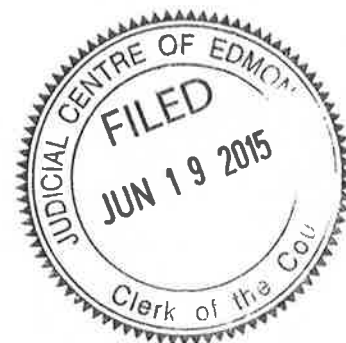


Clerk's Stamp:



COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

REPLY BRIEF OF THE  
PUBLIC TRUSTEE OF ALBERTA

ADDRESS FOR SERVICES AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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

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

---

**REPLY BRIEF OF THE  
PUBLIC TRUSTEE OF ALBERTA**

---

Clerk's Stamp:

COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

**REPLY BRIEF OF THE PUBLIC  
TRUSTEE OF ALBERTA RE: THE  
SAWRIDGE TRUSTEES' APPLICATION  
FOR ADVICE AND DIRECTION.**

ADDRESS FOR SERVICES AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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

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

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

Attention: Marco Poretti

**Solicitor for the Sawridge Trustees**

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

Attention: Doris Bonora

**Solicitor for the Sawridge Trustees**

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

Attention: Karen Platten, Q.C.

**Solicitor for Catherine Twinn**

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

Attention: Priscilla Kennedy

**Solicitors for June Kolosky and Aline Huzar**

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

Attention: Nancy Cumming, Q.C.

**Solicitor for the Sawridge Trustees**

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

Attention: Edward Molstad, Q.C.

**Solicitors for Sawridge First Nation**

# INDEX

	PAGE
<b>PART I</b>	
<b>STATEMENT OF FACTS</b>	3
A. Introduction	3
B. Response to Sawridge Trustees' Statement of Facts	4
i) The Settlement Proposal	4
ii) The Litigation Plan	5
iii) Costs	8
 <b>PART II</b>	 9
<b>ISSUES</b>	
 <b>PART III</b>	 9
<b>SUBMISSIONS OF LAW</b>	
A. The Settlement Proposal	9
i) Candidate Children Are Excluded	9
ii) Impact of Settlement Cannot be Evaluated Prior to Better Production	11
iii) The <i>Minors' Property Act</i>	14
iv) Appropriate Staging Will Address Costs Concerns and Create Future Opportunities for Settlement Discussion	16
B. The Litigation Plan	18
i) Due Diligence is Not Delay	18
ii) The Litigation Plan Requires Substantial Revision	18
C. Indemnification of the Public Trustee	19
i) No Objections to the Public Trustee Accessing Adequate Resources	20
ii) Objections Erroneously Equate Hourly Rates to Value of Service	21
iii) Request For Unredacted Accounts	23

**PART IV**

**REMEDY SOUGHT**

24

**APPENDICES**

1. Consent Order, filed April 30, 2014
2. June 2, 2015 Email from Dentons (P. Campbell-Harker) to Hutchison Law (J. Hutchison)
3. October 16, 2014 Email from Chamberlain Hutchison (now Hutchison Law) to RMRF (M. Poretti) and Dentons (D. Bonora)
4. January 27, 2015 Letter from RMRF to Chamberlain Hutchison (now Hutchison Law)
5. Excerpts from Elizabeth Poitras' Questioning on April 9, 2015
6. April 30, 2015 Email from Dentons (S. Hagerman) to Hutchison Law (J. Hutchison)

**AUTHORITIES**

**List of Authorities**

**I. STATEMENT OF FACTS**

**A. Introduction**

1. The Office of the Public Trustee of Alberta supports a timely, logical and ordered approach in the management of this proceeding.
2. The litigation plan proposed by the Sawridge Trustees does not take into account the new applications filed by the parties. The litigation plan requires considerable modification to be a useful tool to the Court and to the parties.
3. The staging of the upcoming steps in this proceeding is critical. For instance, the Court will not have sufficient information to decide the Settlement Application until at least a portion of the Production Application is addressed.
4. Appropriate staging of outstanding issues will create opportunities for resolution, or at least a narrowing of the issues proceeding. The Public Trustee supports a Court-ordered litigation plan that facilitates that outcome and supports the purposes of the *Rules of Court*.
5. In the interests of justice and good administration of same, the Court and parties should have access to the same information and documentation. Upon this occurring, issues can be narrowed, and counsel can then consider appropriate partial or full settlement. Once the Court also has the same information and documentation, the Court will be positioned to fully assess the impact a settlement would have on the interests of minors. If the Court is positioned in this manner, it may prove possible to avoid a full and complex hearing on the final relief sought.
6. At this time, the Sawridge Trustees' application to have the June 1, 2015 settlement proposal approved by the Court is premature. Neither the Court nor the Public Trustee has the evidence available to them that would be required to

properly evaluate the actual impacts on the interests of affected minors or potential minor beneficiaries (“candidate children”) of the 1985 Trust.

**B. Response to Sawridge Trustees’ Statement of Facts**

i) The Settlement Proposal

7. On June 2, 2015, the Public Trustee received a with prejudice settlement proposal that was open for acceptance until June 29, 2015.<sup>1</sup>
8. On June 12, 2015, the Sawridge Trustees served an application seeking a court ordered approval of the settlement proposal. The application was filed prior to the Sawridge Trustees receiving a response from the Public Trustee on said proposal.
9. The June 2, 2015 settlement proposal addresses the interests of the minor children who the Sawridge Trustees have identified as being affected by the application. It contains no reference to candidate children, a group of affected minors identified by the Public Trustee and the Court.
10. The Public Trustee was appointed to represent two groups of minors in this proceeding:

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

---

<sup>1</sup> [Tab 2, Public Trustee Reply Brief]

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

***The candidate children of applicants for membership in the Sawridge Band are clearly a group of persons who may be readily ascertained. I am concerned that their interest is also at risk. Therefore, I conclude that the Public Trustee should be appointed as the litigation representative not only of minors who are children of current Band members, but also the children of applicants for Band membership who are also minors. (emphasis added)<sup>2</sup>***

ii) The Litigation Plan

11. The parties sought, and obtained, a scheduling order on April 30, 2014. All steps anticipated by that order were taken in the timelines provided.<sup>3</sup>
12. On May 5, 2014, the Public Trustee provided a list of the documents and evidence it would be seeking through questioning, as anticipated in the April 30, 2014 Order. The list included a request for:
  - i.) Copies of all decisions on Sawridge Band membership (acceptance or denial) made since 1985;<sup>4</sup>
  - ii.) Any documentation that relates to the Sawridge Trustee's efforts to identify and locate all minor beneficiaries and beneficiaries or potential beneficiaries with minor children. Specifically, any documentation showing how pending Sawridge Band membership applications have been

---

<sup>2</sup>[Tab 4, Public Trustee Authorities]

<sup>3</sup>[Tab 2, Public Trustee Reply Brief]

<sup>4</sup>Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 1, para.9



considered in relation to locating and identifying all minor beneficiaries;  
(emphasis added)<sup>5</sup>

iii.) Any other documents relevant to the Sawridge membership process and its operations since 1985.<sup>6</sup>

13. The Sawridge Trustees provided a limited selection of documents in response to the May 5, 2014 document request. Questioning of both Paul Bujold and Elizabeth Poitras proceeded as scheduled.

14. The questioning of Elizabeth Poitras was commenced, but adjourned when the Sawridge Trustees introduced documentation from Ms. Poitras's Federal Court litigation, including without prejudice correspondence. The Public Trustee had not been provided with the documents until they were presented to the witness during questioning.<sup>7</sup>

15. On June 16, 2014, the Public Trustee requested the Sawridge Trustees' agreement to hire Mr. Terrance Glancy as agent counsel. The purpose of the proposed retainer included:

i) to obtain assistance in the review of documents from the Elizabeth Poitras Federal Court action; and

ii) to allow the document review to proceed more quickly.

The Sawridge Trustees refused that request.<sup>8</sup>

---

<sup>5</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 1, para.12

<sup>6</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 1, para.4

<sup>7</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 5

<sup>8</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 11

16. The Sawridge Trustees' production of Sawridge Band documents, including without prejudice documents, was the subject of further discussion between counsel.<sup>9</sup>
17. In correspondence dated July 23, 2014, the Public Trustee advised the Sawridge Trustees of its concerns about selective production, the potential need to address that issue prior to further questioning, and the potential for an application to deal with better production.
18. The Sawridge Trustees did not respond directly to the portion of the July 23, 2014 correspondence regarding the Public Trustee's concerns about the need for further and better production.<sup>10</sup>
19. On December 1, 2014, answers to Undertakings for Paul Bujold, which included three binders of documentation, were served on the Public Trustee.<sup>11</sup>
20. Counsel reached an agreement regarding how to deal with the without prejudice documents within Elizabeth Poitras' questioning on January 27, 2015.<sup>12</sup> Ms. Poitras' questioning resumed, and was concluded subject to answers to undertakings, on April 9, 2015.<sup>13</sup>
21. In April 2015, the Public Trustee requested information about QB Action No. 1403 04885 from the Sawridge Trustees. Between April 21-27, 2015, discussions ensued whereby the Sawridge Trustees sought to limit communications between the Office of the Public Trustee and counsel for Catherine Twinn in QB Action No. 1403 04885.<sup>14</sup>

---

<sup>9</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 9, 10 and 11

<sup>10</sup> [Tab 3, Public Trustee Reply Brief]; Affidavit of Roman Bombak, dated June 12, 2015

<sup>11</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 7

<sup>12</sup> [Tab 4, Public Trustee Reply Brief]

<sup>13</sup> [Tab 5, Public Trustee Reply Brief]

<sup>14</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 23

22. On April 30, 2015 Sawridge Trustees sent the Public Trustee a proposed litigation plan.<sup>15</sup> The Sawridge Trustees' correspondence did not set a deadline for reply.

