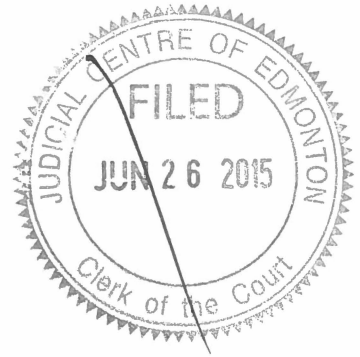


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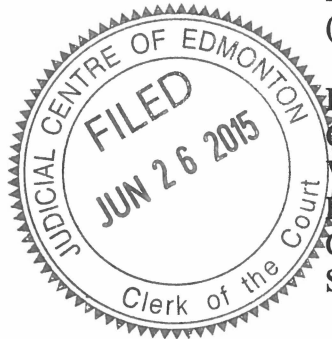
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COURT OF QUEEN'S BENCH OF ALBERTA EDMONTON
JUDICIAL CENTRE

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

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

APPLICANTS



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

DOCUMENT

AFFIDAVIT OF ROMAN BOMBAK

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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

Attention: Janet L. Hutchison
Telephone: (780) 423-3661 ext.225
Fax: (780) 426-1293
File: 51433 JLH

AFFIDAVIT OF ROMAN BOMBAK

Sworn on June 26, 2015

I, Roman Bombak, of Edmonton, Alberta, SWEAR THAT:

1. I am the Manager of Information and Legal Services in the Office of the Public Trustee.

and whether or not they are in compliance with it was always in contemplation in and relevant to this litigation. It was the appellants who raised the question of whether or not they were in compliance in response to the Crown's motion for injunction. It, therefore, had to be dealt with before the injunction application itself was addressed. The Crown and the interveners do not challenge the need to deal with the question and Hugessen J. certainly accepted that it was necessary to interpret the legislation and determine if the appellants were or were not in compliance with it.

[16] Courts do not normally make determinations of law as a condition precedent to the granting of an interlocutory injunction. However, that is what occurred here. In the unusual circumstances of this case, I think it was appropriate for Hugessen J. to have made such a determination.

[17] Although rule 220 was not expressly invoked, I would analogize the actions of Hugessen J. to determining a preliminary question of law. Rules 220(1) and (3) read as follows:

220. (1) A party may bring a motion before trial to request that the Court determine

(a) a question of law that may be relevant to an action;

...

(3) A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

220. (1) Une partie peut, par voie de requête présentée avant l'instruction, demander à la Cour de statuer sur :

a) tout point de droit qui peut être pertinent dans l'action;

...

(3) La décision prise au sujet d'un point visé au paragraphe (1) est définitive aux fins de l'action, sous réserve de toute modification résultant d'un appel.

[18] Although the appellants did not explicitly bring a motion under Rule 220, the need to determine the proper interpretation of the Act was implicit in their reply to the respondent's motion for a mandatory interlocutory injunction. It would be illogical for the appellants to raise the issue in defence to the injunction application and the Court not be able to deal with it. There is no suggestion that the question could not be decided because of disputed facts or for any other reason. It was raised by the appellants who said it was relevant to the action. Therefore, I think that Hugessen J. was able to, and did, make a preliminary determination of law that was final and conclusive for purposes of the action, subject to being varied on appeal.

Does the Band's Membership Application Process Comply with the Requirements

of the Indian Act?

[19] I turn to the question itself. Although the determination under appeal was made by a case management judge who must be given extremely wide latitude (see *Sawridge Band v. Canada*, [2002] 2 F.C. 346 at paragraph 11 (C.A.)), the determination is one of law. Where a substantive question of law is at issue, even if it is decided by a case management judge, the applicable standard of review will be correctness.

[20] The appellants say there is no automatic entitlement to membership and that the Band's membership code is a legitimate means of controlling its own membership. They rely on subsections 10(4) and 10(5) of the Indian Act which provide:

10(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.	10(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce que son nom soit consigné dans la liste de bande avant leur établissement du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet.
---	---

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.	(5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)c) avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné.
--	--

[21] The appellants say that subsections 10(4) and (5) are clear and unambiguous and Hugessen J. was bound to apply these provisions. They submit the words "by reason only of" in subsection 10(4) mean that a band may establish membership rules as long as they do not expressly contravene any provisions of the Act. They assert that the Band's code does not do so. The code only requires that if an individual is not resident on the Reserve, an application must be made demonstrating, to the satisfaction of the Band Council, that the individual:

has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band (paragraph 3(a)(ii)).

[22] With respect to subsection 10(5), the appellants say that the words "if that person does not subsequently cease to be entitled to have his name entered in the Band List" mean that the Band is given a discretion to establish membership rules that may disentitle an individual to membership in the Band. They submit that nothing in the Act precludes a band from establishing additional qualifications for membership.

[23] The Crown, on the other hand, says that persons in the position of the individuals in this appeal have "acquired rights." I understand this argument to be that paragraph 11(1)(c) created an automatic entitlement for those persons to membership in the Indian Band with which they were previously connected. The Crown submits that subsection 10(4) prohibits a band from using its membership rules to create barriers to membership for such persons.

[24] Hugessen J. was not satisfied that subsections 10(4) and (5) are as clear and unambiguous as the appellant suggests. He analyzed the provisions in the context of related provisions and agreed with the Crown.

[25] The appellants seem to object to Hugessen J.'s contextual approach to statutory interpretation. However, all legislation must be read in context. Driedger's well known statement of the modern approach to statutory construction, adopted in countless cases such as *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 21, reads:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87).

Hugessen J. interpreted subsections 10(4) and (5) in accordance with the modern approach and he was correct to do so.

[26] I cannot improve on Hugessen J.'s statutory construction analysis and I quote the relevant portions of his reasons, which I endorse and adopt as my own:

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does

not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used by paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained by the Department of Indian Affairs for a band if, inter alia, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(c).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively: a band may not create barriers to membership for those persons who are by law already deemed to be members.

[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."

...

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual [sic] of their automatic entitlement to membership unless they subsequently lose that entitlement. The band's

membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

[27] I turn to the appellants' arguments in this Court.

[28] The appellants assert that the description "acquired rights" used by Hugessen J. reads words into the Indian Act that are not there. The term "acquired rights" appears as a marginal note beside subsection 10(4). As such, it is not part of the enactment, but is inserted for convenience of reference only (Interpretation Act, R.S.C. 1985, c. I-21, s. 14). However, the term is a convenient "shorthand" to identify those individuals who, by reason of paragraph 11(1)(c), became entitled to automatic membership in the Indian Band with which they were connected. In other words, the instant paragraph 11(1)(c) came into force, i.e. April 17, 1985, these individuals were entitled to have their names entered on the membership list of their Band.

[29] The appellants say that the words "by reason only of" in subsection 10(4) do not preclude an Indian Band from establishing a membership code, requiring persons who wish to be considered for membership to make application to the Band. I acknowledge that the words "by reason only of" could allow a band to create restrictions on continued membership for situations that arose or actions taken after the membership code came into force. However, the code cannot operate to deny membership to those individuals who come within paragraph 11(1)(c).

[30] A band may enact membership rules applicable to all of its members. Yet subsections 10(4) and (5) restrict a band from enacting membership rules targeted only at individuals who, by reason of paragraph 11(1)(c), are entitled to membership. That distinction is not permitted by the Act.

[31] The appellants raise three further objections. First, they say that their membership code is required because of "band shopping." However, in respect of persons entitled to membership under paragraph 11(1)(c), the issue of band shopping does not arise. Under paragraph 11(1)(c), the individuals in question are only entitled to membership in the band in which they would have been a member but for the pre-April 17, 1985 provisions of the Indian Act. In this case, those individuals would have been members of the Sawridge Band.

[32] Second, the appellants submit that the opening words of subsection 11(1), "commencing on April 17, 1985," indicate a process and not an event, i.e. that there is no automatic membership in a band and that indeed some persons may not wish to be members; rather, the word "commencing" only means that a person may apply at any time on or after April 17, 1985. I agree that there is no automatic membership. However, there is an automatic entitlement to membership. The words "commencing on April 17, 1985" only indicate that subsection 11(1) was not retroactive to before April 17, 1985. As of that date, the individuals in question in this appeal acquired an automatic entitlement to membership in the Sawridge Band.

[33] Third, the appellants say that the individuals in question have not made application for membership. Hugessen J. dealt with this argument at paragraph 12 of his reasons:

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

[34] The appellants submit, contrary to Hugessen J.'s finding, that there was no evidence that the individuals in question here wanted to become members of the Sawridge Band. A review of the record demonstrates ample evidence to support Hugessen J.'s finding. For example, by Sawridge Band Council Resolution of July 21, 1988, the Band Council acknowledged that "at least 164 people had expressed an interest in writing in making application for membership in the Band." A list of such persons was attached to the Band Council Resolution. Of the eleven individuals in question here, eight were included on that list. In addition, the record contains applications for Indian status and membership in the Sawridge Band made by a number of the individuals.

[35] For these persons entitled to membership, a simple request to be included in the Band's membership list is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant. As Hugessen J. found, requiring acquired rights individuals to comply with the Sawridge Band membership code, in which preconditions had been created to membership, was in contravention of the Act

[36] Of course, this finding has no bearing on the main issue raised by the appellants in this action, namely, whether the provisions entitling persons to membership in an Indian band are unconstitutional.

THE INJUNCTION APPLICATION

Standing

[37] I turn to the Injunction application. The appellants say that there was no lis between the Band and the eleven persons ordered by Hugessen J. to be included in the Band's Membership List. The eleven individuals are not parties to the main action. The appellants also say that the Crown is not entitled to seek interlocutory relief when it does not seek the same final relief.

[38] I cannot accept the appellants' arguments. The Crown is the respondent in an application to have validly enacted legislation struck down on constitutional grounds. It is seeking an Injunction, not only on behalf of the individuals denied the benefits of that legislation but on behalf of the public interest in having the laws of Canada obeyed. The Crown, as represented by the Attorney General, has traditionally had standing to seek Injunctions to ensure that public bodies, such as an Indian band council, follow the law (see Robert J. Sharpe, *Injunctions and Specific Performance*, looseleaf (Aurora, ON: Canada Law Book, 2002) at paragraph 3.30; *Ontario (Attorney General) v. Ontario Teachers' Federation* (1997), 36 O.R. (3d) 367 at 371-72 (Gen. Div.)). Having regard to the Crown's standing at common law, statutory authority, contrary to the appellants' submission, is unnecessary. Hugessen J. was thus correct to find that the Crown had standing to seek the Injunction.

[39] I also cannot accept the argument that the Crown may not seek interlocutory relief because it has not sought the same final relief in this action. The Crown is defending an attack on the constitutionality of Bill C-31 and is seeking an interlocutory Injunction to require compliance with it in the interim. If the Crown is successful in the main action, the result will be that the Sawridge Band will have to enter or register on its membership list the individuals who are the subject of the Injunction application. The Crown therefore is seeking essentially the same relief on the Injunction application as in the main action.

[40] Further, section 44 of the Federal Courts Act, R.S.C. 1985, c. F-7, confers jurisdiction on the Federal Court to grant an Injunction "in all cases in which it appears to the Court to be just or convenient to do so." The jurisdiction conferred by section 44 is extremely broad. In *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998]

1 S.C.R. 626, the Supreme Court found that the Federal Court could grant injunctive relief even though there was no action pending before the Court as to the final resolution of the claim in issue. If section 44 confers jurisdiction on the Court to grant an injunction where it is not being asked to grant final relief, the Court surely has jurisdiction to grant an injunction where it will itself make a final determination on an interconnected issue. The requested injunction is therefore sufficiently connected to the final relief claimed by the Crown.

The Test for Granting an Interlocutory Injunction

[41] The test for whether an interlocutory injunction should be granted was set out in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) and adopted by the Supreme Court in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 where, at 334, Sopinka and Cory JJ. summarized the test as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[42] The appellants submit that Hugessen J. erred in applying a reverse onus to the test. Since, as will be discussed below, the Crown has satisfied the traditional test, I do not need to consider whether the onus should be reversed.

Serious Question

[43] In *RJR-Macdonald* at 337-38, the Court indicated that the threshold at the first branch is low and that the motions judge should proceed to the rest of the test unless the application is vexatious or frivolous.

[44] The appellants say that in cases where a mandatory injunction is sought, the older pre-American Cyanamide test of showing a strong prima facie case for trial should continue to apply. They rely on an Ontario case, *Breen v. Farlow*, [1995] O.J. No. 2971 (Gen. Div.), in support of this proposition. Of course, that case is not binding on this Court. Furthermore, it has been questioned by subsequent Ontario decisions in which orders in the nature of a mandatory interlocutory injunction were issued (493680 Ontario Ltd. v. Morgan, [1996] O.J. No. 4776 (Gen. Div.); *Samola v. Prudential of America General Insurance Co. (Canada)*, [1999] O.J. No. 2317 (S.C.J.)). In *Morgan*, Hockin J. stated that *RJR-Macdonald* had modified the old test, even for mandatory interlocutory injunctions (paragraph 27).

[45] The jurisprudence of the Federal Court on this issue in recent years is divided. In *Relais Nordik Inc. v. Secunda Marine Services Ltd.* (1988), 24 F.T.R. 256 at paragraph 9, Pinard J. questioned the applicability of the American Cyanamide test to mandatory interlocutory injunctions. On the other hand, in *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.* (1990), 36 F.T.R. 98 at paragraph 15, MacKay J. accepted that the American Cyanamide test applied to mandatory injunctions in the same way as to prohibitory ones. Both of these cases were decided before the Supreme Court reaffirmed its approval of the American Cyanamide test in *RJR-Macdonald*. More recently, in *Patriquen v. Canada (Correctional Services)*, 2003 FC 927 at paragraphs 9-16, Blais J. followed the *RJR-Macdonald* test and found that there was a serious issue to be tried in an application for a mandatory interlocutory injunction (which he dismissed on the basis that the applicant had not shown irreparable harm).

[46] Hugessen J. followed *Ansa International* and held that the *RJR-Macdonald* test should be applied to an interlocutory injunction application, whether it is prohibitory or mandatory. In light of Sopinka and Cory JJ.'s caution about the difficulties of engaging in an extensive analysis of the constitutionality of legislation at an interlocutory stage (*RJR-Macdonald* at 337), I think he was correct to do so. However, the fact that the Crown is asking the Court to require the appellants' to take positive action will have to be considered in assessing the balance of convenience.

[47] In this case, the Crown's argument that Bill C-31 is constitutional is neither frivolous nor vexatious. There is, therefore, a serious question to be tried.

Irreparable Harm

[48] Ordinarily, the public interest is considered only in the third branch of the test. However, where, as here, the government is the applicant in a motion for interlocutory relief, the public interest must also be considered in the second stage (*RJR-Macdonald* at 349).

[49] Validly enacted legislation is assumed to be in the public interest. Courts are not to investigate whether the legislation actually has such an effect (*RJR-Macdonald* at 348-49).

[50] Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it (*Metropolitan Stores* at 143, quoting *Morgentaler v. Ackroyd* (1983), 42 O.R. (2d) 659 at 666-68 (H.C.)).

[51] Further, the individuals who have been denied membership in the appellant band are aging and, at the present rate of progress, some are unlikely ever to benefit from amendments that were adopted to redress their discriminatory exclusion from band membership. The public interest in preventing discrimination by public bodies will be irreparably harmed if the requested injunction is denied and the appellants are able to continue to ignore their obligations under Bill C-31, pending a determination of its constitutionality.

[52] The appellants argue that there cannot be irreparable harm because, if there was, the Crown would not have waited sixteen years after the commencement of the action to seek an injunction. The Crown submits that it explained to Hugessen J. the reasons for the delay and stated that the very length of the proceedings had in fact contributed to the irreparable harm as the individuals in question were growing older and, in some cases, falling ill.

[53] The question of whether delay in bringing an injunction application is fatal is a matter of discretion for the motions judge. There is no indication that Hugessen J. did not act judicially in exercising his discretion to grant the injunction despite the timing of the motion.

Balance of Convenience

[54] In *Metropolitan Stores at 149*, Beetz J. held that interlocutory injunctions should not be granted in public law cases, "unless, in the balance of convenience, the public interest is taken into consideration and given the weight it should carry." In this case, the public interest in seeing that laws are obeyed and that prior discrimination is remedied weighs in favour of granting the injunction requested by the Crown.

[55] As discussed above and as Hugessen J. found, there is a clear public interest in seeing that legislation is obeyed until its application is stayed by court order or the legislation is set aside on final judgment. As well, Bill C-31 was designed to remedy the historic discrimination against Indian women and other Indians previously excluded from status under the Indian Act and band membership. There is therefore a public interest in seeing that the individuals in this case are able to reap the benefits of those amendments.

[56] On the other hand, the Sawridge Band will suffer little or no damage by admitting nine elderly ladies and one gentleman to membership (the Court was advised that one of the eleven individuals had recently died). It is true that the Band is being asked to take the positive step of adding these individuals to its Band List but it is difficult

to find hardship in requiring a public body to follow a law that, pending an ultimate determination of its constitutionality, is currently in force. Even if the Band provides the individuals with financial assistance on the basis of their membership, that harm can be remedied by damages against the Crown if the appellants subsequently succeed at trial. Therefore, as Hugessen J. found, the balance of convenience favours granting the injunction.

CONCLUSION

[57] The appeal should be dismissed.

COSTS

[58] The Crown has sought costs in this Court and in the Court below. The interveners have sought costs in this Court only.

[59] In his Reasons for Order, Hugessen J. reserved the question of costs in favour of the Crown, indicating that the Crown should proceed by way of a motion for costs under rule 369. He awarded no costs to the interveners. It is not apparent from the record that the Crown made a costs motion under rule 369 and in the absence of an order for costs and an appeal of that order, I would not make any award of costs in the Court below.

[60] As to costs in this Court, the Crown and interveners are to make submissions in writing, each not exceeding 3 pages, double-spaced, on or before 7 days from the date of these reasons. The appellants shall make submissions in writing, not exceeding 10 pages, double-spaced, on or before 14 days from the date of these reasons. The Court will, if requested, consider the award of a lump sum of costs inclusive of fees, disbursements, and in the case of the interveners, GST (See *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, [2003] 2 F.C. 451 (C.A.)).

[61] The Judgment of the Court will be issued as soon as the matter of costs is determined.

"Marshall Rothstein"

J.A.

"I agree Marc Noël J.A."

"I agree B. Malone J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-170-03

STYLE OF CAUSE: BERTHA L'HIRONDELLE ET AL. v.

THE QUEEN ET AL.

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: December 15 and 16, 2003

REASONS FOR JUDGMENT

BY: ROTHSTEIN J.A.

CONCURRED IN BY: NOËL J.A.

MALONE J.A.

