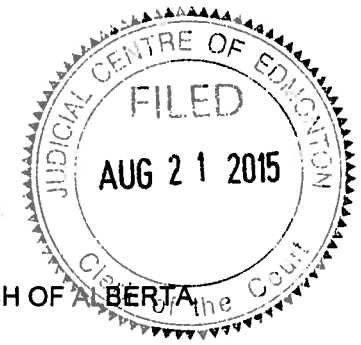

Clerk's stamp:	
COURT FILE NUMBER	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985
APPLICANTS	ROLAND TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, CATHERINE TWINN, as trustees for the 1985 Sawridge Trust
DOCUMENT	**REPLY BRIEF OF THE TRUSTEES FOR SPECIAL CHAMBERS CASE MANAGEMENT MEETING ON SEPTEMBER 2 AND 3, 2015: DOCUMENT PRODUCTION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5 Attention: Doris C.E. Bonora Telephone: (780) 423-7100 Fax: (780) 423-7276 File No: 551860-001-DCEB Reynolds Mirth Richards & Farmer LLP 3200, 10180 101 Street Edmonton AB T5J 3W8 Attention: Marco S. Poretti Telephone: (780) 497-3325 Fax: (780) 429-3044

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DOCUMENT PRODUCTION: SAWRIDGE TRUSTEE

1. The Office of the Public Trustee of Alberta ('Public Trustee") seeks an Order requesting the Court's advice and direction regarding the production of records as set out in the amended application filed by the Office of the Public Trustee ("Public Trustee").

2. The trustees of the 1985 Sawridge Trust (the "trustees") have offered to prepare an affidavit of records in accordance with the *Rules of Court*. The trustees provided a letter which is attached hereto at **[Tab 1]** detailing the offer to prepare such an affidavit.

3. Specifically the Trustees offered :

   (a) The trustees will prepare and serve an Affidavit of Records in compliance with Rule 5.5-5.9 of the Alberta Rules of Court.

   (b) The trustees will provide the Public Trustee with an affidavit which will detail all of the relevant and material documents in relation to the issues raised in action No 1103 14112 which are in the possession of trustees. The trustee's will abide by the definition of relevant and material as such is defined in Rule 5.2.

   (c) The trustees further agreed to be bound by Rule 5.10 such that they will provide notice of any records that come to the attention of the trustees subsequent to service of the Affidavit of Record.

4. We ask the Court to accept this provision in full satisfaction of the application made by the Public Trustee in relation to the production of documents by the trustees.

DOCUMENT PRODUCTION: SAWRIDGE FIRST NATION ("FIRST NATION")

5. We wish to provide support for the submissions of the First Nation.

6. The Public Trustee has relied heavily on comments made by this Court in respect of the inquiry that the Public Trustee may make in respect of the membership processes of the Sawridge First Nation.

7. All parties to the litigation should be mindful of the costs of litigation.

8. All parties to the litigation must also be mindful of the matter at issue. The matter at issue is how to define the beneficiaries of the trust to remove the discriminatory nature of the current definition.

9. In the Reasons for Judgment, the Court decided that the Public Trustee could make inquiries to examine the Band's membership definition and application processes, provided that the

investigation was appropriate to evaluate the proposed amendments to the 1985 Sawridge Trust and provided that the result of the investigation did not duplicate the exclusive jurisdiction of the Federal Court to order relief against the Sawridge Band Chief and Council. The Court confirmed that it did not have the jurisdiction to order a judicial review remedy against the First Nation.

1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365, at paras. 53 – 55

10. In considering the membership process, the trustees submit for review by this Court the decisions involving the membership applications of Maurice Felix Stoney, Aline Huzar and June Kosky ("Stoney Applicants"). Their cases are indicative of the process of membership.

11. The Stoney Applicants have appealed to various tribunals and all levels of the Federal Court. The comments of the various courts are instructive. They have also appealed their cases for membership to the Canadian Human Rights Commission (CHRC). Their application to the CHRC was denied.

12. In June 2000, the three Stoney Applicants were before the Federal Court of Appeal in respect their action to be declared members of the First Nation. The Federal Court found that the Stoney Applicants could not seek relief against the First Nation and until the First Nation's membership rules were found to be invalid, the Federal Court found the membership rules govern membership of the First Nation. Finally the Federal Court found the Stoney Applicants had a right to apply for membership in the First Nation.

Huzar v. *Canada*, 2000 Carswell Nat 1132 **[Tab 2]**

13. After the dismissal at the Federal Court of Appeal, the three Stoney Applicants applied for membership in the First Nation and were denied (paras 5 to 7). The Stoney Applicant's appealed the denial of membership to the Federal Court on the basis of "fairness of the process followed" (paragraph 19). Their application was dismissed.

Maurice Felix Stoney, Applicant and *Sawridge First Nation*, Respondent 2013 FC 509 **[Tab 3]**

14. In paragraph 5 of the decision, the Federal Court reviews the time within which the applications for membership were reviewed. The Stoney Applicants maintained they had an automatic right to be made members and the Federal Court found that they did not have such a right. (Parag 7-15). The Court goes on to refer to the decision of the Federal Court in 2000 in which the Court found that until the membership rules are found to be invalid, those rules govern membership of the First Nation. (paragraph 16) **[Tab 3]**

15. It should be noted that the membership rules are in effect and no court has found them to be invalid. Thus this Court can rely on the membership rules in respect of setting the definition.

16. The Federal Court then finds that the right of the Stoney Applicants to re-argue the question of their automatic right to membership is barred by the principle of issue estoppel. We submit that this should be considered in the extensive document production requested. We ask this Court to consider what conclusions will be drawn from the production and we submit that this Court will be bound by the doctrine of issue estoppel in respect of any membership decision already made. (paragraph 17) **[Tab 3].**

17. The Federal Court then considered the Stoney Applicants right to appeal their membership application rejection.

18. The appeal was made on the basis of the "fairness of the decision" and the Stoney Applicant's based their argument on institutional bias. The Federal Court found that it could make no inference of bias based on the limited number of new memberships that have been granted. The Federal Court considered the appearance of bias in respect of the Chief and two members of the First Nation Council in the work of the appeal committee and said there was no evidence to make a finding to ascertain bias. (paragraph 19-20) **[Tab 3]**

19. Finally the Federal Court made reference to the fact that institutional bias in the context of small First Nations with numerous family connections is nuanced and accepted citing, *Sweetgrass First Nation* v. *Favel* 2007 FC 271 **[Tab 4]** and *Lavallee* v. *Louison* [1999] FCJ No. 1350 **[Tab 5].**

20. The Federal Court then went on to refer to the Charter challenge and said that was there nothing in the evidence that supported a finding of a breach of the Charter.(paragraph 22) **[Tab 3]**

21. The Stoney Applicants then made an application to the Canadian Human Rights Commission ("CHRC") and their application was denied. The decisions of the CHRC are attached. **[Tab 6]**

22. The CHRC says that the Supreme Court in Figliola held that the human rights commission must respect the finality of decisions made by other courts when the issues in respect of human rights issues are raised in both processes. The CRHC said: "In this instance the other decision makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised.

Record of decisions 40/41 CHRC ***[Tab 6]***

23. This Court has confirmed that it does not have the jurisdiction to order a judicial review remedy against the First Nation in respect of its membership process. Any concerns with respect to a

specific membership application must be dealt with through the process that has been established by the Sawridge First Nation, which includes an appeal process and which allows for judicial review of any decisions by the Federal Court.

24. Ample evidence has been provided in the undertakings of the results of the process. See undertakings at **[Tab 7]**.

25. Sawridge First Nation has been fully cooperative in responding to relevant and material requests for information. See undertakings at **[Tab 7].**

CONCLUSION

26. There should be no further direction with respect to the trustees as the offer to produce an Affidavit of Records should be sufficient.

27. It is submitted that there is ample evidence produced to date that allows this Court to determine if the membership process is working. The trustees will produce an Affidavit of Records that will provide evidence. The First Nation has been very generous in answering questions without releasing privacy. There are binding decisions of the Federal Court, the Federal Court of Appeal, and of the CHRC which have addressed fairness of the process, bias, charter challenge and human rights violations. Any request for production should be weighed against the cost and the anticipated outcome. This Court does not need the production of thousands of records in order to change the definition of Beneficiary in the Sawridge Trust to remove discriminating provisions. This Application against the First Nation should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21 DAY OF AUGUST, 2015.

DENTONS CANADA LLP
REYNOLDS MIRTH RICHARDS & FARMER LLP

PER: _____
DORIS BONORA
MARCO S. PORETTI

SOLICITORS FOR THE TRUSTEES

LIST OF AUTHORITIES

1. Letter Detailing The Offer To Prepare An Affidavit;
2. Huzar V. Canada 2000 Carswell Nat 1132'
3. Maurice Felix Stoney, Applicant And Sawridge First Nation, Respondent 2013 Fc 509
4. Sweetgrass First Nation V. Favel 2007 Fc 271
5. Lavallee V. Louison [1999] Fcj No. 1350
6. Record Of Decisions Of The Canadian Human Rights Commission
7. Undertakings

TAB 1

DENTONS

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August 12, 2015

File No.: 551860-1

FAX: 780-426-1293

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

Attention: Janet Hutchison

Dear Madam:

RE: Sawridge Band Inter Vivos Settlement
(1985 Sawridge Trust)
Action No.: 1103 14112
Application for the production of documents

In response to the Amended Application by the Office of the Public Trustee of Alberta filed July 16, 2015, we wish to propose a resolution to the application in respect of the remedies sought against the Sawridge Trustees as follows:

1. The Sawridge Trustees will prepare and serve an Affidavit of Records in compliance with Rule 5.5- 5.9 of the Alberta Rules of Court.

2. The Trustees will provide the Public Trustee with an affidavit which will detail all of the relevant and material documents in relation to the issues raised in action No 1103 14112 that are in the possession of Sawridge Trustees. We will abide by the definition of relevant and material as such is defined in Rule 5.2. We will disclose all records that are or have been under the control of the Sawridge Trustees.

3. We further agree to be bound by Rule 5.10 such that we will provide notice of any records that come to the attention of Sawridge subsequent to service of the Affidavit of records.

4. In respect of a litigation plan, we are prepared to review a plan which you propose. There is no plan proposed at this time.

5. We understand that the remedies set out in paragraph 5 and 6 of your application are adjourned to follow the production of documents. We agree with this adjournment.

We believe these are all the remedies that you are seeking against the Sawridge Trustees. If that is not the case, then we would ask that you advise us immediately such that we have the opportunity to determine if a settlement of the issues is possible or if it will be necessary to file a brief on any matters raised.

Please advise by **August 17, 2015** if the offer made above is acceptable.

Please be advised that this letter is sent on a WITH PREJUDICE basis such that the contents may be revealed to the court in the application set for September 2 and 3, 2015.

Yours truly,
Dentons Canada LLP

Doris Bonora

DCEB/sh

Cc Bryan & Co, McLennan Ross, Bennett Jones, Parlee McLaws,

TAB 2

Original
2000 CarswellNat 1132
Federal Court of Appeal

Huzar v. Canada

2000 CarswellNat 1132, 2000 CarswellNat 5603, [2000] F.C.J. No. 873, 258 N.R. 246

Her Majesty the Queen, in Right of Canada, Department of Indian and Northern Affairs Canada and Walter Patrick Twinn, as Chief of the Sawridge Indian Band and the Sawridge Indian Band, Defendants (Appellants) and Aline Elizabeth Huzar, June Martha Kolosky, William Bartholomew McGillivray, Margaret Hazel Anne Blair, Clara Hebert, John Edward Joseph McGillivray, Maurice Stoney, Allen Austin McDonald, Lorna Jean Elizabeth McRee, Frances Mary Tees, Barbara Violet Miller (nee McDonald), Plaintiffs (Respondents)

Décary J.A., Evans J.A., Sexton J.A.

Judgment: June 13, 2000
Docket: A-326-98

Counsel: *Mr. Philip P. Healey*, for Defendants/Appellants.
Mr. Peter V. Abrametz, for Plaintiffs/Respondents.

Subject: Public; Civil Practice and Procedure

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Native law --- Bands and band government — Miscellaneous issues

Practice --- Pleadings — Amendment — Application to amend — Practice and procedure

Administrative law --- Action for declaration

Table of Authorities

Statutes considered:

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

s. 2(1) "federal board, commission or other tribunal" [rep. & sub. 1990, c. 8, s. 1(3)] — considered

s. 18(3) [en. 1990, c. 8, s. 4] — considered

s. 18.1 [en. 1990, c. 8, s. 5] — considered

APPEAL from order granting plaintiffs' motion to amend statement of claim and dismissing defendants' motion to strike the claim.

***Evans J.A.*:**

1 This is an appeal against an order of the Trial Division, dated May 6 th , 1998, in which the learned Motions Judge granted the respondents' motion to amend their statement of claim by adding paragraphs 38 and 39, and dismissed the motion of the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, to strike the statement of claim as disclosing no reasonable cause of action.

2 In our respectful opinion, the Motions Judge erred in law in permitting the respondents to amend and in not striking out the unamended statement of claim. The paragraphs amending the statement of claim allege that the Sawridge Indian Band rejected the respondents' membership applications by misapplying the Band membership rules (paragraph 38), and claim a declaration that the Band rules are discriminatory and exclusionary, and hence invalid (paragraph 39).

3 These paragraphs amount to a claim for declaratory or prerogative relief against the Band, which is a federal board, commission or other tribunal within the definition provided by section 2 of the *Federal Court Act*. By virtue of subsection 18(3) of that Act, declaratory or prerogative relief may only be sought against a federal board, commission or other tribunal on an application for judicial review under section 18.1. The claims contained in paragraphs 38 and 39 cannot therefore be included in a statement of claim.

4 It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.

5 It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

6 For these reasons, the appeal will be allowed with costs in this Court and in the Trial Division.

Appeal allowed.

TAB 3

Original
2013 FC 509, 2013 CF 509
Federal Court

Stoney v. Sawridge First Nation

2013 CarswellNat 1434, 2013 CarswellNat 2006, 2013 FC 509,
2013 CF 509, 228 A.C.W.S. (3d) 605, 432 F.T.R. 253 (Eng.)

Maurice Felix Stoney, Applicant and Sawridge First Nation, Respondent

Aline Elizabeth (McGillivray) Huzar and June Martha (McGillivray) Kolosky, Applicants and Sawridge First Nation, Respondent

R.L. Barnes J.