23. On May 19, 2015, the Public Trustee responded to the proposed litigation plan to request it be revised. The Public Trustee requested approval of an addition to the fall 2014 costs agreement that would permit use of agency resources and ensure the Public Trustee could comply with the proposed timelines in the litigation plan:

*"I am writing in response to Ms. Bonora's proposed litigation plan in this matter, received by way of email from Ms. Hagerman on April 30, 2015. As you will be aware, that plan does not currently refer to the Public Trustee's pending application for Joinder and Advice and Directions. I suggest we revise the proposed litigation plan once the Public Trustee's application is set down.*

*Regardless of future changes to the litigation plan, it is clear that the main application will be proceeding on ambitious timelines. The Public Trustee has no objection to that approach. However, we have determined that there may be a need, from time to time, for the assistance of agent counsel to ensure the Public Trustee is able to act within those timelines, while thoroughly addressing all issues affecting the interests of the minor beneficiaries (or potential minor beneficiaries)."*<sup>16</sup>

24. Sawridge Trustees' only response was to object to the use of agent counsel and advise they wanted the litigation plan on the June 30, 2015 case management meeting agenda.<sup>17</sup>

iii) Costs

25. Between September 15, 2014 – November 18, 2014, the Public Trustee and Sawridge Trustees negotiated an agreement regarding implementation of the Court's order requiring indemnification of the Public Trustee for the costs incurred as a result of its participation in the within proceeding.

---

<sup>15</sup> [Tab 6, Public Trustee Reply Brief]

<sup>16</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 35

<sup>17</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 36

26. Prior to the May 22, 2015 Hutchison Law account, which included the first Supreme Advocacy LLP account, the Public Trustee submitted 3 accounts to the Sawridge Trustees under the terms of the costs agreement. All accounts have been paid without comment or objection.
27. The Public Trustee regards aspects of the relief sought by the Sawridge Trustees in relation to costs to be contrary to, or at least inconsistent, with the costs agreement.

## **PART II- ISSUES**

28. What is the appropriate staging of the Sawridge Trustees' Settlement Application, particularly in relation to the Public Trustee's Production Application?
29. Does the June 12, 2012 order for indemnification of the Public Trustee in the within proceeding exclude costs associated with retaining the most qualified agent counsel?

## **PART III- SUBMISSIONS OF LAW**

### **A. The Settlement Proposal**

#### **i.) Candidate Children Are Excluded**

30. The June 2, 2015 Settlement proposal excludes all reference to, or consideration of, the "candidate children" represented by the Public Trustee.

31. The June 12, 2012 Reasons for Decision gave the Public Trustee several mandates, including:

- i.) Representing the interests of those who remain minors from the group of 31 children originally affected by the application; and
- ii.) Representing the interests of the “candidate children”, including identification of the candidate children by inquiring into the outstanding membership applications of the Sawridge Band;<sup>18</sup>

32. Despite the passage of over two years since that decision, the Public Trustee and the Court, due to lack of information provided by the Sawridge Trustees, are not yet able to identify all the children potentially affected by the proposed changes to the beneficiary definition.

33. Absent further and better production, it is also impossible to assess how the Settlement Proposal and approval of the final order sought will actually affect the interests and rights of the candidate children.

34. The Sawridge Trustees refer to the June 2, 2015 offer as providing “unqualified success” to the minors. This statement cannot be reconciled with the complete lack of consideration for the interests of the candidate children.

35. It is well accepted law that a Trustee cannot choose between beneficiaries, or favour one group of beneficiaries over another. The Public Trustee is obligated to act with an even hand in relation to all minors it represents.

36. Certainly, the Public Trustee cannot recommend the Settlement Proposal while the Production issues that prevent identification of the candidate children remain outstanding.

---

<sup>18</sup> 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, para 31-33 [June 12, 2015 Brief of the Public Trustee, Tab 4, Authorities of the Public Trustee];

ii.) Impact of Settlement Cannot be Evaluated Prior to Better Production

37. The Settlement Proposal seeks a final order approving the new beneficiary definition and regularizing the transfer of assets into the 1985 Trust.
38. The Sawridge Trustees have been aware of the Public Trustee's concerns regarding the need for additional production around those specific issues for an extended period of time.<sup>19</sup>
39. The Court's June 12, 2012 Reasons for Judgment contemplate a full assessment of the Sawridge Band membership process, including examination of whether it was affected by discrimination, bias, delay, *Charter* breaches or breaches of natural justice.<sup>20</sup>
40. Neither the Court nor the Public Trustee are currently in a position to properly assess the Sawridge Band membership process because membership application and process information is being withheld.
41. Of equal concern, it appears much of the relevant information that is being withheld from the Public Trustee and the Court, is available to the Sawridge Trustees, the Sawridge Band, or both, including:

i.) Individual Sawridge Band membership application files;<sup>21</sup>

ii.) Membership processing forms that would explain reasons for membership decisions;<sup>22</sup>

---

<sup>19</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 11

<sup>20</sup> *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 53-55 [June 12, 2015 Brief of the Public Trustee, Tab 4, Authorities of the Public Trustee]

<sup>21</sup> Paul Bujold Answers to Undertakings, Undertaking #34 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 7]

<sup>22</sup> Paul Bujold Answers to Undertakings, Undertaking #43 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 7]

- iii.) Available information about applications or expressions of interest in membership during the time period incomplete applications were not tracked (1985-2006);<sup>23</sup>
- iv.) Membership decisions;<sup>24</sup>
- v.) Documents related to Elizabeth Poitras' membership litigation, as only a selection of documents have been produced to date;<sup>25</sup>
- vi.) Documents related to the Sawridge Federal Court membership litigation which Mr. Bujold's evidence is based upon (T-66-86);<sup>26</sup>
- vii.) The evidence available in QB Action No. 1403 04885, including Catherine Twinn's sworn but unfiled affidavit, which appears to have the potential to relate to the issues set out in Exhibit J of her filed affidavit, namely:
  - a.) issues with the Sawridge Band membership process;
  - b.) how the membership process affects identification of beneficiaries of the Trust;
  - c.) issues arising from Sawridge Trustees' conflicts of interest; and
  - d.) Information regarding the transfer of assets into the 1985 Trust.<sup>27</sup>

42. The Sawridge Trustees have chosen not to voluntarily address the gaps in production of evidence. The withheld evidence is directly relevant to evaluating the final order being sought.

43. In addition to actual gaps in production, questioning on the relevant issues is not complete. The Public Trustee has yet to question Mr. Bujold on documents that

---

<sup>23</sup> Paul Bujold Answers to Undertakings, Undertaking #34 and #43 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 7]

<sup>24</sup> Paul Bujold Answers to Undertakings, Undertaking #34 and #43 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 7]

<sup>25</sup> Questioning of Elizabeth Poitras, May 29, 2014, page 61 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]; Affidavit of Roman Bombak, dated June 12, 2015, ex.12

<sup>26</sup> Paul Bujold Answers to Undertakings, Undertaking #19 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 7]

<sup>27</sup> Affidavit of Catherine Twinn, dated December 8, 2014, para. 8 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 16]

have been produced regarding the Asset Transfers or regarding the answers to undertakings that pertain to the asset transfer.<sup>28</sup> Answers to undertakings pertaining to the Sawridge Band membership process have also yet to be questioned on.