DATED: January 19, 2004

APPEARANCES:

Mr. Martin J. Henderson

Ms. Catherine Twinn FOR THE APPELLANT

Mr. E. James Kindrake

Ms. Kathleen Kohlman FOR THE RESPONDENT

Mr. Kenneth Purchase FOR INTERVENER, NATIVE COUNCIL OF CANADA

Mr. P. Jon Faulds FOR INTERVENER, NATIVE COUNCIL OF CANADA, ALBERTA

Ms. Mary Eberts FOR INTERVENER, NATIVE WOMEN'S ASSOCIATION OF CANADA

**Mr. Michael J. Donaldson FOR INTERVENER, NON-STATUS INDIAN
ASSOCIATION OF ALBERTA**

SOLICITORS OF RECORD:

AIRD & BERLIS, Toronto, ON

TWINN LAW OFFICE FOR THE APPELLANT

Morris Rosenberg

Deputy Attorney General of Canada

FOR THE RESPONDENT

LANG MICHENER

**Ottawa, ON
CANADA**

FOR INTERVENER, NATIVE COUNCIL OF

FIELD ATKINSON PERRATON,

**Edmonton, AB
CANADA, ALBERTA**

FOR INTERVENER, NATIVE COUNCIL OF

EBERTS SYMES STREET & PALMER LLP FOR INTERVENER, NATIVE

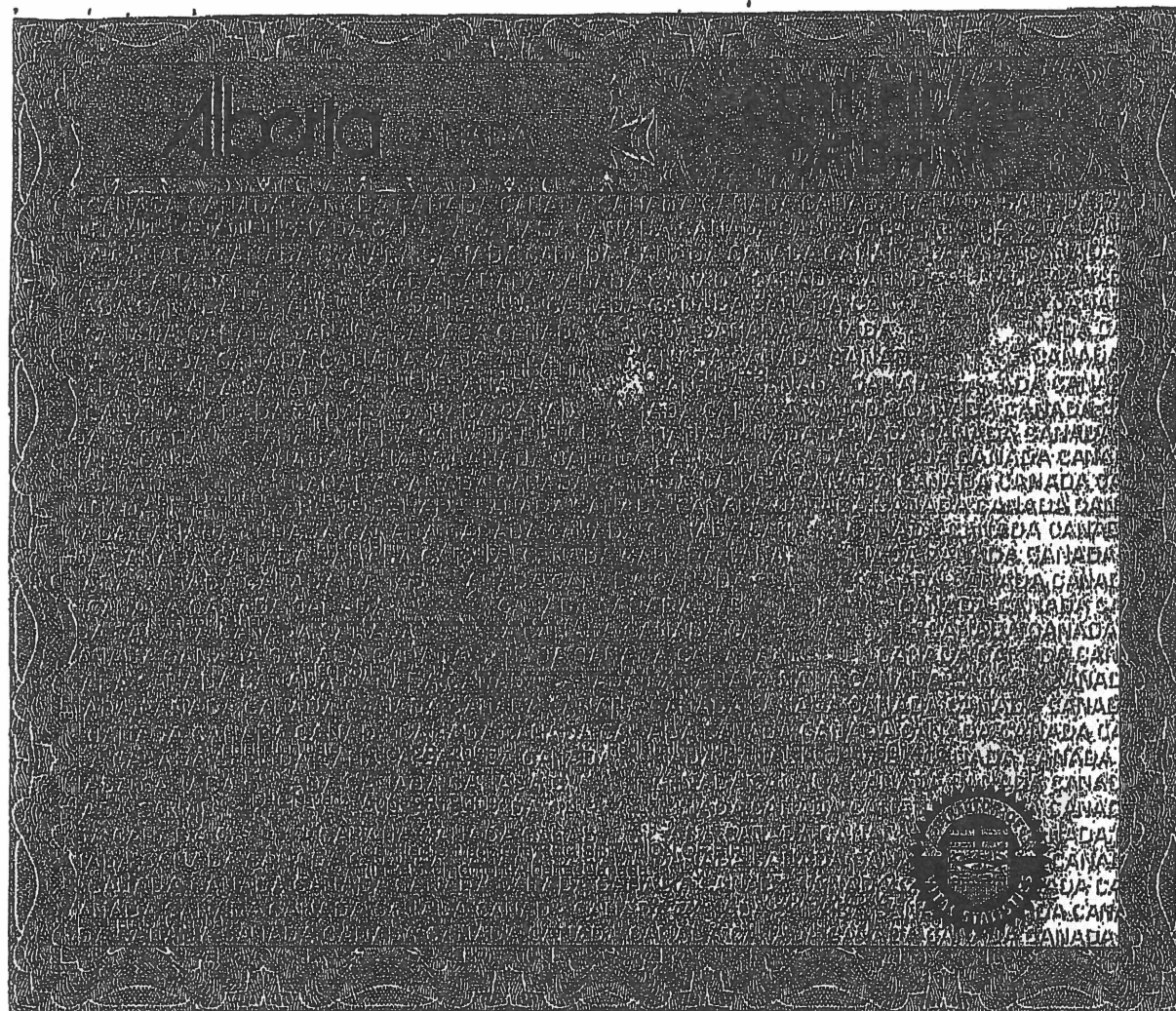
Toronto, ON

WOMEN'S ASSOCIATION OF CANADA

BURNET DUCKWORTH & PALMER LLP FOR INTERVENER,

**Calgary, AB
ALBERTA**

NON-STATUS INDIAN ASSOCIATION OF



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

Gail O'Connell

Sworn before me this 21 day
of May, A.D., 2015

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

Andrew Phypers
Barrister & Solicitor

Exhibit "13" referred to in
 Affidavit of
Gail O'Connell

Sworn before me this 21 day
 of May AD. 2015

Andrew Ryan
 Registrar

Part 2

USE BLACK INK

This form, if filled in, is to be used in connection with the Marriage Act, R.S.A. 1980, c. A-26, and is to be filled in by the Registrar of the Province of Alberta.

PROVINCE OF ALBERTA

Record No. 712 of 1938

REGISTRATION OF MARRIAGE

BRIDEGROOM

1 Name of Groom Harry & Sons
 2 Surname Tracher
 3 Age 34
 4 Place of Birth Three Rivers
 5 Date of Birth Smith, Waag
 6 Name of Father Peter & Sons
 7 Date of Father's Marriage Hollander
 8 Name of Mother Erictje
 9 Date of Mother's Marriage Hettinga
 10 Can Bride Read? yes
 11 Can Bride Write? yes

BRIDE

12 Name in Full Elizabeth Ward
 13 Surname Ward
 14 Age 19
 15 Place of Birth Altham, (in Ontario) Alberta
 16 Date of Birth Smith, Trach
 17 Name of Father Ward
 18 Date of Father's Marriage Ward
 19 Name of Mother Elizabeth Ward
 20 Date of Mother's Marriage Ward
 21 Can Bride Read? yes
 22 Can Bride Write? yes
 23 Date of Marriage Eighteenth July 1938
 24 Place of Marriage St Andrew's Church of England Altham
 25 Name of Minister of the Gospel Rev. Mr. [illegible]
 26 Name of Registrar Nellie Whittemore Altham
 27 Signature of Groom Harry & Sons
 28 Signature of Bride Elizabeth Ward
 29 License No. 50696

ACTUAL
 SIGNATURES
 NECESSARY

I certify the foregoing to be true and correct to the best of my knowledge and belief.
Altham Eighteenth July 1938

This is Exhibit "E" referred to in the
Affidavit of
Gail O'Connell Page 1 of 1
Sworn before me this 21 day
of May, A.D., 2015



Indian and Northern
Affairs Canada
www.inac.gc.ca

Affaires indiennes
et du Nord Canada
www.aic.gc.ca

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

Andrew Hughes
Barrister & Solicitor

SEP 6 2000

Membership Administrator
Lesser Slave Lake Indian Registration Council
P.O. Box 289
SLAVE LAKE, Alberta
T0G 2A0

Notary Public

25000-454 (Downsley)
LB#28

Date of Application: June 22, 2000
Date of Receipt: June 30, 2000

REGISTRATION PARTICULARS:

Name: Rosalind Ann Lindberg

Date of Birth: October 20, 1923

Entitlement under the Indian Act to:

Registration: Section 6(1)(c)
Band Code: 434

Name of Registry Group: Sawridge

Nationality: Omitted from the Indian Register due to non-Indian paternity.

REGISTRY NO.: 4540810701

Mother: Elizabeth Ward, born August 8, 1918, entitled to be registered under section 6(1)(c) of the Indian Act. Her husband, Douglas Ward, a non-Indian, on July 18, 1972, was granted a Letter of Intent and Josephine Cardinal, were registered under No. 7 Sawridge Band, (434) Sawridge Registry Group.

Father: Douglas McMullen, non-Indian

Remarks: The applicant is affiliated with the (434) Sawridge Registry Group.

Name added to Registry: Rosalind Ann Ward

Canada

.../2

Printed on recycled paper - Recycled and recycled paper

-2-

I hereby enter the above particulars in the Indian Register. For your information, the applicant has been advised of her registry number.

Eugene Lohet
M. M. MacDonald
Registrar
OTTAWA, Ontario
K1A 0H4

c.c. Manager, Indian Registration
Lands and Trust Services
Alberta Region



DIVISION OF VITAL STATISTICS

B184734

This is to Certify that the particulars of the undernoted birth which is on record in this Department are as follows:

Name
WARD, ELIZABETH MABLE

Sex FEMALE

Date of
Birth AUG 18, 1918

Place of Birth KINUSO

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

Gail O'Connell

Sworn before me this 21

of May A.D. 2012

Name
of WARD, LEON
Father

His Birthplace *****

Name
of CARDINAL, JOSEPHINEMother
(before marriage)

Her Birthplace *****

Registered at EDMONTON

on NOV 02, 1989
(Month) (Day) (Year)Registration No.
1918-08-019120

Given under my hand and seal of the Director.



D.V.S. 24

This 22
Certified Extract From
Registration of Birth
issued at Edmonton,
Alberta, Canada.

Day of

NOV 19 89

Bill Gilroy
Director

446298

CERTIFICATE OF BAPTISM

CERTIFICAT DE BAPTÊME

Paroisse de Pinette, Alberta
Parish of

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

CECI CERTIFIE - THIS CERTIFIES

Gail O'Connell

Que Elizabeth Marie Ward
That

Sworn before me this 21 day
of Aug A.D. 2015

Enfant de Leon Ward
Child of

et de Josephine Cardinal
and of

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

Andrew Pryper
Briser & Solicitor

qui est né(e) le 18th jour de August 1914.
Born on the day of

a été baptisé(e) - was Baptized

le 7th jour de September 1914.
the day of

Conformément aux Rites de l'Eglise Catholique Romaine
According to the Rites of the Roman Catholic Church

par le Rév. A. P. P. ...
by the Rev.

Parrain Philomène Ward
Sponsors
Marraine

Confirmé(e) à
Confirmed at

par
by

le jour de 19
the day of

Conformément au Régistre de la dite Paroisse
As appears from the Baptismal Register of said Church

daté le September 7th 1914.
Dated

Rev. Raphael Leonard, omv.

ELIZABETH
MABLE
WARD
BORN: AUG 18, 1918

SAWRIDGE FIRST NATION ANNUITY PAYLIST ANALYSIS

This is Exhibit "6" referred to in the
Affidavit of

Gail O'Connell

Sworn before me this 21 day
of MAY A.D. 2015

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

Andrew
Solicitor

SAWRIDGE FIRST NATION ANNUITY PAYLISTS 1910-55													LESSER SLAVE LAKE DISTRICT		PAGE 1 of 1
BAND NAME	DATE/YEAR	NO.	HEAD OF FAMILY	M	W	B	G	H	F	TOTAL PAID	ARREARS PAID	COMMENTS BY INDIAN AGENT	RESEARCHER'S COMMENTS	ANNUITY & GRATUITY	
	OCT 3 1910	7	LEON WARD	1	1	1				3		PAID SELF	LEON WARD PAID PAID WARD PAID PAID BY AGENT - 15.00	15.00	
	SEPT 16 1911	7	LEON WARD	1	1	1				3		PAID TO FATHER AUG. 5	PAID 15.00	15.00	
	SEPT 21 1912	7	LEON WARD	1	1	1				3				15.00	
	SEPT 12 1913	7	LEON WARD	1	1	1				3		ADMITTED 5.00	BOY BORN	15.00	
	SEPT 21 1914	7	LEON WARD	1	1	2				4		(NORMAN)	BOY BORN	20.00	
	AUG 14 1915	7	LEON WARD	1	1	2				4		PAID TO SELF		20.00	
	AUG 14 1916	7	LEON WARD	1	1	2				4				20.00	
	AUG 10 1917	7	LEON WARD	1	1	2	1			5		GIRL BORN (PHILOMINE)		25.00	
	JULY 20 1918	7	LEON WARD	1	1	3				5		GIRL TRANSFERRED TO M.S. (JOHN) BOY BORN	PAID JOHN WARD	25.00	
	JULY 14 1919	7	LEON WARD	1	1	3	1			5		GIRL BORN. BOY BORN (ELIZABETH MABLE WARD)	PAID 25.00	25.00	
	SEPT 10 1920	7	LEON WARD			1	3	1		5				25.00	
	JULY 23 1921	7	LEON WARD			1	3			4		TRANSFERRED TO 70. SICK RECORD IN RESERVE	DID SHE GO	20.00	
	JULY 23 1922	7	LEON WARD			1	3			4		PAID AT GRADARA	TO 51 OR 20	20.00	
	AUG 5 1923	7	LEON WARD			1	3			4		PAID AT SUNKER CREEK	OR WHERE	20.00	
	JUNE 21 1924	7	LEON WARD			1	3			4				20.00	
	JUNE 10 1925	7	LEON WARD			1	3			4				20.00	
	AUG 2 1926	7	LEON WARD			1	3			4		PAID SUNKER CREEK		20.00	
	AUG 4 1927	7	LEON WARD			1	3			4				20.00	
	JUNE 25 1928	7	LEON WARD			1	3			4		PAID JOHN WARD AT GRADARA		20.00	
	JUNE 21 1929	7	LEON WARD			1	3			4				20.00	
	JUNE 20 1930	7	LEON WARD			1	2			3		GIRL TRANSFERRED TO M.S. (JOHN) BOY BORN	PAID FLEMING LOU	15.00	

(WHAT GIRL)

SAMRIDGE FIRS: NATION ANNUITY PAYLISTS 1910-05

LESTER SLAVE LAKE INDIAN REGIONAL COUNCIL. TREATY AND ABORIGINAL RIGHTS RESEARCH GENEOLOGICAL PROJECT 1998 - 2000

Indian Affairs. Treaty and Title, P. 1011.
Treaties, 6, 7, 8, 10 and 11, Part 2, 1931
(A.O. 10, Volume 4-86)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

The Issue Is How Is "Elizabeth Ward" Related to Sawridge

The issue is Elizabeth Ward's (Mother of Rosina Ward, Grandmother of Gail O'Connell) relationship to Sawridge. Among the possible answers is that she is the daughter of Egbert Ward. Or that she is the daughter of Leon Ward. Or none of the above.

Egbert Ward, Son of John Baptiste Ward #4

John Baptiste Ward #4 was placed on the Sawridge payroll in 1910 with wife, five boys and two girls. He died, likely in the flu epidemic, in 1918/1919. In 1922, one of the boys was "transferred to #32, Egbert Ward."

In 1938, Egbert's age is given as 39, his wife 30. That would mean Egbert was born in 1899. He gets his own Sawridge number, #32, at age 23, married with no children. His first daughter is born in 1939, name given as [Marie Rose]. It would be impossible for that daughter to be Elizabeth, since Elizabeth is the mother of Rosina (b. 1935).

Leon Ward, son of John Baptiste Ward:

Leon Ward became #7 Sawridge in 1910. He has three sons (b. 1910, 1914, and 1918). A daughter is born 1917. In 1918-1919, Leon dies, likely in the flu epidemic. The baby girl is transferred to #5, her grandmother, the widow of John Ward. The widow died in 1918 and the baby girl is transferred to #15, St. Pierre Nesootasis and appears on his payroll as "other relative". She continues as such until 1936. In that year, two things happened: Headman St. Pierre Nesootasis died, and the relative is "now paid as a girl" – but her name is given as "Mary Delorme".

A second daughter of John Ward is born in 1919, apparently Leon's widow having been pregnant at the time of her husband's death. In 1921, the second daughter is transferred to #20 Sucker Creek Reserve (Leon's wife Josephine Oubichon Cardinal was from Sucker Creek). This daughter was transferred back to Sawridge #41 in 1930 – Philomene ("Flemming") Ward \ Loyer. So, to summarize to this point, there are two daughters of Leon's, one #5 Sawridge and the other, #41 Sawridge – and neither of them are "Elizabeth Ward."

This is Exhibit "H" referred to in the

Affidavit of

Gail O'Connell

Sworn before me this 21 day

of May A.D., 2015

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

Andrew Pyper
Barrister & Solicitor

NEW INFORMATION FROM DRIFTPILE PAYLISTS

George Hamelin #51 Driftpile

George Hamelin appears on 24 July 1918 as #51 Driftpile, with a woman and a newborn boy, Norman (he later becomes #97). George is from #30 (Leo Chalifoux), she is from #13 (William Giroux).¹ A daughter is added to the payroll in 1920, with a note that she was born in 1917. A second daughter (Mary Jane) in 1923 and 1924. One of the daughters died in 1926. A daughter was born in 1928, another in 1929. Another daughter died in 1930, and still another in 1931. A girl Bertha is born in 1932.

Elizabeth Hamelin Ward, Driftpile #101

On 5 July 1934, one "Elizabeth Ward Hamelin" was added to the Driftpile Cree Nation annuity list as #51. It is likely she was just 18, giving her a birthdate of about 1916 (this is confirmed in 1939 when her age is given as 22, and 1917 is given on her father's payroll as her birthdate). In 1932, Elizabeth is paid at Whitefish Lake, and a child is born (Elie Walker Hemelin) – he is apparently "adopted" and appears later as #115 Elie Badger. Elizabeth's annuity is paid to the priest, Father Falher. In 1939, it is indicated that she is "wife of Harry de Gong, W.M. ("white male"). A "comment by Indian Agent" states, "Prairie Lake. H. DeGong is a white trader at Prairie River. Were married June 14 1938 ('87). "Woman given commutation [authority] 25-131 Sept 13 1939". Elizabeth remained on the Driftpile list until 21 June 1940.

What is clear is that although Elizabeth Ward Hamelin becomes the wife of Harry DeGong, and while it is likely that they are the parents of Fleury deJong, she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist. This Elizabeth Hamelin Ward deGong ceased to be an Indian pursuant to the Indian Act on 13 September 1939. It is also clear that this Elizabeth cannot be the same person as the "Elizabeth Ward" who appeared on the Sawridge list as #65. In fact, "Ward" appears to be only a given middle name and her proper name is Elizabeth Hamelin.

If the woman who is the grandmother of Gaille O'Connell is the same person who married Harry DeGong and is the mother of Fleury DeGong\DeJong, then the proper First Nation for Gaille O'Connell to direct her application for membership is Driftpile. There is not and never has been any connection with Sawridge.

¹ For further research if more Driftpile annuity paylists or summaries are available. +

Elizabeth Ward #65

There is also "Elizabeth Ward #65." She is placed on the Sawridge payroll in 1941 "Girl Trans. from No. 118 D'pile [Age 20, which would make her born around 1920.] Although she is described as a "girl", she enters as a "woman". She married Colin Courtoreille (half-breed) on August 5, 1947, and is dropped from the payroll.

An examination of the Drifpile paylists indicates that she became #118 when she was moved from the list of Johnny Chalifoux. This fits the theory that at the time of her birth, the then unmarried parents (Egbert Ward and Mary Chalifoux) placed the paper with a family in Driftpile. If the parent of Felix Chalifoux is Johnny Chalifoux, and Felix is actually the natural father of Elizabeth (as the payroll implies), this would explain why Elizabeth was raised in the Chalifoux family, but when it was time to have her own number, she was moved to the First Nation of her legal father, Egbert Ward, namely Sawridge First Nation. None of this has anything to do with the Elizabeth Ward who is the grandmother of Gail O'Connell.

1003.
Aug 11 1911

DRIFTLE CREE NATION ANNUITY PAYLIST ANALYSIS

DRIFTLE CREE NATION ANNUITY PAYLISTS 1910-55										LESSER SLAVE LAKE DISTRICT		PAGE 14
DATE/YEAR	NO.	HEAD OF FAMILY	N	W	S	O	M	F	TOTAL PAID	RESEARCHER'S COMMENTS BY INDIAN AGENT	AMOUNT & GRAVITY	
JULY 24 1919	51	GEORGE HAMELIN	1	1	1				3	Self from 20 Q&L. From 13 Girl from 13.	15.00	
JULY 10 1919	51	GEORGE HAMELIN	1	1	1				3		20.00	
OCT 12 1920	51	GEORGE HAMELIN	1	1	1	1			4	Girl from 13	20.00	
JULY 28 1921	51	GEORGE HAMELIN	1	1	1	1			4		20.00	
JULY 20 1922	51	GEORGE HAMELIN	1	1	1	1			4	Admitted 8 to 10	20.00	
AUG 2 1923	51	GEORGE HAMELIN	1	1	1	2			5	Girl from 13	23.00	
JUNE 18 1924	51	GEORGE HAMELIN	1	1	1	3			6	Girl from 13	30.00	
AUG 20 1925	51	GEORGE HAMELIN	1	1	1	3			6		30.00	
JULY 29 1926	51	GEORGE HAMELIN	1	1	1	2			5	Girl from 13	25.00	
AUG 9 1927	51	GEORGE HAMELIN	1	1	1	2			5		25.00	
JUNE 27 1928	51	GEORGE HAMELIN	1	1	1	3			6	Girl from 13	30.00	
JUNE 17 1929	51	GEORGE HAMELIN	1	1	1	4			7	Girl from 13	35.00	
JUNE 16 1930	51	GEORGE HAMELIN	1	1	1	3			6	Girl from 13	30.00	
JUNE 15 1931	51	GEORGE HAMELIN	1	1	1	2			5	Girl from 13	25.00	
JULY 6 1932	51	GEORGE HAMELIN	1	1	1	3			6	Girl from 13. Girl		

LESSER SLAVE LAKE INDIAN REGIONAL COUNCIL TREATY AND ABORIGINAL RIGHTS RESEARCH GENEALOGICAL PROJECT 1899-2000
 This is Exhibit "I" referred to in Affidavit of
 Gail O'Connell
 Sworn before me this 21 day of May AD. 2005
 Andrew P. Papp
 Notary Public, A Commissioner for Oaths
 in and for the Province of Alberta

§.19(1)

TREATY

Guernsey Band Paid at Algeria

No.	NAME	RANK	REG'T	COMP.	DATE	REMARKS
107	Armande Armes				1914	
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Lewie Armes

No. 100

July 10 1920

No.	NAME	RANK	REG'T	COMP.	DATE	REMARKS
1						
2						
3						
4						
5		</				

Indian Affairs, Treaty Activity System
Treaties 5, 6, 7, 8, 12 and 11, Part 2, 1934
(Ind. 10, Volume 10/12)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

s.19(1)

[illegible]

Indian Affairs, Treaty Annals, Preamble
Treaties 4, 5, 7, 8, 13 and 21. Part 2, 192
(H-2, 10, Volume 2-19)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

A0189821_7-000007

APPLICATION FOR ADMISSION

To the
Deputy Superintendent General
of Indian Affairs,
Ottawa, Canada.



