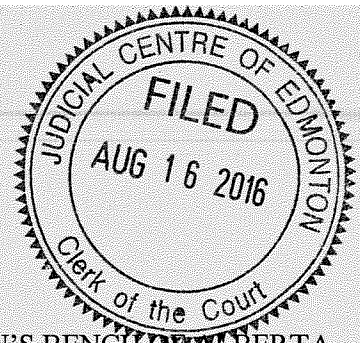


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COURT

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

**REPLY BRIEF OF THE  
PUBLIC TRUSTEE OF ALBERTA  
FOR APPROVAL OF THE  
DISTRIBUTION PROPOSAL**

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**

## **PART I - INTRODUCTION**

- 1.) The Trustees proposed a distribution arrangement in 2015. The OPGT raised concerns about the proposal being premature, particularly given that beneficiary identification had yet to be addressed. The Trustees withdrew the proposal on September 3, 2015.
- 2.) In the December 17, 2015 Reasons for Decision ("*Sawridge #3*"), on its own motion, directed the Trustees to submit a replacement distribution arrangement for the 1985 Sawridge Trust ("the Arrangement").

*1985 Sawridge Trust v. Alberta (Public Trustee)*, (2015) ABQB 799 at para. 42 [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 1]

- 3.) The OPGT had leave to serve Sawridge First Nation with a Rule 5.13 Application for documents required to "test the fairness of the proposed distribution arrangement". The OPGT did not serve SFN with a 5.13 Application on this topic.

Letter from Hutchison Law, Counsel for the OPGT, dated March 15, 2016 [Appendix A to the Brief of the Public Trustee]

*1985 Sawridge Trust v. Alberta (Public Trustee)*, (2015) ABQB 799 at para. 43 [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 1]

- 4.) The Arrangement was to be submitted to the Court on January 29, 2016 and dealt with by April 30, 2016. Due to limited available court time, the case management meeting to deal with the Arrangement has been rescheduled for August 24, 2016.
- 5.) The Arrangement is, in terms of benefits to beneficiaries, essentially the same as the 2015 proposal.

Proposed Distribution Arrangement [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 2]

- 6.) The new Arrangement does not seek to address the identification of beneficiaries and the Trustees acknowledge that the beneficiary definition issue, and thus identification of beneficiaries, will be dealt with at a date after August 24, 2016 and separately from the Arrangement.

Letter from Doris Bonora, Counsel for the Trustees, dated May 16, 2016  
[Appendix B to the Brief of the Public Trustee]

- 7.) In relation to the 2015 Arrangement, the Trustees were on record as stating they are willing to grandfather any of the minors that would lose beneficiary status under the proposed beneficiary definition. The OPGT's lack of opposition to the current application relies, in part, on the understanding this approach should apply to the Arrangement as well.

Letter from Doris Bonora, Counsel for the Trustees, dated June 1, 2015  
[Appendix C to the Brief of the Public Trustee]

- 8.) Correspondence received from the Trustees' on the date of filing this brief suggests specific relief regarding grandfathering will be addressed at a later date.

Email from Doris Bonora, Counsel for the Trustees, dated August 15, 2016 [Appendix D to the Brief of the Public Trustee]

- 9.) The substance of the Arrangement proposes a quasi-social services benefit package, including:

- i.) Health, Dental, Vision Care and Life Insurance;
- ii.) Education Support Fund;

- iii.) Addictions Treatment Support Fund;
- iv.) Child and Youth Development;
- v.) Compassionate Care and Death;
- vi.) Seniors Support;
- vii.) Personal Development and Alternate Health;
- viii.) Income Replacement;
- ix.) Recognition of Beneficiaries and Dependents Educational Achievements;  
and
- x.) One time Only Good Faith Cash Disbursement.

(“the Benefits Policies”)

10.) The OPGT does not dispute that the Benefits Policies would be beneficial to the minors it currently represents who ultimately qualify as beneficiaries of the 1985 Trust.

11.) However, the Arrangement goes beyond the substance of the proposal to provide benefits to 1985 Trust beneficiaries. That document also includes:

- i.) Statements about the Trustees’ level of discretion and the limits on the Court’s ability to review Trustee decisions;
- ii.) Statements about financial impacts on the Trusts as a result, *inter alia*, of the within proceeding; and
- iii.) Statements about the nature of a discretionary trust generally.

Proposed Distribution Arrangement [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 2]

- 12.) The OPGT made efforts to reach agreement on a form of order to deal with the Trustees' submission of the Arrangement to the Court in order to try to limit its costs and the costs of the Trustees, which are all paid by the Trust.

Letter from Hutchison Law, Counsel for the OPGT, dated July 15, 2016  
[Appendix E to the Brief of the Public Trustee]

Letter from Hutchison Law, Counsel for the OPGT, dated August 9, 2016  
[Appendix F to the Brief of the Public Trustee]

- 13.) However, all proposals by the Trustees required the entire January 29, 2016 Proposed Distribution Arrangement be attached, and approved by reference, in the form of order. As the Arrangement document goes beyond the scope of just outlining benefits to the beneficiaries and deals with important issues that have the potential to impact the interests of minor beneficiaries, outlined above, the OPGT was not able to consent to the form of order.

- 14.) While the OPGT has indicated it would not oppose approval of the Benefits Policies, the OPGT has maintained that it may have submissions to make to the Court if a form of order was not agreed to.

Letter from Hutchison Law, Counsel for the OPGT, dated July 15, 2016  
[Appendix E to the Brief of the Public Trustee]

Letter from Hutchison Law, Counsel for the OPGT, dated August 9, 2016  
[Appendix F to the Brief of the Public Trustee]

## **PART II – SUBMISSIONS**

### **Scope of Proposed Distribution Scheme**

- 15.) The OPGT is conscious that the Arrangement is being reviewed in a somewhat hypothetical manner and the Court in *Sawridge #3* referred to it as follows: “a largely theoretical question and the exact numbers and personal characteristics of individuals in the various categories is generally irrelevant to the Sawridge Trustees’ proposed scheme.”

*1985 Sawridge Trust v. Alberta (Public Trustee)*, (2015) ABQB 799 at para. 40 [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 1]

- 16.) As such, the OPGT submits that the August 24, 2016 appearance should be limited to the question of whether the Benefits Policies should be approved of in a general or academic sense.
- 17.) There are potential complexities and issues that could arise from the approval of a distribution prior to determination of the beneficiary definition and identification of the beneficiaries. The Trustees are under a duty to ensure that any distribution is carried out in accordance with trust principles. This would require that certainty of objects is achieved before a distribution is decided. The Trustees’ agreement to refrain from any distribution until the beneficiary definition is decided recognizes these principles and highlights the academic nature of the current application.

Letter from Doris Bonora, Counsel for the Trustees, dated May 16, 2016  
[Appendix B to the Brief of the Public Trustee]

*Barry v. Garden River Band of Ojibways*, [1997] O.J. No. 2109 (C.A.)  
[Appendix G to the Brief of the Public Trustee]

- 18.) Trustee Twinn’s brief also speaks to issues that could arise from this academic exercise: “Given that the current beneficiary pool of the 1985 Trust is potentially quite different than the beneficiary pool pursuant to the 1986 Trust, caution

should be exercised in approving distribution policies for the 1985 Trust when those beneficiaries are yet to be ascertained and their needs identified.”

Brief of Catherine Twinn filed August 15, 2016 at para. 17

- 19.) Thus, the OPGT does not oppose approval of the Benefits Policies, in an academic or general sense. The OPGT’s position should not be treated as a waiver of the OPGT’s ability to make submissions regarding distribution once actual distribution can occur.

#### **Fairness of Scheme to Minors**

- 20.) *Sawridge #3* directs the OPGT to focus its assessment of the Arrangement on the question of whether it creates unfairness as between the adult and minor beneficiaries of the 1985 Trust.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, (2015) ABQB 799 at para. 37, 41 and 67 [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 1]

- 21.) Based on the currently available information, the main difference the OPGT can identify as between adults and minors under the Benefits Policies is that minors must wait until they reach the age of 18 to receive the “one time” “good faith” payment of \$2500.00. So long as the payment is made at the relevant time, the OPGT does not object, in principle, to this distinction.
- 22.) Correspondence received from the Trustees on August 15, 2016 at 8:29pm suggests minors may not receive this benefit. If that were the case, the OPGT would regard that as unfair to minor beneficiaries.

Email from Doris Bonora, Counsel for the Trustees, dated August 15, 2016 [Appendix D to the Brief of the Public Trustee]



- 23.) Without identification of beneficiaries, it is impossible for the OPGT to fully assess, let alone make complete submissions on, whether the Arrangement is in the best interests of all Minor Beneficiaries. For instance, until the residence (on reserve vs. off reserve) of all Minor Beneficiaries is known (post identification of beneficiaries) the OPGT cannot fully assess how the Arrangement actually meets (or does not) Minor Beneficiary's specific needs. The OPGT can only comment that the general concept of the Benefits Policies appears likely to benefit minor beneficiaries.
- 24.) The OPGT shares the concern with Trustee Twinn that the Trustees' form of Order seeks Court approval of argument and evidence in relation to final relief insofar it is contained in the Arrangement incorporated by reference. This is relief not appropriate or required at this stage of the proceeding.

Brief of Catherine Twinn filed August 15, 2016 at paras. 20-22

- 25.) The OPGT agrees with the general approach of Trustee Twinn's proposed form of Order as it only seeks confirmation in relation to the Benefits Policies put forward by the Trustees. The OPGT notes this form of order does not ensure Minor Beneficiaries would receive equal treatment in relation to the one time good faith payment.

### **Financial Viability**

- 26.) As the OPGT advised the Trustees on July 15 and August 9, 2016 it is of the view that the Court must be satisfied the Arrangement is financially viable.

Letter from Hutchison Law, Counsel for the OPGT, dated July 15, 2016  
[Appendix E to the Brief of the Public Trustee]

Letter from Hutchison Law, Counsel for the OPGT, dated August 9, 2016  
[Appendix F to the Brief of the Public Trustee]

27.) The Trustees have not provided the Court with any specific evidence of financial viability of the Arrangement. Exhibit “L” of Paul Bujold’s Affidavit, filed September 12, 2011, does provide some details, in 2009 dollars, regarding the anticipated costs of the benefits plan. The OPGT understands from the evidence that the benefits plan will result in the following costs:

- i.) \$1,066,000.00 Estimated Cost of Year one;
- ii.) \$2,293,000.00 Estimate Cost of Year two;
- iii.) \$2,233,000.00 annually for subsequent years;

Affidavit of Paul Bujold, filed September 13, 2011, Exhibit L [Appendix H to the Brief of the Public Trustee]

28.) These cost estimates do not include the costs to establish beneficiary eligibility under the two Trusts or costs for financial management and planning. The cost estimate only includes “rough estimates” for insurance costs.

Affidavit of Paul Bujold, filed September 13, 2011, Exhibit L [Appendix H to the Brief of the Public Trustee]

29.) The issue of financial viability may be particularly relevant to the Court given the Trustees general reference to financial challenges such as the “struggle of the Trustees” in making payments under the Benefits Policies.

Proposed Distribution Arrangement at pg. 5 [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 2]

30.) On August 15, 2016 the Trustees provided correspondence stating “there has never been a suggestion that the trust cannot fund the distributions.” However, the Court has not received specific evidence on this front.

31.) Trustees have a duty to the minor beneficiaries to “show ordinary care, skill, and prudence...act as the prudent man of discretion and intelligence would act in his own affairs” which would include ensuring any proposed scheme is financially viable.

*Barry v. Garden River Band of Ojibways*, [1997] O.J. No. 2109 (C.A.)  
[Appendix G to the Brief of the Public Trustee]

32.) Further to the Court’s objectives set out in *Sawridge #3* and the OPGT’s obligation to ensure fair treatment of the Minor Beneficiaries, both the Court and the OGPT have an obligation to satisfy themselves that the Arrangement is also in the best interests of Minor Beneficiaries in terms of its financial viability for the 1985 Trust.

*1985 Sawridge Trust v. Alberta (Public Trustee)*, (2015) ABQB 799 at para. 7, 22, 26 and 40 [Brief of the Trustees, filed August 5, 2016 Authorities, Tab 1]

### **Adult Beneficiary Application**

33.) The OPGT notes that since *Sawridge #3* was issued, and indeed, during the time the parties were discussing a form of order on this matter, the Court and the parties were made aware of an application for party standing by Patrick Twinn, on his behalf and on behalf of his infant daughter, Aspen Saya Twinn and his wife, Melissa Megley and by Shelby Twinn and Deborah A. Serafinchon (the “Adult Beneficiaries’ application”).

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 Affidavit  
Patrick Twinn, July 26, 2016 Affidavit  
Deborah Serafinchon, July 26, 2016 Affidavit  
[Appendix I to the Brief of the Public Trustee]

- 34.) Indeed, a second Adult Beneficiary application was received as this brief was being finalized.

Application to be Added as a Party of Intervener by Maurice Felix Stoney and his brothers and sisters, filed August 10, 2016  
Affidavit of Maurice Felix Stoney, July 26, 2016 Affidavit  
[Appendix J to the Brief of the Public Trustee]

- 35.) All parties have yet to have the benefit of the Court's direction on whether the two Adult Beneficiaries' application must be decided before this Court can determine relief, including the approval of the Arrangement.
- 36.) The OPGT has yet to receive the benefit of the Court's direction as to whether it represents the Minor referenced in the Adult Beneficiaries' application, Aspen Twinn.

### **PART III - REMEDY SOUGHT**

- 37.) The OPGT does not oppose an order to approve, in a general sense, the use of Trust resources to establish the Benefits Policies proposed as part of the January 29, 2016 submission of the Trustees;
- 38.) Any order in this matter should include a preamble stating:

- i.) The Trustees are not seeking a final distribution;
- ii.) The Trustees will not make any actual distributions until the matter of the beneficiary definition is addressed, at a later date;
- iii.) The Trustees will schedule a separate hearing, at a later date, to deal with their application regarding the beneficiary definition;
- iv.) The OPGT's lack of opposition to the Arrangement is not a waiver of the OPGT's ability to make submissions regarding distribution once actual distribution is to occur.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the Hamlet of Sherwood Park, in the Province of Alberta, this <sup>th</sup>16 day of August, 2016

**HUTCHISON LAW**

Per: \_\_\_\_\_

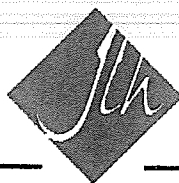
**JANET L. HUTCHISON**

Solicitors for the Public Trustee of Alberta

Estimation of time for Oral Argument: 15 minutes

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## HUTCHISON LAW

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Our File: 51433 JLH

**SENT BY EMAIL ONLY**

March 15, 2016

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

**Attention: Edward Molstad, Q.C. and Gabriel Joshee-Arnal**

Dear Sirs:

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

---

In relation to the above noted matter and the deadline for the OPGT to decide whether or not to file a 5.13 Application requesting documents from SFN relevant to the fairness of the distribution proposal, we advise as follows:

1. Under the current circumstances, and without the opportunity to complete the questioning of Paul Bujold, the OPGT is unable to identify specific documents it believes would be in the possession of Sawridge First Nation that would assist the OPGT in testing the fairness of the proposed distribution proposals;
2. Based on the restrictions the December 17, 2015 decision has placed on the OPGT, and the changes to its terms of appointment, the OPGT is not able to request information it considers relevant to the interests of the full group of Candidate Children it was originally appointed to represent;
3. The OPGT reserves the right to revisit the need to request documents once the May 4, 2016 appeal is decided and questioning is completed;

4. The OPGT's current understanding is that the Trustee's will not be applying to implement any aspect of the January 21, 2016 proposed distribution until after the May 4, 2016 appeal is decided. If Counsel for the SFN, or the Trustees, has a different understanding, we would appreciate hearing from yourself or Counsel for the Trustees in that regard.

Thank you for your attention to this matter.

Yours truly,

HUTCHISON LAW

PER: JANET L. HUTCHISON  
JLH/cm

cc: The Office of the Public Trustee

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

cc: M.Poretti, RMRF LLP

cc: D. Bonora, Dentons LLP

cc: P. Kennedy, DLA Piper LLP

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

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



May 16, 2016

File No.: 551860-1

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

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

Attention: Janet Hutchison

Attention: Karen Platten

Reynolds, Mirth, Richards & Farmer LLP  
3200, 10180 - 101 Street  
Edmonton AB T5J 3W5

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

Attention: Marco Poretti

Attention: Edward Molstad, Q.C.