Heard: March 05, 2013
Judgment: May 15, 2013
Docket: T-923-12, T-922-12

Counsel: Priscilla Kennedy, for Applicants
Edward H. Molstad, for Respondent

Subject: Public

Related Abridgment Classifications
For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Headnote

Aboriginal law --- Government of Aboriginal people — Membership

Applicants were descendants of individuals who were at one time members of First Nation group, but who, either voluntarily or by operation of law, lost their band memberships — Applicants were excluded from membership in First Nation by chief and council — Appeal committee upheld chief and council's decision — Applicants brought application for judicial review — Application dismissed — Applicants did not qualify for automatic band membership — Applicants' only option was to apply for membership in accordance with membership rules promulgated by First Nation — Further, applicants were named as plaintiffs in previous action seeking mandatory relief requiring that their names be added to First Nation's membership list, and that action was struck out — Attempt by applicants to reargue question of their automatic right of membership in First Nation was barred by principle of issue estoppel — There was no evidence to make finding of institutional bias — There was no evidence to support finding of breach of s. 15 of Canadian Charter of Rights and Freedoms.

Table of Authorities

Cases considered by *R.L. Barnes J.*:

Danyluk v. Ainsworth Technologies Inc. (2001), 54 O.R. (3d) 214 (headnote only), 201 D.L.R. (4th) 193, 10 C.C.E.L. (3d) 1, 2001 C.L.L.C. 210-033, 272 N.R. 1, 149 O.A.C. 1, 7 C.P.C. (5th) 199, 34 Admin. L.R. (3d) 163, 2001 CarswellOnt 2434, 2001 CarswellOnt 2435, 2001 SCC 44, [2001] 2 S.C.R. 460 (S.C.C.) — referred to

Huzar v. Canada (2000), 2000 CarswellNat 5603, 258 N.R. 246, 2000 CarswellNat 1132 (Fed. C.A.) — referred to

Lavallee v. Louison (1999), 1999 CarswellNat 1771, 1999 CarswellNat 5553 (Fed. T.D.) — referred to

Sawridge Band v. R. (2003), 2003 FCT 347, 2003 CarswellNat 1212, 2003 CFPI 347, 2003 CarswellNat 2857, [2003] 3 C.N.L.R. 344, (sub nom. *Sawridge Indian Band v. Canada*) 232 F.T.R. 54, (sub nom. *Sawridge Band v. Canada*) [2003] 4 F.C. 748 (Fed. T.D.) — considered

Sawridge Band v. R. (2004), 2004 FCA 16, 2004 CarswellNat 130, (sub nom. *Sawridge Indian Band v. Canada*) 316 N.R. 332, 2004 CAF 16, 2004 CarswellNat 966, (sub nom. *Sawridge Indian Band v. Canada*) 247 F.T.R. 160 (note), [2004] 2 C.N.L.R. 316, (sub nom. *Sawridge Indian Band v. Canada*) [2004] 3 F.C.R. 274 (F.C.A.) — considered

Sweetgrass First Nation v. Favel (2007), 63 Admin. L.R. (4th) 207, 2007 CarswellNat 5180, 2007 CF 271, 2007 FC 271, 2007 CarswellNat 567 (F.C.) — referred to

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11
s. 15 — referred to

Federal Courts Act, R.S.C. 1985, c. F-7
s. 18.1 [en. 1990, c. 8, s. 5] — pursuant to

Gender Equity in Indian Registration Act, S.C. 2010, c. 18
Generally — referred to

Indian Act, R.S.C. 1927, c. 98
Generally — referred to

s. 6 — considered

s. 10(7) — considered

s. 114 — referred to

Indian Act, Act to amend the, S.C. 1985, c. 27
Generally — referred to

APPLICATION for judicial review of appeal committee's decision upholding chief and council's decision to exclude applicants from membership in First Nation.

R.L. Barnes J.:

1 This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7. The Applicants are all descendants of individuals who were at one time members of the Sawridge First Nation, but who, either voluntarily or by operation of the law at the time, lost their band memberships. As a result the Applicants were excluded from membership in the Sawridge First Nation. They now ask this Court to review the Sawridge First Nation Appeal Committee's decision to uphold the Sawridge Chief and Council's decision which denied their applications for membership.

2 The father of the Applicant Maurice Stoney was William J. Stoney. William Stoney was a member of the Sawridge First Nation but in April 1944 he applied to the Superintendent General of Indian Affairs to be enfranchised under section 114 of the *Indian Act*, c 98, RSC 1927. In consideration of payments totalling $871.35, William Stoney surrendered his Indian status and his membership in the Sawridge First Nation. By operation of the legislation, William Stoney's wife, Margaret Stoney, and their two children, Alvin Stoney and Maurice Stoney, were similarly enfranchised thereby losing their Indian status and their membership in the Sawridge First Nation.

3 The Applicants Aline Huzar and June Kolosky are sisters and, like Mr. Stoney, they are the grandchildren of Johnny Stoney. The mother of Ms. Huzar and Ms. Kolosky was Johnny Stoney's daughter, Mary Stoney. Mary Stoney married Simon McGillivray in 1921. Because of her marriage Mary Stoney lost both her Indian status and her membership in Sawridge by operation of law. When Ms. Huzar and Ms. Kolosky were born in 1941 and 1937 respectively Mary Stoney was not a member of the Sawridge Band First Nation and she did not reacquire membership before her death in 1979.

4 In 1985, with the passing of Bill C-31, *An Act to amend the Indian Act*, 33 - 34 Eliz II c 27, and pursuant to section 10 of the *Indian Act*, the Sawridge First Nation delivered its membership rules, supporting documentation and bylaws to the Deputy Minister of Indian and Northern Affairs, who accepted them on behalf of the Minister. The Minister subsequently informed Sawridge that notice would be given pursuant to subsection 10(7) of the *Indian Act* that the Sawridge First Nation had control of its membership. From that point on, membership in the Sawridge First Nation was determined based on the Sawridge Membership Rules.

5 Ms. Kolosky submitted her application for membership with the Sawridge First Nation on February 26, 2010. Ms. Huzar submitted her application on June 21, 2010. Mr. Stoney submitted his application on August 30, 2011. In letters dated December 7, 2011, the Applicants were informed that their membership applications had been reviewed by the First Nation Council, and it had been determined that they did not have any specific "right" to have their names entered in the Sawridge Membership List. The Council further stated that it was not compelled to exercise its discretion to add the Applicants' names to the Membership list, as it did not feel that their admission would be in the best interests and welfare of Sawridge.

6 After this determination, "Membership Processing Forms" were prepared that set out a "Summary of First Nation Councils Judgement". These forms were provided to the Applicants and outlined their connection and commitment to Sawridge, their knowledge of the First Nation, their character and lifestyle, and other considerations. In particular, the forms noted that the Applicants had not had any family in the Sawridge First Nation for generations and did not have any current relationship with the Band. Reference was also made to their involvement in a legal action commenced against the Sawridge First Nation in 1995 in which they sought damages for lost benefits, economic losses, and the "arrogant and high-handed manner in which Walter Patrick Twinn and the Sawridge Band of Indians has deliberately, and without cause, denied the Plaintiffs reinstatement as Band Members...". The 1995 action was ultimately unsuccessful. Although the Applicants were ordered to pay costs to the First Nation, those costs remained unpaid.

7 In accordance with section 12 of the Sawridge Membership Rules, the Applicants appealed the Council's decision arguing that they had an automatic right to membership as a result of the enactment of Bill C-31. On April 21, 2012 their appeals were heard before 21 Electors of the Sawridge First Nation, who made up the Appeal Committee. Following written and oral submissions by the Applicants and questions and comments from members of the Appeal Committee, it was unanimously decided that there were no grounds to set aside the decision of the Chief and Council. It is from the Appeal Committee's decision that this application for judicial review stems.

8 The Applicants maintain that they each have an automatic right of membership in the Sawridge First Nation. Mr. Stoney states at para 8 of his affidavit of May 22, 2012 that this right arises from the provisions of Bill C-31. Ms. Huzar and Ms. Kolosky also argue that they "were persons with the right to have their names entered in the [Sawridge] Band List" by virtue of section 6 of the *Indian Act*.

9 I accept that, if the Applicants had such an acquired right of membership by virtue of their ancestry, Sawridge had no right to refuse their membership applications: see *Sawridge Band v. R.*, 2004 FCA 16 (F.C.A.) at para 26, [2004] F.C.J. No. 77 (F.C.A.).

10 Ms. Huzar and Ms. Kolosky rely on the decisions in *Sawridge Band v. R.*, 2003 FCT 347, [2003] 4 F.C. 748 (Fed. T.D.), and *Sawridge Band v. R.*, 2004 FCA 16, [2004] F.C.J. No. 77 (F.C.A.) in support of their claims to automatic Sawridge membership. Those decisions, however, apply to women who had lost their Indian status and their band membership by virtue of marriages to non-Indian men and whose rights to reinstatement were clearly expressed in the amendments to the *Indian Act*, including Bill C-31. The question that remains is whether the descendants of Indian women who were also deprived of their right to band membership because of the inter-marriage of their mothers were intended to be protected by those same legislative amendments.

11 A plain reading of sections 6 and 7 of Bill C-31 indicates that Parliament intended only that persons who had their Indian status and band memberships directly removed by operation of law ought to have those memberships unconditionally restored. The only means by which the descendants of such persons could gain band membership (as distinct from regaining their Indian status) was to apply for it in accordance with a First Nation's approved membership rules. This distinction was, in fact, recognized by Justice James Hugessen in *Sawridge Band v. R.*, 2003 FCT 347 (Fed. T.D.) at paras 27 to 30, [2003] 4 F.C. 748 (Fed. T.D.):

> 27 Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."
>
> 28 The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombie stated as follows (*House of Commons Debates*, Vol. II, March 1, 1985, page 2644):
>
> > ... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.
>
> 29 A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombie referred to the difference between status and membership. He stated that, while those persons who lost their status and membership should have both restored, the descendants of those persons are only automatically entitled to status (*House of Commons Debates*, idem, at page 2645):
>
> > This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. [page766] While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and residency should be determined by the relationship with the Indian communities to which they belong.
>
> 30 Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved (*House of Commons Debates*, idem, at page 2646):
>
> > ... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow

> us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals...
>
> [Emphasis added]

This decision was upheld on appeal in *Sawridge Band v. R.*, 2004 FCA 16, [2004] F.C.J. No. 77 (F.C.A.).

12 The legislative balance referred to by Justice Hugessen is also reflected in the 2010 Legislative Summary of Bill C-3 titled the *Gender Equity in Indian Registration Act*, SC 2010, c 18. There the intent of Bill C-31 is described as follows:

> Bill C-31 severed status and band membership for the first time and authorized bands to control their own membership and enact their own membership codes (section 10). For those not exercising that option, the Department of Indian Affairs would maintain "Band Lists" (section 11). Under the legislation's complex scheme some registrants were granted automatic band membership, while others obtained only conditional membership. The former group included women who had lost status by marrying out and were reinstated under paragraph 6(1)(c). The latter group included their children, who acquired status under subsection 6(2).
>
> [Emphasis added]

13 While Mary Stoney would have an acquired right to Sawridge membership had she been alive when Bill C-31 was enacted, the same right did not accrue to her children. Simply put neither Ms. Huzar or Ms. Kolosky qualified under section 11 of Bill C-31 for automatic band membership. Their only option was to apply for membership in accordance with the membership rules promulgated by Sawridge.

14 This second generation cut-off rule has continued to attract criticism as is reflected in the Legislative Summary at p 13, para 34:

> 34. The divisiveness has been exacerbated by the Act's provisions related to band membership, under which not all new or reinstated registrants have been entitled to automatic membership. As previously mentioned, under provisions in Bill C-31, women who had "married out" and were reinstated did automatically become band members, but their children registered under subsection 6(2) have been eligible for conditional membership only. In light of the high volume of new or returning "Bill C-31 Indians" and the scarcity of reserve land, automatic membership did not necessarily translate into a right to reside on-reserve, creating another source of internal conflict.

Notwithstanding the above-noted criticism, the legislation is clear in its intent and does not support a claim by Ms. Huzar and Ms. Kolosky to automatic band membership.

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

16 Even if I am wrong in my interpretation of these legislative provisions, this application cannot be sustained at least in terms of the Applicants' claims to automatic band membership. All of the Applicants in this proceeding, among others, were named as Plaintiffs in an action filed in this Court on May 6, 1998 seeking mandatory relief requiring that their names be added to the Sawridge membership list. That action was struck out by the Federal Court of Appeal in a decision issued on June 13, 2000 for the following reasons:

> [4] It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.
>
> [5] It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against

> the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

See *Huzar v. Canada*, [2000] F.C.J. No. 873, 258 N.R. 246 (Fed. C.A.).

17 It is not open to a party to relitigate the same issue that was conclusively determined in an earlier proceeding. The attempt by these Applicants to reargue the question of their automatic right of membership in Sawridge is barred by the principle of issue estoppel: see *Danyluk v Ainsworth Technologies Inc.* 2001 SCC 44, [2001] 2 S.C.R. 460 (S.C.C.).

18 The Applicants are, nevertheless, fully entitled to challenge the lawfulness of the appeal decision rejecting their membership applications.

19 The Applicants did not challenge the reasonableness of the appeal decision but only the fairness of the process that was followed. Their argument is one of institutional bias and it is set out with considerable brevity at para 35 of the Huzar and Kolosky Memorandum of Fact and Law:

> 35. It is submitted that the total membership of Sawridge First Nation is small being in the range of 50 members. Only three applicants have been admitted to membership since 1985 and these three are (were) the sisters of deceased Chief, Walter Twinn. The Appeal Committee consisted of 21 of the members of Sawridge and three of these 21 were the Chief, Roland Twinn and Councillors, Justin Twinn and Winona Twin, who made the original decision appealed from.

20 In the absence of any other relevant evidence, no inference can be drawn from the limited number of new memberships that have been granted by Sawridge since 1985. While the apparent involvement of the Chief and two members of the Band Council in the work of the Appeal Committee might give rise to an appearance of bias, there is no evidence in the record that would permit the Court to make a finding one way or the other or to ascertain whether this issue was waived by the Applicants' failure to raise a concern at the time.

21 Indeed, it is surprising that this issue was not fully briefed by the Applicants in their affidavits or in their written and oral arguments. It is of equal concern that no cross-examinations were carried out to provide an evidentiary foundation for this allegation of institutional bias. The issue of institutional bias in the context of small First Nations with numerous family connections is nuanced and the issue cannot be resolved on the record before me: see *Sweetgrass First Nation v. Favel*, 2007 FC 271 (F.C.) at para 19, [2007] F.C.J. No. 347 (F.C.), and *Lavallee v. Louison*, [1999] F.C.J. No. 1350 (Fed. T.D.) at paras 34-35, (1999), 91 A.C.W.S. (3d) 337 (Fed. T.D.).

22 The same concern arises in connection with the allegation of a section 15 Charter breach. There is nothing in the evidence to support such a finding and it was not advanced in any serious way in the written or oral submissions. The record is completely inadequate to support such a claim to relief. There is also nothing in the record to establish that the Crown was provided with any notice of what constitutes a constitutional challenge to the *Indian Act*. Accordingly, this claim to relief cannot be sustained.

23 For the foregoing reasons these applications are dismissed with costs payable to the Respondent.

Judgment

THIS COURT'S JUDGMENT is that these applications are dismissed with costs payable to the Respondent.

Application dismissed.

