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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

## WRITTEN BRIEF OF THE TRUSTEES VOLUME 1 OF 2

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## INTRODUCTION

1. This Brief is in response to an application brought by the Public Trustee of Alberta (the “Public Trustee”) regarding:
  - a) The appointment of the Public Trustee as litigation representative of minors who may be interested in the within proceedings;
  - b) The payment of advance costs on a solicitor and his own client basis and exemption from liability for costs as a condition of any such appointment; and
  - c) The relevance of the Public Trustee’s intervention in the membership application process of the Sawridge First Nation and questioning on “membership” issues in these proceedings.

It is noted that if the Public Trustee is not awarded advance costs, it will not consent to an appointment as litigation representative. Thus if the court decided the issue of costs first, issues (a) and (c) above would become moot and would not have to be decided by the Court.

2. These proceedings concern the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the “1985 Trust”) and have been initiated by the trustees of the 1985 Trust (the “Trustees”). The Trustees seek the advice and direction of the Court on:
  - a) Amending the definition of “Beneficiaries” in the 1985 Trust; and
  - b) Confirming the transfer of assets into the 1985 Trust.

(the “Advice and Direction Application”)
3. The Public Trustee sets out an argument for the appointment of a litigation representative for minors. While it might seem obvious that minors’ interests need a litigation representative, it will be the submission of the Trustees that the parents of the minors should be considered prior to the involvement of the Public Trustee.
4. Further, the Public Trustee is only prepared to be involved if they are funded by the trust and thus essentially funded by the very minors they wish to represent. With respect, the

Public Trustee has failed to provide the necessary evidence to meet the seminal test on the issue of advance costs.

5. The Brief of the Public Trustee, *inter alia*, reviews the history of membership disputes involving the Sawridge First Nation. It raises concerns with how matters have been dealt with in the past. Further, the Brief questions the independence and objectivity of the Sawridge Chief and Council, the Trustees and indeed even the parents of the minors.
6. While we recognize the good intentions of the Public Trustee, this negative portrayal is unfortunate, especially given the good news that should be heralded given the foresight of the former Sawridge Chief to create the trust and preserve funds for future generations. The negativity is also unfortunate given the purpose of the Advice and Direction Application.
7. It is significant to note that this application has been brought voluntarily by the Trustees, and that they are requesting that the current definition of “Beneficiaries” be changed to include all members of the Sawridge First Nation. It is submitted that this is a significant step forward for the Sawridge community as a whole, and one that should be commended.
8. The good news continues in that the Trustees wish to establish a variety of programs and services for all beneficiaries. These programs will support health, education, child and youth development, seniors and community strengthening. This is not a situation in which funds are simply being disbursed to beneficiaries on a *per capita* basis, but rather an attempt to benefit the community as a whole over generations in areas that have been identified through consultation with the beneficiaries and through the assistance of outside consultants.
9. In seeking the advice and direction of the Court, the Trustees have made great efforts to provide notice to anyone who may have any interest or who the Trustees had reason to believe would be a potential beneficiary of the trusts.
10. It is respectfully submitted that the Trustees have taken significant measures not only to bring an important issue before the Court, but to notify all remotely interested parties of the same. The Trustees notified approximately 190 individuals.

11. The Public Trustee, however, suggests that the Trustees must go beyond notification and in fact must interfere in the affairs of the First Nation membership application process. The Trustees and the First Nation are two distinct entities and neither has the authority to interfere in the affairs of the other. The Public Trustee seems to suggest that it wishes to become an active applicant and commence and pursue litigation that no minor nor a minor's parent has asked it to pursue.
12. It is respectfully submitted that this is not a case about membership. The two issues raised in the Advice and Direction Application are very narrow and relate specifically to the 1985 Trust. Relevance in these proceedings is to be determined by the scope of the Advice and Direction Application. The scope does not include an inquiry into membership applications nor the membership process which are within the distinct authority of the First Nation and are issues that the Trustees have neither the knowledge nor jurisdiction to defend.
13. Membership is solely the responsibility of the Sawridge Chief and Council. The within proceedings are not the appropriate venue to pursue any concerns with respect to this issue. There are other avenues open to anyone who wishes to raise such concerns, whether it be through pursuing the matter directly with the Sawridge First Nation or going through the Courts.
14. It should not be for the Public Trustee to decide whether these issues should be advanced, and to attempt to advance them in these proceedings, especially when no minor nor minor's parents has asked them to do so and considering that the Trustees have no jurisdiction over membership.
15. In the circumstances, the Trustees are opposed to the relief being sought by the Public Trustee.

## **PART I – STATEMENT OF FACTS**

### **Background**

16. In 1966, Chief Walter Patrick Twinn ( “Chief Walter Twinn”) became the Chief of the Sawridge Band No. 454, now known as Sawridge First Nation (the “Sawridge First Nation” or the “Nation”), and remained the Chief until his death on October 30, 1997.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 6. **TAB 1**

17. In the early 1970’s, the Sawridge First Nation began investing some of its oil and gas royalties in land, hotels and other business assets. At the time, it was unclear whether the Nation had statutory ownership powers, and accordingly assets acquired by the Nation were registered in the names of individuals who would hold the property in trust. By 1982, Chief Walter Twinn, George Twin, Walter Felix Twin, Samuel Gilbert Twin and David Fennell held a number of assets in trust for the Sawridge First Nation.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 8. **TAB 1**

### **Creation of the 1982 Trust**

18. In 1982, the Sawridge First Nation decided to establish a formal trust in respect of the property then held in trust by individuals. The establishment of the formal trust would enable the Nation to provide long term benefits to the members and their descendents. On April 15, 1982, a declaration of trust establishing the Sawridge Band Trust (the “1982 Trust”) was executed. All property held by Chief Walter Twinn and the other individuals was transferred into the 1982 Trust.

Affidavit of Paul Bujold dated September 12, 2011,  
paras. 9 - 12. **TAB 1**

**Changes in Legislation – The Charter of Rights and Freedoms and Bill C-31**

19. On April 17, 1982, the *Constitution Act, 1982*, which included the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the “*Charter*”) came into force. Section 15 of the *Charter* did not have effect, however, until April 17, 1985, to enable provincial and federal legislation to be brought into compliance.
20. After the *Charter* came into force, the federal government began the process of amending the *Indian Act*, R.S.C. 1970, c. I-6 (the “1970 *Indian Act*”). Following the federal election in 1984, the government introduced *Bill C-31* to address concerns that certain provisions of the 1970 *Indian Act* relating to membership were discriminatory.
21. It was expected that *Bill C-31* would result in an increase in the number of individuals included on the membership list of the Sawridge First Nation. This led the Nation to settle a new trust, the 1985 Trust, within which assets would be preserved for Nation members as defined by the legislation prior to *Bill C-31*.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 15. **TAB 1**

**Creation of the 1985 Trust**

22. On April 15, 1985 the Sawridge Band Intervivos Settlement was created (the “1985 Trust”).

Affidavit of Paul Bujold dated September 12, 2011,  
paras. 1 and 16. **TAB 1**

23. The 1985 Trust provides that the “Beneficiaries” are:

"Beneficiaries at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15<sup>th</sup> day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15<sup>th</sup> day of April 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15<sup>th</sup> day of April, 1982, shall be regarded as “Beneficiaries” for the

purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band No. 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement.”

Affidavit of Paul Bujold dated September 12, 2011,  
para. 17. **TAB 1**

24. The 1985 Trust effectively “froze” the definition of beneficiaries according to the legislation as it existed prior to *Bill C-31*.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 18. **TAB 1**

25. By way of a resolution dated April 15, 1985, the trustees of the 1982 Trust resolved to transfer all of the assets of the 1982 Trust to the 1985 Trust. This transfer was carried out with the approval of the members of the Sawridge First Nation and under the guidance of lawyers and accountants. While all of the necessary documentation relating to the transfer has not been located, it is clear that the transfer took place and the Trustees have been operating on the assumption that the asset transfer was done properly.

Affidavit of Paul Bujold dated September 12, 2011,  
paras. 19 - 24. **TAB 1**

26. Taking into account the assets and liabilities of the 1985 Trust, the approximate value of the net assets of the 1985 Trust as at December 31, 2010 is \$70,263,960.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 27. **TAB 1**

### **Creation of the 1986 Trust**

27. On August 15, 1986, the Sawridge Band Trust was settled (the “1986 Trust”). The beneficiaries of the 1986 Trust included all members of the Sawridge First Nation in the post-*Bill C-31* era.

Affidavit of Paul Bujold dated September 12, 2011, para. 29. **TAB 1**

28. The Sawridge First Nation transferred cash and other assets into the 1986 Trust to further the purposes of the trust. After April 15, 1985 no further funds or assets were put into the 1985 Trust. Effectively, the assets in existence as at April 15, 1985 were preserved for those who qualified as Sawridge members based on the definition of membership that existed at that time. The 1986 Trust was established so that assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed in the post-*Bill C-31* era.

Affidavit of Paul Bujold dated September 12, 2011, paras. 30 – 31. **TAB 1**

### **Sawridge Membership Code**

29. *Bill C-31* gave Indian bands the option of taking over control of their membership list by establishing their own membership codes, subject to the approval of the Minister of Indian Affairs. The Sawridge First Nation established such a code, and took over control of its membership effective July 8, 1985. It continues to exercise this control to this day.

Affidavit of Elizabeth Poitras dated December 7, 2011, paras. 3, 5 and 15. **TAB 2**

*Indian Act*, R.S.C. 1985, c. I-5, s. 10. **TAB 3**

30. As at September 30, 2011, the Sawridge First Nation had 41 members, all of whom were older than 18 years of age. These members have 31 dependant children younger than 18 years of age (the “Minor Dependants”). Twenty-three of the Minor Dependants qualify as beneficiaries of the 1985 Trust (hereinafter referred to as the “1985 Minor Beneficiaries”), and there are no other beneficiaries of the 1985 Trust younger than 18

years of age. The other eight Minor Dependants do not qualify as beneficiaries of the 1985 Trust.

Affidavit of Paul Bujold dated September 30, 2011,  
paras. 3 and 4. **TAB 4**

### **Advice and Direction Application**

31. The Trustees have determined that maintaining the definition of “Beneficiaries” contained in the 1985 Trust is potentially discriminatory. The definition of “Beneficiaries” in the 1985 Trust would allow non-members of the First Nation to be beneficiaries of the 1985 Trust and would exclude certain members of the First Nation (such as those individuals acquiring membership as a result of *Bill C-31*) from being beneficiaries.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 32. **TAB 1**

32. The Trustees believe that it is fair, equitable and in keeping with the history and purpose of the Trusts that the definition of “Beneficiaries” contained in the 1985 Trust be amended such that a beneficiary is defined as a member of the Nation, which is consistent with the definition of “Beneficiaries” in the 1986 Trust. This would then include those individuals acquiring membership as a result of *Bill C-31*.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 33. **TAB 1**

33. The Trustees have been administering the 1985 Trust and the 1986 Trust (the “Trusts”) for many years. In December of 2008, the Trustees retained the Four Worlds Centre for Development Learning (hereinafter referred to as “Four Worlds”) to conduct a consultation process with the beneficiaries of the Trusts. Four Worlds prepared a report identifying the types of programs and services that the Trusts should offer to the beneficiaries and the types of payments the Trustees should consider making from the Trusts. The programs identified include health, dental and long-term disability insurance, compassionate care support, seniors support, child and youth development and educational support.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 34. **TAB 1**

34. These programs will be offered not only to the beneficiaries of the Trusts, but to the Minor Dependants as well, regardless of their status as a beneficiary under the Trusts.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 34. **TAB 1**

35. For example, the same programs, services and other benefits that will be offered to the 1985 Minor Beneficiaries will also be offered to the eight Minor Dependants who do not qualify as beneficiaries of the 1985 Trust. This is because the programs, services and other benefits are offered equally between the 1985 Trust and the 1986 Trust, and the eight Minor Dependants that do not qualify as beneficiaries under the 1985 Trust will nonetheless have these benefits offered to them because they are dependants of beneficiaries of the 1986 Trust.

Affidavit of Paul Bujold dated September 30, 2011,  
paras. 5 and 6. **TAB 4**

36. Minors whose parents are members of the First Nation will receive substantial support whether the minor is a member or not.
37. Having undertaken the consultation process, the Trustees have a desire to confer more direct benefits on the beneficiaries of the Trusts. The Trustees require clarification and amendment of the 1985 Trust such that the definition of "Beneficiaries" in the 1985 Trust is varied to make it consistent with the definition of "Beneficiaries" in the 1986 Trust. In this way the members of the Nation are the beneficiaries of both the 1985 Trust and the 1986 Trust and the assets that once belonged to the First Nation can be distributed through the trusts to the beneficiaries who are the members of the First Nation.

Affidavit of Paul Bujold dated September 12, 2011,  
para. 35. **TAB 1**

38. In seeking the advice and direction of the Court, the Trustees have made great efforts to provide notice to anyone who may have any interest. The Trustees have placed advertisements in newspapers in Western Canada to try to ascertain potential beneficiaries. The Trustees then notified, *inter alia*, all registered members of the Nation, all known beneficiaries of the 1985 Trust, all parents of minors who are beneficiaries, all individuals who have applied for membership in the Sawridge First Nation, all individuals responding to newspaper advertisements placed by the Trustees and any other

individual who the Trustees had reason to believe would be potential beneficiaries of the 1985 Trust.

Affidavit of Paul Bujold dated August 30, 2011, paras. 7  
– 11. **TAB 5**

39. The Public Trustee and the Minister of Aboriginal Affairs and Northern Development were also provided notice. The Minister was provided notice in respect of minors and in respect of any persons who are status Indians and are deemed to be affiliated with the Sawridge First Nation by the Minister, as this list of individuals was not known to the Trustees. The Minister has declined to intervene on behalf of minors. The Minister sent notice to all those affiliated persons.
40. No parent of a minor child has expressed an interest in filing an affidavit or getting involved to date on behalf of a minor. However, 18 other individuals have filed affidavits on their own without the assistance of a lawyer.

## **PART II - ISSUES**

41. The issues on this application are as follows:
  - a) Should the Public Trustee be appointed as litigation representative for some or all of the minors who may be interested in the within proceedings?
  - b) If so, should the Public Trustee be entitled to a payment of advance costs on a solicitor and his own client basis and exemption from liability for costs as conditions of any such appointment?
  - c) Are the Sawridge First Nation membership criteria and process relevant and material to the within proceeding?

### **PART III – SUBMISSIONS OF LAW**

#### **A. Should the Public Trustee be Appointed as Litigation Representative?**

##### **Should the Public Trustee usurp the role of the parent?**

42. With respect to whether the Public Trustee's participation in these proceedings is warranted, it is important to note that each of the current minor beneficiaries of the 1985 Trust will continue to receive benefits through their parents, regardless of whether the definition of "Beneficiaries" is changed to equate to membership. Further, minors of parents who are members will continue to receive benefits under the 1986 Trust.
43. With the exception of arguing the trust is invalid, no argument made by the Public Trustee in favour or against the arguments of the Applicants can enhance or derogate from the rights and benefits already in place for the 31 minors identified whether the definition is changed or not.
44. Every parent who is a member and who has children has been notified of this application and none has chosen to be involved in the process to date on behalf of a minor. There is no evidence from the Public Trustee that any parent or any minor has asked for the Public Trustee's involvement.
45. Further, the Minister of Aboriginal and Northern Affairs Canada has not asked to be appointed as litigation representative on behalf of the minors.
46. Seemingly, the Public Trustee has stepped into this litigation without the request of the parents and it does not appear that the Public Trustee has canvassed the parents to see if their involvement is desired.
47. The Public Trustee submits that the parents are in a conflict of interest as their own share of the trust assets are diluted if their children are also recognized as beneficiaries. As such, the Public Trustee argues that the parents of the minor beneficiaries cannot objectively represent the interests of their children.

