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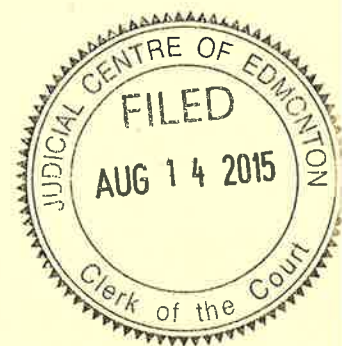
COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

Clerk's Stamp

IN THE MATTER OF THE TRUSTEE
ACT, RSA 2000, c T-8, AS
AMENDED

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



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

DOCUMENT

**BOOK OF AUTHORITIES OF
SAWRIDGE FIRST NATION**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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LIST OF AUTHORITIES

A. LEGISLATION AND RULES

- Tab 1** *Rules of Court*, Alta Reg 124/2010, 3.14
- Tab 2** *Rules of Court*, Alta Reg 124/2010, 5.5
- Tab 3** *Rules of Court*, Alta Reg 124/2010, 5.13
- Tab 4** *Rules of Court*, Alta Reg 124/2010, 5.2
- Tab 5** *Rules of Court*, Alta Reg 124/2010, 5.3
- Tab 6** *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, ss. 2, 4
- Tab 7** *Rules of Court*, Alta Reg 124/2010, 5.33

B. CASE LAW

- Tab 1** *1985 Sawridge Trust v Alberta (Public Trustee)*, 2012 ABQB 365
- Tab 2** *Sawridge Band v Canada*, [1996] 1 FCR 3
- Tab 3** *Sawridge Band v Canada*, 2009 FCA 123
- Tab 4** *Poitras v Sawridge Band*, 2013 FC 910
- Tab 5** *Sawridge Band v Canada*, [2003] 4 FCR 748
- Tab 6** *InnerSense International Inc. v University of Alberta* 2007 ABQB 157
- Tab 7** *Ed Miller Sales & Rentals Ltd v Caterpillar Tractor Co*, (1988) 63 Alta LR (2d) 189 (QB)
- Tab 8** *Trimay Wear Plate v Way*, 2008 ABQB 601
- Tab 9** *Wasylyshen v Canadian Broadcasting Corp.*, [2006] AJ No 1169 (QB)
- Tab 10** *Esso Resources Canada Limited v Lloyd's Underwriters & Companies*, 1990 ABCA 144
- Tab 11** *Gainers Inc. v Pocklington Holdings Inc.*, 1995 CarswellAlta 200 (CA)

- Tab 12** *Weatherill (Estate of) v Weatherill*, 2003 ABQB 69
- Tab 13** *NAC Constructors Ltd. v Alberta Capital Region Wastewater Commission*, 2006 ABCA 246
- Tab 14** *Dow Chemical Canada Inc v Nova Chemicals Corporation*, 2015 ABQB 2
- Tab 15** *Re/Max Real Estate (Edmonton) Ltd v Border Credit Union Ltd*, (1988), 60 Alta LR (2d) 356 (Master Funduk)
- Tab 16** *GWL Properties Ltd v WR Grace & Co of Canada Ltd*, 1992 CarswellBC 227 (SC)
- Tab 17** *Royal Bank of Canada v Trang*, 2014 ONCA 883
- Tab 18** *Kiedynk v John Doe*, 1991 CarswellAlta 37 (QB)
- Tab 19** *Juman v Doucette*, 2008 SCC 8
- Tab 20** *Kent v Martin*, 2013 ABQB 27

C. PRIOR ORDERS

- Tab 1** Order of Justice D.R.G. Thomas, pronounced June 12, 2012, filed September 20, 2012
- Tab 2** Order of Justice D.R.G. Thomas, pronounced August 31, 2011, filed September 6, 2011

Tab A-1

Current to July 31, 2015

Alta. Reg. 124/2010, r. 3.14

Judicature Act
ALBERTA RULES OF COURT

Alta. Reg. 124/2010

Part 3
Court Actions

Division 2
Actions Started by Originating Application

Subdivision 1
General Rules

RULE 3.14

Originating application evidence (other than judicial review)

3.14(1) When making a decision about an originating application, other than an originating application for judicial review, the Court may consider the following evidence only:

- (a) affidavit evidence, including an affidavit by an expert;
- (b) a transcript referred to in rule 3.13;
- (c) if Part 5 applies by agreement of the parties or order of the Court to the originating application, the transcript evidence or answers to written questions, or both, under that Part that may be used under rule 5.31;
- (d) an admissible record disclosed in an affidavit;
- (e) anything permitted by any other rule or by an enactment;
- (f) evidence taken in any other action, but only if the party proposing to submit the evidence gives each of the other parties 5 days' or more notice of that party's intention and obtains the Court's permission to submit the evidence;
- (g) with the Court's permission, oral evidence, which if permitted must be given in the same manner as at trial.

(2) An affidavit or other evidence that is used or referred to at a hearing by the respondent, or by the originating applicant in response to the respondent, and that has not previously been filed in the action must be filed as soon as practicable after the hearing.

Alta. Reg. 124/2010 r3.14 effective November 1, 2010 (Alta. Gaz. August 14, 2010)

Tab A-2

Current to July 31, 2015

Alta. Reg. 124/2010, r. 5.5

Judicature Act

ALBERTA RULES OF COURT

Alta. Reg. 124/2010

Part 5 Disclosure of Information

Division 1 How Information Is Disclosed

Subdivision 2 Disclosing and Identifying Relevant and Material Records

RULE 5.5

When affidavit of records must be served

5.5(1) Every party must serve an affidavit of records on each of the other parties in accordance with the time period specified in subrule (2), (3) or (4).

(2) The plaintiff must serve an affidavit of records on each of the other parties within 3 months after the date the plaintiff is served with a statement of defence, or the first statement of defence if more than one is served.

(3) The defendant must serve an affidavit of records on each of the other parties within 2 months after the date the defendant is served with the plaintiff's affidavit of records.

(4) A third party defendant who has filed a statement of defence must, within 3 months after that filing, serve an affidavit of records on each of the other parties.