Dear Madam:

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

As the Trustees were directed by the Court to provide a distribution scheme for court approval in the December 17, 2015 judgment, we advise that we will submit our Proposed Distribution Scheme for approval as drafted with the exception that we will confirm that we are not asking the Court to confirm the definition of beneficiaries as such is an issue that must be decided at a separate application. However, the balance of the Proposed Distribution Scheme will be submitted for approval.

Please advise if your client will consent or at least not oppose approval of the distribution scheme with the exception of the definition of beneficiary.

Yours truly  
Dentons Canada LLP

Doris Bonora

DCEB/sh

**DENTONS**

Doris C.E. Bonora

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June 1, 2015

File No.: 551860-1

**SENT VIA E-MAIL**

**WITH PREJUDICE**

Chamberlain Hutchison  
Suite 155, Glenora Gates  
10403 - 122 Street  
Edmonton AB T5N 4C1

Attention: Ms. Janet L. Hutchison

Dear Madam:

**RE: Sawridge Band Inter Vivos Settlement ("1985 Sawridge Trust" or "Trust" Action No. 1103 14112)**

These proceedings were initiated on August 31, 2011. At that time, the trustees of the 1985 Sawridge Trust obtained an Order directing that an application for advice and directions was to be brought regarding the definition of "beneficiaries" contained in the Trust deed. It is coming upon 4 years since the issuance of that Order, and despite great expense incurred by our clients, we are no nearer resolution of this issue. The time that has elapsed and the costs that have been incurred are detrimental to the Trust and are not in the best interests of the beneficiaries.

We are now in receipt of your letter dated May 15, 2015, wherein you advise that you will be seeking joinder of our action with Action No. 1403 04885. It is our respectful view that the two actions are unrelated, and joinder of these actions would result in further significant delay and expense to the Trust.

Our clients have considered how to best proceed given the circumstances and we wish to propose a settlement. As you know, the concern of the trustees is that the current definition of "beneficiaries" is discriminatory, and we are seeking the advice and direction of the Court to address this concern. By changing the definition of "beneficiaries" to one that references membership in the Band, it was thought that this would best express the intentions of all parties concerned including the settlors and trustees of the original trust. However, we acknowledge that such a change is a concern to your client and the minors that you represent. We have our list of beneficiaries and have included beneficiaries who were born after the litigation began and included children who have become adults and further included children who have become members. In particular, there are 24 children that are currently beneficiaries of the 1985 Sawridge Trust, and all but 4 of them would lose their beneficiary status should the definition of "beneficiaries" be changed to equate to membership. There are 4 children who have attained

membership status and thus they will continue to be beneficiaries if the definition of beneficiary changed to "members". See table 1 for a list of the children who would lose beneficiary status. See Table 2 for a list of the children who have been admitted as members. There are 4 minors who have become adults since the litigation began (or will be adults in 2015). They have remained on the tables despite becoming adults.

Our client is prepared to "grandfather" the 20 children who have not yet been admitted to membership whereby they would not lose their beneficiary status, despite the change in the definition. These individuals would maintain their beneficiary status throughout their lifetime. Thus we are essentially offering these minors a complete victory in this matter. They would not be excluded from the trust regardless of their ability to obtain membership. While we maintain that they are likely to become members, we would now guarantee their beneficiary status in the trust which could offer them significant benefits in the future. There is no guarantee that a change in definition if approved by the court would provide benefits for these children.

The perpetuation of discrimination in the current definition of beneficiaries is evident in respect the women who were excluded from beneficial status in the 1985 Trust by the Indian Act, 1970 even though they may have regained membership in the Sawridge First Nation. These women were granted membership in the Sawridge First Nation as a result of Bill C-31 either through application to the First Nation or as a result of a Court Order. Since these women are all current members of the Sawridge First Nation and since it is the intent of the Trustees to apply for a variance to the 1985 Trust definition of beneficiary which includes all members of the Sawridge First Nation as beneficiaries, these women will be included as beneficiaries in the 1985 Trust should the Court agree to the proposed variance to the 1985 Trust. The delay in this litigation and the delay in the change of definition perpetuates the discrimination for these women. They cannot receive benefits from this trust and they continue to be singled out as members who do not enjoy the same status as other members of the First Nation. A change in definition is a very good step to remedying the discrimination for these women as they are presently excluded from the trust and with the change in definition will be included as beneficiaries.

We believe that such a solution of grandfathering the minors on Table 1 is not only fair but provides the Public Trustee with everything that it could reasonably expect in these proceedings. Not only is the discriminatory provision removed, but all of the minor "beneficiaries" who would lose their status are protected. While we acknowledge that the Court will ultimately have to decide whether such a proposal is appropriate, we are hopeful that a joint submission to that effect will convince Justice Thomas of the same. We are also hopeful that your client will view such a proposal as a good faith attempt by the trustees to address the interests of the minor beneficiaries, and that you will agree to join us in seeking the necessary Order from the Court without delay. As noted above, we are essentially offering these minors a complete victory in this matter.

As we are proposing to grandfather as beneficiaries all of the minor children who would lose their status we feel that the Public Trustee has fulfilled the mandate provided to it by the court. We are offering to grandfather all of these children in the interests of fairness and in the interests of stopping the litigation and proceeding to use the trust assets for the benefit of the beneficiaries instead of the costs of litigation.

We would also seek consent or at least no opposition to the nunc pro tunc approval of the transfer of assets from the 1982 trust to the 1985 trust. We believe that this was clearly intended and the trust has been operating since 1982. It would be impossible to overturn the transactions and events that have occurred since 1982. Thus we seek the approval for the transfer of assets. It is a benefit to all the beneficiaries to remove this uncertainty. To be clear, if the transfer is not approved we believe that the assets would need to return to the 1982 trust in which the definition of beneficiary is the members of the First Nation and thus the children you represent would not be included.

Thus we seek your approval for an order

**1. To amend the definition of beneficiaries as follows:**

**"Beneficiaries" at any particular time shall mean:**

- a. all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada;
- b. the individuals who are listed as Schedule A to this trust (Schedule A would include all the individuals listed on Table 1).


**2. Approving the transfer of assets from the 1982 trust to the 1985 trust nunc pro tunc.**

This offer is open for acceptance until **June 29, 2015**. We look forward to hearing from you.

Yours very truly,  
**Dentons Canada LLP**

  
Doris C.E. Bonora

**Reynolds Mirth Richards & Farmer LLP**

  
Marco Poretti  
DCEB/pach

## Janet Hutchison

**From:** Bonora, Doris <doris.bonora@dentons.com>  
**Sent:** Monday, August 15, 2016 8:28 PM  
**To:** 'Janet Hutchison' (jhutchison@jhlhlaw.ca); 'emeehan@supremeadvocacy.ca'; Karen Platten; 'CristaOsualdini'; Marco S. Poretti  
**Cc:** Brian Heidecker; 'Paul@sawridgetrusts.ca'  
**Subject:** Response to correspondence August 9, 2016 from OPGT

We are writing in response to the letter of August 9, 2016 sent by Hutchison Law LLP.

As a general comment we are concerned that the tenor of your letter would suggest that there are permanent distributions that the OPGT is requesting to be required to be made from the trust. Please understand that we are not proposing in any way to change the nature of the discretionary trust. That is partially the reason that the form of order that is proposed by McLennon Ross LLP is not acceptable. The policies for which discretionary payments are made are not permanently set. The trust is meant to be flexible to the changing needs of the community. The trust needs to remain discretionary. The trustees cannot have their powers and discretion fettered. The commentary in our proposed distribution scheme is essential to our proposal. The idea that the OPGT will not recognize the discretionary nature of the trust and the underlying law is very concerning for us.

### **One time good faith payment**

There are no guarantees that this will continue. This is the discretion that is being exercised now and there is no reason to impair the discretion of the trustees in this regard. This is not a payment to a minor and thus is not likely in the jurisdiction of the OPGT.

### **Actual distribution**

We do not understand the OPGT comments in this regard. This is a discretionary trust. When the beneficiary definition is determined, the trustees will exercise their discretion to make payments to beneficiaries and their dependents as the trustees see fit. There is no need for ongoing supervision and we do not agree that such ongoing supervision is necessary. Our commentary in our proposed distribution scheme was intended to address this.

### **Grandfathering**

Grandfathering is specifically not part of the distribution proposal. This was part of a settlement that the OPGT rejected and opposed. Until the beneficiary definition is determined, grandfathering is premature to be a part of the distribution scheme.

### **Financial Viability**

The OPGT has misinterpreted our comments on financial viability. The comments were in respect of the fact that the trust may have difficulty financing over 12 months of legal accounts from the OPGT when we are not being told the amount of those accounts. There has never been a suggestion that the trust cannot fund the distributions. We do not see this as an issue and thus we will not address it.

Doris Bonora

 DENTONS

Doris C.E. Bonora  
Partner

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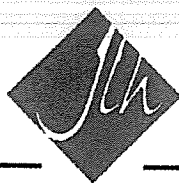
Bio | [Website](#)

Dentons Canada LLP

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

大成 Salans FMC SNR Denton McKenna Long

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## HUTCHISON LAW

Our File: 51433 JLH

**SENT BY EMAIL ONLY**

July 15, 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 in relation to the Trustees' request for responses on:

- 1.) The with prejudice offer regarding the transfer of assets from the 1982 Trust to the 1985 Trust, specifically to Denton's correspondence dated June 22, 2016 (received June 24, 2016); and
- 2.) The OPGT's position on the Trustees' Proposed Distribution Scheme, provided in response

to the Court's directions in *Sawridge* #3.

We will respond to other recent correspondence, including the current wording of the Litigation Plan in separate correspondence.

### **Consent Order Regarding Assets**

In relation to the Trustees' offer of June 24, 2016, the OPGT will consent to the form of Consent Order attached. We note that the proposed additions to this order are primarily taken from the body of Dentons' correspondence and, as such, we do not expect these to be controversial proposed revisions.

The OPGT has no concerns with the proposed revisions suggested by McLennan Ross' letter dated July 14, 2016 and has revised its form of Order to include those revisions.

The OPGT would also welcome comments from Counsel if additional discussion would bring this matter to resolution. We note that a consent order, in the form attached, may also make the OPGT's Rule 5.13 application on assets unnecessary and may save all parties considerable expense.

As you are aware, the parties have yet to deal with the Rule 4.15 issue of whether Case Management Justice can deal with final relief in this proceeding. To the extent that a consent order in this matter constitutes final relief, the OPGT's consent to having a Case Management Justice deal with the order is not a consent to a Case Management Justice dealing with any future applications that constitute final relief.

### **Proposed Distribution Scheme**

In relation to the Trustees' application to the Court for approval of its Proposed Distribution Scheme, as discussed in the past, the OPGT does not have concerns about establishing a benefits plan that would provide minor beneficiaries with the proposed benefit plan. Past concerns focused on beneficiary identification.

The OPGT will not oppose the application by the Trustees. However, the OPGT reserves the right to make comments to the Court or answer questions the Court may have of it in relation to the Proposed Distribution Scheme.

The OPGT's position is based on considerations which include:

- 1.) The Trustees' have stated, on a with prejudice basis, that they have no intention of applying for approval of a final distribution from the 1985 Trust, despite the elements of *Sawridge* #3 that suggest that may be what the Court was requesting submissions on.



The OPGT's position on the current Proposed Distribution Scheme relies on the Trustee's stated position. The OPGT has not waived any role it may have in relation to providing comments or submissions on behalf of affected minors in relation to a final distribution scheme, should such a proposal be brought forward in the future.

- 2.) The Trustees have stated, on a with prejudice basis, that they will refrain from any distribution from the Trust until after the beneficiary definition issue is resolved. The OPGT will suggest to the Court that given this position by the Trustees, this should form part of any order on the Proposed Distribution Scheme.
- 3.) The OPGT's position on the current Proposed Distribution Scheme also relies on the Trustees' with prejudice commitments that the Proposed Distribution Scheme application not deal with the issue of the beneficiary definition, and final identification of beneficiaries will be dealt with in a separate application at a later date. We note this position confirmed with prejudice in Denton's letter dated May 16, 2016.
- 4.) As of *Sawridge #3*, the OPGT understands its role in relation to the current Proposed Distribution Scheme to be, primarily, to assess whether it creates unfairness as between the adult and minor beneficiaries of the 1985 Trust (see paragraphs 37, 41 and 67 of *Sawridge #3*). Based on the current available information, the OPGT cannot identify anything in the proposed benefits plan that is the focus of the current Proposed Distribution Scheme that would create unfair treatment for minor beneficiaries or potential minor beneficiaries (as potential minor beneficiaries are delineated within *Sawridge #3*). The view is based, in part, on the OPGT's understanding that the Trustees' remain committed to providing access to these benefits to all minor beneficiaries who would lose beneficiary status under the proposed definition.
- 5.) The OPGT's position on this application should not be treated as a waiver of the OPGT's ability to make submissions regarding distribution once actual distribution occurs.
- 6.) In addition to the above, the OPGT expects to provide comments to the Court on items including:
  - i. The OPGT is not taking any specific positions on the portions of the document that address the Trustees' positions on the extent of their discretion and the limitations on the Court's ability to review Trustees' decisions. The OPGT will take the position that it is not necessary, or appropriate, to seek rulings on those concepts as general propositions and the Court does not need to rule on those positions in order to address the substance of the Proposed Distribution Scheme.
  - ii. The OPGT and the Court have a role in evaluating whether the current Proposed Distribution Scheme is in the best interests of minor beneficiaries in terms of its financial viability for the 1985 Trust. The OPGT is not aware of the Trustees' providing specific evidence of financial viability. In this regard, the OPGT will simply refer the Court to the evidence in Mr. Bujold's Affidavit filed September 13, 2011 regarding the 2009 costs of the benefits

plan. The OPGT will also refer to the Court to the advice of the Trustees that the Trusts are experiencing financial challenges as a result of the Fort McMurray wildfires.

As I have advised all counsel earlier this week, I am out of town on business next week. As such, if you have any time sensitive communications on this matter between July 18-22, 2016 I would appreciate it if you would ensure they are sent to Mr. Meehan's office as well as my own.

Thank you for your attention to this matter.

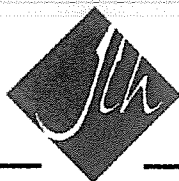
Yours truly,

**HUTCHISON LAW**

**PER: JANET L. HUTCHISON**  
JLH/cm

cc: Client

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



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**HUTCHISON LAW**

---

Our File: 51433 JLH

**SENT BY EMAIL ONLY**

August 9, 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  
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**Attention: Doris Bonora**

Parlee McLaws LLP  
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**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 further to our letter dated July 15, 2016, and the recent exchanges of correspondence between Denton's and McLennan Ross, to provide the OPGT's comments on the Trustee's Proposed Distribution Scheme and to the two forms of orders in circulation.

**Forms of Order**

The forms of order proposed both appear to deal with items #1-#3 of the OPGT's July 15, 2016 comments.

In relation to item #4 of our July 15, 2016 comments, if we are dealing with the form of order

proposed by McLennan Ross, we would prefer to see a statement about the one time, good faith payment that makes it clear this payment will be received by all beneficiaries at such time as they are 18 years of age. With the current drafting, there is at least some potential to read the order to say that individuals who are currently minors are completely excluded from the one time payment benefit.

The OPGT has concerns with the approach of attaching the January 2016 Proposed Distribution Scheme to the form of order. The January 2016 document contains content that goes well beyond setting out the benefits plan proposed to be implemented by way of the proposed distribution. The OPGT does not adopt the document as a whole or the considerable commentary it includes. This was reflected in our July 15, 2016 correspondence where we indicated the OPGT did not consider it appropriate, or necessary, to deal with details of the Trustee's level of discretion or the standard of review a Court might adopt in review of Trustee decisions.

The OPGT prefers the approach taken in the McLennan Ross proposed form of order where the specifics of the proposed distribution are set out in detail and the January 2016 document is not attached. If there are details missing from the form of order proposed by McLennan Ross that the Trustees feel are necessary, the OPGT will be pleased to review additional clauses to address the Trustees' needs in this regard.