48. It is submitted that this argument is difficult to sustain because it suggests that parents would actively work against their children in order to obtain more for themselves. It is submitted that the support of children is a direct support to the parent of the children and thus this is not a conflict at all. It is anachronistic to assume that the Public Trustee knows better than a First Nation parent what is best for the children of that parent.
49. The suggestion being made is that the parents will put their interests before that of their child, and will take steps to exclude their own children from beneficiary status because it will potentially mean that their own share is less. The Four Worlds Report prepared for the Trustees recommends that the programs and services are to be offered to the beneficiaries on a needs based approach. It is incumbent on the Trustees to assure that all trust fund moneys are expended or distributed in order to relieve and provide for need.
50. To have a child is to commit to acting in the best interest of that child. That is the very essence of being a parent. In fact, it is hereby suggested that most parents will put their children's interests in front of their own.
51. The Courts have long recognized these realities. The Supreme Court of Canada, in the case of *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, addressed the matter as follows, at pp. 317-318:

The right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent. The common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being. This recognition was based on the presumption that parents act in the best interest of their child. Although the philosophy underlying state intervention has changed over time, most contemporary statutes dealing with child protection matters, and in particular the Ontario Act, while focusing on the best interest of the child, favour minimal intervention. In recent years, courts have expressed some reluctance to interfere with parental rights, and state intervention has been tolerated only when necessity was demonstrated, thereby confirming that the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society.

(emphasis added)

*B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at pp. 317 – 318. **TAB 6**

52. Recent Alberta cases confirm these principles. Mr. Justice Slatter (as he then was) discusses the strong presumption in favour of allowing the parent to protect the interests of the child in *V.B. v. Alberta (Minister of Children's Services)*, 2004 ABQB 788:

The Plaintiff argues that anybody can act as a next friend, and that even though the Plaintiff V.B. is neither a guardian nor a trustee, she can commence this action on behalf of her children. The Plaintiff cites *Thomlinson v. Alberta (Child Services)* 2003 ABQB 308, 335 A.R. 85. While it is undoubtedly true that the Court could appoint "anybody" as the next friend, there is obviously a strong presumption in favour of appointing the guardian or trustee of the child as the next friend: *Woolf v. Pemberton* (1877), 6 Ch. D. 19 (C.A.); *In re Taylor's Application*, [1972] 2 Q.B. 369 (C.A.). In the case of any competition between the guardian and a third party to be the next friend, the Court would almost invariably choose the guardian.

(emphasis added)

*V.B. v. Alberta (Minister of Children's Services)*, 2004  
ABQB 788 at para. 19. **TAB 7**

53. Mr. Justice Thomas reiterated this proposition in *C.H.S. v. Alberta (Director of Child Welfare)*, 2008 ABQB 620:

While it is open for a willing stranger to be appointed as the next friend of an infant plaintiff, ideally a parent or guardian would consent to act as next friend: *Thomlinson v. Alberta (Child Services)*, [2003] A.J. No. 716, 2003 ABQB 308 ["*Thomlinson*"].

(emphasis added)

*C.H.S. v. Alberta (Director of Child Welfare)*, 2008  
ABQB 620 at para. 19. **TAB 8**

54. The nature of the Advice and Direction Application is such that the minors' interests can be protected by their parents without the need for anyone to be appointed as litigation representative. This is not a proceeding in which a minor is a party in the action. This is an application that is being made by the Trustees to seek direction on the definition of beneficiary and to try and correct discrimination in a definition. Minors will not be affected by the change in definition. As adults, they will have to apply to become members in order to continue to obtain benefits from the trust.
55. As such, it is open to any parent to make submissions on any aspect of the application, including on behalf of their children, should they so desire. Their children's interests are their interests.

56. It is unclear whether any of the parents intend to do so, and this will not be known until the date of the application. If any parent wishes to make submissions, then it is submitted that it is the parent who is in the best position to do so.

*B. (R.), supra* at pp. 317 – 318. **TAB 6**

57. If a parent does not wish to make submissions, it is respectfully submitted that the Court should respect that decision. There are many factors that may go into such a decision, not the least of which may be that the minors continue to receive benefits, regardless of whether they maintain their beneficiary status.
58. It is significant that there is no evidence in the affidavit filed by the Public Trustee of any minor interest being affected or any minor who desires the Public Trustee to be involved. In the absence of a proper evidentiary basis, it would be inappropriate to appoint the Public Trustee as litigation representative.

*C.H.S., supra* at para. 22. **TAB 8**

59. The cases referred to at paragraph 49 (*E.(Mrs.) v. Eve*) and paragraph 56 (*L.C. v. Alberta (Metis Settlements Child & Family Services, Region 10)*) of the Brief of the Public Trustee were matters where the parents were applying to the Court for the relief being sought. There are no such applications before the Court in the within matter. The Public Trustee does not refer to any case where it is appointed as a litigation representative at its own request and without the request of a parent.
60. Perhaps the parents view this as a positive step for the community, and one that is in the best interests of their children.
61. In contrast, one must question whether the arguments that are being advanced by the Public Trustee in these proceedings are in the best interest of the minors.
62. Firstly, the Public Trustee is attempting to bring into this application the very divisive issue of First Nation membership. As will be discussed below in detail, it is respectfully submitted that this issue is irrelevant. To allow this issue to be pursued would broaden the scope of the proceedings and would result in a significant increase in costs.

63. Second, the Public Trustee wishes to raise the issue of membership in the context of questioning whether certainty of objects exists in the 1985 Trust. As will be discussed below, there is no merit to such an argument, however, if successful, one must question how such a finding in any way would benefit the minors of the trust. A finding that the 1985 Trust is void can hardly be seen as a positive outcome for minors. The funds would then likely revert to the Settlor and perhaps eventually the First Nation. In that case, there may be no funds available to minors.
64. Third, the Public Trustee is prepared to act as the litigation representative, but it wishes to have its costs paid by the 1985 Trust. Thus, essentially, the Public Trustee is asking the children and their parents to fund the involvement of the Public Trustee from the trust. This will certainly decrease the funds available to support the minors and other beneficiaries. The Public Trustee cites a concern for the taxpayers of Alberta.

Written Brief of the Public Trustee, para. 66.

65. Further, the Public Trustee takes the position that if its costs are not paid for, it will refuse to act. Clearly, the Public Trustee does not see its role as essential to the interest of the minors. While in a business setting economics will often determine the pursuit of litigation, but in the public realm this is not the case. One must question how essential their involvement is given this position. The Public Trustee will only act if they are paid by the children and the parents to do so even though they have not been asked to be involved by those minors and parents.
66. One must also question whether the minors, or their parents, would be in favour of the appointment of the Public Trustee as litigation representative. Indeed, there is no such evidence before the Court.

### **The Nature of the Advice and Direction Application**

67. The Advice and Direction Application has been brought voluntarily by the Trustees. In doing so, they have acted in good faith and have made great efforts to provide notice to anyone who may have an interest in the proceedings.
68. The nature of such an application is such that full disclosure to the Court is required. Indeed, failure to provide full disclosure would negate one of the purposes of going to

Court, that being the discharge of the trustee's duty in respect of the subject matter of the application. There is no indemnification where there has been wilful concealment or misrepresentation in obtaining the opinion, advice or direction of the Court.

*Trustee Act*, R.S.A. 2000, c. T-8, s. 43. **TAB 9**

69. The Trustees will place all relevant information in their possession before the Court. Further, the Trustees acknowledge that they have a duty to all beneficiaries, and that they must address the issues raised by them in an objective and dispassionate manner.

### **The Court's *parens patriae* Jurisdiction**

70. The Court may also play an active role in ensuring that the best interests of the minors are looked after, given its inherent *parens patriae* jurisdiction.
71. Further, prior to approving the variation of the 1985 Trust, the Court must be satisfied that it appears to be for the benefit of the minor beneficiaries.

*Trustee Act*, R.S.A. 2000, c. T-8, s. 42. **TAB 9**

### **Representing Different Groups of Minors**

72. The Public Trustee states at paragraph 72 that within the group of 31 Minor Dependants of Sawridge First Nation members, some will gain beneficiary status if the proposed variance to the beneficiary definition is approved. That is not so. If the definition were to be changed to equate beneficiary status to First Nation membership, none of the 31 Minor Dependants would gain beneficiary status.

Affidavit of Paul Bujold dated September 30, 2011,  
paras. 3 and 4. **TAB 4**

73. If the definition is changed as proposed, 23 of the 31 minors would lose their status as a beneficiary under the 1985 Trust, however, they would continue to receive benefits as minor dependants of an adult beneficiary. When they become an adult, they would have the ability to become a member and thus regain the beneficiary status.

74. In the changed definition, all 31 Minor Dependents would continue to have access to the benefits of either the 1985 Trust or the 1986 Trust as minors, and all 31 would have to apply to be members to continue benefits as adults.

Affidavit of Paul Bujold dated September 30, 2011,  
paras. 5 and 6. **TAB 4**

75. To the extent that the minors' interests need protection, the parents of each child are in the best position to do so. and they should be permitted to do so either overtly or silently until they express a desire to have the Public Trustee involved.

**B. Payment by Trust of Advance Costs and Exemption from Liability for Costs**

76. It is to be noted at the outset that the Public Trustee will only consent to an appointment as litigation representative on the condition that it receive payment of advance costs on a solicitor and own client basis, in any event of the cause, as well as an exemption from liability for costs.

Brief of the Public Trustee, paras. 7, 69, 70, 74 and 79.

77. The Trustees oppose the application of the Public Trustee regarding costs.

**a) Public Trustee's Costs to Represent the Affected Minors**

78. The leading case in Canada concerning a request for costs prior to the final disposition of a case and in any event of the cause is the Supreme Court of Canada's decision in *British Columbia (Minister of Forests) v. Okanagan Indian Band* [2003] 3 S.C.R. 371, 2003 SCC 71.
79. An order for advance costs is a "rare and exceptional" remedy. The standard of proving that a case is special enough to warrant advance costs is high.

*British Columbia (Minister of Forests) v. Okanagan Indian Band* [2003] 3 S.C.R. 371, 2003 SCC 71 at para. 1. **TAB 10**

*Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 at para. 38. **TAB 11**

80. In *Okanagan Indian Band*, a three-part test was established for an award of advance costs – the party seeking the order must be **impecunious**, it must establish a *prima facie* **meritorious** case and there must be “**special circumstances** to satisfy the Court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate.”

*Okanagan Indian Band, supra*, at para. 36. **TAB 10**

81. This three-part test was confirmed by the Supreme Court in the decision of *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 (“Little Sisters”) and in the recent decision of *R. v. Caron*, 2011 SCC 5.

*Little Sisters, supra* at para. 37. **TAB 11**

*R. v. Caron*, 2011 SCC 5 at para. 39. **TAB 12**

82. In *Little Sisters*, the Supreme Court summarized and supplemented the three-part test as follows:

The nature of the *Okanagan* approach should be apparent from the analysis it prescribes for advance costs in public interest cases. A litigant must convince the court that three absolute requirements are met (at para. 40):

1. The party seeking interim costs **genuinely cannot afford to pay** for the litigation, and no other realistic option exists for bringing the issues to trial -- in short, the **litigation would be unable to proceed if the order were not made**.
2. The claim to be adjudicated is *prima facie* **meritorious**; that is, the claim is at least of sufficient merit that it is **contrary to the interests of justice** for the opportunity to pursue the case to be forfeited just because the litigant lacks financial means.
3. The issues raised **transcend the individual interests** of the particular litigant, are of **public importance**, and **have not been resolved in previous cases**.

(emphasis added)

In analysing these requirements, the court must decide, with a view to all the circumstances, whether the case is sufficiently special that it would be contrary to the interests of justice to deny the advance costs application, or whether it should consider other methods to facilitate the hearing of the case. The discretion enjoyed by the court affords it an opportunity to consider all relevant factors that arise on the facts.

*Little Sisters, supra* at para. 37. **TAB 11**

83. With respect to the first test relating to impecuniosity, Orkin notes that the test must be “strictly applied, and an applicant must meet a high standard of proof in order to demonstrate impecuniosity”.

*The Law of Costs*, Toronto: Thomson Reuters, 2011 (looseleaf) at p. 2-54, §203. **TAB 13**

84. There is no evidence before the Court to suggest that the Public Trustee is impecunious. In fact, the suggestion that the costs would otherwise be paid from out of the public purse would suggest otherwise. The Public Trustee appears to be concerned with what it considers appropriate rather than impecuniosity.

*Keewatin v. Ontario (Minister of Natural Resources)*, [2006] O.J. No. 3418, 32 C.P.C. (6th) 258 (Ont. Sup. Ct. J.) at para. 84. **TAB 14**

85. There is no evidence that the children whom it seeks to represent are impecunious. We respectfully submit that the Public Trustee has failed to provide the necessary evidence to advance the first branch of the test for advance costs and thus must fail in its application for advance costs. In fact, the Public Trustee seems to suggest that the value of the trust is a reason to award costs in advance, an argument for which the Public Trustee has provided no legal support or precedent.

86. In the second branch of the test, there must be some risk that the litigation will not proceed. In the case at hand, the opposite is true. The Advice and Direction Application will proceed regardless of the Public Trustee’s involvement. The interests of the children and how the change of definition will affect them will be front and centre as an issue and will be presented by the Trustees.

*Little Sisters*, *supra* at para. 37. **TAB 11**

87. Further, with respect to the second part of the test, a case is meritorious if “the claim is at least of sufficient merit that it is contrary to the interests of justice for the opportunity to pursue the case to be forfeited just because the litigant lacks financial means”. Again, the Advice and Direction Application will proceed regardless of the disposition of this issue, and the Court will deal with the application on its merits. Should the Public Trustee wish to make submissions at the Advice and Direction Application, it should do so at its own cost, not at the cost of the beneficiaries of the trust.

88. The Public Trustee fails on the second branch of the test and thus must fail in its application for advance costs.
89. The third part of the test requires the applicant to show “special circumstances”. This was addressed recently in *Dish Network L.L.C. v. Rex*, 2011 BCSC 1105, at paras. 68-69:

68 The case law suggests that the following factors demonstrate special circumstances:

(a) the potential effect of the litigation is widespread and significant: *Caron* at para. 44; *Keewatin* at para. 233; *Okanagan* at para. 46; *William* at paras. 44-45;

(b) the outcome of the litigation would resolve continued legal uncertainty: *Caron* at paras. 44-45; *William* at para. 49;

(c) the outcome of the litigation may reduce the need for related litigation, and thereby reduce public and private costs: *William* at paras. 46, 49;

(d) the issue would not be resolved but for the litigation: *Caron*; *Hagwilget* at para. 21; *D.W.H.* at paras. 31, 37;

(e) the litigation involves scrutiny of government actions: *L.C.* at paras. 80, 91; *Hagwilget* at para. 24;

(f) determination of the issue is an urgent matter: *Hagwilget* at paras. 20-21;

(g) the applicant was forced into the litigation or had no choice but to resort to litigation to assert their rights: *Okanagan*; *Xeni* at paras. 123-124; *Hagwilget* at para. 22; and

(h) one party controls all of the funds that are at issue in the litigation (e.g. trust and matrimonial litigation): *Little Sisters* at para. 104.