End of Document

TAB 4

Lavallee v. Louison, 1999 CanLII 8714 (FC)

Date: 1999-09-03
Docket: T-1520-98
Citation: Lavallee v. Louison, 1999 CanLII 8714 (FC), <http://canlii.ca/t/4693> retrieved on 2015-08-20

Date: 19990903

Docket: T-1520-98

Ottawa, Ontario, the 3rd day of September 1999

PRESENT: THE HONOURABLE MADAME JUSTICE SHARLOW

BETWEEN:

TERRENCE LAVALLEE

Applicant

- and -

URBIN LOUISON, JACK STEVENSON, JENNIFER CYR,

GARY L. PELLETIER and TERRENCE R. PELLETIER

Respondents

ORDER

The application for judicial review is dismissed with costs.

Karen R. Sharlow

Judge

Date: 19990903

Docket: T-1520-98

BETWEEN:

TERRENCE LAVALLEE

Applicant

- and -

URBIN LOUISON, JACK STEVENSON, JENNIFER CYR,

GARY L. PELLETIER and TERRENCE R. PELLETIER

Respondents

REASONS FOR ORDER

SHARLOW J.

[1] The applicant Terrence Lavallee was one of five candidates for the office of Chief of the Cowessess Band in the April 25, 1998 election. He lost by one vote to the respondent Terrence Pelletier. Four appeals against that election resulted in two decisions adverse to Mr. Lavallee that were made by the other four respondents. He seeks judicial review of those decisions and asks that they be set aside.

Election law

[2] The Chief and Councillors of the Cowessess Band are not elected under the procedure in the *Indian Act*. Cowessess Band elections are governed by the *Cowessess Indian Reserve Election Act* and non-codified customs and traditions.

[3] The *Election Act* was enacted in 1980 and has never been amended. The provisions of the *Election Act* that are relevant to this application are reproduced below:

(2) ELIGIBILITY

[. . .]

7. All Candidates for Chief and Councillors must file nomination documentation to show non-conflict of interests. Candidates must be a resident of the Reserve for a period of one year before nomination.

[. . .]

(5) ELECTION PROCEDURE

1. In advance of the officials notice of any election, the Chief and Council of the Cowessess Reserve will appoint by Resolution an Electoral Officer and one (1) Deputy Electoral Officer.

2. Duties of the Electoral Officer will include:

(a) The posting of all notices and the distribution of all election information pursuant to this Act.

(b) To preside as Chairperson at the nomination meeting.

(c) To arrange for the facilities, to conduct the nomination meeting and the election.

[. . .]

3. Not less than fifteen (15) days prior to the due date of an election a voters list shall be posted at all Indian Government Offices of Cowessess Reserve. [. . .]

(6) APPEALS

1. Any candidate may appeal the results of the election within thirty (30) days from the day of the election.

2. Grounds for an appeal are restricted to:

a) Election practices which contravene this Act.

b) Illegal, corrupt or criminal practice on the part of the candidate which might discredit the high integrity of the Indian Government of Cowessess Reserve.

3. An appeal must be in writing to the Electoral Officer and contain details of the grounds upon which the appeal is made.

4. A Tribunal will rule on whether to allow or disallow an appeal hearing.

a) The Tribunal will be elected before the nomination meeting and will consist of persons from the Cowessess Reserve membership.

5. If it is judged there is sufficient evidence to warrant, the Tribunal may order a hearing.

6. An appeal hearing will take the form of a formal meeting consisting of:

a) The Electoral Officer.

b) The Tribunal.

7. The decision of the group (6.6) will represent the final decision regarding the election. The hearing may:

a) Uphold the election.

b) Order a new election for the position(s) appealed only.

[. . .]

(8) AMENDMENTS

1. Amendments can be made to this Elections Act from time to time by Resolution of the Chief and Council of Cowessess Reserve. Such Resolution to be presented to three (3) Band meetings.

a) Such Resolution to be read, and discussed on two consecutive meetings.
b) Such Resolution to be questioned, and voted on at the third and final reading.

[4] Section 6 of the *Election Act* deals with appeals to Band elections. It contemplates two different decision-making bodies. One is the Tribunal. It consists of three individuals whose principal task is to decide whether a notice of appeal warrants a hearing.

[5] An appeal that warrants a hearing is referred to a second group of four persons consisting of the Tribunal and the Chief Electoral Officer. The *Election Act* does not give this second group a name, but counsel have referred to it as the "Appeal Tribunal" and I will do the same.

Background Facts

[6] The Chief and Councillors of the Cowessess Band hold office for a term of three years. An election was due in the spring of 1998. At a Band Council meeting on March 3, 1998, the respondent Urbin Louison was appointed Chief Electoral Officer and Kim Delorme was appointed Deputy Electoral Officer for the upcoming election.

[7] Mr. Louison and Ms. Delorme had served in those positions for the 1995 Cowessess Band elections. Mr. Louison is a member of Kahkewistahaw First Nation. Ms. Delorme is a member of the Cowessess Band.

[8] In February, 1998, the respondents Jack Stevenson, Jennifer Cyr and Gary Pelletier received letters from then Chief Lionel Sparvier notifying them that their names had been suggested to sit on the Tribunal. The letter asked if they were willing to be appointed to the Tribunal. Others apparently received similar letters. Mr. Stevenson, Ms. Cyr and Mr. Pelletier indicated that they were willing to serve. At a Band Council meeting on March 16, 1998, those three were formally appointed as the Tribunal.

[9] The nomination meeting was held on April 3, 1998. The meeting was chaired by Mr. Louison as Chief Electoral Officer. The election was scheduled for April 25, 1998.

[10] Mr. Louison indicated at the nomination meeting that any Band member who wished to oppose the eligibility of any candidate could do so at that meeting.

[11] Mr. Lavallee alleges at the nomination meeting that Mr. Louison also said that objections relating to the residency of any candidate should be raised at the nomination meeting and could not be raised later. Mr. Louison denies saying anything to that effect. I do not need to decide whether he said that or not. Nothing Mr. Louison said at the nomination meeting could have precluded an appeal on the question of the eligibility of a candidate.[1]

[12] In any event, no issues were raised at the nomination meeting with respect to the eligibility of any candidate. Mr. Lavallee, Terrence Pelletier, Malcolm Delorme, Claudia Agecoutay and Henry Delorme were nominated as candidates for Chief. At the election on April 25, 1998, Terrence Pelletier beat Mr. Lavallee by one vote.

[13] After the election, four appeals were filed by the candidates for Chief, three by Mr. Lavallee and one by Mr. Delorme. It appears that there was also an attempt made by a number of band members to file an appeal containing substantially the same allegations that appeared in Mr. Lavallee's appeal. However, that was not treated as an appeal because the *Election Act* permits only candidates to appeal.

[14] The Tribunal met on May 26, 1998. Mr. Louison and Ms. Delorme also attended. The Tribunal made two important decisions at that meeting.

[15] One decision was that Mr. Lavallee's three appeals did not warrant a hearing. The Tribunal notified him of their decision by letter dated June 29, 1998. That letter states the reasons for their decision. The decision embodied in that letter is one of the decisions challenged by Mr. Lavallee in this application.

[16] The Tribunal also decided on May 26, 1998 that one of the issues raised in Mr. Delorme's appeal warranted a hearing. The Tribunal ordered the hearing on that issue to be held on June 10, 1998. Mr. Delorme had alleged in his notice of appeal that Mr. Lavallee was not a resident of the Cowessess Reserve for the year preceding the nomination meeting on April 3, 1998. The issue to be considered at the Delorme appeal hearing was whether Mr. Lavallee was eligible to stand for election for the office of Chief.

[17] The Appeal Tribunal convened on June 10, 1998 to hear the Delorme appeal. The proceedings were adjourned at Mr. Lavallee's request to June 12, 1998. Mr. Lavallee attended the hearing on June 12, 1998 and gave evidence, as did Mr. Delorme. The Appeal Tribunal concluded that Mr. Lavallee did not meet the residency requirement in section 2(7) of the *Election Act,* and ordered a new election for Chief to be held on July 3, 1998 among the other four candidates. That is the second decision challenged by Mr. Lavallee in this application.

[18] At the July 3, 1998 election, the respondent Terrence Pelletier was again elected as Chief. There were no appeals with respect to that election.

This application

[19] Mr. Lavallee seeks to quash the decision of the Appeal Tribunal made on June 12, 1998 and the decision of the Tribunal made on May 26, 1998 denying him a hearing on his appeals. Counsel for the respondents indicated at the hearing that Mr. Lavallee should have commenced a separate application for each decision to be reviewed. Technically that is correct. However, the respondents filed material dealing with the merits of both decisions without objecting to the form of the application. I indicated that I would treat the application as though it had been commenced correctly. If more than one application had been made, they would have been heard together in any event because they deal in large part with the same facts.

[20] A number of arguments are raised in Mr. Lavallee's application but at the hearing some of them were abandoned. I will discuss only the remaining issues.

Bias

[21] As Mr. Lavallee's allegations of bias relate to both of the decisions under review, I will deal with them together.

[22] Mr. Lavallee's application record contains evidence of his past dealings and relationships with each of the three Tribunal members. This evidence is the basis of an argument that there was a reasonable apprehension of bias. It is not completely clear whether this evidence is also intended to raise a question of actual bias, but I have assumed that it is. I will deal with the question of actual bias first.

(a) Actual bias

[23] The Band manager Lucy Pelletier is a sister of the respondent Jennifer Cyr and a first cousin of the respondents Gary Pelletier and Terrence Pelletier, the successful candidate for Chief. Mr. Lavallee says in his affidavit that while he was Chief in 1995, he was instrumental in relieving Lucy Pelletier from her position as Band manager prior to the 1995 election. Ms. Cyr's affidavit says that in 1995, Lucy Pelletier was simply laid off from her position prior to the 1995 election because she was planning to stand for election as Chief. The affidavit of Lionel Sparvier, who was Chief from 1989 to 1992 and again from 1995 to 1998, and a Councillor from 1992 to 1995, confirms Ms. Cyr's explanation.

[24] Mr. Lavallee says in his affidavit that the respondents Jennifer Cyr and Gary Pelletier are employees of the Band. According to the affidavits of Ms. Cyr and former Chief Sparvier, Ms. Cyr is not an employee of the Band, but of the Board of Trustees of the Treaty Land Entitlement Board. Gary Pelletier says in his affidavit that he is an employee of the Band, a Post Secondary Counsellor, but he reports to the Band Administrator and to the Post Secondary Program Board of Directors and is not under the direct supervision of the Chief and Councillors. The affidavit of former Chief Sparvier confirms Gary Pelletier's description of his position with the Band, and also says that in practice the Chief and Council took a hands off approach to Gary Pelletier's position.

[25] There is no evidence of any history of animosity or hostility between Ms. Cyr and Mr. Lavallee or between Gary Pelletier and Mr. Lavallee.

[26] The evidence summarized above does not support a claim of actual bias on the part of Ms. Cyr or Gary Pelletier.

[27] The facts relating to the dealings between Mr. Lavallee and the respondent Jack Stevenson are set out in an affidavit of Carole Lavallee, Mr. Lavallee's sister. She tells of an exchange between Mr. Stevenson and herself that she recalls having occurred in July of 1997. It appeared to her at the time that Mr. Stevenson was very angry with Mr. Lavallee over a land dispute. She says Mr. Stevenson was rude and yelled at her.

[28] Mr. Stevenson's affidavit explains the nature of the dispute he had with Mr. Lavallee and acknowledges that there was an exchange between himself and Ms. Lavallee, though he says it occurred in August of 1997. He says that he was merely trying to convince Ms. Lavallee to have Mr. Lavallee talk to him. Mr. Stevenson denies that he was rude or loud. He says that in any event, the dispute was resolved shortly afterward without incident, and he did not pursue the matter further with Mr. Lavallee. He denies bearing any grudge against Mr. Lavallee with respect to the dispute.

[29] There was no cross-examination on the affidavits of Mr. Stevenson or Carole Lavallee. The affidavit of Mr. Lavallee does not refer to this incident or the underlying dispute. Thus the evidence as to whether Mr. Stevenson was angry with Mr. Lavallee in the summer of 1997 is disputed, but even if Mr. Stevenson was angry at that time, there is no evidence to suggest that his anger survived until the spring of 1998 when the election occurred. Nor is there is any evidence that Mr. Stevenson took any action or said anything against Mr. Lavallee at or around the time of the election or in the months following the election. The evidence does not support a claim of actual bias against Mr. Stevenson.

(b) Reasonable apprehension of bias

[30] Even though I have found no evidence of actual bias, I must consider whether there is evidence that supports a claim of a reasonable apprehension of bias. Such a claim may be made out even if there is no proof of actual bias. The same issue was raised on different facts in *Sparvier v. Cowessess Indian Band #73*, [1994] 1 C.N.L.R. 182 (F.C.T.D.). In that case Rothstein J. summarized the relevant principles. He says at page 195-6:

> The test for a reasonable apprehension of bias was stated by de Grandpré J. in the *Committee for Justice and Liberty et al. v. National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at page 394:
>
> The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one, held by reasonable and rightminded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. . . ."
>
> The application of the test for reasonable apprehension of bias will depend on the nature of the tribunal in question. In *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623, Cory J. states at pages 638-639:
>
> It can be seen that there is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the board should be such that there could be no reasonable apprehension of bias with regard to their decision. At the other end of the scale are boards with popularly elected members such as those dealing with planning and development whose members are municipal councillors. With those boards, the standard will be much more lenient. In order to disqualify the members a challenging party must establish that there has been a pre-judgement of the matter to such an extent that any representations to the contrary would be futile. Administrative boards that deal with matters of policy will be closely comparable to the boards composed of municipal councillors. For those boards, a strict application of a reasonable apprehension of bias as a test might undermine the very role which has been entrusted to them by the legislature.
>
> In my view, the function of the Appeal Tribunal is adjudicative. Its duty is to decide appeals based on contraventions of the Cowessess Indian Reserve Elections Act or illegal, corrupt or criminal practices on the part of candidates. Even though Appeal

Tribunal members may not be legally trained, it appears that they are to decide, based on facts and their application of the Act or other Band customs, traditions or perhaps other laws, whether or not to uphold an election or order a new election. Members are not popularly elected. Although the Act uses the term "elected", members are selected by the Band Council.

This leads me to conclude that in the absence of compelling reasons, a more rigorous rather than a less strict application of the reasonable apprehension of bias test would be desirable in the case of the Appeal Tribunal. I will comment further on the question of compelling reasons to the contrary subsequently. I should add, however, that on the facts of this case, a less strict application of the test leads me to the same conclusion I would have reached had I applied the test in a more rigorous fashion.

[31] He went on to conclude in that case that there was sufficient evidence of actual bias with respect to one member of the Appeal Tribunal to set aside its decision. He then said, at page 198-199:

In view of this finding, it is unnecessary for me to decide the allegation by the applicant that the presence of Muriel Lavallée on the Appeal Tribunal also provided a basis for apprehension of bias. However, a few comments may nonetheless be in order. Muriel Lavallée rented farmland to the applicant before the Appeal Tribunal, Terry Lavallée, and there was thus a business relationship of landlord and tenant between them.