#### No Waiver

As indicated in item #5 of our July 15, 2016 comments, any agreement by the OPGT on this form of order is not to be treated as a waiver of the OPGT's ability to make submissions regarding distribution once actual distribution is to occur. The OPGT remains conscious that, in many respects, this Proposed Distribution Scheme is presented as a possible approach, one that may have to be re-evaluated upon beneficiary identification, any further directions from the Court regarding the pool 1/ pool 2 concepts or other future developments.

We would request a clause be included in the form of order to indicate this position by the OPGT.

#### Grandfathering Clause

Paragraph 1 of the Denton's form of order states that "the proposal set out in paragraph 4 entitled 'Beneficiaries' as set out in Schedule 'A' is reserved to a separate Court application." We agree with this approach, however, we do wish to ensure it is clear that the OPGT's position on this form of order and Proposed Distribution scheme is based, in part, on the Trustee's position that current minor beneficiaries who would lose their beneficiary status should the definition of "beneficiaries" be changed to equate to membership will be grandfathered to maintain beneficiary status. To ensure there is no confusion on this point, the OPGT would request a clause be included in the form of order on this topic. As we appreciate that this is originally the Trustees' proposal, we would suggest the most efficient approach may be to have the Trustees provide a draft clause that would be acceptable to them. If that approach is not acceptable to the Trustees, please advise and we will forward proposed language for a clause of this nature.

Financial Viability

As noted in our July 15, 2016 correspondence, item #6, the OPGT is of the view that the Court must have some evidence presented to it regarding the financial viability of the current Proposed Distribution Scheme in order to evaluate whether it is in the best interests of minor beneficiaries. The current forms of order do not address this matter. We would appreciate comments from Trustees' counsel on this matter such that all counsel might discuss an appropriate insertion in the preamble or body of the order, or appropriate submissions from the Trustees, to address that issue.

The OPGT remains willing to discuss these matters in order to try to work towards a form of order prior to August 16, 2016 and looks forward to the further comments of all counsel.

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

*Indexed as:*  
**Barry v. Garden River Band of Ojibways**

**Between**

**Caroline Barry, Patricia Lariviere, Arlene Barry, Valerie Boissoneau, Rita Tice and Carolyn Musgrove each suing on behalf of herself and on behalf of all the women reinstated to and entitled to be reinstated to membership in the Garden River Ojibway Nation #14 [also known as the Garden River Band of Ojibways]; and, Natalie Barry, a minor, and Christian Barry, a minor, and Kari Barry, a minor, by their litigation guardian, Caroline Barry; Lee Ann Barry, a minor, and Charla Barry, a minor, by their Litigation guardian, Arlene Barry; Daniel Tice, a minor, and Deanna Tice, a minor, by their Litigation guardian, Rita Tice; Kelly Musgrove, a minor, Melanie Musgrove, a minor, and Stacey Musgrove, a minor, by their Litigation guardian, Carolyn Musgrove, each minor plaintiff suing on behalf of himself or herself and on behalf of all the other children and lawful wards of all the women reinstated to and entitled to be reinstated to membership in the said Band, plaintiffs (appellants), and  
The Chief and Council of the Garden River Band of Ojibways [also known as the Garden River Ojibway Nation #14] including, before the election of 14 October 1988, Ron Boissoneau (Chief, Morley Pine, Ronald Thibault, Daniel L. Pine, Darrell Boissoneau, Willard Pine, Chris Belleau, Arnold Solomon and Terry J. Belleau, Councillors, and, after the said election, Dennis Jones (Chief, Morley Pine, Ronald Thibault, Willard Pine, Chris Belleau, Arnold Solomon, Terry J. Belleau, Muriel Lesage, Gordon Boissoneau and Ted Nolan, Councillors, defendants (respondents)**

[1997] O.J. No. 2109

33 O.R. (3d) 782

147 D.L.R. (4th) 615

100 O.A.C. 201

[1997] 4 C.N.L.R. 28

71 A.C.W.S. (3d) 800

No. C14296

Ontario Court of Appeal  
Toronto, Ontario

**Finlayson, Charron and Rosenberg JJ.A.**

Heard: April 17, 1997.

Judgment: May 27, 1997.

(31 pp.)

**Counsel:**

Michael F.W. Bennett for the appellants.

Robert MacRae for the respondents.

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The following judgment was delivered by

**1** THE COURT:-- The adult appellants are female members of the Garden River First Nation of Ojibways who were reinstated to Indian status and to membership in the Garden River Band of Ojibways ("Band") on or before December 17, 1987 as a result of amendments, introduced in Bill C-31, *infra*, to the Indian Act, R.S.C. 1970, c. I-6, as amended. The minor appellants are their children. The respondents are the Chief and Council of the Band at the material times.

**2** The appellants appeal from the judgment of the Honourable Mr. Justice Noble of the Ontario Court of Justice (General Division), wherein the action of the appellants for an equal per capita distributive share of land claim settlement moneys was dismissed. When the moneys were distributed to the members of the Garden River Band, the adult appellants' shares were reduced by amounts of Band moneys that they had previously received when they were deemed to have left the Band and became "enfranchised" by reason of marriage to a man who was not a status Indian. The appellant children were denied shares on the ground that they were not members of the Band at the date of distribution.

The proceedings

3 This is an action for an accounting and payment to the appellants of their per capita distributive share in what they maintain is a trust fund received by the Garden River Band in settlement of an outstanding claim of the Band against the Government of Canada. The adult appellants claimed a distributive share for themselves and on behalf of all other women reinstated to membership in the Band. The minor appellants claimed a distributive share for themselves and on behalf of all other children of reinstated women who are or shall be known to the respondents. They also sought:

- (a) A temporary injunction restraining the Chief and Council, from time to time, of the Band from distributing or disposing of any part of or of the whole of the balance of the funds from the Squirrel Island Settlement Trust monies remaining in its account until the trial of this action and, in the event there is an insufficient balance of such funds to satisfy the claims of the plaintiffs, then an order that the defendants account to the plaintiffs and trace the said funds.
- (b) A declaration that the defendants' failure to distribute the plaintiffs' share of the said Band's Squirrel Island Settlement Trust monies is contrary to s. 15 of the Canadian Charter of Rights and Freedoms ("Charter").
- (c) A claim for pre-judgment and post-judgment interest and costs on a solicitor client basis.

4 On the face of it, this would appear to be a straightforward case involving the per capita distribution of a finite sum of money. Unfortunately, at the Band Council stage, the distribution of these moneys was caught up in a larger and more contentious issue relating to the reinstatement of these adult appellants and their children to the Garden River Band as a result of the passage by the Parliament of Canada of certain amendments to the Indian Act, those amendments being commonly referred to as Bill C-31. We propose to deal with the factual aspects of the Settlement Agreement separate from our analysis of the effect, if any, of Bill C-31 on the contemplated distribution.

#### Facts

##### (1) The Squirrel Island Land Claim

5 The Band had an outstanding claim against the Government of Canada that related to the sale of land on Squirrel Island in the middle of the St. Mary's River. The Band contended that Squirrel Island was part of the Band Reservation set aside by the Robinson Huron Treaty of 1850. The moneys in issue are part of the Garden River Land Settlement Agreement ("Settlement Agreement") dated March 30, 1987, wherein the Crown, as represented by the Minister of Indian Affairs and Northern Development, agreed with the Chief and Council of the Band to pay in settlement of the claim the sum of \$2,530,000.00 made up as follows:

- (a) the offsetting of \$154,600.00 as full payment for advances and loans provided by the Crown for researching, preparing and negotiating the agreement;
- (b) \$1,036,250.00 to be paid into an interest bearing trust account, to be held by the Band in trust exclusively for the repurchase of Squirrel Island;



- (c) \$1,339,150.00 to be paid into the Band's revenue account, an account set up under the provisions of the Indian Act.

6 Section 69.(1) of the Indian Act provides:

The Governor in Council may by order permit a band to control, manage and expend in whole or in part its revenue moneys and may amend or revoke such order.

7 The Indian Bands Revenue Moneys Regulations, C.R.C. 1978, c. 953, as amended, names the Garden River Band of Indians as a Band. As we read the Regulation, this Band may, subject to the Regulations, control, manage and expend in whole or part its revenue moneys. The Regulations relate to the establishment of a bank account, the selection of signing officers, the appointment of auditors and the publication of an annual auditor's report.

8 At trial, a councillor of the Band testified that the Band Council considered it necessary to consult the Band members and obtain a consensus regarding disposition of the settlement funds in the Revenue Account. Accordingly, a questionnaire was circulated to individual members, asking whether it was agreed "to divide equally amongst the members of the Garden River Band the one million dollars from the trust account [sic]". The questionnaire further asked whether, if the member agreed with the distribution, the distributive share of an enfranchised person now reinstated pursuant to Bill C-31 should be reduced by the aggregate amount of Band moneys paid out to the person when he or she left the Band. The tabulated results of the questionnaire demonstrated that almost everyone who completed a questionnaire was in favour of the distribution. By a small majority, members were also in favour of making deductions from the shares of the enfranchised women in the amount that they had received upon leaving the Band. It is interesting to note that, at a later date, the Chief and Council agreed that no deductions would be made from any members who owed debts to the Band for other reasons, such as water use charges.

9 Accordingly, on September 28, 1987, the Band Council passed a Band Council Resolution ("BCR") which stated:

As we the Garden River Band operate under section 69 of the Indian Act, do hereby request that the sum of one million dollars from our Revenue Account be made available and payable to the Garden River Band. These monies are required for per capita distribution to the Garden River Band Members.

1. The Garden River Band will arrange for an audit report to be completed by June 30, 1988. Our auditor is Dunwoody and Company.
2. The Band will submit expenditure reports.
3. The Band will use the funds provided for distribution only.
4. The Band will maintain financial records in accordance with generally

accepted accounting principles and practices.

**10** It would appear from the above that the sum of \$1,000,000.00, being part of the \$1,339,150.00 paid under the Settlement Agreement, is not strictly a trust fund because it was to be paid into the Revenue Account of the Band where it could be used for the purposes of the Band generally, subject only to the Regulations which set out accountability requirements. There was no requirement in the Settlement Agreement that the fund was to be distributed to the members of the Band and certainly there was no requirement that it be distributed by a certain date. At some later time, the Band decided on December 17 and 18, 1987 as the dates for the per capita distribution. There was no clear evidence presented at trial explaining why these dates were selected. Accordingly, while the funds were not the subject matter of a trust when they were delivered to the Band Council, when the Band Council resolved to make a per capita distribution, and to set aside \$1,000,000.00 for that purpose, in our view a trust was created. The Band Council was then under a duty to ensure that the distribution was carried out in accordance with trust principles.

(2) Band Membership and the Bill C-31 issue

**11** Prior to April 1985, pursuant to s. 5 of the Indian Act, the Department of Indian Affairs and Northern Development ("Department") was responsible for maintaining a list, known as the Indian Register, of all aboriginals with Indian status. The Department also maintained the lists of all the Indians who were members of the individual bands ("Band Lists") and did so on the basis of the names in the Indian Register. At that time, subject to s. 12(1)(b) of the Indian Act, an aboriginal woman with Indian status was no longer entitled to be included in the Indian Register if she married a man who was not a status Indian. As a consequence of losing her eligibility to be registered, she not only lost her status as an Indian under the Indian Act, she lost her eligibility to remain on the Band List of the Band in which she had previously enjoyed membership and with it her status as a member of the Band. As a further consequence, children of such a union were also deprived of the opportunity of achieving status as an Indian, both on the Register maintained by the Department and as a member in the Indian Band. This process leading to a lack of status was known as enfranchisement because when it was first enacted in 1869, the woman became eligible to vote in Canadian elections, a right she had not previously held as a status Indian under the Indian Act.

**12** On the other hand, if a man with Indian status married a non-status woman, he did not lose his status but rather his wife gained his status. With the advent of the Constitution Act, 1982 and the Canadian Charter of Rights and Freedoms ("Charter"), this obvious inequality could no longer be tolerated. Parliament passed Bill C-31, An Act to Amend the Indian Act, R.S.C. 1985 (1st Supp.) c. 32, s. 4. It received Royal Assent on June 28, 1985 but was made effective retroactively to April 17, 1985. It removed the discriminatory provisions and permitted the re-registration of enfranchised Indian women and their children. It also permitted each band to assume control over its membership list. Thus, the Department continued to register aboriginals who had status or who were reinstated to status, but once a band gained control of its membership list, the Department relinquished responsibility for that list to the Band. Two separate lists, one maintained by the Department and

one maintained by the band, would come into existence.

**13** In order to assume control of its membership list, a Band was required to create a code setting out the rules by which membership was to be determined, and submit it for approval to the Department before June 28, 1987. These provisions are found in s. 10 of Bill C-31, as follows:

- 10.(1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.
- (2) A band may, pursuant to the consent of a majority of the electors of the band,
  - (a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and
  - (b) provide for a mechanism for reviewing decisions on membership.
- (3) Where the council of a band makes a by-law under paragraph 81 (p. 4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

To bring this section into effect, it is necessary to invoke s. 81(1) (p. 4) of the Indian Act which states:

81.(1) The council of a band may make by-laws not inconsistent with this Act or with any regulations made by the Governor in Council or the Minister, for any or all of the following purposes, namely:

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

**14** On June 19, 1987, the Garden River Band complied with the procedural requirements of s.10 and submitted its membership rules, called Citizenship Registry Regulations, to the Minister. They were accepted by the Minister by letter dated September 25, 1987 and the membership rules were effective retroactively to June 25, 1987. Part IX provided:

### Non-Discrimination

This Code shall be administered and all powers, duties and functions hereunder shall be exercised or performed without discrimination based on sex, affiliation to First Nations or Indian Bands, creeds or religion.

**15** The Garden River Band membership rules created four categories of members: Original Members, Restored Members, Accepted Members and Members by Birth. "Original Members" were those who were entitled to be entered on the band list immediately prior to April 17, 1985 and also any child born after April 17, 1985, if the child's natural parents were both original members. The "Restored Members" category applied to those persons, including the adult appellants, who were entitled to rejoin the band pursuant to Bill C-31. The "Accepted Members" category encompassed all members who had applied for membership and whose applications had been accepted and confirmed. The children of reinstated women, including the appellant children, would belong in this category. The final category was created to provide greater certainty for children born after April 17, 1985 and whose natural parents are or were both members of the Garden River Band at the time of the child's birth. At the time that the Band was drafting the membership rules, the Department was having difficulty managing a large, unexpected backlog of applications for reinstatement to Indian status. The Department was also waiting for the bands to complete the process of assuming control over their membership. As a result, births after April 17, 1985 were not being registered by the Department, with the exception of those children born to parents who were both original members. This time was referred to as an abeyance period. There was concern that a child might be denied membership in the Band, and so this section provided for automatic membership for the child.

**16** If a person had only one parent who was a member of the Band, that person was required to apply for membership, and thus would become an Accepted Member. The rules further provided for the application process. This is the route by which the appellant children could obtain Band membership. It should be noted that after the rules became effective on June 25, 1987, application for membership was necessary whether the parent-member was the father or the mother of the child. It should be further noted that the application process required the person to first obtain Indian status with the Department prior to applying for membership in the Band. Due to the Department backlog, this requirement created problems in some cases.

**17** It was the testimony of the adult appellants that although they frequently and regularly inquired at Band Council meetings regarding the membership application process for their children, the Chief and Councillors did not provide satisfactory answers. The reinstated women were reassured that there was no deadline for applications. Minutes of the Band Council Meeting of February 8, 1988 indicate that application forms were still not available at that time, long after the date of distribution of the settlement moneys. At the time of the distribution, the appellant children were not members of the Band, although in most cases, they had achieved Indian status by directly applying to the Department.

### (3) Enfranchisement payments

**18** Bill C-31 also dealt with payments that had been made to enfranchised women or other aboriginal persons who became enfranchised or otherwise ceased to be a member of a band. On leaving, these persons were entitled to receive one per capita share of money held in the band's capital fund, one per capita share of money held in the revenue fund, and if they were in a treaty area, 20 years treaty annuity. Each of the adult appellants had received an aggregate sum of less than one thousand dollars at the time she lost status. A band was allowed a strictly limited right of recovery of these sums by s. 64.1(2) of the Indian Act. The provision permits recovery of money paid out on enfranchisement in excess of one thousand dollars. Section 64.1 of the Indian Act was never resorted to by the Garden River Band. Even if the Band had invoked s. 64.1, it would have had no application in this case, because individually each adult appellant received an enfranchisement payment that was less than \$1,000.