**** Editor's Table ****

Provision	Changed by	Effective	Gazette Date
5.5	Alta. Reg. 140/2013 s5	2013 Jul 25	2013 Aug 15

Alta. Reg. 124/2010 r5.5 effective November 1, 2010 (Alta. Gaz. August 14, 2010); Alta. Reg. 140/2013 s5

Tab A-3

Current to July 31, 2015

Alta. Reg. 124/2010, r. 5.13

Judicature Act

ALBERTA RULES OF COURT

Alta. Reg. 124/2010

Part 5

Disclosure of Information

Division 1

How Information Is Disclosed

Subdivision 2

Disclosing and Identifying Relevant and Material Records

RULE 5.13

Obtaining records from others

5.13(1) On application, and after notice of the application is served on the person affected by it, the Court may order a person who is not a party to produce a record at a specified date, time and place if

- (a) the record is under the control of that person,
- (b) there is reason to believe that the record is relevant and material, and
- (c) the person who has control of the record might be required to produce it at trial.

(2) The person requesting the record must pay the person producing the record an amount determined by the Court.

Alta. Reg. 124/2010 r5.13 effective November 1, 2010 (Alta. Gaz. August 14, 2010)

Tab A-4

Current to July 31, 2015

Alta. Reg. 124/2010, r. 5.2

Judicature Act
ALBERTA RULES OF COURT

Alta. Reg. 124/2010

Part 5
Disclosure of Information

Division 1
How Information Is Disclosed

Subdivision 1
Introductory Matters

RULE 5.2

When something is relevant and material

5.2(1) For the purposes of this Part, a question, record or information is relevant and material only if the answer to the question, or the record or information, could reasonably be expected

(a) to significantly help determine one or more of the issues raised in the pleadings, or

(b) to ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised in the pleadings.

(2) The disclosure or production of a record under this Division is not, by reason of that fact alone, to be considered as an agreement or acknowledgment that the record is admissible or relevant and material.

Alta. Reg. 124/2010 r5.2 effective November 1, 2010 (Alta. Gaz. August 14, 2010)

Tab A-5

Current to July 31, 2015

Alta. Reg. 124/2010, r. 5.3

Judicature Act
ALBERTA RULES OF COURT

Alta. Reg. 124/2010

Part 5
Disclosure of Information

Division 1
How Information Is Disclosed

Subdivision 1
Introductory Matters

RULE 5.3

of this Part

5.3(1) The Court may modify or waive any right or power under a rule in this Part or make any order warranted in the circumstances if

(a) a person acts or threatens to act in a manner that is vexatious, evasive, abusive, oppressive, improper or tediously lengthy, or

(b) the expense, delay, danger or difficulty in complying with a rule would be grossly disproportionate to the likely benefit.

(2) In addition to making a procedural order, the Court may do any one or more of the following:

(a) make a costs award under Part 10 or require an advance payment against costs payable, or both;

(b) increase or decrease the amount of interest to which a person is entitled;

(c) order future questioning to be conducted before a judge, master or person designated by the Court;

(d) make any other order respecting the action or an application or proceeding the Court considers necessary in the circumstances.

Alta. Reg. 124/2010 r5.3 effective November 1, 2010 (Alta. Gaz. August 14, 2010)

Tab A-6

Current to July 25, 2015

S.C. 2000, c. 5, s. 2

[eff since June 18, 2015](Current Version)

Personal Information Protection and Electronic Documents Act

S.C. 2000, c. 5

[Unofficial Chapter No. P-8.6]

PART 1

PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR

Interpretation

SECTION 2.

Definitions

2. (1) The definitions in this subsection apply in this Part.

"alternative format"

"alternative format", with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information.

"breach of security safeguards"

"breach of security safeguards" means the loss of, unauthorized access to or unauthorized disclosure of personal information resulting from a breach of an organization's security safeguards that are referred to in clause 4.7 of Schedule 1 or from a failure to establish those safeguards.

"business contact information"

"business contact information" means any information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual's name, position name or title, work address, work telephone number, work fax number or work electronic address.

"business transaction"

"business transaction" includes

(a) the purchase, sale or other acquisition or disposition of an organization or a part of an organization, or any of its assets;

(b) the merger or amalgamation of two or more organizations;

- (c) the making of a loan or provision of other financing to an organization or a part of an organization;
- (d) the creating of a charge on, or the taking of a security interest in or a security on, any assets or securities of an organization;
- (e) the lease or licensing of any of an organization's assets; and
- (f) any other prescribed arrangement between two or more organizations to conduct a business activity.

"commercial activity"

"commercial activity" means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.

"Commissioner"

"Commissioner" means the Privacy Commissioner appointed under section 53 of the Privacy Act.

"Court"

"Court" means the Federal Court.

"federal work, undertaking or business"

"federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament. It includes

- (a) a work, undertaking or business that is operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;
- (b) a railway, canal, telegraph or other work or undertaking that connects a province with another province, or that extends beyond the limits of a province;
- (c) a line of ships that connects a province with another province, or that extends beyond the limits of a province;
- (d) a ferry between a province and another province or between a province and a country other than Canada;
- (e) aerodromes, aircraft or a line of air transportation;
- (f) a radio broadcasting station;
- (g) a bank or an authorized foreign bank as defined in section 2 of the *Bank Act*;
- (h) a work that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more provinces;
- (i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces; and

(j) a work, undertaking or business to which federal laws, within the meaning of section 2 of the Oceans Act, apply under section 20 of that Act and any regulations made under paragraph 26(1)(k) of that Act.

"organization "

"organization" includes an association, a partnership, a person and a trade union.

"personal health information"

"personal health information", with respect to an individual, whether living or deceased, means

- (a) information concerning the physical or mental health of the individual;
- (b) information concerning any health service provided to the individual;
- (c) information concerning the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
- (d) information that is collected in the course of providing health services to the individual; or
- (e) information that is collected incidentally to the provision of health services to the individual.

"personal information"

"personal information" means information about an identifiable individual.

"prescribed"

"prescribed" means prescribed by regulation.

"record"

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of any of those things.

Notes in Schedule 1

(2) In this Part, a reference to clause 4.3 or 4.9 of Schedule 1 does not include a reference to the note that accompanies that clause.

**** Editor's Table ****

Provision	Changed by	In force	Authority
2	2015 c32 s2	2015 Jun 18	R.A.
"Court"	2002 c8 s183(1)(r)	2003 Jul 2	SI/2003-109

S.C. 2000, c. 5, s. 2, effective January 1, 2001 (SI/2000-29); S.C. 2002, c. 8, s. 183; S.C. 2015, c. 32, s. 2.