Sir—

I hereby make application for admission of the undersigned child into the St. Anthony's Residential School to remain therein under the guardianship of the Principal for such term as the Department of Indian Affairs may deem proper.

Application 145 1931

Indian name of child

English name Elizabeth United

Age 13

Name of Band Metis, Manitoba

No. of child under which child's name is put 2

Father's full name and No. James, Benjamin (Blackfoot Guardian)

Mother's full name and No. Martha, Maria

Parents living or dead

State of child's health Good

Religion Roman Catholic

Does applicant speak English? No

Previously received Yes

Signature of Parent James and Benjamin (Guardian)

Witness—If mother or guardian signs, sign and forward full explanatory notes

I hereby certify that the above application for admission has been read over and interpreted to the parent or guardian and that the person is understood by him or her and that I witnessed his or her signature to this document.

Signature of Administrator or other Officer

Witnessed or other official of the school must set sign as witness.

Note—All the above particulars must be fully stated, especially the "Name of Band," "No. of child under which name is put," and "Religion." If the child is not of good moral character or is not of good health, the Department of Indian Affairs will not consider the application. When application is made for the admission of a child, the Department should be notified by the Principal of the school.

(over)

This is Exhibit "J" referred to in Affidavit of Edith O'Connell
Sworn before me this 21 day
of May A.D. 1931
at St. Anthony's
Notary Public, A Commissioner for Oaths
in and for the Province of Alberta.

Attest: Robert Angen
Notary Public

CERTIFICATE OF HEALTH

Annually Ticket, Name and Number and Date of Parent or Guardian

Candidate's Name Elizabeth Ward

Age 13

Height 5 feet 1 inch

Weight 117 lbs

State defects of limbs, if any None

State defects of sight, if any None

State defects of hearing, if any None

State signs of venereal or other forms of contagious disease, if any None

Describe what venereal disease, if any None

State whether subject to fits No

State whether child has had small-pox No

State whether vaccinated, and if so, in what year yes Vaccinated today 2/19/31

Is this candidate generally of sound and healthy constitution, and fitted to enter an Indian School?

Candidate generally of sound and healthy constitution and fitted to enter an Indian school.

I certify that I have made a personal examination of the above-named applicant, and that the answers set down by me are correct.

N.B.—No child suffering from venereal or any form of contagious disease is to be admitted to school; if in any special case it is thought that this rule should be relaxed, a report should be made to the Department setting forth the facts.



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

Gail O'Connell

Sworn before me this 21 day
of May A.D. 2015

A Notary Public & Commissioner for Oaths
in and for the Province of Alberta
Hector Phyllis
Barrister & Solicitor

January 22, 2004

Ms. Gail O'Connell
3 Dodge Avenue
Red Deer, Alberta
T4R 3H8

Dear Madam:

RE: Band Membership Application

Further to your request of December 16th, 2003 and January 14th, 2004, enclosed
please find the Sawridge Indian Band Membership Application form. Upon
completion please forward same along with a copy of your status card.

If you should have any questions or concerns, please do not hesitate to contact
us.

Yours truly,

SAWRIDGE BAND

Per:

Michael R. McKinney, B. Comm., LL.B.
Executive Director





REGISTERED MAIL

October 31, 2012

Gail E. O'Connell
3 Dodge Avenue
Red Deer, Alberta
T4R 3H0

Dear Ms. O'Connell:

RE: Membership Application

Your application for membership in the Sawridge First Nation has been reviewed by the Council. Please take notice that the Council has denied your application for Membership in the Sawridge First Nation. This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

- 1) You claim a connection to the Sawridge First Nation through Rosina Lindberg. No information was provided about Rosina Lindberg that would establish that she was ever a Member of the Sawridge First Nation before Bill O'Connell, or if she was a Member of the Sawridge First Nation, how she ceased to be a Member of the Sawridge First Nation. We do not have information about Rosina that would connect her to Sawridge. Rosina was born in 1936. Your Application indicates that Rosina Lindberg's mother was Elizabeth Ward and that she lost her status when she got married. Elizabeth Ward appears to have been on the Sawridge Pay list area in 1920, but then appears on the Sucker Creek and Duffield pay lists. We believe that your connection is with the Sucker Creek or Duffield First Nation.
- 2) You do not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 3) Even if you had shown a connection to the Sawridge First Nation the Council considered that it would not be compelled to exercise its discretion to add your name to the Membership List as it did not take in its determination that your admission into Membership of the First Nation would be in the best interests and welfare of the First Nation. The Council considered your commitment to, and knowledge of the history, customs, traditions, culture and communal life of the First Nation and your character and lifestyle in making this determination.

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,
SAWRIDGE FIRST NATION
Per:

Michael R. McKinney
Executive Director

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

Gail O'Connell

Sworn before me this 21 day
of 2015 MAY A.D., 2015

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

Thereu. My per
Carrillo & Solicitor



NOTICE OF MEETING
TO HEAR APPEAL T-486

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

Gail O'Connell

Sworn before me this 18 day
of June, A.D. 2015.

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

Ms. Gail O'Connell
3 Dodge Avenue
Red Deer, Alberta
T4R 3H6

SAWRIDGE FIRST NATION

NOTICE OF MEETING OF ELECTORS

TO: GAIL O'CONNELL

AND TO: ALL ELECTORS OF THE SAWRIDGE FIRST NATION

PLEASE TAKE NOTICE THAT A MEETING OF THE ELECTORS OF THE SAWRIDGE FIRST NATION WILL BE HELD AT THE HOUR OF 10:00 A.M. ON JANUARY 5, 2013 AT THE SAWRIDGE FIRST NATION OFFICE BOARDROOM (IN THE SAWRIDGE BAND ADMINISTRATION BUILDING LOCATED AT 806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, ALBERTA).

THIS MEETING WILL BE HELD TO HEAR THE APPEAL OF GAIL O'CONNELL IN RESPECT OF A DECISION OF THE SAWRIDGE FIRST NATION COUNCIL TO DENY THE MEMBERSHIP APPLICATION OF GAIL O'CONNELL. THE MEETING WILL BE HELD IN ACCORDANCE WITH THE APPEAL PROCEDURE, MEMBERSHIP RULES AND CONSTITUTION OF THE SAWRIDGE FIRST NATION.

AT THIS MEETING GAIL O'CONNELL WILL BE PERMITTED TO BE PRESENT AND TO MAKE REPRESENTATIONS EITHER IN PERSON OR THROUGH AN AGENT OR COUNSEL. A DECISION MAY BE MADE WHETHER YOU ARE PRESENT OR NOT.

THE ELECTORS PRESENT AT THE MEETING ARE EMPOWERED TO DISPOSE OF THE APPEAL AND MAY DO SO AFTER DELIBERATING *IN CAMERA*. IT IS POSSIBLE THAT THE MEETING WILL NOT BE CONCLUDED ON THE DATE SCHEDULED AND WILL HAVE TO BE ADJOURNED TO ANOTHER DAY BY THE ELECTORS. ONCE A DECISION IS MADE NOTICE WILL BE PROVIDED TO THE PERSON MAKING THE APPEAL. THE DECISION OF THE ELECTORS SHALL BE FINAL.

**THIS NOTICE IS PROVIDED BY THE SAWRIDGE FIRST NATION ON
THE 21 DAY OF NOVEMBER 2012**



MEMBERSHIP PROCESSING FORM

APPLICANT: Gail Elizabeth O'Connell

ADDRESS: 3 Dodge Ave, Red Deer, AB

PHONE: (403) 348-0201

APPLICABLE MEMBERSHIP SECTION # - 2

APPLICATION REQUIRED? Yes

SPECIFIC RIGHT No

BECAUSE: Applicant is the Daughter of a Bill C-31 and registered as a 6(2) under the Indian Act.

Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father. Elizabeth Ward appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.

APPLICATION

Application satisfactorily completed? Yes
Applicant interviewed by both Councillors? Yes _____ No x
Applicant interviewed by Chief? Yes _____ No x

SUMMARY OF FACTS CONSIDERED

CONNECTION TO FIRST NATION

- Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father.
- Applicant's Grandmother, Elizabeth Ward, appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.
- Applicant fails to explain how mother lost her status. But indicates that her mother had Registry 4540040701 at the time of applicants birth. This cannot be true.

SIGNIFICANT COMMITMENT TO FIRST NATION(and its History, Customs, Traditions, Culture and Communal Life).

- No current knowledge or ties to the First Nation.
- Would like to learn more.
- Has never lived in or participated in the Community or the First Nation.
- No contact with any active First Nation Members except two recently reinstated members who are not active.
- No stated interest to get involved in community or First Nation.
- Applicant not known to First Nation members
- Not believed that applicant has any opportunity to contribute to First Nation

SIGNIFICANT KNOWLEDGE OF FIRST NATION
(History, Customs, Traditions, Culture and Communal Life)

- No Cree
- Knows Nothing about the First Nation's History, Customs, Traditions or Culture.
- Knows her Mom and Uncle Fleury Dejong

CHARACTER AND LIFESTYLE
(Not a Detriment)

- Employed – Dental Receptionist/Office Administrator
- Debt Free
- Owns own home
- No Criminal Record
- No Drivers License Suspension
- Hardworking and self sufficient
- Good Student
- Positive letters of reference from three people who have known her for 1-2 years – one reference knew her 25 years.

OTHER CONSIDERATIONS

Children Yes - Has 3 Adult Children
Spouse No - Divorced

Physical Condition
Good Health.

Decision

Membership Denied based on

- 1) Applicant has insufficient connection to First Nation. Connection is with Sucker Creek and Driftpile.
- 2) Did not have any specific "right" to have name entered in the Membership List of the Sawridge First Nation.
- 3) The Council was not compelled to exercise its discretion to add name to the Membership List as it did not feel, in its judgment, that admission into Membership of the First Nation would be in the best interests and welfare of the First Nation.

APPEAL PROCEDURE

This procedure shall apply to the appeal of any person (herein called the "Appellant"), whose application for membership in the Sawridge First Nation (herein called the "First Nation") has been denied pursuant to Sawridge Membership Rules.

COMMENCEMENT OF APPEAL

1. The Appeal shall be commenced by the Appellant serving a Notice of Appeal in writing to the First Nation Council at the Office of the First Nation within 15 days after the First Nation has communicated to the Appellant the Decision of the First Nation Council.
2. The Appeal shall be heard by the Electors of the First Nation in attendance (herein called the "Appeal Committee") at a meeting convened by First Nation Council for the purposes of hearing the Appeal.
3. The Appellant shall be given notice of the date, time and place of the hearing before the Appeal Committee.

APPEAL COMMITTEE

4. The Appeal Committee shall consist of the Electors of the First Nation in attendance at the Meeting convened by the First Nation Council for the purpose of hearing the Appeal.
5. The Appeal hearing shall be scheduled to be heard within 60 days of receipt of a Notice of Appeal subject to the right of the Appeal Committee to adjourn the hearing from time to time. Prior to the Appeal hearing commencing, the Appeal hearing may be postponed to a later date, that is more than 60 days after receipt of the Notice of Appeal, at the request of the Appellant.
6. The Chair of the Appeal Committee shall be the Speaker of the Assembly or if the Speaker is unable or unwilling to chair, a Member of the Appeal Committee elected by the Members of the Appeal Committee in attendance.
7. There shall be no quorum requirement for the Appeal Committee however, if the Appeal Committee is of the view that the number of Electors of the First Nation in attendance are not sufficient to conduct business, they may adjourn the hearing to such time as they decide in order to allow more Electors to attend.

HEARING PROCEDURE

8. The Appeal Hearing shall be conducted by the Chair.
9. The Chair shall decide all matters in relation to procedure.

10. The Appellant may be represented by Legal Counsel.
11. The Appeal Committee may retain Legal Counsel to assist in the conduct of the Appeal.
12. If the Appellant or the Appellant's representative does not attend at the commencement of the Appeal, the Appeal Committee may adjourn the Hearing for a reasonable period of time in order to allow the attendance of the Appellant or the Appellant's representative and after the expiration of a reasonable period of time, the Appeal Committee may proceed to hear the Appeal in the absence of the Appellant or the Appellant's representative.
13. The Chair of the Appeal Committee shall provide the Appellant and the Appeal Committee with a copy of the Application for Membership, the Decision of First Nation Council and the Notice of Appeal.
14. The Appeal Hearing procedure shall be as follows:
 - (a) The Chair shall introduce himself or herself;
 - (b) The Chair shall request the Appellant, and if represented, his/her Legal Counsel to introduce themselves;
 - (c) The Chair shall request that the Appeal Committee, and if represented, its Legal Counsel to introduce themselves;
 - (d) The Chair shall confirm that the Appellant has received a copy of the Application for Membership and the Decision of First Nation Council.
 - (e) The Chair shall confirm that the Appeal Committee has received a copy of the Application for Membership, the decision of First Nation Council and the Notice of Appeal;
 - (f) The Chair shall confirm that the Appellant, and if represented, his/her Legal Counsel have received a copy of the Appeal Procedure.
 - (g) The Chair shall ask the Appellant to make their submissions with respect to the Appeal;
 - (h) Following the submissions of the Appellant, the Chair shall ask if any Member of the Appeal Committee wishes to make submissions. If any Member of the Appeal Committee wishes to make submissions, they will be allowed an opportunity.
 - (i) The Appellant, and if represented, his/her Legal Counsel will then be asked if they have any submissions they wish to make in response to the submissions made by any Members of the Appeal Committee. If they wish to make submissions in response, they will be allowed an opportunity.
 - (j) When these submissions are concluded, the Appellant will be advised that the submissions shall be considered by the Appeal Committee and a Decision will be made and communicated to him/her within thirty (30) days of the date of the Hearing.
15. All persons shall be given a reasonable amount of time to make submissions, however, the Chair may, in his or her discretion set reasonable time limits in relation to any submissions.

16. The Chair may adjourn the Appeal Committee Hearing at any time he or she deems it necessary.
17. There shall be no transcript or other record of the Appeal Committee Hearing except for the Application for Membership, the Decision of First Nation Council, the Notice of Appeal and any written submissions or other documentation presented to the Appeal Committee.

DELIBERATIONS

18. Immediately following the conclusion of the submissions to the Appeal Committee, the Appeal Committee shall meet in camera to make a decision.
19. The Appellant, and if represented, his/her Legal Counsel, shall be advised that the Appeal Committee may reconvene if they require further submissions and the Appellant and Legal Counsel shall be requested to wait outside of the meeting room of the Appeal Committee for up to a maximum of one hour while the Appeal Committee deliberates in camera to determine if any further submissions are required.
20. If during deliberations it is determined that no further submissions shall be required, the Appellant and if represented, his/her Legal Counsel shall be advised and shall be excused.
21. If during deliberations it is determined that further submissions are required, the Appeal Committee may reconvene and open the meeting for that purpose however the Appellant and if represented, his/her Legal Counsel shall be provided notice and an opportunity to attend.
22. During the deliberations in camera, the only persons who may be present are the Appeal Committee, the Chair and Legal Counsel if retained by the Appeal Committee and any other person the Appeal Committee permits.
23. There shall be no recording or notes taken with respect to the in camera deliberations of the Appeal Committee.

DECISION BASED ON CONSENSUS

24. During the deliberations, any Member of the Appeal Committee may make a proposal either to allow the Appeal and grant Membership to the Appellant or to dismiss the Appeal and uphold the decision to deny the Appellant Membership. Any such proposal shall include reasons for the proposed decision. Once the proposal is made, it shall be discussed by the Appeal Committee and any member of the Appeal Committee may propose amendments or changes. The Appeal Committee will endeavor to reach a consensus decision on the disposition of the Appeal. A consensus will be reached if all of the Members of the Appeal Committee present agree that the decision and the reasons for the decision are acceptable. A consensus may only be considered to be reached if the decision and reasons are written out and every person who is in attendance at the deliberations of the Appeal Committee has indicated their acceptance of the decision. If

a consensus decision is reached, the written decision with the reasons shall be provided to the Appellant and if represented, his/her Legal Counsel.

25. If the deliberations continue for more than two hours and the Appeal Committee has failed to reach a consensus, the Appeal Committee may continue to deliberate however, after this time has expired, the deliberation shall end if any Member of the Appeal Committee makes a motion to end the deliberations and that Motion is passed by a majority of the Appeal Committee in attendance. If the deliberations are ended in this fashion, then the Members of the Appeal Committee in attendance shall vote by way of secret ballot to either allow the Appeal or to dismiss the Appeal. If a vote by secret ballot is held, the decision of the majority shall be the decision of the Appeal Committee however, in the case of a tie, the Appeal shall be dismissed. When a decision is made as a result of a secret ballot, a Notice of Decision shall be provided to the Appellant indicating only that the Appeal Committee allowed or denied the Appeal.

DECISIONS

26. The Appellant shall be provided with Notice of Decision of the Appeal Committee within 30 days of the Appeal Hearing. The Notice of Decision shall be mailed to the mailing address provided by the Appellant on the Application for Membership Form.
27. If the decision of the Appeal Committee is to allow the Appeal in relation to the Application for Membership, the name of the Appellant shall be entered on the First Nation Membership List.
28. If the decision of the Appeal Committee is to dismiss the Appeal, the Appellant shall have no further right to apply for Membership in the First Nation.
29. The decision of the Appeal Committee is final and binding and not subject to review.

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0363235	POST CANADA
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This is Exhibit "1" referred to in the Affidavit of Enil OConnell sworn before me this 18 day of June AD, 2015

[Signature]
Kenny Daulton, A Commissioner for Oaths
and for the Province of Alberta

CANADA POSTES
POST CANADA

Rec'd Dec 13, 2012

SAWRIDGE FIRST NATION

NOTICE OF MEETING OF ELECTORS

**TO: GAIL O'CONNELL
AND TO: ALL ELECTORS OF THE SAWRIDGE FIRST NATION**

PLEASE TAKE NOTICE THAT A MEETING OF THE ELECTORS OF THE SAWRIDGE FIRST NATION WILL BE HELD AT THE HOUR OF 10:00 A.M. ON JANUARY 5, 2013 AT THE SAWRIDGE FIRST NATION OFFICE BOARDROOM (IN THE SAWRIDGE BAND ADMINISTRATION BUILDING LOCATED AT 806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, ALBERTA).

THIS MEETING WILL BE HELD TO HEAR THE APPEAL OF GAIL O'CONNELL IN RESPECT OF A DECISION OF THE SAWRIDGE FIRST NATION COUNCIL TO DENY THE MEMBERSHIP APPLICATION OF GAIL O'CONNELL. THE MEETING WILL BE HELD IN ACCORDANCE WITH THE APPEAL PROCEDURE, MEMBERSHIP RULES AND CONSTITUTION OF THE SAWRIDGE FIRST NATION.

AT THIS MEETING GAIL O'CONNELL WILL BE PERMITTED TO BE PRESENT AND TO MAKE REPRESENTATIONS EITHER IN PERSON OR THROUGH AN AGENT OR COUNSEL. A DECISION MAY BE MADE WHETHER YOU ARE PRESENT OR NOT.

THE ELECTORS PRESENT AT THE MEETING ARE EMPOWERED TO DISPOSE OF THE APPEAL AND MAY DO SO AFTER DELIBERATING *IN CAMERA*. IT IS POSSIBLE THAT THE MEETING WILL NOT BE CONCLUDED ON THE DATE SCHEDULED AND WILL HAVE TO BE ADJOURNED TO ANOTHER DAY BY THE ELECTORS. ONCE A DECISION IS MADE NOTICE WILL BE PROVIDED TO THE PERSON MAKING THE APPEAL. THE DECISION OF THE ELECTORS SHALL BE FINAL.

**THIS NOTICE IS PROVIDED BY THE SAWRIDGE FIRST NATION ON
THE 21 DAY OF NOVEMBER 2012**



MEMBERSHIP PROCESSING FORM

APPLICANT: Gail Elizabeth O'Connell

ADDRESS: 3 Dodge Ave, Red Deer, AB

PHONE: (403) 348-0201

APPLICABLE MEMBERSHIP SECTION # - 2

APPLICATION REQUIRED? Yes

SPECIFIC RIGHT No

BECAUSE: Applicant is the Daughter of a Bill C-31 and registered as a 6(2) under the Indian Act.

Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father. Elizabeth Ward appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.

APPLICATION

Application satisfactorily completed? Yes

Applicant interviewed by both Councillors? Yes

Applicant interviewed by Chief? Yes

Yes

Yes

No

No x

No x

SUMMARY OF FACTS CONSIDERED

CONNECTION TO FIRST NATION

- Applicant's mother (Rosina Lindberg) was reinstated pursuant to the order of Hugesson as an Absolute - having been omitted from the list due to non-Indian paternity. It appears that Rosina Wards Mother (Elizabeth Ward) lost her status on marriage to her Non-Indian Father. It appears that Rosina was born in 1935 (when her mother was 17) but we do not know when they got married. Rosina's Birth Certificate does not list a father.
- Applicant's Grandmother, Elizabeth Ward, appears to have been on the Sawridge Pay list once in 1920 and then appears only at Sucker Creek and Driftpile. It is arguable that Rosina was an omission and not a C-31. In other words an error before Bill C-31. Even if Rosina had been on the list from birth, Gail would not have been on the list from birth since Rosina was married to Lindberg (a non-Indian) at the time of Gail's birth. It is also arguable that Rosina and all of her descendants really belong to Driftpile or Sucker Creek.
- Applicant fails to explain how mother lost her status. But indicates that her mother had Registry 4540040701 at the time of applicants birth. This cannot be true.