### (4) The distribution procedure

**19** As noted above, on September 28, 1987, the Band passed a resolution to make a per capita distribution of \$1,000,000.00 from the revenue account to all members of the Band. The minutes of a special meeting of the Band Council held on December 3, 1987, indicate that it was agreed to make the disbursements two weeks later on December 17 and 18, 1987. These minutes further note that it was decided to give each member the sum of \$1,000.00 and that no deductions would be made from the shares of members with outstanding debts to the Band. There is no indication in the minutes of the reason for choosing this date for distribution.

**20** One week before the dates set for distribution, on December 11, 1987, the Band Council held a "Working Meeting". Several issues related to the disbursement of the funds were discussed. Decisions were finalized regarding the distribution procedure. It is recorded in the minutes that the reinstated women who had applied for reinstatement before June 15, 1987 would qualify for a share, but that a reduction would be applied in the amount of money received at the time of enfranchisement, rounded off to the nearest \$100.00.

**21** Another issue raised was the question of entitlement of certain children to a share in the settlement funds. There was no provision in the Indian Act as amended by Bill C-31, or in the Band's own membership rules, which automatically bestowed membership to children born after April 17, 1985 to parents, only one of whom was a member of the Band. Due to the Department's abeyance period for registering births, these children were in an uncertain situation. The minutes note:

STATUS CHILDREN - Children born [sic] to one parent original band members born after April 17, 1985 and before June 15, 1987, should they get a share? Noted that all birth registrations were suspended for band membership during that time, except where two parents were band members. Noted that membership code came into effect June 15, 1987.

Decision was made to make Status children Garden River Band members under both of the following categories:

1 - Born between April 17, 1985 and December 16, 1987.

2 - Born to one parent original Garden River Band member.

All in agreement.

**22** At trial, considerable time was spent in interpreting this decision. It was established by witnesses for both sides that it should be read conjunctively, such that a person was required to satisfy both conditions in order to achieve membership in the Band. Therefore, any child born after the effective date of Bill C-31, who had at least one parent who was a member in the Garden River Band, would be entitled to membership in the Band without having to fulfil the procedural requirements set out in the Band's recently enacted membership rules.

**23** The decision was implemented by passing Band Council Resolution number 90, dated December 11, 1987, listing forty-nine individuals by name who met both of these requirements, and admitting them to Band membership. People on the list had either a mother or a father who was a member of the Garden River Band. This decision remedied the problem created by the delays in the membership process which existed because the Department had suspended the registration of births and because the Band had not yet instituted its application process. At trial, it was established that persons who obtained membership as a result of this resolution were allowed to collect full shares of the settlement money on December 17 and 18, 1987.

**24** The December 11, 1987 decision did not address the concerns of the appellants regarding the position of their children, who were all born before April 17, 1985. These children were still required to complete the application process set out in the membership rules. Thus, the discrimination which Bill C-31 attempted to remedy was perpetuated. Children born before April 17, 1985 to a father with Indian status who had married a non-status woman could become members of the Band, since both parents were entitled to Indian status and Band membership according to the Indian Act prior to the Bill C-31 amendments. Children born before April 17, 1985 to unmarried mothers who were Band members could obtain membership, since their mothers never lost status or membership. Children born after April 17, 1985 to fathers or to mothers whose spouses were without status, gained membership as a result of the December 11, 1987 resolution. However, the children of the reinstated women continued to be denied membership. In effect, this denial was based on their mothers' lost status. A woman's loss of status due to marriage of a non-status man had been recognized and rejected as discriminatory action by Parliament. Thus, the denial of membership to the appellant children, while granting membership to other children in a similar

position, was a breach of the non-discriminatory clause in the Band's membership rules.

25 This issue of discrimination directed towards children of enfranchised woman was finally eliminated on February 13, 1989. A Band Council Resolution passed on that date reflects the following decision:

THAT ALL Children of restored and original Band Members who have attained Indian Band status designated as First Generation be accepted by the Garden River Band with no exceptions or reservations to any individual.

26 The rapidity of the meetings and decision-making must be noted. The Settlement Agreement was made on March 30, 1987. The dates for distribution of the funds were accepted on December 3rd, of that year, the procedures were discussed one week later on December 11th, and the actual disbursements were made on December 17th and 18th. It is also noted that during the same time period, Band members continued to raise concerns regarding who would share and to what extent, as evidenced by the minutes of the meeting and the testimony at trial.

The trial judge's disposition

27 The trial judge determined this case based upon his analysis of what he regarded as the two issues before the court. The first issue was whether the first generation children of women formerly deprived of Indian status, and to whom Indian status has now been restored by Bill C-31, were entitled to membership in the Band as of the date for distribution of the \$1,000,000 from the Settlement Agreement. The second issue was whether it was appropriate to deduct from Indian women re-admitted under Bill C-31 those amounts which had been advanced to them individually by the Government of Canada when their Indian status, and therefore Band membership, had been lost.

28 The trial judge found that on the date of distribution, the appellant children could not claim membership based on any of the enumerated classes found within the Band's membership rules. He stated that he was unable to find that "in its application of its Citizenship Regulations or in the distribution of the Squirrel Island Settlement Trust Money, that the band acting through its Council, did so contrary to law". He also found:

There was nothing sinister or deliberate in the sense of lacking fairness or was there anything legally improper in the decision to make distribution on December 17 and 18, 1987 to those persons who were, at that time, recorded in the records of the Garden River Band of Ojibways as members in the Band.

Therefore, he held that the appellant children were not entitled to a share.

29 Regarding the second issue, he stated:

In my opinion, what the Band Council did was fair and equitable and restored the financial interests of the restored C-31 Indian women to equal that of their Indian sisters who had not been deprived of their status and who had not received earlier distribution.

Having decided both issues in the negative, the trial judge dismissed the action.

#### Analysis

**30** In our opinion, the essential error of the trial judge was in not recognizing that the Band in this case was attempting to deal with two unrelated matters at the same time. In the result, he dealt with the two issues in the manner in which they were presented to him and later to this court. They are:

- (1) should the appellant children have received a full share as members of the Band?
- (2) were the deductions from the adult appellants appropriate?

With respect, we are of the view that the trial judge erred in his conclusions on both issues.

**31** The Band Council Resolution stated that \$1,000,000.00 of the settlement moneys was required for per capita distribution to the Garden River Band members. Black's Law Dictionary (6th ed.) at p. 1136, provides the following definition of per capita:

By the heads or polls; according to the number of individuals; share and share alike. This term, derived from the civil law, is much used in the law of descent and distribution, and denotes that method of dividing an intestate estate by which an equal share is given to each of a number of persons, all of whom stand in equal degree to the decedent, without reference to their stocks or the right of representation.

Webster's Ninth New Collegiate Dictionary, at p. 872 defines per capita as meaning "equally to each individual".

**32** In order to comply with its own Resolution to make a per capita distribution to band members, the Band Council would have to give an equal share to all band members. In effect, it constituted itself a trustee for this purpose. The Band itself appears to have recognized this, given the language of its questionnaire relating to distribution. The trial judge also appears to have proceeded on the basis that from at least the date of the resolution to make a per capita distribution, the Band Council was dealing with trust moneys. As D.W.M. Waters, *Law of Trusts in Canada*, 2nd ed. (1984) explains at p. 111, "whether a trust has been created is simply a matter of construction". In our view, the proper construction of the September 28, 1987 Band Council Resolution is that an express trust was created with the Garden River Band as both settlor and trustee of the \$1,000,000.00, being the moneys necessary to make a per capita distribution, and the Garden River Band Members as beneficiaries.



33 One of the primary duties of a trustee is to treat all beneficiaries impartially: *Benoit v. Tisdale* (1925), 28 O.W.N. 477 (Weekly Court); *Re McClintock* (1976), 70 D.L.R. (3d) 175 at 180 (Ont. Div. Ct.). Waters, *Law of Trusts in Canada*, supra, describes this duty as follows at p. 787:

It is a primary duty upon trustees that in all their dealings with trust affairs they act in such a way that, if there are two or more beneficiaries, each beneficiary receives exactly what the terms of the trust confer upon him and otherwise receives no advantage and suffers no burden which other beneficiaries do not share. In this way the trustees act impartially; they hold an even hand. The settlor or testator may choose to give disproportionate interests to various beneficiaries, and he very often does so in practice, but that is his privilege. It is still the duty of the trustees to carry out the terms of the trust as they find them, and to ensure that in the administration of the trust they do not give advantage or impose burden when that advantage or burden is not to be found in the terms of the trust. [emphasis added].

34 The duty to act impartially would require the trustee to treat equally all members of a class of beneficiaries. We think this basic principle is dispositive of the appeal as it relates to the adult appellants. Once the decision was made by the Band Council that there should be a per capita distribution of the sum in issue, then it is apparent that the Band Council had an obligation to treat all members of the Band equally. There could be no suggestion of set off with respect to so-called Band indebtedness unless all Band indebtedness was subject to the set off. The evidence at trial established that a decision was made to deduct sums only from the appellant women. Members of the Band who owed sums for such items as water use charges were able to collect full shares. The reinstated women were entitled to be treated equally to all other beneficiaries. Since all other beneficiaries received full shares, the Band should have advanced full shares to the adult appellants.

35 In any event, such a set off could not be employed to recover from formerly enfranchised women sums relating to re-instatement under Bill C-31. There was a special provision in Bill C-31 relating to that and it is reproduced in s. 64.1(2) of the Indian Act. This provision limits recovery to sums paid in excess of one thousand dollars. The appellant women had all received sums less than this amount. The trial judge erred in permitting this deduction from the per capita distributive share of each of the adult appellants.

36 The minor appellants, being the first generation children of formerly enfranchised women present a different problem, but it is a problem that disappears when one ignores the self-imposed time limit for the distribution. When the Band Council Resolution in question was passed, it is common ground that the identity of all the first generation children were known. The only live issue

for a time was whether a distinction would be drawn between children born after April 17, 1985 with only one parent who was a Band member and children born before April 17, 1985 with similar parentage. The latter group was comprised of the minor appellants whose applications for membership in the Band were being held in abeyance because of matters over which they had no control. Leaving apart the highly valid point that such a distinction could not be made between the two classes of children without violence to the self-imposed non-discrimination provisions of the Band's membership rules, the Band Council knew that these children would ultimately become members, as in fact they did, but well after the date for distribution. The cut off date, being highly arbitrary, could not have the effect of eliminating these children from participation in the per capita distribution. Alternatively, if the deadline was of some significance to the Band Council, it would have been a simple thing to have made the distribution to the members whose credentials were certain, after withholding for the time being an amount sufficient to cover the interests of those minor appellants whose applications had not yet been accepted.

37 However, on the evidence, the date for distribution was not chosen for any particular reason. Despite notice of concerns regarding individual entitlement to participate in the distribution of the moneys, the Chief and Council appeared determined to distribute the entire \$1,000,000.00 at one time. In fairness to the Band Council, last minute attempts were made to remedy entitlement problems. The December 11th resolution addressed the question of entitlement for some individuals. At trial, witnesses testified that even on the date of distribution, children were brought to the Band Office, produced birth documentation, were accepted as members, and were given their shares. It is also noted that on October 13, 1988, many months after the self-imposed deadline, a Band Council Resolution similar to the December 11, 1987 resolution was passed. As a result, seven more children were entered onto the membership list and advanced shares in the settlement funds.

38 In setting the arbitrary deadline, the Band compromised its ability to fulfil its duties with respect to the distribution of funds. The Band placed itself in the position of having to disburse the funds before it could, as trustee, definitively ascertain the identity of all beneficiaries. This was not only a breach of the Band's duty to act impartially, but it was a breach of its specific duty to determine and ascertain the class that was to benefit from the distribution and to identify and locate the members of that class.

39 It is basic to all trust concepts that for a trust to come into existence, it must have three essential characteristics. Before a trustee can begin the administration of a trust, he or she must be satisfied that the trust satisfies the following three requirements: a) certainty of intention; b) certainty of subject-matter; and, c) certainty of objects.

40 It is the third requirement which is relevant to the discussion of the entitlement of the minor appellants. The need for certainty of objects means that a fixed trust will fail unless it is possible to say whether any person is a member of the class and unless all the possible members of the class are known or ascertainable: *Waters, Law of Trusts in Canada*, supra at p. 80. In determining whether

the trust satisfies the requirement of certainty of objects, the trustee will effectively be determining what classes are entitled to benefit from the trust fund. This is because the question whether it is possible to say that any person is a member of the class and the question whether all possible members of the class are known or ascertainable assumes that the class has been determined. In the case under appeal, there is no issue that the object of the distribution was the membership of the Band; the question that arose was whether the Band could pick the date that it did to ascertain the membership of the Band.

41 We think that it could not. A trustee's first duty is to follow implicitly the terms of the trust instrument: *Merrill Petroleum Ltd. v. Seaboard Oil Co.* (1957), 22 W.W.R. 529 at 557, affirmed 25 W.W.R. 236 (Alta C.A.), noted in *Waters, Law of Trusts in Canada*, supra at 695. As a logical extension of this duty, we think that before a distribution is made, a trustee has a duty to make reasonable efforts to identify and locate the members of a class of beneficiaries. If a trust dictates that the trustee should distribute trust funds to a certain class of beneficiaries, the trustee can only comply with this requirement by first identifying and determining the members of the class.

42 The case of *Atlantic Trust Co. v. McGrath* (1969), 8 D.L.R. (3d) 225 (N.S.C.A.) stands for the proposition that an administrator of an estate has a duty to make reasonable inquiries as to the existence of beneficiaries of the estate. In that case, the administrator had the final accounts passed and the estate distributed after sending out the usual notices for persons having claims against the estate. After the distribution had been completed, the widow of a son of the deceased came forward claiming that she had been excluded from the distribution. At the time of the distribution, the administrator did not know about the deceased's son but he did have reasonable grounds for believing that such a son existed and was last thought to be in the north-eastern United States. Notwithstanding such reasonable grounds, he made no effort to locate the son. The trial judge held that the administrator had a duty to make inquiries as to the existence of the son (quoted at p. 228):

... I am of the opinion from all the evidence on the point that Howard McGrath [the administrator] had reasonable grounds for supposing there might well be a son of Harvey McGrath's [the deceased] residing somewhere in the eastern American States. He should have advertised at least in Massachusetts for the next of kin.

The Nova Scotia Court of Appeal agreed that a duty to make such inquiries existed (at p. 238):

Here the evidence which I have mentioned and which was accepted by the trial Judge indicates a very definite warning that further inquiries and investigations should have been made.

See also: M.V. Ellis, *Fiduciary Duties in Canada*, (1993), at 4.6.

43 Accordingly, there was an affirmative and readily performable duty on the Band Council to ascertain and identify the membership of the Band. That duty came into existence on September 28,

1987 when the decision was made to make a per capita distribution. That Band Council Resolution did not fix a date for distribution or set special guidelines for those entitled to a distributive share: it referred only to "Garden River Band Members". Its only time limit on that date was that it would produce an audited report by June 30, 1988. During that period, the Band Council was made aware of the inability of some children who were clearly eligible for Band membership to complete their applications for membership within the time frame set by the Band Council.

44 The trial judge was in error in determining this issue in favour of the Band Council by holding that there was nothing sinister or deliberately unfair in the decision to fix the date for distribution for December 17th and 18th of 1987. That is not the test in scrutinizing the performance of a trustee. The issue of whether a trustee can set an arbitrary time limit for identifying and locating the members of the class is to be resolved by a standard of care analysis. In other words, would a trustee be reasonably fulfilling his or her duty to identify and locate the members of the beneficiary class if he or she operated on a self-imposed deadline?

45 In *Learoyd v. Whiteley*, (1887), 12 App. Cas. 727 (H.L.), Lord Watson set out the standard of care expected of a trustee in carrying out his or her duties. He stated at p. 733 that

"the law requires of a trustee no higher degree of diligence in the execution of his office than a man of ordinary prudence would exercise in the management of his own affairs."

Waters defined the standard as follows at p. 750, *supra*:

the trustee must show ordinary care, skill, and prudence, he must act as the prudent man of discretion and intelligence would act in his own affairs.

In *Fales v. Can. Permanent Trust Co.*, [1977] 2 S.C.R. 302 at 318, Dickson J. stated that the trustee must show "vigilance, prudence and sagacity".