69 Special circumstances do not exist where the issues do not transcend the applicant and may not exist where the issues affect only a small group of people. For example, *Roberts* involved the personal tax appeals of three individuals involving taxation of a fraction of their income. The Court found that special circumstances did not exist because the outcome of the case was not expected to affect more than 100 taxpayers' pending objections. In *Robertson and Charkaoui (Re)*, special circumstances did not exist because there was no evidence that the issue of interest to the applicants would have major repercussions on other persons or groups.

*Dish Network L.L.C. v. Rex*, 2011 BCSC 1105, at paras. 68-69. **TAB 15**

90. The issues raised in the Advice and Direction Application do not transcend the applicant, but rather are very specific to the 1985 Trust. Further, the issues deal with a relatively small group of people.
91. Further, it is respectfully submitted that none of the factors enumerated in *Dish* demonstrating special circumstances are present in these proceedings.
92. As noted previously, advance costs should be limited to rare and exceptional cases. The Supreme Court of Canada in *Little Sisters* commented as follows:

34 Nevertheless, the general rule based on principles of indemnity, i.e., that costs follow the cause, has not been displaced. This suggests that policy and indemnity rationales can co-exist as principles underlying appropriate costs awards, even if "[t]he principle that a successful party is entitled to his or her costs is of long standing, and should not be departed from except for very good reasons": Orkin, at p. 2-39.

...

38 It is only a "rare and exceptional" case that is special enough to warrant an advance costs award: Okanagan, at para. 1. The standard was indeed intended to be a high one, and although no rigid test can be applied systematically to determine whether a case is "special enough", some observations can be made.

(emphasis added)

*Little Sisters*, *supra* at paras. 34 and 38. **TAB 11**

93. At paragraph 82 of its Brief, the Public Trustee cites *Deans v. Thachuk* for the proposition that applications for advice and directions regarding a trust or dealing with difficulties in the administration of a trust are generally situations where the parties' costs are paid by the trust. However, the Alberta Court of Appeal in *Deans* confirmed that the three-part test prescribed in *Okanagan Indian Band* nonetheless applied in such situations.

*Deans v. Thachuk* [2005] A.J. No. 142 (C.A.) at paras. 17 – 21. [Public Trustee Authorities, Tab 4]

94. It is respectfully submitted that the Public Trustee has failed to meet the three part test and that rare and exceptional circumstances do not exist to warrant the order being sought.

95. It is also interesting to note that in most cases involving advance costs, such advance costs were sought against the Crown or some government agency. That is not the case here. The Public Trustee is actually asking the children whom they wish to represent to pay the Public Trustee to represent them. If the Public Trustee thinks these children need assistance, even though the parents have not asked for assistance, they should do so using public funds that have been earmarked for this very purpose.

**b) Exemption from Liability for Costs**

96. The Public Trustee also seeks an exemption from liability for costs in these proceedings. At paragraph 86 of its Brief, it submits that the default rule in an action should apply to this application, given that the minors are in a position similar to that of a party defendant.

97. We submit that the request by the Public Trustee to significantly broaden the scope of these proceedings to include membership issues including participating in membership applications puts them in the role that is closer to that of a plaintiff, and the rules provide that a litigation representative for a plaintiff is liable to pay a costs award.

*Alberta Rules of Court*, Alta. Reg. 124/2010, Rule 10.47(1). [Public Trustee Authorities, Tab 1]

98. In fact, one of the primary functions of a litigation representative is to answer for costs.

*C.H.S.*, *supra*, at para. 23. **TAB 8**

*Thomlinson v. Alberta (Child Services)*, [2003] A.J. No. 716, 2003 ABQB 308 at para. 113. [Public Trustee Authorities, Tab 22]

*Crothers v. Simpson Sears Ltd.* (1988), 59 Alta. L.R. (2d) 1 (C.A.), at page 15. **TAB 16**

99. At paragraphs 87 and 88 of its Brief, the Public Trustee argues that an exemption for costs is justified where there is “a clear need for an independent third party”. With respect, we submit that the need has not been established. As noted previously, in the context of this litigation the interests of the minors are best looked after by the parents, and should they wish to participate, they may do so. Further, the Court’s *parens patriae* jurisdiction permits it to safeguard the minors’ interests as well. And finally, the interests

of the minors is not being affected as they will continue to receive the same benefits whether the definition is changed or not. It is their status as adults that is impacted.

100. While it is open for the Court to exempt a party from costs, it is a “highly unusual step” as it leaves the other party without any effective cost remedy.

*L. C. v. Alberta (Metis Child & Family Services, Region 10)* [2011] A.J. No. 84 (Q.B.) at para. 55. [Public Trustee Authorities, Tab 9]

101. At paragraph 87 of its Brief, the Public Trustee refers to *Thomlinson v. Alberta (Child Services)* 2003 ABQB 308. The Court held there that where a statutory body was compelled to act as a next friend, it was thereby acting involuntarily, and in such circumstances the Court had the jurisdiction to exempt the next friend from costs. In the within proceedings, the Public Trustee is not being compelled to participate.

*Thomlinson v. Alberta (Child Services)* 2003 ABQB 308 at para 117 – 119. [Public Trustee Authorities, Tab 22]

102. Further, the Court in *Thomlinson* simply found that it had the jurisdiction to make such an order, but as it was not concerned with the merits of the substantive application at the time, it did not grant an order exempting costs. The Court specifically noted that it would not comment on whether such an order would be appropriate in the circumstances. It should be further noted that no such order was ever made in the *Thomlinson* case.

*Thomlinson, supra* at para. 119. [Public Trustee Authorities, Tab 22]

103. In the within proceedings, it would similarly be inappropriate to grant an order exempting the Public Trustee from costs at this stage. This is especially so given that the Trustees have serious concerns regarding the position being advanced by the Public Trustee on the membership issue which will expand the scope of the litigation significantly and increase the costs significantly. The Court should address costs at the time of the substantive application, and in view of the litigation that was conducted.

**C. Relevance of Membership Issues**

104. The Public Trustee seeks information “relating to the current functioning of the Sawridge First Nation membership process, the outstanding membership applications, and how many of those applications affect minor’s interests”, arguing that the information is relevant “in relation to identification of beneficiaries and to ascertaining whether the proposed definition variation satisfies the need for certainty of objects.”

Written Brief of the Public Trustee, para. 91.

105. In support of its application, the Public Trustee refers to previous judicial proceedings involving the Sawridge First Nation and cites certain findings of fact from these proceedings. This is not usually done. One is not permitted to “bootleg” evidence cited in previous cases. Judicial notice cannot be taken of a fact simply because it was established in other judicial proceedings.

*R. v. Kirton*, 2007 MBCA 38 at para. 18. **TAB 17**

*R. v. Levkovic*, 2010 ONCA 830 at paras. 44-50. **TAB 18**

*R. v. Noel*, 2010 NBCA 28 at para. 36. **TAB 19**

106. This idea is summarized in Halsbury’s Laws of Canada with the statement that:

Generally speaking, a fact proved in one proceeding cannot be judicially noticed in another proceeding but must be freshly proved, particularly where the fact in question is an adjudicative fact, because findings of fact have no precedential effect.

QuickLaw: Halsbury’s Laws of Canada – Evidence at HEV-205. **TAB 20**

107. The Trustees were not involved in these previous proceedings, and while they take no issue with certain facts, the Public Trustee Brief goes beyond uncontested matters.
108. For example, the Trustees do not contest that the Sawridge First Nation has enacted its own membership code that has certain criteria respecting admission into the First Nation. But previous findings regarding the number of membership applications outstanding, the steps taken by the Sawridge First Nation to process these applications and the number of individuals accepted into membership are all unproven, especially in the current context.

These are matters that change over time. The number of outstanding membership applications five years ago may very well be different than the current number.

109. Further, the Trustees have no legal right or power to intervene in these matters. The Trustees are without jurisdiction to determine whether any person is a member of the First Nation.
110. This is not to lose sight of the fact that these highly contentious issues are of no relevance to these proceedings. Questioning on an affidavit must be “relevant and material”, having regard to the issues in the underlying application.

*Rozak Estate v. Demas* 2011 ABQB 239, at paras. 28 – 32. **TAB 21**

111. Information is relevant and material if it could reasonably be expected to significantly help determine one or more of the issues in the application.

*Araam Inc. v. Aman Building Corp.* [2011] A.J. No. 1097, at paras. 15 and 16. [Public Trustee Authorities, Tab 2]

112. The issues in the underlying application are set out in the Procedural Order pronounced by this Court on August 31, 2011 (the “Procedural Order”) directing that an application be brought for the opinion, advice and direction of the Court in respect of certain specific issues. Paragraph 1 of the Procedural Order reads as follows:

1. An application shall be brought by the Trustees of the 1985 Sawridge Trust for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Sawridge Trust (hereinafter referred to as the “Advice and Direction Application”). The Advice and Direction Application shall be brought:
  - a. To seek direction **with respect to the definition of “Beneficiaries” contained in the 1985 Sawridge Trust**, and if necessary to **vary the 1985 Sawridge Trust** to clarify the definition of “Beneficiaries”.
  - b. To seek **direction with respect to the transfer of assets** to the 1985 Sawridge Trust.

(emphasis added)

Order dated August 31, 2011, para. 1. **TAB 22**

113. The Trustees have determined that maintaining the definition of “Beneficiaries” contained in the 1985 Trust is potentially discriminatory, allowing non-members of the Sawridge First Nation to be beneficiaries, while excluding current members (such as those individuals acquiring membership as a result of *Bill C-31*). The Trustees believe that it would be fair, equitable and in keeping with the history and purpose of the Trusts that the definition of “Beneficiaries” be amended such that a beneficiary is defined as a member of the Sawridge First Nation.

Affidavit of Paul Bujold dated September 12, 2011,  
paras. 32 and 33. **TAB 1**

114. The Trustees acknowledge that some background information is required for the Court to address the issues raised in the Advice and Direction Application. For example, there is no disputing that the Sawridge First Nation has control over its membership list and that as at September 30, 2011, it had 41 members.

Affidavit of Elizabeth Poitras dated December 7, 2011,  
para. 15. **TAB 2**

Affidavit of Paul Bujold dated September 30, 2011,  
paras. 5 and 6. **TAB 4**

115. However, the Public Trustee wishes to go much further than this and seeks to delve into the current functioning of the Sawridge First Nation membership process, including any outstanding membership applications.

Brief of the Public Trustee, para. 101.

116. The issue of First Nation membership is not relevant to the within application. The Trustees have no jurisdiction over First Nation membership. That is the purview of the Sawridge Chief and Council. It is respectfully submitted that to allow this issue to be brought into these proceedings would be detrimental to the interest of all beneficiaries and to the consideration of the issues the Trustees have brought before the Court.

Brief of the Public Trustee, para. 92.

117. The Public Trustee relies heavily throughout its submissions on the *Barry v. Garden River Band of Ojibways* [1997] O.J. No. 2109 (C.A.) decision.

118. *Garden River Band* was a case in which the Chief and Council of the Band declared a *per capita* distribution to its members after receiving money as part of a land claim settlement with the Federal government. The Band Council passed a Band Council Resolution on September 28, 1987 declaring that \$1 million would be distributed to the Band members, and subsequently decided to make the distribution of the monies on December 17 and 18, 1987. At the time of the distribution of the monies, there were a number of children of Band members who were not yet members of the Band, and therefore would not be included in the distribution. These were children of Indian women who had lost their status as a result of marrying non-status Indians, but who subsequently regained their status as a result of *Bill C-31*. These women had automatically been restored to Band membership, but their children had to first apply for Indian status with the Federal government, and then apply for membership with the Band. There was a backlog of applications with the Federal government, thereby leading to delays affecting the children. However, at the time of the distribution, the Band Council knew that these children would ultimately become members, as in fact they did, but only after the date of the distribution.

*Barry v. Garden River Band of Ojibways* [1997] O.J. No. 2109 (C.A.) at paras. 1, 2, 5, 9, 10 and 36. **TAB 23**

119. The Ontario Court of Appeal held that the Band chose an arbitrary deadline for the distribution of the funds, despite notice of concerns regarding individual entitlement to participate in the distribution. It commented as follows:

In setting the arbitrary deadline, the Band compromised its ability to fulfil its duties with respect to the distribution of funds. The Band placed itself in the position of having to disburse the funds before it could, as trustee, definitively ascertain the identity of all beneficiaries.

*Barry, supra* at para. 38. **TAB 23**

120. The Public Trustee argues that the Trustees have duties to “make reasonable inquiries into the existence of beneficiaries and to identify and locate all members of the class of beneficiaries”. We agree this is generally a duty of trustees but we do not agree that this means that the Trustees in the within proceeding must participate in and investigate the membership process.

121. The purpose of the Advice and Direction Application, *inter alia*, is to address whether the definition of “Beneficiaries” should be varied. Inquiries into the processing of pending membership applications have no relevance whatsoever to whether the definition of “Beneficiaries” in the 1985 Trust is contrary to public policy.
122. *Garden River Band* involved the assessment of the trustees’ decision to distribute trust funds using an arbitrary distribution date, at a time when the trustees knew that the minors would ultimately become members. Thus if the deadline was followed, the minors would be permanently excluded.
123. In the within proceedings, there is no distribution at issue. While the intent is to start providing some benefits from the 1985 Trust following the Advice and Direction Application, that will occur in the future at the discretion of the Trustees when it is known to the Trustees who are the “beneficiaries” for the purpose of any planned distribution, and will continue in the future according to the needs of the beneficiaries. The Trustees will most certainly have duties at any time to specifically identify a beneficiary of the trust who requests a discretionary payment from the trust fund. At that time, the Trustees will be entitled to review the membership list to satisfy their duty to identify the beneficiaries. But it will not be the duty of the Trustees to determine if an application for membership is being heard or if the process for membership is fair. An individual may sort that out with the First Nation. Once they become a member, they will be a beneficiary and then as a beneficiary may seek benefits from the trust.
124. By way of analogy, if a Bursary fund were established for first-year arts students enrolled at the University of Alberta, the trustees of the bursary need only determine if the arts student is enrolled at the University and deserving of the bursary. The Bursary Trustees need not investigate the University and determine if the application for enrolment process is fair.
125. The Trustees clearly have no legal right to get involved in the membership process itself, nor do they have any obligation to do so. That is solely the jurisdiction of the Sawridge Chief and Council.
126. If an individual is concerned about whether his or her membership application has been dealt with fairly, or at all, then the applicant should pursue that in the appropriate forum.