SIGNIFICANT COMMITMENT TO FIRST NATION (and its History, Customs, Traditions, Culture and Communal Life).

- No current knowledge or ties to the First Nation.
- Would like to learn more.
- Has never lived in or participated in the Community or the First Nation.
- No contact with any active First Nation Members except two recently reinstated members who are not active.
- No stated interest to get involved in community or First Nation.
- Applicant not known to First Nation members
- Not believed that applicant has any opportunity to contribute to First Nation

SIGNIFICANT KNOWLEDGE OF FIRST NATION
(History, Customs, Traditions, Culture and Communal Life)

- No Cree
- Knows Nothing about the First Nation's History, Customs, Traditions or Culture.
- Knows her Mom and Uncle Fleury Dejong

CHARACTER AND LIFESTYLE
(Not a Detriment)

- Employed – Dental Receptionist/Office Administrator
- Debt Free
- Owns own home
- No Criminal Record
- No Drivers License Suspension
- Hardworking and self sufficient
- Good Student
- Positive letters of reference from three people who have known her for 1-2 years – one reference knew her 25 years.

OTHER CONSIDERATIONS

Children Yes - Has 3 Adult Children
Spouse No - Divorced

Physical Condition
Good Health.

Decision

Membership Denied based on

- 1) Applicant has insufficient connection to First Nation. Connection is with Sucker Creek and Driftpile.
- 2) Did not have any specific "right" to have name entered in the Membership List of the Sawridge First Nation.
- 3) The Council was not compelled to exercise its discretion to add name to the Membership List as it did not feel, in its judgment, that admission into Membership of the First Nation would be in the best interests and welfare of the First Nation.

APPEAL PROCEDURE

This procedure shall apply to the appeal of any person (herein called the "Appellant"), whose application for membership in the Sawridge First Nation (herein called the "First Nation") has been denied pursuant to Sawridge Membership Rules.

COMMENCEMENT OF APPEAL

1. The Appeal shall be commenced by the Appellant serving a Notice of Appeal in writing to the First Nation Council at the Office of the First Nation within 15 days after the First Nation has communicated to the Appellant the Decision of the First Nation Council.
2. The Appeal shall be heard by the Electors of the First Nation in attendance (herein called the "Appeal Committee") at a meeting convened by First Nation Council for the purposes of hearing the Appeal.
3. The Appellant shall be given notice of the date, time and place of the hearing before the Appeal Committee.

APPEAL COMMITTEE

4. The Appeal Committee shall consist of the Electors of the First Nation in attendance at the Meeting convened by the First Nation Council for the purpose of hearing the Appeal.
5. The Appeal hearing shall be scheduled to be heard within 60 days of receipt of a Notice of Appeal subject to the right of the Appeal Committee to adjourn the hearing from time to time. Prior to the Appeal hearing commencing, the Appeal hearing may be postponed to a later date, that is more than 60 days after receipt of the Notice of Appeal, at the request of the Appellant.
6. The Chair of the Appeal Committee shall be the Speaker of the Assembly or if the Speaker is unable or unwilling to chair, a Member of the Appeal Committee elected by the Members of the Appeal Committee in attendance.
7. There shall be no quorum requirement for the Appeal Committee however, if the Appeal Committee is of the view that the number of Electors of the First Nation in attendance are not sufficient to conduct business, they may adjourn the hearing to such time as they decide in order to allow more Electors to attend.

HEARING PROCEDURE

8. The Appeal Hearing shall be conducted by the Chair.
9. The Chair shall decide all matters in relation to procedure.

10. The Appellant may be represented by Legal Counsel.
11. The Appeal Committee may retain Legal Counsel to assist in the conduct of the Appeal.
12. If the Appellant or the Appellant's representative does not attend at the commencement of the Appeal, the Appeal Committee may adjourn the Hearing for a reasonable period of time in order to allow the attendance of the Appellant or the Appellant's representative and after the expiration of a reasonable period of time, the Appeal Committee may proceed to hear the Appeal in the absence of the Appellant or the Appellant's representative.
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 - (c) The Chair shall request that the Appeal Committee, and if represented, its Legal Counsel to introduce themselves;
 - (d) The Chair shall confirm that the Appellant has received a copy of the Application for Membership and the Decision of First Nation Council.
 - (e) The Chair shall confirm that the Appeal Committee has received a copy of the Application for Membership, the decision of First Nation Council and the Notice of Appeal;
 - (f) The Chair shall confirm that the Appellant, and if represented, his/her Legal Counsel have received a copy of the Appeal Procedure.
 - (g) The Chair shall ask the Appellant to make their submissions with respect to the Appeal;
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17. There shall be no transcript or other record of the Appeal Committee Hearing except for the Application for Membership, the Decision of First Nation Council, the Notice of Appeal and any written submissions or other documentation presented to the Appeal Committee.

DELIBERATIONS

18. Immediately following the conclusion of the submissions to the Appeal Committee, the Appeal Committee shall meet in camera to make a decision.
19. The Appellant, and if represented, his/her Legal Counsel, shall be advised that the Appeal Committee may reconvene if they require further submissions and the Appellant and Legal Counsel shall be requested to wait outside of the meeting room of the Appeal Committee for up to a maximum of one hour while the Appeal Committee deliberates in camera to determine if any further submissions are required.
20. If during deliberations it is determined that no further submissions shall be required, the Appellant and if represented, his/her Legal Counsel shall be advised and shall be excused.
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23. There shall be no recording or notes taken with respect to the in camera deliberations of the Appeal Committee.

DECISION BASED ON CONSENSUS

24. During the deliberations, any Member of the Appeal Committee may make a proposal either to allow the Appeal and grant Membership to the Appellant or to dismiss the Appeal and uphold the decision to deny the Appellant Membership. Any such proposal shall include reasons for the proposed decision. Once the proposal is made, it shall be discussed by the Appeal Committee and any member of the Appeal Committee may propose amendments or changes. The Appeal Committee will endeavor to reach a consensus decision on the disposition of the Appeal. A consensus will be reached if all of the Members of the Appeal Committee present agree that the decision and the reasons for the decision are acceptable. A consensus may only be considered to be reached if the decision and reasons are written out and every person who is in attendance at the deliberations of the Appeal Committee has indicated their acceptance of the decision. If

a consensus decision is reached, the written decision with the reasons shall be provided to the Appellant and if represented, his/her Legal Counsel.

25. If the deliberations continue for more than two hours and the Appeal Committee has failed to reach a consensus, the Appeal Committee may continue to deliberate however, after this time has expired, the deliberation shall end if any Member of the Appeal Committee makes a motion to end the deliberations and that Motion is passed by a majority of the Appeal Committee in attendance. If the deliberations are ended in this fashion, then the Members of the Appeal Committee in attendance shall vote by way of secret ballot to either allow the Appeal or to dismiss the Appeal. If a vote by secret ballot is held, the decision of the majority shall be the decision of the Appeal Committee however, in the case of a tie, the Appeal shall be dismissed. When a decision is made as a result of a secret ballot, a Notice of Decision shall be provided to the Appellant indicating only that the Appeal Committee allowed or denied the Appeal.

DECISIONS

26. The Appellant shall be provided with Notice of Decision of the Appeal Committee within 30 days of the Appeal Hearing. The Notice of Decision shall be mailed to the mailing address provided by the Appellant on the Application for Membership Form.
27. If the decision of the Appeal Committee is to allow the Appeal in relation to the Application for Membership, the name of the Appellant shall be entered on the First Nation Membership List.
28. If the decision of the Appeal Committee is to dismiss the Appeal, the Appellant shall have no further right to apply for Membership in the First Nation.
29. The decision of the Appeal Committee is final and binding and not subject to review.

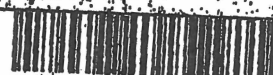
Stamp
088 338
WAVE LAKE, ALBERTA
T4R 2A0

ADDRESS
DATE & TIME
APPEALS PROGRAM
NOTICE OF
APPEAL



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CANADA POSTES
POST
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Rec'd Feb 19/13
→ For Mar 9 Meeting
(12 days notice)



104374 484 256 066

CLEARVIEW RPO
SHOPPERS DRUG MART
7 CLEARVIEW MARKETWAY
RED DEER AB
T4R 0M0
(403) 242-4948



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

Gail O'Connell

Sworn before me this 19 day
of June A.D. 2015

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

Ms. Gail E. O'Connell
3 Dodge Avenue
Red Deer, Alberta
T4R 3H6

CANADA POST / CANADA POSTES
REGISTERED DOMESTIC / RECOMMANDÉ RÉGIME INTÉRIEUR
RW 700 023 218 CA RW 700 023 218 CA
RW 700 023 218 CA
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CPQ Tracking Number / Numéro de suivi de la SCP
22-100-001 (1-800)
Bandeau garantit que l'adresse est vérifiée et conforme aux normes.
L'expéditeur garantit que cet étiquetage ne contient pas de fautes d'orthographe.
Signature Required / Signature requise

Rec'd FEB 19/13

SAWRIDGE FIRST NATION

NOTICE OF MEETING OF ELECTORS

**TO: GAIL O'CONNELL
AND TO: ALL ELECTORS OF THE SAWRIDGE FIRST NATION**

PLEASE TAKE NOTICE THAT A MEETING OF THE ELECTORS OF THE SAWRIDGE FIRST NATION WILL BE HELD AT THE HOUR OF 10:00 A.M. ON MARCH 9, 2013 AT THE SAWRIDGE FIRST NATION OFFICE BOARDROOM (IN THE SAWRIDGE BAND ADMINISTRATION BUILDING LOCATED AT 806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, ALBERTA).

THIS MEETING WILL BE HELD TO HEAR THE APPEAL OF GAIL O'CONNELL IN RESPECT OF A DECISION OF THE SAWRIDGE FIRST NATION COUNCIL TO DENY THE MEMBERSHIP APPLICATION OF GAIL O'CONNELL. THE MEETING WILL BE HELD IN ACCORDANCE WITH THE APPEAL PROCEDURE, MEMBERSHIP RULES AND CONSTITUTION OF THE SAWRIDGE FIRST NATION.

AT THIS MEETING GAIL O'CONNELL WILL BE PERMITTED TO BE PRESENT AND TO MAKE REPRESENTATIONS EITHER IN PERSON OR THROUGH AN AGENT OR COUNSEL. A DECISION MAY BE MADE WHETHER YOU ARE PRESENT OR NOT.

THE ELECTORS PRESENT AT THE MEETING ARE EMPOWERED TO DISPOSE OF THE APPEAL AND MAY DO SO AFTER DELIBERATING *IN CAMERA*. IT IS POSSIBLE THAT THE MEETING WILL NOT BE CONCLUDED ON THE DATE SCHEDULED AND WILL HAVE TO BE ADJOURNED TO ANOTHER DAY BY THE ELECTORS. ONCE A DECISION IS MADE NOTICE WILL BE PROVIDED TO THE PERSON MAKING THE APPEAL. THE DECISION OF THE ELECTORS SHALL BE FINAL.

**THIS NOTICE IS PROVIDED BY THE SAWRIDGE FIRST NATION ON
THE 6 DAY OF FEBRUARY 2013**



APPEAL PROCEDURE

This procedure shall apply to the appeal of any person (herein called the "Appellant"), whose application for membership in the Sawridge First Nation (herein called the "First Nation") has been denied pursuant to Sawridge Membership Rules.

COMMENCEMENT OF APPEAL

1. The Appeal shall be commenced by the Appellant serving a Notice of Appeal in writing to the First Nation Council at the Office of the First Nation within 15 days after the First Nation has communicated to the Appellant the Decision of the First Nation Council.
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18. Immediately following the conclusion of the submissions to the Appeal Committee, the Appeal Committee shall meet in camera to make a decision.
19. The Appellant, and if represented, his/her Legal Counsel, shall be advised that the Appeal Committee may reconvene if they require further submissions and the Appellant and Legal Counsel shall be requested to wait outside of the meeting room of the Appeal Committee for up to a maximum of one hour while the Appeal Committee deliberates in camera to determine if any further submissions are required.
20. If during deliberations it is determined that no further submissions shall be required, the Appellant and if represented, his/her Legal Counsel shall be advised and shall be excused.
21. If during deliberations it is determined that further submissions are required, the Appeal Committee may reconvene and open the meeting for that purpose however the Appellant and if represented, his/her Legal Counsel shall be provided notice and an opportunity to attend.
22. During the deliberations in camera, the only persons who may be present are the Appeal Committee, the Chair and Legal Counsel if retained by the Appeal Committee and any other person the Appeal Committee permits.
23. There shall be no recording or notes taken with respect to the in camera deliberations of the Appeal Committee.

DECISION BASED ON CONSENSUS

24. During the deliberations, any Member of the Appeal Committee may make a proposal either to allow the Appeal and grant Membership to the Appellant or to dismiss the Appeal and uphold the decision to deny the Appellant Membership. Any such proposal shall include reasons for the proposed decision. Once the proposal is made, it shall be discussed by the Appeal Committee and any member of the Appeal Committee may propose amendments or changes. The Appeal Committee will endeavor to reach a consensus decision on the disposition of the Appeal. A consensus will be reached if all of the Members of the Appeal Committee present agree that the decision and the reasons for the decision are acceptable. A consensus may only be considered to be reached if the decision and reasons are written out and every person who is in attendance at the deliberations of the Appeal Committee has indicated their acceptance of the decision. If

a consensus decision is reached, the written decision with the reasons shall be provided to the Appellant and if represented, his/her Legal Counsel.

25. If the deliberations continue for more than two hours and the Appeal Committee has failed to reach a consensus, the Appeal Committee may continue to deliberate however, after this time has expired, the deliberation shall end if any Member of the Appeal Committee makes a motion to end the deliberations and that Motion is passed by a majority of the Appeal Committee in attendance. If the deliberations are ended in this fashion, then the Members of the Appeal Committee in attendance shall vote by way of secret ballot to either allow the Appeal or to dismiss the Appeal. If a vote by secret ballot is held, the decision of the majority shall be the decision of the Appeal Committee however, in the case of a tie, the Appeal shall be dismissed. When a decision is made as a result of a secret ballot, a Notice of Decision shall be provided to the Appellant indicating only that the Appeal Committee allowed or denied the Appeal.

DECISIONS

26. The Appellant shall be provided with Notice of Decision of the Appeal Committee within 30 days of the Appeal Hearing. The Notice of Decision shall be mailed to the mailing address provided by the Appellant on the Application for Membership Form.
27. If the decision of the Appeal Committee is to allow the Appeal in relation to the Application for Membership, the name of the Appellant shall be entered on the First Nation Membership List.
28. If the decision of the Appeal Committee is to dismiss the Appeal, the Appellant shall have no further right to apply for Membership in the First Nation.
29. The decision of the Appeal Committee is final and binding and not subject to review.

**IN THE MATTER OF THE APPEAL OF THE MEMBERSHIP APPLICATION OF
GAIL O'CONNELL TO THE SAWRIDGE FIRST NATION**

BETWEEN:

GAIL O'CONNELL

Appellant

- and -

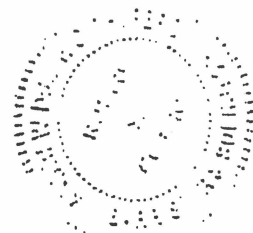
SAWRIDGE FIRST NATION

Respondent

DECISION

GAIL O'CONNELL
3 Dodge Avenue
Red Deer, AB T4R 3H6

PARLEE McLAWS LLP
1500 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 4K1
Attn: Edward H. Molstad, Q.C.
Tel: (780) 423-8500
Fax (780) 423-2870
Solicitor for Sawridge First Nation



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

Gail O'Connell

Sworn before me this 18 day
of June A.D., 2015

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

R.

The Appeal of Gail O'Connell (herein referred to as the "Appellant") in relation to her membership application was heard on the Sawridge Reserve in the Sawridge Boardroom on March 9, 2013, before Electors of the Sawridge First Nation (herein referred to as the "First Nation") in attendance at a meeting convened by the Council of the First Nation for the purposes of hearing the Appeal.

The Electors of the First Nation in attendance when the appeal was heard who constituted the Appeal Committee were as follows:

Brenda Anne Draney	Frieda Draney
Bertha L'Hirondelle	Roseina A. Lindberg
Vera I. McCoy	Clara Midbo
David Paul Midbo	Kristina Gayle Midbo
Tracey Poltras Collins	Darcy A Twin
E. Justin Twin	Jaclyn D. Twin
Walter F. Twin	Winona N. Twin
Yvonne D. Twin	Arlene T. Twinn
Catherine M Twinn	Irene M. Twinn
Isaac F. Twinn	Paul H. Twinn
Roland C. Twinn	Samuel L. Twinn
Margaret C. Ward	

Rarihokwats chaired the Appeal Committee.

The Hearing of the Appeal Committee was called to order at 10:00 A.M. and the Appeal Committee was questioned as to whether they were of the view that the number of Electors of the First Nation in attendance was sufficient to conduct business. The majority of the Electors in attendance were of the view that there were not sufficient Electors in attendance to conduct business and as a result, the Chair adjourned the hearing for 15 minutes.

{B6352164.DOCX; 1}

R.

The Appeal Committee reconvened at 10:15 A.M. The Appellant was in attendance with her sister and her mother.

The Chair introduced himself and all Members of the Appeal Committee introduced themselves. In addition, in attendance and introduced were Edward H. Molstad, Legal Counsel on behalf of the Sawridge First Nation and Michael McKinney, in-house Legal Counsel on behalf of the Sawridge First Nation.

The Appeal Committee and the Appellant were provided with the following documentation:

1. The Application Form of the Appellant;
2. The Membership Processing Form;
3. Letter dated October 31, 2012 from the First Nation to the Appellant advising of the decision of Council with respect to the Appellant's Application for Membership;
4. Notice of Appeal of the Appellant dated November 13, 2012, received by the First Nation on November 15, 2012;
5. Document entitled "Appeal Procedure";
6. Membership Rules of the First Nation entitled "Sawridge Membership Rules".
7. Document entitled "Driftpile Cree Nation Annuity Paylist Analysis";
8. Three page document entitled "The Issue is How is 'Elizabeth Ward' related to Sawridge".

The Appellant was asked by the Chair as to whether there was any objection to the Appeal Procedure or the Appeal Committee as it was constituted. No objection was registered.

Submissions were made on behalf of the Appellant and the Appellant tendered a document which was the birth certificate of Elizabeth Mable Ward.

Following the submissions of the Appellant and questions and comments of members of the Appeal Committee, the Appellant, her sister, Legal Counsel Edward H. Molstad and Legal Counsel Mike McKinney were excused and the Appeal Committee met in camera in order to consider the matter.

The Appeal Committee deliberated for more than two hours and was unable to reach a consensus.

{E6352164.DOCX; 1}

R.

A Motion was made that the deliberations of the Appeal Committee should end and to proceed with a vote by secret ballot. The motion was carried.

A vote was then conducted by way of secret ballot.

The ballots were counted by the Chair and Michael McKinney and following the counting of the ballots, the Chair advised the Appeal Committee that based upon the secret ballot vote the appeal was denied.

The secret ballots were put into an envelope by the Chair and Michael McKinney, sealed and the envelope was delivered to Legal Counsel Edward H. Molstad.

The proceedings before the Appeal Committee were concluded.



RARIHOKWATS
CHAIR, APPEAL COMMITTEE

This is Exhibit B related to the Affidavit (or statutory declaration) of

ROMAN CONBAK

Sworn (or affirmed or declared)

SWORN STATEMENT OF DEBORAH SERAFINCHON

Before me this 26 day of

June A.D. 2015

I, Deborah Serafinchon, office worker, and daughter of the late Walter Patrick Twinn, of the City of Edmonton, in the Province of Alberta, do solemnly swear that:

A Commissioner for Oaths in and for Alberta

Family Background

Glenn A. Godfrey
Barrister and Solicitor

One of the Public Trustees

1. I am the eldest daughter of the late Walter Patrick Twinn, Settlor of the Sawridge Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the "Trusts"), and former Chief of the Sawridge Band (hereinafter called the "Band") and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. I was born on October 2, 1961, the illegitimate daughter of my late father Walter Patrick Twinn (hereinafter called "Father") and Lillian McDermott (hereinafter called "Mother") of Faust. Both were Indians and attended Indian Residential School at Grouard.
3. At birth I was placed into foster care and grew up in that system. I never felt I belonged and struggled with knowing my identity, where I came from, who I came from and what caused me to grow up in foster care. I experienced abuse.
4. After I became an adult, I searched for my birth parents.
5. I discovered my biological mother first; who informed me Walter Patrick Twinn was my Father. Both of my parents died young, shortly after I found them. My Father was born March 29, 1934 and died October 30, 1997.
6. I contacted my Father in 1996, the year before he died and we spoke a number of times, but before we could meet, he died suddenly. The day he died, I fell in my bathroom and have been wheel chair bound since. I've had 3 back surgeries.
7. About a year after his death, I was contacted by Catherine Twinn, my Father's widow. I am informed by Catherine Twinn that my Father told her shortly after they married he had fathered a little girl he had no contact with, wondered about and had offered to marry my Mother. My mother independently confirmed the marriage offer.