Current to July 25, 2015

S.C. 2000, c. 5, s. 4

[eff since June 23, 2015](Current Version)

Personal Information Protection and Electronic Documents Act

S.C. 2000, c. 5

[Unofficial Chapter No. P-8.6]

PART 1

PROTECTION OF PERSONAL INFORMATION IN THE PRIVATE SECTOR

Application

SECTION 4.

Application

4. (1) This Part applies to every organization in respect of personal information that

(a) the organization collects, uses or discloses in the course of commercial activities; or

(b) is about an employee of, or an applicant for employment with, the organization and that the organization collects, uses or discloses in connection with the operation of a federal work, undertaking or business.

Application

(1.1) This Part applies to an organization set out in column 1 of Schedule 4 in respect of personal information set out in column 2.

Limit

(2) This Part does not apply to

(a) any government institution to which the Privacy Act applies;

(b) any individual in respect of personal information that the individual collects, uses or discloses for personal or domestic purposes and does not collect, use or disclose for any other purpose; or

(c) any organization in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

Other Acts

(3) Every provision of this Part applies despite any provision, enacted after this subsection comes into force, of any other Act of Parliament, unless the other Act expressly declares that that provision operates despite the provision of this Part.

**** Editor's Table ****

Provision	Changed by	In force	Authority
4	2015 c32 s3	2015 Jun 18	R.A.
4	2015 c36 s164	2015 Jun 23	R.A.

S.C. 2000, c. 5, s. 4, effective January 1, 2001 (SI/2000-29); S.C. 2015, c. 32, s. 3; S.C. 2015, c. 36, s. 164.

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Current to July 31, 2015

Alta. Reg. 124/2010, r. 5.33

Judicature Act

ALBERTA RULES OF COURT

Alta. Reg. 124/2010

Part 5

Disclosure of Information

Division 1

How Information Is Disclosed

Subdivision 3

**Questions to Discover Relevant and Material
Records and Relevant and Material Information**

RULE 5.33

Confidentiality and use of information

5.33(1) The information and records described in subrule (2) must be treated as confidential and may only be used by the recipient of the information or record for the purpose of carrying on the action in which the information or record was provided or disclosed unless

- (a) the Court otherwise orders,
- (b) the parties otherwise agree, or
- (c) otherwise required or permitted by law.

(2) For the purposes of subrule (1) the information and records are:

- (a) information provided or disclosed by one party to another in an affidavit served under this Division;
- (b) information provided or disclosed by one party to another in a record referred to in an affidavit served under this Division;
- (c) information recorded in a transcript of questioning made or in answers to written questions given under this Division.

Alta. Reg. 124/2010 r5.33 effective November 1, 2010 (Alta. Gaz. August 14, 2010)

Tab B-1

2012 ABQB 365

Alberta Court of Queen's Bench

1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee)

2012 CarswellAlta 1042, 2012 ABQB 365, [2012] A.W.L.D. 3421, [2012] A.W.L.D. 3422, [2012] A.W.L.D. 3425, [2012] A.W.L.D. 3478, [2013] 3 C.N.L.R. 395, 217 A.C.W.S. (3d) 513, 543 A.R. 90, 75 Alta. L.R. (5th) 188

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 the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust")

Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle, and Clara Midbo, As Trustees for the 1985 Sawridge Trust Respondent and Public Trustee of Alberta Applicant

D.R.G. Thomas J.

Heard: April 5, 2012

Judgment: June 12, 2012

Docket: Edmonton 1103-14112

Counsel: Ms Janet L. Hutchison for Public Trustee / Applicants

Ms Doris Bonora, Mr. Marco S. Poretti for Sawridge Trustees / Respondents

Mr. Edward H. Molstad, Q.C. for Sawridge Band / Respondents

Subject: Public; Civil Practice and Procedure; Estates and Trusts; Constitutional

Headnote

Aboriginal law --- Practice and procedure — Parties — Miscellaneous

As Indian Act was being amended, Band set up trust to hold Band property on behalf of its then-members, to avoid sharing assets with persons previously excluded from membership by gender rules — Trustees eventually accepted that definition of beneficiaries in trust was potentially discriminatory and sought to redefine class of beneficiaries — Trustees applied for advice and directions, and as question arose as to effect on entitlements of certain dependent children to share in trust assets, Public Trustee was notified of proceedings — Public Trustee applied to be appointed litigation representative of interested minors, on condition that costs of representation would be paid by trust and that it would be shielded from any costs liability — Application granted — Litigation representative was appropriate and necessary because of substantial monetary interests involved — While trustees planned to use trust to provide for various social and health benefits to beneficiaries and their children, proposed amendment did not require distribution in that manner and could exclude minors from assets — Given overlap between identities of trustees, band council, and beneficiaries, there was clear potential for conflict of interest contrary to long-standing rule requiring fiduciaries to avoid conflicts of interest — Trustees and adult members of Band were in structural conflict of interest, that, along with fact that proposed beneficiary definition would remove some minors' entitlements, was sufficient basis for appointing representative — Public Trustee should be appointed as litigation representative not only of minors who were children of current band members but also of minor children of applicants seeking band membership.

Civil practice and procedure --- Actions involving parties under disability — Infants — Guardian ad litem, next friend or litigation guardian — Appointment — General principles

As Indian Act was being amended, Band set up trust to hold Band property on behalf of its then-members, to avoid sharing assets with persons previously excluded from membership by gender rules — Trustees eventually accepted that definition of beneficiaries in trust was potentially discriminatory and sought to redefine class of beneficiaries — Trustees applied for advice and directions, and as question arose as to effect on entitlements of certain dependent children to share in trust assets, Public Trustee was notified of proceedings — Public Trustee applied to be appointed litigation representative of interested minors, on condition that costs of representation would be paid by trust and that it would be shielded from any costs liability — Application granted — Litigation representative was appropriate and necessary because of substantial monetary interests involved — While trustees planned to use trust to provide for various social and health benefits to beneficiaries and their children, proposed amendment did not require distribution in that manner and could exclude minors from assets — Given overlap between identities of trustees, band council, and beneficiaries, there was clear potential for conflict of interest contrary to long-standing rule requiring fiduciaries to avoid conflicts of interest — Trustees and adult members of Band were in structural conflict of interest, that, along with fact that proposed beneficiary definition would remove some minors' entitlements, was sufficient basis for appointing representative — Public Trustee should be appointed as litigation representative not only of minors who were children of current band members but also of minor children of applicants seeking band membership — Operationally, role of

Public Trustee was of neutral agent or officer of court, and it should receive full and advance indemnification from trust for its participation.