The Federal Court of Appeal in *Huzar v. Canada* [2000] F.C.J. No. 873 (Fed. C.A.) clearly set out the proper procedure. *Huzar* was a case in which the Sawridge First Nation was successful in striking out a Statement of Claim issued against it by Aline Huzar (who has filed an affidavit in the within proceedings). Ms. Huzar was seeking a declaration against the Band that her membership application had been improperly rejected. The Court held that the proper way to advance such a claim was by judicial review, and struck the claim accordingly.

*Huzar v. Canada* [2000] F.C.J. No. 873 (Fed. C.A.) at paras. 1 – 6. **TAB 24**

127. The manner in which to advance a claim has accordingly been public knowledge since 2000 and in the last 12 years no application for judicial review has been brought by Ms. Huzar nor anyone else mentioned in the affidavit filed by the Public Trustee. Such an application must be made in the Federal Court, which has exclusive original jurisdiction in respect of applications for judicial review against any federal board, commission or other tribunal. We submit that this Court may not have jurisdiction to make any findings in respect of the membership process. If these persons did not take their own case to court, they cannot expect the Public Trustee to take it to court for them in a forum in which the First Nation is not even a proper party.

*Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18(1). **TAB 25**

128. The Procedural Order in the within proceedings specifically addressed this issue, as follows:

Notice of the Advice and Direction Application on any person shall not be used by that person to show any connection or entitlement to rights under the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to entitle a person to being held to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to determine or help to determine that a person should be admitted as a member of the Sawridge First Nation. Notice of the Advice and Direction Application is deemed only to be notice that a person may have a right to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust and that **the person must determine his or her own entitlement and pursue such entitlement.**

(emphasis added)

Order dated August 31, 2011, para. 3. **TAB 22**

129. The Public Trustee also argues that the information relating to the membership issues is relevant for ascertaining whether the proposed definition variation satisfies the need for certainty of objects.

Brief of the Public Trustee, para. 91.

130. The definition of beneficiary proposed by the Applicant would see the beneficiaries defined as the members of the First Nation. This is similar to the situation in *Garden River Band*, where the Court held as follows:

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

It is the third requirement which is relevant to the discussion of the entitlement of the minor appellants. The need for certainty of objects means that a fixed trust will fail unless it is possible to say whether any person is a member of the class and unless all the possible members of the class are known or ascertainable: Waters, *Law of Trusts in Canada*, supra, at p. 80. In determining whether the trust satisfies the requirement of certainty of objects, the trustee will effectively be determining what classes are entitled to benefit from the trust fund. This is because the question whether it is possible to say that any person is a member of the class and the question whether all possible members of the class are known or ascertainable assumes that the class has been determined. **In the case under appeal, there is no issue that the object of the distribution was the membership of the Band; the question that arose was whether the Band could pick the date that it did to ascertain the membership of the Band.**

(emphasis added)

*Barry*, supra, at paras. 39-40. **TAB 23**

131. Similarly, there is no issue with the objects of the 1985 Trust, with the proposed definition variation. The objects are the members of the First Nation. The proposed description of the class of beneficiaries is sufficiently clear to meet the certainty of objects requirement.

D.W.M. Waters, *Law of Trusts in Canada*, 3<sup>rd</sup> (2005) at pages 132, 156 and 157. **TAB 26**

132. There are numerous cases that have upheld trusts established for the benefit of members of First Nations.

133. In the case at hand, the Court will be asked to vary the definition so that “Beneficiaries” is defined as the members of the First Nation. The objects of the trust are clear.
134. The fact that there may be pending membership applications, or that certain individuals may not be happy with how their applications have been processed, however, does not go to whether the trust is valid. Again, such issues are as between the individual and the First Nation.
135. Further, the fact that a trustee must take steps to ascertain the identity of the beneficiaries prior to making a distribution does not go to whether there is certainty of objects. Rather, it goes to whether the trustee has met its duty in the circumstances of any particular distribution.
136. As noted in *Garden River Band*, there was no issue as to the objects of the trust. The issue was with failure of the trustees to properly ascertain the appropriate beneficiaries on a given date. These are two separate issues.
137. Thus, the membership application process and individual membership applications are not relevant to these proceedings. The fact that some individuals may have had their membership application delayed, denied or otherwise dealt with will not “significantly help determine” any of the issues in the Advice and Direction Application. The circumstances of each individual will be different, and an inquiry into those circumstances will tell us nothing about whether the definition of “Beneficiaries” in the 1985 Trust is discriminatory or whether the proposed definition change meets the test for certainty of objects.
138. Further, such inquiries will not assist in assessing the impact on the 23 minors who stand to lose beneficiary status as a result of the proposed definition change. As adults they will be entitled to apply for membership, and will deal directly with the First Nation at that time. It is impossible to say today what the outcome of any membership application will be. This is so regardless of whether information about the current membership process is available.
139. We are concerned that the Public Trustee is, with all good intention, trying to make this application into an expensive, extensive review of the First Nation membership process.

Even without advance costs, such an application will be very expensive for the 1985 Trust. Moreover, the questions concerning the actualities of the membership process will be asked of the administrator of the Trust who has no direct knowledge of that process. He is very unlikely to be able to answer these questions because they are being asked of the wrong person. They need to be asked of the First Nation by the person who wishes to pursue membership, outside the context of the within proceedings.

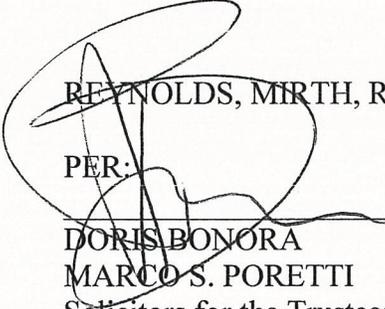
140. We sincerely ask the court to direct that the membership application process is irrelevant to these proceedings and that if a person has issues with his or her application for membership, that the applicant should pursue such issues through a judicial review application as directed in *Huzar*.

**PART IV – REMEDY SOUGHT**

141. We respectfully request that the relief sought be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8 DAY OF  
MARCH, 2012

REYNOLDS, MIRTH, RICHARDS & FARMER LLP

PER: 

DORIS BONORA  
MARCO S. PORETTI  
Solicitors for the Trustees

**PART V – LIST OF AUTHORITIES**

Affidavit of Paul Bujold dated September 12, 2011 .....1

Affidavit of Elizabeth Poitras dated December 7, 2011 .....2

*Indian Act*, R.S.C. 1985, c. I-5.....3

Affidavit of Paul Bujold dated September 30, 2011 .....4

Affidavit of Paul Bujold dated August 30, 2011 .....5

*B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 .....6

*V.B. v. Alberta (Minister of Children's Services)*, 2004 ABQB 788 .....7

*C.H.S. v. Alberta (Director of Child Welfare)*, 2008 ABQB 620 .....8

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*Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2.....11

*R. v. Caron*, 2011 SCC 5.....12

*The Law of Costs*, Toronto: Thomson Reuters, 2011 (looseleaf) .....13

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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

**AFFIDAVIT OF PAUL BUJOLD on advice  
and direction in the 1985 trust**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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

Attention: Doris C.E. Bonora  
Telephone: (780) 425-9510  
Fax: (780) 429-3044  
File No: 108511-001-DCEB

**AFFIDAVIT OF PAUL BUJOLD**

**Sworn on September 12, 2011**

I, Paul Bujold, of Edmonton, Alberta swear and say that:

1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985

Trust”) and the Sawridge Band Trust created in 1986 (hereinafter referred to as the “1986 Trust”), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust.

### **Issues for this Application**

3. At present, there are five trustees of the 1985 Trust: Bertha L’Hirondelle, Clara Midbo, Catherine Twinn, Roland C. Twinn and Walter Felix Twin (hereinafter referred to as the “Trustees”).
4. The Trustees would like to make distributions for the benefit of the beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees:
  - a. Regarding the definition of “Beneficiaries” contained in the 1985 Trust.
  - b. Regarding the transfer of assets into the 1985 Trust.
5. Accordingly, the Trustees seek the opinion, advice and direction of the Court in regard to these matters.

### **Background**

6. In 1966, Chief Walter Patrick Twinn (hereinafter referred to as “Chief Walter Twinn”) became the Chief of the Sawridge Band No. 454, now known as Sawridge First Nation (hereinafter referred to as the “Sawridge First Nation” or the “Nation”), and remained the Chief until his death on October 30, 1997.

7. I am advised by Ronald Ewoniak, CA, retired engagement partner on behalf of Deloitte & Touche LLP to the Sawridge Trusts, Companies and First Nation, and do verily believe, that Chief Walter Twinn believed that the lives of the members of the Sawridge First Nation could be improved by creating businesses that gave rise to employment opportunities. Chief Walter Twinn believed that investing a portion of the oil and gas royalties received by the Nation would stimulate economic development and create an avenue for self-sufficiency, self-assurance, confidence and financial independence for the members of the Nation.
  
8. I am advised by Ronald Ewoniak, CA, and do verily believe, that in the early 1970s the Sawridge First Nation began investing some of its oil and gas royalties in land, hotels and other business assets. At the time, it was unclear whether the Nation had statutory ownership powers, and accordingly assets acquired by the Nation were registered to the names of individuals who would hold the property in trust. By 1982, Chief Walter Twinn, George Twin, Walter Felix Twin, Samuel Gilbert Twin and David Fennell held a number of assets in trust for the Sawridge First Nation.

#### **Creation of the 1982 Trust**

9. I am advised by Ronald Ewoniak, CA, and do verily believe, that in 1982 the Sawridge First Nation decided to establish a formal trust in respect of the property then held in trust by individuals on behalf of the present and future members of the Nation. The establishment of the formal trust would enable the Nation to provide long-term benefits to the members and their descendents. On April 15, 1982, a declaration of trust establishing the Sawridge Band Trust (hereinafter referred to as the "1982 Trust") was executed. Attached as **Exhibit "A"** to my Affidavit is a copy of the 1982 Trust.
  
10. In June, 1982, at a meeting of the trustees and the settlor of the 1982 Trust, it was resolved that the necessary documentation be prepared to transfer all property held by Chief Walter Twinn, George Vital Twin and Walter Felix Twin, in trust for the present

and future members of the Nation, to the 1982 Trust. Attached as **Exhibit "B"** to my Affidavit is a copy of the resolution passed at the said meeting dated June, 1982.

11. The 1982 Trust was varied by a Court Order entered on June 17, 2003, whereby paragraph 5 of the 1982 Trust was amended to provide for staggered terms for the trustees. Attached as **Exhibit "C"** to my Affidavit is a copy of the Court Order entered on June 17, 2003 varying the 1982 Trust.
12. On December 19, 1983, a number of properties and shares in various companies which had been held by Chief Walter Twinn, Walter Felix Twin, Samuel Gilbert Twin and David Fennell in trust for the present and future members of the Nation were transferred into the 1982 Trust. Attached as **Exhibit "D"** to my Affidavit is an agreement dated December 19, 1983, transferring certain assets into the 1982 Trust. Attached as **Exhibit "E"** to my Affidavit is a transfer agreement dated December 19, 1983 transferring certain assets from the 1982 Trust to Sawridge Holdings Ltd.

#### **Changes in Legislation – The *Charter of Rights and Freedoms* and *Bill C-31***

13. On April 17, 1982, the *Constitution Act, 1982*, which included the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the "*Charter*"), came into force. Section 15 of the *Charter* did not have effect, however, until April 17, 1985, to enable provincial and federal legislation to be brought into compliance with it.
14. After the *Charter* came into force, the federal government began the process of amending the *Indian Act*, R.S.C. 1970, c. I-6 (hereinafter referred to as the "*1970 Indian Act*"). Following the federal election in 1984, the government introduced *Bill C-31*, a copy of which is attached as **Exhibit "F"** to my Affidavit. *Bill C-31* was introduced to address concerns that certain provisions of the *1970 Indian Act* relating to membership were discriminatory.

15. It was expected that *Bill C-31* would result in an increase in the number of individuals included on the membership list of the Sawridge First Nation. This led the Nation to settle a new trust, the 1985 Trust, within which assets would be preserved for the Band members as defined by the legislation prior to *Bill C-31*.

#### **Creation of the 1985 Trust**

16. Attached as **Exhibit "G"** to my Affidavit is a copy of the 1985 Trust dated April 15, 1985.
17. The 1985 Trust provides that the "Beneficiaries" are:

"Beneficiaries at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15<sup>th</sup> day of April 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15<sup>th</sup> day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band No. 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement."

18. The 1985 Trust effectively "froze" the definition of beneficiaries according to the legislation as it existed prior to *Bill C-31*.

19. Attached as **Exhibit "H"** to my Affidavit is a copy of a Resolution of Trustees dated April 15, 1985, whereby the trustees of the 1982 Trust resolved to transfer all of the assets of the 1982 Trust to the 1985 Trust.
  
20. On April 15, 1985, the Sawridge First Nation approved and ratified the transfer of the assets from the 1982 Trust to the 1985 Trust. Attached as **Exhibit "I"** to my Affidavit is a Sawridge Band Resolution dated April 15, 1985 to this effect.
  
21. On April 16, 1985 the trustees of the 1982 Trust and the trustees of the 1985 Trust declared:
  - a. that the trustees of the 1985 Trust would hold and continue to hold legal title to the assets described in Schedule "A" of that Declaration; and
  - b. that the trustees of the 1985 Trust had assigned and released to them any and all interest in the Promissory Notes attached as Schedule "B" of that Declaration.Attached as **Exhibit "J"** to this my Affidavit is the Declaration of Trust made April 16, 1985.
  
22. Based upon my review of the exhibits attached to this my affidavit and upon the knowledge I have acquired as Chief Executive Officer of the Sawridge Trusts, I believe that all of the property from the 1982 Trust was transferred to the 1985 Trust. Further, there was additional property transferred into the 1985 Trust by the Sawridge First Nation or individuals holding property in trust for the Nation and its members.
  
23. The transfers were carried out by the trustees of the 1982 Trust under the guidance of accountants and lawyers. The Trustees have been unable to locate all of the necessary documentation in relation to the transfer of the assets from the 1982 Trust to the 1985 Trust or in relation to the transfer of assets from individuals or the Nation to the 1985 Trust.

24. It is clear that the transfers were done but the documentation is not currently available. The Trustees have been operating on the assumption that they were properly guided by their advisors and the asset transfer to the 1985 Trust was done properly.
25. The Trustees seek the Court's direction to declare that the asset transfer was proper and that the assets in the 1985 Trust are held in trust for the benefit of the beneficiaries of the 1985 Trust.
26. The 1985 Trust is the sole shareholder of Sawridge Holdings Ltd. I am advised by Ralph Peterson, Chairman of the Board of Directors of the Sawridge Group of Companies, and do verily believe that an approximate value of the 1985 Trust investment in Sawridge Holdings Ltd. as at December 31, 2010 is \$68,506,815. This represents an approximate value of the net assets of Sawridge Holdings Ltd., assuming all assets could be disposed of at their recorded net book value and all liabilities are settled at the recorded values as at that date, with no consideration for the income tax effect of any disposal transactions.
27. Taking into account the other assets and liabilities of the 1985 Trust, the approximate value of the net assets of the 1985 Trust as at December 31, 2010 is \$70,263,960.
28. To unravel the assets of the 1985 Trust after 26 years would create enormous costs and would likely destroy the trust. Assets would have to be sold to pay the costs and to pay the taxes associated with a reversal of the transfer of assets.