Szilard v. Szasz, 1954 CanLII 4 (SCC), [1955] S.C.R. 3, Rand J. stated at pages 6-7:

These authorities illustrate the nature and degree of business and personal relationships which raise such a doubt of impartiality as enables a party to an arbitration to challenge the tribunal set up. It is the probability or the reasoned suspicion of biased appraisal and judgment, unintended though it may be, that defeats the adjudication as its threshold. Each party, acting reasonably, is entitled to a sustained confidence in the independence of mind of those who are to sit in judgment on him and his affairs.

The Cowessess Indian Band is not large. The total number of electors who voted in the April 24, 1992 vote was 408. In respect of the size of the community in question, the Cowessess Band is, in my opinion, analogous with the voluntary religious associations to which Gonthier J. referred in *Hofer*,[2] *supra*, where at page 197 he stated:

However, given the close relationship amongst members of voluntary associations, it seems rather likely that members of the relevant tribunal will have had some previous contact with the issue in question, and given the structure of a voluntary association, it is almost inevitable that the decision makers will have at least an indirect interest in the question.

I indicated earlier that in view of the adjudicative function of the Appeal Tribunal, in the absence of compelling reasons to the contrary, a more rigorous application of the reasonable apprehension of bias test would be desirable. However, it does not appear to me to be realistic to expect members of the Appeal Tribunal, if they are residents of the reservation, to be completely without social, family or business contacts with a candidate in an election. At paragraph 15 of his affidavit dated June 16, 1992, Lionel Sparvier states:

15. THAT pursuant to Cowessess Band custom, the members of the tribunal are selected from members of the Cowessess Indian Band, and are invariably related to one

or more candidates for council or Chief due to the large number of candidates who run for elected positions traditionally.

If a rigorous test for reasonable apprehension of bias were applied, the membership of decision-making bodies such as the Appeal Tribunal, in bands of small populations, would constantly be challenged on grounds of bias stemming from a connection that a member of the decision-making body had with one or another of the potential candidates. Such a rigorous application of principles relating to the apprehension of bias could potentially lead to situations where the election process would be frustrated under the weight of these assertions. Such procedural frustration could, as stated by counsel for the respondents, be a danger to the process of autonomous elections of band governments.

It may be that to avoid these difficulties, Appeal Tribunal members could be selected from outside the residents of the reservation, perhaps on a reciprocal basis with other bands. Such a process may create difficulties of its own or be unsustainable in the context of an autonomous Indian band. These are policy matters to which the issues in this case call attention.

However, the Court must work within the framework of the existing law. I have added these comments because of the difficulties I see with the application of a more desirable strict bias test in the case of an adjudicative board such as the Appeal Tribunal, to the practicalities of inevitable social and business relationships in a small community such as the Cowessess Band.

[32] I agree with Rothstein J. that the role of the Tribunal and the Appeal Tribunal is primarily adjudicative, which suggests that the test for reasonable apprehension of bias should be assessed at the stricter end of the scale. However, such an ideal must yield to the practicalities, as well as the legal regime under consideration.

[33] In this regard it must be noted that the *Election Act* was enacted to deal with the electoral process of a Band that was small when the *Sparvier* case was decided, and remains small. The total Band membership was 2,838 of whom 1,593 were eligible to vote in the April 25, 1998 election. The material indicates that of the 137 people (excluding the Tribunal members, the Chief Electoral Officer and the Deputy Electoral Officer) who attended the nomination meeting, 5 stood for election as Chief and 37 stood for election as Councillor (there are 12 positions on Council). Only 493 people voted in the April 25, 1998 election. Yet the *Election Act* contemplates a three person Tribunal and requires that they be appointed from the Band membership. The pool of individuals who are likely to accept the responsibility of Tribunal members would normally consist of those who participate in elections, at least by voting.

[34] It is probable, given these numbers, that the Tribunal members are likely to be people who have family, social, work or business relationships with potential candidates. This is confirmed by former Chief Sparvier, who says this in his affidavit:

By custom the individuals who sit on the Appeal Tribunal are selected from members of the Cowessess First Nation, and invariably the members of the Appeal Tribunal have some social, family or business relationship with one or more of the many candidates who are typically nominated for Chief or for a position on Council.

[35] To put too much weight on such relationships in assessing the existence of a reasonable apprehension of bias with respect to the Tribunal or the Appeal Tribunal could

frustrate the objects of the *Election Act*, ultimately paralyzing the electoral appeal process altogether.

[36] With these considerations in mind, I have considered the facts summarized above in the context of the legal test for a reasonable apprehension of bias.

[37] The family ties of Jennifer Cyr and Gary Pelletier to the Band manager and Terrence Pelletier, and the fact that Gary Pelletier works for the Band in circumstances where he is not under the direct supervision of the Chief and Council, are the kinds of normal relationships that may normally be expected for Tribunal members. Such relationships do not create a reasonable apprehension of bias on the part of Ms. Cyr or Mr. Pelletier with respect to the election appeals under consideration.

[38] As to Mr. Stevenson, even if I were to accept that there was some evidence of personal hostility to Mr. Lavallee some months before the election, those events are too remote in subject matter and in time to support an allegation of a reasonable apprehension of bias on the part of Mr. Stevenson with respect to the April 25, 1998 election.

[39] It follows that the decisions of the Tribunal and the Appeal Tribunal cannot be set aside for actual bias or for a reasonable apprehension of bias.

The Resolution of the Chief and Council dated June 4, 1998

[40] Mr. Lavallee contends that the Chief and Council passed a resolution on June 4, 1998 with the intent of compelling the Appeal Tribunal to follow certain procedures with respect to the appeals filed against the April 25, 1998 election. Those procedures were not followed.

[41] One of the preambles to the June 4, 1998 resolution refers specifically to the appeals filed against the April 25, 1998 election and states that the Chief and Council "have reason to believe that the Appeal Tribunal will not follow these rules of procedural fairness or natural justice[3] that have been incorporated into the Cowessess Election Law." There is no evidence as to the factual basis for that statement.

[42] The procedures adopted by this resolution would require, among other things, that the Chief and Council and all candidates be given the right to participate in any appeal heard by the Appeal Tribunal. That would include the right to attend the hearing, give evidence, cross examine witnesses and submit argument. Each of those parties would be entitled to 14 days' notice of any meeting or hearing by the Appeal Tribunal to consider an appeal.

[43] There is no evidence as to how this resolution came to be passed. There is no evidence as to when or if any of the members of the Tribunal or the Appeal Tribunal had notice of this resolution. The affidavits of the Tribunal members do not respond to any allegations made by Mr. Lavallee with respect to this resolution. If the resolution was passed on the date it appears to have been signed, the Tribunal members could not have been aware of it on May 26, 1998, but might have been aware of it on June 10, 1998.

[44] Counsel for Mr. Lavallee argued that he cannot be expected to adduce evidence as to the background facts of this resolution, or whether the members of the Appeal

Tribunal knew of it. It was a resolution signed by Chief Terrence Pelletier, who defeated Mr. Lavallee in the April 25, 1998 election, and by 11 of the 12 members of the Council. I am asked to assume that for political reasons, those Band councillors would have no interest in assisting Mr. Lavallee in his application.

[45] Given that Mr. Lavallee referred to this resolution in his affidavit and none of the respondents commented on it in their affidavits, I infer that they knew of its existence on June 10, 1998, the date initially fixed for the Delorme appeal hearing, and on June 12, 1998, when the hearing occurred. The question, then, is whether the June 4, 1998 resolution was binding on the Appeal Tribunal and if so, what effect it has.

[46] Counsel for Mr. Lavallee argued that the resolution, once adopted, became part of the custom of the Cowessess Band with respect to elections and this was binding on the Appeal Tribunal. I do not agree. In the context of elections, a custom is a practice or tradition that has been followed so consistently in the past that common consent may be inferred. A band council resolution passed on June 4, 1998 cannot possibly be a custom with respect to an election held on April 25, 1998. The June 4, 1998 resolution cannot be given any effect as a Band custom. To have any effect at all, the resolution must be shown to be a valid exercise of the legal authority of the Band and Council.

[47] Counsel for Mr. Lavallee could not point to any legal authority by which the Chief and Council were authorized to make rules for the proceedings of the Appeal Tribunal. Absent such authority, the Appeal Tribunal is the master of its own procedure. That such a separation of authority has been recognized in practice is confirmed by former Chief Sparvier, who says this in his affidavit:

> Once appointed or elected the electoral officers and Appeal Tribunal operate independently of the Band Council and Chief, and the decision-making process they follow is independent of the Chief and Council.

[48] The right of the Appeal Tribunal to govern its own proceedings is subject only to the requirements of the *Election Act* and other Band customs, and the supervision of the Court where it is alleged that there has been a breach of the principles of procedural fairness or natural justice.

[49] The *Election Act* sets out the means by which it may be amended. An amendment requires the passing of a resolution by the Chief and Council as the first step of a process. Before the resolution can take effect as an amendment to the *Election Act*, it must be presented at three Band meetings. It must be read and discussed at two consecutive Band meetings and then questioned and voted on at a third and final meeting.

[50] It follows that the Chief and Council had no power to direct the Appeal Tribunal in any way, including matters of procedure, and that the resolution of June 4, 1998 did not amend the *Election Act*. The Appeal Tribunal did not err in ignoring the June 4, 1998 resolution when it met on June 10, 1998 and June 12, 1998.

[51] In reaching this conclusion I intend no criticism of the Chief and Council for attempting to improve the procedural aspects of election appeals. The problem is that their power to achieve that objective is constrained by the *Election Act* itself, which permits only the Band members to amend the *Election Act*. The June 4, 1998 resolution

would have bound the Appeal Tribunal if it had been adopted by the Band members as an amendment to the *Election Act* after being considered at three Band meetings as explained above.

[52] I will now consider the more specific arguments made by Mr. Lavallee with respect to decisions of May 26, 1998 and June 12, 1998.

The May 26, 1998 decision

[53] On May 26, 1998, the Tribunal decided that none of Mr. Lavallee's appeals warranted a hearing. That decision was made at a meeting attended by the Tribunal members, Mr. Louison and Ms. Delorme. Mr. Lavallee was not invited to attend that meeting and had no notice of it. The proceedings were not recorded, nor is there any other form of contemporaneous documentation of the proceedings. The only evidence about what happened at the May 26, 1998 meeting is found in the decision letter dated June 29, 1998 and the affidavits of Mr. Louison, Ms. Delorme, and the three Tribunal members.

[54] The decision to hold a hearing into Mr. Delorme's appeal was reduced to writing on the same day, in the form of a document dated May 26, 1998 entitled "Notification of Election Appeal Hearing - Residency." Mr. Delorme was served with that document on May 27, 1998. By contrast, the decision not to hold a hearing with respect to Mr. Lavallee's appeals was not reduced to writing until June 29, 1998, over one month after the decision was made.

[55] It is not alleged that the delay in notifying Mr. Lavallee of the disposition of his appeals caused any prejudice to Mr. Lavallee. None of the documents filed in support of Mr. Lavallee's application raised any issue with respect to the delay. However, counsel for Mr. Lavallee argued at the hearing that the delay casts doubt on the credibility of the Tribunal members and the fairness of the procedure they followed.

[56] While it is true that the affidavits filed in response to Mr. Lavallee's application offer no explanation for the delay, it is also true that Mr. Lavallee's application material is silent on the point. No cross-examinations were conducted by either party. In these circumstances, the delay in and by itself does not justify an adverse inference against the Tribunal members.

[57] Counsel for Mr. Lavallee also argued that the absence of contemporaneous documentation of the results of the May 26, 1998 meeting is a fatal flaw. While it would have been preferable to have such documentation, there is enough evidence of what happened at that meeting to enable me to deal with Mr. Lavallee's present application.

[58] In the context of the *Election Act*, the initial onus is on the appellant to set out in a notice of appeal all of the relevant facts and arguments in support of the appeal. The material indicates that both Mr. Lavallee and Mr. Delorme understood that requirement, because their notices of appeal are quite detailed. The proceedings on May 26, 1998 were held to permit the Tribunal to fulfil its obligation under the *Election Act* to consider the notices of appeal that had been filed and to decide whether an appeal was warranted. In

doing so, they were obliged to consider the facts alleged by the appellant and determine, from their own knowledge of the *Election Act* and Band customs with respect to elections, whether the allegations warranted a formal appeal hearing.

[59] It is clear from the reasons dated June 29, 1998 and the other material on the record before me that the Tribunal members considered, not only the notices of appeal and their knowledge of the *Election Act* and Band customs, but also their personal knowledge of what happened on election day, April 25, 1998.

[60] Counsel for Mr. Lavallee argued that the Tribunal acted improperly in permitting their personal knowledge of the facts to form the basis of their decision not to permit Mr. Lavallee to have a formal hearing with respect to his appeal. There is merit in this argument. In effect, the Tribunal members adduced factual evidence at their May 26, 1998 meeting that contradicted the factual allegations made by Mr. Lavallee, but they did not tell Mr. Lavallee about that evidence. In not giving Mr. Lavallee a chance to respond to that contradictory evidence, they deprived him of a fundamental right that made the entire May 26, 1998 proceeding unfair to him.

[61] It might have been preferable to have a Tribunal whose members had no factual knowledge about the election procedure followed on April 25, 1998, or other matters raised in the notices of appeal. That could have been achieved if the Tribunal members had stayed away from the election entirely, except to cast their own ballots. However, it was argued by counsel for the respondents that it is the custom for Tribunal members to attend elections, and also to be present during the ballot count. Therefore, it is not only unrealistic but contrary to Band custom to require Tribunal members to consider appeals without taking into account their own personal knowledge of the facts.

[62] The evidence adduced by the respondents does not prove that there is any such custom. It is clear that the Tribunal members did in fact attend the April 25, 1998 election and the ballot count, and no one objected to their presence. However, I see nothing in the record to suggest that the presence of the Tribunal was a Band custom, or that the Tribunal members considered themselves obliged to attend by virtue of having been appointed to the Tribunal.

[63] I do not suggest that the Tribunal members should have been forbidden from attending the election and the count. But having done so, it was unfair for them to then rely on their own personal knowledge when determining that Mr. Lavallee's appeals had no merit, without first giving him fair notice of the factual evidence that contradicted his allegations. He should have been allowed to respond to that contradictory evidence before the Tribunal decided whether any or all of his three ppeals warranted a hearing.

[64] I would go further and say that even if the contradictory evidence had come from someone other than the Tribunal members, such as a neutral observer like Mr. Louison as Chief Electoral Officer, Mr. Lavallee in fairness should have been told about that evidence, and should have been given an opportunity to respond to it before the Tribunal determined whether an appeal hearing was warranted.