Estates and trusts --- Trustees --- Powers and duties of trustees --- Conflict of interest --- Miscellaneous

As Indian Act was being amended, Band set up trust to hold Band property on behalf of its then-members, to avoid sharing assets with persons previously excluded from membership by gender rules --- Trustees eventually accepted that definition of beneficiaries in trust was potentially discriminatory and sought to redefine class of beneficiaries --- Trustees applied for advice and directions, and as question arose as to effect on entitlements of certain dependent children to share in trust assets, Public Trustee was notified of proceedings --- Public Trustee applied to be appointed litigation representative of interested minors, on condition that costs of representation would be paid by trust and that it would be shielded from any costs liability --- Application granted --- Litigation representative was appropriate and necessary because of substantial monetary interests involved --- While trustees planned to use trust to provide for various social and health benefits to beneficiaries and their children, proposed amendment did not require distribution in that manner and could exclude minors from assets --- Given overlap between identities of trustees, band council, and beneficiaries, there was clear potential for conflict of interest contrary to long-standing rule requiring fiduciaries to avoid conflicts of interest --- Trustees and adult members of Band were in structural conflict of interest, that, along with fact that proposed beneficiary definition would remove some minors' entitlements, was sufficient basis for appointing representative --- Public Trustee should be appointed as litigation representative not only of minors who were children of current band members but also of minor children of applicants seeking band membership --- Public Trustee was entitled to investigate Band's membership rules and application processes to determine on behalf of potential minor claimants to trust whether beneficiary class could be ascertained.

Aboriginal law --- Government of Aboriginal people --- Membership

As Indian Act was being amended, Band set up trust to hold Band property on behalf of its then-members, to avoid sharing assets with persons previously excluded from membership by gender rules --- Trustees eventually accepted that definition of beneficiaries in trust was potentially discriminatory and sought to redefine class of beneficiaries --- Trustees applied for advice and directions, and as question arose as to effect on entitlements of certain dependent children to share in trust assets, Public Trustee was notified of proceedings --- Public Trustee applied to be appointed litigation representative of interested minors, on condition that costs of representation would be paid by trust and that it would be shielded from any costs liability --- Application granted --- Trustees and adult members of Band were in structural conflict of interest, that, along with fact that proposed beneficiary definition would remove some minors' entitlements, was sufficient basis for appointing representative --- Public Trustee should be appointed as litigation representative not only of minors who were children of current band members but also of minor children of applicants seeking band membership --- Operationally, role of Public Trustee was of neutral agent or officer of court, and it should receive full and advance indemnification from trust for its participation --- Public Trustee was entitled to investigate Band's membership rules and application processes to determine on behalf of potential minor claimants to trust whether beneficiary class could be ascertained --- Court had authority to examine band membership processes and determine whether they were discriminatory, unreasonable or delayed, but only Federal Court had authority to order judicial review remedy on that basis.

Table of Authorities

Cases considered by D.R.G. Thomas J.:

Addison & Leye Ltd. v. Canada (2007), 284 D.L.R. (4th) 385, [2008] 2 C.T.C. 129, 65 Admin. L.R. (4th) 1, 2007 SCC 33, 2007 CarswellNat 1915, 2007 CarswellNat 1916, (sub nom. *Addison & Leye Ltd. v. Canada Customs & Revenue Agency*) 365 N.R. 62, (sub nom. *Canada v. Addison & Leye Ltd.*) [2007] 2 S.C.R. 793, (sub nom. *Canada v. Addison & Leye Ltd.*) 2007 D.T.C. 5365 (Eng.), (sub nom. *Canada v. Addison & Leye Ltd.*) 2007 D.T.C. 5368 (Fr.) (S.C.C.) --- considered

B. (R.) v. Children's Aid Society of Metropolitan Toronto (1995), 9 R.F.L. (4th) 157, 21 O.R. (3d) 479 (note), 122 D.L.R. (4th) 1, [1995] 1 S.C.R. 315, 26 C.R.R. (2d) 202, (sub nom. *Sheena B., Re*) 176 N.R. 161, (sub nom. *Sheena B., Re*) 78 O.A.C. 1, 1995 CarswellOnt 105, 1995 CarswellOnt 515 (S.C.C.) --- referred to

Barry v. Garden River Ojibway Nation No. 14 (1997), 1997 CarswellOnt 1812, (sub nom. *Barry v. Garden River Band of Ojibways*) [1997] 4 C.N.L.R. 28, (sub nom. *Barry v. Garden River Band of Ojibways*) 147 D.L.R. (4th) 615, (sub nom. *Barry v. Garden River Band of Ojibways*) 100 O.A.C. 201, (sub nom. *Barry v. Garden River Band of Ojibways*) 33 O.R. (3d) 782 (Ont. C.A.) --- considered

Blueberry Interim Trust, Re (2012), 2012 CarswellBC 639, 2012 BCSC 254 (B.C. S.C.) --- referred to

Braid Builders Supply & Fuel Ltd. v. Genevieve Mortgage Corp. (1972), 1972 CarswellMan 9, 17 C.B.R. (N.S.) 305, 29 D.L.R. (3d) 373 (Man. C.A.) --- considered

Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

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

s. 18 — referred to

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Generally — referred to

Indian Act, R.S.C. 1985, c. I-5

Generally — referred to

s. 52 — considered

Public Trustee Act, S.A. 2004, c. P-44.1

s. 10 — referred to

s. 12(4) — referred to

s. 21 — considered

s. 22 — considered

s. 41 — referred to

s. 41(b) — referred to

Tax Court of Canada Act, R.S.C. 1985, c. T-2

s. 12 — considered

Rules considered:

Alberta Rules of Court, Alta. Reg. 124/2010

Generally — referred to

R. 2.11(a) — referred to

R. 2.15 — considered

R. 2.16 — referred to

APPLICATION by Public Trustee to be appointed litigation representative for interested minors, in trustees' application for advice and directions.