#### **Creation of the 1986 Trust**

29. Attached to my affidavit as **Exhibit "K"** is a copy of the 1986 Trust dated August 15, 1986. The beneficiaries of the 1986 Trust included all members of the Sawridge First Nation in the post-*Bill C-31* era.

30. The Sawridge First Nation transferred cash and other assets into the 1986 Trust to further the purposes of the trust. After April 15, 1985 no further funds or assets were put into the 1985 Trust.
31. Effectively, the assets in existence as at April 15, 1985 were preserved for those who qualified as Sawridge members based on the definition of membership that existed at that time. The 1986 Trust was established so that assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed in the post-*Bill C-31* era.

#### **Identification of Beneficiaries Under the 1985 Trust and the 1986 Trust**

32. The Trustees have determined that maintaining the definition of “Beneficiaries” contained in the 1985 Trust is potentially discriminatory. The definition of “Beneficiaries” in the 1985 Trust would allow non-members of the Nation to be beneficiaries of the 1985 Trust and would exclude certain members of the Nation (such as those individuals acquiring membership as a result of *Bill C-31*) from being beneficiaries.
33. The Trustees believe that it is fair, equitable and in keeping with the history and purpose of the Sawridge Trusts that the definition of “Beneficiaries” contained in the 1985 Trust be amended such that a beneficiary is defined as a member of the Nation, which is consistent with the definition of “Beneficiaries” in the 1986 Trust.

#### **Current Status**

34. The Trustees have been administering the Sawridge Trusts for many years. In December of 2008, the Trustees retained the Four Worlds Centre for Development Learning (hereinafter referred to as “Four Worlds”) to conduct a consultation process with the beneficiaries of the Sawridge Trusts. Four Worlds prepared a report identifying the types of programs and services that the Sawridge Trusts should offer to the beneficiaries and

the types of payments the Trustees should consider making from the trusts. Attached hereto as **Exhibit "L"** is a summary chart of recommendations taken from the said report.

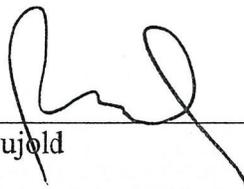
35. Having undertaken the consultation process, the Trustees have a desire to confer more direct benefits on the beneficiaries of the Sawridge Trusts. The Trustees require clarification and amendment of the 1985 Trust such that the definition of "Beneficiaries" in the 1985 Trust is varied to make it consistent with the definition of "Beneficiaries" in the 1986 Trust. In this way the members of the Nation are the beneficiaries of both the 1985 Trust and the 1986 Trust and the assets that once belonged to the Nation can be distributed through the trusts to the members of the Nation.

SWORN before me at Edmonton  
in the Province of Alberta,  
on the 12 day of September, 2011.

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

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

809051\_2;September 12, 2011

}   
\_\_\_\_\_  
Paul Bujold

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

Paul Bujold

Sworn before me this 12 day of September A.D., 2012

A. Magnan

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

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

This Declaration of Trust made the 15th day of April, A.D.

1982.

BETWEEN:

CHIEF WALTER PATRICK TWINN  
of the Sawridge Indian Band  
No. 19, Slave Lake, Alberta

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,  
WALTER FELIX TWINN and GEORGE TWINN  
Chief and Councillors of the  
Sawridge Indian Band No. 19 G S R respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

Whereas the Settlor is Chief of the Sawridge Indian Band No. 19, and in that capacity has taken title to certain properties on trust for the present and future members of the Sawridge Indian Band No. 19 (herein called the "Band"); and,

whereas it is desirable to provide greater detail for both the terms of the trust and the administration thereof; and,

Whereas it is likely that further assets will be acquired on trust for the present and future members of the Band, and it is desirable that the same trust apply to all such assets;

NOW, therefore, in consideration of the premises and mutual promises contained herein, the Settlor and each of the Trustees do hereby covenant and agree as follows:

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.
2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions properly made therefrom by the Trustees.
3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.
4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.
5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

through 80 inclusive of the Indian Act, R.S.C. 1970, c. I-6, as amended from time to time. Upon ceasing to be an elected Chief or Councillor as aforesaid, a Trustee shall ipso facto cease to be a Trustee hereunder; and shall automatically be replaced by the member of the Band who is elected in his stead and place. In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased, it being the intention that the Chief and all Councillors should be Trustees. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

6. The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of twenty one (21) years after the death of the last decendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and

their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries set out above; and the Trustees may make such payments at such time, and from time to time, and in such manner as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investment authorized for Trustees' investments by The Trustees' Act, being Chapter 373 of the Revised Statutes of Alberta 1970, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or desirable to give effect to the trust purposes set out above,

and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power

- a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and
- c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by Federal, Provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them

by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take with notice of and subject to this clause.

12. A majority of the Trustees shall be required for any action taken on behalf of the Trust. In the event that there is a tie vote of the Trustees voting, the Chief shall have a second and casting vote.

Each of the Trustees, by joining in the execution of this Trust Agreement, signifies his acceptance of the Trust herein. Any Chief or Councillor or any other person who becomes a Trustee under paragraph 5 above shall signify his acceptance of the Trust herein by executing this Trust Agreement or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Trust Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Trust Agreement.

SIGNED, SEALED AND DELIVERED  
In the Presence of:

Walter P. J.  
NAME

1100 One Thornton Court  
ADDRESS

A. Settlor: Walter P. J.

Walter P. J.  
NAME

1100 One Thornton Court  
ADDRESS

B. Trustees: 1. Walter P. J.

Weather Upk  
NAME

1100 One Fountain Court  
ADDRESS

Weather Upk  
NAME

1100 One Fountain Court  
ADDRESS

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

2. Q/W

3. Walter F. ...

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

Meeting of the Trustees and Settlers of the  
SAWRIDGE BAND TRUST  
June, 1982, held at Sawridge Band Office  
Sawridge Reserve, Slave Lake, Alberta

IN ATTENDANCE:

WALTER P. TWINN  
GEORGE TWIN  
WALTER FELIX TWINN

All the Trustees and Settlers being present, formal notice calling the meeting was dispensed with and the meeting declared to be regularly called. Walter P. Twinn acted as Chairman, and called the meeting to order. George Twinn acted as secretary.

IT IS HEREBY RESOLVED:

1. THAT the Solicitors and David A. Fennell and David Jones and the Accountants, Ron Ewoniak of Deloitte, Haskins & Sells presented to the Settlers a Trust Settlement document which settled certain of the assets of the Band on the Trust.
2. THAT this document was reviewed by the Settlers and approved unanimously.
3. THAT the Trustees then instructed the Solicitors to prepare the necessary documentation to transfer all property presently held by themselves to the Trust and to present the documentation for review and approval.

There being no further business, the meeting then adjourned.

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

Paul Bujold

Sworn before me this 12 day

of September A.D., 2011

A Magnan

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

Walter P. Twinn  
WALTER P. TWINN

George Twinn  
GEORGE TWINN

Walter Felix Twinn  
WALTER FELIX TWINN

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

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

Sworn before me this 12 day of September A.D., 2011

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

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

IN THE MATTER OF THE SAWRIDGE BAND TRUST:

BETWEEN:

WALTER P. TWINN, GEORGE TWINN  
AND SAMUEL TWINN

APPLICANTS

AND:

WALTER P. TWINN (as representative  
of the beneficiaries)

RESPONDENT

BEFORE THE HONOURABLE )  
MR. JUSTICE D. H. BOWEN ) ON WEDNESDAY, THE 15TH DAY  
IN CHAMBERS ) OF JUNE, A.D. 1983.  
LAW COURTS, EDMONTON )

ORDER

UPON HEARING THE APPLICATION of the Applicant in the matter of the variation of the Sawridge Band Trust to amend paragraph 5 of the original trust deed made on the 15th day of April, 1982 (a copy of which is attached) pursuant to the Alberta Trustee Act, R.S.A. 1980 c. T-10, s.42(1);

IT IS ORDERED that the Sawridge Band Trust be amended to allow the increase of the terms of office of the Trustees to 6 years for the Chief, 4 years for the Councillor (a), 2 years for Councillor (b) and that the Trustees complete their terms before they are replaced.

*[Signature]*  
Clerk of the Court

Interested in this 17 day  
June 13 1983  
Clerk of the Court

*[Signature]*  
Justice

No: 8303 15822

A.D. 1983

---

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

---

IN THE MATTER OF THE SAWRIDGE BAND TRUST:

BETWEEN:

WALTER P. TWINN, GEORGE TWINN  
AND SAMUEL TWINN

APPLICANTS

AND:

WALTER P. TWINN (as representative  
of the beneficiaries)

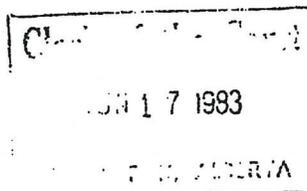
RESPONDENT

---

ORDER

---

David A Fennell  
Professional Corporation  
910, 10310 Jasper Avenue  
Edmonton, Alberta



THIS AGREEMENT made with effect from the  
A.D. 1983.

19<sup>th</sup> day of December  
This is Exhibit "D" referred to in the  
Affidavit of  
Paul Bujold  
Sworn before me this 12 day  
of September A.D., 2011  
A Magnan  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

BETWEEN:

WALTER PATRICK TWINN, WALTER FELIX TWINN, SAM  
TWINN, and DAVID A. FENNEL (each being Trustees of  
certain properties for the Sawridge Indian Band,  
herein referred to as the "Old Trustees")

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

OF THE FIRST PART

and:

WALTER PATRICK TWINN, SAM TWINN and GEORGE TWINN  
(together being the current Trustees of the  
Sawridge Band Trust, herein referred to as the "New  
Trustees")

OF THE SECOND PART

WHEREAS:

1. Each of the Old Trustees individually or together with one or more or the other Old Trustees holds one or more of those certain properties listed in Appendix A attached hereto in trust for the present and future members of the Sawridge Indian Band;
2. The Sawridge Band Trust has been established to provide a more formal vehicle to hold property for the benefit of present and future members of the Sawridge Indian Band; and

3. It is desirable to consolidate all of the properties under the Sawridge Band Trust, by having the Old Trustees transfer the said properties listed in Appendix A to the New Trustees.

NOW THEREFORE, THIS AGREEMENT WITNESS AS FOLLOWS:

1. Each of the Old Trustees hereby transfers all of his legal interest in each of the properties listed in Appendix A attached hereto to the New Trustees as joint tenants, to be held by the New Trustees on the terms and conditions set out in the Sawridge Band Trust, and as part of the said Trust.

2. The Old Trustees agree to convey their said legal interests in the properties referred to above in the New Trustees, or to their order, forthwith upon being directed to do so by the New Trustees, and in the meantime hold their interests in the said properties as agents of the New Trustees and subject to the direction of the New Trustees.

3. The New Trustees hereby undertake to indemnify and save harmless each and every one of the Old Trustees with respect to any claim or action arising after the date of this Agreement with respect to the said properties herein transferred to the New Trustees.

IN WITNESS WHEREOF each of the parties hereto has signed on the respective dates indicated below:

*M Capuribus*  
Witness

*Walter Patrick Twinn*  
Walter Patrick Twinn

Dec 19/83  
Date

*M Capuribus*  
Witness

*Walter Felix Twinn*  
Walter Felix Twinn

Dec 19/83  
Date

M Caprihuro  
Witness

Sam Twinn  
Sam Twinn

Dec 19/83  
Date

M Caprihuro  
Witness

David A. Fennell  
David A. Fennell

Dec 19/83  
Date

M Caprihuro  
Witness

Walter Patrick Twinn  
Walter Patrick Twinn

Dec 19/83  
Date

M Caprihuro  
Witness

Sam Twinn  
Sam Twinn

Dec 19/83  
Date

M Caprihuro  
Witness

George Twinn  
George Twinn

Dec 19/83  
Date

SCHEDULE "A"

<u>Description</u>	<u>Adjusted Cost</u> <u>Base</u>	<u>Consideration</u>
<p>A. <u>The Zeidler Property</u>            All that portion of the Northeast quarter of Section 36, Township 72, Range 6. West of the 5th Meridian which lies between the North limit of the Road as shown on Road Plan 946 E.O. and the Southwest limit of the right-of-way of the Edmonton Dunevegan and British Columbia Railway on shown on Railway Plan 4961 B. O. containing 28.1 Hectare (69.40 acres) more or less</p> <p>excepting thereout:</p> <p>(a) 22.6 Hectares (55.73 acres) more or less described in Certificate of Title No. 227-V-136;</p> <p>(b) 0.158 Hectares (1.28 acres) more or less as shown on Road Plan 469 L.Z.</p>	<p>\$100,000.00</p>	<p>Primissory Note in the amount of \$100,000.00            1 Common share in Sawridge Holdings Ltd.</p>
<p>B. <u>The Planer Mill</u>            Plan 2580 T.R., Lot Four (4), containing 7.60 Hectares (18.79 acres) more or less (P.T. SECS. 29 and 30-72-4-W5TH, Mitsue Lake Industrial Park) excepting thereout all mines and minerals.</p>	<p>Land            \$ 64,633.00</p> <p>Equipment            \$135,687.00</p>	<p>Promissory Note in the amount of \$200,320.00            1 Common Share in Sawridge Holdings L</p>

<u>Description</u>	<u>Adjusted Cost Base</u>	<u>Consideration</u>
<u>C. Mitsue Property</u>		
Plan 2580 T.R. Lot Eight (8) containing 6.54 Hectares more or less (part of Sections 29 and 30-72-4- W5TH, Mitsue Lake Industrial Park) excepting thereout all mines and minerals and the right to work the same.	Land \$ 55,616.00  Building \$364,325.00	Promissory Note in the amount of \$419,941.00 1 Common Share in Sawridge Holdings Lt.
<u>D. The Residences</u>		
Lot 3, Block 7, Plan 1915 H.W. (305-1st St. N.E.)	Land \$ 24,602.00  House \$ 30,463.00	Promissory Note in the amount of \$40,000.00 1 Common Share in Sawridge Holdings Lt.
Lot 18, Block 35, Plan 5928 R.S. (301-7th St. S.E.)	\$ 20,184.00	Promissory Note in the amount of \$4,620.00 Mortgage assumed \$15,564 1 Common Share in Sawridge Holdings Lt.
Lot 17, Block 35, Plan 5928 R.S. (303-7th St. S.E.)	\$ 20,181.00	Promissory Note in the amount of \$4,564.00 Mortgage assumed \$15,617.00 1 Common Share in Sawridge Holdings Lt.

<u>Description</u>	<u>Consideration</u>
E. <u>Shares in Companies</u>	
1. <u>Sawridge Holdings Ltd.</u>	
Walter Patrick Twinn - 20 Class "A" common	
George Twinn - 2 Class "A" common	
Walter Felix Twinn - 10 Class "A" common	
2. <u>Sawridge Enterprises Ltd.</u>	
Walter P. Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
G. Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
George Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
3. <u>Sawridge Development Co. (1977) Ltd.</u>	
Walter P. Twinn - 8 common	1 common share in Sawridge Holdings Ltd.
Sam Twinn - 1 common	1 common share in Sawridge Holdings Ltd.
Walter Felix Twinn - 1 common	1 common share in Sawridge Holdings Ltd.