46 In our opinion, the Band Council did not show ordinary care, skill and prudence in carrying out its duties as trustee with respect to the minor appellants and the class they represent.

#### Disposition

47 We are of the opinion that this case can be decided on the basis of well recognized principles relating to the fiduciary obligations of any person who undertakes to make a per capita distribution of a fund of money entrusted to that persons' care. Accordingly, we find it unnecessary to address the appellants' submissions regarding s. 15 of the Charter of Rights and Freedoms.

48 For the reasons given, we are allowing the appeal and setting aside the judgment below. The appellants and all those they represent are entitled to a declaration that they are each entitled to the payment of an equal distributive share of the \$1,000,000 fund from the Settlement Agreement

without deduction of any kind. They are also entitled to pre-judgment interest from the distribution date until the date of the trial judgment below and post-judgment interest thereafter until payment. In order to give effect to this declaration, the matter is remitted to the trial judge or a judge of concurrent jurisdiction for an accounting and judgment with respect to the individual appellants and members of the class they represent.

**49** Since the appellants are beneficiaries of a trust who were obliged to sue their trustees, they should receive costs on a solicitor and client basis here and below.

FINLAYSON J.A.  
CHARRON J.A.  
ROSENBERG J.A.

qp/d/ln/mmr/mjb/qlhjk

This is Exhibit " L " referred to in the  
Affidavit of

Paul Bujold

Sworn before me this 12 day

of September A.D., 2011

A. Magnan

~~A Notary Public~~, A Commissioner for Oaths  
in and for the Province of Alberta

Catherine A. Magnan

My Commission Expires

January 29, 2012

## SAWRIDGE BENEFICIARIES PROPOSED PROGRAM SUMMARY

### START-UP RECOMMENDATIONS

	Program Description	Estimated Cost
1. Establish a Trust Program Office	<ul style="list-style-type: none"> <li>Develop a job description for this position (which will combine two functions: overseeing the implementation of beneficiary programmes and providing administrative support to the Trustees)</li> <li>Hire and orient preferred candidate</li> <li>Establish primary office in Edmonton and an extension office in Slave Lake</li> <li>Retain legal counsel with the requisite expertise</li> <li>Make public beneficiary criteria and the application process</li> <li>Gather pertinent information to support the process of accessing applications</li> <li>Strike an eligibility committee (with representation from each of the community's extended families) to screen applications</li> <li>Provide the community with regular updates on progress toward this goal</li> <li>A one-time cash disbursement in recognition of the challenges the beneficiary program has had in getting off the ground</li> </ul>	\$120,000 annually for salary, benefits, transportation allowance, and office costs (provided that affordable office space can be secured through collaboration with other Sawridge entities)  An reliable estimate can be projected once legal counsel has been retained
2. Establish and Make Public a Clear Process for Determining Beneficiary Eligibility		
3. A One-Time "Good Faith" Cash Disbursement		\$2,500/beneficiary over the age of 18 (or who are younger but have an independent household) for a total of approximately \$105,000
4. Transparent & Accountable Communication Channels	<ul style="list-style-type: none"> <li>Quarterly newsletter</li> <li>Beneficiary Manual</li> <li>Website</li> </ul>	\$10,000 one-time for website \$10,000 one-time for manual \$3,000 annually for newsletter & keeping manual up to date
5. Adopt a Phased Approach	<ul style="list-style-type: none"> <li>Begin with programme offerings about which there is already strong consensus and which can be implemented within the next year or so (see suggestions for phase 1 programming on the next page)</li> <li>In year 2, phase in the remainder of the programs as more viable implementation options have been created (primarily by the Trust Administrator/Program Manager) and in consultation with beneficiary working groups as appropriate</li> </ul>	No specific costs associated with this recommendation. Rather, this approach will help manage costs.
<b>Total Estimated Costs for the Start-up Recommendations</b> <i>Note: The figures presented here represent the cost of instigating and maintaining the Beneficiary Program. They do not include the costs of establishing beneficiary eligibility under the two Trusts. Depending on the legal costs, this figure could be substantial.</i>		<b>\$248,000 for first year</b> <b>\$123,000 annually for subsequent yrs</b>

<b>PHASE I PROGRAMMING</b>		
<b>Category of Benefit</b>	<b>Program Description</b>	<b>Estimated Cost</b>
<b>6. Insurance</b> <ul style="list-style-type: none"> <li>Health</li> <li>Dental</li> <li>Long-term disability</li> <li>Basic life</li> <li>AD&amp;D</li> </ul>	<ul style="list-style-type: none"> <li>JT Moland will offer a package that provides health and dental insurance benefits that top up those provided under the uninsured benefits program (\$30/single, \$60/family monthly)</li> <li>As well, a quote for life, disability and AD&amp;D insurance has been received (between \$150 and \$590 monthly, depending on age, gender and smoking habits). The Program Administrator will investigate options for a life insurance package with a higher payout value.</li> </ul>	<ul style="list-style-type: none"> <li>Rough estimate is \$20,000 annually for health &amp; dental, \$200,000 for life, disability and AD &amp; D insurance (@ \$25,000 coverage)</li> </ul>
<b>7. Death of Immediate Family Members and Compassionate Care Support</b>	<ul style="list-style-type: none"> <li>Funeral and other costs, on a receipted basis, not to exceed \$12,000 per event (limited to immediate family members (spouse, dependent child, parent, sibling)</li> <li>Compassionate care support provided to beneficiaries to assist them to care for a ill family member or for a family member to care for a beneficiary who is ill (e.g. to support living costs while a family member is hospitalized out of their home community)</li> </ul>	<ul style="list-style-type: none"> <li>If two such deaths occur within the families of Sawridge beneficiaries, the annual cost would be \$24,000 annually</li> <li>Compassionate care fund will be administered by the Trustees on a case-by-case basis (estimated costs could be up to \$20,000/year)</li> </ul>
<b>8. Seniors Support</b>	<ul style="list-style-type: none"> <li>"No-strings" monthly assured income pension</li> <li>"Special needs" support for home care, transportation</li> <li>Care taken to ensure that these benefits do not negatively impact the senior's other pension benefits or tax situation</li> </ul>	<ul style="list-style-type: none"> <li>On the basis of 8 seniors, monthly pension \$144,000 annually</li> <li>Special needs fund up to \$60,000 annually</li> </ul>
<b>9. Child &amp; Youth Development</b>	<ul style="list-style-type: none"> <li>Monthly or quarterly benefit to support recreational/artistic/ cultural pursuits</li> <li>Professional services and/or equipment for children and youth with special needs</li> </ul>	<ul style="list-style-type: none"> <li>\$2,500 annually for each dependent for an estimated total of \$120,000 annually</li> <li>Fund of up to \$20,000 for special needs annually</li> </ul>
<b>10. Educational Support</b>	<ul style="list-style-type: none"> <li>Post-secondary (top-ups plus students not covered under Regional Council)</li> <li>Special employment-related courses</li> </ul>	<ul style="list-style-type: none"> <li>\$50,000 for top-up and additional post secondary</li> <li>\$10,000 for employment-related training costs annually</li> </ul>
<b>11. Phase I Community Strengthening</b>	<ul style="list-style-type: none"> <li>Two community gatherings in the first year to celebrate achievements, honour those who have worked so hard to create prosperity and wellbeing for the community, play, consult about current community realities and needs and create opportunities for reconciliation.</li> <li>Set up community working group</li> </ul>	<ul style="list-style-type: none"> <li>Community events could cost up to \$75,000/ea for an annual total of \$150,000</li> </ul>
<b>Total Estimated Costs for the Phase I Recommendations</b>		<b>\$818,000.00</b>



<b>PHASE II PROGRAMMING</b>		
<b>Category of Benefit</b>	<b>Program Description</b>	<b>Estimated Cost</b>
<b>12. Quality of Life Support Program</b>	<ul style="list-style-type: none"> <li>Universal annual cash disbursement of \$1,000 for beneficiaries over the age of 18 annually</li> <li>Matching savings program (either 3:1 or 5:1 depending on the positive life goal chosen to a maximum of \$9,000 annually per beneficiary)</li> </ul>	<ul style="list-style-type: none"> <li>\$450,000 for each year after the first year</li> </ul>
<b>13. Financial Planning &amp; Management</b>	<ul style="list-style-type: none"> <li>Designated contact person within one or more financial institutions that have branches in both Edmonton and Slave Lake to provide estate planning, personal taxation advice, investment education &amp; advice, budgeting &amp; money management</li> <li>Resource list of programs offering financial management programs locally (e.g. as part of life skills programs)</li> </ul>	<ul style="list-style-type: none"> <li>No financial cost at this time</li> </ul>
<b>14. Employment, entrepreneurship &amp; Worthwhile Pursuits</b>	<ul style="list-style-type: none"> <li>Life and career counseling through the Alberta Government Service Centres</li> <li>Job search &amp; preparation services through existing not-for-profit programming</li> <li>Volunteer mentors (from Sawridge businesses) vet business plans and provide ongoing mentoring</li> <li>Matching funds at 5:1 up to a total of \$9,000 for business start-up (see Recommendation #12 above)</li> <li>Support to prepare competitive resumes and service contract bids for job openings and contract opportunities with Sawridge companies</li> <li>Matching funds at 5:1 up to a one-time total of \$9,000 for artistic and humanitarian projects (see Recommendation #12 above)</li> </ul>	<ul style="list-style-type: none"> <li>Covered under Recommendation #12 above</li> </ul>
<b>15. Vacations in Sawridge Properties</b>	<ul style="list-style-type: none"> <li>One week annually per family for a maximum of two rooms plus meals</li> </ul>	<ul style="list-style-type: none"> <li>Estimated at \$112,000 annually</li> </ul>
<b>16. Housing</b>	<ul style="list-style-type: none"> <li>Matching funds at 10:1 up to a one-time total of \$20,000 for first-time home buyers (for the purpose of the down payment)</li> <li>Support beneficiaries to take full advantage of all government programs to support home ownership and renovation.</li> <li>Matching 5:1 funds to support existing home owners and those living on reserve to complete renovations/repairs up to a total of \$20,000 within a ten-year period</li> </ul>	<ul style="list-style-type: none"> <li>The suggestions listed here would project an annual cost of about \$600,000</li> </ul>
<b>17. Personal Development</b>	<ul style="list-style-type: none"> <li>Expanded services will be available under the health insurance program (see #6 above)</li> <li>Counseling and other therapies recommended by an independent health practitioner could be covered under a special fund of up to \$20,000 annually</li> <li>Personal development activities eligible for 3:1 matching funds under recommendation #12 above</li> </ul>	<ul style="list-style-type: none"> <li>\$100,000 fund for counseling/therapies recommended by independent practitioner</li> </ul>

<p><b>18. Phase II Community Strengthening</b></p>	<ul style="list-style-type: none"> <li>Encourage partnerships with the Band to access services available under targeted government programs (e.g. the common-experience counseling funds)</li> <li>The creation of a Community Wellness Committee to help plan community gatherings and to work with consultant to develop and community wellness plan</li> <li>The sponsoring of bi-annual community gatherings</li> <li>Contract services focused on healing community relationships &amp; developing community strengths</li> <li>Contract technical support for the development of a community wellness plan</li> <li>Arbitration and mediation training for Sawridge beneficiaries &amp; the establishment of a administrative tribunal</li> </ul>	<ul style="list-style-type: none"> <li>Cost of developing a wellness plan \$60,000</li> <li>Gatherings estimated at \$150,000 annually</li> <li>Contracted services related to healing and reconciliation could be capped at \$50,000 annually</li> <li>The Alberta Arbitration Society charges \$350 for each two-day workshop. If two beneficiaries were interested in this program and committed to 3 courses annually, the cost would be about \$5,000 for course fees as well as related costs such as accommodation, materials (courses are held in Calgary and Red Deer)</li> </ul>
<b>Total Estimated Costs for the Phase II Recommendations</b>		<b>1,527,000.00</b>
<b>Estimated Cost of Year One</b>		Start-up 248,000.00 Phase I 818,000.00 <b>Total 1,066,000.00</b>
<b>Estimated Cost of Year Two</b>		Start-up 123,000.00 Phase I 643,000.00 Phase II 1,527,000.00 <b>Total 2,293,000.00</b>
<b>Estimated Cost of Subsequent Years</b>		Start up 123,000.00 Phase I 643,000.00 Phase II 1,467,000.00 <b>Total 2,233,000.00</b>

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

APPLICANTS

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

DOCUMENT

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 A. SERAFINCHON

COMPLETE ADDRESS FOR SERVICE  
ON THE APPLICANT OF ANY  
DOCUMENTS IN THIS ACTION and  
DOCUMENTS PREPARED AND  
FILED BY

BORDEN LADNER GERVAIS LLP  
Centennial Place, East Tower  
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Calgary, Alberta T2P 0R3  
Attention: Nancy Golding Q.C./Sandi Shannon  
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File no. 443395/01

#### NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

**Date:**

**Time:**

**Where:**

Law Courts Building  
1A Sir Winston Churchill Square,  
Edmonton, Alberta T5J 3Y2

**Before Whom:**

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. Patrick Twinn, on his own behalf and on behalf of his infant daughter, Aspen Saya Twinn and his wife Melissa Megley; and Shelby Twinn; and Deborah Serafinchon (collectively, the "Applicant Beneficiaries") are parties affected by the application of Bertha Twin-L'Hirondelle, Clara Twin-Midbo, Catherine Twinn, Roland C. Twinn, and Walter Felix Twin (the "Sawridge Trustees") in the within matter. The Applicant Beneficiaries are asking for an Order that they each be added as Parties to the within Action in order to protect their respective interests and the interests of others in similar circumstances.
2. That the Order adding the Applicant Beneficiaries as Parties to the within Action require the Sawridge Trustees to pay the legal fees associated with representation of the Applicant Beneficiaries out of the funds held by the Sawridge Band Intervivos Settlement (the "1985 Trust").
3. For an Order for an accounting of the 1985 Trust and in the case of Patrick Twinn, in addition for an accounting of the 1986 Trust.
4. Such further and other relief as this Court may deem appropriate.

**Grounds for making this application:**

*History*

5. In 1985, Chief Walter Patrick Twinn established the 1985 Trust to hold certain properties in trust for members of the Sawridge First Nation. In 1986, Chief Walter Twinn established the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively with the 1985 Trust, the "Sawridge Trusts").
6. Although the Sawridge Trustees have failed to comply with the August 31, 2011 Order of Justice Thomas and have not filed a constating application, it appears that the Sawridge Trustees are seeking the opinion, advice and direction of the Court respecting the

administration and management of the property held under the 1985 Trust (hereinafter referred to as the "Advice and Direction Application") in respect to:

- a. the definition of the term definition of "Beneficiaries" contained in the 1985 Trust and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries"; and
  - b. the transfer of assets into the 1985 Trust.
7. The Applicant Beneficiaries are or should be Beneficiaries of the 1985 Trust and are affected by the Advice and Direction Application in the within matter and have interests that are not presently represented in the within Action. The Applicant Beneficiaries consent would be required to any variation of the 1985 Trust.

#### *The Applicants*

8. The Applicant Beneficiary, Patrick Twinn ("Patrick") is a registered member of the Sawridge First Nation and is a Beneficiary of both Sawridge Trusts.
9. Patrick also makes this application on behalf of his wife Melissa Megley ("Melissa") and their infant daughter, Aspen Saya Twinn ("Aspen"). Melissa and Aspen are both Beneficiaries of the 1985 Trust under the current definition of "Beneficiary".
10. The Applicant Beneficiary Shelby Twinn ("Shelby") is also a Beneficiary of the 1985 Trust under the current definition of "Beneficiary".
11. As Beneficiaries of both Sawridge Trusts, both Patrick and Shelby are entitled to an accounting of the 1985 Trust and in addition Patrick is entitled to an accounting of the 1986 Trust. Despite Patrick's request that the Sawridge Trustees provide an accounting of the 1985 Trust and the 1986 Trust to himself and all the Beneficiaries none has been provided. Shelby has also requested that the Sawridge Trustees provide an accounting of the 1985 Trust for herself and all of the Beneficiaries and none has been provided. The Sawridge Trustees have improperly refused to provide an accounting of the 1985 Trust and the 1986 Trust until this Advice and Direction Application and other related Actions are resolved
12. As Beneficiaries of the 1985 Trust, Shelby and Patrick on his own behalf and on behalf of Melissa and Aspen, are entitled to provide their opinions on the definition of "Beneficiary" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application, as their interests may be diluted, enhanced or otherwise affected by the Court's decision. Their consent would be required to any variation of the 1985 Trust.
13. Although Beneficiaries under the current definition of "Beneficiary" in the 1985 Trust, neither Melissa nor Aspen are registered members of the Sawridge First Nation (the "Sawridge Band"). Should a definition of Beneficiary tied to Sawridge Band membership, as currently proposed by the Sawridge Trustees be decided by the Court to

be the proper definition, Melissa and Aspen will lose their entitlement and they should have a right to argue against this if they choose.