Taking Action to Establish Meaning and Recognition, Identity, Security & Connectedness

8. Catherine Twinn and I began a relationship. However, I was more interested in building a relationship with my Father's five children, closest in age to me, from his first marriage to Theresa Auger. They are Irene Twinn, Roland Twinn, Arlene Twinn, Ardell Twinn and Paul Twinn. Arlene first contacted me by mail in 2000 and I met Irene Twinn and Ardell Twinn around Christmas 2001.
9. Initially, I had a positive reception from Arlene Twinn and Ardell Twinn and a conflicting reaction from Irene Twinn.
10. My primary relationship was with Arlene Twinn and through her, incidental contact with her twin brother, Ardell Twinn with whom no relationship emerged.

11. I have no relationship with Roland Twinn and only met him once, accidentally, in a Toys R Us Store when I was with Arlene Twinn.
12. Paul Twinn refused to be in the same room as me when I was in Arlene Twinn's house. I have never had a relationship or contact with Paul Twinn.
13. I quickly learned they hated Catherine Twinn and had no relationship with her or their young half-brothers.
14. I felt caught in the middle. I felt I had to choose between having a relationship with the first or second family, that the first family would reject me if I had a relationship with the second family.

Irene Twinn

15. Irene Twinn in particular made it clear I could not fence sit – telling me I had to choose one family or the other. Irene Twinn had an extreme hatred towards Catherine Twinn. This made me wonder what was wrong with Catherine Twinn to be so hated.
16. I chose my siblings from the first family and for years tried to build a stable relationship with those of them who were interested.
17. One Christmas I and my 3 children but not my husband stayed with Irene Twinn and her 2 sons. Christmas Eve, Irene Twinn told me that I am not liked by the Twinn family; I am not and never will be a part of the family; I should stop trying to belong; and she is the oldest sibling and protector of her siblings.
18. Christmas morning my daughter Lisa and her brothers woke up very early, accidentally awakening Irene Twinn, who became very angry. Irene Twinn verbally attacked me, my parenting skills, and my children she called spoiled rotten and inconsiderate for waking her up.
19. My daughter Lisa called her father who quickly came and took us home. I left crying and never spoke to Irene Twinn again. I was shocked at how cruel Irene Twinn could be while coating cruel words with facial smiles and a pretext of friendliness.
20. I had no further contact with Irene Twinn.

Arlene Twinn

21. My relationship with Arlene Twinn lasted from October 2000 until July 2010.
22. Arlene Twinn was forced to meet me August 2000 before she was ready. I had attended my mother's funeral in August 2000. Elsie Stenstrom was a friend of my mother and Arlene Twinn's mother. At the funeral Elsie Stenstrom gave me a sympathy card from Arlene Twinn. We had corresponded prior but were not ready to meet in person.
23. On October 13, 2000 I went to Slave Lake to put a cross on my father Walter's grave. I stopped at Elsie Stenstrom's home who asked if I wanted to meet Arlene Twinn. I said no, she is not ready. Elsie Stenstrom took me to the restaurant in the Sawridge Truck Stop, left the table and unbeknownst to me, went to the C-Store at the Truck Stop where Arlene Twinn worked and brought her to meet me. That was the first time we met in person.

24. I experienced at least 2 volatile occasions where Arlene Twinn suddenly turned on me, leaving me baffled. Once when Arlene Twinn thought I, unemployed at the time, was trying to get a job with the Sawridge Group of Companies through Catherine Twinn. I had shared with Arlene Twinn that I had given my Resume to Catherine Twinn asking if she knew of any jobs. Arlene Twinn screamed at me assuming I wanted a job with the Sawridge Group. I reassured her I did not want a job with Sawridge Group, had no intention of moving to Slave Lake and was seeking help for a job search in Edmonton, specifically not with the Sawridge Group of Companies.
25. The other occasion I was yelled at by Arlene Twinn remains a mystery. I still do not know what I did but I apologized, and about 1 week later Arlene Twinn called and apologized.
26. In July 2010 I and my family went to Slave Lake on Arlene Twinn's birthday and checked into a Motel. Arlene Twinn's son Chase swam with my children during the day. That night I met Arlene Twinn at the Fairgrounds and watched the fireworks. Arlene Twinn did not sit with me, sitting with Haitina Twinn, Roland Twinn's wife. Arlene Twinn made little effort to spend time with me and I felt rebuffed. The next day I called her to say goodbye and felt coldly and angrily dismissed. It was unpleasant. Thereafter, Arlene Twinn deleted me from Facebook and dismissed me from her life. There has been no contact since.
27. My reaching out to my older half siblings led to challenges with my foster family who, hurt, withdrew from me.
28. Today the only members of the Twinn family I have relationships with are Catherine Twinn and her sons, my half-brothers.


DNA Testing, Indian Status, Band Membership & Beneficiary Status

29. During the time Arlene Twinn spoke to me, I had conversations with her whether she, her mother and her siblings would provide blood samples to prove my paternity. I remember washing dishes in Arlene Twinn's kitchen and discussing this. She indicated her Mom was willing however they never acted on it. I bear a striking resemblance to my Father. Because of this, Arlene and Irene Twinn expressed apprehension about me meeting their Mother who they said has negative feelings and thoughts towards my Father.
30. I began to feel it was obvious that the first family would not provide blood samples, so I turned to Catherine Twinn. She and her sons' blood samples proved my paternity, that I am the eldest daughter of Walter Patrick Twinn.
31. Catherine Twinn encouraged me to apply to the Trust and the Band to ascertain my entitlement at birth under the 1970 Indian Act rules that I qualify as a member of the Sawridge Band, being the illegitimate daughter of a male Indian, and a Beneficiary under the 1985 Trust. If I were to apply and be admitted into Band membership I would become a beneficiary of the 1986 Trust.
32. In about 2002 I applied for Indian Status registration through the office of Lesser Slave Lake Indian Regional Council (LSLIRC) governed by a Board of 5 Chiefs, Roland Twinn being one of the Chiefs. The CEO, Al Willier, is Roland Twinn's good friend. I was never registered even though both my parents qualify as Indians. At some point, I was informed by the LSLIRC the DNA result proving Walter was my Father was inadequate and I would need 2 of my Father's sisters to attest I was his daughter. I believed this requirement was impossible and gave up pursuing Indian Status registration.

33. I had raised the issue of applying for Band membership with Arlene Twinn and was led to believe I would never be accepted into membership because the aunties, my Father's sisters, would never allow it. Discouraged, I never applied and/or finalized my application for Indian Status, Band Membership or Beneficiary status. It was evident to me that any application would upset my half siblings and I put relationship ahead of applying.
34. I have not applied to the Trusts and the Trust Administrator has never contacted me. My half siblings, except Cameron Shirt, are members of the Sawridge Band through our Father, Walter Patrick Twinn.
35. I've been informed by Catherine Twinn and do verily believe that Cameron Shirt applied to the Trust for beneficiary status but his status was resisted and he has never received benefits.
36. I have not applied for band membership for the same reason I have not applied to the Trusts. Some of the principal leaders of the Sawridge Band govern the Trusts, and those like Roland Twinn, have made it clear to me I'm not wanted and my application would be denied. I do not have the resources to challenge this and endure a difficult process.
37. As Walter's daughter, I'd like to be equally included as a beneficiary and a band member as are the children of my Father, his brothers and his sisters.
38. Through my Mother, I have direct lineage to the Sawridge Band. My Mother's Indian Registry number had the Sawridge Band 454 number. My Mother and Father were related which is why they did not marry. At the time they became involved, and I was conceived, they did not know they were related. They later learned they were related after my Father offered to marry my Mother. Not knowing they were related was one of many impacts from Indian Residential School, along with addictions and shortened life spans. I am the "*bruised generation*", deeply impacted by Indian Residential School which continues to alter the course of my life and that of my family.

I swear this evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the
City of Edmonton,
In the Province of Alberta
the 1 day of April, 2015


A Commissioner for Oaths in and
for the Province of Alberta


DEBORAH SERAFINCHON

Marvin J. H. Braun
BARRISTER + SOLICITOR

This is Exhibit "C" referred to in the
Affidavit (or statutory declaration) of
ROMAN BOMBAL

Sworn 'or affirmed or declared
before me this 26 day of
June A.D. 20 15

SWORN STATEMENT OF GINA DONALD

I, Gina Donald, of the City of Edmonton in the Province of Alberta, SWEAR AND SAY THAT:

A Commissioner for Oaths in and for Alberta

Glenn A. Godfrey
Barrister and Solicitor
Office of the Public Trustee

Family Background and Roots in the Sawridge Band

1. I am an individual who is resident in the City of Edmonton in the Province of Alberta and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born September 17, 1979. I have two older brothers. We have the same parents. My mother, Lillian Potskin (hereinafter called "mother") was 5 months pregnant with me when she married my father, Lyle Donald, now a registered Indian and a member of the Miksew First Nation. At the time, he was not recognized as an Indian.
3. The effect of their marriage was to enfranchise my mother from Indian status and membership in the Sawridge Band (hereinafter referred to as the "Band") and to exclude me from being registered as an Indian and Band Member like my older brothers, Jonathon and Brent, who were registered and retained their status and membership despite the marriage of our parents.
4. After my birth, my mother received and signed enfranchisement papers and later upon her enfranchisement, a per capita payment after my birth.
5. Following my birth and before 1985, my mother applied for my band membership many times but these efforts were unsuccessful.
6. I am informed by my mother that other children in the same circumstance as me, such as Vera Twin-McCoy, somehow retained their registration as an Indian and membership in the Band even though our mothers married non-Indians and our fathers were non-Indian. Vera Twin-McCoy's three children are registered Indians and Band members even though the two children fathered by Vera's husband, Jody McCoy, is a non-Indian. I wonder why I am treated differently.
7. My mother and brother, Jonathon Potskin, are presently Band members. My brother, Brent, was a Band Member until he enfranchised his membership in or around 1995. I am a status Indian, but do not have membership in any Band.

1985 Bill C-31

8. The Band passed Membership Rules in 1985 and took control of its Band List. My mother was not added to the Band List by the Band.
9. After Bill C-31 my mother applied to the Band for me to have Band Membership while I was still a minor. The form used by the Band was for adults and not appropriate for children.

10. My mother was Court ordered onto the Sawridge Band List, along with others, by Justice James Hugessen of the Federal Court by Order dated March 27, 2003.

My Experience Applying to the Band for Band Membership


11. When I became an adult I first applied to the Band Council in the 1990s for membership in the Band. Sometime later, the Band advised me they had lost my application. I reapplied for membership in the Band in 2005. Once again, I was advised that my application had been lost by the Band.
12. My grandmother, Jean Potskin, who lived until her death on the Band reserve, was a Band Member and sought my inclusion as a Band Member despite concerns of reprisal. Her efforts were unsuccessful and certain members of the Band made it well known that they disliked her.
13. I applied yet again to the Band Council for membership on February 27, 2009. On September 9, 2013 and again on December 30, 2013. The Band Council requested that I modify my application. I complied with these requests and modified my application as requested. To my knowledge, my application is complete per the Band's requested modifications since at least 2013.
14. Since December 2013, I have not heard from the Band Council in regards to my application for membership in the Band.
15. I've called the Band office many times seeking an update on the status of my application, but have not received any information. I have not received a return phone call from the Chief or Council, or the Band's legal counsel, Mike McKinney.
16. I recently learned from my mother that the Chief's son, Roy Twinn, whose mother is a non-Indian:
- o is now a Band member;
 - o voted in the February 17, 2015 election;
 - o applied for Band Membership in 2013;
 - o within months of applying, his application was approved; and,
 - o just months before the February 17, 2015 election, was admitted into Band membership;
17. There are only three minor children who are Band members and all three are the children of elected Band officials Roland Twinn and Winona Twin. They admitted their children while they held office as Chief and Councilor. It appears their children do not have to wait. This preferential space and system determines who is admitted into band membership and who isn't;
18. I've been denied the right to vote in many Band elections by the refusal or failure of the Chief and his Council to make a decision on my completed application.

Others in Like Circumstances as Me

19. My brother Brent Potskin has a daughter, Elizabeth, born Aug 4, 1994. My brothers Brent and Jonathon Potskin went to the Band office to apply for Elizabeth's band membership. At the time of Elizabeth's birth her father Brent was a band member. Yet Elizabeth was not added to the Band List. Since she turned 18 years of age, in 2012, I believe Elizabeth applied for membership but is still not a member.
20. The children of two women, members of the Twin family, were admitted without delay into Band membership. These are the children of Frieda Draney and Clara Midbo.
21. Other members of the Potskin family have applied for Band Membership. They too have waited a number of years for a response. During the wait they have received little or no response from the Band or if a decision was made, their application was denied by the Chief and Council.
22. I am aware of at least one case, Alfred Potskin, who was denied membership by the Chief and Council who considered his commitment to and knowledge of the history, customs, traditions, culture and communal life of the Band and his character and lifestyle. The Chief and Council did not give Alfred an interview or any fair process to determine if the subjective criteria they used to deny his application were correct, true and fair. My uncle Alfred was by all accounts a loving, kind, sober and hardworking man. At the time of his denial, he was suffering from cancer.
23. I am aware there are other Potskin family members who have applied including:
 - i. Crystal Poitras-John;
 - ii. Nicole Poitras;
 - iii. Heather Poitras;
 - iv. Tracey-Poitras Collins submitted a Band Membership application three times, over a 28 year time-frame before she was finally admitted into Band membership after a grueling and biased process:
 - The first application was submitted to the Band in 1985. The Band did not acknowledge her application, offered no follow up, and failed to respond to Tracey's inquiries, despite her many calls to the Band office.
 - The second application was hand-delivered January 6, 2005 to the Band office with no subsequent response from the Band.
 - The third application was submitted in 2012. The Chief and Council denied her application. Tracey's Appeal was heard January 26, 2013, and narrowly succeeded because not enough of the Chief and Council's supporters were present. The Chief and Council participated fully in Tracey's Appeal including the secret voting.

25. I swear this as evidence for the Court and for no improper purpose.

Михаил Васильевич
Владимир Григорьевич


GINA DONALD

This is Exhibit 7 referred to in the Affidavit (or statutory declaration) of ROMAN GOMBAL

Sworn 'or affirmed or declared'

before me this 26 day of

June A.D. 20 15

SWORN STATEMENT OF SHELBY TWINN

I, Shelby Twinn, biological daughter of Paul Twinn, of the City of Edmonton, do solemnly swear that:

Glenn A. Godfrey
Barrister and Solicitor
Office of the Public Trustee

Family Background

1. I am the biological daughter of Paul Twinn, and my paternal grandfather was the late Walter Patrick Twinn, Settlor of the Sawridge Band Inter Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the "Trusts"), and former Chief of the Sawridge First Nation (hereinafter called the "Band") and, as such, I have personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. My mother is Kristal, who was married to Paul Twinn and lived on the Sawridge Indian Reserve until I was about 5 years old. She left never to return, except for the funeral of my grandfather on November 4, 1997, taking me and my younger sister, Kaitlin.
3. I was very young when she left but know something about her situation, experience and reasons, including how she had been treated. Her situation was very painful and she chooses not to recall it.
4. My mother avoided all contact with the Twin(n) family and the Band since we moved to Prince George when I was 6 years old.
5. My mother remarried and that man is my father who raised and unconditionally loves and embraces me and my sister Kaitlin, also the biological daughter of Paul Twinn.
6. I have no contact with Paul Twinn who made no effort of any kind to have a relationship with me and my sister Kaitlin. As we were growing up, he did not support us in any way including financially, nor provide support of any kind to my mother. In fact, my mother had to resolve a number of liabilities imposed on her by his conduct such as a motor vehicle accident that saw her sued as a co-defendant.

Sawridge Trusts

7. I first learned of my beneficiary status under the 1985 Trust during a conversation with Catherine Twinn September 27, 2013.
8. Paul Bujold, who I am informed by Catherine Twinn is the Trust Administrator, never contacted me or my mother to explain the application process, my beneficiary status under the 1985 Trust or the Court application process to change the definition of beneficiary of the 1985 Trust to band membership under the 1986 Trust. I have no resources to consult a lawyer or access the Court to ensure my beneficiary status is not compromised.
9. I first learned of my beneficiary status under the beneficiary definition in the 1985 Trust where you do not have to be a Band Member but descend from a male Indian who is a beneficiary. Specifically, you do not need to be a band member as required under the 1986 Trust.

Band Membership

10. Sometime after I moved to Alberta from BC in 2013, I communicated via Facebook with Arlene Twinn, sister to Paul Twinn, who asked me to complete a Membership Application form and Indicated I would be admitted into band membership if I applied.
11. I have reservations about applying for band membership and have not acted on Arlene's invitation.
12. I wish to have beneficiary status under the 1985 Trust but not band membership (which gives you beneficiary status under the 1986 Trust). I have educational goals and sponsorship from the 1985 Trust would help greatly.
13. I understand benefits under either Trust are the same and there is no doubling of benefits being a Beneficiary of both Trusts.
14. My reservations about applying for band membership include:
 - a. A need to maintain healthy and clear boundaries for my wellbeing, given the history of the family, the addictions, unstable inter-personal relations, factions and personal animosities and dislikes;
 - b. My unwillingness to be admitted while others of equal entitlement are denied such as Deborah Serafinchon, blood aunt by birth;
 - c. Not alarming my mother and father whose support and love have been unconditional and unwavering;
 - d. The need to carefully screen what I chose to bring into my life;
 - e. It would be premature to apply until and unless I know the situation fully, have my eyes wide open and have established loving, trustful and safe relationships with members which at this point, does not seem probable;
 - f. My lack of commitment to being a participating Band member given my life, interests, relationships and priorities are elsewhere;
15. My sister Kaitlin is three years younger than me. I was born in 1992. Caitlin was born in 1995.
16. I know my sister Kaitlin very well and love her deeply. I would not want her to have to apply for band membership to qualify as a beneficiary of the Trust. She loves to read, enjoys her own company and is more solitary than outgoing and extroverted. She would not want to go through a band membership application process. I know she would not feel comfortable and would never apply.

No Change to 1985 Trust definition of Beneficiaries

17. I believe that like me, Kaitlin has goals and aspirations. Having beneficiary status and access to benefits such as Educational funding would be of great benefit and value.

18. I firmly believe my paternal grandfather, the late Walter Patrick Twinn, who settled these Trusts intended to include us as beneficiaries regardless of our connection to the Band, lack thereof, or band membership status. I oppose changing the rules that define beneficiaries of the 1985 Trust to be the same as the 1986 Trust, namely Band membership.
19. The Band has only 44 members suggesting the membership rules and process are skewed. Persons admitted into membership are those chosen by the Chief and Council. Maintaining the 1985 Trust definition of beneficiaries ensures a larger, more inclusive group beyond those with band membership. In particular, it includes women who marry male band members and their children. Based on what I know of the experience of my mother, Shannon Twinn and Catherine Twinn, if it were up to the Chief and Council, they would never be included as beneficiaries.
20. I swear this as evidence for the Court and for no improper purpose:

SWORN BEFORE ME at the
City of Edmonton
in the Province of Alberta
the 16 day of April, 2015


A Commissioner for Oaths in and
for the Province of Alberta

Matthew Brown
BARRISTER SOLICITOR


SHELBY TWINN

2. Unless otherwise stated, my Affidavit is based on information I have obtained from a review of the attached exhibits or information provided by Janet L. Hutchison, of Hutchison Law, Counsel for the Office of the Public Trustee. In all cases, I verily believe the same to be true.
3. The last filing deadline for the June 30, 2015 chambers appearance was on June 19, 2015.
4. On Sunday, June 21, 2015, Gail O'Connell sent a sworn affidavit to Hutchison Law by email. The email was first received the morning of June 22, 2015. A true copy of Ms. O'Connell's sworn affidavit and exhibits are attached as Exhibit "A" to this my Affidavit.
5. On June 22, 2015, Deborah Serafinchon sent a sworn affidavit to Hutchison Law by email. A true copy of Ms. Serafinchon's sworn affidavit is attached as Exhibit "B" to this my Affidavit.
6. On June 24, 2015, Gina Donald sent a sworn affidavit to Hutchison Law by email. A true copy of Ms. Donald's sworn affidavit is attached as Exhibit "C" to this my Affidavit.
7. On June 25, 2015, Shelby Twinn sent a sworn affidavit to Hutchison Law by email. A true copy of Ms. Twinn's sworn affidavit is attached as Exhibit "D" to this my Affidavit.
8. All four affidavits were received without notice and were entirely unsolicited by the Public Trustee or its counsel.
9. In the normal course, the Public Trustee or its counsel would arrange to interview these individual affiants and investigate the information they have provided further. However, the Public Trustee has reviewed the affidavits and wishes to ensure the content is available to all parties and the Court for purposes of the June 30, 2015 Settlement Application by the Sawridge Trustees.
10. I make this Affidavit in support for the Public Trustee's application for further and better production in the within proceeding and its applications for advice and direction from the Court.