44. Despite the incomplete evidence available, the Court and the Public Trustee are asked to take a position on the Settlement Proposal. Absent access to the withheld information, neither the Public Trustee nor the Court can exercise due diligence and fully evaluate whether the final order sought by way of the Settlement proposal is in the best interests of all affected minors.
45. The Public Trustee has a duty to make an informed decision on settlement proposals. The Production Application must be addressed before this will be possible.
46. Given that the Court is also unable to make a fully informed decision on the Settlement Proposal and its impact on the best interests of the affected minors, the Public Trustee submits the Court's *parens patriae* jurisdiction cannot be invoked in relation to the Settlement Proposal, at least not at this juncture:

*Though the scope or sphere of operation of the parens patriae jurisdiction may be unlimited, it by no means follows that the discretion to exercise it is unlimited. It must be exercised in accordance with its underlying principle. Simply put, the discretion is to do what is necessary for the protection of the person for whose benefit it is exercised .... The discretion is to be exercised for the benefit of that person, not for that of others. It is a discretion, too, that must at all times be exercised with great caution, a caution that must be redoubled as the seriousness of the matter increases. This is particularly so in cases where a court might be tempted to act because failure to do so would risk imposing an obviously heavy burden on some other individual.*<sup>29</sup>

---

<sup>28</sup> Paul Bujold Answers to Undertakings, Undertaking #12-19 [Affidavit of Roman Bombak, dated June 12, 2015, ex. 7]; Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 3

<sup>29</sup> *E. (Mrs.) v. Eve*, [1986] 2 S.C.R. 388, at para. 77 [Tab 1, Public Trustee Reply Brief Authorities]



47. There is a real possibility the Settlement Proposal would benefit existing adult beneficiaries, including several of the Trustees, to the exclusion or possible detriment of others. The impact on affected minors are not known.<sup>30</sup>

48. Advantages to other beneficiaries do not justify exercise of *parens patriae* powers. Indeed, the Court must be particularly cautious about exercising this jurisdiction at the request of the Trustees while the issues of potential or actual conflicts of interest on the part of the Sawridge Trustees remains an outstanding issue.

iii.) The Minors' Property Act

49. The Sawridge Trustees rely on s. 2-4 of the *Minors' Property Act* in seeking the Court's approval of the settlement.<sup>31</sup>

50. Section 14 of the *Minors' Property Act* has not been referenced. Given the lack of information about affected minors, particularly the candidate children, neither the Court nor the Public Trustee can assess whether consents are required from minors over the age of 14, as required by the Act.<sup>32</sup>

51. On a plain reading of s.2 and 3 of the Act, it is not clear they apply to this situation. On review of section 4(2), the phrasing of the section is significant:

*"If a representative has agreed to a settlement of a minor's claim, the Court may, on application, confirm the settlement if in the Court's opinion it is in the minor's best interest to do so."*<sup>33</sup>

---

<sup>30</sup> Table of Overlapping Roles of Sawridge Trustees [Appendix B, Brief of the Public Trustee, filed June 12, 2015]; Questioning of Paul Bujold, May 27-28, 2014, pages 7-19, and 21-25 and 30-31 [page 166-185, Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

<sup>31</sup> [Tab 9, Sawridge Trustees' Brief, filed June 12, 2015]

<sup>32</sup> *Minors' Property Act*, Chapter M-18.1 [Tab 2, Public Trustee Reply Brief Authorities]

<sup>33</sup> [Tab 9, Sawridge Trustees' Brief, filed June 12, 2015]

52. The wording of s.4 reflects the general purpose of the *Minors' Property Act*, namely to ensure the Court has the opportunity to review decisions made on behalf of a minor. It does not normally operate to permit the Court to make those decisions before a minor's representative has the opportunity to make its own, fully informed, decision.
53. The Public Trustee is not aware of any provision in the *Minors' Property Act* that would support the Court's authority to compel the Office of Public Trustee to support, or accept, a settlement proposal is has not been positioned to fully evaluate.
54. The Public Trustee supports exploration of all available options to resolve, or narrow, issues in this litigation. However, the Public Trustee does not have the ability to agree to settlements in situations where:
- i.) It has insufficient information to exercise due diligence in assessment of a settlement offer;
  - ii.) An offer would benefit one group of minors the Public Trustee represents, while ignoring the impact on the rights of another group the Public Trustee represents.
55. While the Public Trustee supports the goals of an efficient and effective litigation process, approval of the settlement proposal is simply premature at this point in time.

iv.) Appropriate Staging Will Address Costs Concerns and Create Future Opportunities for Settlement Discussion

56. The Sawridge Trustees take the view the Settlement Application must be decided prior to all other applications that are pending in order to limit costs.<sup>34</sup>

57. While costs concerns cannot override the Public Trustee's, or the Court's, duty to make an informed decision on settlement, the parties can cooperate on a litigation plan that is likely to be most efficient, and limit costs incurred before the next opportunity arises to discuss resolution of issues in the proceeding.

58. The approach to further and better production must facilitate the following goals:

- i.) All Counsel are operating on the basis of the same evidence in this proceeding;
- ii.) Providing the Court with access to a complete, and objective, evidentiary record in this proceeding, including evidence that will permit an assessment of the Sawridge Band membership process in relation to, *inter alia*, issues of discrimination, bias, delay, breach of *Charter* principles or of the requirements of natural justice.<sup>35</sup>;
- iii.) Identifying the full class of candidate children; and
- iv.) There is sufficient evidence to properly evaluate certainty of objects and certainty of subject matter in relation to the 1985 Trust and the original application for advice and direction.

---

<sup>34</sup> June 17, 2015 Letter from Hutchison Law to the Court

<sup>35</sup> *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 54 [June 12, 2015 Brief of the Public Trustee, Tab 4, Authorities of the Public Trustee];

59. The Public Trustee submits the following “staging” of further and better production will further those goals, while respecting the Sawridge Trustees’ concerns regarding management of litigation costs:

- i.) Production of all Sawridge Band membership application files, including incomplete applications, membership processing forms and any other information refused in Paul Bujold’s undertakings #34, #43 and #48;
- ii.) Production of relevant and material evidence from QB Action No.1403 04885;
- iii.) Production of all evidence from the Federal Court Action No.T-66-86 (also referred to as T-66-86A and T-66-86B) or the Federal Court Action No.T-2655-89 which the Sawridge Trustees have in their possession or control, which has been used to prepare the application for advice and direction, or which has been referenced or relied on in preparation of Paul Bujold’s affidavits or answers to undertakings;
- iv.) If not captured by (iii), a copy of the Sawridge Band Council Resolution dated July 21, 1988, which includes a list of 164 people who had expressed an interest in writing in applying for Sawridge Band Membership, which BCR would form part of the document production in Federal Court Action No.T-66-86.<sup>36</sup>

60. Broader requests for production of documents from Federal Court Action No.T-66-86 (T-66-86A/ T-66-86B) and T-2655-89 and the need for questioning additional witnesses could be reviewed and re-evaluated after these elements of further and better production are satisfied.

---

<sup>36</sup> *Sawridge Band v. Canada* [2004] F.C.J. No. 77 (C.A.) at para. 34 [June 12, 2015 Brief of the Public Trustee, Tab 11, Authorities of the Public Trustee]

**B. The Litigation Plan**

i.) Due Diligence is Not Delay

61. The Public Trustee responded to the Sawridge Trustee's litigation plan in 19 calendar days. That response included a request for approval of the retainer of Supreme Advocacy LLP for agency/ legal research services, to provide the Public Trustee with sufficient resources to permit it to comply with the proposed timelines.

62. The Public Trustee has exercised due diligence in attempting to obtain complete production of relevant and material evidence in this proceeding. The Public Trustee has insisted, and will continue to insist, on production of the evidence that will permit identification of the candidate children.

63. Timeframes required for exercise of due diligence does not equate to delay.

64. Further, the Sawridge Trustees have had the option of voluntary, and timely, production throughout. To date, the Sawridge Trustees have not been willing to voluntarily provide complete production of the information the Public Trustee has been seeking since May 2014.

ii.) The Litigation Plan Requires Substantial Revision

65. The litigation plan proposed on April 30, 2015 fails to address the outstanding production issues and the fact that the Public Trustee is being impeded in carrying out its mandates by lack of information.

66. That plan does not refer to any of the applications filed on June 12, 2015.

67. The litigation plan requires revision to address the need for:

- i) more expeditious production;
- ii) more complete production, such that the parties and the Court have access to exactly the same information.

68. A useful litigation plan could also reflect that once the initial stages of further production are completed (as set out in paragraph 59), there may be a more realistic possibility for settlement, or at least a narrowing of the issues.

69. The timelines in the litigation plan must also reflect the level of resources the Public Trustee will be permitted to access, once the outcome of the costs applications is known.

70. The Public Trustee fully supports a reasonable, court ordered, litigation plan that reflects all pending applications and the other remaining steps in the proceeding.

### **C. Indemnification of the Public Trustee**

71. The June 12, 2012 Reasons for Decision not only appointed the Public Trustee to represent the affected minors but ordered all costs of the representation be borne by the Sawridge Trust.<sup>37</sup>

72. The Sawridge Trustees' appeal of that costs order failed and the Court of Appeal confirmed the Court's broad discretion with respect to granting costs.<sup>38</sup>

---

<sup>37</sup> 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 34-42 [June 12, 2015 Brief of the Public Trustee, Tab 4, Authorities of the Public Trustee];

<sup>38</sup> 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2013 ABCA 226 [June 12, 2015 Brief of the Public Trustee, Tab 5, Authorities of the Public Trustee];

73. The Court's costs order contains nothing limiting the discretion of the Public Trustee to hire counsel or agents as it deems necessary to fulfill its mandate in the within proceeding.

74. The Public Trustee is fully cognizant of its duty to the Court and its duty to act in the best interests of the minors it represents. The Public Trustee will operate in the within proceeding mindful of those duties and, to that end, ensure its costs are reasonable.