D.R.G. Thomas J.:

1. Introduction

1 On April 15, 1985 the Sawridge Indian Band, No. 19, now known as the Sawridge First Nation [the "Band" or "Sawridge Band"] set up the 1985 Sawridge Trust [sometimes referred to as the "Trust" or the "Sawridge Trust"] to hold some Band property on behalf of its then members. The 1985 Sawridge Trust and other related trusts were created in the expectation that persons who had been excluded from Band membership by gender (or the gender of their parents) would be entitled to join the Band as a consequence of amendments to the *Indian Act*, R.S.C. 1985, c. I-5 which were being proposed to make that legislation compliant with the *Canadian Charter of Rights and Freedoms*, Part 1, *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 [the "Charter"].

2 The 1985 Sawridge Trust is administered by the Trustees named as Respondents in this application [the "Sawridge Trustees" or the "Trustees"] who now seek the advice and direction of this Court in respect to proposed amendments to the definition of the term "Beneficiaries" in the 1985 Sawridge Trust and confirmation of the transfer of assets into that Trust. One consequence of these proposed amendments to the 1985 Sawridge Trust would be that the entitlement of certain dependent children to share in Trust assets would be affected. There is some question as to the exact nature of the effects, although it seems to be accepted by all of those involved on this application that certain children who are presently entitled to a share in the benefits of the 1985 Sawridge Trust would be excluded if the proposed changes are approved and implemented. Another concern is that the proposed revisions would mean that certain dependent children of proposed members of the Trust would become beneficiaries and entitled to shares in the Trust, while other dependent children would be excluded.

3 At the time of confirming the scope of notices to be given in respect to the application for advice and directions, it was observed that children who might be affected by variations to the 1985 Sawridge Trust were not represented by counsel. In my Order of August 31, 2011 [the "August 31 Order"] I directed that the Office of the Public Trustee of Alberta [the "Public Trustee"] be notified of the proceedings and invited to comment on whether it should act in respect of any existing or potential minor beneficiaries of the Sawridge Trust.

4 On February 14, 2012 the Public Trustee applied to be appointed as the litigation representative of minors interested in the proceedings, for the payment of advance costs on a solicitor and own client basis and exemption from liability for the costs of others. The Public Trustee also applied, for the purposes of questioning on affidavits which might be filed in this proceeding, for an advance ruling that information and evidence relating to the membership criteria and processes of the Sawridge Band is relevant material.

5 On April 5, 2012 I heard submissions on the application by the Public Trustee which was opposed by the Sawridge Trustees and the Chief and Council of the Sawridge Band. The Trustees and the Band, through their Chief and Council, argue that the guardians of the potentially affected children will serve as adequate representatives of the interests of any minors.

6 Ultimately in this application I conclude that it is appropriate that the Public Trustee represent potentially affected minors, that all costs of such representation be borne by the Sawridge Trust and that the Public Trustee may make inquiries into the membership and application processes and practices of the Sawridge Band.

II. The History of the 1985 Sawridge Trust

7 An overview of the history of the 1985 Sawridge Trust provides a context for examining the potential role of the Public Trustee in these proceedings. The relevant facts are not in dispute and are found primarily in the evidence contained in the affidavits of Paul Bujold (August 30, 2011, September 12, 2011, September 30, 2011), and of Elizabeth Poitras (December 7, 2011).

8 In 1982 various assets purchased with funds of the Sawridge Band were placed in a formal trust for the members of the Sawridge Band. In 1985 those assets were transferred into the 1985 Sawridge Trust. At the present time the value of assets held by the 1985 Sawridge Trust is approximately \$70 million. As previously noted, the beneficiaries of the Sawridge Trust are restricted to persons who were members of the Band prior to the adoption by Parliament of the *Charter* compliant definition of Indian status.

9 In 1985 the Sawridge Band also took on the administration of its membership list. It then attempted (unsuccessfully) to deny membership to Indian women who married non-aboriginal persons: *Sawridge Band v. R.*, 2009 FCA 123, 391 N.R. 375 (F.C.A.), leave denied [2009] S.C.C.A. No. 248 (S.C.C.). At least 11 women were ordered to be added as members of the Band as a consequence of this litigation: *Sawridge Band v. R.*, 2003 FCT 347, [2003] 4 F.C. 748 (Fed. T.D.), affirmed 2004 FCA 16, [2004] 3 F.C.R. 274 (F.C.A.). Other litigation continues to the present in relation to disputed Band memberships: *Sawridge Band v. Poitras*, 2012 FCA 47, 428 N.R. 282 (F.C.A.), leave sought [2012] S.C.C.A. No. 152 (S.C.C.).

10 At the time of argument in April 2012, the Band had 41 adult members, and 31 minors. The Sawridge Trustees report that 23 of those minors currently qualify as beneficiaries of the 1985 Sawridge Trust; the other eight minors do not.

11 At least four of the five Sawridge Trustees are beneficiaries of the Sawridge Trust. There is overlap between the Sawridge Trustees and the Sawridge Band Chief and Council. Trustee Bertha L'Hirondelle has acted as Chief; Walter Felix Twinn is a former Band Councillor. Trustee Roland Twinn is currently the Chief of the Sawridge Band.

12 The Sawridge Trustees have now concluded that the definition of "Beneficiaries" contained in the 1985 Sawridge Trust is "potentially discriminatory". They seek to redefine the class of beneficiaries as the present members of the Sawridge Band, which is consistent with the definition of "Beneficiaries" in another trust known as the 1986 Trust.

13 This proposed revision to the definition of the defined term "Beneficiaries" is a precursor to a proposed distribution of the assets of the 1985 Sawridge Trust. The Sawridge Trustees indicate that they have retained a consultant to identify social and health programs and services to be provided by the Sawridge Trust to the beneficiaries and their minor children. Effectively they say that whether a minor is or is not a Band member will not matter: see the Trustee's written brief at para. 26. The Trustees report that they have taken steps to notify current and potential beneficiaries of the 1985 Sawridge Trust and I accept that they have been diligent in implementing that part of my August 31 Order.

III. Application by the Public Trustee

14 In its application the Public Trustee asks to be named as the litigation representative for minors whose interests are potentially affected by the application for advice and directions being made by the Sawridge Trustees. In summary, the Public Trustee asks the Court:

1. to determine which minors should be represented by it;
2. to order that the costs of legal representation by the Public Trustee be paid from the 1985 Sawridge Trust and that the Public Trustee be shielded from any liability for costs arising; and
3. to order that the Public Trustee be authorized to make inquiries through questioning into the Sawridge Band membership criteria and application processes.