SWORN BEFORE ME at Edmonton, Alberta,
this 26 day of June, 2015.

Commissioner for Oaths in and for the
Province of Alberta

Glenn A. Godfrey
Barrister and Solicitor
Office of the Public Trustee



ROMAN BOMBAK

This is Exhibit "A" referred to in the
Affidavit (or statutory declaration) of
ROMAN GOMBAK
~~Sworn or affirmed or declared~~
before me this 26 day of
June A.D. 20 15

SWORN STATEMENT OF GAIL O'CONNEL

I, Gail O'Connell, great daughter of Leon Ward and Josephine Cardinal, granddaughter of Elizabeth Mable Ward and daughter of Roseina Ward, of the City of Red Deer, in the Province of Alberta, do solemnly swear that:

Glenn A. Godfrey
Barrister and Solicitor
Office of the Public Trustee

Family History and Genealogy

1. I am the daughter of Roseina Lindberg nee Ward (hereinafter referred to as Roseina) who was born October 20, 1935.
2. Roseina, along with others, was Court ordered onto the Band List of the Sawridge First Nation (hereinafter referred to as the "Band") by Justice James Hugessen of the Federal Court by Order dated March 27, 2003. Attached to my Affidavit as **Exhibit A** is a true copy of the Court Order.
3. The reason Roseina was Court ordered onto the Band List is because the Band had not added her to the List they administer even though she was entitled, as the Court found, to be on the Band List without having to apply.
4. The Band appealed the Court Decision ordering Roseina and others be added to the Band List but the Band's Appeal failed. Attached as **Exhibit B** is a true copy of the Decision of the Court of Appeal dated January 19, 2004.
5. Roseina Lindberg was the daughter of Elizabeth Mable Ward. Attached as **Exhibit C** is a copy of the Certificate of Birth for Roseina.
6. Elizabeth Mable Ward, my grandmother, married Harry DeJong July 18, 1938, however, Harry DeJong is not my Grandfather. The Registration of Marriage Certificate of Elizabeth Ward who married Harry DeJong does not show her date of birth. It lists her age as 19 (she turned 20 the following month), her father as Leo Ward of Slave Lake, her mother as Josephine Cardinal and her name as Elizabeth Ward. Attached as **Exhibit D** is a copy of the Registration of Marriage Certificate of Elizabeth Ward and Harry DeJong.
7. Elizabeth Mable Ward had Roseina Ward (Lindberg) out of wedlock before she knew Harry DeJong.
8. Attached as **Exhibit E** is a copy of a letter dated September 6, 2000 from Indian Affairs and Northern Development indicating the reason for Roseina's omission from the Indian Register due to non-Indian paternity. It also notes that her parents are Leon Ward and Josephine Cardinal, registered under #7, Sawridge Band.
9. Elizabeth Mable Ward was born **August 18, 1918** and died September 6, 1951, only 33 years old. Attached as **Exhibit F** are true copies of the Baptismal Certificate dated September 7, 1918 and Birth Certificate for Elizabeth Mable Ward. On both documents her date of birth is August 18, 1918 and her parents are Leon Ward and Josephine Cardinal. Elizabeth's older sister, Philomine Ward, is listed as her godmother on the Certificate of Baptism.
10. Elizabeth Mable Ward is the daughter of Leon Ward and Josephine Cardinal, both Sawridge #7. Attached as **Exhibit G** is a true copy of a two page summary of the Band's Pay Lists from

October 3, 1910 to July 11, 1932 showing only Leon Ward as #7, his wife, their children and one copy of an Original Band Pay List dated June 19, 1931. The Band did not provide copies of any original Band Pay List. Through Access to Information, I obtained a copy of the original Band Pay List dated June 19, 1931. Most of the names on the original Pay List are redacted except for the name #7 Ward and #4 Ward. Under remarks, it states the woman is a duplicate of #51 and two boys not accounted for. I assume #4 must also be related to #7 or the name would have been redacted.

Who Is Really Elizabeth's Father?

11. The Band admits that Leon Ward, Josephine Cardinal and their children were members of Sawridge and Leon Ward is listed as #7. The Band disputes that Elizabeth Mable Ward is the child of Leon Ward. Attached as **Exhibit H** is a document prepared by or for the Band titled "The Issue Is How Is "Elizabeth Ward" Related to Sawridge" (hereinafter referred to as the "**Band Genealogy**"). It concludes that Elizabeth's father was George Hamelin, #51, from the Driftpile First Nation (hereinafter referred to as Driftpile).
12. I am informed by Sam Twinn and do verily believe that when my Appeal first came to the Electors January 5, 2013 an elected Elder and Trustee, Bertha L'Hirondelle, suggested I belonged to Driftpile. Sam Twinn and others requested that a Genealogy be drafted in collaboration with our family prior to the Appeal being heard. The Genealogy would provide facts and relevant information from both sides on contested facts. My Appeal was rescheduled for March 9, 2013 to enable preparation of the collaborative Genealogy to assist the Electors.
13. There was no follow up or outreach to me to confirm or discuss the Band Genealogy by anyone from the Band.
14. The Band Genealogy prepared for my Appeal heard March 9, 2013, I believe, influenced the outcome of my Appeal. The Electors who attended were mostly supporters of the Chief and Council. The electors upheld the Council's decision denying my application for membership. Many of the members voting on my Appeal believed I belong to Driftpile, not Sawridge, because of the Band Genealogy. I am informed by Catherine Twinn and do verily believe she overheard Paul Twinn say about me, "she belongs to Driftpile."
15. The Band Genealogy refers to "Pay Lists" but not the original Pay Lists. It relies on Analyses prepared by the Lesser Slave Lake Indian Regional Council, Treaty and Aboriginal Rights Research, Genealogical Project, 1999-2000. The Band places inordinate weight on these Band Pay List Analyses. The original Pay Lists are notorious for mistakes and vagueness and I understand there was controversy around Indian Agent Harold Laird (1911-1930) of Lesser Slave Lake and his record keeping.
16. The Band Analyses add researcher comments under the Indian Agent column that do not appear in the original Pay list. Attached as **Exhibit I** is a copy of the Driftpile Pay List for George Hamelin dated July 5, 1934 and the Band Analysis of that Pay List showing the addition of the researchers comments under the Indian Agent column.
17. The Band Genealogy disputes my great grandfather Leon Ward's paternity of my grandmother Elizabeth Ward. It says, "Among the possible answers is that she is the daughter of Egbert Ward. Or that she is the daughter of Leon Ward. Or none of the above." It dismisses Elizabeth as the daughter of Egbert Ward and Leon Ward and concludes she is the daughter of George Hamelin, #51, from Driftpile.

18. The Band's reasons for concluding my grandmother is the daughter of George Hamelin #51 appear to rest on the following:
- A Driftpile Pay List for #51 George Hamelin dated October 12, 1920 records "girl born" and the Band researcher's comments are "Elizabeth Ward Hamelin born in 1917";
 - The June 19, 1931 Sawridge Pay List for #7 Ward that says the woman is a duplicate of #51;
 - On October 12, 1920 the Indian Agent, under #51, records "girl born". She is never given a name while under #51. The Researcher later assumes this girl becomes #101, first appearing on the July 5, 1934 Driftpile Pay List until 1940;
 - On June 23, 1939, according to the Driftpile Pay List Analysis, the Indian Agent adds comments to the Driftpile Pay List that #101, Elizabeth Ward Hamelin, age 22, married H. De Gong, a white trader, at Prairie River on June 14, 1938. The 1939 date for the Analysis is incorrect. The actual date for the Pay List is June 23, 1938;
 - She remained on the Driftpile Pay List until June 21, 1940, when she was given "commutation authority" Sept 13, 1939;
 - Her name never appeared on the Sawridge Pay List;
19. The Band Genealogy states "What is clear is that although Elizabeth Ward Hamelin becomes the wife of Harry DeGong, and while it is likely that they are the parent of Fleury DeJong, she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist....If the woman who is the grandmother of Galle O'Connell is the same person who married Harry DeGong and is the mother of Fleury Degong/DeJong, then the proper First Nation for Galle O'Connell to direct her application for membership is Driftpile. There is not and never has been any connection with Sawridge."
20. The authorship of this Band Genealogy was not identified at the time of the Appeal and all supporting sources of information in the possession of the Band were not provided to me.
21. I was informed by Catherine Twinn that Mike McKinney, Executive Director/General Counsel to the Band, recently advised that Rarihokwats, Chair of the Appeal Committee (e.g. the Electors), is believed to have authored the Band Genealogy.
22. To dismiss Elizabeth Mable Ward as Leon Ward's daughter, the Band Genealogy ignores the best evidence, makes unsubstantiated assumptions, fails to disclose all relevant evidence and is inherently speculative and biased in selecting information to support a pre-determined conclusion, particulars of which include:
- The birth and baptismal certificates for Elizabeth Mable Ward, born August 18, 1918 lists her parents as Leon Ward and Josephine Cardinal who are on the Sawridge Pay list;
 - The copy of the Birth Certificate provided to Rarihokwats at the March 9, 2013 Appeal;
 - I do not believe any proper weight was given by the Electors to the Birth Certificate evidence;
 - The Registration of Marriage Certificate for Elizabeth Ward, **Exhibit D**, dated July 18, 1938 naming Leo Ward and Josephine Cardinal as her mother and father;
 - The Band Analyses of the Sawridge Pay Lists, **Exhibit "G"**, for Lion/Leon Ward, #7, from October 3, 1910 to July 11, 1932;
 - The Band did not produce any original Pay Lists or all its Analyses of Band Pay Lists including past 1932 for Leon Ward and his children with Josephine Cardinal;
 - The Band did not produce any birth, baptismal, marriage or other certificates to support its position that George Hamelin, not Leon Ward, fathered Elizabeth Mable Ward;
 - The woman listed on the Driftpile Pay lists as Elizabeth Ward Hamelin, appears to not be the same woman as my Grandmother Elizabeth Mable Ward, for a number of reasons including:
 - My Grandmother's Birth and Baptismal certificates list her birth date as August 18, 1918 and her father as Leon Ward, not George Hamelin;

- My Grandmother's Registration of Marriage lists her father as Leo Ward and my Grandmother's name as Elizabeth Ward, not Hamelin;
 - This Marriage Certificate does not identify my Grandmother as Elizabeth Ward Hamelin;
 - My grandmother never had the name "Elizabeth Ward Hamelin";
 - My Grandmother had a child in 1935 and in 1938. No mention is made on the Driftpile Pay List of those children born during that time period;
 - My Grandmother was 19 years old when she married July 18, 1938. The woman named Elizabeth Ward Hamelin is listed as being 22 years old on the June 23, 1939 Driftpile Pay List;
- i. Our family oral history told to me by my mother Roseina is that my Grandmother was raised by Bernard and Louisa Halcrow. Elizabeth lived with them for a long period of time. The Halcrows' took care of my grandmother but they did not adopt her;
 - j. The Band Genealogy says that Leon Ward became #7 Sawridge in 1910. A Sawridge Paylist dated July 14, 1919 showed "Girl Born, Man Died". July 14, 1919 is not the date of Elizabeth Mable Ward's birth. She was, according to her Birth, Baptismal and Marriage Certificates, born August 18, 1918.
 - k. Elizabeth's August 18, 1918 birth occurred one month after the July 20, 1918 entry to the 1918 Pay List. Elizabeth Mable Ward is the last daughter born to Leon Ward. July 14, 1919 is simply the annual date when the Indian Agent recorded notations onto the Pay List as to what has occurred in the year prior, from the previous entries made to the Pay List July 20, 1918. These facts are contrary to the Band Genealogy that 'she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist'.
 - l. The Band assumed that the August 10, 1917 Pay List entry "Girl Born", who is transferred the following year to #5, the widow of John Ward (e.g. Leon Ward's father) eventually becomes Mary DeLorme. The Band says that John's widow dies in 1918, the girl is transferred to #15 St Pierre Nesootasis as "other relative" and that from then until 1936 when St. Pierre dies, the girl becomes Mary DeLorme and paid as a girl, even though she is 19 years of age;
 - m. The Band assumed that the July 14, 1919 entry of "Girl Born" is "Philomene". My mother always stated that Philomene was older than Elizabeth. This is corroborated by Elizabeth's Baptismal Certificate dated September 7, 1918 which names "Philomine Ward" as Elizabeth's godmother;
 - n. From the July 25, 1921 Pay List the Band states that "In 1921 the 2nd daughter is transferred to #20, Sucker Creek Reserve" and "This daughter is transferred back to Sawridge #41 in 1930...and the "two daughters of Leon's, one #5 Sawridge and the other #41 Sawridge — and neither of them are Elizabeth Ward". The Band Genealogy fails to provide evidence to support this and other assumption and statements;
 - o. The Band Genealogy assumes that Josephine Cardinal marries George Hamelin, #51 Driftpile, and is listed with a "newborn boy, Norman" on George's Driftpile Pay List July 24, 1918. How could she be giving birth to another newborn, Elizabeth Ward, one month later, August 18, 1918?
 - p. The Band suggests that Josephine Cardinal, mother to Elizabeth Ward, married George Hamelin. They point to a woman and new born infant Norman being recorded on the July 24, 1918 Driftpile Pay List under George Hamelin #51. This is one month before Elizabeth Ward was born, while Leon Ward was alive and married to Josephine and both were listed on the Sawridge Pay List;
 - q. The Band Genealogy identifies the wife of George Hamelin as the daughter of William Giroux #13. This cannot be my great grandmother Josephine Cardinal as her parents were Casimir Cardinal and Sophie Masinyoneb Willier;
 - r. The Band provided Driftpile Pay Lists for the period July 24, 1918 to June 24, 1944 for George Hamelin #51. The June 23, 1939 Driftpile Pay List shows "girl born" to George Hamelin #51. If his wife/the mother is Josephine Cardinal, in 1939 she is 48 years old. Giving birth at this age is an inordinately long fertility period;

- s. The June 23, 1939 Driftpile Pay List lists the names and ages of George Hamelin's family. He and Josephine Cardinal are listed as 44 years old. My great grandmother Josephine Cardinal was born December, 1891 making her 48 years old;
 - t. The Driftpile Pay Lists are problematic. Whoever is accepting Treaty money for "Elizabeth Ward Hamelin" allegedly Elizabeth Mable Ward, does not know the correct date when my grandmother married DeJong or that my grandmother had two children prior to the marriage, including my mother Roseina, born October 20, 1935;
 - u. Pay Lists only indicated where a person was paid at, not where their Band Membership was. If Elizabeth Ward lived near Driftpile her Treaty payments could be made at Driftpile. This does not change her band membership to Driftpile from Sawridge, it just means her Treaty money was paid at Driftpile;
 - v. Because Elizabeth's father is Leon Ward, not George Hamelin #51, under the Indian Act, her membership was in her father's Band, which is Sawridge;
 - w. Elizabeth Ward's father died while she was an infant. Elizabeth Ward was given to Bernard and Louisa Halcrow to raise. They did not adopt Elizabeth;
 - x. The Band failed and/or refused to provide evidence as to which Band Elizabeth Mable Ward, born August 18, 1918, was paid out when she married a non-Indian and was "commuted";
 - y. In 2003 my mother Roseina Ward Lindberg was Court added to the Sawridge Band List. The Crown lawyer relied on evidence the Court accepted in support of Roseina Ward being added to the Sawridge Band List. None of this evidence was successfully appealed, disclosed to me or provided at my March 9, 2013 Appeal. How can the Band now challenge this?
 - z. The Band unsuccessfully challenged the paternity of Elizabeth Courtreille, who was also added to the Band List by the same Court Order that added my mother Roseina;
23. The Band Genealogy confuses, disputes and distorts facts including:
- a. the recorded paternity of Elizabeth Mable Ward on her birth, baptismal and marriage certificates;
 - b. the entitlement of Leon's children and wife to membership in his Band;
 - c. the 1917 and 1919 Sawridge Pay List evidence showing 2 girls born;
 - d. the evidence tendered by the Crown, accepted by the Court, adding my mother to the Band List, upheld on Appeal;
 - e. Other evidence including that set out in paragraph 22;
24. The Band did not produce all the evidence and none of the original Pay Lists it relied on or other evidence including the Band which paid the per capita share to Elizabeth Mable Ward when she was enfranchised for marrying a non-Indian. It selected some Analyses of Pay Lists. There is some evidence showing that researcher comments were later added to the Pay List Analyses as comments of the Indian Agent.
25. The Band did not make timely disclosure of who authored the Band Genealogy and failed to collaborate with us in creating our Ward family genealogy. Were there other Josephine Cardinal's? Our family research suggests that the Josephine Cardinal who was the widow of Leon Ward was born in December 1891 and baptized January 23, 1892. She married Leon Ward September 9, 1906 and gave birth to their first child in 1908-1910. Her parents were Casimir Cardinal and Sophie Masiniyoneb Willier. The Band document identifies the wife of George Hamelin as the daughter of William Giroux #13. This suggests there is more than one Josephine Cardinal.

The Appeal Ignored Our Family's Oral History Evidence

- 26. At the time of the 1918 Pay Lists, a flu epidemic killed many people in the Lesser Slave Lake area. I do not have a copy of the Death Certificate for Leon Ward but our family oral history evidence suggests he may have died in that epidemic leaving infant Elizabeth fatherless.

27. Our oral history evidence suggests that following the death of Leon Ward, Josephine Cardinal gave Elizabeth Mable Ward to Bernard and Louisa Halcrow to take care of. This was not a legal adoption. According to my mother, Elizabeth Mable Ward lived with Bernard and Louisa Halcrow.
28. Elizabeth Mable Ward was never a part of the George Hamelin family. Elizabeth Mable Ward never was a Hamelin and never lived with the Hamelins nor is George Hamelin listed on her birth, baptism or marriage certificates.
29. Philomene was Elizabeth's older sister.
30. Attached as **Exhibit J**, is an application for admission to St. Andrews Indian Residential School dated September 14, 1931 by Bernard and Louisa Halcrow as Guardians to Elizabeth Ward. On the backside of that document, there is a Certificate of Health for Elizabeth Ward. Both sides of the application states her age as 13 years old. This further corroborates the birth, baptismal and marriage certificate evidence that Elizabeth was born August 18, 1918 and is the daughter of Leon Ward and Josephine Cardinal.
31. Elizabeth Ward is never listed as a Hamelin on her Marriage Certificate, Baptismal or Birth Certificate or application for admission to school. She was always a Ward and never a Hamelin. The lineage of Elizabeth Mable Ward is that she is the daughter of Leon Ward, which the Court confirmed when it recognized her daughter, Roselina, as belonging to the Sawridge Band.
32. The Band has placed much weight on oral history evidence, however, not our family's oral history evidence or the conclusive and best evidence, the Birth, Baptismal, School Application and Marriage Certificates of Elizabeth Mable Ward, all recording her parents as Leon Ward and Josephine Cardinal.
33. Consistent with the Sawridge Pay Lists, we were told that Leon Ward and Josephine Cardinal had three other children besides Elizabeth Mable Ward. These were:
 - a. Norman Ward
 - b. John Ward
 - c. Philomene Ward
34. The Band did not seek our oral history evidence or other evidence nor did it's author collaborate with us in creating the Band Genealogy. I believe the Band Genealogy influenced those voting on my Appeal, arguing that I belong at Driftpile, not Sawridge.

The Band Membership Application and Process

35. In December 2003, I requested from the Band an application form for Membership.
36. On January 22, 2004 I received a letter from Mike McKinney, Executive Director/General Counsel for the Band, attached as **Exhibit K** with a membership application form of about 43 pages with instructions to return the form with a copy of my status card. In addition, I was to include numerous essays, letters of character reference, and copies of vital documents.
37. On March 25, 2004 the completed application for membership, with required documentation, was sent via registered mail and received by the Band.
38. On November 25, 2004 I placed a phone call to the Band to ask about the status of my application for membership. I spoke to Lorna at the Chief's office and was told my application

had not been reviewed. She undertook to have someone call me as to when I will receive a response. I never received a return call.