[65] I do not think it would have been difficult or unduly time consuming to make Mr. Lavallee aware of the contradictory evidence before the May 26, 1998 meeting. He could

have been given a written summary of the contradictory evidence with an invitation to provide a written response within a reasonably short period of of time.

[66] Having said that, I would add that the Tribunal had no obligation to permit Mr. Lavallee to personally attend the meeting at which they considered his notice of appeal. As long as he had fair notice of all the contradictory evidence and a reasonable chance to respond, the procedure would have been fair even if he was permitted only to respond in writing.

[67] It is important to note that this extra procedural step is required only if there are disputed facts. It would not be required if, for example, the Tribunal had concluded that even if the factual allegations of the appellant were assumed to be true, no hearing is warranted.

[68] In summary, I have concluded that the Tribunal was wrong to accept the evidence of its own members at the May 26, 1998 meeting and, without notifying Mr. Lavallee of that evidence, rely on it to conclude that Mr. Lavallee's factual allegations could not be sustained. However, it does not follow that this error by the Tribunal, in and by itself, entitles Mr. Lavallee to a remedy. Even if the Tribunal had allowed Mr. Lavallee's appeal to proceed, the best outcome that Mr. Lavallee could have expected is a new election.

[69] There was in fact a new election held on July 3, 1998 in which Mr. Lavallee was not permitted to stand for election as Chief. That is because of the result of the June 12, 1998 hearing into Mr. Delorme's appeal. Unless that June 12, 1998 decision is fatally flawed, the errors of the Tribunal at the May 26, 1998 are moot.

The June 12, 1998 decision

[70] Mr. Lavallee raises several arguments relating specifically to the June 12, 1998 decision. He argues, first, that he was not given adequate notice of the June 12, 1998 hearing.

[71] Mr. Lavallee's evidence is that he received notice early in the morning on June 10, 1998 that a hearing of Mr. Delorme's appeal would proceed and that it would be held at 10:00 a.m. that day. That evidence is not contradicted. However, the late notice is not the fault of the Appeal Tribunal. The affidavit of Ms. Cyr says that she attempted to serve him with this notice at his home on the reserve once on May 27, 1998, twice on May 28, 1998, once on June 2, 1998, once on June 5, 1998 and three times on June 9, 1998. Mr. Lavallee was not at home on any of these occasions.

[72] The notice that was finally served on Mr. Lavallee on June 10, 1998 stated the basis of Mr. Delorme's appeal. The notice explained that Mr. Delorme was alleging that Mr. Lavallee was employed and lived in Regina during the year preceding the nomination meeting. At the date of service Mr. Lavallee was also given a copy of a letter that the Tribunal had sent to Mr. Delorme to give him notice of evidence contradicting Mr. Delorme's allegations. The letter noted that Mr. Lavallee had submitted a sworn affidavit declaring his residency, that he had resided in a house on the reserve for more than six years, that he had farmed his lands on the reserve and had a permit book for more than 22 years, that he appeared on federal and provincial voting lists as having an address on the reserve, and that his postal address is the closest post office to the reserve.

[73] Mr. Lavallee says that he attended the June 10, 1998 hearing and told the Appeal Tribunal that he could not possibly proceed on such short notice. He says that he was advised to re-attend for a hearing on June 12, 1998. He did re-attend but he says that he had been unable in the meantime to obtain the documentary evidence he required to establish that Mr. Delorme's allegations were wrong, and he had also been unable to instruct counsel. He does not say whether or not he requested a further adjournment on June 12, 1998. I infer that he did not.

[74] The affidavits of Mr. [redacted] and Gary Pelletier confirm that Mr. Lavallee attended the June 10, 1998 hearing, that he complained of the short notice, and that he asked for and was granted an adjournment to June 12, 1998.

[75] Mr. Pelletier's affidavit gives some details of the discussion about the adjournment. He says that he asked Mr. Lavallee if a forty-eight hour adjournment would be enough time for him to prepare, and Mr. Lavallee replied that it would. That is confirmed by the affidavits of Ms. Cyr and Mr. Stevenson.

[76] Mr. Pelletier also says that Mr. Lavallee did not indicate an intention to seek counsel or that he would need additional time for that purpose. According to Mr. Pelletier, if Mr. Lavallee had indicated that the forty-eight hour adjournment was insufficient, the Appeal Tribunal would have considered giving him more time. None of this is contradicted by Mr. Lavallee.

[77] Mr. Lavallee has failed to establish that he was not given enough notice of the June 12, 1998 hearing. He knew on June 10, 1998 the substance of the allegations that Mr. Delorme was making with respect to the question of his residence. I accept the uncontradicted evidence of Mr. Pelletier that Mr. Lavallee told the Appeal Tribunal that forty-eight hours would give him sufficient time to prepare, and that on June 12, 1998 he did not ask for more time. It is too late now for Mr. Lavallee to say that he did not have enough time to prepare for the June 12, 1998 hearing.

[78] It is also argued for Mr. Lavallee that the Appeal Tribunal's proceedings should be set aside because there is no transcript or other contemporaneous recording of the proceedings, and therefore it is impossible to conduct a judicial review of the proceedings. In my opinion no such record was necessary. Mr. Lavallee personally attended the hearings and had an opportunity to know all of the evidence that the Appeal Tribunal considered. The members of the Appeal Tribunal have submitted affidavits explaining how the proceedings were conducted and have appended the documentary evidence that was considered. Their evidence is not contradicted. They were not cross-examined on their affidavits.

[79] Finally, counsel for Mr. Lavallee argues that the Appeal Tribunal erred in determining the question of Mr. Lavallee's residence. He argues, first that the the Appeal Tribunal did not state what legal principles they applied in determining Mr. Lavallee's residency.

[80] There are many decided cases on the question of residence in many contexts, including income tax law, citizenship law and laws governing elections. The legal meaning of "residence" varies with the context it which it is used. I was referred to no case law on the meaning of residence in the context of Cowessess Band custom elections.

[81] Counsel for Mr. Lavalle did not suggest what legal test the Appeal Tribunal should have applied, nor did he argue that they did not apply the correct legal test. It seems to me that the Appeal Tribunal interpreted "residence" in its normal sense as the place where a person habitually lives, eats and sleeps. I have no basis for concluding that the Appeal Tribunal should have adopted a different meaning.

[82] Counsel for Mr. Lavallee also argues that the Appeal Tribunal reaches the wrong conclusion about his place of residence. In this application, Mr. Lavallee submitted evidence that is intended to prove that he met the residence requirement under the *Election Act*. However, the Appeal Tribunal and only the Appeal Tribunal has the authority to determine that question. All I can do is determine whether the conclusion of the Appeal Tribunal was reasonable, in the sense that it is correct in principle and supported by the evidence they had before them. I cannot take into account evidence that was not before the Appeal Tribunal, even evidence that Mr. Lavallee says could have been given to them if had been allowed more time to prepare.

[83] I have concluded, based on the affidavits of the members of the Appeal Tribunal and the documentary evidence they had before them, that their decision was reasonable.

Conclusion

[84] As I have found no error in the June 12, 1998 decision of the Appeal Tribunal that Mr. Lavallee was ineligible for election as Chief, that decision must stand. It follows that the result of the July 3, 1998 election must also stand.

[85] Mr. Lavallee's application with respect to the May 26, 1998 decision of the Tribunal is rendered moot. Therefore, even though errors were made with respect to that decision, Mr. Lavallee is not entitled to a remedy.

[86] This application will be dismissed with costs.

Karen R. Sharlow

Judge

Ottawa, Ontario

September 3, 1999

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[1] *Sparvier v. Cowessess Indian Band #73*, [1994] 1 C.N.L.R. 182 (F.C.T.D.)

[2] *Lakeside Hutterite Colony v. Hofer*, 1992 CanLII 37 (SCC), [1992] 3 S.C.R. 165.

[3]This refers to the rules of natural justice as explained in the *Sparvier* case (*supra*).

TAB 5

Date: 20070308

Docket: T-1774-06

Citation: 2007 FC 271

Ottawa, Ontario, March 8, 2007

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SWEETGRASS FIRST NATION

Applicant

and

VIRGINIA FAVEL and MYRON PASKEMIN, in their own capacities and as purporting to act as the Election Tribunal of Sweetgrass First Nation

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

Background

[1] By this application for judicial review, Sweetgrass First Nation (Sweetgrass) seeks a declaration with respect to the composition of an Election Tribunal (Tribunal) appointed under the *Sweetgrass Band Election Act* (Act) to investigate the propriety of a Band election conducted on November 13, 2005. This is the second application brought by Sweetgrass in support of Band Council Resolutions (BCR) purporting to alter the membership of the Tribunal. The first application was brought before me at a hearing in Saskatoon on May 15, 2006 seeking a declaration

that two of the three members of the Tribunal were disqualified from acting and had been lawfully replaced by the Band Council. On that occasion Sweetgrass sought to remove the Tribunal Chair, Lori Gollan, and Member, Myron Paskemin, on the basis of alleged appointment irregularities and, with respect to Ms. Gollan, for bias. In my decision rendered on June 20, 2006, I did grant the requested relief with respect to Ms. Gollan and I directed that the Band Council appoint her successor within 30 days: see *Sweetgrass First Nation v. Gollan, Favel and Paskemin*, [2006] F.C.J. No. 969, 2006 FC 778. In the case of Mr. Paskemin, I held that Sweetgrass had not established any basis for his removal from the Tribunal. The following passages from my earlier decision provide the rationale for dismissing the application by Sweetgrass with respect to Mr. Paskemin:

> [31] Sweetgrass has challenged the right of Mr. Paskemin to sit as a member of the Tribunal based upon a further technical argument. Sweetgrass does not say that he is disqualified from acting on the ground of bias. Sweetgrass contends that Mr. Paskemin's appointment was irregular and not in conformity with the Act and that the earlier appointment of Ms. Weenie should be restored. Some concern has also now been expressed about Mr. Paskemin's ability to dispassionately sit in judgment of the election in the face of this challenge to his membership on the Tribunal. Sweetgrass argues that there is benefit in having an effective sweep of the Tribunal with replacements who can be seen to be objective and impartial.
>
> ...
>
> [34] The attempt by the current Council to unseat Mr. Paskemin on technical grounds and to replace him with a person with such obvious family ties to the current Chief detracts from its argument that it is truly committed to a transparent and impartial appeal process.
>
> ...
>
> [36] Finally, I also do not accept that this challenge to Mr. Paskemin's right to continue as a member of the Tribunal is a basis

> for concern that he could not fairly carry out his responsibilities. Such an argument would disqualify any member of a tribunal simply because his right to sit was legally challenged. There can be no such basis for removing a member of an adjudicative body absent evidence of disqualifying bias. Here there was no evidence offered that Mr. Paskemin was biased, and there is no basis whatsoever for removing him from the Tribunal.
>
> [37] In the result, I do not accept the argument by Sweetgrass that Mr. Paskemin [...] should be removed on the basis of alleged appointment irregularities.

[2] In accordance with my decision, the Band Council did replace Ms. Gollan as Tribunal Chair with Mr. Robert Pelton, Q.C. by resolution dated July 4, 2006. Regretably, it would appear that Mr. Pelton was not advised of his appointment until August 1, 2006. To further complicate matters, on July 31, 2006 the Band Council purported to replace Mr. Paskemin on the Tribunal with Gordon Albert. The BCR supporting the removal of Mr. Paskemin stated that he was in a conflict of interest "having family members currently sitting on Sweetgrass First Nation Band Council namely Elsie Whitecalf and Archie Weenie, and Myron Paskemin has a family member namely Quinton Weenie who stood for election on November 13, 2005".

[3] The Record indicates that, notwithstanding the July 31, 2006 Band Council decision, Mr. Paskemin and the second member of the Tribunal (Virginia Favel) were strongly disposed to proceed with the investigation of the 2005 Band election. However, Mr. Pelton was not prepared to act as Chair until the issue of Mr. Paskemin's membership on the Tribunal was resolved. By agreement reached in late August, 2006, the parties resolved to put the issue of Mr. Paskemin's status on the Tribunal back before the Court on an expedited basis. The within application was filed

with the Court on October 4, 2006 and the matter was scheduled for argument in Saskatoon on February 22, 2007.

[4] In the application materials filed by Sweetgrass the factual basis for the Band Council decision purporting to remove Mr. Paskemin from the Tribunal was expanded from allegations of disqualifying family conflicts to include allegations concerning his prior financial dealings with the Band.

[5] In an affidavit deposed by the Band Administrator, Agnes Albert, it was asserted that Mr. Paskemin "is related to numerous candidates in the [November 13, 2005] election" including two nephews, a first cousin, a cousin once-removed, a niece and a grand-nephew. Ms. Albert's affidavit also claimed that in November, 2005, Mr. Paskemin was paid $300.00 for clearing brush and cleaning ditches (a fact conceded by Mr. Paskemin) and that, throughout 2005, a business with which he was involved (Paskemin & Associates Consulting) had benefited financially from a number of contracts issued "under the auspices of the previous Chief and Council". It is noteworthy that Ms. Albert's affidavit asserts that Paskemin & Associates Consulting was "his [Mr. Paskemin's] business" but she offers no further evidence to indicate the extent of any actual financial advantage accruing to him from the business.

[6] Mr. Paskemin's responding affidavit indicates that none of the election candidates related to him are in his immediate family and, in any event, most of the 1500 Band members "are related to each other in some way". The extensive familial linkages within Sweetgrass are confirmed in the

affidavit of Ms. Albert and highlighted by the relationships which existed between the Band Council's chosen replacement for Mr. Paskemin, Gordon Albert, and several election candidates. Ms. Albert's affidavit confirms the existence of Mr. Albert's familial relationships with election candidates similar to those of Mr. Paskemin including a cousin, a sister-in-law, and a half brother.

[7] With respect to the allegations concerning Mr. Paskemin's alleged financial interest in the affairs of Sweetgrass, he deposed that Paskemin & Associates Consulting was his daughter's business in which he was only a nominal partner – a business for which he did no work, from which he received no payment and which has since been dissolved. Mr. Paskemin's affidavit described his financial circumstances and the nature of his prior work for Sweetgrass in the following passage:

> 17. I have nothing to gain financially whether the current or previous administration is in power. I am retired and living on a small pension. Given my advanced age, I am not capable of hard manual labour. If a minor job were to come up (such as cleaning a ditch) and I was available, willing and capable of doing the job, I do not think I would be prejudiced or advantaged regardless of who was in power as, as stated, such incidental work tends to be awarded to whoever is around.
>
> 18. Lastly, the fact of any previous work I did for the Band would have been well known to the newly elected Band, yet no objection was made before or after the election, or to the Federal Court when the Band previously sought to remove me for perceived bias.

Issues

[8] a. Is Sweetgrass entitled to relitigate the issue of Mr. Paskemin's status as a member of the Tribunal having regard to the previous decision of this Court and to the principle of *res judicata*?

b. Did the Sweetgrass Band Council have any lawful basis for purporting to remove Mr. Paskemin from the Tribunal on the basis of apprehended bias?

c. What is an appropriate award of costs?