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

15 The Sawridge Trustees and the Band both argue that the Public Trustee is not a necessary or appropriate litigation representative for the minors, that the costs of the Public Trustee should not be paid by the Sawridge Trust and that the criteria and mechanisms by which the Sawridge Band identifies its members is not relevant and, in any event, the Court has no jurisdiction to make such determinations.

IV. Should the Public Trustee be Appointed as a Litigation Representative?

16 Persons under the age of 18 who reside in Alberta may only participate in a legal action via a litigation representative: *Alberta Rules of Court*, Alta Reg 124/2010, s. 2.11(a) [the “Rules”, or individually a “Rule”]. The general authority for the Court to appoint a litigation representative is provided by *Rule*, 2.15. A litigation representative is also required where the membership of a trust class is unclear: *Rule*, 2.16. The common-law *parens patriae* role of the courts (*Eve, Re*, [1986] 2 S.C.R. 388, 31 D.L.R. (4th) 1 (S.C.C.)) allows for the appointment of a litigation representative when such action is in the best interests of a child. The *parens patriae* authority serves to supplement authority provided by statute: *W. (R.) v. Alberta (Director of Child Welfare)*, 2010 ABCA 412 (Alta. C.A.) at para. 15, (2010), 44 Alta. L.R. (5th) 313 (Alta. C.A.). In summary, I have the authority in these circumstances to appoint a litigation representative for minors potentially affected by the proposed changes to the 1985 Sawridge Trust definition of “Beneficiaries”.

17 The Public Trustee takes the position that it would be an appropriate litigation representative for the minors who may be potentially affected in an adverse way by the proposed redefinition of the term “Beneficiaries” in the 1985 Sawridge Trust documentation and also in respect to the transfer of the assets of that Trust. The alternative of the Minister of Aboriginal Affairs and Northern Development applying to act in that role, as potentially authorized by the *Indian Act*, R.S.C. 1985, c. I-5, s. 52, has not occurred, although counsel for the Minister takes a watching role.

18 In any event, the Public Trustee argues that it is an appropriate litigation representative given the scope of its authorizing legislation. The Public Trustee is capable of being appointed to supervise trust entitlements of minors by a trust instrument (*Public Trustee Act*, S.A. 2004, c. P-44.1, s. 21) or by a court (*Public Trustee Act*, s. 22). These provisions apply to all minors in Alberta.

A. Is a litigation representative necessary?

19 Both The Sawridge Trustees and Sawridge Band argue that there is no need for a litigation representative to be appointed in these proceedings. They acknowledge that under the proposed change to the definition of the term “Beneficiaries” no minors could be part of the 1985 Sawridge Trust. However, that would not mean that this class of minors would lose access to any resources of the Sawridge Trust; rather it is said that these benefits can and will be funnelled to those minors through those of their parents who are beneficiaries of the Sawridge Trust, or minors will become full members of the Sawridge Trust when they turn 18 years of age.

20 In the meantime the interests of the affected children would be defended by their parents. The Sawridge Trustees argue that the Courts have long presumptively recognized that parents will act in the best interest of their children, and that no one else is better positioned to care for and make decisions that affect a child: *B. (R.) v. Children’s Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 (S.C.C.), at 317-318, (1995), 122 D.L.R. (4th) 1 (S.C.C.). Ideally, a parent should act as a ‘next friend’ [now a ‘litigation representative’ under the new *Rules*]: *R. v. B. (V.)*, 2004 ABQB 788 at para. 19; (2004), 365 A.R. 179 (Alta. Q.B.); *S. (C.H.) v. Alberta (Director of Child Welfare)*, 2008 ABQB 620, 452 A.R. 98 (Alta. Q.B.).

21 The Sawridge Trustees take the position at para. 48 of its written brief that:

[i]t is anachronistic to assume that the Public Trustee knows better than a First Nation parent what is best for the children of that parent.

The Sawridge Trustees observe that the parents have been notified of the plans of the Sawridge Trust, but none of them have commented, or asked for the Public Trustee to intervene on behalf of their children. They argue that the silence of the parents should be determinative.

22 The Sawridge Band argues further that no conflict of interest arises from the fact that certain Sawridge Trustees have served and continue to serve as members of the Sawridge Band Chief and Council. At para. 27 of its written brief, the Sawridge Band advances the following argument:

... there is no conflict of interest between the fiduciary duty of a Sawridge Trustee administering the 1985 Trust and the duty of impartiality for determining membership application for the Sawridge First Nation. The two roles are separate and have no interests that are incompatible. The Public Trustee has provided no explanation for why or how the two roles are in conflict. Indeed, the interests of the two roles are more likely complementary.

23 In response the Public Trustee notes the well established fiduciary obligation of a trustee in respect to trust property and beneficiaries: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 (S.C.C.) at para. 148, [2011] 2 S.C.R. 175 (S.C.C.). It observes that a trustee should avoid potential conflict scenarios or any circumstance that is "... ambiguous ... a situation where a conflict of interest and duty might occur ..." (citing D. W. M. Waters, M. Gillen and L. Smith, eds., *Waters' Law of Trusts in Canada*, 3rd. ed. (Toronto: Thomson Carswell, 2005), at p. 914 [*"Waters' Law of Trusts"*]). Here, the Sawridge Trustees are personally affected by the assignment of persons inside and outside of the Trust. However, they have not taken preemptive steps, for example, to appoint an independent person or entity to protect or oversee the interests of the 23 minors, each of whom the Sawridge Trustees acknowledge could lose their beneficial interest in approximately \$1.1 million in assets of the Sawridge Trust.

24 In these circumstances I conclude that a litigation representative is appropriate and required because of the substantial monetary interests involved in this case. The Sawridge Trustees have indicated that their plan has two parts:

firstly, to revise and clarify the definition of "Beneficiaries" under the 1985 Sawridge Trust; and
secondly, then seek direction to distribute the assets of the 1985 Sawridge Trust with the new amended definition of beneficiary.