<u>Description</u>	<u>Adjusted Cost</u> <u>Base</u>	<u>Consideration</u>
<u>Sawridge Hotels Ltd.</u>		
Walter P. Twinn, 1059	\$8,138.00	Promissory Note from Sawridge Holdings Ltd. \$8,138.00 1 Common Share in Sawridge Holdings Ltd.
David A. Fennell, 1	\$ 1.00	1 Common Share in Sawridge Holdings Ltd.
5. <u>Slave Lake Developments Ltd.</u>		
Band holds 22,000 shares	\$ 44,000	Promissory Note from Sawridge Holdings Ltd. in the amount of \$44,000 1 common share in Sawridge Holdings Ltd.
Walter Twinn holds 250 shares	\$ 250.	1 common shares in Sawridge Holdings Ltd.

PROMISSORY NOTE

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Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to as "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19<sup>th</sup> day of ~~December~~, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter P. Twinn

Per: George Twinn

PROMISSORY NOTE

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Per: Walter P. Twinn

Per: G. Twinn

PROMISSORY NOTE

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Per: Walter Patrick Twinn

Per: George Twinn

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Per: G. J. Twinn

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Per: Walter J. Twinn

Per: G. J. Twinn

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Per: G. H. Twinn

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SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED FIFTY ONE THOUSAND THREE HUNDRED (\$251,300.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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DATED at the City of Edmonton, in the Province of Alberta, this 19<sup>th</sup> day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

THIS AGREEMENT made with effect from the 19 day of December  
A.D. 1983.

This is Exhibit "E" referred to in the  
Affidavit of  
Paul Bujold

TRANSFER AGREEMENT

Sworn before me this 12 day  
of September A.D., 2011

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

BETWEEN:

Catherine A. Magnan  
My Commission Expires  
January 12, 2012

WALTER PATRICK TWINN, SAM TWINN, and GEORGE TWINN  
(together being the Trustees of the Sawridge Band  
Trust, herein referred to as the "New Trustees")

OF THE FIRST PART

and:

SAWRIDGE HOLDINGS LTD. (a federally incorporated  
Company maintaining its head office on the Sawridge  
Indian Band Reserve near Slave Lake, Province of  
Alberta, hereinafter referred to as the  
"Purchaser")

OF THE SECOND PART

WHEREAS:

1. The New Trustees are the legal owners of certain assets (herein referred to as the "property") described in Schedule "A" annexed to this Agreement, and hold the property in trust for the members of the Sawridge Indian Band.
2. The New Trustees have agreed to transfer to the Purchaser all of their right, title and interest in and to the property and the Purchaser has agreed to purchase the property upon and subject to the terms set forth herein;

3. The New Trustees and the Purchaser have agreed to file jointly an Election under subsection 85(1) of the Federal Income Tax Act in respect of the property and the amount to be elected in respect of the property as set forth in Schedule "A" to this Agreement, the said Election and amounts having been made and agreed to only for tax purposes of the parties hereto;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

1. For good and valuable consideration as more particularly set forth in Schedule "A" hereto, now paid by the Purchaser to the New Trustees (the receipt and sufficiency of which is hereby acknowledged) and being fair market value of the property described and referred to in the said Schedule "A", the New Trustees hereby grant, bargain, sell, assign, transfer, convey and set over unto the Purchaser, its successors and assigns, the property owned by the New Trustees as described and referred to in Schedule "A" hereto annexed.

2. The purchase price for the property shall be paid as follows:

- (a) by promissory note or notes drawn by the Purchaser in favour of the New Trustees equal in value to the aggregate of the adjusted cost bases to the New Trustees of all items of the said property;
- (b) by the issuing by the Purchaser to the New Trustees of one or more Common Shares of the Purchaser.

3. The new Trustees hereby covenant, promise and agree with the purchaser that the New Trustees are or are entitled to be now rightfully possessed of and entitled to the property hereby sold, assigned and transferred to the purchaser, and that the New Trustees have covenant good right, title and authority to sell, assign and transfer the same unto the Purchaser, its successors and assigns, according to the true intent and meaning of these presents; and the Purchaser shall immediately after the execution and delivery hereof have possession and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the same and every part thereof to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by the New Trustees or any person whomsoever; and the Purchaser shall have good and marketable title thereto, free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and encumbrances of any nature or kind whatever (except as specifically agreed to between the parties).

4. For the purposes hereof:

(i) "fair market value" of the property:

(a) shall mean the fair market value thereof on the effective date of this Agreement;

(b) subject to (c) below, the fair market value of the property which is being mutually agreed upon by the New Trustees and the Purchaser is listed and as described in Schedule A attached hereto;

(b) in the event that the Minister of National Revenue or any other competent authority at any time finally determines that the fair market value of the property referred to in (a) above differs from the mutually agreed upon value in (b) above, the fair market value of the property shall for all purposes of this Agreement be deemed always to have been equal to the value finally determined by the said Minister or other competent authority.

- (ii) "tax cost" of the property shall mean the cost amount of the property for income tax purposes, as of the effective date of this Agreement.
- (iii) The "purchase price" for the property shall be the fair market value thereof as determined under (i) above.

5. The New Trustees and the Purchaser shall jointly complete and file Form T2057 (Election on Disposition of Property to a Canadian Corporation, herein referred to as "Election") required under subsection 85(1) of The Federal Income Tax Act in respect of the property with the Edmonton district offices of Revenue Canada - Taxation on or before such dates as may be required by the said Income Tax Act.

6. The Purchaser shall, upon execution of this Agreement, cause to be issued and allotted to the New Trustees the shares set out in Schedule A hereto.

7. The New Trustees covenant and agree with the Purchaser, its successor and assigns, that they will from time to time and at all times hereafter, upon every reasonable request of the Purchaser, its successors and assigns, make, do and execute or cause and procure to be made, done and executed all such further acts, deeds or assurances as may be reasonably required by the Purchaser, its successors and assigns, for more effectually and completely vesting in the Purchaser, its successors and assigns, the property hereby sold, assigned and transferred in accordance with the terms hereof, and the Purchaser makes the same undertaking in favour of the New Trustees.

.../5

IN WITNESS WHEREOF this Agreement has been executed on the dates indicated by the New Trustees and the Purchaser effective as of the date first above written.

Dec 19/83  
Date

Walter P. Twinn  
Walter Patrick Twinn

M Capnerhurst  
Witness

Dec 19/83  
Date

Sam Twinn  
Sam Twinn

M Capnerhurst  
Witness

Dec 19/83  
Date

George Twinn  
George Twinn

M Capnerhurst  
Witness

Dec 19/83  
Date

Sawridge Holdings Ltd.  
Sawridge Holdings Ltd.  
Walter P. Twinn

Witness (c/s)

APPENDIX "A"

THIS is Appendix "A" to an Agreement made with effect from the 19 day of December, A.D. 1983.

BETWEEN:

WALTER PATRICK TWINN, WALTER FELIX TWINN, SAM TWINN, and DAVID A. FENNELL (the "Old Trustees")

and:

WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (the "New Trustees")

The properties referred to in that Agreement are:

<u>Description</u>	<u>Old Trustee(s)</u>
A. <u>The Zeidler Property</u>	
All that portion of the Northeast quarter of Section 36, Township 72, Range 6, West of the 5th Meridian which lies between the North limit of the Road as shown on Road Plan 946 E.O. and the Southwest limit of the right-of-way of the Edmonton Dunevegan and British Columbia Railway as shown on Railway Plan 4961 B.O. containing 28.1 Hectares (69.40 acres) more or less	Walter P. Twinn
excepting thereout:	
(a) 22.6 Hectares (55.73 acres) more or less described in Certificate of Title No. 227-V-136;	
(b) 0.158 Hectares (1.28 acres) more or less as shown on Road Plan 469 L.Z.	

<u>Description</u>	<u>Old Trustee(s)</u>
B. <u>The Planer Mill</u>  Plan 2580 T.R., Lot Four (4), containing 7.60 Hectares (18.79 acres) more or less, (P.T. SECS. 29 and 30-72-4-W5TH, Mitsu Lake Industrial Park) excepting thereout all mines and minerals.	Walter P. Twinn
C. <u>Mitsue Property</u>  Plan 2580 T.R. Lot Eight (8) containing 6.54 Hectares more or less (part of Sections 29 and 30-72- 4-W5TH, Mitsu Lake Industrial Park) excepting thereout all mines and minerals and the right to work the same.	
D. <u>The Residences</u>  Lot 3, Block 7, Plan 1915 H.W. (305-1st St. N.E.) Lot 18, Block 35, Plan 5928 R.S. (301-7th St. S.E.) Lot 17, Block 35, Plan 5928 R.S. (303-7th St. S.E.)	Walter P. Twinn
D. <u>Shares in Companies</u>  1. <u>Sawridge Holdings Ltd.</u>  Walter Patrick Twinn - 20 Class "A" common  George Twinn - 2 Class "A" common  Walter Felix Twinn - 10 Class "A" common	

<u>Description</u>	<u>Trustee(s)</u>
2. <u>Sawridge Enterprises Ltd.</u>	
Walter P. Twinn - 1 share	
Samuel G. Twinn - 1 share	
George Twinn - 1 share	
3. <u>Sawridge Development Co. (1977) Ltd.</u>	
Walter P. Twinn - 8 common	
Sam Twinn - 1 common	
Walter Felix Twinn - 1 common	
4. <u>Sawridge Hotels Ltd.</u>	
Walter P. Twinn, 1059	
David A. Fennell, 1	
5. <u>Slave Lake Developments Ltd.</u>	
Band holds 22,000 shares	
Walter Twinn holds 250 shares	

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

Paul Bujold

Sworn before me this 12 day

of September A.D., 20 11

A. Magnan

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



053723  
C-3

Catherine A. Magnan  
My Commission Expires  
January 29, 20 12

## Acts of the Parliament of Canada

## Lois du Parlement du Canada

Passed in the year  
1985

adoptées en  
1985

During the thirty-third  
and thirty-fourth years  
of the Reign of Her Majesty  
QUEEN ELIZABETH II

pendant les trente-troisième et  
trente-quatrième années  
du règne de Sa Majesté  
LA REINE ELIZABETH II

These Acts were passed during  
that portion of the First  
Session of the Thirty-Third  
Parliament that included  
the 1985 calendar year

au cours de la période 1985 de la  
première session de la  
trente-troisième législature

Her Excellency the Right Honourable  
JEANNE SAUVÉ  
Governor General

Son Excellence la très honorable  
JEANNE SAUVÉ  
Gouverneur général

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33-34 ELIZABETH II

CHAPTER 27

CHAPITRE 27

An Act to amend the Indian Act

Loi modifiant la Loi sur les Indiens

[Assented to 28th June, 1985]

[Sanctionnée le 28 juin 1985]

R.S., c. I-6; c. 10 (2nd Supp.); 1974-75-76, c. 48; 1978-79, c. 11; 1980-81-82-83, cc. 47, 110; 1984, c. 4

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, décrète :

S.R., c. I-6; ch. 10 (2<sup>e</sup> suppl.); 1974-75-76, ch. 48; 1978-79, ch. 11; 1980-81-82-83, ch. 47, 110; 1984, ch. 4

1. (1) The definitions "child", "elector" and "Registrar" in subsection 2(1) of the *Indian Act* are repealed and the following substituted therefor in alphabetical order within the subsection:

1. (1) Les définitions de «électeur», «enfant» et «registraire», au paragraphe 2(1) de la *Loi sur les Indiens*, sont abrogées et respectivement remplacées par ce qui suit :

"child"  
«enfant»

"child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;

«électeur» signifie une personne qui  
a) est inscrite sur une liste de bande,  
b) a dix-huit ans révolus, et  
c) n'a pas perdu son droit de vote aux élections de la bande;

«électeur»  
"elector"

"elector"  
«électeur»

"elector" means a person who  
(a) is registered on a Band List,  
(b) is of the full age of eighteen years, and  
(c) is not disqualified from voting at band elections;

«enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté, ainsi qu'un enfant adopté selon la coutume indienne;

«enfant»  
"child"

"Registrar"  
«registraire»

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department;"

«registraire» désigne le fonctionnaire du ministère responsable du registre des Indiens et des listes de bande tenus au ministère;»

«registraire»  
"Registrar"

(2) Subsection 2(1) of the said Act is further amended by adding thereto, in alphabetical order within the subsection, the following definitions:

(2) Le paragraphe 2(1) de la même loi est modifié par insertion, suivant l'ordre alphabétique, de ce qui suit :

"Band List"  
«liste...»

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

«liste de bande» signifie une liste de personnes tenue en vertu de l'article 8 par une bande ou au ministère;»

«liste de bande»  
"Band List"

«registre des Indiens» signifie le registre de personnes tenu en vertu de l'article 5;»

«registre des Indiens»  
"Indian Register"

"Indian Register"  
«registre...»

"Indian Register" means the register of persons that is maintained under section 5;"

2. Section 4 of the said Act is amended by striking out subsection (2) and substituting the following therefor:

Act may be declared inapplicable

"(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 5 to 14.3 or sections 37 to 41, shall not apply to

(a) any Indians or any group or band of Indians, or

(b) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

Authority confirmed for certain cases

(2.1) For greater certainty, and without restricting the generality of subsection (2), the Governor in Council shall be deemed to have had the authority to make any declaration under subsection (2) that he has made in respect of section 11, 12 or 14, or any provision thereof, as each section or provision read immediately prior to April 17, 1985."

3. The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section:

Application of certain provisions to all band members

"4.1 A reference to an Indian in the definitions "band", "Indian moneys" and "mentally incompetent Indian" in section 2 or a reference to an Indian in subsection 4(2) or (3), subsection 18(2), section 20, sections 22 to 25, subsection 31(1) or (3), subsection 35(4), section 51, section 52, subsection 58(3), subsection 61(1), section 63, section 65, subsection 66(2), subsection 70(1) or (4), section 71, paragraph 73(g) or (h), subsection 74(4), section 84, paragraph 87(a), section 88, subsection 89(1) or paragraph 107(b) shall be deemed to include a reference to any person who is entitled to have his name entered in a Band List and whose name has been entered therein."

2. L'article 4 de la même loi est modifié par retranchement du paragraphe (2) et son remplacement par ce qui suit :

«(2) Le gouverneur en conseil peut, par proclamation, déclarer que la présente loi, ou toute partie de celle-ci, sauf les articles 5 à 14.3 et 37 à 41, ne s'applique pas

a) à des Indiens ou à un groupe ou une bande d'Indiens, ou

b) à une réserve ou à des terres cédées, ou à une partie y afférente,

et peut par proclamation révoquer toute semblable déclaration.

Pouvoir de déclarer la loi inapplicable

(2.1) Sans qu'en soit limitée la portée générale du paragraphe (2), il demeure entendu que le gouverneur en conseil est réputé avoir eu le pouvoir de faire en vertu du paragraphe (2) toute déclaration qu'il a faite à l'égard des articles 11, 12 ou 14 ou d'une de leurs dispositions, dans leur version précédant immédiatement le 17 avril 1985.»

