Lord, would not suggest
24 that this is a situation where the Public Trustee's behaviour could in any way be
25 characterized as unreasonable.

26

27 I would ask that the Court, at minimum, deal with costs at the time that the production
28 application is actually dealt with and award no costs of this particular application today in
29 terms of if Mr. Molstad has submissions on costs on production.

30

31 And, My Lord, beyond that, I would suggest that if a cost award is granted, that's not in
32 the best interest of the minors. It shouldn't -- it -- the clear terms of the order are a total
33 indemnification of the Public Trustee. If costs are awarded against the Public Trustee, it
34 comes directly out of the Sawridge Trust. It's not in anyone's best interest to deal with it
35 that way, My Lord.

36

37 **Order (Costs)**

38

39 THE COURT:

Well, what I am going to do is reserve on the
40 question of costs on this adjournment application on which Mr. Molstad's client has been
41 successful simply reserved for a trial judge, if there is ever a trial, of the issues around

1 this litigation. So I am putting it off beyond any production application. It is off until --
2 to be dealt with by a trial judge if there ever is a trial.
3
4 All right?
5
6 MR. MOLSTAD: Thank you.
7
8 MS. HUTCHISON: Thank you, My Lord.
9
10 MS. BONORA: Thank you, Sir.
11
12 THE COURT: Thanks, counsel. We will see some of you but
13 not Mr. Molstad on June 30th.
14
15 Okay. Go ahead. I will return all this material. We are adjourned.
16
17 (OTHER MATTERS SPOKEN TO)
18
19 THE COURT: Go ahead. I am done. It will just take me a
20 minute to get organized up here.
21
22 MR. MOLSTAD: Thanks again, My Lord.
23
24 THE COURT: Thank you.
25
26 MS. BONORA: Thank you. Yeah.
27
28 THE COURT: Thanks, counsel.
29
30 MR. KUEBER: My Lord.
31
32 MS. HUTCHISON: Thank you, My Lord.
33
34 THE COURT: Thanks.
35
36 THE COURT: Oh, can I just ask counsel -- is the recording
37 still on?
38
39 THE COURT CLERK: Yes, Sir. Shall I turn it off?
40
41 THE COURT: And that excludes Mr. Molstad, but can you

1 just look at your calendars to see whether you can be available on Thursday morning in
2 case there is a roll-over? I do not want to have to adjourn this for a long period of time
3 if there is just some things that can be --
4

5 MS. BONORA: That's a statutory holiday. Is that okay?
6

7 THE COURT: Yes. Well, yes, I mean, it is Thursday which
8 is --
9

10 MS. BONORA: July --
11

12 THE COURT: -- we are hearing this the 30th. The Thursday
13 would be the July 2nd in the morning.
14

15 MS. BONORA: Oh, I'm sorry.
16

17 MR. KUEBER: Yeah.
18

19 MS. BONORA: You're skipping --
20

21 THE COURT: Yes.
22

23 MS. BONORA: -- a day. Mm-hm.
24

25 MS. HUTCHISON: My Lord, I know I'm booked to be out of
26 town, but I --
27

28 THE COURT: Are you?
29

30 MS. HUTCHISON: -- can certainly -- I can try and see if I can
31 change that, but --
32

33 THE COURT: Well, I just -- if you would not mind? I just do
34 not want this -- if I am going to deal with this next week, I want to try and get it fully
35 dealt with; and I include in that possibly giving an oral judgment so that I am not
36 carrying this.
37

38 MS. HUTCHISON: I will --
39

40 THE COURT: All right.
41

1 MS. HUTCHISON:

-- do what I can, My Lord.

2

3 THE COURT:

Okay.

4

5 MR. KUEBER:

I'm --

6

7 THE COURT:

Okay.

8

9 MR. KUEBER:

-- available, Sir.

10

11 THE COURT:

Okay.

12

13 MR. KUEBER:

Thanks.

14

15 MS. BONORA:

I can make myself --

16

17 THE COURT:

Okay.

18

19 MS. BONORA:

-- available.

20

21 THE COURT:

Good. Thanks.

22

23

24 PROCEEDINGS CONCLUDED

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Record**

2

3 I, Morag O'Sullivan, certify that this recording is the record made of the evidence in the
4 proceedings in Court of Queen's Bench held in Courtroom 313 at Edmonton, Alberta, on
5 the 24th of June, 2015, and that I, Morag O'Sullivan, was the court official in charge of
6 the sound-recording machine during the proceedings.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Transcript**

2

3 I, Corie Dombrosky, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript
7 of the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record
10 and is transcribed in this transcript.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35 Pages: 37

36 Lines: 1545

37 Characters: 54573

38

39 File Locator: c9fb00e61c5a11e5a51f0017a4770810

40 Digital Fingerprint: df322e47a62778ab49c7d253be5cd5f5ad4efc7a8c95e82b0433f8821301ae69

41

Detailed Transcript Statistics	
Order No. 55561-15-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	35
Total Pages:	37
Line Statistics	
Title Page Lines:	50
ToC Lines:	21
Transcript Lines:	1474
Total Lines:	1545
Visible Character Count Statistics	
Title Page Characters:	619
ToC Characters:	1322
Transcript Characters:	52632
Total Billable Characters:	54573
Multi-Take Adjustment: (-) Duplicated Title Page Characters	53954