While I do not dispute that the Sawridge Trustees plan to use the Trust to provide for various social and health benefits to the beneficiaries of the Trust and their children, I observe that to date the proposed variation to the 1985 Sawridge Trust does not include a *requirement* that the Trust distribution occur in that manner. The Trustees could, instead, exercise their powers to liquidate the Sawridge Trust and distribute approximate \$1.75 million shares to the 41 adult beneficiaries who are the present members of the Sawridge Band. That would, at a minimum, deny 23 of the minors their current share of approximately \$1.1 million each.

25 It is obvious that very large sums of money are in play here. A decision on who falls inside or outside of the class of beneficiaries under the 1985 Sawridge Trust will significantly affect the potential share of those inside the Sawridge Trust. The key players in both the administration of the Sawridge Trust and of the Sawridge Band overlap and these persons are currently entitled to shares of the Trust property. The members of the Sawridge Band Chief and Council are elected by and answer to an interested group of persons, namely those who will have a right to share in the 1985 Sawridge Trust. These facts provide a logical basis for a concern by the Public Trustee and this Court of a potential for an unfair distribution of the assets of the 1985 Sawridge Trust.

26 I reject the position of the Sawridge Band that there is no potential for a conflict of interest to arise in these circumstances. I also reject as being unhelpful the argument of the Sawridge Trustees that it is "anachronistic" to give oversight through a public body over the wisdom of a "First Nations parent". In Alberta, persons under the age of 18 are minors and their racial and cultural backgrounds are irrelevant when it comes to the question of protection of their interests by this Court.

27 The essence of the argument of the Sawridge Trustees is that there is no need to be concerned that the current and potential beneficiaries who are minors would be denied their share of the 1985 Sawridge Trust; that their parents, the Trustees, and the Chief and Council will only act in the best interests of those children. One, of course, hopes that that would

be the case, however, only a somewhat naive person would deny that, at times, parents do not always act in the best interests of their children and that elected persons sometimes misuse their authority for personal benefit. That is why the rules requiring fiduciaries to avoid conflicts of interest is so strict. It is a rule of very longstanding and applies to all persons in a position of trust.

28 I conclude that the appointment of the Public Trustee as a litigation representative of the minors involved in this case is appropriate. No alternative representatives have come forward as a result of the giving of notice, nor have any been nominated by the Respondents. The Sawridge Trustees and the adult members of the Sawridge Band (including the Chief and Council) are in a potential conflict between their personal interests and their duties as fiduciaries.

29 This is a 'structural' conflict which, along with the fact that the proposed beneficiary definition would remove the entitlement to some share in the assets of the Sawridge Trust for at least some of the children, is a sufficient basis to order that a litigation representative be appointed. As a consequence I have not considered the history of litigation that relates to Sawridge Band membership and the allegations that the membership application and admission process may be suspect. Those issues (if indeed they are issues) will be better reviewed and addressed in the substantive argument on the adoption of a new definition of "Beneficiaries" under the revised 1985 Sawridge Trust.

B. Which minors should the Public Trustee represent?

30 The second issue arising is who the Public Trustee ought to represent. Counsel for the Public Trustee notes that the Sawridge Trustees identify 31 children of current members of the Band. Some of these persons, according to the Sawridge Trustees, will lose their current entitlement to a share in the 1985 Sawridge Trust under the new definition of "Beneficiaries". Others may remain outside the beneficiary class.

31 There is no question that the 31 children who are potentially affected by this variation to the Sawridge Trust ought to be represented by the Public Trustee. There are also an unknown number of potentially affected minors, namely, the children of applicants seeking to be admitted into membership of the Sawridge Band. These candidate children, as I will call them, could, in theory, be represented by their parents. However, that potential representation by parents may encounter the same issue of conflict of interest which arises in respect to the 31 children of current Band members.

32 The Public Trustee can only identify these candidate children via inquiry into the outstanding membership applications of the Sawridge Band. The Sawridge Trustees and Band argue that this Court has no authority to investigate those applications and the application process. I will deal in more detail with that argument in Part VI of this decision.

33 The candidate children of applicants for membership in the Sawridge Band are clearly a group of persons who may be readily ascertained. I am concerned that their interest is also at risk. Therefore, I conclude that the Public Trustee should be appointed as the litigation representative not only of minors who are children of current Band members, but also the children of applicants for Band membership who are also minors.

V. The Costs of the Public Trustee

34 The Public Trustee is clear that it will only represent the minors involved here if:

1. advance costs determined on a solicitor and own client basis are paid to the Public Trustee by the Sawridge Trust; and
2. that the Public Trustee is exempted from liability for the costs of other litigation participants in this proceeding by an order of this Court.

35 The Public Trustee says that it has no budget for the costs of this type of proceedings, and that its enabling legislation specifically includes cost recovery provisions: *Public Trustee Act*, ss. 10, 12(4), 41. The Public Trustee is not often involved in litigation raising aboriginal issues. As a general principle, a trust should pay for legal costs to clarify the construction or administration of that trust: *Deans v. Thachuk*, 2005 ABCA 368 (Alta. C.A.) at paras. 42-43, (2005), 261 D.L.R. (4th) 300 (Alta. C.A.), leave denied (2006), [2005] S.C.C.A. No. 555 (S.C.C.).

36 Further, the Public Trustee observes that the Sawridge Trustees are, by virtue of their status as current beneficiaries of the Trust, in a conflict of interest. Their fiduciary obligations require independent representation of the potentially affected

minors. Any litigation representative appointed for those children would most probably require payment of legal costs. It is not fair, nor is it equitable, at this point for the Sawridge Trustees to shift the obligation of their failure to nominate an independent representative for the minors to the taxpayers of Alberta.

37 Aline Huzar, June Kolosky, and Maurice Stoney agree with the Public Trustee and observe that trusts have provided the funds for litigation representation in aboriginal disputes: *Horse Lake First Nation v. Horseman*, 2003 ABQB 114, 337 A.R. 22 (Alta. Q.B.); *Blueberry Interim Trust, Re*, 2012 BCSC 254 (B.C. S.C.).

38 The Sawridge Trustees argue that the Public Trustee should only receive advance costs on a full indemnity basis if it meets the strict criteria set out in *Little Sisters Book & Art Emporium v. Canada (Commissioner of Customs & Revenue Agency)*, 2007 SCC 2, [2007] 1 S.C.R. 38 (S.C.C.) [*"Little Sisters"*] and *R. c. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78 (S.C.C.). They say that in this instance the Public Trustee can afford to pay, the issues are not of public or general importance and the litigation will proceed without the participation of the Public Trustee.