75. At this time, there is no basis to suggest the discretion of the Public Trustee to retain the assistance it requires should not be respected. Clearly, the Court may continue to provide oversight as necessary.

i.) No Objections to the Public Trustee Accessing Adequate Resources

76. The two costs applications before the Court raise largely the same issues, although the Public Trustee now seeks advice and direction on its ability to secure agency resources generally, in light of the Sawridge Trustees' refusal to pay for local agents (Mr. Terrance Glancy) or Supreme Advocacy LLP.

77. The Sawridge Trustees indicate they do not object to the Public Trustee having access to additional resources<sup>39</sup>

78. The choice of legal representation is generally a discretionary one. Absent evidence of inappropriate, or abusive, billing practices, Courts will generally be hesitant to intervene on this issue.

79. The Public Trustees' request for additional resources was not made frivolously. Rather, the request was made with a recognition of the complexities raised by the

---

<sup>39</sup> Sawridge Trustees' Brief, filed June 12, 2015, para 39

within proceeding and arises from a desire to accommodate the Sawridge Trustees' preferred time frames for remaining steps in the proceeding.<sup>40</sup>

ii.) Objections Erroneously Equate Hourly Rates to Value of Service

80. It appears the Sawridge Trustees' objections on the costs issue are based on:

- i) The assumption the total costs associated with retainer of Supreme Advocacy LLP will exceed the costs of other available, and equivalent, agent counsel;<sup>41</sup>
- ii) The assertion that Supreme Advocacy LLP's hourly rates exceed those of local firms that provide "similar services";<sup>42</sup>
- iii) The inability to assess the usefulness of Supreme Advocacy LLP's services; and<sup>43</sup>
- iv) The involvement of counsel located out of Alberta.<sup>44</sup>

81. With respect, it is submitted that many of these concerns are premature and unsupported. For example, the first account objected to contains none of the disbursements objected to in paragraph 42 of the Sawridge Trustees' brief.

82. It should also be noted that Hutchison Law has long since ceased to charge clients for long distance fees due to the minimal charges involved under modern plans. Similarly, Supreme Advocacy LLP does not bill for long distance charges. Both firms also make extensive use of technology to limit the need for travel or other

---

<sup>40</sup> Affidavit of Roman Bombak, dated June 12, 2015, Exhibit 35

<sup>41</sup> Sawridge Trustees' Brief, filed June 12, 2015, para 40-41

<sup>42</sup> Sawridge Trustees' Brief, filed June 12, 2015, para 40

<sup>43</sup> Sawridge Trustees' Brief, filed June 12, 2015, para 42

<sup>44</sup> Sawridge Trustees' Brief, filed June 12, 2015, para 40 +42



charges that might have been associated with use of counsel in another province in an earlier era.

83. The Sawridge Trustees' objections also fail to consider the fact that hourly rates must be considered in the context of counsel's experience and background. The Court will hardly be surprised by the concept that experienced counsel, with a particularly relevant background, is often able to provide more assistance in a few hours than counsel with less appreciation of the issues can in the course of weeks.

84. The Public Trustee submits that Supreme Advocacy LLP, and particularly Mr. Meehan, are uniquely positioned to provide the most efficient and effective agency services available, for reasons including:

- i) Mr. Meehan was counsel for one of the interveners in Federal Court Action No. T-66-86 (T-66-86A/ T-66-86B), being the Native Council of Canada (later name changed to Congress of Aboriginal Peoples). He was counsel for 8 years and appeared at the first trial in that litigation;
- ii) Mr. Meehan was replaced as counsel for the Congress of Aboriginal Peoples in Federal Court Action No. T-66-86 after the first trial, by Ms. Hutchison;
- iii) Supreme Advocacy LLP has recently provided legal advice to a First Nation in relation to the applicability and proper functioning of a substantial trust;
- iv) Should this matter ever proceed beyond the Court of Appeal, Supreme Advocacy LLP is available for Supreme Court of Canada proceedings, and located in Ottawa, thus reducing travel costs for Ms. Hutchison;

v) Mr. Meehan has been practicing in Alberta for 33 years and his Queen's Counsel designation is from Alberta;

vi) Mr. Meehan was also previously a professor at the University of Alberta and taught Trusts.

85. The Public Trustee submits there is literally not a single lawyer available as agent counsel in Alberta, who is not conflicted out of this proceeding, who offers a similar background or relevancy of agency services in the context of this proceeding.

iii.) Request For Unredacted Accounts

86. The Public Trustee has concerns regarding whether the Sawridge Trustees' request for unredacted accounts is consistent with the terms of the fall 2014 costs agreement between Sawridge Trustees and the Public Trustee.

87. The Public Trustee will require clarification regarding whether the Sawridge Trustees' application is intended to reopen discussion of the 2014 costs agreement.

88. To the extent the Court determines a review is required at this stage, it would still not be appropriate to provide unredacted accounts to the Sawridge Trustees. Clearly, such accounts contain solicitor-client privileged information that should not be available to the Sawridge Trustees.

89. Unredacted accounts can certainly be submitted to the Court for review, on a confidential basis.

**PART IV- REMEDY SOUGHT**

90. On the basis of the foregoing, the Public Trustee seeks an order:

- a.) Postponing the Settlement Application until the issues around further and better production are addressed;
- b.) Substantially revising the proposed litigation plan to reflect all pending applications and timelines which reflect the Public Trustee's available resources;
- c.) Confirmation that the Public Trustee has discretion to access the resources it requires to fulfill its mandate in this proceeding, including legal agents such as Mr. Glancy and Supreme Advocacy LLP;
- d.) Refusal of the application for release of unredacted accounts;
- e.) Such further and other relief as this Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Edmonton, Province of Alberta, this 19th day of June, 2015.

**HUTCHISON LAW**

Per: 

JANET L. HUTCHISON

Solicitors for the Public Trustee

Estimation of time for Oral Argument: 30 minutes

# Appendix 1

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

*[Signature]*  
for Clerk of the Court



Clerk's stamp:

1103 14112

COURT FILE NUMBER

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

CONSENT ORDER

Attention: Doris Bonora  
Dentons Canada LLP  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V8

Telephone: (780) 423-7188  
Fax: (780) 423-7276  
File No: 551860-1-DCEB

Date on which Order Pronounced: April 30, 2014

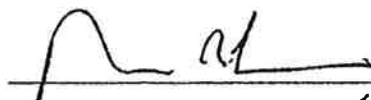
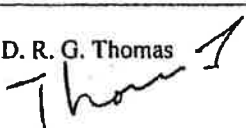
Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: D.R.G. Thomas

- 2 -

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that direction was required to proceed with the litigation; AND UPON being advised of the discussions between counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation, and counsel for Aline Elizabeth Huzar and June Martha Kolosky; IT IS HEREBY ORDERED AND DECLARED as follows:

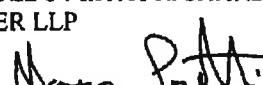
1. Questioning of Paul Bujold and Elizabeth Poitras shall occur May 27, 28 and 29, 2014.
2. The Office of the Public Trustee will provide the Sawridge Trustees with a list of documents that appear, from the contents of Mr. Bujold's affidavits, to be relevant and likely to exist by May 5, 2014. The Sawridge Trustees will deliver to Chamberlain Hutchison the documents they are able to locate by May 16, 2014. The parties acknowledge that this process will not limit the scope of examination of Mr. Bujold nor obligate the Office of the Public Trustee to complete questioning on the documents received on May 16, 2014 in the May 27-29 questioning. Rather, the purpose of the process is to assist Mr. Bujold in informing himself and to limit the number of undertakings required at the May 27-29, 2014 questioning.
3. Service of notice of this application in accordance with paragraph 18 of the Procedural Order of August 31, 2011, as amended, is hereby deemed good and sufficient.

  
 Mr. Justice D. R. G. Thomas  


CONSENTED TO BY:

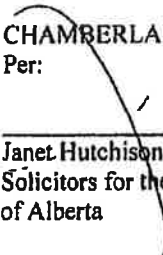
REYNOLDS MIRTH RICHARDS &  
 FARMER LLP

Per:

  
 Marco S. Poretti  
 Solicitors for the Trustees

CHAMBERLAIN HUTCHISON

Per:

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

- 3 -

DENTONS CANADA LLP

Per: 

Doris Bonora

Counsel for the Trustees

8090005\_1|NATDOCS

# Appendix 2



**From:** Campbell-Harker, Peggy <peggy.campbell-harker@dentons.com>  
**Sent:** Tuesday, June 02, 2015 9:39 AM  
**To:** jhutchison@jlhlaw.ca  
**Cc:** Bonora, Doris; mporetti@rmrf.com  
**Subject:** Sawridge  
**Attachments:** Scanned from a Xerox multifunction device001.pdf

Enclosed please find a copy of our letter for your information.

Thank you.

Send on behalf of Doris Bonora



Peggy Campbell-Harker  
Legal Assistant

D +1 780 423 7179  
peggy.campbell-harker@dentons.com  
Website

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

FMC is proud to join Salans and SNR Denton as a founding member of Dentons.