Chantelle Monson

From: Bonora, Doris <doris.bonora@dentons.com>
Sent: Wednesday, June 17, 2015 8:54 AM
To: Edward H. Molstad
Cc: jhutchison@jlhlaw.ca; mporetti@rmrf.com; necumming@bryanco.com;
kplatten@mross.com; priscilla.kennedy@dlapiper.com
Subject: Re: Sawridge Trusts Our File 64203-7

Ed

Thank you for your letter. I agree with its contents but want to be clear that we agreed to the adjournment of the application involving the First Nation but not the application brought by the Sawridge Trustees regarding approval of our settlement offer along with two other issues. I also wanted to advise that we do not share Ms. Hutchinson's view that any costs award sought by you against the trusts would be paid by the trusts. We think that would be within the discretion of Justice Thomas to decide
Doris

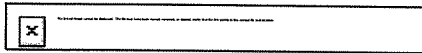
Sent from my iPhone

On Jun 17, 2015, at 6:25 AM, Edward H. Molstad <emolstad@parlee.com> wrote:

Letter attached:

/ied

Iris E. Doel | Legal Assistant to Edward H. Molstad, Q.C.



1500 Manulife Place, 10180-101 Street Edmonton, AB T5J 4K1
Direct: 780.423.8505 | Fax: 780.423.2870 | Email: idoel@parlee.com

LEGAL NOTICE: The information contained in this email (including any attachments) is: (a) confidential, proprietary and subject to copyright, and may be subject to solicitor/client privilege, all such rights being reserved and not waived, and (b) intended only for the use of the named recipient(s). If you have received this communication in error, please notify us immediately by return email or telephone and delete all copies of the original message. If you are not an intended recipient, you are advised that copying, forwarding or other distribution of this email is prohibited. Thank you

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

<pdf Ltr Janet Hutchison (E6891072).PDF>



HUTCHISON LAW

#155 Glenora Gates
10403 122 Street
Edmonton, Alberta
T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

* Janet L. Hutchison, LL.B.
Rebecca C. Warner, B.A., J.D., Student-at-Law

Our File: 51433 JLH

SENT BY FAX ONLY

COPY

June 17, 2015

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

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

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

In relation to the above noted matter, the Public Trustee is writing to update the Court on the recent discussions amongst counsel and to propose a compromise solution in relation to adjournment requests made by counsel.

Brief Update

Both the Sawridge Trustees and the Public Trustee filed and served applications and briefs on June 12, 2015.

On June 15, 2015, the Public Trustee was advised by Ms. Cumming that its application materials were delivered by courier on June 15, 2015. The courier has confirmed the delivery attempted on June 12, 2015 was not successful as Bryan & Company had closed when the first delivery was attempted at approximately 5:00PM. The materials were delivered at 9:00AM on June 15, 2015.

On June 16, 2015 Mr. Molstad advised the Public Trustee he did not receive application

materials until June 15, 2015. The courier has confirmed that its application materials were delivered to Parlee McLaws LLP on June 12, 2015 at 4:51PM.

On June 16, 2015, all counsel discussed a request from Mr. Molstad to adjourn the Public Trustee's application for further and better production ("the Production Application"). The Public Trustee advised all counsel it would agree to an adjournment of the Production Application if the Sawridge Trustees' application for approval of the June 1, 2015 proposed settlement were also adjourned ("the Settlement Application"). The Sawridge Trustees advised they would not agree to adjourn the Settlement Application.

Counsel were not able to agree on these matters and will require the Court's assistance to determine the appropriate staging of each application and the agenda for the June 30, 2015 Case Management meeting.

Compromise Solution on Adjournments

The Public Trustee takes no issue with Mr. Molstad's request for additional time to deal with the Production Application. However, the Public Trustee regards the subject matter of the Production Application and the Settlement Application, as matters that must, at minimum, be dealt with concurrently.

The parties cannot agree on the staging of the applications. Given the pending filing deadlines and limited time available, the Public Trustee seeks the approval of the Court for a compromise solution that would address the concerns of all counsel, while ensuring valuable party and Court resources are not used for a contested adjournment application, as follows:

- 1.) The Public Trustee's Production Application and the application regarding Action No. 1403 04885 (Part I and II of application) will be adjourned to a later date, that is mutually agreeable to the Court and all counsel;
- 2.) The Sawridge Trustees' Settlement Application will proceed on June 30, 2015, but on a limited basis. Specifically, the parties will seek the advice and direction of the Court regarding whether the Settlement Application should be heard before, after or concurrently with the Public Trustee's Production Application;
- 3.) The substance of the Sawridge Trustees' Settlement Application will be adjourned to a later date, that is mutually agreeable to the Court and all counsel, and consistent with the Court's direction regarding staging of the applications;
- 4.) All parties participating in the June 30, 2015 Case Management meeting may refer to all application materials filed on June 12, 2015.

Matters that Can Be Usefully Addressed on June 30, 2015

The Public Trustee has suggested that several elements of the two applications should still be addressed at the June 30, 2015 case management meeting, specifically:

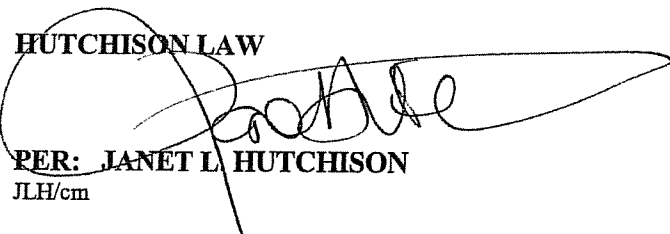
- 1.) The Public Trustee's request for advice and direction regarding communication between all counsel in the within proceeding and in QB Action No. 1403 04885 [see para. 8(i) of the Public Trustee's application];
- 2.) The Public Trustee's request for advice and direction regarding the scope of the June 12, 2012 costs indemnification order [see para. 8(ii) of the Public Trustee's application];
- 3.) The Sawridge Trustees' application for advice and direction regarding costs; and
- 4.) The Sawridge Trustee's application for advice and direction on its proposed litigation plan.