Confirmation de la validité de certaines déclarations

3. La même loi est modifiée par insertion, après l'article 4, de ce qui suit :

«4.1 La mention d'un Indien dans les définitions de «bande», «deniers des Indiens» ou «Indien mentalement incapable» à l'article 2 et cette mention aux paragraphes 4(2) ou (3), au paragraphe 18(2), à l'article 20, aux articles 22 à 25, aux paragraphes 31(1) ou (3), au paragraphe 35(4), à l'article 51, à l'article 52, au paragraphe 58(3), au paragraphe 61(1), à l'article 63, à l'article 65, au paragraphe 66(2), aux paragraphes 70(1) ou (4), à l'article 71, aux alinéas 73g) ou h), au paragraphe 74(4), à l'article 84, à l'alinéa 87a), à l'article 88, au paragraphe 89(1) ou à l'alinéa 107b) sont réputées comprendre la mention de toute personne qui a droit à ce que son nom soit consigné dans une liste de bande et dont le nom y a effectivement été consigné.»

Application de certaines dispositions à tous les membres d'une bande

1974-75-76, c.  
48, s. 25;  
1978-79, c. 11,  
s. 10

4. Sections 5 to 14 of the said Act are repealed and the following substituted therefor:

*"Indian Register*

Indian Register

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.

Existing Indian Register

(2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985.

Deletions and additions

(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.

Date of change

(4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.

Application for registration

(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.

Persons entitled to be registered

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

(a) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(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

4. Les articles 5 à 14 de la même loi sont abrogés et remplacés par ce qui suit :

1974-75-76, ch.  
48, art. 25;  
1978-79, ch. 11,  
art. 10

*«Registre des Indiens*

5. (1) Est tenu au ministère un registre des Indiens où est consigné le nom de chaque personne ayant droit d'être inscrite comme Indien en vertu de la présente loi.

Tenue du registre

(2) Les noms figurant au registre des Indiens immédiatement avant le 17 avril 1985 constituent le registre des Indiens au 17 avril 1985.

Registre des Indiens existant

(3) Le registraire peut ajouter au registre des Indiens, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans ce registre.

Additions et retranchements

(4) Le registre des Indiens indique la date où chaque nom y a été ajouté ou en a été retranché.

Date du changement

(5) Il n'est pas requis que le nom d'une personne qui a droit d'être inscrite soit consigné dans le registre des Indiens, à moins qu'une demande à cette effet soit présentée au registraire.

Demande

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

Personnes ayant droit à l'inscription

a) elle était inscrite ou avait droit de l'être immédiatement avant le 17 avril 1985;

b) elle est membre d'un groupe de personnes déclaré par le gouverneur en conseil après le 16 avril 1985 être une bande pour l'application de la présente loi;

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 précédant immédiatement

relating to the same subject-matter as any of those provisions;

(d) 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)(iii) pursuant to an order made under subsection 109(1), 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;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

le 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;

d) 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)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(1), dans leur version précédant immédiatement le 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;

e) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande :

(i) soit en vertu de l'article 13, dans sa version précédant immédiatement le 4 septembre 1951, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

(ii) soit en vertu de l'article 111, dans sa version précédant immédiatement le 1<sup>er</sup> juillet 1920, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article;

f) ses parents ont tous deux droit d'être inscrits en vertu du présent article ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

(2) Sous réserve de l'article 7, une personne a droit d'être inscrite si l'un de ses parents a droit d'être inscrit en vertu du paragraphe (1) ou, s'il est décédé, avait ce droit à la date de son décès.

Idem

Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a); and

(3) Pour l'application de l'alinéa (1)f) et du paragraphe (2) :

a) la personne qui est décédée avant le 17 avril 1985 mais qui avait droit d'être inscrite à la date de son décès est réputée avoir droit d'être inscrite en vertu de l'alinéa (1)a);

b) la personne visée aux alinéas (1)c), d) ou e) qui est décédée avant le 17 avril

Présomption

(b) a person described in paragraph (1)(c), (d) or (e) who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that paragraph.

Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered:

(a) a person who was registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act; or

(b) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(f), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered.

Exception

(2) Paragraph (1)(a) does not apply in respect of a female person who was, at any time prior to being registered under paragraph 11(1)(f), entitled to be registered under any other provision of this Act.

Idem

(3) Paragraph (1)(b) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1)(f), entitled to be registered under any other provision of this Act.

#### Band Lists

Band Lists

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.

Band Lists maintained in Department

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.

1985 est réputée avoir droit d'être inscrite en vertu de ces alinéas.

7. (1) Les personnes suivantes n'ont pas droit d'être inscrites :

a) celles qui étaient inscrites en vertu de l'alinéa 11(1)(f), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et dont le nom a ultérieurement été omis ou retranché du registre des Indiens en vertu de la présente loi;

b) celles qui sont les enfants d'une personne qui était inscrite ou avait droit de l'être en vertu de l'alinéa 11(1)(f), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et qui sont également les enfants d'une personne qui n'a pas droit d'être inscrite.

Personnes n'ayant pas droit à l'inscription

(2) L'alinéa (1)a) ne s'applique pas à une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)(f), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi.

Exception

(3) L'alinéa (1)b) ne s'applique pas à l'enfant d'une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)(f), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi.

Idem

#### Listes de bande

8. Est tenue conformément à la présente loi la liste de chaque bande où est consigné le nom de chaque personne qui en est membre.

Tenue de la liste

9. (1) Jusqu'à ce que la bande assume la responsabilité de sa liste, celle-ci est tenue au ministère par le registraire.

Liste de bande tenue au ministère

Existing Band Lists	(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.	(2) Les noms figurant à une liste d'une bande immédiatement avant le 17 avril 1985 constituent la liste de cette bande au 17 avril 1985.	Listes de bande existantes
Deletions and additions	(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.	(3) Le registraire peut ajouter à une liste de bande tenue au ministère, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.	Additions et retranchements
Date of change	(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom.	(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché.	Date du changement
Application for entry	(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.	(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné à moins qu'une demande à cet effet soit présentée au registraire.	Demande
Band control of membership	<b>10.</b> (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.	<b>10.</b> (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.	Pouvoir de décision
Membership rules	(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.	(2) La bande peut, avec l'autorisation de la majorité de ses électeurs : a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs; b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs.	Règles d'appartenance
Exception relating to consent	(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.	(3) Lorsque le conseil d'une bande établit un statut administratif en vertu de l'alinéa 81(1)p.4 mettant en vigueur le présent paragraphe à l'égard d'une bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande qui ont dix-huit ans révolus.	Statut administratif sur l'autorisation requise
Acquired rights	(4) Membership rules established by a band under this section may not deprive any person who had the right to have his	(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce	Droits acquis

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.

que son nom soit consigné dans la liste de bande immédiatement avant la fixation des règles 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.

Idem

(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) immédiatement 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.

Idem

Notice to the Minister

(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.

(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre du fait que celle-ci décide désormais de l'appartenance à ses effectifs et lui transmet le texte des règles d'appartenance.

Avis au Ministre

Notice to band and copy of Band List

(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

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le Ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies :

Transmission de la liste

- (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.

- a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs;
- b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

Effective date of band's membership rules

(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.

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au Ministre a été donné en vertu du paragraphe (6); les additions ou retranchements de la liste de la bande effectués par le registraire après cette date ne sont valides que s'ils ont été effectués conformément aux règles d'appartenance fixées par la bande.

Date d'entrée en vigueur des règles d'appartenance

Band to maintain Band List

(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

(9) À compter de la réception de l'avis prévu à l'alinéa (7)b), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le ministère, à compter de

Transfert de responsabilité

13.2, the Department shall have no further responsibility with respect to that Band List from that date.

cette date, est dégagé de toute responsabilité à l'égard de cette liste.

Deletions and additions

(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.

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste.

Additions et retranchement

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché.

Date du changement

Membership rules for Departmental Band List

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

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 :

Règles d'appartenance pour une liste tenue au ministère

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have his name entered in the Band List for that band, immediately prior to April 17, 1985;

a) son nom a été consigné dans cette liste, ou elle avait droit à ce qu'il le soit immédiatement avant le 17 avril 1985;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

b) elle a droit d'être inscrite en vertu de l'alinéa 6(1)b) comme membre de cette bande;

(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; or

c) elle a 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;

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

d) elle est née après le 16 avril 1985 et a droit d'être inscrite en vertu de l'alinéa 6(1)f) et ses parents ont tous deux droit à ce que leur nom soit consigné dans la liste de bande ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Additional membership rules for Departmental Band List

(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

(2) À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, lorsque la bande n'a pas la responsabilité de la tenue de sa liste prévue à la présente loi, une personne a droit à ce que son nom soit consigné dans la liste de bande tenue au ministère pour cette dernière :

Règles d'appartenance supplémentaires pour les listes tenues au ministère

(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.

Deeming provision

(3) For the purposes of paragraph (1)(d) and subsection (2), a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(c), (d) or (e) who was no longer living on the first day on which he would otherwise be entitled to have his name entered in the Band List of the band of which he ceased to be a member shall be deemed to be entitled to have his name so entered.

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be.

Entitlement with consent of band

12. 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, any person who

(a) is entitled to be registered under section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or

(b) is a member of another band, is entitled to have his name entered in the Band List maintained in the Department

a) soit si elle a droit d'être inscrite en vertu des alinéas 6(1)d) ou e) et qu'elle a cessé d'être un membre de la bande en raison des circonstances prévues à l'un de ces alinéas;

b) soit si elle a droit d'être inscrite en vertu de l'alinéa 6(1)f) ou du paragraphe 6(2) et qu'un de ses parents visés à l'une de ces dispositions a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès.

Présomption

(3) Pour l'application de l'alinéa (1)d) et du paragraphe (2), la personne dont le nom a été omis ou retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné.

Fusion ou division de bandes

(4) Lorsqu'une bande fusionne avec une autre ou qu'elle est divisée pour former de nouvelles bandes, toute personne qui aurait par ailleurs eu droit à ce que son nom soit consigné dans la liste de la bande en vertu du présent article a droit à ce que son nom soit consigné dans la liste de la bande issue de la fusion ou de celle de la nouvelle bande à l'égard de laquelle ses liens familiaux sont les plus étroits.

Inscription sujette au consentement du conseil

12. À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, la personne qui,

a) soit a droit d'être inscrite en vertu de l'article 6 sans avoir droit à ce que son nom soit consigné dans une liste de bande tenue au ministère en vertu de l'article 11,

b) soit est membre d'une autre bande, a droit à ce que son nom soit consigné dans la liste d'une bande tenue au ministère

for a band if the council of the admitting band consents.

Limitation to one Band List

13. Notwithstanding sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department.

Decision to leave Band List control with Department

13.1 (1) A band may, at any time prior to 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, decide to leave the control of its Band List with the Department if a majority of the electors of the band gives its consent to that decision.

Notice to the Minister

(2) Where a band decides to leave the control of its Band List with the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect.

Subsequent band control of membership

(3) Notwithstanding a decision under subsection (1), a band may, at any time after that decision is taken, assume control of its Band List under section 10.

Return of control to Department

13.2 (1) A band may, at any time after assuming control of its Band List under section 10, decide to return control of the Band List to the Department if a majority of the electors of the band gives its consent to that decision.

Notice to the Minister and copy of membership rules

(2) Where a band decides to return control of its Band List to the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect and shall provide the Minister with a copy of the Band List and a copy of all the membership rules that were established by the band under subsection 10(2) while the band maintained its own Band List.

Transfer of responsibility to Department

(3) Where a notice is given under subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11.

pour cette dernière si le conseil de la bande qui l'admet en son sein y consent.

13. Par dérogation aux articles 11 et 12, nul n'a droit à ce que son nom soit consigné en même temps dans plus d'une liste de bande tenue au ministère.

Nom consigné dans une seule liste

Première décision

13.1 (1) Une bande peut, avant le jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, décider de laisser la responsabilité de la tenue de sa liste au ministère à condition d'y être autorisée par la majorité de ses électeurs.

Avis au Ministre

(2) Si la bande décide de laisser la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision.

Seconde décision

(3) Malgré la décision visée au paragraphe (1), la bande peut, en tout temps après cette décision, assumer la responsabilité de la tenue de sa liste en vertu de l'article 10.

Transfert de responsabilités au ministère

13.2 (1) La bande peut, en tout temps après avoir assumé la responsabilité de la tenue de sa liste en vertu de l'article 10, décider d'en remettre la responsabilité au ministère à condition d'y être autorisée par la majorité de ses électeurs.

Avis au Ministre et texte des règles

(2) Lorsque la bande décide de remettre la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision et lui transmet une copie de la liste et le texte des règles d'appartenance fixées par la bande conformément au paragraphe 10(2) pendant qu'elle assumait la responsabilité de la tenue de sa liste.

Transfert de responsabilités au ministère

(3) Lorsqu'est donné l'avis prévu au paragraphe (2) à l'égard d'une liste de bande, la tenue de cette dernière devient la responsabilité du ministère à compter de la date de réception de l'avis. Elle est tenue, à compter de cette date, conformément aux règles d'appartenance prévues à l'article 11.

Entitlement retained

13.3 A person is entitled to have his name entered in a Band List maintained in the Department pursuant to section 13.2 if that person was entitled to have his name entered, and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under subsection 13.2(2), whether or not that person is also entitled to have his name entered in the Band List under section 11.

13.3 Une personne a droit à ce que son nom soit consigné dans une liste de bande tenue par le ministère en vertu de l'article 13.2 si elle avait droit à ce que son nom soit consigné dans cette liste, et qu'il y a effectivement été consigné, immédiatement avant qu'une copie en soit transmise au Ministre en vertu du paragraphe 13.2(2), que cette personne ait ou non droit à ce que son nom soit consigné dans cette liste en vertu de l'article 11.

Maintien du droit d'être consigné dans la liste

#### Notice of Band Lists

Copy of Band List provided to band council

14. (1) Within one month after the day an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, the Registrar shall provide the council of each band with a copy of the Band List for the band as it stood immediately prior to that day.

#### Affichage des listes de bande

14. (1) Au plus tard un mois après la date où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, le registraire transmet au conseil de chaque bande une copie de la liste de la bande dans son état précédant immédiatement cette date.

Copie de la liste de bande transmise au conseil de bande

List of additions and deletions

(2) Where a Band List is maintained by the Department, the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under subsection (1), provide the council of the band with a list of the additions to or deletions from the Band List not included in a list previously provided under this subsection.

(2) Si la liste de bande est tenue au ministère, le registraire, au moins une fois tous les deux mois après la transmission prévue au paragraphe (1) d'une copie de la liste au conseil de la bande, transmet à ce dernier une liste des additions à la liste et des retranchements de celle-ci non compris dans une liste antérieure transmise en vertu du présent paragraphe.

Listes des additions et des retranchements

Lists to be posted

(3) The council of each band shall, forthwith on receiving a copy of the Band List under subsection (1), or a list of additions to and deletions from its Band List under subsection (2), post the copy or the list, as the case may be, in a conspicuous place on the reserve of the band.

(3) Le conseil de chaque bande, dès qu'il reçoit copie de la liste de bande prévue au paragraphe (1) ou la liste des additions et des retranchements prévue au paragraphe (2), affiche la copie ou la liste, selon le cas, en un lieu bien en évidence dans la réserve de la bande.