39 Advance costs on a solicitor and own client basis are appropriate in this instance, as well as immunization against costs of other parties. The *Little Sisters Book & Art Emporium* criteria are intended for advance costs by a litigant with an independent interest in a proceeding. Operationally, the role of the Public Trustee in this litigation is as a neutral 'agent' or 'officer' of the court. The Public Trustee will hold that position only by appointment by this Court. In these circumstances, the Public Trustee operates in a manner similar to a court appointed receiver, as described by Dickson J.A. (as he then was) in *Braid Builders Supply & Fuel Ltd. v. Genevieve Mortgage Corp.* (1972), 29 D.L.R. (3d) 373, 17 C.B.R. (N.S.) 305 (Man. C.A.):

In the performance of his duties the receiver is subject to the order and direction of the Court, not the parties. The parties do not control his acts nor his expenditures and cannot therefore in justice be accountable for his fees or for the reimbursement of his expenditures. It follows that the receiver's remuneration must come out of the assets under the control of the Court and not from the pocket of those who sought his appointment.

In this case, the property of the Sawridge Trust is the equivalent of the "assets under control of the Court" in an insolvency. Trustees in bankruptcy operate in a similar way and are generally indemnified for their reasonable costs: *Residential Warranty Co. of Canada Inc., Re*, 2006 ABQB 236, 393 A.R. 340 (Alta. Q.B.), affirmed 2006 ABCA 293, 275 D.L.R. (4th) 498 (Alta. C.A.).

40 I have concluded that a litigation representative is appropriate in this instance. The Sawridge Trustees argue this litigation will proceed, irrespective of whether or not the potentially affected children are represented. That is not a basis to avoid the need and cost to represent these minors; the Sawridge Trustees cannot reasonably deny the requirement for independent representation of the affected minors. On that point, I note that the Sawridge Trustees did not propose an alternative entity or person to serve as an independent representative in the event this Court concluded the potentially affected minors required representation.

41 The Sawridge Band cites recent caselaw where costs were denied parties in estate matters. These authorities are not relevant to the present scenario. Those disputes involved alleged entitlement of a person to a disputed estate; the litigant had an interest in the result. That is different from a court-appointed independent representative. A homologous example to the Public Trustee's representation of the Sawridge Trust potential minor beneficiaries would be a dispute on costs where the Public Trustee had represented a minor in a dispute over a last will and testament. In such a case this Court has authority to direct that the costs of the Public Trustee become a charge to the estate: *Public Trustee Act*, s. 41(b).

42 The Public Trustee is a neutral and independent party which has agreed to represent the interests of minors who would otherwise remain unrepresented in proceedings that may affect their substantial monetary trust entitlements. The Public Trustee's role is necessary due to the potential conflict of interest of other litigants and the failure of the Sawridge Trustees to propose alternative independent representation. In these circumstances, I conclude that the Public Trustee should receive full and advance indemnification for its participation in the proceedings to make revisions to the 1985 Sawridge Trust.

VI. Inquiries into the Sawridge Band Membership Scheme and Application Processes

43 The Public Trustee seeks authorization to make inquiries, through questioning under the *Rules*, into how the Sawridge Band determines membership and the status and number of applications before the Band Council for membership. The Public Trustee observes that the application process and membership criteria as reported in the affidavit of Elizabeth Poitras appears

which it seeks is relevant to evaluate and identify the beneficiaries of the 1985 Sawridge Trust. As such, it seeks information in respect to Band membership processes, but not to affect those processes. They say that this Court will not intrude into the jurisdiction of the Federal Court because that is not ‘relief’ against the Sawridge Band Chief and Council. Disclosure of information by a federal board, commission, or tribunal is not a kind of relief that falls into the exclusive jurisdiction of the Federal Courts, per *Federal Court Act*, s. 18.

51 As well, I note that the “exclusive jurisdiction” of statutory courts is not as strict as alleged by the Trustees and the Band Chief and Council. In *783783 Alberta Ltd. v. Canada (Attorney General)*, 2010 ABCA 226, 322 D.L.R. (4th) 56 (Alta. C.A.), the Alberta Court of Appeal commented on the jurisdiction of the Tax Court of Canada, which per *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, s. 12 has “exclusive original jurisdiction” to hear appeals of or references to interpret the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp). The Supreme Court of Canada in *Addison & Leye Ltd. v. Canada*, 2007 SCC 33, 365 N.R. 62 (S.C.C.) indicated that interpretation of the *Income Tax Act* was the sole jurisdiction of the Tax Court of Canada (para. 7), and that (para. 11):

... The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. ...

52 The legal issue in *783783 Alberta Ltd. v. Canada (Attorney General)* was an unusual tort claim against the Government of Canada for what might be described as “negligent taxation” of a group of advertisers, with the alleged effect that one of two competing newspapers was disadvantaged. Whether the advertisers had or had not paid the correct income tax was a necessary fact to be proven at trial to establish that injury: paras. 24-25. The Alberta Court of Appeal concluded that the jurisdiction of a provincial superior court includes whatever statutory interpretation or application of fact to law that is necessary for a given issue, in that case a tort: para. 28. In that sense, the trial court was free to interpret and apply the *Income Tax Act*, provided in doing so it did not determine the income tax liability of a taxpayer: paras. 26-27.

53 I conclude that it is entirely within the jurisdiction of this Court to examine the Band’s membership definition and application processes, provided that:

1. investigation and commentary is appropriate to evaluate the proposed amendments to the 1985 Sawridge Trust, and
2. the result of that investigation does not duplicate the exclusive jurisdiction of the Federal Court to order “relief” against the Sawridge Band Chief and Council.

54 Put another way, this Court has the authority to examine the band membership processes and evaluate, for example, whether or not those processes are discriminatory, biased, unreasonable, delayed without reason, and otherwise breach *Charter* principles and the requirements of natural justice. However, I do not have authority to order a judicial review remedy on that basis because that jurisdiction is assigned to the Federal Court of Canada.

55 In the result, I direct that the Public Trustee may pursue, through questioning, information relating to the Sawridge Band membership criteria and processes because such information may be relevant and material to determining issues arising on the advice and directions application.

VII. Conclusion

56 The application of the Public Trustee is granted with all costs of this application to be calculated on a solicitor and its own client basis.

Application granted.