39. Between 2004 and 2010 I periodically called the Band office at least once a year. There was no progress on my application. I always received the same type of response. No one wanted to know who I was. When I would express my concern about how long the process was taking, I was told they had a lot of applications to go through.
40. On December 9, 2010 I placed another phone call to the Band inquiring about the status of my application. I was told the Council was going through applications on Tuesday December 14, 2010. The person I spoke to would not take down my name or give me any further information. I asked if there were some sort of statute of limitations and was informed there was not. She was not concerned that my application was dated 2004.
41. I was never informed or given the opportunity to answer any questions or concerns the Band had or to participate in a meeting or interview with the Chief and Council or it's designate.
42. On November 8, 2012, attached as **Exhibit L**, I received a registered letter signed by Mike McKinney, Executive Director/General Counsel to the Band, dated October 31, 2012 advising me the Council had denied my application for membership. Their reasons were:
 - a. They do not recognize my connection to Sawridge through my mother, Roseina Lindberg, because they do not recognize my mother's connection to Sawridge. Yet my mother is on the Band List, pursuant to the Court Order by Justice James Hugessen dated March 27, 2003;
 - b. I do not have any specific "right" to have my entered on the Band list;
 - c. Even if I had shown a connection, they didn't feel it was in the Band's best interests;
 - d. They took into account my character and lifestyle without any evidence of the standard set by existing band members if judged on the same subjective criteria.
43. My application demonstrates I am of good character and an absolute family oriented person who has worked hard to teach my children values and morals of a higher standard.
44. On November 13, 2012 I sent a Letter of Appeal to the Band via registered mail.
45. On November 21, 2012 I received, via regular mail, a Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. The notice is dated November 21, 2012, the same date I received it. Attached to this my Affidavit is **Exhibit "M"**, a true copy of the November 21, 2012 Notice.
46. The Band, included their membership processing form in **Exhibit M**, and agreed my character and lifestyle was 'not a detriment'. **Exhibit M** was mailed with the Notice of Appeal to be held January 5, 2013. The form indicates the following:
 - I am employed, debt free;
 - own my own home;
 - no criminal record;
 - no driver's license suspension;
 - hardworking and self-sufficient;
 - good student;
 - positive letters of reference from 3 people who have known me – one reference knew me for 25 years);
47. On December 13, 2012 I received, via Registered mail, a second Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. The notice is dated November 21, 2012. The only difference between the two notices, in my view, is that in the mail out received December 13,

2012, the Membership processing form is now marked "Draft". Attached as **Exhibit "N"** is a true copy of the notice I received December 13, 2012.

48. I decided not to attend the Appeal at Slave Lake on January 5, 2013. I felt it was all just a matter of formality, my exclusion from membership a foregone conclusion. Given the time the process had taken, the lack of a fair process, the denial by Chief and Council using subjective criteria without any interview or effort to fairly assess me or afford me a reasonable chance to address their concerns and questions, no discussion of balanced options such as a probationary period, and other factors, all pointed to a foregone conclusion. I believed there was no point in attending.
49. On February 19, 2013 I received a notice of a new date to hear my Appeal, March 9, 2013 Attached as **Exhibit "O"** are true copies of same.
50. On February 21, 2013 I received the Band Genealogy, attached as **Exhibit H**, dated February 19, 2013 from Donna Brown, administrative assistant, and copies of various pay lists. Information in the Band document, as explained elsewhere, was not in the least accurate, fair or balanced.
51. On March 9, 2013 I attended the Appeal with my mother Roseina and my sister Gina. From the moment we arrived, the hostility, unfriendliness, tension, unease and suspicion was palpable. A person named Rarihokwats, who chaired the Appeal, suggested my mother, an elderly Band Member, wait in the waiting room before the voting occurred even though she had a right as a member to be present. The underlying suggestion was that we did not belong to Sawridge and were not welcome. It was clear that minds were made up.
52. At the Appeal I was taken aback by the suggestion we belong to Driftpile. We have no roots or relatives in the Driftpile First Nation.
53. I became so unnerved by the atmosphere I was hindered in speaking to the 5 pages of documents and other information I had. I gave Rarihokwats the Birth Certificate for my grandmother Elizabeth Mable Ward listing her parents as Leon Ward and Josephine Cardinal. I do not know if copies were given to and read by the Band Members. I believe members who voted against allowing my Appeal may have been influenced by the Band document endorsed by their leaders and professional advisors that Elizabeth Mable Ward was not the daughter of Leon Ward but the daughter of George Hamelin #51 and she belonged to Driftpile, not Sawridge.
54. The March 9, 2013 Appeal including the deliberations of the electors lasted the full day. They were unable to reach a consensus. A secret vote was taken and later I learned my Appeal was denied.
55. Sometime in April, 2013, I received from Ed Molstad, of Parlee McLaws LLP, present at my Appeal as one of the paid professionals, a copy of the Decision from the Appeal Committee chaired by Rarihokwats. My Appeal was denied. This Decision is attached as **Exhibit "P"**.

My Concerns With the Process and Membership Rules

56. The Membership Application form I filled out was about 43 pages and extremely invasive.
57. The decision making process took almost 10 years.
58. The Applicant should not have to "prove" they are worthy or meet some other subjective criteria that can easily be abused. If they are the child of a band member this should be of considerable if not decisive weight. Descent should be conclusive of membership and only in rare circumstances be overruled.

59. There is a power imbalance, lack of fairness and impartiality against applicants inherent in the process. Members who reside close to the Band office and their close family may be unlikely to dissent from the decision of Chief and Council and allow an applicant's Appeal.
60. The process did not allow a fair opportunity to know in advance, present and ask questions on all relevant facts, concerns, reasons and principles both prior to the Chief and Council decision or on Appeal.
61. The decision making process for band membership should ensure that applicants are equally entitled to a fair process and equality of the law like other people in Canada.
62. There should be a period of time before the Decision and the Appeal in which the applicant can meet with Chief and Council and electors one on one, and address any questions or concerns.
63. Issues should be clearly identified in advance of the Decision and Appeal with a fair process to address these.
64. All applicants should have timely and full disclosure of all information the Band has gathered relevant to their application and Appeal.
65. Applicants on Appeal should be given the names and contact information for all electors. All electors should be allowed to vote, not just those who live close by to the Band office or their close family who come to support their family members living on reserve. Some members may be dependent on Band resources and the decisions of Chief and Council for their necessities.
66. A period of probation and/or conditional membership should be granted where existing members and the applicant, through no one's fault, do not know one another. Not knowing one another should not be an excuse to deny someone the same birthright members enjoy.
67. The discriminatory provisions of the Membership Rules should be changed particularly as it impacts children. All applicants should be treated equally, not based on who likes, supports or knows who.
68. Discriminatory thinking and mindsets should not determine membership. I should not be discriminated against because of a circumstance that existed or an action that was taken by my mother, grandmother, the Indian Agent, the Band or others.
69. The rules should provide for certainty based on descent and relationship. Subjective factors such as "character", "lifestyle" and "knowledge of the history and customs" should be re-assessed as these are too subjective.
70. The Chief and Council should not decide membership applications. They have a vested interest in satisfying their current political constituency who arguably have an interest in excluding people from membership to retain control and maintain a larger per capita share of resources. The process needs an independent, impartial and unbiased decision maker like a Tribunal or body with security of remuneration and tenure. I am advised by Catherine Twinn and do verily believe she recommended this but it has not been implemented.
71. Despite Sam Twinn specifically requesting such, the Band did not collaborate with me in building the Band Genealogy for my family and did not take into account critical evidence we provided or had.

72. The "Chair" of the Appeal process should in fact be independent, neutral and impartial. Rarihokwats influenced and controlled the Appeal process under the guise of being an impartial, independent, neutral party. I am informed by Catherine Twinn and do verily believe he is a paid consultant to the Chief and Council, has refused to disclose his compensation and performs multiple paid tasks for the Band including:

- Assisting the Band on litigation;
- Conducting Research;
- Drafting Court documents including the Band's Statement of Claim filed March 31, 2015 in the Court of Queen's Bench as Action 1503-04882 contesting compliance with the First Nations Financial Transparency Act;
- Drafting Laws and the Constitution of the First Nation at the direction of the Chief and Council;
- Drafting Policies for the Band;
- Acting as Speaker of the Sawridge Legislative Assembly to push through the laws he has drafted;
- Supporting the Chief in securing speaking opportunities and making presentations;
- Supporting Mike McKinney the in house Band lawyer on issues including drafting Permit forms so Chief and Council control if spouses, children and others can live with a band member on reserve;
- Recommending a legislative strategy and timetable for Band laws;
- Other;

73. There are no objective criteria in the Band's Rules, just vague, subjective and uncertain criteria such as character and lifestyle with no fair process to assess this. Transparency and disclosure well in advance of any decision should be required including disclosure of information that is being considered with a fair and meaningful opportunity to reply. The process must be fair, reasonable, timely, transparent, accountable, unbiased and non-discriminatory.

Post Appeal

74. There was no honest effort to identify and resolve contested facts in advance of the Chief and Council Decision on my application or my Appeal. There was not a clear and balanced presentation of all the evidence at the March 9, 2013 hearing. Band members were not enabled, even if so motivated, to make a fair, unbiased and informed decision on my Appeal.

75. I was not invited or given a fair opportunity to have input into the Band Genealogy about my grandmother's paternity presented to the Band members March 9, 2013 or collaborate in addressing a fair and balanced presentation of contested facts.

76. The Band is very small, only 44 members. The Band imported outside paid professionals for my Appeal. Rarihokwats chaired the Appeal, led the process, controlled information, inappropriately influenced decision making and without disclosure, authored the Band Genealogy. I consider the paid professionals to have played an enabling role in this gross wrongdoing and obvious manipulation of the vote to deny my Appeal. Their combined conduct enabled the Chief and Council in an improper purpose of unfairly considering and excluding my equal entitlement to membership.

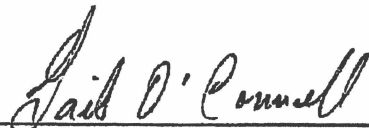
77. The Band Genealogy that is supposedly my family genealogy still makes my head spin and I wonder if that was the author's intention. Being a reasonable person, I could see how assumptions could be made from historical entries, however, the assumptions and conclusions in the Band Genealogy are speculative and unreasonable. The Band should disclose all its research and information it uses with regard to membership applications, which it has not.

78. When I reflect on the whole process including the Appeal, I still feel anxiety, frustration and sadness. Especially when I consider my grandmother and her paternity as Leon's daughter. My grandmother suffered violence in life and now in death.
79. I contacted Aboriginal Affairs and Northern Development Canada (AANDC) a number of times after the March 9, 2013 Appeal hearing to confirm and request information but the process is so slow. Without information, I was not in a position to appeal. As a single parent I did not have money to retain a lawyer and appeal. I have no chance against the notorious resources and litigation muscle of the Band that has spent millions of dollars on litigation to exclude people from membership.
80. I've subsequently learned about other Sawridge women who married non-Indian men and the status of their minor children upon their mother's enfranchisement by marrying a non-Indian man.
81. I am aware that Lilly Potskin, a Band member, attended the wedding of Pauline Twin who married a non-Indian man named Hammers in about 1966. Pauline is sister to Bertha L'Hirondelle and Clara Midbo and mother to Vera McCoy. Vera McCoy's son Justin Twin and daughter Winona Twin were Band Councillors who rejected my application for Band membership.
82. I want the Band to confirm that Pauline Twin was enfranchised as a result of her marriage to a non-Indian and the enfranchisement of her minor daughter, Vera McCoy nee Twin, postponed. Vera McCoy is a Band member. I want to understand why people in the same factual circumstances as me and my family are treated differently. Vera McCoy married a non-Indian man, Jody McCoy, and their two children, Jaclyn Twin and Justin Twin, are Band Members. Justin Twin, up until recently, was a Band Councillor and is a Sawridge Trustee. Jaclyn Twin is an elected official of the Band.
83. I swear this as evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the
City of Red Deer,
In the Province of Alberta
the 21 day of MAY, 14th 2015

A Commissioner for Oaths in and
for the Province of Alberta

Andrew Phypers
Barrister & Solicitor


GAIL O'CONNELL



Exhibits to Gail O'Connell's Affidavit/Sworn Statement

Exhibit A Justice James Hugessen of the Federal Court Order dated March 27, 2003.

Exhibit B is a true copy of the Decision and Order of the Court of Appeal.

Exhibit C is a copy of the Certificate of Birth for Roselna Lindberg.

Exhibit D copy of the Registration of Marriage Certificate of Elizabeth Ward and Harry DeJong.

Exhibit E copy of letter dated September 6, 2000 from Indian Affairs and Northern Development indicating the reason for Rosina's omission from the Indian Register due to non-Indian paternity.

Exhibit F copy of the Birth Certificate and Certificate of Baptism for Elizabeth Mable Ward showing her parents are Leon Ward and Josephine Cardinal.

Exhibit G is a true copy of the Sawridge First Nation Annuity Pay List Analysis for the Band showing Leon Ward as #7 and a copy of a redacted Sawridge Pay List dated June 19, 1931

Exhibit H is a document prepared by/for the Band titled "*The Issue Is How Is "Elizabeth Ward" Related to Sawridge*", its authorship was later attributed to Rarihokwats, Chair of the Appeal Committee.

Exhibit I Driftpile Pay List for George Hamelin dated July 5, 1934 and the Band Analyses of the Pay List showing the addition of the researchers comments to the Indian Agent column.

Exhibit J, Bernard and Louisa Halcrow, Guardians to Elizabeth Ward, Application for Elizabeth Ward to be admitted to St. Andrews Indian Residential School dated Sept 14, 1931.

Exhibit K, letter dated January 22, 2004 from Michael McKinney excluding the membership application form of about 43 pages.

Exhibit L, received on November 8, 2012 a registered letter from Michael McKinney dated October 31, 2012 advising me the Council had denied my application for membership.

Exhibit "M", copy of the November 21, 2012 Notice received by regular mail of Appeal to be heard January 5, 2013 where Membership Processing Form is not marked "Draft."

Exhibit N, copy received December 13, 2012 via Registered mail, of Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. Only difference between Exhibit L and M is attached Membership Processing form is marked Draft.

Exhibit "O", copy of Notice received February 19, 2013 with a new Appeal Hearing date, March 9, 2013.

Exhibit P, copy of Decision denying the Appeal received in April, 2013.

Federal Court of Canada
Trial Division



Section de justice
la Cour fédérale du Canada

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

Gail O'Connell

Sworn before me this 21 day

of May A.D. 2015

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

Andrew Hughes
Barrister & Solicitor

Date: 20030327

Docket: T-66-86A

Neutral citation: 2003 FCT 347

BETWEEN:

BERTHA L'HIRONDELLE suing on her own behalf
and on behalf of all other members of the Sawridge Band

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

- and -

**NATIVE COUNCIL OF CANADA,
NATIVE COUNCIL OF CANADA (ALBERTA)
NON-STATUS INDIAN ASSOCIATION OF ALBERTA
NATIVE WOMEN'S ASSOCIATION OF CANADA**

Interveners

REASONS FOR ORDER AND ORDER

HUGGENSEN, J.:

[1] In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the Indian Act, R.S.C. 1985, c. I-5, commonly

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known as Bill C-31, are unconstitutional. While I shall later deal in detail with the precise text of the relevant amendments, I cannot do better here than reproduce the Court of Appeal's brief description of the thrust of the legislation when it set aside the first judgment herein and ordered a new trial:

Briefly put, this legislation, while conferring on Indian bands the right to control their own band lists, obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the 1985 legislation. Such persons included: women who had become disentitled to Indian status through marriage to non-Indian men and the children of such women; those who had lost status because their mother and paternal grandmother were non-Indian and had gained Indian status through marriage to an Indian; and those who had lost status on the basis that they were illegitimate offspring of an Indian woman and a non-Indian man. Bands assuming control of their band lists would be obliged to accept all these people as members. Such bands would also be allowed, if they chose, to accept certain other categories of persons previously excluded from Indian status.

[Sawridge Band v. Canada (C.A.), [1997] 3 F.C. 580 at paragraph 2]

[2] The Crown defendant now moves for the following interlocutory relief:

- a. An interlocutory declaration that, pending a final determination of the Plaintiff's action, in accordance with the provisions of the *Indian Act*, R.S.C. 1985 c. 1-5, as amended, (the "*Indian Act*, 1985") the individuals who acquired the right to be members of the Sawridge Band before it took control of its own Band List, shall be deemed to be registered on the Band List as members of the Sawridge Band, with the full rights and privileges enjoyed by all band members;
- b. In the alternative, an interlocutory mandatory injunction, pending a final resolution of the Plaintiff's action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

[3] The basis of the Crown's request is the allegation that the plaintiff Band has consistently and persistently refused to comply with the remedial provisions of C-31, with the result that 11 women, who had formerly been members of the Band and had lost both their Indian status and their Band membership by marriage to non-Indians pursuant to the former provisions of section 12(1)b of the Act, are still being denied the benefits of the amendments.

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[4] Because these women are getting on in years (a twelfth member of the group has already died and one other is seriously ill) and because the action, despite intensive case management over the past five years, still seems to be a long way from being ready to have the date of the new trial set down, the Crown alleges that it is urgent that I should provide some form of interim relief before it is too late.

[5] In my view, the critical and by far the most important question raised by this motion is whether the Band, as the Crown alleges, is in fact refusing to follow the provisions of C-31 or whether, as the Band alleges, it is simply exercising the powers and privileges granted to it by the legislation itself. I shall turn to that question shortly, but before doing so, I want to dispose of a number of subsidiary or incidental questions which were discussed during the hearing.

[6] First, I am quite satisfied that the relief sought by the Crown in paragraph a. above is not available. An interim declaration of right is a contradiction in terms. If a court finds that a right exists, a declaration to that effect is the end of the matter and nothing remains to be dealt with in the final judgment. If, on the other hand, the right is not established to the court's satisfaction, there can be no entitlement to have an unproved right declared to exist. (See *Sankey v. Minister of Transport and Stanley E. Haskins*, [1979] 1 F.C. 134 (F.C.T.D.)) I accordingly treat the motion as though it were simply seeking an interlocutory injunction.

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[7] Second, in the unusual and perhaps unique circumstances of this case, I accept the submission that since I am dealing with a motion seeking an interlocutory injunction, the well-known three part test established in such cases as *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *R J R Macdonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 should in effect be reversed. The universally applicable general rule for anyone who contests the constitutionality of legislation is that such legislation must be obeyed unless and until it is either stayed by court order or is set aside on final judgment. Here, assuming the Crown's allegations of non-compliance are correct, the plaintiff Band has effectively given itself an injunction and has chosen to act as though the law which it contests did not exist. I can only permit this situation to continue if I am satisfied that the plaintiff could and should have been given an interlocutory injunction to suspend the effects of C-31 pending trial. Applying the classic test, therefore, requires that I ask myself if the plaintiff has raised a serious issue in its attack on the law, whether the enforcement of the law will result in irreparable harm to the plaintiff, and finally, determine where the balance of convenience lies. I do not accept the proposition that because the injunction sought is of a mandatory nature, the test should in any way be different from that set down in the cited cases. (See *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.*, [1990] F.C.J. No. 514; 32 C.P.R. (3d) 340.)

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[8] It is not contested by the Crown that the plaintiff meets the first part of the test, but it seems clear to me that it cannot possibly meet the other two parts. It is very rare that the enforcement of a duly adopted law will result in irreparable harm and there is nothing herein which persuades me that this is such a rarity. Likewise, whatever inconvenience the plaintiff may suffer by admitting 11 old ladies to membership is nothing compared both to the damage to the public interest in having Parliament's laws flouted and to the private interests of the women in question who, at the present rate of progress, are unlikely ever to benefit from a law which was adopted with people in their position specifically in mind.

[9] Thirdly, I reject the proposition put forward by the plaintiff that would deny the Court the power to issue the injunction requested because the Crown has not alleged a cause of action in support thereof in its statement of defence. The Court's power to issue injunctions is granted by section 44 of the *Federal Court Act* and is very broad. Interpreting a similar provision in a provincial statute in the case of *Canadian Pacific Ltd. v. Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation*, [1996] 2 S.C.R. 495, the Supreme Court said at page 505:

Canadian courts since *Channel Tunnel* have applied it for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, wherever that right may fall to be determined... This accords with the more general recognition throughout Canada that the court may grant interim relief where final relief will be granted in another forum.

[10] The Supreme Court of Canada confirmed the Federal Court of Canada's broad jurisdiction to grant relief under section 44 : *Canada (HRC) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626.

[11] Likewise, I do not accept the plaintiff's argument to the effect that the Crown has no standing to bring the present motion. I have already indicated that I feel that there is a strong public interest at play in upholding the laws of Canada unless and until they are struck down by a court of competent jurisdiction. That interest is uniquely and properly represented by the Crown and its standing to bring the motion is, in my view, unassailable.

[12] Finally, the plaintiff argued strongly that the women in question have not applied for membership. This argument is a simple "red herring". It is quite true that only some of them have applied in accordance with the Band's membership rules, but that fact begs the question as to whether those rules can lawfully be used to deprive them of rights to which Parliament has declared them to be entitled. The evidence is clear that all of the women in question wanted and sought to become members of the Band and that they were refused at least implicitly because they did not or could not fulfil the rules' onerous application requirements.

-What evidence?
They weren't even all women

[13] This brings me at last to the main question: has the Band refused to comply with the provisions of C-31 so as to deny to the 11 women in question the rights guaranteed to them by that legislation?

[14] I start by setting out the principal relevant provisions.

2.(1) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List.

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

6. (1) Subject to section 7, a person is entitled to be registered if

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

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(5) The name of a person who is entitled to have his name entered in a Band List maintained in the Department is not required to be entered therein unless an application for entry therein is made to the Registrar.

10. (1) A band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with this section and if, after the band has given appropriate notice of its intention to assume control of its own membership, a majority of the electors of the band gives its consent to the band's control of its own membership.

(2) A band may, pursuant to the consent of a majority of the electors of the band,

(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and

(b) provide for a mechanism for reviewing decisions on membership.