The Public Trustee is also proposing that, to the extent Ms. Cumming or Mr. Molstad wish to file reply submissions in relation to the matters to be addressed in the June 30, 2015 case management meeting, that their deadline to file be extended to June 23, 2015.

We look forward to the Court's direction in relation to these matters.

All of which is respectfully submitted,

HUTCHISON LAW



PER: JANET L. HUTCHISON
JLH/cm

cc: The Office of the Public Trustee

cc: D. Bonora, Dentons LLP

cc: M. Poretti, RMRP LLP

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

cc: P. Kennedy, DLA Piper LLP

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

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

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


for Clerk of the Court

Form 11
[Rule 3.31]

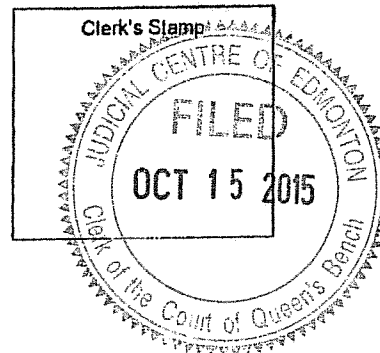
COURT FILE NUMBER 1103 14112
COURT: COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL CENTRE: EDMONTON
IN THE MATTER OF THE TRUSTEE
ACT, RSA 2000, c T-8, AS
AMENDED

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

APPLICANTS: ROLAND TWINN, CATHERINE
TWINN, WALTER FELIX TWIN,
BERTHA L'HIRONDELLE and
CLARA MIDBO, as Trustees for the
1985 Sawridge Trust (the "Sawridge
Trusts")

DOCUMENT ORDER

ADDRESS FOR SERVICE
AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT
Hutchison Law
#155, 10403 122 Street
Edmonton, AB T5N 4C1
Attention: Janet L. Hutchison
Telephone: (780) 423-3661
Facsimile: (780) 426-1293
File No.: 51433 JLH



DATE ON WHICH ORDER WAS
PRONOUNCED:

June 30, 2015

LOCATION WHERE ORDER WAS
PRONOUNCED:

Edmonton, Alberta

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

UPON NOTING the presence of the following Counsel:

- i. Doris Bonora – Counsel for the Sawridge Trustees;
- ii. Nancy Cumming, Q.C. – Counsel for the Sawridge Trustees, Roland Twinn, Bertha L'Hirondelle, Everett Justin Twin and Margaret Ward in Court of Queen's Bench Action No. 1403 04885;
- iii. Janet Hutchison – Counsel for the Office of the Public Trustee;
- iv. Eugene Meehan, Q.C. – Agent Counsel to Hutchison Law (Counsel for the Office of the Public Trustee);
- v. Karen Platten, Q.C. – Counsel for Catherine Twinn.

AND UPON REVIEWING the Notice of Application filed by the Office of the Public Trustee on June 12, 2015, returnable June 30, 2015 (the "Public Trustee's Notice");

AND UPON REVIEWING the Notice of Application filed by the Sawridge Trustees on June 12, 2015, returnable June 30, 2015 (the "Trustee's Notice");

AND UPON REVIEWING the written submissions filed by Counsel for the Sawridge Trustees, on June 12, 2015 and June 19, 2015;

AND UPON REVIEWING the written submissions filed by Counsel for the Office of the Public Trustee, on June 12, 2015 and June 19, 2015;

AND UPON REVIEWING the written submissions filed by Counsel for the Sawridge Trustees, Roland Twinn, Bertha L'Hirondelle, Everett Justin Twin and Margaret Ward (Bryan & Co.) on June 23, 2015;

AND UPON REVIEWING the written submissions filed by Counsel for Catherine Twinn (McLennan Ross LLP) on June 26, 2015, and served upon the parties on June 29, 2015;

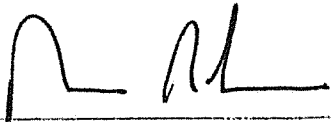
AND UPON REVIEWING the correspondence forwarded to the Court by Counsel for the Sawridge Trustees and Counsel for the Public Trustee, dated June 29, 2015;

AND UPON hearing oral submissions from all Counsel present.