Analysis

[9] It is a long established principle of Canadian law that a party to litigation is not entitled to relitigate issues which have either been finally determined in judicial proceedings between the same parties or with respect to issues which could have been raised in such earlier proceedings. This rule requires a party to litigation to put its complete case before the Court and to include all matters which properly belong to the subject of the initial litigation. A fairly recent pronouncement of this principle can be found in the Federal Court of Appeal decision in *Apotex Inc. v. Merck and Co.*, [2002] F.C.J. No. 811, 2002 FCA 210:

> [28] It is also clear from the Supreme Court of Canada's judgments in *Maynard v. Maynard*, [1951] S.C.R. 346, and *Doering, supra*, that issue estoppel operates to preclude a party from litigating new issues which could have been raised, but were not, at the earlier hearing. The judgment of the Judicial Committee of the Privy Council in *Hoystead v. Commissioner of Taxation, supra*, at 165 is cited with approval in *Angle, Doering, and Maynard, supra*:
>
> > Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a

> principle of law that this cannot be permitted, and there is abundant authority reiterating that principle.
>
> It follows that a party will not be permitted to return to Court to litigate that which could have been raised in the earlier litigation before the Court.

[10] The above principle obviously applies to the issue raised on this application. In the earlier proceeding the eligibility of Mr. Paskemin to sit as a member of the Tribunal was squarely placed in issue by Sweetgrass in its pleadings and in the evidence and argument which were advanced on its behalf.

[11] Although the previous basis for challenging Mr. Paskemin's right to participate in the work of the Tribunal related to claimed irregularities in his appointment, there is no reason why the evidence now before me of alleged bias could not have been tendered in the earlier proceeding. Presumably Mr. Paskemin's family relationships with some of the election candidates were well-known within the Band. Similarly, Mr. Paskemin's business and employment history with the Band – limited as it was – would have been a matter of public knowledge. The fact that no one in the Band took the trouble to look for the related documentary evidence in the context of the earlier proceeding in this Court does not satisfy the heavy burden of establishing reasonable diligence necessary to bring new evidence in a fresh proceeding: see *Doering v. Grandview*, [1976] 2 S.C.R. 621.

[12] In the earlier proceeding, I was asked to rule on Mr. Paskemin's eligibility to sit as a member of the Tribunal and I confirmed that right. The fact that Sweetgrass failed to put its

strongest case forward in that proceeding did not give it the right to subsequently remove Mr. Paskemin from the Tribunal on the basis of evidence that was known or reasonably available to it.

[13] Mr. Paskemin is quite correct in his assertions that the earlier Judgment of this Court constituted a binding declaration confirming his right to sit on the Tribunal and Band Council had no right to remove him in the face of that declaration.

[14] While it is not strictly necessary to address the merits of the allegations of bias levelled against Mr. Paskemin, it would, I think, be prudent to do so if for no other reason than to remove any lingering concerns about that issue by the electors of Sweetgrass.

[15] The essence of the allegations against Mr. Paskemin is that he received $300.00 from Sweetgrass for clearing some brush and ditches in late 2005 and that he may have benefited from contract work given to a business in which he held an interest, namely Paskemin & Associates Consulting. Mr. Paskemin has stated under oath that he neither worked for nor benefited from his interest in Paskemin & Associates Consulting. He deposed that the business was run by his daughter and it has since been dissolved. That particular evidence was not challenged by Sweetgrass and I, therefore, accept it over the bare and unsubstantiated assertion by Sweetgrass that Paskemin & Associates Consulting was Mr. Paskemin's business.

[16] Mr. Paskemin's family relationships to a number of election candidates both successful or otherwise are not, of course, disputed.

[17] The question, then, is whether the above-noted evidence is sufficient to give rise to an apprehension of bias such that Mr. Paskemin would be disqualified from sitting on the Tribunal.

[18] Dealing first with Mr. Paskemin's family relationships, I am struck by the inconsistent approach taken by Band Council to Mr. Paskemin's eligibility from that adopted in the case of his proposed successor, Mr. Albert. The argument that Mr. Paskemin's family connections are sufficient to justify his removal but that the similar relationships of Mr. Albert can be safely ignored, indicates that Band Council's stated reasons for removing Mr. Paskemin are illegitimate. Indeed, one is left with the distinct impression that Band Council's decision to remove Mr. Paskemin was motivated by a political interest to delay the work of the Tribunal and not by any real concern about a perceived lack of impartiality.

[19] In any event, the kind of family relationships relied upon by Sweetgrass to justify Mr. Paskemin's removal do not give rise to any concern about bias. In a community of the size and composition of Sweetgrass, these types of distant family connections are inevitable. To give them the kind of effect proposed by the current Band Council would presumably disqualify almost every elector within Sweetgrass from sitting on the Tribunal. Here, I am guided by the common sense approach adopted by Justice Karon Sharlow in *Lavallee v. Louison,* [1999] F.C.J. No. 1350 where she held:

> [34] It is probable, given these numbers, that the Tribunal members are likely to be people who have family, social, work or business relationships with potential candidates. This is confirmed by former Chief Sparvier, who says this in his affidavit:

> By custom the individuals who sit on the Appeal Tribunal are selected from members of the Cowessess First Nation, and invariably the members of the Appeal Tribunal have some social, family or business relationship with one or more of the many candidates who are typically nominated for Chief or for a position on Council.
>
> [35] To put too much weight on such relationships in assessing the existence of a reasonable apprehension of bias with respect to the Tribunal or the Appeal Tribunal could frustrate the objects of the Election Act, ultimately paralyzing the electoral appeal process altogether.

[20] The same basic principle applies to Mr. Paskemin's prior financial dealings with Sweetgrass such as they were. His work for the Band in 2005 and the resulting compensation of $300.00 were presumably a fairly common experience within the community and would not give rise to any realistic concern that the recipient would not be able to render impartial service to the Tribunal. This is a significantly different situation than the one which gave rise to Ms. Gollan's disqualification. She had a substantial and long-standing financial relationship with Sweetgrass which included a close-working relationship with the previous Chief and Band Council. Mr. Paskemin had no expectation of continued employment by the Band and the amount of compensation which he did receive in 2005 was nominal. For the reasons previously stated, Mr. Paskemin's nominal relationship to Paskemin & Associates Consulting is of no legal significance.

[21] In conclusion, I reject unreservedly the allegations of bias levelled by Band Council against Mr. Paskemin. There is simply no factual basis to support a plausible argument that he would be

unable to participate fairly and impartially in the work of the Tribunal. This application for judicial review is, therefore, dismissed.

[22] I would be remiss if I did not express a concern about the delay in having the Tribunal carry out its mandate. The Band election was conducted more than fifteen (15) months ago and another election is scheduled for November of this year. It is essential that the Tribunal be permitted to complete its work and its inability to do so to date is undoubtedly of concern to many Sweetgrass electors having regard to the outstanding allegations of election impropriety following the 2005 election. Notwithstanding the submissions made by counsel for Mr. Paskemin, I do not believe that it is necessary for me to now direct the Tribunal to proceed in accordance with its obligations under the Act nor do I think it appropriate to direct Band Council to refrain from taking any further action which could delay the work of the Tribunal. Suffice it to say that this process should now move forward in a timely manner without further unwarranted interference from Band Council or from any other interested party.

[23] With respect to the question of costs, I will, once again, order that Mr. Paskemin be paid his legal costs on a solicitor-client scale. This is in conformity with my earlier decision.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is dismissed.

THIS COURT FURTHER ADJUDGES that legal costs on a solicitor-client scale be awarded to Mr. Paskemin.

"R. L. Barnes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1774-06
STYLE OF CAUSE:	Sweetgrass First Nation v. Favel, et al.
PLACE OF HEARING:	Saskatoon, SK
DATE OF HEARING:	February 22, 2007
REASONS FOR JUDGMENT AND JUDGMENT BY:	Justice Barnes
DATED:	March 8, 2007

APPEARANCES:

Mr. Richard W. Danyliuk	FOR THE APPLICANT
Mr. Terry J. Zakreski	FOR THE RESPONDENT

SOLICITORS OF RECORD:

McDougall Gauley LLP Barristers & Solicitors Box 638, 701 Broadway Avenue Saskatoon, Saskatchewan S7K 3L7	FOR THE APPLICANT
Mr. Terry J. Zakreski Stevenson Hood Thornton Beaubier LLP Barristers & Solicitors 500 - 321A, 21st Street East, Saskatoon, Saskatchewan S7K OC1	FOR THE RESPONDENT

TAB 6

Canadian human rights commission | Commission canadienne des droits de la personne

Record of Decision under Sections 40/41

PROTECTED

Complaint Information

File Number(s): 20140253

Date of Complaint(s): February 14, 2014

Complainant(s): Aline Huzar

Respondent(s): Sawridge First Nation

Decision under section 41

The Commission decided, for the reasons identified below, not to deal with the complaint, under paragraph 41(1)(d) of the *Canadian Human Rights Act*.

The Commission further decided that a decision under paragraph 41(1)(e) of the *Canadian Human Rights Act* is therefore unnecessary.

Material considered when decision made

The following documents were reviewed:

- Complaint form dated February 14, 2014
- Section 40/41 report dated January 21, 2015
- Complainant's submission received on February 20, 2015
- Respondent's submission dated March 23, 2015

Reasons for decision

The Commission adopts the following conclusion set out in the Section 40/41 Report:

The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in her application for judicial review when she alleged that the decision violated the Charter; however, she did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in Figliola held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.

Signature

April 15, 2015

Deputy Chief Commissioner ***Date***

Canadian human rights commission | Commission canadienne des droits de la personne

Record of Decision under Sections 40/41

PROTECTED

Complaint Information

File Number(s): 20140008

Date of Complaint(s): January 31, 2014

Complainant(s): Maurice Stoney

Respondent(s): Sawridge First Nation

Decision under section 41

The Commission decided, for the reasons identified below, not to deal with the complaint, under paragraph 41(1)(d) of the *Canadian Human Rights Act*.

The Commission further decided that a decision under paragraph 41(1)(e) of the *Canadian Human Rights Act* is therefore unnecessary.

Material considered when decision made

The following documents were reviewed:

- Complaint form dated January 31, 2014
- Section 40/41 report dated January 21, 2015
- Complainant's submission dated February 6, 2015
- Respondent's submission dated March 23, 2015

Reasons for decision

The Commission adopts the following conclusion set out in the Section 40/41 Report:

The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in his application for judicial review when he alleged that the decision violated the Charter; however, he did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in Figliola held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.

Signature

April 15, 2015

Deputy Chief Commissioner ***Date***

Canadian human rights commission | Commission canadienne des droits de la personne

Record of Decision under Sections 40/41

PROTECTED

Complaint Information

File Number(s): 20140251

Date of Complaint(s): February 14, 2014

Complainant(s): June Kolosky

Respondent(s): Sawridge First Nation

Decision under section 41

The Commission decided, for the reasons identified below, not to deal with the complaint, under paragraph 41(1)(d) of the *Canadian Human Rights Act*.

The Commission further decided that a decision under paragraph 41(1)(e) of the *Canadian Human Rights Act* is therefore unnecessary.

Material considered when decision made

The following documents were reviewed:

- Complaint form dated February 14, 2014
- Section 40/41 report dated January 21, 2015

Reasons for decision

The Commission adopts the following conclusion set out in the Section 40/41 Report:

The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in her application for judicial review when she alleged that the decision violated the Charter; however, she did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in Figliola held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.

Signature

April 15, 2015

Deputy Chief Commissioner ***Date***

TAB F

UNDERTAKINGS FROM

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

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

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

QUESTIONING ON AFFIDAVIT OF PAUL BUJOLD

Ms. D.C.E. Bonora for the Applicants
Ms. J. L. Hutchison for the Public Trustee
Susan Stelter Court Reporter
Edmonton, Alberta
27 & 28 May, 2014

UNDERTAKING NO. 1:

RE: PROVIDE LIST OF WHO SAT ON SAWRIDGE FIRST NATION CHIEF AND COUNCIL FROM 1985 UNTIL PRESENT

FROM	TO	CHIEF	COUNCILLOR	COUNCILLOR
Feb 85	Feb 87	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 87	Feb 89	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 89	Feb 91	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 91	Feb 93	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 93	Feb 95	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 95	Feb 97	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 97	8 Aug 97	Walter P. Twinn	Walter F. Twinn	George Twin
9 Aug 97	30 Oct 97	Walter P. Twinn	Walter F. Twinn	Roland Twinn
31 Oct 97	Feb 99	Bertha L'Hirondelle	Walter F. Twinn	Roland Twinn
Feb 99	Feb 01	Bertha L'Hirondelle	Walter F. Twinn	Roland Twinn
Feb 01	Feb 03	Bertha L'Hirondelle	Walter F. Twinn	Roland Twinn
Feb 03	Feb 05	Roland Twinn	Bertha L'Hirondelle	Ardell Twinn
Feb 05	Feb 07	Roland Twinn	Bertha L'Hirondelle	Justin Twin

Feb 07	Feb 09	Roland Twinn	Justin Twin	Winona Twin
Feb 09	Feb 11	Roland Twinn	Justin Twin	Winona Twin
Feb 11	Feb 15	Roland Twinn	Justin Twin	Winona Twin

UNDERTAKING NO. 2:

RE: ADVISE WHO THE SAWRIDGE TRUSTEES WERE FROM 1985 TO PRESENT, BREAKING IT UP INTO TERMS THAT THEY SAT IF THEY HAD MULTIPLE TERMS, AND PROVIDE DATE RANGE.

TRUST	TRUSTEE NAME	APPOINTMENT DATE	DEATH / RESIGNATION DATE
Sawridge Band Intervivos Settlement, 15 April 1985	Walter P. Twinn	15 April 1985	30 October 1997
	George V. Twin	15 April 1985	8 August 1997
	Samuel G. Twin	15 April 1985	28 June 1986
	Catherine Twinn	18 December 1986	On-going
	Chester Twin	18 December 1986	22 January 1996
	George V. Twin	18 December 1986	8 August 1997
	Walter F. Twin	18 December 1986	21 January 2014
	Bertha L'Hirondelle	21 November 1997	On-going
	Clara Midbo	19 March 2002	13 July 2014
	Roland C. Twinn	19 March 2002	On-going
	E. Justin Twin	21 January 2014	On-going
Sawridge Trust 15 August, 1986	Walter P. Twinn	15 August 1986	30 October 1997
	George V. Twin	15 August 1986	8 August 1997
	Catherine Twinn	15 August 1986	On-going
	Walter F. Twin	21 November 1997	21 January 2014
	Bertha L'Hirondelle	21 November 1997	On-going
	Clara Midbo	19 March 2002	13 July, 2014
	Roland C. Twinn	19 March 2002	On-going
	E. Justin Twin	21 January 2014	On-going

UNDERTAKING NO. 3:

RE: ADVISE OF ANY OTHER TITLES OR POSITIONS JUSTIN TWIN HOLDS UNDER THE SAWRIDGE FIRST NATION.