Please see [dentons.com](http://dentons.com) for Legal Notices. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. To update your commercial electronic message preferences email [dentonsinsightsca@dentons.com](mailto:dentonsinsightsca@dentons.com) or visit our website.

**DENTONS**

Doris C.E. Bonora

doris.bonora@dentons.com  
D +1 780 423 7188Salans FMC SNR Denton  
dentons.comDentons Canada LLP  
2800 Manulife Place  
10180 - 101 Street  
Edmonton, AB, Canada T5J 3V5T +1 780 423 7100  
F +1 780 423 7278

June 1, 2015

File No.: 551860-1

**SENT VIA E-MAIL****WITH PREJUDICE**Chamberlain Hutchison  
Suite 155, Glenora Gates  
10403 - 122 Street  
Edmonton AB T5N 4C1

Attention: Ms. Janet L. Hutchison

Dear Madam:

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

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

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

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

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

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

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

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

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

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

Thus we seek your approval for an order

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

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

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

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

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

Yours very truly,  
**Dentons Canada LLP**

Doris C.E. Bonora

**Reynolds Mirth Richards & Farmer LLP**

Marco Poretti  
DCEB/pach

**Table 1: Minor Beneficiaries of the 1985 Trust as at August 31, 2011 updated to 2015**

Beneficiary	Birthdate	Age in 2015	Category
1. Lamouche-Twin, Everett (Justin Twin)	05/10/2003	12	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
2. Lamouche-Twin, Justice (Justin Twin)	02/04/2001	14	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
3. Lamouche-Twin, Kalyn (Justin Twin)	24/08/2007	8	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
4. Lamouche-Twin, Maggie (Justin Twin)	27/03/2009	6	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
5. Moodie, Jorja L. (Jeanine Potskin)	29/01/2008	7	Illegitimate Child of Female Band member Not Protested
6. Potskin, Ethan E.R. (Trent Potskin)	15/01/2004	11	Illegitimate Child of Male Illegitimate Child of Female Band member Not Protested
7. Potskin, Jaise A. (Jeanine Potskin)	25/03/2003	12	Illegitimate Child of Female Illegitimate Child of Female Band member Not Protested
8. Potskin, Talia M.L. (Trent Potskin)	16/03/2010	5	Illegitimate Child of Male Illegitimate Child of Female Band member Not Protested
9. Robberstad, Jady (Jaclyn Twin)	04/07/2011	4	Illegitimate Child of Female Band member Not Protested
10. Twin, Alexander L. (Wesley Twin)	23/01/2005	10	Child of Married Male Band member
11. Twin, Autumn J. (Darcy Twin)	26/09/2002	13	Child of Married Male Band member
12. Twin, Destin D. (Jaclyn Twin)	24/06/2008	7	Illegitimate Child of Female Band member Not Protested
13. Twin, Justice W. (Wesley Twin)	20/09/2001	14	Child of Married Male Band member
14. Twin, Logan F. (Darcy)	17/04/2007	8	Child of Married Male Band member

Beneficiary	Birthdate	Age in 2015	Category
Twin)			
15. Twin, River C. (Darcy Twin)	03/05/2010	5	Child of Married Male Band member
16. Twinn, Clinton (Irene Twinn)	03/02/1997	18	<ul style="list-style-type: none"> <li>➤ Illegitimate Child of Female Band Member Not Protested</li> <li>➤ <b>Adult after 30 August 2011</b></li> </ul>
17. Twinn-Vincent, Seth (Arlene Twinn)	01/07/2001	14	Child of Female Band member who married Non-Band member
18. Twinn-Vincent, W. Chase (Arlene Twinn)	31/07/1998	17	Child of Female Band member who married Non-Band member
19. Potskin, William (Aaron Potskin)	19/09/2013	2	<ul style="list-style-type: none"> <li>➤ Child of Male band member</li> <li>➤ <b>Born after the litigation began</b></li> </ul>
20. Twinn, Kaitlin ( Paul Twinn)	23/02/1995	20	<ul style="list-style-type: none"> <li>➤ Child of male band member</li> <li>➤ <b>Adult after 30 August 2011</b></li> </ul>

**Table 1: Minor Beneficiaries of the 1985 Trust as at August 31, 2011 updated to 2015**

**Table 2: Beneficiaries to the 1985 Trust who have become members**

Non-Beneficiary	Birthdate	Age in 2015	Category
1. Twinn, Alexander G. (Roland Twinn)	01/10/1997	18	<ul style="list-style-type: none"> <li>➤ Child of Married Male Band member</li> <li>➤ Admitted as a member of the First nation</li> <li>➤ Adult (this year) after 30 August 2011</li> </ul>
2. Twinn, Corey (Ardell Twinn)	18/01/1994	21	<ul style="list-style-type: none"> <li>➤ Child of male band member</li> <li>➤ Admitted as a member of the First nation</li> <li>➤ Adult after 30 August 2011</li> </ul>
3. Twin, Starr (Winona Twin)	29/11/2002	13	<ul style="list-style-type: none"> <li>➤ Illegitimate Child of Female Band member Not Protested</li> <li>➤ Admitted as a member of the First nation</li> </ul>
4. Twin, Rainbow (Winona Twin)	31/05/1998	17	<ul style="list-style-type: none"> <li>➤ Illegitimate Child of Female Band member Not Protested</li> <li>➤ Admitted as a member of the First nation</li> </ul>

Table 2: Beneficiaries to the 1985 Trust who have become members

# Appendix 3



**From:** Janet Hutchison <jhutchison@chamberlainhutchison.com>  
**Sent:** Thursday, October 16, 2014 9:33 AM  
**To:** 'Marco S. Poretti'; Doris C.E. Bonora (doris.bonora@dentons.com)  
**Subject:** Sawridge Trustees -51430 JLH

I would appreciate hearing from you with regards to my letters of July 23, 2014 and September 15, 2014. In particular, I would appreciate dealing with all issues around payment of the Public Trustee's legal fees as soon as possible.

Thank you,

**Janet L. Hutchison**

**Chamberlain Hutchison\***  
**Barristers & Solicitors**  
*\*Independent Association of Law Practices*

#155, Glenora Gates  
 10403 – 122 Street  
 Edmonton, AB T5N 4C1  
 Phone: 780-423-3661 (ext. 227)  
 Fax: 780-426-1293

\*\*\*\*\*  
 \*\*\*\*\*

### **CONFIDENTIALITY WARNING**

**This email transmission, and any attachments to it, contain confidential information intended for a specific individual and purpose. The information is private, and is legally protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of the information in, or attached to this email is strictly prohibited. If you have received this communication in error, please notify us immediately by collect telephone (780) 423-3661, return the original to us by regular mail and permanently delete any electronic copies. Thank you.**

\*\*\*\*\*  
 \*\*\*\*\*

# Appendix 4



BARRISTERS SOLICITORS

Reynolds  
Mirth  
Richards  
& Farmer LLP



WRITER'S E-MAIL

mporetti@rmrf.com

YOUR FILE

WRITER'S DIRECT PHONE

780.497.3325

OUR FILE

108511-001-MSP

January 27, 2015

VIA EMAIL

**Chamberlain Hutchison**

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

**Attention: Ms. Janet L. Hutchison**

Dear Madam:

**Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)**

We are writing to address the issue of document production that has arisen during the questioning of Ms. Poitras.

We had previously provided you with copies of the documents that we intend to put to Ms. Poitras at her questioning under cover of our letter dated July 7, 2014. To this we add the following, copies of which are attached hereto:

1. Letter dated October 3, 1985 from Ms. Poitras to Sawridge Chief and Council; and
2. Sawridge fax dated January 9, 2001, with attached document entitled "Questions".

We have now provided you with copies of all of the documents in our possession relating to Ms. Poitras.

We wish to resume the questioning of Ms. Poitras without delay. We understand that you maintain your objection over the use of without prejudice communications in respect of the questioning of Ms. Poitras, as set out in your letter dated July 23, 2014. We do not agree with your position, however we are prepared to proceed with the questioning of Ms. Poitras by continuing to mark the without prejudice communications between the parties for identification purposes only, and not asking any questions of the witnesses in respect of these documents. Further, we would not file any of these documents with the Court without first receiving your agreement or a Court order allowing us to do so. Our expectation at this time is that there will not be a need to present the without prejudice documents to the Court, however we reserve our right to bring such an application if necessary.

Page 2  
January 27, 2015

We are available on February 4 – 6, 13, 17 – 19, 23 and 24. Please advise whether any of these dates works for you and Ms. Poitras.

Yours truly,

**REYNOLDS, MIRTH, RICHARDS & FARMER LLP**

PER: 

MARCO S. PORETTI

MSP/cam

cc: Doris Bonora (with encl.)