IT IS HEREBY ORDERED THAT:

1. The Sawridge Trustees' application to adjourn the Settlement Application is granted;
2. The Public Trustee's Production Application will be heard in Chambers on September 2, 2015, going over to September 3, 2015, if necessary;
3. The Sawridge Trustee's Settlement Application will be heard after the Production Application is heard, on either September 2 or 3, 2015;
4. By July 15, 2015, the Public Trustee will file an amended Application to provide the Sawridge First Nation with further and better particulars of the relief sought in the Production Application;
5. The Sawridge First Nation will file its Brief, responding to the Public Trustee's Amended Production Application and brief, by August 14, 2015;
6. The Public Trustee may file a written reply to the Sawridge First Nation brief, if necessary, by August 21, 2015;
7. The Sawridge Trustees will file their Brief, responding to the Public Trustee's Amended Production Application and brief, by August 21, 2015;
8. The Public Trustee may file a written reply to the Sawridge Trustees' August 21, 2015 brief, if necessary, prior to the September 2, 2015 chambers appearance;
9. The Costs Indemnity Order, issued June 12, 2012, permits the Public Trustee to retain agent counsel when additional resources are required;
10. The Sawridge Trustees should raise any issues they may have regarding accounts the Public Trustee submits to them for reimbursement under the Cost Indemnity Order, including requests for unredacted accounts, on a regular basis;

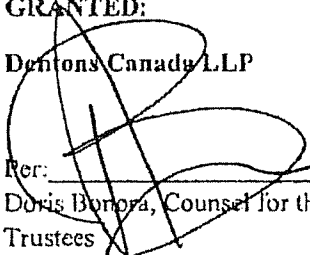
11. Any future issues about specifics of retainer of agency or additional resources by the Public Trustee, or requests for unredacted accounts by the Sawridge Trustees, may be addressed by the Case Management Justice on a written basis.



Hon. Justice D.R.G. Thomas
Thomas

APPROVED AS BEING THE ORDER
GRANTED:

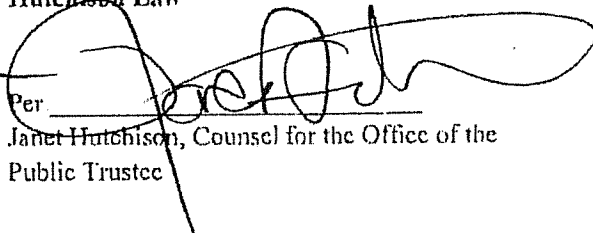
Dentons Canada LLP

Per: 

Doris Bonora, Counsel for the Sawridge
Trustees

APPROVED AS BEING THE ORDER
GRANTED:

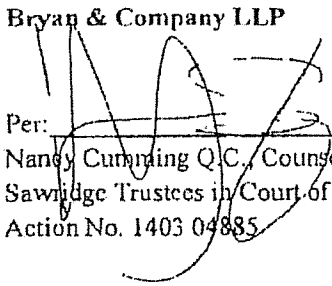
Hutchison Law

Per: 

Janet Hutchison, Counsel for the Office of the
Public Trustee

APPROVED AS BEING THE ORDER
GRANTED:

Bryan & Company LLP

Per: 

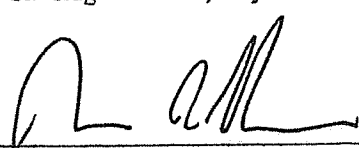
Nancy Cumming Q.C., Counsel for the
Sawridge Trustees in Court of Queen's Bench
Action No. 1403 04885

APPROVED AS BEING THE ORDER
GRANTED:

McLennan Ross LLP

Per: _____
Karen Platten, Q.C., Counsel for Catherine
Twinn in Court of Queen's Bench Action No.
1403 04885

11. Any future issues about specifics of retainer of agency or additional resources by the Public Trustee, or requests for unredacted accounts by the Sawridge Trustees, may be addressed by the Case Management Justice on a written basis.



Hon. Justice D.R.G. Thomas

**APPROVED AS BEING THE ORDER
GRANTED:**

Dentons Canada LLP

Per: _____
Doris Bonora, Counsel for the Sawridge
Trustees

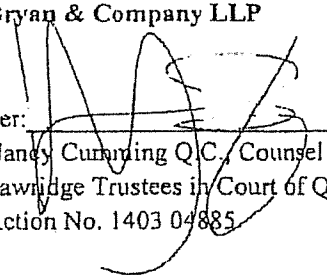
**APPROVED AS BEING THE ORDER
GRANTED:**

Hutchison Law

Per: _____
Janet Hutchison, Counsel for the Office of the
Public Trustee

**APPROVED AS BEING THE ORDER
GRANTED:**

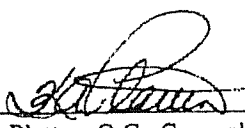
Bryan & Company LLP

Per: 

Nancy Cumming Q.C., Counsel for the
Sawridge Trustees in Court of Queen's Bench
Action No. 1403 04885

**APPROVED AS BEING THE ORDER
GRANTED:**

McLennan Ross LLP

Per: 

Karen Platten, Q.C., Counsel for Catherine
Twinn in Court of Queen's Bench Action No.
1403 04885



PARLEE McLAWS ^{LLP}
BARRISTERS & SOLICITORS | PATENT & TRADEMARK AGENTS

June 27, 2016

EDWARD H. MOLSTAD, Q.C.
DIRECT DIAL: 780.423.8506
DIRECT FAX: 780.423.2870
EMAIL: emolstad@parlee.com
OUR FILE #: 64203-7/EHM

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

Attention: Ms. Janet Hutchison

Dear Madam:

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

We have reviewed the Litigation Plan attached to Ms Bonora's letter of June 22nd, 2016 and Sawridge First Nation is prepared to agree to this Litigation Plan subject to all counsel agreeing on or before June 30th, 2016.