Provided by Mike McKinney. Member of the Assembly, Member of Council, Member of the Housing and Development Committee, Member of the By Law and Security Committee, Chair of the Sawridge First Nation Management Board, Director of 867075 Alberta Ltd. and Sawridge Resource Development Corp.

UNDERTAKING NO. 4:

RE: ADVISE WHETHER CATHERINE TWINN HOLDS ANY OTHER ROLES, TITLES, POSITIONS, OR FULFILLS ANY OTHER RESPONSIBILITIES FOR THE SAWRIDGE FIRST NATION OTHER THAN THAT PREVIOUSLY DISCUSSED.

Provided by Mike McKinney. Member of the Assembly, Member of the Education Committee, Member of the Membership Committee.

UNDERTAKING NO. 5:

RE: ADVISE WHICH YEAR BERTHA L'HIRONDELLE WAS ACCEPTED BACK INTO THE SAWRIDGE FIRST NATION AS A MEMBER.

Provided by Mike McKinney. 15 September 1993

UNDERTAKING NO. 6:

RE: ADVISE IF BERTHA L'HIRONDELLE HOLDS ANY OTHER ROLES, TITLES, POSITIONS OR HAS OTHER SIGNIFICANT RESPONSIBILITIES WITHIN THE SAWRIDGE FIRST NATION STRUCTURE.

Provided by Mike McKinney. Member of the Assembly, Member of the Elder's Commission, Member of the Membership Committee, Member of the Medical and Social Committee, Member of the Housing and Development Committee.

UNDERTAKING NO. 7:

RE: DETERMINE IF CLARA MIDBO HOLDS ANY OTHER ROLES, TITLES, POSITIONS OR RESPONSIBILITIES WITH SAWRIDGE FIRST NATION.

Clara Midbo is deceased. Her date of death was July 13, 2014.

UNDERTAKING NO. 8:

RE: ADVISE IF ROLAND TWINN HOLDS ANY OTHER ROLES, TITLES, POSITIONS OR RESPONSIBILITIES FOR SAWRIDGE FIRST NATION.

Provided by Mike McKinney. Member of the Assembly, Chief of the Council, Member of the Membership Committee, Member of the Special Projects Committee, Chair of the Audit and compensation Committee, President and Director of 867075 Alberta Ltd. and Sawridge Resource Development Corp.

UNDERTAKING NO. 9:

CONFIRM WHETHER WALTER FELIX TWIN HOLDS ANY OTHER ROLES, TITLES, POSITIONS OR HAS SIGNIFICANT RESPONSIBILITIES WITHIN THE SAWRIDGE FIRST NATION.

Walter Felix Twin has resigned as a Trustee as at January 21, 2014.

UNDERTAKING NO. 10:

RE: PROVIDE A COPY OF ANY POLICIES OR CONTRACTS OR OTHER DOCUMENTATION RELATING TO A CODE OF CONDUCT OR MATTERS SUCH AS CONFLICT OF INTEREST FOR THE TRUSTEES THEMSELVES.

See Code of Conduct attached at tab 10.

UNDERTAKING NO. 11:

RE: ON A BEST EFFORTS BASIS DETERMINE WHETHER THERE ARE ANY GUIDELINES, POLICIES, CONTRACTS OR ANY DOCUMENTATION RELATING TO CODES OF CONDUCT OR CONFLICT OF INTEREST IN RELATION TO THE MEMBERSHIP REVIEW COMMITTEE, MEMBERSHIP APPEAL COMMITTEE, OR CHIEF AND COUNCIL SPECIFIC TO MEMBERSHIP.

Provided by Mike McKinney. There are no other guidelines, policies, procedures, rules or any document relating to the code of conduct or conflict of interest in relation to the Membership Committee, the Membership Appeal Committee, or Chief and Council with regard to membership other than the *Constitution Act*, the *Governance Act* or the Membership Rules of the Sawridge First Nation. Attached are the *Constitution Act* and *Governance Act* at tab 11; the Membership Rules were previously provided.

UNDERTAKING NO. 12: (UNDER ADVISEMENT)

RE: PROVIDE COPIES OF ANY COMMUNICATIONS SENT TO MR. FENNELL, WHETHER THEY WERE BY LETTER, EMAIL, OR OTHERWISE, DOCUMENTING THE REQUEST THAT WAS BEING MADE.

Our letter to David Fennel is included at tab 12.

UNDERTAKING NO. 13:

RE: CONTACT MR. FENNELL AND ADVISE WHETHER OR NOT HE HAS ANY DOCUMENTATION OR ACCESS TO DOCUMENTATION OR IS AWARE OF ANOTHER RESOURCE OR SOURCE THAT MAY HAVE DOCUMENTS RELEVANT TO THE ASSETS THAT WERE HELD BY INDIVIDUALS AND THEN THE TRANSFER FROM THOSE INDIVIDUALS TO THE '82 TRUST, OR RELEVANT TO THE TRANSFER OF ASSETS FROM THE '82 TRUST TO THE '85 TRUST.

Our response from David Fennell is included at tab 13.

UNDERTAKING NO. 14: (REFUSED)

RE: PROVIDE COPIES OF ANY DOCUMENTATION SENT ATTEMPTING TO SEEK INFORMATION FROM DAVID JONES.

We e-mailed David Jones and received the response provided at tab 15.

UNDERTAKING NO. 15:

RE: CONTACT MR. JONES AND ADVISE WHETHER OR NOT HE HAS ACCESS TO DOCUMENTS THAT RELATE TO THE ASSETS HELD BY INDIVIDUALS THAT WERE ULTIMATELY TRANSFERRED TO THE 1982 TRUST, OR THE ASSETS THAT WERE THEN TRANSFERRED FROM THE 1982 TRUST TO THE 1985 TRUST.

Our response from David Jones is included at tab 15.

UNDERTAKING NO. 16:

RE: PRODUCE DOCUMENTS WITH RESPECT TO THE TRANFER OF THE ASSETS FROM INDIVIDUALS INTO THE 1982 TRUST AND THEN FROM THE 1982 TRUST TO THE 1985 TRUST, AND THE ADDITIONAL FINANCIAL STATEMENTS.

See included documents at tab 16. We believe many of these documents have been sent to you.

UNDERTAKING NO. 17: (UNDER ADVISEMENT)

RE: INQUIRE OF THE VARIOUS INDIVIDUALS AND SOURCES PREVIOUSLY DISCUSSED TO DETERMINE IF THEY HAVE ANY DOCUMENTATION OR INFORMATION THAT WOULD ASSIST IN UNDERSTANDING WHAT SPECIFIC ASSETS WERE INTENDED TO BE SETTLED AS THE CERTAIN ASSETS REFERRED TO IN EXHIBIT B, AND WHAT SPECIFIC ASSETS WERE INTENDED TO BE INCLUDED IN THE DECLARATION OF TRUST AT EXHIBIT A.

We have made inquiries and there is no listing of any "intended" assets. The only assets listed are those that were settled into the Trust.

UNDERTAKING NO. 18:

RE: INQUIRE OF CRA AND DEPARTMENT OF INDIAN AFFAIRS TO DETERMINE IF THEY HAVE DOCUMENTATION SHOWING WHAT ASSETS WERE INTENDED TO BE INCLUDED WITHIN THE TRUST SETTLEMENT AT EXHIBIT A, THE 1982 TRUST OR DECLARATION OF TRUST, AND ANY DOCUMENTATION INDICATING WHAT HAPPENED WITH THE TRANSFER FROM THE 1982 TRUST TO THE 1985 TRUST.

See attached letter from Department of Indian Affairs at tab 18. We confirm that it does not appear that any information was shared with the Department of Indian affairs regarding the transfer from 1982 to 1985, nor with regards to which assets were intended to be included We wrote to the CRA but have not yet received a response.

UNDERTAKING NO. 19: (UNDER ADVISEMENT)

RE: PRODUCE WRITTEN DOCUMENTATION THAT SUPPORTS THE UNDERSTANDING SET OUT IN PARAGRAPH 15 AND 18 OF MR. BUJOLD'S SEPTEMBER 12, 2011 AFFIDAVIT.

These statements were the product of discussions between Mr. Bujold and many people around the purpose of the trust. These statements were confirmed by the transcript of Federal Court proceedings, but the Sawridge Trust takes the position that these transcripts are not producible in this litigation.

UNDERTAKING NO. 20:

RE: PRODUCE ANY PORTION OF BOARD MEETING MINUTES DEALING WITH THE DIRECTION REFERENCED IN PARAGRAPH 7 OF MR. BUJOLD'S AUGUST 30, 2011 AFFIDAVIT.

> **Extract 17 November 2009 Minutes:**
> Paul Bujold provided a handout of the proposed newspaper advertisement seeking individuals claiming beneficiary status. This advertisement will be posted in major newspapers in Alberta, Saskatchewan and British Columbia. In addition, the advertisement will also appear in local newspapers and various postings around Slave Lake.
> **Moved by Catherine Twinn and seconded by Clara Midbo that the Trustees approve the posting of a newspaper advertisement seeking potential beneficiaries of the Sawridge Intervivos Settlement Trust.**
> **Carried**

UNDERTAKING NO. 21:

RE: ADVISE WHICH PUBLICATIONS WERE ADVERTISED IN, HOW REGULARLY, AND OVER WHAT PERIOD OF TIME. ALSO PROVIDE COPY OF ADVERTISEMENT.

See tab 21: List of Weekly Newspapers for Legal Notice, 091207-14 and 21 – Notice to Potential Beneficiaries, Estate Alberta Weekly Newspaper Association, 2009 for notices placed 7 and 14 December 2009 in all weekly newspapers in Alberta and North West Territories, British Columbia and Saskatchewan. The notice ran for two weeks.

See tab 21: Invoices, Edmonton Journal Classifieds, 091218-21-Invoices, Globe and Mail, 091218, 21-Invoices, Regina Leader Post, 091218, 21-Invoices, The Calgary Heralds Classifieds, 091218, 21-Invoices, The Saskatoon Star Phoenix, 091218, 21-Invoices, Vancouver Sun and Province, 091218, 21-Newspaper Clipping, Vancouver Sun, Notice to Potential Beneficiaries, 091230 for legal notices placed in major daily newspapers in Alberta, British Columbia and Saskatchewan and nationally in the Globe and Mail. The notices ran for two weeks. See 21-Legal Notice, Lakeside Leader, 111017, 21-Legal Notice, South Peace News, 111017 for additional notices placed in the immediate vicinity of Sawridge First Nation in September 2011 for one week.

UNDERTAKING NO. 22:

RE: PROVIDE ANY RESPONSES RECEIVED TO NEWSPAPER ADVERTISEMENT.

(See attached documents at tab '22-').

UNDERTAKING NO. 23:

RE: PRODUCE COPY OF STANDARD FORM THAT WAS SENT OUT TO THOSE WHO RESPONDED TO AD.

(See attached documents at tab '23-')

UNDERTAKING NO. 24:

RE: PRODUCE COPIES OF ANY COMPLETED OR PARTIALLY COMPLETED APPLICATIONS RECEIVED BACK.

See Potential Beneficiary Application package.
(See attached documents in separate binder labeled "Undertaking 24".)

UNDERTAKING NO. 25:

RE: PRODUCE ALL THREE LISTS REFERENCED IN PARAGRAPH 10 AND 11 OF MR. BUJOLD'S AUGUST 30, 2011 AFFIDAVIT.

(See attached documents at tab '25-')

UNDERTAKING NO. 26:

RE; PRODUCE COPY OF FLOW CHART REFERENCED ON PAGE 2 OF EXHIBIT D TO MR. BUJOLD'S AUGUST 30, 2011 AFFIDAVIT.

(See attached documents at tab '26-')

UNDERTAKING NO. 27: (UNDER ADVISEMENT)

RE: ADVISE WHO THE DIRECTORS AND OFFICERS OF SAWRIDGE HOLDINGS LTD. AND 352736 ALBERTA LTD. WERE IN 2011 AND ADVISE IF THERE WERE ANY CHANGES IN THE INTERIM.

(See attached document at tab 27-Directors and Officers 2011-2014). ***NOTE: 352736 Alberta Ltd. has become 1649183 Alberta Ltd. as of 1 January 2012.***

UNDERTAKING NO. 28:

RE: PROVIDE LIST OF MINOR BENEFICIARIES IMPACTED BY THE APPLICATION, INCLUDING IDENTITY AND CONTACT INFORMATION, AND THEIR REASONS FOR QUALIFYING.

See Undertaking 31 below.

UNDERTAKING NO. 29:

RE: PROVIDE ANY CORRESPONDENCE WITH THE MINISTER RESPECTING THE REQUEST FOR INFORMATION AND REFUSAL TO PROVIDE THE CURRENT LIST OF INDIVIDUALS MENTIONED IN PARAGRAPH 12 OF MR. BUJOLD'S AUGUST 30, 2011 AFFIDAVIT.

(See attached documents at tab '29-')

UNDERTAKING NO. 30:

RE: REVIEW DOCUMENTATION AND PRODUCE ANYTHING NONPRIVILEGED DEALING WITH THE TOPIC OF THE DETERMINATION OF THE TRUSTEES MAINTAINING THE DEFINITION OF BENEFICIARIES FROM THE 1985 TRUST WOULD BE POTENTIALLY DISCRIMINATORY, INCLUDING ANY COMMUNICATION BETWEEN THE TRUSTEES AND THE SAWRIDGE FIRST NATION.

There is no such communication between the trustees and Sawridge First Nation.

UNDERTAKING NO. 31:

RE: PROVIDE LIST OF WHO THE 31 DEPENDENT CHILDREN WERE AT THE TIME THE AFFIDAVIT WAS SWORN AND INDENTIFY OF THOSE 31 WHICH WERE THE 23 THAT QUALIFIED AS BENEFICIARIES OF THE 85'TRUST AT THE TIME THAT THE AFFIDAVIT WAS SWORN AND WHICH WERE THE EIGHT THAT DID NOT QUALIFY. ALSO UPDATE THE LIST UNTIL TODAY'S DATE.

(See attached documents at tab '31-')

UNDERTAKING NO. 32:

RE: PROVIDE LIST OF INDIVIDUALS ADDED BY JUSTICE HUGGESSEN TO BE MEMBERS OF SAWRIDGE AND BENEFICIARIES OF THE 86' TRUST.

Jeannette Nancy Boudreau (now deceased), Elizabeth Courtoreille (now deceased), Fleury Edward DeJong (now deceased), Roseina Anna Lindberg, Cecile Yvonne Loyie (now deceased), Elsie Flora Loyie (now deceased), Rita Rose Mandel (now deceased), Elizabeth Bernadette Poitras, Lillian Ann Marie Potskin, Margaret Agnes Clara Ward, Mary Rachel L'Hirondelle (now deceased). (See attached document.) Please note Justice Hugessen directed these individuals to be members. The trust was not subject to the declaration. The decision is reproduced at Tab 32.