1314028\_3

# Appendix 5

1 COURT FILE NO: 1103 14112

2 COURT: QUEEN'S BENCH OF ALBERTA

3 JUDICIAL CENTRE: EDMONTON

4  
5 IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000,  
6 c.T-8 as amended

7  
8 IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS  
9 SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN,  
10 OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as  
11 SAWRIDGE FIRST NATION, ON APRIL 15, 1985  
12 (The "1985 SAWRIDGE TRUST")

13  
14 APPLICANTS: ROLAND TWINN, CATHERINE TWINN, WALTER  
15 FELIX TWIN, BERTHA L'HIRONDELLE and  
16 CLARA MIDBO, as TRUSTEES FOR THE 1985  
17 SAWRIDGE TRUST

18  
19 -----  
20  
21 QUESTIONING ON AFFIDAVIT  
22 OF  
23 ELIZABETH POITRAS  
24 -----

25 M.S. Poretti, Esq. For the Applicants

26 Ms. J.L. Hutchison For the Public Trustee

27 Susan Stelter Court Reporter

Edmonton, Alberta

9 April, 2015

1 ELIZABETH POITRAS, SWORN AT 10:50 A.M., QUESTIONED BY  
2 MR. PORETTI:

3 Q MR. PORETTI: Good morning, Mrs. Poitras.

4 A Good morning Mr. Poretti.

5 MR. PORETTI: We are going to deal with some  
6 preliminary matters before we get into the questioning.

7 Pursuant to our off-the-record discussion we are  
8 going to mark as the next exhibit for identification a  
9 letter dated April 7, 2015 from Mr. Glancy to Hutchison  
10 Law.

11 EXHIBIT NO. I FOR IDENTIFICATION:  
12 LETTER DATED APRIL 7, 2015 FROM MR.  
13 GLANCY TO HUTCHISON LAW.

14 MR. PORETTI: Ms. Hutchison, the first order of  
15 business will be to deal with the documents that are  
16 marked without prejudice. And I confirm that during  
17 our questioning today I will be marking a number of  
18 these documents for identification purposes on the  
19 following basis:

20 I will not be asking any questions of the witness  
21 in respect of these documents. Further, I will not  
22 file any of these documents with the court without  
23 first receiving your agreement or a court order  
24 allowing us to do so. Our expectation at this time is  
25 that there will not be a need to present the without  
26 prejudice documents to the court, however we reserve  
27 our right to bring such an application if necessary.

1 So that is how we intend to proceed on the without  
2 prejudice documents.

3 With respect to Mr. Glancy's letter, which has been  
4 marked as Exhibit I for Identification, he raises an  
5 issue relating to the implied undertaking of  
6 confidentiality, and I understand that you would like  
7 to put your position on the record in relation to how  
8 we are going to proceed today.

9 MS. HUTCHISON: Thank you, Mr. Poretti. And so  
10 just to be clear, we have agreed to your proposal on  
11 how to deal with the without prejudice documents from  
12 the collection of documents that you provided to us  
13 with a letter dated July 7th, 2014. They will be  
14 marked as exhibits for identification only and won't be  
15 examined on, and of course we both may have future  
16 positions to take up with the court about whether or  
17 not they actually go before the court.

18 In relation to Mr. Glancy's letter and how that  
19 pertains to the other documents in the collection that  
20 are not marked without prejudice, Mr. Glancy, as  
21 counsel in the process of litigation that these  
22 documents relate to, has flagged a concern about  
23 potential breach of implied undertaking of  
24 confidentiality.

25 He has also provided some information that tells us  
26 that, of course, these are not the only documents that  
27 were produced in the Poitras litigation. And so on the



# Appendix 6

**From:** [Hagerman, Susan](#)  
**To:** [Janet Hutchison](#)  
**Cc:** [Bonora, Doris](#); [Marco S. Poretti <MPoretti@rmrf.com> \(MPoretti@rmrf.com\)](#); [Paul@sawridgetrusts.ca](#)  
**Subject:** Sawridge Trust  
**Date:** Thursday, April 30, 2015 6:00:24 PM  
**Attachments:** [proposed litigation plan.pdf](#)

---

Attached please find a Proposed Litigation Plan for your review. We look forward to your comments.



Susan Hagerman  
Estates Paralegal

D +1 780 423 7318  
[susan.hagerman@dentons.com](mailto:susan.hagerman@dentons.com)  
[Website](#)

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

FMC is proud to join Salans and SNR Denton as a founding member of Dentons.

Please see [dentons.com](http://dentons.com) for Legal Notices. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. To update your commercial electronic message preferences email [dentonsinsightsca@dentons.com](mailto:dentonsinsightsca@dentons.com) or visit our website.

## CLERK'S STAMP

COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF  
ALBERTA JUDICIAL CENTRE

Edmonton

IN THE MATTER OF THE TRUSTEE ACT,  
R.S.A. 2000, c, T-8, AS AMENDEDIN THE MATTER OF THE SAWRIDGE BAND  
INTER VIVOS SETTLEMENT CREATED BY CHIEF  
WALTER PATRICK TWINN OF THE SAWRIDGE  
INDIAN BAND, NO. 19 now known as SAWRIDGE  
FIRST NATION ON APRIL 15, 1985 (the "1985  
Sawridge Trust")

APPLICANTS

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

DOCUMENT

PROPOSED LITIGATION PLAN

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF PARTY  
FILING THIS DOCUMENTATTENTION: DORIS BONORA  
DENTONS CANADA LLP  
#2900, 10180 – 101 STREET  
EDMONTON, AB T5J 3V5FILE NUMBER : 551860-1-DCEB  
PH : 780-423-7100  
FAX : 780-423-7276

1. The remaining steps and procedures are to be completed on or before the dates specified below:

ACTION	DUE ON OR BEFORE
Questioning of Paul Bujold on documents and undertakings	May 13, 2015
Application on Objections and documents	July 15, 2015
Questioning resulting from Application	September 15, 2015
Mediation to come up with joint proposal	October 15, 2015
Briefs for Applicant	November 15, 2015
Brief for Respondent	December 15, 2015
Application	January 15, 2016

**This Litigation Plan is agreed to by the Parties**

Dentons Canada LLP

Reynolds Mirth Richards & Farmer LLP

Per: \_\_\_\_\_  
Doris Bonora  
Solicitors for the Applicants

Per: \_\_\_\_\_  
Marco S. Poretti  
Solicitors for the Applicants

Chamberlain Hutchison

Per: \_\_\_\_\_  
Janet L. Hutchison  
Solicitors for the Office of the Public Trustee  
of Alberta

### **List of Authorities**

1. *E. (Mrs.) v. Eve*, [1986] 2 S.C.J. No. 60 (S.C.C.)
2. *Minors' Property Act*, S.A. 2004, c.M-18.1

# Tab 1 Authority

*Indexed as:*  
**E. (Mrs.) v. Eve**

**Eve, by her Guardian ad litem, Milton B. Fitzpatrick,  
Official Trustee, appellant;  
v.  
Mrs. E., Respondent; and Canadian Mental Health Association,  
Consumer Advisory Committee of the Canadian Association of the  
Mentally Retarded, The Public Trustee of Manitoba, and  
Attorney General of Canada, interveners.**

[1986] 2 S.C.R. 388

[1986] S.C.J. No. 60

File No: 16654.

Supreme Court of Canada

1985: June 4, 5 / 1986: October 23.

**Present: Dickson C.J. and Beetz, Estey, McIntyre, Chouinard,  
Lamer, Wilson, Le Dain and La Forest JJ.**

ON APPEAL FROM THE COURT OF APPEAL FOR PRINCE EDWARD ISLAND

*Courts -- Jurisdiction -- Parens patriae -- Scope of doctrine and discretion required for its exercise  
-- Whether or not encompassing consent for non-therapeutic sterilization of mentally incompetent  
person -- Chancery Act, R.S.P.E.I. 1951, c. 21, s. 3 -- Chancery Jurisdiction Transfer Act, S.P.E.I.  
1974, c. 65, s. 2.*

*Family law -- Mentally incompetent person -- Application made for non-therapeutic sterilization of  
adult daughter by parent -- Whether or not court authorized to grant consent -- Whether or not  
authority to be found in statutes -- Whether or not authority flowing from parens patriae power --  
Mental Health Act, R.S.P.E.I. 1974, c. M-9, am. S.P.E.I. 1976, c. 65, ss. 2(n), 30A(1), (2), 30B, 30L  
-- Hospitals Act, "Hospital Management Regulations", R.R.P.E.I., c. H-11, s. 48.*

*Human rights -- Disabled persons -- Mentally incompetent person -- Application made for*

*non-therapeutic sterilization of adult daughter by parent -- Whether or not court authorized to grant consent -- Whether or not authority to be found in statutes -- Whether or not authority flowing from parens patriae power.*

[page389]

"Mrs. E." applied to the Supreme Court of Prince Edward Island for permission to consent to the sterilization of "Eve", her adult daughter who was mentally retarded and suffered from a condition making it extremely difficult to communicate with others. Mrs. E. feared Eve might innocently become pregnant and consequently force Mrs. E., who was widowed and approaching sixty, to assume responsibility for the child. The application sought: (1) a declaration that Eve was mentally incompetent pursuant to the Mental Health Act; (2) the appointment of Mrs. E. as committee of Eve; and (3) an authorization for Eve's undergoing a tubal ligation. The application for authorization to sterilize was denied, and an appeal to the Supreme Court of Prince Edward Island, in banco, was launched. An order was then made appointing the Official Trustee as Guardian ad litem for Eve. The appeal was allowed. The Court ordered that Eve be made a ward of the Court pursuant to the Medical Health Act solely to permit the exercise of the parens patriae jurisdiction to authorize the sterilization, and that the method of sterilization be determined by the Court following further submissions. A hysterectomy was later authorized. Eve's Guardian ad litem appealed.