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.

(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List; if that person does not subsequently cease to be entitled to have his name entered in the Band List.

(6) Where the conditions set out in subsection (1) have been met with respect to a band, the council of the band shall forthwith give notice to the Minister in writing that the band is assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

(7) On receipt of a notice from the council of a band under subsection (6), the Minister shall, if the conditions set out in subsection (1) have been complied with, forthwith

(a) give notice to the band that it has control of its own membership; and

(b) direct the Registrar to provide the band with a copy of the Band List maintained in the Department.

(8) Where a band assumes control of its membership under this section, the membership rules established by the band shall have effect from the day on which notice is given to the Minister under subsection (6), and any additions to or deletions from the Band List of the band by the Registrar on or after that day are of no effect unless they are in accordance with the membership rules established by the band.

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(b), and, subject to section 13.2, the Department shall have no further responsibility with respect to that Band List from that date.

(10) A band may at any time add to or delete from a Band List maintained by it the name of any person who, in accordance with the membership rules of the band, is entitled or not entitled, as the case may be, to have his name included in that list.

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11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...
(c) that person is entitled to be registered under paragraph 6(1)(e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; ...

(2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

[15] The amending statute was adopted on June 27, 1985 but was made to take effect retroactively to April 17, 1985, the date on which section 15 of the *Charter* took effect. This fact in itself, without more, is a strong indication that one of the prime objectives of the legislation was to bring the provisions of the *Indian Act* into line with the new requirements of that section, particularly as they relate to gender equality.

[16] On July 8, 1985, the Band gave notice to the Minister that it intended to avail itself of the provisions of section 10 allowing it to assume control of its own Band List and that date, therefore, is the effective date of the coming into force of the Band's membership rules. Because C-31 was technically in force but realistically unenforceable for over two months before it was adopted and because the Band wasted no time in assuming control of its own Band List, none of the 11 women who are in question here were able to have their names

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entered on the Band List by the Registrar prior to the date on which the Band took such control.

[17] The relevant provisions of the Band's membership rules are as follows:

3. Each of the following persons shall have a right to have his or her name entered in the Band List:

(a) any person who, but for the establishment of these rules, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band List required to be maintained in the Department and who, at any time after these rules come into force, either

(i) is lawfully resident on the reserve; or

(ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

...

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

...

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and as such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

[18] Section 3(a)(i) and (ii) clearly creates pre-conditions to membership for acquired rights individuals, referred to in this provision by reference to section 11(1) of the Act. Those individuals must either be resident on the reserve, or they must demonstrate a significant commitment to the Band. In addition, the process as described in the evidence and provided for in section 11 of the membership rules requires the completion of an application form

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some 43 pages in length and calling upon the applicant to write several essays as well as to submit to interviews.

[19] The question that arises from these provisions and counsel's submissions is whether the Act provides for an automatic entitlement to Band membership for women who had lost it by reason of the former paragraph 12(1)(b). If it does, then the pre-conditions established by the Band violate the legislation.

[20] Paragraph 6(1)(c) of the Act entitles, *inter alia*, women who lost their status and membership because they married non-Indian men to be registered as status Indians.

[21] Paragraph 11(1)(c) establishes, *inter alia*, an automatic entitlement for the women referred to in paragraph 6(1)(c) to have their names added to the Band List maintained in the Department.

[22] These two provisions establish both an entitlement to Indian status, and an entitlement to have one's name added to a Band List maintained by the Department. These provisions do not specifically address whether bands have the same obligation as the Department to add names to their Band List maintained by the Band itself pursuant to section 10.

[23] Subsection 10(4) attempts to address this issue by stipulating that nothing in a band's membership code can operate to deprive a person of her or his entitlement to registration "by reason only of" a situation that existed or an action that was taken before the rules came into force. For greater clarity, subsection 10(5) stipulates that subsection 10(4) applies to persons automatically entitled to membership pursuant to paragraph 11(1)(c), unless they subsequently cease to be entitled to membership.

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does not make it absolutely clear that they were intended to entitle acquired rights individuals to automatic membership, and that the Band is not permitted to create pre-conditions to membership, as it has done. The words "by reason only of" in subsection 10(4) do appear to suggest that a band might legitimately refuse membership to persons for reasons other than those contemplated by the provision. This reading of subsection 10(4), however, does not sit easily with the other provisions in the Act as well as clear statements made at the time regarding the amendments when they were enacted in 1985.

[25] The meaning to be given to the word "entitled" as it is used in paragraph 6(1)(c) is clarified and extended by the definition of "member of a band" in section 2, which stipulates that a person who is entitled to have his name appear on a Band List is a member of the Band. Paragraph 11(1)(c) requires that, commencing on April 17, 1985, the date Bill C-31 took effect, a person was entitled to have his or her name entered in a Band List maintained

by the Department of Indian Affairs for a band if, *inter alia*, that person was entitled to be registered under paragraph 6(1)(c) of the 1985 Act and ceased to be a member of that band by reason of the circumstances set out in paragraph 6(1)(o).

[26] While the Registrar is not obliged to enter the name of any person who does not apply therefor (see section 9(5)), that exemption is not extended to a band which has control of its list. However, the use of the imperative "shall" in section 8, makes it clear that the band is obliged to enter the names of all entitled persons on the list which it maintains. Accordingly, on July 8, 1985, the date the Sawridge Band obtained control of its List, it was obliged to enter thereon the names of the acquired rights women. When seen in this light, it becomes clear that the limitation on a band's powers contained in subsections 10(4) and 10(5) is simply a prohibition against legislating retrospectively; a band may not create barriers to membership for those persons who are by law already deemed to be members.

[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."

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[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 :

... 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.

[Canada, *House of Commons Debates*, March 1, 1985, p. 2644]

[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:

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. 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.

[*Debates, supra* at 2645]

[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:

... 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.

This is a difficult issue. It has been for many years. The challenge is striking. The fairest possible balance must be struck and I believe it has been struck in this Bill. I believe we have fulfilled the promise made by the Prime Minister in the Throne Speech that discrimination in the Indian Act would be ended.

[Debates, *supra* at 2646]

[31] At a meeting of the Standing Committee on Indian Affairs and Northern Development, Minister Crombie again made it clear that, while the Bill works towards full Indian self-government, the Bill also has as a goal remedying past wrongs:

Several members of this committee said during the debate on Friday that this bill is just a beginning and not an end in itself, but rather the beginning of a process aimed at full Indian self-government. I completely agree with that view. But before we can create the future, some of the wrongs of the past have to be corrected. That is, in part, the purpose of Bill C-31...

[Canada, House of Commons, *Minutes of the Proceedings of the Special Committee on Indian Affairs and Northern Development*, Issue no. 12, March 7, 1985 at 12:7]

[32] Furthermore, in the Minister's letter to Chief Walter Twinn on September 26, 1985, in which he accepted the membership code, the Minister reminded Chief Twinn of subsections 10(4) and (5) of the Act, and stated as follows:

We are both aware that Parliament intended that those persons listed in paragraph 6(1)(c) would at least initially be part of the membership of a Band which maintains its own list. Read in isolation your membership rules would appear to create a prerequisite to membership of lawful residency or significant commitment to the Band. However, I trust that your membership rules will be read in conjunction with the Act so that the persons who are entitled to reinstatement to Band membership, as a result of the Act, will be placed on your Band List. The amendments were designed to strike a delicate balance between the right of individuals to Band membership and the right of Bands to control their membership. I sponsored the Band control of membership amendments with a strongly held trust that Bands would fulfill their obligations and act fairly and reasonably. I believe you too feel this way, based on our past discussions.

[33] Sadly, it appears from the Band's subsequent actions that the Minister's "trust" was seriously misplaced. The very provisions of the Band's rules to which the Minister drew attention have, since their adoption, been invoked by the Band consistently and persistently to refuse membership to the 11 women in question. In fact, since 1985, the Band has only admitted three acquired rights women to membership, all of them apparently being sisters of the addressee of the Minister's letter.

[34] The quoted excerpts make it abundantly clear that Parliament intended to create an automatic right to Band membership for certain individuals, notwithstanding the fact that this would necessarily limit a band's control over its membership.

[35] In a very moving set of submissions on behalf of the plaintiff, Mrs. Twinn argued passionately that there were many significant problems with constructing the legislation as though it pits women's rights against Native rights. While I agree with Mrs. Twinn's concerns, the debates demonstrate that there existed at that time important differences between the positions of several groups affected by the legislation, and that the legislation was a result of Parliament's attempt to balance those different concerns. As such, while I agree wholeheartedly with Mrs. Twinn that there is nothing inherently contradictory between women's rights and Native rights, this legislation nevertheless sets out a regime for membership that recognizes women's rights at the expense of certain Native rights.

Specifically, it entitles women who lost their status and band membership on account of marrying non-Indian men to automatic band membership.

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive *Charter* protected persons of those rights.

[37] As a result, I find that the Band's application of its membership rules, in which pre-conditions have been created to membership, is in contravention of the *Indian Act*.

[38] While not necessarily conclusive, it seems that the Band itself takes the same view. Although on the hearing of the present motion, it vigorously asserted that it was in compliance with the Act, its statement of claim herein asserts without reservation that C-31

has the effect of imposing on it members that it does not want. Paragraph 22 of the Fresh as Amended Statement of Claim reads as follows:

22. The plaintiffs state that with the enactment of the Amendment, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection. Furthermore, such membership rights were granted to individuals without regard for their actual connection to or interest in the First Nation, and regardless of their individual desires or that of the First Nation, or the circumstances pertaining to the First Nation. This exercise of power by Parliament was unprecedented in the predecessor legislation.

[39] I shall grant the mandatory injunction as requested and will specifically order that the names of the 11 known acquired rights women be added to the Band List and that they be accorded all the rights of membership in the Band.

[40] I reserve the question of costs for the Crown. If it seeks them, it should do so by moving pursuant to Rule 369 of the *Federal Court Rules, 1998*. While the interveners have made a useful contribution to the debate, I would not order any costs to or against them.

ORDER

The plaintiff and the persons on whose behalf she sues, being all the members of the Sawridge Band, are hereby ordered, pending a final resolution of the plaintiff's action, to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Received Time Mar. 27. 10:51AM.

Without restricting the generality of the foregoing, this Order requires that the following persons, namely, Jeannette Nancy Boudreau, Elizabeth Courtoreille, Fleury Edward DeJong, Roseina Anna Lindberg, Cecile Yvonne Loyie, Elsie Flora Loyie, Rita Rose Mandel, Elizabeth Bernadette Poltras, Lillian Ann Marie Potskin, Margaret Ages Clara Ward and Mary Rachel L'Hirondelle be forthwith entered on the Band List of the Sawridge Band and be immediately accorded all the rights and privileges attaching to Band membership.

"James K. Hugessen"

Judge

Edmonton, Alberta
March 27, 2003

Received Time Mar. 27. 10:51AM

FEDERAL COURT OF CANADA
Names of Counsel and Solicitors of Record

DOCKET: T-66-86

STYLE OF CAUSE: Bertha L'Hirondelle et al v. Her Majesty The Queen et al

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 19 AND 20, 2003

REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE HUGESSEN.

DATED: March 27, 2003

APPEARANCES BY:

Mr. Martin J. Henderson	For the Plaintiffs
Ms. Lori A. Mattis	For the Plaintiffs
Ms. Catherine Twinn	For the Plaintiffs
Ms. Kristina Midbo	For the Plaintiffs
Mr. E. James Kindrake	For the Defendant
Ms. Kathleen Kohlman	For the Defendant
Mr. Kenneth S. Purchase	For the Intervener, Native Council of Canada
Mr. P. Jon Faulds	For the Intervener, Native Council of Canada (Alberta)
Mr. Michael J. Donaldson	For the Intervener, Non-Status Indian Association of Alberta
Ms. Mary Eberts	For the Intervener, Native Women's Association of Canada

Received Time Mar.27. 10:51AM

SOLICITORS OF RECORD:

Aird & Berlis LLP
Toronto, Ontario

FOR THE PLAINTIFFS

Morris Rosenberg
Deputy Attorney General of Canada

FOR THE DEFENDANT

Lang Michener
Ottawa, Ontario

**FOR THE INTERVENER, NATIVE
COUNCIL OF CANADA**

Field Atkinson Perraton LLP
Edmonton, Alberta

**FOR THE INTERVENER, NATIVE
COUNCIL OF CANADA (ALBERTA)**

Burnet Duckworth & Palmer LLP

**FOR THE INTERVENER, NON-
STATUS INDIAN ASSOCIATION OF
ALBERTA**

Eberts Symes Street & Corbett
Toronto, Ontario

**FOR THE INTERVENER, NATIVE
WOMEN'S ASSOCIATION OF
CANADA**



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Case name: L'Hirondelle v. Canada
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Date: 2004-01-19
Neutral citation: 2004 FCA 16
File numbers: A-170-03

Date: 20040119

Docket: A-170-03

Citation: 2004 FCA 16

CORAM: ROTHSTEIN J.A.

NOËL J.A.

MALONE J.A.

BETWEEN:

BERTHA L'HIRONDELLE, suing on her own behalf
and on behalf of all other members of the Sawridge Band

Plaintiffs (Appellants)

and

HER MAJESTY THE QUEEN

Defendant (Respondent)

and

NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA),
NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN
ASSOCIATION OF ALBERTA

Intervenors (Respondents)

Heard at Calgary, Alberta, on December 15 and 16, 2003.

REASONS FOR JUDGMENT BY:
ROTHSTEIN J.A.

This is Exhibit "B" referred to in the
Affidavit of
Gail O'Connell
Sworn before me this 21 day
of MAY A.D. 2004
[Signature]
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta
Andrew Phypers
Solicitor & Notary

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	MALONE J.A.
	BETWEEN:
	BERTHA L'HIRONDELLE, suing on her own behalf
	and on behalf of all other members of the Sawridge Band
	Plaintiffs
	(Appellants)
	and
	HER MAJESTY THE QUEEN

FAQs

(Respondent)

Defendant

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ASSOCIATION OF ALBERTA

Self-
Represented
Litigants

(Respondents)

Interveners

Media &
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Heard at Calgary, Alberta, on December 15 and 16, 2003.

REASONS FOR JUDGMENT BY:

ROTHSTEIN J.A.

CONCURRED IN BY:
J.A.

NOËL

J.A.

MALONE

Date: 20040119

Docket: A-170-03

Citation: 2004 FCA 16

CORAM: ROTHSTEIN J.A.

NOËL J.A.

MALONE J.A.

BETWEEN:

BERTHA L'HIRONDELLE, suing on her own behalf

and on behalf of all other members of the Sawridge Band

Plaintiffs

(Appellants)

and

HER MAJESTY THE QUEEN

Defendant

(Respondent)

and

NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA),

NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN

ASSOCIATION OF ALBERTA

Interveners

(Respondents)

REASONS FOR JUDGMENT

ROTHSTEIN J.A.

[1] By Order dated March 27, 2003, Hugessen J. of the Trial Division (as it then was) granted a mandatory interlocutory injunction sought by the Crown, requiring the appellants to enter or register on the Sawridge Band List the names of eleven individuals who, he found, had acquired the right to be members of the Sawridge Band before it took control of its Band list on July 8, 1985, and to accord the eleven individuals all the rights and privileges attaching to Band membership. The appellants now appeal that Order.

HISTORY

[2] The background to this appeal may be briefly stated. An Act to amend the Indian Act, R.S.C. 1985, c. 32 (1st Supp.) [Bill C-31], was given Royal Assent on June 28, 1985. However, the relevant provisions of Bill C-31 were made retroactive to April 17, 1985, the date on which section 15, the equality guarantee, of the Canadian Charter of Rights and Freedoms [the Charter] came into force.

[3] Among other things, Bill C-31 granted certain persons an entitlement to status under the Indian Act, R.S.C. 1985, c. I-5 [the Act], and, arguably, entitlement to membership in an Indian Band. These persons included those whose names were omitted or deleted from the Indian Register by the Minister of Indian and Northern Affairs prior to April 17, 1985, in accordance with certain provisions of the Act as they read prior to that date. The disqualified persons included an Indian woman who married a man who was not registered as an Indian as well as certain other persons disqualified

by provisions that Parliament considered to be discriminatory on account of gender. The former provisions read:

- | | |
|---|---|
| 12. (1) The following persons are not entitled to be registered, namely, | 12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites : |
| (a) a person who | a) une personne qui, selon le |
| ... | cas : |
| (iii) is enfranchised, or | ... |
| (iv) is born of a marriage entered into after September 4, 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e), | (iii) est émancipée,

(iv) est née d'un mariage célébré après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a), b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e), |
| unless, being a woman, that person is the wife or widow of a person described in section 11; and | sauf si, étant une femme, cette personne est l'épouse ou la veuve de quelqu'un décrit à l'article 11; |
| (b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11. | b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11. |
| (2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if on the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph. | (2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e) peut faire l'objet d'une protestation dans les douze mois de l'addition; si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa. |

[4] Bill C-31 repealed these disqualifications and enacted the following provisions to allow those who had been stripped of their status to regain it:

6. (1) Subject to section 7, a person is entitled to be registered if

...

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

...

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph;

6. (1) Sous réserve de l'article 7, une personne a le droit d'être inscrite si elle remplit une des conditions suivantes :

...

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

...

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes :

...

c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

[5] By an action originally commenced on January 15, 1986, the appellants claim a declaration that the provisions of Bill C-31 that confer an entitlement to Band membership are inconsistent with section 35 of the Constitution Act, 1982 and are, therefore, of no force and effect. The appellants say that an Indian Band's right to control its own membership is a constitutionally protected Aboriginal and treaty right and that legislation requiring a Band to admit persons to membership is therefore unconstitutional.

[6] This litigation is now in its eighteenth year. By Notice of Motion dated November 1, 2002, the Crown applied for:

an Interlocutory mandatory Injunction, pending a final resolution of the Plaintiff's action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

[7] The basis of the Crown's application was that until legislation is found to be unconstitutional, it must be complied with. The mandatory injunction application was brought to require the Band to comply with the provisions of the Act unless and until they are determined to be unconstitutional. By Order dated March 27, 2003, Hugessen J. granted the requested Injunction.

[8] This Court was advised that, in order for the Band to comply with the Order of Hugessen J., the eleven individuals in question were entered on the Sawridge Band list. Nonetheless, the appellants submit that Hugessen J.'s Order was made in error and should be quashed.

ISSUES

[9] In appealing the Order of Hugessen J., the appellants raise the following issues:

1. Does the Band's membership application process comply with the requirements of the Act?
2. Even if the Band has not complied with the Act, did Hugessen J. err in granting a mandatory Interlocutory Injunction because the Crown lacks standing and has not met the test for granting Interlocutory Injunctive relief.

APPELLANTS' SUBMISSIONS

[10] The appellants say that the Band's membership code has been in effect since July 8, 1985 and that any person who wishes to become a member of the Band must apply for membership and satisfy the requirements of the membership code. They say that the eleven individuals in question have never applied for membership. As a result, there has been no refusal to admit them. The appellants submit that the code's requirement that all applicants for membership go through the application process is in accordance with the provisions of the Act. Because the Band is complying with the Act, there is no basis for granting a mandatory Interlocutory Injunction.

[11] Even If the Band has not complied with the Act, the appellants say that Hugessen J. erred in granting a mandatory Interlocutory Injunction because the Crown has no standing to seek such an Injunction. The appellants argue that there is no lis between the beneficiaries of the Injunction and the appellants. The Crown has no interest or, at least, no sufficient legal interest in the remedy. Further, the Crown has not brought a proceeding seeking final relief of the nature sought in the mandatory Interlocutory Injunction application. In the absence of such a proceeding, the Court is without jurisdiction to grant a mandatory Interlocutory Injunction. Further, there is no statutory authority for the Crown to seek the relief in question. The appellants also argue that the Crown has not met the three-part test for the granting of an Interlocutory Injunction.

ARE THE APPELLANTS COMPLYING WITH THE INDIAN ACT?

The Appropriateness of Deciding a Legal Question in the Course of an Interlocutory Injunction Application

[12] The question of whether the Sawridge Band membership code and application process are in compliance with the Act appears to have been first raised by the appellants in response to the Crown's injunction application. Indeed, the appellants' Fresh As Amended Statement of Claim would seem to acknowledge that, at least when it was drafted, the appellants were of the view that certain individuals could be entitled to membership in an Indian Band without the consent of the Band. Paragraph 22 of the Fresh as Amended Statement of Claim states in part:

The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection.

[13] There is nothing in the appellants' Fresh As Amended Statement of Claim that would suggest that an issue in the litigation was whether the appellants were complying with the Act. The entire Fresh As Amended Statement of Claim appears to focus on challenging the constitutional validity of the Bill C-31 amendments to the Indian Act.

[14] The Crown's Notice of Motion for a mandatory Interlocutory Injunction was based on the appellants' refusal to comply with the legislation pending determination of whether the legislation was constitutional. The Crown's assumption appears to have been that there was no dispute that, barring a finding of unconstitutionality, the legislation required the appellants to admit the eleven individuals to membership.

[15] Be that as it may, the appellants say that the interpretation of the legislation