In the alternative, if all counsel do not agree, Sawridge First Nation requires that the Public Trustee agree to the following schedule:

July 4th, 2016 Public Trustee to provide particulars of evidence to be relied upon for the submissions and or brief on the 5.13 Membership issue and the 5.13 transfer issue (as Applicant). In addition to providing particulars, copies of the evidence which will be referred to or relied upon by the Public Trustee will be served upon the Sawridge First Nation;

July 4th, 2016 to July 22nd, 2016, Sawridge First Nation will be allowed questioning on Affidavit evidence that will be referred to or relied upon in relation to the 5.13 Applications to be heard on August 24th, 2016.

August 5th, 2016, Public Trustee to file and serve written submissions and/or brief on the issues regarding the 5.13 Applications in relation to Membership and transfer issues as Applicant.

August 16th, 2016, Sawridge First Nation, Trustees and other parties to respond to the written brief on the section 5.13 Applications in relation to Membership and the transfer issue.

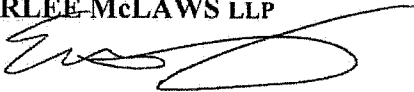
August 24th, 2016, 5.13 Applications on Membership and transfer issue by Public Trustee to be heard by Mr. Justice Thomas.

This letter is sent with prejudice and if either of the above alternatives are not accepted and confirmed by the Public Trustee by June 30th, 2016, it will be the position of the Sawridge First Nation as follows:

1. The Public Trustee has not complied with the Order of Justice Thomas;
2. The Public Trustee's 5.13 Applications should have included Affidavits, Evidence and written submissions;
3. The time for the Public Trustee to file any Affidavits, Evidence or written submissions in relation to 5.13 Applications has expired and without a further Court Order, the Public Trustee has no right to file any Affidavits, Evidence or written submissions.

Yours truly,

PARLEE-McLAWS LLP



EDWARD H. MOLSTAD, Q.C.
EHM/tlk

Cc: Reynolds Mirth Richards & Farmer LLP – Attn: Mr. Marco Poretti
Cc: Dentons LLP – Attn: Ms Doris Bonora
Cc: Bryan & Company – Attn: Ms Nancy Cumming, Q.C.
Cc: McLennan Ross LLP – Attn: Ms Karen Platten, Q.C.
Cc: McLennan Ross LLP – Attn: Ms Crista Osualdini
Cc: Supreme Advocacy LLP - Mr. Eugene Meehan, Q.C.
(ALL VIA EMAIL ONLY)



HUTCHISON LAW

#155 Glenora Gates
10403 122 Street
Edmonton, Alberta
T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

* Janet L. Hutchison, L.L.B.
Rebecca C. Warner, B.A., J.D., Student-at-Law

Our File: 51433 JLH

SENT BY EMAIL ONLY

May 6, 2015

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Attention: Marco Poretti

Attention: Doris Bonora

Dear Sir and Madam:

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

Further to our correspondence of May 5, 2015, I am writing to advise that I have instructions from the Public Trustee of Alberta to:

- 1.) Postpone the questioning of Paul Bujold to a later date;
- 2.) File an application for, *inter alia*, the advice and direction of the Court in this proceeding.

Your offices were already aware that the Public Trustee proposed to bring an application to address issues around production of documents in the within proceeding. That application was not anticipated to impact the scheduled questioning. However, the email exchanges between April 21-27, 2015 have raised more immediate issues on which the Public Trustee requires guidance from the Court. The nature of these issues requires our client to have that guidance before questioning can proceed.

The Public Trustee's application will address issues, including the following :

- a.) Should the within proceeding and QB Action No. 1404 04885 be joined;
- b.) The respective roles of all counsel involved in the within proceeding and QB Action No. 1404 04885;

- c.) Whether any counsel have conflicts of interest (in either matter) and if so, how to address said conflicts of interest;
- d.) Whether the Court should exercise its discretion under Rule 3.10 of the *Alberta Rules of Court* to apply Part 5 of the Rules, in whole or in part, to the within proceeding;
- e.) Setting an appropriate schedule/ litigation plan for remaining steps in the proceeding (or joined proceedings).

The Public Trustee will be contacting the Court regarding Justice Thomas' availability and will serve materials in this application as expeditiously as possible.

Thank you for your attention to this matter.

Yours truly,

HUTCHISON LAW

PER: JANET L. HUTCHISON

JLH/cm
Enclosure

cc: Client



HUTCHISON LAW

Our File: 51433 JLH

SENT BY EMAIL ONLY

June 17, 2016

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Attention: Marco Poretti

Dentons LLP
Suite 2900 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Attention: Doris Bonora

Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta
T5J 4K1

Attention: Edward Molstad, Q.C.

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

Attention: Karen Platten, Q.C. and Crista Osualdini

Dear Sirs and Mesdames:

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

We are writing to provide the OPGT's position on the litigation plan that has been under discussion. This letter will also serve as a response to Dentons' June 7 and June 9, 2016 correspondence and Parlee McLaws' June 15, 2016 correspondence.

OPGT 5.13 Applications

In relation to the 5.13 Application regarding Distribution for documents that Sawridge First Nation ("SFN") may have possession of that would assist in testing the fairness of the Trustees' proposed distribution schedule, in light of the restrictions set out in *Sawridge #3* the OPGT will not be seeking consent, or leave of the Court, to file an application on that topic.