Held: The appeal should be allowed.

The Mental Health Act did not advance respondent's case. This Act provides a procedure for declaring mental incompetency, at least for property owners. Its ambit is unclear and it would take much stronger language to empower a committee to authorize the sterilization of a person for non-therapeutic purposes. The Hospital Management Regulations were equally inapplicable. They are not aimed at defining the rights of individuals.

The parens patriae jurisdiction for the care of the mentally incompetent is vested in the provincial superior courts. Its exercise is founded on necessity -- the need to act for the protection of those who cannot care for themselves. The jurisdiction is broad. Its scope cannot be defined. It applies to many and varied situations, and a court can act not only if injury has occurred but also if it is apprehended. The jurisdiction is carefully guarded and the courts will not assume that it has been removed by legislation.

While the scope of the parens patriae jurisdiction is unlimited, the jurisdiction must nonetheless be exercised in accordance with its underlying principle. The discretion given under this jurisdiction is to be exercised for the benefit of the person in need of protection and not [page390] for the benefit of others. It must at all times be exercised with great caution, a caution that must increase with the seriousness of the matter. This is particularly so in cases where a court might be tempted to act because failure to act would risk imposing an obviously heavy burden on another person.



Sterilization should never be authorized for non-therapeutic purposes under the *parens patriae* jurisdiction. In the absence of the affected person's consent, it can never be safely determined that it is for the benefit of that person. The grave intrusion on a person's rights and the ensuing physical damage outweigh the highly questionable advantages that can result from it. The court, therefore, lacks jurisdiction in such a case.

The court's function to protect those unable to take care of themselves must not be transformed so as to create a duty obliging the Court, at the behest of a third party, to make a choice between two alleged constitutional rights -- that to procreate and that not to procreate -- simply because the individual is unable to make that choice. There was no evidence to indicate that failure to perform the operation would have any detrimental effect on Eve's physical or mental health. Further, since the *parens patriae* jurisdiction is confined to doing what is for the benefit and protection of the disabled person, it cannot be used for Mrs. E.'s benefit.

Cases involving applications for sterilization for therapeutic reasons may give rise to the issues of the burden of proof required to warrant an order for sterilization and of the precautions judges should take with these applications in the interests of justice. Since, barring emergency situations, a surgical procedure without consent constitutes battery, the onus of proving the need for the procedure lies on those seeking to have it performed. The burden of proof, though a civil one, must be commensurate with the seriousness of the measure proposed. A court in conducting these procedures must proceed with extreme caution and the mentally incompetent person must have independent representation.

### Cases Cited

Considered: *X (a minor), Re*, [1975] 1 All E.R. 697; *D (a minor), Re*, [1976] 1 All E.R. 326; *Eberhardy, Matter of*, 307 N.W.2d 881 (Wis. 1981); *Grady, In re*, 426 A.2d 467 (N.J. 1981); *Hayes, Guardianship*, [page391] *Matter of*, 608 P. 2d 635 (Wash. 1980); referred to: *Cary v. Bertie* (1696), 2 Vern. 333, 23 E.R. 814; *Morgan v. Dillon (Ire.)* (1724), 9 Mod. R. 135, 88 E.R. 361; *Beall v. Smith* (1873), L.R. 9 Ch. 85; *Beverley's Case* (1603), 4 Co. Rep. 123 b, 76 E.R. 1118; *Wellesley v. Duke of Beaufort* (1827), 2 Russ. 1, 38 E.R. 236; *Wellesley v. Wellesley* (1828), 2 Bli. N.S. 124, 4 E.R. 1078; *Beson v. Director of Child Welfare (Nfld.)*, [1982] 2 S.C.R. 716; *Re S. v. McC (orse. S.) and M; W. v. W.*, [1972] A.C. 24; *P (a minor), In re* (1981), 80 L.G.R. 301; *B (a minor), Re* (1982), 3 F.L.R. 117; *K and Public Trustee, Re* (1985), 19 D.L.R. (4th) 255; *Buck v. Bell*, 274 U.S. 200 (1927); *Tulley, Guardianship of, App.*, 146 Cal.Rptr. 266 (1978); *Hudson v. Hudson*, 373 So.2d 310 (Ala. 1979); *Eberhardy's Guardianship, Matter of*, 294 N.W.2d 540 (Wis. 1980); *Stump v. Sparkman*, 435 U.S. 349 (1978); *C.D.M., Matter of*, 627 P. 2d 607 (Alaska 1981); *A. W., Matter of*, 637 P. 2d 366 (Colo. 1981); *Terwilliger, Matter of*, 450 A.2d 1376 (Pa. 1982); *Wentzel v. Montgomery General Hospital, Inc.*, 447 A.2d 1244 (Md. 1982); *Moe, Matter of*, 432 N.E.2d 712 (Mass. 1982); *P.S. by Harbin v. W.S.*, 452 N.E.2d 969 (Ind. 1983); *Sallmaier, Matter of*, 378 N.Y.S.2d 989 (1976); *A. D., Application of*, 394 N.Y.S.2d 139 (1977); *Penny N., In re*, 414 A.2d 541 (N.H. 1980); *Quinlan, Matter of*, 355 A.2d 647 (N.J. 1976); *J. v. C.*, [1970] A.C. 668; *Strunk v.*

Strunk, 445 S.W.2d 145 (Ky. 1969).

### **Statutes and Regulations Cited**

Act for the Relief of the Suitors of the High Court of Chancery, 15 & 16 Vict., c. 87, s. 15 (U.K.)  
 Act to authorize the appointment of a Master of the Rolls to the Court of Chancery, and an Assistant Judge of the Supreme Court of Judicature in this Island, 11 Vict., c. 6 (P.E.I.)  
 Act to provide for the care and maintenance of idiots, lunatics and persons of unsound mind, 15 Vict., c. 36 (P.E.I.)  
 Canadian Charter of Rights and Freedoms, ss. 7, 15(1).  
 Chancery Act, R.S.P.E.I. 1951, c. 21, s. 3.  
 Chancery Jurisdiction Transfer Act, S.P.E.I. 1974, c. 65, s. 2.  
 Hospitals Act, R.S.P.E.I. 1974, c. H-11, s. 16.  
 Hospitals Act, "Hospital Management Regulations", R.R.P.E.I., c. H-11, s. 48.  
 Mental Health Act, R.S.P.E.I. 1974, c. M-9, as amended by S.P.E.I. 1974, c. 65, ss. 2(n), 30A(1), (2), 30B, 30L.  
 Sexual Sterilization Act, R.S.A. 1970, c. 341, rep. S.A. 1972, c. 87.  
 Sexual Sterilization Act, R.S.B.C. 1960, c. 353, s. 5(1), rep. S.B.C. 1973, c. 79.

[page392]

### **Authors Cited**

Burgdorf, Robert L., Jr., and Marcia Pearce Burgdorf. "The Wicked Witch is Almost Dead: Buck v. Bell and the Sterilization of Handicapped Persons," 50 Temp. L.Q. 995. (1977).  
 Canada. Law Reform Commission. Sterilization: Implications for Mentally Retarded and Mentally Ill Persons (Working Paper 24). Ottawa: 1979.  
 Fitzherbert, Sir Anthony. The new Natura brevium of the most reverend judge, Mr. Anthony Fitz-Herbert. London: A Strahan and W. Woodfall, law printers to the King, for J. Butterworth, 1794.  
 Lachance, Denise. "In re Grady: The Mentally Retarded Individual's Right to Choose Sterilization," 6 Am. J.L. & Med. 559 (1981).  
 McIvor, Craig L. "Equitable Jurisdiction to Order Sterilizations," 57 Wash. L.R. 373 (1982).  
 McLaughlin, Paul. Guardianship of the Person. Downsview, Ont.: National Institute on Mental Retardation, 1979.  
 Norris, Christina Norton. "Recent Developments - Courts -- Scope of Authority -- Sterilization of Mental Incompetents," 44 Tenn. L. Rev 879 (1977).  
 Ross, Deborah Hardin. "Sterilization of the Developmentally Disabled: Shedding Some Myth-Conceptions," 9 Fla. St. U.L. Rev. 599 (1981).  
 Sherlock, Richard K. and Robert D. Sherlock. "Sterilizing the Retarded: Constitutional, Statutory

and Policy Alternatives," 60 N.C.L. Rev. 943 (1982).

Theobald, Sir Henry Studdy. The Law Relating to Lunacy. London: Stevens and Sons Ltd., 1924.

APPEAL from a judgment of the Prince Edward Island Court of Appeal (1980), 27 Nfld. & P.E.I.R. 97, 74 A.P.R. 97, with addendum (1981), 28 Nfld. & P.E.I.R. 359, 97 A.P.R. 359, 115 D.L.R. (3d) 283, allowing an appeal from a judgment of McQuaid J. dismissing an application for consent to the sterilization of a mentally incompetent person. Appeal allowed.