14. Likewise, Shelby, a Beneficiary under the current definition of "Beneficiary" in the 1985 Trust, is not a registered Sawridge Band member and she would therefore not be a Beneficiary if the definition proposed by the Sawridge Trustees based on Band membership were accepted by the Court. She should have a right to argue against this proposed definition if she chooses.
15. Patrick is aware of a number of persons who have an absolute entitlement to Beneficiary status under both Sawridge Trusts, including by Court Order, who are not registered Sawridge Band members, who will lose their Beneficiary entitlement if the Sawridge Trustees' application to vary the Beneficiary definition to Band membership, as currently proposed succeeds.
16. As non-registered Sawridge Band members who will lose their Beneficiary status if the Sawridge Trustees are successful in their application, Patrick, as representative of Melissa and Aspen, and Shelby's opinions on the Advice and Direction Application are critical to reaching a fair and just determination of the within Advice and Direction Application.
17. The Applicant, Deborah Serafinchon ("Deborah") is the illegitimate child of Chief Walter Patrick Twinn who settled the 1985 and 1986 Trusts. Deborah is not currently a Beneficiary of the 1985 Trust.
18. Deborah's half siblings, including Trustee, Roland C. Twinn, derive their entitlement to Beneficiary status under both Sawridge Trusts solely through the male line, their common father, the late Chief Walter Patrick Twinn. As an illegitimate female child who is the direct descendant in the male line of a Sawridge First Nation member, Deborah Serafinchon is not entitled to be a Beneficiary of the 1985 Trust under current definition of "Beneficiary". Her illegitimate male siblings and legitimate siblings are. Illegitimate female siblings are not. If the definition of Beneficiary under the 1985 Trust is varied to exclude discriminatory language, such as "illegitimate", "male" and "female", Deborah is entitled to be a Beneficiary under the 1985 Trust.
19. Deborah Serafinchon's discriminatory exclusion as a Beneficiary of the 1985 Trust is not remedied if the Sawridge Trustees proposed definition is accepted by the Court. As a person excluded from the 1985 Trust on account of their gender and who will also be excluded if the Sawridge Trustees are successful in their Advice and Direction Application, Deborah Serafinchon's opinion, advice and direction for the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust is critical to reaching a fair and just determination of the within Advice and Direction Application.
20. The Sawridge Trustees appear to seek, *inter alia*, an order to vary the definition of the 1985 Trust such that an individual's Beneficiary status will depend entirely on whether the Sawridge First Nation determines that the individual qualifies as a member of the

Sawridge Band under the Membership Rules which are discriminatory and uncertain. The Applicant Beneficiaries represent interests of people that are not currently before the Court as they are not Parties to the Action.

21. The Applicant Beneficiaries represent a variety of interests that are not currently represented in the within Action. However, it is highly unlikely that they are the only Beneficiaries or potential Beneficiaries with similar interests. The Applicant Beneficiaries are aware of individuals falling into other categories whose entitlement will also be lost if the definition of Beneficiary is varied as proposed by the Sawridge Trustees. These Applicant Beneficiaries wish to offer a proposal that is inclusive and non-discriminatory. Accordingly, it is in the public interest that their opinions, advice and direction as to the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application are heard. It is critical to reaching a fair and just determination of the within Action that they be heard in this Action. Additionally, as the Advice and Direction Application requires the variation of the 1985 Trust the consent of the Beneficiaries is required.
22. The issues raised by the Sawridge Trustees' Advice and Direction Application are potentially complex issues of Trust and Aboriginal law. Further, the Advice and Direction Application affects access to trust property worth over \$60,000,000.00. The acquisition, or loss, of Beneficiary status will have significant financial and social ramifications for the affected, or potentially affected, adults and their issue for the rest of their lives. It is incumbent upon the Trustees to determine who the Beneficiaries are currently before any change or variation is made.
23. There are special circumstances in this case that merit an order to have the legal fees associated with representation of the Applicant Beneficiaries paid by the Sawridge Trusts, including the fact that the Sawridge Trustees, are incapable of effectively representing the interest of the Applicant Beneficiaries due to a conflict of interest and personal animosity. As well, the main Advice and Direction Application raises complex issues which make it extremely difficult, if not impossible, for an individual to effectively be self-represented in the proceedings.

**Material or evidence to be relied on:**

24. The Affidavit of Shelby Twinn sworn July 26, 2016
25. The Affidavit of Patrick Twinn sworn July 26, 2016
26. The Affidavit of Deborah Serafinchon sworn July 26, 2016
27. Such further and other materials as Counsel may advise and this Honourable Court may allow.

**Applicable rules:**

28. Alberta Rules of Court 1.4 and 2.11, 3.74 and 6.3

**Applicable Acts and regulations:**

N/A

**Any irregularity complained of or objection relied on:**

N/A

**How the application is proposed to be heard or considered:**

29. This application is to be heard by leave of the Honourable Justice J. Thomas, or at his direction, another Justice, at a special application to be set at the soonest possible date.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.



COURT FILE NUMBER	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, AND CLARA MIDO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST
RESPONDENT	IN THE MATTER OF THE TRUSTEE ACT R.S.A. 2000, CT-8 AS AMENDED  IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO.19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985
DOCUMENT	AFFIDAVIT OF PATRICK TWINN
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BORDEN LADNER GERVAIS LLP Centennial Place, East Tower 1900, 520 – 3 Avenue SW Calgary, Alberta T2P 0R3  Attention: Nancy Golding Q.C/Sandi Shannon Tel: (403) 232-9485/9782 Fax: (403) 266-1395 Email: ngolding@blg.com sshannon@blg.com File no. 443395/01

**AFFIDAVIT OF  
PATRICK TWINN**  
Sworn (or Affirmed) on July 26, 2016

I, Patrick Twinn, of the Sawridge Indian Reserve 150 G and the City of Edmonton, in the Province of Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am one of the Applicant Beneficiaries herein, and as such have knowledge of the matters hereinafter disposed to.
2. This matter involving the Sawridge Band Intervivos Settlement (the "1985 Trust") has been brought forward to the Court by its five trustees: Bertha Twin- L'Hirondelle, Clara Twin-Midbo, Catherine Twinn, Roland C. Twinn, and Walter Felix Twin (hereinafter referred to as the "Sawridge Trustees"). I understand that Justin Twin and Margaret Ward, have replaced Walter Felix Twin who resigned and Clara Midbo, deceased as Sawridge Trustees.
3. I understand that the Sawridge Trustees are seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust (the "Advice and Direction Application") in respect to:
  - a. the definition of the term "Beneficiaries" contained in the 1985 Trust and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries"; and
  - b. the transfer of assets into the 1985 Trust.
4. I make this Affidavit in support of a motion:
  - (i) to be added as a party in the Advice and Direction Application and to have my counsel participate in the Court proceedings relating to the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application;
  - (ii) for an order compelling the Sawridge Trustees to provide an accounting and pass their accounts for the 1985 and 1986 Trusts; and
  - (iii) for advance costs and full indemnification of costs from the 1985 Trust and the 1986 Trust.

**The Trusts**

5. In 1985, my father, Walter Patrick Twinn established the 1985 Trust to hold certain properties in trust for members of the Sawridge First Nation. I understand that the Beneficiaries of the 1985 Trust were defined as all persons who qualified as a member of the Sawridge First Nation pursuant to the provisions of the *Indian Act* as existed on April 15, 1982. The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time

as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985.

6. In 1986, my Father established the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively with the 1985 Trust, the "Sawridge Trusts"). The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of the Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada

Attached hereto and marked as Exhibit "A" is a true copy of the Sawridge Trust website "Beneficiaries" tab viewed on July 25, 2016.

#### **Background**

7. I was born into the Sawridge First Nation on October 22, 1985. My Father, was the Canadian Chief of the Sawridge First Nation from 1966 to his death, October 30, 1997 ("Chief Walter Twinn").
8. My mother, Catherine Twinn, is a Trustee of the Sawridge Trusts and is a current member of the Sawridge First Nation.
9. I am a recognized member of the Sawridge First Nation (the "Sawridge Band") and have been absolutely entitled as a Beneficiary, without exception, since my birth.
10. I am cohabitating with and on July 30, 2016 will formalize my marriage to my partner and the mother of my daughter, Melissa Megley. Melissa Megley, under the current rules, qualifies as a Beneficiary of the 1985 Trust in her own right. I have been informed by Melissa Megley that she does not consent to the Sawridge Trustees' proposed variation. I do not believe that Melissa will ever be admitted by the Sawridge Band into membership under the current membership process and Membership Rules and therefore will never be a Beneficiary through band membership. Melissa will be excluded as a Beneficiary of the 1985 Trust if the definition of Beneficiary is varied to be band membership as proposed by the Sawridge Trustees in the Advice and Direction Application.
11. My newborn daughter, Aspen Saya Twinn, is the youngest Beneficiary of the 1985 Trust. She is not a Sawridge Band member nor do I believe she will ever be one under the current Sawridge Band leadership. Accordingly, my daughter will be excluded as a Beneficiary of the 1985 Trust if the definition of Beneficiary is varied to be band membership as proposed by the Sawridge Trustees in the Advice and Direction Application. On her behalf, Melissa and I do not consent to this proposed variation.
12. In addition to Melissa Megley and our newborn daughter, my brothers, Sam, Isaac and Cameron have informed me they do not consent, on their own behalf and on behalf of their present or future spouses and issue, to this proposed variation of the definition of Beneficiary in the 1985 Trust.

13. As a descendant and listed member of the Sawridge First Nation, I am a Beneficiary of the 1985 Trust under the current definition of "Beneficiary" and I am directly affected by the Advice and Direction Application being brought forward involving the 1985 Trust.
14. I will continue to be a Beneficiary under the 1985 Trust if the Sawridge Trustees Advice and Direction Application succeeds as I am currently a Sawridge Band member subject to a decision of the Chief and Council, who under the Membership Rules, purport to be able to revoke band membership. The Membership Rules give the Chief and Council what appears to be an absolute discretion over accepting, rejecting and revoking any persons as Sawridge Band members.
15. I also have concerns with the administration of the Trusts. In addition to these concerns outlined below, I believe that there is a conflict of interest between the duties of Sawridge Trustees who were or are elected Band officials and the powers that they held or hold to determine membership in the Sawridge First Nation. I am aware that other First Nation Trusts prohibit elected Band officials, employees and agents to act as Trustees to avoid conflicts of interest and ensure an equality amongst the Trustees. I believe a Trustee must represent all Beneficiaries, past, present and future, not just their political constituency. I believe this does not happen when the Chief is a Trustee and a majority of Trustees are or were elected Band officials, as is the case here.
16. I do not believe that appropriate steps have been taken to properly ascertain all of persons who are Beneficiaries of the 1985 Trust. I and other 1985 Beneficiaries I know of have not been consulted by the Trustees to grandfather us and our issue. Nor have we been asked to consent to substituting the existing Beneficiary definition with band membership. Nor have we been asked to consent to the variation they seek.
17. Further, I believe that vested and potential Beneficiaries are being excluded from Sawridge Band membership as a result of personal animosities and that others are being accepted based on their personal relationships with some of the Sawridge Trustees.
18. I do verily believe that the Trustees' proposed amendment to the definition of "Beneficiary" under the 1985 Trust will result in the exclusion of many of the current 1985 Trust Beneficiaries and many potential Beneficiaries and their issue.

#### **Request for Accounting**

19. On April 12, 2016, as a Beneficiary under the 1985 Trust and the 1986 Trust, I sent a request to Paul Bujold requesting an accounting of the 1985 and 1986 Trusts as soon as was practicable.
20. To the best of my knowledge, since September 9, 2009, Mr. Bujold has been the Administrator of the Trusts. This is a salaried position that is contracted for by the Trusts at the discretion of a majority of Trustees.
21. On April 29, 2016, Mr. Bujold responded to my request as follows:

Thank you for your request for an accounting. Unfortunately, we are unable to address your request at this time.
22. On May 3, 2016, I responded to Mr. Bujold requesting further information as to why the Trusts did not feel that they had to account to their beneficiaries. Both the 1985 Trust and the 1986 Trust explicitly require the Trustees to "keep accounts in acceptable manner of all receipts, disbursements, investments and other transactions in the administration of the Trusts." I also

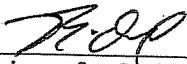
explained to Mr. Bujold that my understanding is that a trustee must be ready to provide an accounting to a Beneficiary at any time.

23. On May 4, 2016, Mr. Bujold confirmed that the Trustees have kept accounts as required by the Sawridge Trusts and informed me that the Trustees did have plans to account to the Beneficiaries. However, according to Mr. Bujold, an accounting would only be provided after the determination of the Advice and Direction Application and other related Actions. Attached hereto and marked as Exhibit "B" is the email correspondence referred to in paragraphs 20-24 of this my Affidavit.
24. Mr. Bujold further informed me that it was the Trustees' position that "[r]eporting to the beneficiaries is not a simple process and requires some preparation which the Trusts do not have time for at this time because of the many legal actions, apart from the Trusts' own application for Advice and Direction for the 1985 Trust, that need to be managed and responded to." Mr. Bujold also informed me that "[c]urrent Trustee direction is not to do an accounting until the beneficiaries for both Trusts have been ascertained and the transfer of assets for the 1985 Trust is complete, that is impossible at the moment since the matter is currently before the courts."
25. My father now deceased, created the 1985 Trust. My mother is a current Trustee and is a member of the Sawridge First Nation. I am and always have been a recognized member of the Sawridge First Nation. Accordingly, I have always been considered to be a Beneficiary under both the 1985 Trust and the 1986 Trust and I am therefore entitled to an accounting, which to date the Sawridge Trustees have refused to provide.

#### Need for Advance Costs and Indemnity

26. I am seeking advance costs and full indemnification for costs of this action from the 1985 Trust. Absent this award, there is no other realistic option for me to bring this issue to Court. Without this financial assistance, there is simply no way that I can proceed.
27. Further, I represent interests, including those of my partner and my infant daughter, that are currently not represented in this matter. The interests I represent are of broader public import and I do not believe that they have been previously determined.
28. I am a member of the Sawridge First Nation, born into it by my father, Chief Walter Twinn and my mother, Catherine Twinn. As I was a Sawridge First Nation member at the time the 1985 Trust was created and I remain one today, I should be included as a Party in the Advice and Direction Application presented before the Court regarding the definition of "Beneficiaries" and the transfer of assets with the 1985 Trust, particularly as my consent would be required in a trust variation application.
29. As a Beneficiary under both Sawridge Trusts, I am entitled to an accounting from the Trustees without delay.

SWORN (OR AFFIRMED) BEFORE ME at  
St. Albert,, Alberta, this 26<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
Commissioner for Oaths in and for the  
Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

CAL01: 1951745: v6

  
\_\_\_\_\_  
PATRICK TWINN

# Exhibit A

## Beneficiaries

Beneficiaries must presently meet the following requirements set out in the Trust Deeds of the two Trusts:

### The Sawridge Band Inter-Vivos Settlement, 15 April 1985

"The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985."

### The Sawridge Trust, 15 August 1986

"The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of The Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada."

This is exhibit "A" referred to  
in the Affidavit of

PATRICK TWINN

Sworn before me this 26<sup>th</sup>

Day of July A.D. 20 16

[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

# Exhibit B



This is exhibit "B" referred to  
in the Affidavit of  
PATRICK TWINN  
Sworn before me this 26<sup>th</sup>  
Day of July A.D. 2016  
MAJ  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

**From:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Date:** May 4, 2016 at 4:21:17 PM MDT  
**To:** Patrick Twinn <[patricktwinn77@hotmail.com](mailto:patricktwinn77@hotmail.com)>  
**Subject:** RE: Accounting of Trusts

Patrick,

The Trusts do have plans to account to the beneficiaries of both Trusts after the determination of the beneficiary definition for the 1985 Trust, and the transfer of assets to the 1985 Trusts, currently before the courts, is complete.