UNDERTAKING NO. 33:

RE: INQUIRE OF SAWRIDGE FIRST NATION AS TO NUMBER OF APPLICATIONS THEY RECEIVED BETWEEN 1985 AND 1993, HOW MANY WERE RECEIVED, HOW MANY WERE PROCESSED, AND WHAT THE OUTCOME OF THOSE MEMBERSHIP APPLICATIONS WERE FROM 1985 TO 1993.

LIST OF MEMBERSHIP APPLICATIONS COMPLETED

No.	Date Received	Last Action	Action Date
1.	24 July 91	Accepted	15 Sept 93
2.	12 Feb 01	Accepted	09 April 02
3.	12 Feb 01	Accepted	09 April 02
4.	14 March 03	Accepted	09 April 02
5.	14 March 03	Accepted	09 April 02
6.	14 March 03	Accepted	09 April 02
7.	14 March 03	Accepted	09 April 02
8.	14 March 03	Accepted	09 April 02
9.	13 Oct 99	Denied	13 May 04
10.	13 Aug 01	Accepted	10 April 08
11.	18 June 03	Accepted	10 April 08
12.	19 Dec 03	Accepted	10 April 08
13.	29 March 04	Denied	14 Jan 09
14.	06 Dec 04	Denied	14 Jan 09
15.	24 Feb 10	Denied	22 Nov 11
16.	24 Feb 10	Denied	22 Nov 11
17.	24 Feb 10	Denied	22 Nov 11
18.	24 Feb 10	Denied	22 Nov 11
19.	24 Feb 10	Denied	22 Nov 11
20.	24 Feb 10	Denied	22 Nov 11
21.	24 Feb 10	Denied	22 Nov 11
22.	24 Feb 10	Denied	22 Nov 11
23.	14 May 10	Denied	22 Nov 11
24.	25 Jan 11	Letter – Re already applied	22 Nov 11

25.	18 Sept 09	Appeal denied	21 April 12
26.	03 Mar 10	Appeal denied	21 April 12
27.	25 June 10	Appeal denied	21 April 12
28.	31 Jan 08	Accepted	22 Aug 12
29.	31 Jan 08	Accepted	22 Aug 12
30.	01 Oct 08	Accepted	22 Aug 12
31.	01 Oct 08	Accepted	22 Aug 12
32.	3 March 10	Denied	22 Aug 12
33.	3 March 10	Denied	22 Aug 12
34.	3 March 10	Denied	22 Aug 12
35.	3 March 10	Denied	22 Aug 12
36.	3 March 10	Denied	22 Aug 12
37.	29 March 10	Appeal Denied	01 Dec 12
38.	15 Apr 04	Appeal Denied	09 March 13
39.	06 Jan 05	Appeal Denied	05 Jan 13
40.	01 March 10	Denied	22 Oct 12
41.	12 Sept 11	Denied	09 Dec 13

LIST OF MEMBERSHIP APPLICATIONS PENDING			
No.	**Date Received**	**Last Action**	**Action Date**
1.	06 Sept 06	Letter – Re missing info	14 March 12
2.	08 July 08	Letter – Re missing info	14 Jan 09
3.	27 Feb 09	Updated application received	24 Jan 14
4.	01 March 10	Letter – Re missing info	22 Nov 11
5.	23 June 10	Letter – Re missing info	22 Nov 11

6.	23 June 10	Letter – Re missing info	22 Nov 11
7.	23 June 10	Letter – Re missing info	22 Nov 11
8.	27 July 10	Letter – Re missing info	14 March 12
9.	27 July 10	Letter – Re missing info	14 March 12
10.	11 Feb 11	Letter – Re missing info	22 Nov 11
11.	03 May 11	Letter – Re missing info	14 March 12
12.	28 Sept 11	To Committee	28 Sept 11
13.	01 Oct 11	To Committee	01 Oct 11
14.	01 Oct 11	To Committee	01 Oct 11
15.	01 Oct 11	To Committee	01 Oct 11
16.	10 Jan 12	Letter – Re missing info	12 Dec 12
17.	23 Jan 12	Letter – Re missing info	12 Dec 12
18.	23 Jan 12	Letter – Re missing info	12 Dec 12
19.	24 Feb 12	To Committee	24 Feb 12
20.	10 May 12	To Committee	10 May 12
21.	15 June 12	To Committee	15 June 12
22.	18 July 12	To Committee	18 July 12
23.	08 Aug 12	Letter – Re missing info	12 Dec 12
24.	25 Sept 12	To Committee	25 Sept 12
25.	05 Oct 12	To Committee	05 Oct 12
26.	09 Oct 12	To Committee	09 Oct 12
27.	07 Jan 13	To Committee	07 Jan 13
28.	15 March 13	To Committee	15 March 13
29.	21 May 13	To Committee	21 May 13
30.	03 June 13	To Committee	03 June 13

31.	25 Oct 13	To Committee	25 Oct 13
32.	19 Feb 14	To Committee	19 Feb 14
33.	25 April 14	To Committee	25 April 14

UNDERTAKING NO. 34:

RE REQUEST OF THE SAWRIDGE FIRST NATION TO PRODUCE COPIES OF ALL MEMBERSHIP APPLICATION FORMS THAT THEY HAVE RECEIVED FROM 1985 UNTIL PRESENT DATE.

Sawridge First Nation takes the position that it would be illegal to provide these documents without the written consent of each individual. In addition to regular applications for membership, every person asking to enfranchise or surrender their membership from 1985 to 1995 (9 people) were required to fill out a membership application form.

UNDERTAKING NO. 35:

RE: REQUEST OF SAWRIDGE FIRST NATION TO PRODUCE A COPY OF THE JULY 21, 1988 BAND COUNCIL RESOLUTION, AND SPECIFICALLY ASK THEM TO CHECK THE DOCUMENTATION THAT WAS FILED IN RELATION TO THE COURT APPLICATION SAWRIDGE BAND V. CANADA 2004 SCA 16, TO SEE IF THEY CAN LOCATE A COPY OF THAT BCR AND THE ATTACHED LIST.

Sawridge First Nation reports that it has not been able to find a copy of the BCR in their files.

UNDERTAKING NO. 36:

RE INQUIRE OF SAWRIDGE FIRST NATION THE DATE EACH MEMBERSHIP APPLICATION WAS RECEIVED BY THEM AND THE DATE A DECISION WAS MADE ON EACH MEMBERSHIP APPLICATION.

See Undertaking 33 above.

UNDERTAKING NO. 37: (UNDER ADVISEMENT)

RE WITH RESPECT TO UNDERTAKINGS REQUESTING INFORMATION ON SAWRIDGE FIRST NATION MEMBERSHIP APPLICATIONS, IF THE FIRST NATION REFUSES OR FAILS TO PROVIDE THAT INFORMATION INQUIRE OF THE TRUSTEES DIRECTLY TO PROVIDE ANY AND ALL INFORMATION OR DOCUMENTATION THAT THEY CAN TO ANSWER THOSE QUESTIONS AROUND MEMBERSHIP APPLICATIONS.

The undertaking is refused. If the trustees have any information, they do not have this information in their role as trustees.

UNDERTAKING NO. 38: (REFUSED)

RE: PROVIDE COPIES OF ANY DOCUMENTS BEING RELIED UPON TO SUPPORT THE BELIEF AND UNDERSTANDING THAT THE 1982 ASSETS WERE CHANGED TO THE 1985 TRUST ASSETS.

UNDERTAKING NO. 39: (UNDER ADVISEMENT)

RE: PRODUCE COPIES OF THE FINANCIAL STATEMENTS FOR SAWRIDGE HOLDINGS LTD. AND/OR THE SAWRIDGE GROUP OF COMPANIES FROM 2011 UNTIL PRESENT DATE.

The value of the companies was given orally by the CFO at the time and were not based on the financial statements. The value of the referenced corporations was not determined by the financial statements.

UNDERTAKING NO. 40:

RE: PRODUCE ANY NONPRIVILEGED DOCUMENTATION RECEIVED RELATING TO THE STATEMENTS IN PARAGRAPH 28 OF MR. BUJOLD'S SEPTEMBER 12, 2011 AFFIDAVIT.

No documents could be found on this topic.

UNDERTAKING NO. 41:(UNDER ADVISEMENT)

RE: PRODUCE THE ORIGINAL VERSION OF THE SAWRIDGE MEMBERSHIP RULES AND ANY INTERIM VERSIONS OF THOSE RULES.

(See attached documents at tab '41-')

UNDERTAKING NO. 42: (UNDER ADVISEMENT)

RE: REQUEST OF SAWRIDGE INDIAN BAND TO PRODUCE ALL MEMBERSHIP APPLICATION FORMS PRIOR TO THE ONE ENTERED AS EXHIBIT 6.

Sawridge First Nation reports that it does not have previous copies of the Application Form on file. The current application is provided at tab 42.

UNDERTAKING NO. 43:

RE: INQUIRE OF SAWRIDGE FIRST NATION WHETHER APPLICANTS RECEIVED A MORE DETAILED REASON FOR DECISION DOCUMENT THAN THAT RECEIVED IN EXHIBIT 7 IN RESPECT TO WHAT SPECIFIC FACTORS OR FACTS IN THEIR APPLICATION WERE CONSIDERED.

Sawridge First Nation reports that Applicants being refused only receive the information provided in the letters of refusal already provided to the Office of the Public Trustee. Those Applicants who appeal denied applications receive a full copy of the membership processing form which gives the record of the decision. This information is private and cannot be shared due to the privacy legislation.

UNDERTAKING NO. 44:

RE: INQUIRE OF SAWRIDGE IF THEY HAVE ANY POLICY OR GUIDE THAT WOULD ASSIST IN DETAILING WHAT FACTORS WOULD BE CONSIDERED IN ASSESSING WHETHER AN INDIVIDUAL'S ADMISSION INTO THE SAWRIDGE FIRST NATION WOUDLBE IN THE BEST INTEREST AND WELFARE OF THE NATION, AND WHETHER AN INDIVIDUAL MAPPLYING OFR MEMBERSHIP HAS A SUFFICIENT COMMITMENT TO AND KNOWLEDGE OF THE HISTORY, CUSTOMS, TRADITIONS, AND CULTURE AND COMMUNAL LIFE OF THE FIRST NATION, AND WHETHER AN INDIVIDUAL HAS A CHARACTER AND LIFESYTLE THAT WOULD MAKE THEIR ADMISSION IN THE BAND DETRIMENTAL TO THE FUTURE WELFARE OR ADVANCEMENT OF THE BAND.

Sawridge First Nation reports that there are no additional guidelines to deal with membership applications other than those provided in the Membership Rules. (See undertaking 41 above.) Each application is dealt with on a case-by-case basis.

UNDERTAKING NO. 45:

RE: INQUIRE OF SAWRIDGE FIRST NATION TO PRODUCE COPIES OF ANY LETTERS, EMAILS, OR OTHER DOCUMENTS RELATING TO COMPLAINTS OF CONFLICT OF INTERST IN RELATION TO ANY ELEMENT OF THE MEMBERSHIP PROCESS, WHETHER IT IS MEMBERSHIP APPLICATION, MEMBERSHIP APPEAL COMMITTEE HEARING, MEMBERSHIP ISSUES BEFORE COUNCIL, OR INTERVIEWS THAT ARE HELD OCCASIONALLY FOR MEMBERS' ADMISSION AS PROVIDED FOR UNDER SECTION 5 OF *GOVERNANCE ACT*.

Sawridge First Nation reports that there have been no formal complaints filed under Section 5 of the *Governance Act*. Aline Huzar, June Kolosky and Maurice Stoney, whose membership application was denied, appealed and rejected, appealed to the Federal Court (T-922-12 and T-932-12 [E6393143] and rejected, have now filed a complaint with the Canadian Human Rights Commission. No details are currently available on this complaint.

UNDERTAKING NO. 46:

RE: INQUIRE OF SAWRIDGE FIRST NATION TO PRODUCE COPIES OF ANY LETTERS, EMAILS OR OTHER DOCUMENTS RELATING TO COMPLAITNS OF CONFLICT OF INTEREST IN RELATION TO ANY ELEMENT OF THE MEMBERSHIP PROCESS, WHETHER IT IS MEMBERSHIP APPLICATION, MEMBERSHIP APPEAL COMMITTEE HEARING, MEMBERSHIP ISSUES BEFORE COUNCIL, OR INTERVIEWS THAT ARE HELD OCASIONALLY FOR MEMBERS' ADMISSION AS PROVIDED FOR UNDER ARTICLE 17, SUBSECTION (8) OF THE *CONSTITUTION ACT*.

Sawridge First Nation reports that there have been no formal complaints filed under Article 17, Subsection (8) of the *Constitution Act* thus no letters, emails or other documents exist.

UNDERTAKING NO. 47;

RE: PRODUCE STANDARD NOTIFICATION OR FIRST CONTACT PACKAGE SENT OUT FOR A NEW BENEFICIARY.

(See attached documents at tab '47-')

UNDERTAKING NO. 48: (UNDER ADVISEMENT)

RE: INQUIRE OF SAWRIDGE FIRST NATION AND REQUEST ANY DOCUMENTS THEY HAVE IN RELATION TO TRACY POITRAS COLLINS' MEMBERSHIP APPLICATION AND THE VARIOUS DECISIONS MADE ALONG THE WAY RIGHT UP TO THE FINAL DECISION THAT APPROVED HER MEMBERSHIP INCLUDING LETTERS THAT MIGHT HAVE BEEN SENT OUT TO HER INITIALLY, RESULTS OF ANY APPEALS AND RESULTS OF ANY COMMUNITY INTERVIEW.

Sawridge First Nation takes the position that it would be illegal to provide these documents under the privacy legislation.

UNDERTAKING NO. 49:

RE: INQUIRE OF CATHERINE TWINN HER RECOLLECTION OF WHAT WAS DISCUSSED AT THE APRIL 15, 1985 MEETING THAT THE SAWRIDGE BAND RESOLUTION PRESENTED AT EXHIBIT 1 OF MR. BUJOLD'S SEPTEMBER 12, 2011 AFFIDAVIT DEALT WITH. SPECIFICALLY DOES SHE RECALL IF THERE WAS ANY DISCUSSION OR DOCUMENTATION PRESENTED IN RELATION TO THE TRANSFER OF ASSETS FROM THE 1982 TRUST TO THE1985 TRUST. ALSO INQUIRE IF MS. TWINN HAS ANY DOCUMENTATION OF THAT PARTICULAR MEETING.

We made this inquiry and were informed that she has no memory of this meeting or documentation in her possession, We made one further inquiry pursuant to this undertaking and no response was received.

UNDERTAKING NO. 50:

RE: REVIEW ANY TRUSTEE MEETING MINUTES AVAILABLE RELATING TO THE TRANSFER OF ASSETS FROM INDIVIDUALS INTO THE '82 TRUST, OR '82 TRUST INTO '85 TRUST, OR THE ONE INDIVIDUAL TRANSFER TO THE '85 TRUST.

(See attached document at tab '50-').