Eugene P. Rossiter, for the appellant.

Walter McEwen, for the respondent.

B.A. Crane, Q.C., for the intervener the Canadian Mental Health Association.

David H. Vickers, Harvey Savage and S. D. McCallum, for the intervener the Consumer Advisory Committee of the Canadian Association for the Mentally Retarded.

[page393]

M. Anne Bolton, for the intervener The Public Trustee of Manitoba.

E.A. Bowie, Q.C., and B. Starkman, for the intervener the Attorney General of Canada.

Solicitors for the appellant: Scales, Jenkins & McQuaid, Charlottetown.

Solicitors for the respondent: Campbell, McEwen & McLellan, Summerside.

Solicitors for the intervener Canadian Mental Health Association: Gowling & Henderson, Ottawa.

Solicitors for the intervener Canadian Association for the Mentally Retarded: Vickers & Palmer, Victoria.

Solicitor for the intervener The Public Trustee of Manitoba: The Public Trustee of Manitoba, Winnipeg.

Solicitor for the intervener Attorney General of Canada: Roger Tasse, Ottawa.

---

The judgment of the Court was delivered by

**1 LA FOREST J.:**-- These proceedings began with an application by a mother for permission to consent to the sterilization of her mentally retarded daughter who also suffered from a condition that makes it extremely difficult for her to communicate with others. The application was heard by McQuaid J. of the Supreme Court of Prince Edward Island -- Family Division. In the interests of privacy, he called the daughter "Eve", and her mother "Mrs. E".

Background

best interests test, various guidelines have been developed by the courts in the United States to ensure the proper use of this test.

#### Summary and Disposition

72 In the foregoing discussion, I have attempted to set forth the legal background relevant to the question whether a court may, or in this case, ought to authorize consent to non-therapeutic sterilization. Before going on, it may be useful to summarize my views on the *parens patriae* jurisdiction. From the earliest time, the sovereign, as *parens patriae*, was vested with the care of the mentally incompetent. This right and duty, as Lord Eldon noted in *Wellesley v. Duke of Beaufort*, *supra* at 2 Russ., at p. 20, 38 E.R., at p. 243 is founded on the obvious necessity that the law should place somewhere the care of persons who are not able to take care of themselves. In early [page426] England, the *parens patriae* jurisdiction was confined to mental incompetents, but its rationale is obviously applicable to children and, following the transfer of that jurisdiction to the Lord Chancellor in the seventeenth century, he extended it to children under wardship, and it is in this context that the bulk of the modern cases on the subject arise. The *parens patriae* jurisdiction was later vested in the provincial superior courts of this country, and in particular, those of Prince Edward Island.

73 The *parens patriae* jurisdiction is, as I have said, founded on necessity, namely the need to act for the protection of those who cannot care for themselves. The courts have frequently stated that it is to be exercised in the "best interest" of the protected person, or again, for his or her "benefit" or "welfare".

74 The situations under which it can be exercised are legion; the jurisdiction cannot be defined in that sense. As Lord MacDermott put it in *J. v. C.*, [1970] A.C. 668, at p. 703, the authorities are not consistent and there are many twists and turns, but they have inexorably "moved towards a broader discretion, under the impact of changing social conditions and the weight of opinion ...." In other words, the categories under which the jurisdiction can be exercised are never closed. Thus I agree with Latey J. in *Re X*, *supra*, at p. 699, that the jurisdiction is of a very broad nature, and that it can be invoked in such matters as custody, protection of property, health problems, religious upbringing and protection against harmful associations. This list, as he notes, is not exhaustive.

75 What is more, as the passage from Chambers cited by Latey J. underlines, a court may act not only on the ground that injury to person or property has occurred, but also on the ground that such injury is apprehended. I might add that the jurisdiction is a carefully guarded one. The courts will not readily assume that it has been removed by legislation where a necessity arises to protect a person who cannot protect himself.

[page427]

76 I have no doubt that the jurisdiction may be used to authorize the performance of a surgical operation that is necessary to the health of a person, as indeed it already has been in Great Britain and this country. And by health, I mean mental as well as physical health. In the United States, the courts have used the *parens patriae* jurisdiction on behalf of a mentally incompetent to authorize chemotherapy and amputation, and I have little doubt that in a proper case our courts should do the same. Many of these instances are related in *Strunk v. Strunk*, 445 S.W.2d 145 (Ky. 1969), where the court went to the length of permitting a kidney transplant between brothers. Whether the courts in this country should go that far or as in *Quinlan* permit the removal of life-sustaining equipment, I leave to later disposition.

77 Though the scope or sphere of operation of the *parens patriae* jurisdiction may be unlimited, it by no means follows that the discretion to exercise it is unlimited. It must be exercised in accordance with its underlying principle. Simply put, the discretion is to do what is necessary for the protection of the person for whose benefit it is exercised; see the passages from the reasons of Sir John Pennycuik in *Re X*, at pp. 706-07, and Heilbron J. in *Re D*, at p. 332, cited earlier. The discretion is to be exercised for the benefit of that person, not for that of others. It is a discretion, too, that must at all times be exercised with great caution, a caution that must be redoubled as the seriousness of the matter increases. This is particularly so in cases where a court might be tempted to act because failure to do so would risk imposing an obviously heavy burden on some other individual.

78 There are other reasons for approaching an application for sterilization of a mentally incompetent person with the utmost caution. To begin with, the decision involves values in an area where our social history clouds our vision and encourages many to perceive the mentally handicapped as somewhat less than human. This attitude has been [page428] aided and abetted by now discredited eugenic theories whose influence was felt in this country as well as the United States. Two provinces, Alberta and British Columbia, once had statutes providing for the sterilization of mental defectives; The Sexual Sterilization Act, R.S.A. 1970, c. 341, repealed by S.A. 1972, c. 87; Sexual Sterilization Act, R.S.B.C. 1960, c. 353, s. 5(1), repealed by S.B.C. 1973, c. 79.

79 Moreover, the implications of sterilization are always serious. As we have been reminded, it removes from a person the great privilege of giving birth, and is for practical purposes irreversible. If achieved by means of a hysterectomy, the procedure approved by the Appeal Division, it is not only irreversible; it is major surgery. Here, it is well to recall Lord Eldon's admonition in *Wellesley's case*, *supra*, at 2 Russ. p. 18, 38 E.R. p. 242, that "it has always been the principle of this Court, not to risk the incurring of damage to children which it cannot repair, but rather to prevent the damage being done". Though this comment was addressed to children, who were the subject matter of the application, it aptly describes the attitude that should always be present in exercising a right on behalf of a person who is unable to do so.

80 Another factor merits attention. Unlike most surgical procedures, sterilization is not one that is

# Tab 2 Authority



Province of Alberta

## **MINORS' PROPERTY ACT**

**Statutes of Alberta, 2004  
Chapter M-18.1**

Current as of June 1, 2015

**Office Consolidation**

© Published by Alberta Queen's Printer

Alberta Queen's Printer  
7<sup>th</sup> Floor, Park Plaza  
10611 - 98 Avenue  
Edmonton, AB T5K 2P7  
Phone: 780-427-4952  
Fax: 780-452-0668

E-mail: [qp@gov.ab.ca](mailto:qp@gov.ab.ca)  
Shop on-line at [www.qp.alberta.ca](http://www.qp.alberta.ca)

(c) has been otherwise dealt with in accordance with the rules.

2014 cE-12.5 s53;2014 c13 s2

#### **Expiry of caveat**

**12.2(1)** Unless it is discharged or withdrawn in accordance with this Act and the Rules, a caveat remains in force for 3 months from the date it was filed, unless the Court orders otherwise.

(2) If a caveat has expired or has been discharged or withdrawn in accordance with this Act and the Rules, no further caveat in respect of the same minor may be filed by or on behalf of the same caveator without the permission of the Court.

2014 cE-12.5 s53;2014 c13 s2

#### **Discharge of caveat**

**12.3** A person whose application for a trusteeship order is affected by a caveat may apply in accordance with the Rules requesting that the caveator be required to show cause why the caveat should not be discharged.

2014 cE-12.5 s53

### **General**

#### **Court directing delivery of minor's property to Public Trustee**

**13** The Court, on application, may, if in the Court's opinion it is in a minor's best interest to do so, direct a person who is in possession of property of the minor to deliver the property to the Public Trustee.

#### **Procedure on application**

**14(1)** The practice and procedure on applications to the Court under this Act are governed by the *Alberta Rules of Court* or the *Surrogate Rules*, as the case may be.

(2) An application to the Court under this Act may be made by any person the Court considers appropriate to make the application.

(3) An application under this Act relating to a minor who is 14 years of age or older may be made only with the minor's consent, unless the Court otherwise allows.

(4) The powers conferred under this Act on the Court may be exercised by a judge of the Court in chambers.

#### **Notice to Public Trustee**

**15(1)** The Public Trustee must be given at least 10 days' notice of any application