Trustees have kept "accounts in acceptable manner of all receipts, disbursements, investments and other transactions in the administration of the Trusts" and these will be shared at the time of the accounting.

Reporting to the beneficiaries is not a simple process and requires some preparation which the Trusts do not have time for at this time because of the many legal actions, apart from the Trusts' own application for Advice and Direction for the 1985 Trust, that need to be managed and responded to.

Your characterisation that "the Trust Administrator and the Chair feel they do not have to account to a beneficiary" is inaccurate. The Trusts' Administrator and Chair can only act on the direction of the Trustees. Current Trustee direction is not to do an accounting until the beneficiaries for both Trusts have been ascertained and the transfer of assets for the 1985 Trust is complete, that is impossible at the moment since the matter is currently before the courts.

Your request will be raised with the Trustees at their June meeting.

**Paul Bujold**  
**Trusts Administrator**  
Sawridge Trusts  
Office (780) 988-7723

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dissemination, distribution, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please destroy the original document.

**From:** Patrick Twinn [<mailto:patricktwinn77@hotmail.com>]  
**Sent:** Tuesday, May 03, 2016 1:46 PM  
**To:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Cc:** Brian Heidecker <[brian@sawridgetrusts.ca](mailto:brian@sawridgetrusts.ca)>  
**Subject:** RE: Accounting of Trusts

Paul

While I appreciate you responding in a timely and professional manner, I am interested in knowing why the Trusts feel they do not have to account as the trustees must be ready to provide at any time to provide accounts to a beneficiary. Common Law suggests that accounts must be show the amount at inception, the amounts received and the amounts expended. In both the 85 and 86 Trusts, the Trustees are required to keep "keep accounts in acceptable manner of all receipts, disbursements, investments and other transactions in the administration of the Trusts."

With that said, there is no direction to account to beneficiaries but there also is no prohibition from doing so, therefore common law requirements to accounts should be apply.

I am curious to know why the Trust Administrator and the Chair feel they do not have to account to a beneficiary.

**W. Patrick Twinn**  
**(780) 718-9661**  
**P.O. Box 1460**  
**Slave Lake, Alberta T0G 2A0**

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---

**From:** [paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)  
**To:** [patricktwinn77@hotmail.com](mailto:patricktwinn77@hotmail.com)  
**CC:** [brian@sawridgetrusts.ca](mailto:brian@sawridgetrusts.ca)  
**Subject:** RE: Accounting of Trusts  
**Date:** Fri, 29 Apr 2016 14:01:09 +0000

Patrick,  
Thank you for your request for an accounting. Unfortunately, we are unable to address your request at this time.

**Paul Bujold**  
**Trusts Administrator**

Sawridge Trusts  
Office (780) 988-7723

**Notice of Confidentiality:**

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**From:** Patrick Twinn [<mailto:patricktwinn77@hotmail.com>]  
**Sent:** Tuesday, April 12, 2016 4:42 PM  
**To:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Subject:** Accounting of Trusts

Paul,

I am a beneficiary of the 1985 and 1986 Trusts and I'm requesting an accounting of the Trusts as soon as practicable.

Patrick

W. Patrick Twinn  
Ph: (780) 718-9661  
Mailing Address: P.O. Box 1460  
Slave Lake, Alberta  
T0G 2A0

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COURT FILE NUMBER	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, AND CLARA MIDO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST
RESPONDENT	IN THE MATTER OF THE TRUSTEE ACT R.S.A. 2000, CT-8 AS AMENDED  IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO.19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Trust")
DOCUMENT	AFFIDAVIT OF SHELBY TWINN
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BORDEN LADNER GERVAIS LLP Centennial Place, East Tower 1900, 520 – 3 Avenue SW Calgary, Alberta T2P 0R3  Attention: Nancy Golding Q.C/Sandi Shannon Tel: (403) 232-9485/9782 Fax: (403) 266-1395 Email: ngolding@blg.com sshannon@blg.com File no. 443395/01

**AFFIDAVIT OF  
SHELBY TWINN**  
Sworn (or Affirmed) on July 26, 2016

I, Shelby Twinn, of the City of Edmonton, in the Province of Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am one of the Applicant Beneficiaries herein, and as such have knowledge of the matters hereinafter disposed to.
2. This matter involving the 1985 Trust has been brought forward to the Court by its five trustees: Bertha Twin- L'Hirondelle, Clara Twin-Midbo, Catherine Twinn, Roland C. Twinn, and Walter Felix Twin (hereinafter referred to as the "Sawridge Trustees"). I understand that Justin Twin and Margaret Ward are now Sawridge Trustees and that they replaced Walter Felix Twin, who resigned, and Clara Midbo who is now deceased.
3. I understand that the Sawridge Trustees are seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust (the "Advice and Direction Application") in respect to:
  - a. the definition of the term "Beneficiaries" contained in the 1985 Trust, and, if necessary, to vary the 1985 Trust to clarify the definition of "Beneficiaries"; and
  - b. the transfer of assets to the 1985 Trust.
4. I am a beneficiary under the current definition of the 1985 Trust. I understand that the Sawridge Trustees, with the exception of Catherine Twinn, are seeking to amend the definition of "Beneficiary" under the 1985 Trust on the basis that it is discriminatory. I understand that they seek to amend the definition of "Beneficiary" to band members only as determined by Chief and Council. Although I am currently a Beneficiary under the 1985 Trust, if the Sawridge Trustees application for Advice and Direction succeeds, I will no longer be a Beneficiary as I am not one of the 44 Sawridge Band members on the Sawridge Band List controlled by Chief and Council.
5. I make this Affidavit in support of a motion:
  - (i) to be added as a party in the Advice and Direction Application and to have my counsel participate in the Court proceedings relating to the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application;
  - (ii) for an order compelling the Sawridge Trustees to provide an accounting and pass their accounts for the 1985 Trust; and
  - (iii) for advance costs and full indemnification of costs from the 1985 Trust and 1986 Trust.

**The Trusts**

6. In 1985, my Paternal Grandfather, Walter Patrick Twinn established the 1985 Trust to hold certain properties in trust for members of the Sawridge First Nation the ("Sawridge Band"). I understand that the Beneficiaries of the 1985 Trust were defined as all persons who qualified as a member of the Sawridge First Nation pursuant to the provisions of the Indian Act as they existed on April 15, 1982. The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985.

7. In 1986, my paternal grandfather established the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively with the 1985 Trust, the "Sawridge Trusts"). The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of the Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada

8. Attached hereto and marked as Exhibit "A" is a true copy of the Sawridge Trusts website "Beneficiaries" tab viewed on July 25, 2016.

#### Background

9. I was born January 3, 1992, and was raised on the Sawridge First Nation Reserve for the first 5 years of my life. I am entitled to and am registered as an Indian. I am not on the Sawridge Band list, and do not receive any benefits from the Sawridge First Nation.
10. My biological father, Paul Twinn is recognized as a Status Indian with the Canadian Federal Government under the *Indian Act* and is a member of the Sawridge First Nation. My paternal grandfather, Walter Patrick Twinn, was the Canadian Chief of the Sawridge First Nation from 1966 to his date of death, October 30, 1997 ("Chief Walter Twinn").
11. My mother, Kristal Schreiber, was married to Paul Twinn and lived on the Sawridge Indian Reserve until I was 5 years old. She returned only once with my sister and me, in November 1997, for my paternal grandfather's funeral.
12. Around 1998, when I was 6 years old my mother moved us to Prince George, British Columbia and to the best of my knowledge it was around that time that she ceased all contact with the Twin(n) family and the Sawridge First Nation.
13. My biological father has made no effort to have any type of relationship with either myself or my sister. He has never supported us financially, nor did he provide any support to my mother. My mother re-married and although I consider her husband to be my father I was never formally adopted.
14. Despite being the daughter of Paul Twinn and the granddaughter of Chief Walter Twinn, and therefore a Beneficiary of the 1985 Trust under the current definition, I have never been contacted about my being a Beneficiary by any Trust Administrator. The first time that I learned that I was a Beneficiary under the 1985 Trust was in September 2013 through Catherine Twinn.

15. I moved to Alberta in 2013. At that time I contacted Arlene Twinn, my biological father's sister, and was asked to complete a membership application form. I have a number of educational goals and would benefit greatly from being a Beneficiary of the Sawridge Trusts. However, at this time I have a number of reservations about applying to be a member.
16. I am very close with my sister Kaitlin who is three years younger than me, and know her very well and love her deeply. Like myself, my sister is a Beneficiary of the 1985 Trust under its current definition. Kaitlin was included for "grandfathering" in the Trustees' Offer to the Court filed June 12, 2016. I was not. My sister has never been contacted by the Trusts.
17. I do verily believe that my paternal grandfather, who settled the Trusts, would have wanted my sister and me to be Beneficiaries, regardless of our Sawridge Band membership status. I strongly oppose the proposal to change the rules that define Beneficiary in the 1985 Trust to band members as controlled by the Chief and Council as that we would not be Beneficiaries.
18. I believe that the purpose of the 1985 Trust was to ensure that a larger and more inclusive family group beyond that of individual members picked by the Chief and Council. This would include women, who marry male Band members and their children. I believe it is essentially impossible to marry within the Sawridge Band as there are only 44 Sawridge Band members.

#### **Request for Accounting**

19. On March 2, 2016 I emailed Paul Bujold, Trusts Administrator the following request:

I am a beneficiary of the 1985 Trust. I qualify under section 11 (1) (d) of the Indian Act, as it stood April 17, 1982. I write on behalf of myself and others who qualify under these Indian Act provisions. We are entitled to an accounting of the 1985 Trust assets. To start we will need copies of all legal accounts by March 8, 2016, received by the Trust, whether paid or not, arising in relation to the 1985 Trust. We want the full accounting on or before April 4, 2016.

20. On March 18, 2016 Paul Bujold replied saying:

We cannot provide you with this information at the moment.

Attached hereto and marked as Exhibit "B" is a true copy of my correspondence to Paul Bujold dated March 2, 2016, and Paul Bujold's correspondence to me dated March 18, 2016.

21. As a beneficiary of the 1985 Trust, I am entitled to an accounting which to date the Sawridge Trustees have refused to provide. I am concerned about the legal fees paid by the Trusts.

#### **Need for Advance Costs and Indemnity**

22. I am seeking advance costs and full indemnification for costs of this action from the 1985 Trust. Absent this award, there is no other realistic option for me to bring this issue to Court. Without this financial assistance, there is simply no way that I can proceed.
23. I do not believe that my sister and I are the only children of the Sawridge First Nation who would qualify as Beneficiaries of the 1985 Trust under the current definition and who would lose their entitlement under the Sawridge Trustees' proposed amendment. I believe that my interests are of

24. As outlined above, under the current definition of “Beneficiary”, my sister and I are Beneficiaries of the 1985 Trust. If the Sawridge Trustees are successful in their application, my sister and I will lose that entitlement. There are no other Parties to this Action at present that I am aware of, like myself and my sister. Accordingly, my opinion, advice and direction for the definition of “Beneficiaries” contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application is critical to reaching a fair and just determination.

Commissioner for Oaths in and for the  
Province of Alberta

Shelby Twinn

CAL01: 1951985: v42



# Exhibit A

## Beneficiaries

Beneficiaries must presently meet the following requirements set out in the Trust Deeds of the two Trusts:

### The Sawridge Band Inter-Vivos Settlement, 15 April 1985

"The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985."

### The Sawridge Trust, 15 August 1986

"The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of The Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada."

This is exhibit "A" referred to  
in the Affidavit of

SHELBY TWINN

Sworn before me this 26<sup>th</sup>

Day of July A.D. 2016

[Signature]  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

# Exhibit B

Begin forwarded message:

**From:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Date:** March 18, 2016 at 7:58:40 AM MDT  
**To:** Shelby Twinn <[S.Twinn@LIVE.CA](mailto:S.Twinn@LIVE.CA)>  
**Subject:** RE: 1985 Trust Accounting

Shelby,  
We cannot provide you with this information at the moment.  
Thanks,

**Paul Bujold**  
**Trusts Administrator**  
Sawridge Trusts  
Office (780) 988-7723

**Notice of Confidentiality:**

This message, transmitted by electronic mail, is intended only for the use of the individual or entity to whom it is addressed and may contain information which is confidential and privileged. Confidentiality and privilege are not lost by this e-mail having been sent to the wrong person. Any dissemination, distribution, or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please destroy the original document.

**From:** Shelby Twinn [<mailto:S.Twinn@LIVE.CA>]  
**Sent:** Wednesday, March 02, 2016 9:29 AM  
**To:** Paul Bujold <[paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)>  
**Subject:** 1985 Trust Accounting

March 2, 2016

Good Morning Paul,

I am a beneficiary of the 1985 Trust. I qualify under section 11 (1) (d) of the Indian Act, as it stood April 17, 1982. I write on behalf of myself and others who qualify under these Indian Act provisions. We are entitled to an accounting of the 1985 Trust assets. To start we will need copies of all legal accounts by March 8, 2016, received by the Trust, whether paid or not, arising in relation to the 1985 Trust. We want the full accounting on or before April 4, 2016.

Sincerely,

Shelby Twinn

This is Exhibit " B " referred to  
in the Affidavit of

SHELBY TWINN

Sworn before me this 26<sup>th</sup>

Day of July A.D. 20 16

B. Deol  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor

COURT FILE NUMBER	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, AND CLARA MIDBO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST
RESPONDENT	IN THE MATTER OF THE TRUSTEE ACT R.S.A. 2000, CT-8 AS AMENDED  IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO.19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Sawridge Trust")
DOCUMENT	AFFIDAVIT OF DEBORAH SERAFINCHON
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	BORDEN LADNER GERVAIS LLP Centennial Place, East Tower 1900, 520 – 3 Avenue SW Calgary, Alberta T2P 0R3 Attention: Nancy Golding Q.C/Sandi Shannon Tel: (403) 232-9485/9782 Fax: (403) 266-1395 Email: ngolding@blg.com/sshannon@blg.com File no. 443395/01

**AFFIDAVIT OF  
DEBORAH SERAFINCHON**

**Sworn (or Affirmed) on July 26, 2016**

I, Deborah Serafinchon, of the City of Edmonton, in the Province of Alberta,  
SWEAR/AFFIRM AND SAY THAT:

1. I am one of the Applicant Beneficiaries herein, and as such have knowledge of the matters hereinafter disposed to.
2. This matter involving the 1985 Trust has been brought forward to the Court by the five trustees of the 1985 Trust: Bertha Twin- L'Hirondelle, Clara Twin-Midbo, Catherine Twinn, Roland C. Twinn, and Walter Felix Twin (hereinafter referred to as the "Sawridge Trustees"). I understand that Walter Felix Twin has resigned and that Clara Midbo is now deceased and that they have been replaced as Sawridge Trustees by Justin Twin and Margaret Ward.
3. I understand that the Sawridge Trustees are seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust (the "Advice and Direction Application") in respect to:
  - a. the definition of the term "Beneficiaries" contained in the 1985 Trust if necessary, to vary the 1985 Trust to clarify the definition of "Beneficiaries"; and
  - b. the transfer of assets into the 1985 Trust.
4. I make this Affidavit in support of a motion:
  - (i) to be added as a party in the Advice and Direction Application and to have my counsel participate in the Court proceedings relating to the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets

into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application; and

- (ii) for advance costs and full indemnification of costs from the 1985 Trust and the 1986 Trust.

### **The Trusts**

5. In 1985, my father, Walter Patrick Twinn, established the 1985 Trust to hold certain properties in trust for members of the Sawridge First Nation. I understand that the Beneficiaries of the Trust were defined as all persons who at the time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970 as it existed on April 15, 1982. The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985.

6. In 1986, my Father established the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively with the 1985 Trust, the "Sawridge Trusts"). The Sawridge Trusts Website provides as follows:

The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of the Sawridge Indian Band as they may exist from time to time to the

extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada

7. Attached hereto and marked as Exhibit "A" is a true copy of the Sawridge Trusts website "Beneficiaries" tab viewed on July 25, 2016.