In relation to the 5.13 Application regarding Membership, the OPGT will be filing a brief written submission on that application to ensure that the Court is made aware of the information that has been provided by the SFN since January 29, 2016. We expect, based on *Sawridge #3*, the Court would then make a decision regarding whether the information received fully satisfies its directions. The OPGT will not be seeking to file affidavit evidence in relation to that application and anticipates its submissions will be relatively brief, similar in length to the SFN submissions. The nature of those submissions is anticipated to be similar in nature to a report or update to the Court. That submission will also speak to the SFN's ongoing request for a costs award against the OPGT.

The 5.13 Application regarding Assets is, in the OPGT's view, related to the Trustees' proposed application to "clarify" the relief they are seeking in relation to assets. We note, in that regard, that while OPGT counsel did receive Dentons' May 13, 2016 email in that regard, for some reason OPGT counsel was not copied with the form of proposed consent order that was sent to all other counsel on June 8, 2016.

In any event, the OPGT's current instructions are not to consent to that "clarification" in the form of a consent order at this time. In particular, the OPGT is conscious that there remain many unanswered questions, including those posed by McLennan Ross' email of May 18, 2016. The clarification provided did not include specific statements that, if the parties or the Court accepted the "clarification", the Trustees would commit to a binding legal position that nothing in the within proceeding would be relied on by the Trustees to attempt to prevent any beneficiary (the OPGT's interest being, of course, the minor beneficiaries) from seeking a full accounting from the 1985 Trust, including an accounting to establish whether all the assets intended to be settled into the 1982 Trust were actually transferred into the 1985 Trust.

The OPGT remains open to discussions on this point, but for the purposes of scheduling, is currently of the view that the parties require the guidance of the Court as to its interpretation and directions on the transfer issue originally put before it by the Trustees.

The OPGT will be filing a concise written submission in relation to the 5.13 Assets application to make the Court aware of the OPGT's understanding of the scope of the asset element of the application, advise of the information received from the SFN and Trustees regarding their view of the scope, and request the Court to determine which issues it has an obligation, in a trust context, to consider before granting any relief sought by the Trustees. We expect that if the Court considers it has an obligation to examine any of the issues identified by the OPGT, the Court will direct the SFN to comply with the 5.13 document requests. If the Court finds that it has no obligation to consider those matters, it may also decide it does not require any of the information sought in the OPGT's application. Those are matters for the Court to determine.

The OPGT will not be filing affidavit evidence in support of this submission. The OPGT will not be seeking to conclude Paul Bujold's questioning prior to the August 24, 2016 hearing as the Court's decision on the issues identified above will determine what scope of future questioning the Court feels it requires in order to deal with the final order regarding the asset issue.

The proposed timelines for the remaining steps regarding the 5.13 Applications are set out in the attached revised Litigation Plan.

Trustees' Position on OPGT Accounts

We do not intend to address the substantive disputes over these matters in correspondence to all counsel. It is sufficient for the purposes of this correspondence to note that the OPGT and the Trustees clearly have a very different understanding of their without prejudice agreements regarding the advance and full costs indemnity awarded by the Court of Appeal and, indeed, a very different understanding of the obligations placed on the Trustees by that indemnity.

In relation to Trustees' proposal to include deadlines for addressing these issues in the litigation plan, the OPGT is willing to do so. However, the OPGT expects the Trustees to be bound by specific deadlines in that process as well and has revised the litigation plan accordingly.

Other Items for Follow Up

- 1.) The Trustees had requested that the Minutes of Settlement relating to the discontinuance of the appeal from *Sawridge #3* be provided to Justice Thomas. The OPGT does not see any need to put those Minutes before the Court. The only situation the OPGT is currently aware of that might necessitate putting this without prejudice settlement document before a Court would be a situation where a party was in breach of the Minutes. Please confirm the Trustees are not suggesting that any such situation currently exists.
- 2.) Regarding the Trustees' request for the OPGT's consent to the Proposed Distribution arrangement, we will be responding to the Trustees regarding this matter by way of separate correspondence, in advance of any possible filing deadlines for submissions for the August 24, 2016 case management meeting.
- 3.) The OPGT will be following up regarding aspects of the April 20, 2016 meeting by way of separate correspondence. However, Parlee McLaws' June 15, 2016 correspondence suggests that clarification of one element of that meeting is required prior to further response. OPGT's counsel requested confirmation, at least twice during the April 20, 2016 meeting, that the entire meeting was acknowledged by all counsel to be without prejudice. Do any of the participants in the April 20, 2016 meeting (in that we refer to the clients as well as their representatives) have a different understanding of the status of the April 20, 2016 meeting?

Thank you for your attention to this matter.

Yours truly,

HUTCHISON LAW

PER: JANET L. HUTCHISON

JLH/cm

Enclosures

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

Clerk's stamp:

COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL CENTRE

EDMONTON

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

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

DOCUMENT

LITIGATION PLAN

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Attention: Marco S. Poretti
Reynolds, Mirth, Richards & Farmer LLP
3200 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3W8

Telephone: (780) 497-3325
Fax: (780) 429-3044
File No: 108511-001-MSP

Attention: Doris Bonora
Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Telephone: (780) 423-7188
Fax: (780) 423-7276
File No: 551860-001

The following steps and actions are to be completed on a best efforts basis, and subject to the Court's availability, on or before the dates specified below:

Comments in red by Ed Molstad

Comments in Blue by Karen Platten

Comments in green by Dentons

No comments provided by the OPGT to date

Comments in burguandy provided by the OPGT

	ACTION	DEADLINE
1.	Sawridge Trustees - to provide clarification on transfer issue.	May 15, 2016 - Completed
2.	Sawridge Trustees - to provide position on proposed distribution scheme.	May 15, 2016 - Completed
3.	OPGT – response to March 15, 2016 Sawridge First Nation Brief re: Beneficiary Application and Settlement Application. Unnecessary because OPGT will be filing and serving the amended application on June 15, 2016 (EM) Acceptable to remove this item Acceptable to remove this item. Require clarification re: the SFN's comments re: an amended application if June 17, 2016 does not address their position.	May 30, 2016.
4.	OPGT – to advise which 5.13 applications are proceeding.	June 17, 2016 Completed
5.	OPGT - to advise on whether it shall question Paul Bujold in advance of 5.13 application. OPGT will not seek to complete questioning of Paul Bujold until Court has determined what the scope of the asset issue in the Trustee's application will be.	June 17, 2016 Completed
6.	OPGT to provide additional responses to Trustee's questions on the July 2015 accounts, specifically to respond to the Trustee's list of questions in the March 31, 2016 correspondence	July 4, 2016
7.	Trustees to provide final response regarding OPGT July 2015 accounts, or full or partial payment, of July 2015	July 19, 2016, or two weeks after receipt of

	OPGT accounts	#6, whichever date is earlier.
8.	OPGT to file written submissions in response to SFN March 31, 2016 submissions on 5.13 applications and costs.	July 15, 2016
9.		
10.		
11.	Respondents - response on 5.13 applications.	July 29, 2016
12.	OPGT – provide up to date billing to Trustees (from June 2015 to the present).	Within 30 days of receipt of payment of at least 50% of the amounts owing on the July 2015 accounts or final resolution of the Trustee's questions regarding the July 2015 accounts
13.	An application to be filed by the OPGT and Twinn to determine if Justice Thomas is able to hear the proposed distribution scheme application. Change to: Whether Justice Thomas is to hear any application involving final relief such as the definition of beneficiaries under the 1985 Trust. Change is acceptable	TBD
14.	Case Management Conference – to set the terms and procedure for the final determination of the matter. No indication of what is being sought in the final determination. In paragraph 11, 12 and 13 there is no indication on the steps to get to the determination such as the steps to file briefs, applications to be filed etc. Only deal with the 5.13 applications in the Litigation Plan. Propose that the application August 24 be guided by the special chambers rules with the Sawridge Trustees as the applicants. The transfer issue will only proceed if there is agreement by the parties. We do not agree that we should leave everything out except the 5.13 applications as we need to continue to	TBD

	<p>move the litigation forward.</p> <p>The OPGT shares the concerns expressed by Counsel for Catherine Twinn and requests a specific and detailed explanation from the Trustees and SFN regarding what else the Trustees and SFN are currently contemplating addressing on August 24, 2016. This information was requested in the OPGT's correspondence dated June 10, 2016, point #4.</p>	
15.	<p>Potential Applications: (a) 5.13 applications; (b) Transfer issue; (c) Proposed Distribution Scheme (not to include definition of beneficiaries issue).</p>	August 24, 2016

This Litigation Plan is agreed by the Parties

REYNOLDS MIRTH RICHARDS &
FARMER LLP

Per:

Marco S. Poretti
Solicitors for the Trustees of the 1985
Sawridge Trust (Roland Twinn, Catherine
Twinn, Walter Felix Twin, Bertha
L'Hirondelle and Clara Midbo)

PARLEE McLAWS LLP

Per:

Edward H. Molstad Q.C.
Solicitors for the Sawridge First Nation

McLENNAN ROSS LLP

Per:

Karen Platten, Q.C.
Solicitors for Catherine Twinn

DENTONS CANADA LLP

Per:

Doris Bonora
Solicitors for the Trustees of the 1985
Sawridge Trust (Roland Twinn, Catherine
Twinn, Walter Felix Twin, Bertha
L'Hirondelle and Clara Midbo)

HUTCHISON LAW

Per:

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



HUTCHISON LAW

#155 Glenora Gates
10403 122 Street
Edmonton, Alberta
T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

* Janet L. Hutchison, LL.B.
Rebecca C. Warner, B.A., J.D., Student-at-Law

Our File: 51433 JLH

SENT BY EMAIL ONLY

June 29, 2015

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

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

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

In relation to the above noted matter, we are writing to provide an update to the Court regarding the counsel list for Chambers on June 30, 2015, at 2:00 pm.

Party	Counsel
The Sawridge Trustees	<ol style="list-style-type: none">1. Marco Poretti, Reynolds Mirth Richards & Farmer LLP- Counsel in QB Action No. 1103 14112.2. Doris Bonora, Dentons LLP - Counsel in QB Action No. 1103 14112 and former counsel in QB Action No. 1403 04885.3. Nancy Cumming, Q.C., Bryan & Company – Counsel in QB Action No. 1403 04885.

* Denotes Professional Corporation

The Office of the Public Trustee	Janet Hutchison, Hutchison Law - Counsel in QB Action No. 1103 14112. Eugene Meehan, Q.C. - Agent Counsel in QB Action No. 1103 14112.
The Sawridge First Nation	Edward Molstad, Q.C., Parlee McLaws LLP - Counsel in QB Action No. 1103 14112.
Catherine Twinn	Karen Platten, Q.C., McLennan Ross LLP - Counsel in QB Action No. 1403 04885.
June Kolosky and Aline Huzar	Priscilla Kennedy, DLA Piper LLP - Counsel in QB Action No. 1103 14112.