### **Background**

8. I was born on October 2, 1961. My father was the Canadian Chief of the Sawridge First Nation from 1966 to October 30, 1997, when he died ("Chief Walter Twinn").
9. My mother, Lillian McDermott, is recognized as a Status Indian with the Canadian Federal Government under the *Indian Act*. My mother's Indian Registry number has the Sawridge Band 454. My maternal grandmother, is Marie Louise Sawan. Marie Louise Sawan's mother or grandmother was Amelia Nisotesis, sister to my paternal grandfather Paul Twin (Nisotesis). My maternal grandfather, Myles McDermott was also Indian and I believe he was entitled to be recognized as an Indian. His mother, my paternal grandmother, was an Indian from Treaty 8.
10. My biological parents were closely related. I believe my paternal grandfather, Paul Twin (Nisotesis) and my maternal grandmother or great-grandmother, Amelia Nisotesis, were brother and sister and the children of Charles Nisotesis and Isabelle Courteoreille. Both my parents attended Indian Residential School at Grouard.
11. I was born an illegitimate child and was placed in foster care at birth and was raised in that system. As an adult I searched for my birth parents. I discovered my biological mother first who informed me of who my father was. Shortly after I found my mother, she died.
12. I contacted my father in 1996, the year before his death, and we spoke many times. Before we were able to meet, my father passed away suddenly. On the



same day as his passing, I fell in my bathroom and have been wheel chair bound since.

13. Patrick Twinn is my co-Applicant in the within motion. He is also my brother. We share the same father. Patrick Twinn's mother is a member of the Sawridge First Nation (the "Sawridge Band") and a beneficiary under both Sawridge Trusts. Patrick is recognized as a Status Indian and is on the Sawridge Band list. Patrick Twinn is a Beneficiary of the 1985 Trust and the 1986 Trust.
14. Roland C. Twinn is my brother. We share the same father. Roland C. Twinn's mother is Theresa Auger. Roland C. Twinn is currently the elected Chief of the Sawridge First Nation and is a Beneficiary under the 1985 Trust (collectively with Patrick Twinn, my "Brothers"). I understand that Roland Twinn's mother chose to enfranchise for a large per capital pay out and is therefore not a member of the Sawridge First Nation nor a beneficiary of either of the Sawridge Trusts.
15. In 2002, I applied for Indian Status registration through the office of Lesser Slave Lake Indian Regional Council ("LSLIRC"). LSLIRC is governed by a board of 5 Chiefs, my brother Roland C. Twinn being one of them. I have no relationship with Roland C. Twinn. Although both my biological parents qualify as Indians, I have not been registered.
16. At some point, I was informed by LSLIRC that the DNA sample I had provided proving that Chief Walter Twinn was my father was inadequate for registration and that I would need two of my father's sisters to attest that I was his daughter. At the time, there were three living sisters, two of whom, Bertha L'Hirondelle and Clara Midbo are named Trustees in this action. I believe this requirement to be impossible and have since given up obtaining registration.
17. I may be excluded as a Beneficiary under the 1985 Trust as a result of being born an illegitimate female. As an illegitimate female child who is the direct descendant in the male line of a Sawridge First Nation member, I am not entitled to be a Beneficiary as a result of the language in the *Indian Act* of 1970. As male descendants, both my Brothers are. I believe this to be discriminatory.

18. I believe that I should have the same entitlement as my brothers and other siblings who are considered Beneficiaries of the 1985 Trust and the 1986 Trust.
19. I also believe that if the *Indian Act* of 1970 is read to include both male and female offspring of a male Indian, as well as illegitimate and legitimate offspring, then I am entitled to be a Beneficiary under the 1985 Act. I may also have an absolute right from birth to be on the Sawridge Band list. If the proposal of the Sawridge Trustees in the application for Advice and Direction is accepted however, I am not entitled to be a Beneficiary under the 1985 Trust because I am not on the Chief and Council controlled Sawridge Band List.
20. I understand that the Sawridge Trustees, with the exception of Catherine Twinn, are seeking to vary the definition of "Beneficiary" under the 1985 Trust on the basis that they have decided it is discriminatory and that they seek to amend the definition of "Beneficiary" to band members only – a list of individuals that the Chief and Council currently dominate and control. This is, in my experience, a far worse form of discrimination.
21. Accordingly, I am directly affected by the matter brought forward by the Sawridge Trustees in the Advice and Direction Application involving the 1985 Trust and I am a potential Beneficiary thereunder.

#### **Need for Advance Costs and Indemnity**

22. I am seeking advance costs and full indemnification for costs of this action from the 1985 Trust. Absent this award, there is no other realistic option for me to bring this issue to Court. Without this financial assistance, there is simply no way that I can proceed.
23. My biological parents found out they were related after I was conceived. As a result of the Residential School program, they were not aware of this fact before. I believe that as a result they did not marry and I was placed in the foster care system. I do not believe that I am the only potential Beneficiary to have been placed in the foster care system or born illegitimate and raised outside of the Sawridge First Nation. This impacts my and others' children and grandchildren. I

24. As outlined above, both my mother and father are direct descendants of Charles Nisotesis and Isabelle Courteoreille whose names were on the Keenooshayoo's Band Pay List, paid at Sawridge, when Treaty 8 was concluded in 1899 at Lesser Slave Lake. Both were recognized as Status Indians under the *Indian Act*, and in the case of my father, after 1951 when the Band List first appeared, he was on the Sawridge Band List. I should have the same entitlements to the 1985 Trust as my male siblings. I should also have the same entitlements as my female siblings without discrimination based on legitimacy or illegitimacy. I, and people like me, are not currently represented in this Action. Accordingly, my opinion, advice and direction for the definition of "Beneficiaries" contained in the 1985 Trust and the transfer of assets into the 1985 Trust brought forward by the Sawridge Trustees in the Advice and Direction Application is critical to reaching a fair and just determination.

  
DEBORAH SERAFINCHON

# Exhibit A

## Beneficiaries

Beneficiaries must presently meet the following requirements set out in the Trust Deeds of the two Trusts:

### The Sawridge Band Inter-Vivos Settlement, 15 April 1985

"The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to The Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985."

### The Sawridge Trust, 15 August 1986

"The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of The Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada."

This is exhibit "A" referred to  
in the Affidavit of

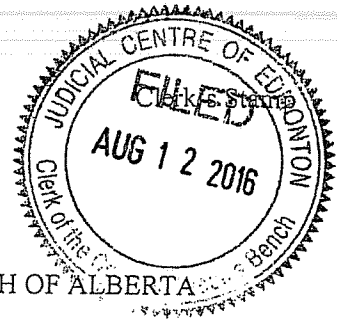
DEBORAH SERAFINCHON

Sworn before me this 26<sup>th</sup>

Day of July A.D. 2016

B. Deol  
A Commissioner for Oaths in and for  
the Province of Alberta

**BALRAJ DEOL**  
Barrister & Solicitor



COURT FILE NO.: 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

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

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

DOCUMENT: APPLICATION TO BE ADDED as a Party or Intervener  
by Maurice Felix Stoney and his brothers and sisters

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION  
OF PARTY FILING THIS  
DOCUMENT

DLA PIPER (CANADA) LLP  
1201 Scotia 2 Tower  
10060 Jasper Avenue NW  
Edmonton, AB, T5J 4E5  
Attn: Priscilla Kennedy  
Tel: 780.429.6830  
Fax: 780.702.4383

#### NOTICE TO THE RESPONDENTS

You have the right to state your side of this matter before the judge.

To do so you must be in Court when the application is heard as shown below.

DATE: Thursday, August 24, 2016  
TIME: 10:00 A.M.  
WHERE: Law Courts Edmonton  
BEFORE WHOM: Justice D.R.G. Thomas

1. Applicants  
Maurice Stoney and his 10 living brothers and sisters.
2. Issue to be determined
  - (a) Addition of Maurice Stoney, Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty Jean Stoney, Gail Stoney Alma Stoney, Alva Stoney and Bryan Stoney as beneficiaries of these Trusts.
3. Grounds for request and relief sought
  - (a) William Stoney, father to these Applicants was a member of Sawridge ;

(b) Each of the Applicants was a member of Sawridge;

(c) William Stoney and his children were removed from the Sawridge Pay List by Indian Affairs as being enfranchised;

(d) The *Constitution Act, 1982*, section 35 recognized all *Treaty* rights as constitutional rights on April 17, 1982 so that every enfranchised *Treaty No. 8* members had constitutional rights recognized from then;

(e) Maurice Stoney and his brothers and sisters are all members of Sawridge and beneficiaries under the definitions of beneficiaries of the 1982 and 1985 Trusts;

4. **Documents Filed in this application**

(a) Affidavit of Maurice Stoney

5. **Applicable Statutes**

(a) *Constitution Act, 1982*, section 35.

(b) *Treaty No. 8*

(c) *Trustee Act*, RSA 2000, c T-8

(d) *Indian Act*, RSC 1985, c. I-5.

6. **Any irregularity complained of or objection relied on:**

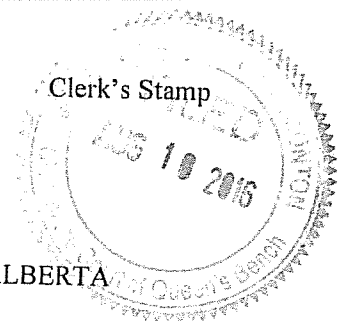
7. **How the application is proposed to be heard or considered:**

In chambers before Mr. Justice D.R.G. Thomas, the case management Justice assigned to this file.

**WARNING**

If you do not come to Court either in person or by your lawyer, the court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

COURT FILE NO.: 1103 14112  
COURT  
JUDICIAL CENTRE: EDMONTON



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

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

DOCUMENT: AFFIDAVIT OF Maurice Felix Stoney

ADDRESS FOR  
SERVICE AND  
CONTACT INFORMATION  
OF PARTY FILING THIS  
DOCUMENT

DLA PIPER (CANADA) LLP  
1201 Scotia 2 Tower  
10060 Jasper Avenue NW  
Edmonton, AB, T5J 4E5  
Attn: Priscilla Kennedy  
Tel: 780.429.6830  
Fax: 780.702.4383

Sworn May 17, 2016.

I, Maurice Stoney, of Slave Lake in the Province of Alberta MAKE OATH AND SAY:

1. All of my brothers and sisters were born to our parents William and Margaret Stoney who were both members of the Sawridge First Nation, and as such I have knowledge of the matters deposed to in this Affidavit unless stated to be made on information and belief, in which case, I do verily believe them to be true.
2. Aline Huzar and June Kolowsky are my cousins. Our grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895, attached as **Exhibit "A"** is the list of Kinodayoo's Band, Sawridge showing Johnny Stony as number 18. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band.



3. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* and attached as **Exhibit "B"** are letters dated April 6, 1903 and April 15, 1903 to the Deputy Superintendent General of Indian Affairs; attached as **Exhibit "C"** is a letter dated April 16, 1903 from Indian Affairs; attached as **Exhibit "D"** is a letter dated April 17, 1903 from Indian Affairs; attached as **Exhibit "E"** is a letter dated December 9, 1911 from the Assistant Indian Agent; attached as **Exhibit "F"** is a copy of a letter dated April 18, 1913; attached as **Exhibit "G"** is a copy of a letter dated September 9, 1912; and as **Exhibit "H"** is a copy of a letter dated August 19, 1920.
4. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8* where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920. It does not appear that Johnny Stoney agreed to this.
6. My father was William Stoney, was the son of Johnny Stoney, and he and my mother were members of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.
7. In 1944, my father William Stoney and all of his family including me, along with other members of Sawridge Band, were enfranchised because he was working and attached as **Exhibit "I"** is a copy of enfranchisement documents.
8. My parents had 15 children, 10 are still alive today: Billy born in 1940; myself born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. I have been involved with the Sawridge First Nation all of my life.
9. I applied to Sawridge in 1985 for recognition of my membership because I had been removed from membership by Canada after the enfranchisement of my father. I remained

a descendant of the signatories to *Treaty No. 8* throughout all of the years when Canada treated me as "enfranchised". In 1982 when section 35 was passed as part of the *Constitution*, all of our family's *treaty rights* were recognized. I believe I am an acquired rights member recognized as an Registered Indian in 1985 when Sawridge's membership was governed by Indian Affairs. The Sawridge Membership Rules did not become effective until September 26, 1985 when the Minister of Indian Affairs and Northern Development wrote to Chief Walter Twinn reminding him that he must comply with recognition of all "acquired rights" members.

10. In March 1993, the Lesser Slave Lake Indian Regional Council, which included Sawridge Band, passed a Band Council Resolution, attached as **Exhibit "J"** to require Canada to provide lands in severalty as provided in *Treaty No. 8*, attached as **Exhibit "K"**, to all persons reinstated as Indians under Bill C-31.
11. In July, 1995, my cousins Aline Huzar and June Kolowsky, myself, and a number of other persons filed a Federal Court proceeding against Canada and Chief Walter Twinn *Huzar v. Canada*, Federal Court File No. T-1529-95, seeking to have our membership in the Sawridge Band be recognized and seeking a declaration that the membership application and rules of Sawridge were discriminatory and exclusionary. In *Huzar v. Canada*, [1997] F.C.J. 1556, Prothonotary Hargrave found that Sawridge had only accepted two individuals into band membership, both sisters of the Chief Walter Twinn, although there had been more than 200 applications. In June 2000, the Federal Court of Appeal (2000 CanLII 15589) struck this action as a claim for judicial review improperly brought as an action.
12. All of our applications for membership in Sawridge were ignored. On June 22, 2010 we submitted new applications and I called Sawridge many times thereafter to find out what was happening on my application. Finally in December, 2011 I was advised that the Council of Sawridge First Nation had denied my application for membership and attached as **Exhibit "L"** is the Registered letter from Sawridge. On December 19, 2011, I appealed this decision.
13. The Appeal Committee heard the appeal for my membership on April 21, 2012 with the appeal brought by my cousins Aline and June and provided their decision on May 7, 2012

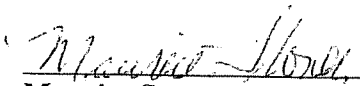
upholding the decision of Chief and Council denying our membership. We filed a judicial review of this appeal decision in the Federal Court on May 11, 2012. This judicial review was denied.

14. For thirty years, I have been seeking to have my membership in Sawridge be recognized. I was born on the Sawridge Reserve and was a member until at least 1944 when my father was enfranchised. All aboriginal and treaty rights were recognized and affirmed in 1982 and enfranchisement was removed in 1985 in Bill C-31 in order to have the *Indian Act* comply with the *Constitution Act, 1982*. I have lived beside the Sawridge Reserve all of my life. My grandfather's lands are now part of the Reserve.

SWORN BEFORE ME at the City )  
of Edmonton, in the Province of Alberta )  
this 17 day of May, 2016 )  
)  
)  
)

  
A Commissioner for Oaths in and for the  
Province of Alberta

Priscilla E.S.J. Kennedy  
Barrister & Solicitor

  
Maurice Stoney



Our File: 51433 JLH

**DELIVERED**

August 16, 2016

Reynolds Mirth Richards & Farmer LLP  
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Calgary, AB, Canada T2P 0R3

**Attention: Nancy Golding, Q.C.**

Dear Sir and Mesdames:

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

In relations to the above noted matter, please find enclosed for service upon Reynolds Mirth Richards & Farmer LLP, Dentons LLP and McLennan Ross LLP the Reply Brief of the Public

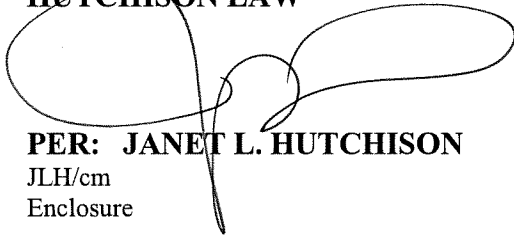
Trustee of Alberta in relation to the Proposed Distribution Arrangement.

As a professional courtesy, we have also delivered copies to the other counsel listed above, who we understand may be appearing on August 24, 2016.

Thank you for your attention to this matter.

Yours truly,

**HUTCHISON LAW**

A large, stylized handwritten signature in black ink, appearing to read 'JLH', is written over the text 'HUTCHISON LAW' and 'PER: JANET L. HUTCHISON'.

**PER: JANET L. HUTCHISON**

JLH/cm

Enclosure

cc: Client

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