If we can provide the Court with any additional information, please do not hesitate to contact me directly.

All of which is respectfully submitted,

HUTCHISON LAW

PER: JANET L. HUTCHISON
JLH/cm

cc: The Office of the Public Trustee

cc: D. Bonora, Dentons LLP

cc: M. Poretti, RMRP LLP

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

cc: P. Kennedy, DLA Piper LLP

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

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



HUTCHISON LAW

Our File: 51433 JLH

SENT BY EMAIL ONLY

February 25, 2016

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Reynolds Mirth Richards & Farmer
Suite 3200 Manulife Place
10180-101 Street
Edmonton Alberta T5J 3W8

Attention: Doris Bonora

Attention: Marco S. Poretti

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta
T5N 3Y4

**Attention: Karen Platten, Q.C. and Crista
Osualdini**

Dear Sir and Madam:

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust); QB Action No. 1103
14112 / Appeal No. 1603-0029AC**

I am writing to respond to Ms. Bonora's correspondence of February 12, 2016, which stated, *inter alia*, "...we were and are hoping we could work cooperatively, instead of having this contentious litigation".

The Public Trustee has always been willing to find opportunities to cooperate towards resolutions, both on the final relief and on procedural matters. We have included Ms. Twinn's counsel in this correspondence as we expect any discussions around greater cooperation at this point in time could affect the pending appeals.

The Public Trustee is still limited in its ability to make proposals around the settlement of the assets as the 5.13 Applications remain outstanding and questioning of Mr. Bujold on the majority

of the asset settlement documents has not occurred. However, the Public Trustee does consider itself to be in a better position than it was in September 2015 to discuss the issues with the beneficiary definition and possible solutions that might address the Public Trustee's concerns on that front.

I understand that representatives of the Public Trustee's office will make themselves available for a preliminary meeting to discuss options for greater cooperation in this matter on the following dates:

- 1.) Monday, February 29, 2016- 11:00AM-2:00PM;
- 2.) Friday, March 4, 2016 – any time that day.

We are certainly willing to consider alternate dates, but would ask that all counsel cooperate to avoid booking a meeting in the lead up to the March 15, March 18-22 and April 18-22 filing deadlines.

We look forward to hearing from you at your earliest convenience.

Thank you for your attention to this matter.

Yours truly,


HUTCHISON LAW

PER: JANET L. HUTCHISON

cc: The Office of the Public Trustee

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

Janet Hutchison

From: Marco S. Poretti <MPoretti@rmrf.com>
Sent: Friday, February 26, 2016 2:02 PM
To: 'Chantelle Monson'; Doris Bonora <doris.bonora@dentons.com>; Karen Platten <kplatten@mross.com>; Crista Osualdini
Cc: Janet Hutchison
Subject: RE: Sawridge - 51433
Attachments: 51433.ltr.trustees.02.25.2016.pdf

Janet and Crista,

Further to the attached letter and subsequent correspondence, we confirm that we are prepared to meet with you and your clients on February 29, 2016, at 11:00 a.m. We suggest that the meeting take place at our offices.

I will be in attendance along with Ms. Bonora, Paul Bujold and Brian Heidecker.

Please advise who you will be attending with. We look forward to the meeting.

Marco



BARRISTERS SOLICITORS

Reynolds
Mirth
Richards
& Farmer LLP

Marco S. Poretti | Partner
3200 Manulife Place | 10180 - 101 Street | Edmonton AB Canada T5J 3W8
Direct: 780.497.3325 | Fax: 780.429.3044 | Toll Free: 1.800.661.7673
mporetti@rmrf.com | www.rmrf.com

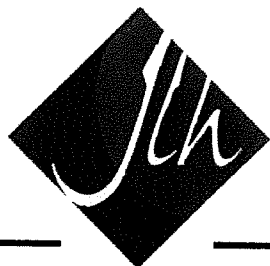
This communication, including any attachments, is confidential and may be protected by solicitor/client privilege. This communication is intended only for the person or persons to whom it is addressed. Any review, retransmission, dissemination or other use of this information is strictly prohibited. If you have received this e-mail in error, please contact the sender and delete the e-mail. E-mail communications are vulnerable to interception by unauthorized parties. If you are the intended recipient and you do not wish for the sender to communicate with you by e-mail, please notify the sender at your earliest convenience. In the absence of such notification, your consent is assumed.

From: Chantelle Monson [<mailto:CMonson@jlhlaw.ca>]
Sent: Thursday, February 25, 2016 3:20 PM
To: Marco S. Poretti; Doris Bonora <doris.bonora@dentons.com>; Karen Platten <kplatten@mross.com>; Crista Osualdini
Cc: Janet Hutchison
Subject: Sawridge - 51433

Good Afternoon,

Please find attached a letter in relation to the above noted matter.

Thank you,



Chantelle Monson
Legal Assistant

Hutchison Law

#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park, Alberta T8H 2A3
Phone: 780-417-7871 (ext. 223)
Fax: 780-417-7872

CONFIDENTIALITY WARNING

This email transmission, and any attachments to it, contain confidential information intended for a specific individual and purpose. The information is private, and is legally protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of the information in, or attached to this email is strictly prohibited. If you have received this communication in error, please notify us immediately by collect telephone 780-417-7871 return the original to us by regular mail and permanently delete any electronic copies. Thank you.