Affichage de la liste

#### Inquiries

Inquiries relating to Indian Register or Band Lists

14.1 The Registrar shall, on inquiry from any person who believes that he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein.

#### Demandes

14.1 Le registraire, à la demande de toute personne qui croit qu'elle-même ou que la personne qu'elle représente a droit à l'inclusion de son nom dans le registre des Indiens ou une liste de bande tenue au ministère, indique sans délai à l'auteur de la demande si ce nom y est inclus ou non.

Demandes relatives au registre des Indiens ou aux listes de bande

## Protests

## Protestations

Protests	<p><b>14.2</b> (1) A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar, containing a brief statement of the grounds therefor.</p>	Protestations
Protest in respect of Band List	<p>(2) A protest may be made under this section in respect of the Band List of a band, by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative.</p>	Protestation relative à la liste de bande
Protest in respect of Indian Register	<p>(3) A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative.</p>	Protestation relative au registre des Indiens
Onus of proof	<p>(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest.</p>	Charge de la preuve
Registrar to cause investigation	<p>(5) Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision.</p>	Le registraire fait tenir une enquête
Evidence	<p>(6) For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just.</p>	Preuve
Decision final	<p>(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive.</p>	Décision finale
Appeal	<p><b>14.3</b> (1) Within six months after the Registrar renders a decision on a protest under section 14.2,</p> <p>(a) in the case of a protest in respect of the Band List of a band, the council of the band, the person by whom the protest was made, or the person in respect</p>	Appel
	<p>(1) Une protestation peut être formulée, par avis écrit au registraire renfermant un bref exposé des motifs invoqués, contre l'inclusion ou l'addition du nom d'une personne dans le registre des Indiens ou une liste de bande tenue au ministère ou contre l'omission ou le retranchement de son nom de ce registre ou d'une telle liste dans les trois ans suivant soit l'inclusion ou l'addition, soit l'omission ou le retranchement.</p> <p>(2) Une protestation peut être formulée en vertu du présent article à l'égard d'une liste de bande par le conseil de cette bande, un membre de celle-ci ou la personne dont le nom fait l'objet de la protestation ou son représentant.</p> <p>(3) Une protestation peut être formulée en vertu du présent article à l'égard du registre des Indiens par la personne dont le nom fait l'objet de la protestation ou son représentant.</p> <p>(4) La personne qui formule la protestation prévue au présent article a la charge d'en prouver le bien-fondé.</p> <p>(5) Lorsqu'une protestation lui est adressée en vertu du présent article, le registraire fait tenir une enquête sur la question et rend une décision.</p> <p>(6) Pour l'application du présent article, le registraire peut recevoir toute preuve présentée sous serment, sous déclaration sous serment ou autrement, si celui-ci, à son appréciation, l'estime indiquée ou équitable, que cette preuve soit ou non admissible devant les tribunaux.</p> <p>(7) Sous réserve de l'article 14.3 la décision du registraire visée au paragraphe (5) est finale et péremptoire.</p> <p><b>14.3</b> (1) Dans les six mois suivant la date de la décision du registraire sur une protestation prévue à l'article 14.2 :</p> <p>a) soit, s'il s'agit d'une protestation formulée à l'égard d'une liste de bande, le conseil de la bande, la personne qui a formulé la protestation ou la personne</p>	

of whose name the protest was made or his representative, or

(b) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may, by notice in writing, appeal the decision to a court referred to in subsection (5).

Copy of notice of appeal to the Registrar

(2) Where an appeal is taken under this section, the person who takes the appeal shall forthwith provide the Registrar with a copy of the notice of appeal.

Material to be filed with the court by Registrar

(3) On receipt of a copy of a notice of appeal under subsection (2), the Registrar shall forthwith file with the court a copy of the decision being appealed together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings related thereto that were held before the Registrar.

Decision

(4) The court may, after hearing an appeal under this section,

(a) affirm, vary or reverse the decision of the Registrar; or

(b) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation.

Court

(5) An appeal may be heard under this section

(a) in the Province of Prince Edward Island, the Yukon Territory or the Northwest Territories, before the Supreme Court;

(b) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the Court of Queen's Bench;

(c) in the Province of Quebec, before the Superior Court for the district in which the band is situated or in which the person who made the protest resides, or for such other district as the Minister may designate; or

(d) in any other province, before the county or district court of the county or district in which the band is situated or in which the person who made the pro-

testation ou son représentant,

b) soit, s'il s'agit d'une protestation formulée à l'égard du registre des Indiens, la personne dont le nom a fait l'objet de la protestation ou son représentant,

peuvent, par avis écrit, interjeter appel de la décision à la cour visée au paragraphe (5).

(2) Lorsqu'il est interjeté appel en vertu du présent article, l'appelant transmet sans délai au registraire une copie de l'avis d'appel.

(3) Sur réception de la copie de l'avis d'appel prévu au paragraphe (2), le registraire dépose sans délai à la cour une copie de la décision en appel, toute la preuve documentaire prise en compte pour la décision, ainsi que l'enregistrement ou la transcription des débats devant le registraire.

(4) La cour peut, à l'issue de l'audition de l'appel prévu au présent article :

a) soit confirmer, modifier ou renverser la décision du registraire;

b) soit renvoyer la question en appel au registraire pour réexamen ou nouvelle enquête.

(5) L'appel prévu au présent article peut être entendu :

a) dans la province de l'Île-du-Prince-Édouard, le territoire du Yukon et les territoires du Nord-Ouest, par la Cour suprême;

b) dans la province du Nouveau-Brunswick, du Manitoba, de la Saskatchewan ou d'Alberta, par la Cour du Banc de la Reine;

c) dans la province de Québec, par la Cour supérieure du district où la bande est située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre district désigné par le Ministre;

d) dans les autres provinces, par un juge de la cour de comté ou de district du comté ou du district où la bande est

Copie de l'avis d'appel au registraire

Documents à déposer à la cour par le registraire

Décision

Cour

test resides, or of such other county or district as the Minister may designate.”

5. Subsections 15(1) to (4) of the said Act are repealed and the following substituted therefor:

*“Payments in Respect of Persons Ceasing to be Band Members”*

6. (1) Subsection 16(1) of the said Act is repealed.

(2) Subsection 16(3) of the said Act is repealed.

7. (1) Subsection 17(1) of the said Act is repealed and the following substituted therefor:

*“New Bands*

17. (1) The Minister may, whenever he considers it desirable,

(a) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated; and

(b) constitute new bands and establish Band Lists with respect thereto from existing Band Lists, or from the Indian Register, if requested to do so by persons proposing to form the new bands.”

(2) Subsection 17(3) of the said Act is repealed and the following substituted therefor:

“(3) No protest may be made under section 14.2 in respect of the deletion from or the addition to a Band List consequent on the exercise by the Minister of any of his powers under subsection (1).”

8. The said Act is further amended by adding thereto, immediately after section 18 thereof, the following section:

“18.1 A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom he has custody.”

située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre comté ou district désigné par le Ministre.»

5. Les paragraphes 15(1) à (4) de la même loi sont abrogés et remplacés par ce qui suit :

*« Paiements aux personnes qui cessent d'être membres d'une bande »*

6. (1) Le paragraphe 16(1) de la même loi est abrogé.

(2) Le paragraphe 16(3) de la même loi est abrogé.

7. (1) Le paragraphe 17(1) de la même loi est abrogé et remplacé par ce qui suit :

*« Nouvelles bandes*

17. (1) Le Ministre peut, lorsqu'il l'estime à propos :

a) fusionner les bandes qui, par un vote majoritaire de leurs électeurs, demandent la fusion;

b) constituer de nouvelles bandes et établir à leur égard des listes de bande à partir des listes de bande existantes, ou du registre des Indiens, s'il lui en est fait la demande par des personnes proposant la constitution de nouvelles bandes.»

(2) Le paragraphe 17(3) de la même loi est abrogé et remplacé par ce qui suit :

«(3) Aucune protestation ne peut être formulée en vertu de l'article 14.2 à l'égard d'un retranchement d'une liste de bande ou d'une addition à celle-ci qui découle de l'exercice par le Ministre de l'un de ses pouvoirs prévus au paragraphe (1).»

8. La même loi est modifiée par insertion, après l'article 18, de ce qui suit :

«18.1 Le membre d'une bande qui réside sur la réserve de cette dernière peut y résider avec ses enfants à charge ou tout enfant dont il a la garde.»

Minister may constitute new bands

No protest

Children of band members

Constitution de nouvelles bandes par le Ministre

Aucune protestation

Enfants des membres d'une bande

9. (1) Subsections 48(13) and (14) of the said Act are repealed.

(2) Subsection 48(16) of the said Act is repealed and the following substituted therefor:

Definition of "child"

"(16) In this section, "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom."

10. (1) Section 64 of the said Act is renumbered as subsection 64(1).

(2) Section 64 of the said Act is further amended by adding thereto the following subsection:

Expenditure of capital moneys in accordance with by-laws

"(2) The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys."

11. The said Act is further amended by adding thereto, immediately after section 64 thereof, the following section:

Limitation in respect of paragraphs 6(1)(c), (d) and (e)

"64.1 (1) A person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of a band in the circumstances set out in paragraph 6(1)(c), (d) or (e) is not entitled to receive an amount under paragraph 64(1)(a) until such time as the aggregate of all amounts that he would, but for this subsection, have received under paragraph 64(1)(a) is equal to the amount by which the amount that he received under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that

9. (1) Les paragraphes 48(13) et (14) de la même loi sont abrogés.

(2) Le paragraphe 48(16) de la même loi est abrogé et remplacé par ce qui suit :

Définition d'enfant

«(16) Au présent article, «enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté et un enfant adopté conformément aux coutumes indiennes.»

10. (1) Le numéro d'article 64 de la même loi est remplacé par le numéro de paragraphe 64(1).

(2) L'article 64 de la même loi est modifié par adjonction de ce qui suit :

Dépenses sur les deniers au compte de capital

«(2) Le Ministre peut effectuer des dépenses sur les deniers au compte de capital d'une bande conformément aux statuts administratifs établis en vertu de l'alinéa 81(1)p.3 en vue de faire des paiements à toute personne dont le nom a été retranché de la liste de la bande pour un montant n'excédant pas une part per capita des deniers au compte de capital.»

11. La même loi est modifiée par insertion, après l'article 64, de ce qui suit :

Réserve relative aux alinéas 6(1)(c), (d) ou e)

«64.1 (1) Une personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)a), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, du fait qu'elle a cessé d'être membre d'une bande dans les circonstances prévues aux alinéas 6(1)c), (d) ou e) n'a pas droit de recevoir de montant en vertu de l'alinéa 64(1)a) jusqu'à ce que le total de tous les montants qu'elle aurait reçus en vertu de l'alinéa 64(1)a), n'eût été le présent paragraphe, égale la part du montant qu'elle a reçu en vertu de l'alinéa 15(1)a), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que

paragraph, exceeds one thousand dollars, together with any interest thereon.

celui de ce paragraphe, en excédant de mille dollars, y compris les intérêts.

Additional  
limitation

(2) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect, a person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(c), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(b) to (k), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band.

(2) Lorsque le conseil d'une bande établit des statuts administratifs en vertu de l'alinéa 81(1)p.4) mettant en vigueur le présent paragraphe, la personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)a) dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute autre disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, parce qu'elle a cessé d'être membre de la bande dans les circonstances prévues aux alinéas 6(1)c), d) ou e) n'a droit de recevoir aucun des avantages offerts aux membres de la bande à titre individuel résultant de la dépense de deniers des Indiens au titre des alinéas 64(1)b) à k), du paragraphe 66(1) ou du paragraphe 69(1) jusqu'à ce que l'excédent du montant ainsi reçu sur mille dollars, y compris l'intérêt sur celui-ci, ait été remboursé à la bande.

Réserve  
additionnelle

Regulations

(3) The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of subsections (1) and (2)."

(3) Le gouverneur en conseil peut prendre des règlements prévoyant la façon de déterminer les intérêts pour l'application des paragraphes (1) et (2).»

Règlements

12. Section 66 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

12. L'article 66 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Idem

"(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys."

«(2.1) Le Ministre peut effectuer des dépenses sur les derniers de revenu de la bande conformément aux statuts administratifs visés à l'alinéa 81(1)p.3) en vue d'effectuer des paiements à une personne dont le nom a été retranché de la liste de bande jusqu'à concurrence d'un montant n'excédant pas une part *per capita* des fonds de revenu.»

Idem

13. Section 68 of the said Act is repealed and the following substituted therefor:

13. L'article 68 de la même loi est abrogé et remplacé par ce qui suit :

Maintenance of  
dependants

"68. Where the Minister is satisfied that an Indian

«68. Lorsque le Ministre est convaincu qu'un Indien :

Entretien des  
personnes à  
charge

(a) has deserted his spouse or family without sufficient cause,

a) a abandonné son conjoint ou sa famille sans raison suffisante,

(b) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or

b) s'est conduit de façon à justifier le refus de son conjoint ou de sa famille de vivre avec lui, ou

(c) has been separated by imprisonment from his spouse and family,

the Minister may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the spouse or family or both the spouse and family of that Indian."

14. Subsections 77(1) and (2) of the said Act are repealed and the following substituted therefor:

Eligibility of voters for chief

"77. (1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

Councillor

(2) A member of a band who is of the full age of eighteen years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section."

15. Section 81 of the said Act is amended by adding thereto, immediately after paragraph (p) thereof, the following paragraphs:

"(p.1) the residence of band members and other persons on the reserve;

(p.2) to provide for the rights of spouses and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;

(p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;

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

15.1 (1) Paragraph 81(r) of the said Act is repealed and the following substituted therefor:

c) a été séparé de son conjoint et de sa famille par emprisonnement,

il peut ordonner que les paiements de rentes ou d'intérêts auxquels cet Indien a droit soient appliqués au soutien du conjoint ou de la famille ou du conjoint et de la famille de ce dernier.»

14. Les paragraphes 77(1) et (2) de la même loi sont abrogés et remplacés par ce qui suit :

«77. (1) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans la réserve, a qualité pour voter en faveur d'une personne présentée comme candidat au poste de chef de la bande et, lorsque la réserve, aux fins d'élection, ne comprend qu'une section, pour voter en faveur de personnes présentées aux postes de conseillers.

Qualités exigées des électeurs au poste de chef

(2) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans une section établie aux fins de votation, a qualité pour voter en faveur d'une personne présentée au poste de conseiller pour représenter cette section.»

Conseiller

15. L'article 81 de la même loi est modifié par insertion, après l'alinéa p), de ce qui suit :

«p.1) la résidence des membres de la bande ou des autres personnes sur la réserve;

p.2) l'adoption de mesures relatives aux droits des conjoints ou des enfants qui résident avec des membres de la bande dans une réserve pour toute matière au sujet de laquelle le conseil peut établir des statuts administratifs à l'égard des membres de la bande;

p.3) l'autorisation du Ministre à effectuer des paiements sur des deniers au compte de capital ou des deniers de revenu aux personnes dont les noms ont été retranchés de la liste de la bande;

p.4) la mise en vigueur des paragraphes 10(3) ou 64.1(2) à l'égard de la bande;»

15.1 (1) L'alinéa 81r) de la même loi est abrogé et remplacé par ce qui suit :

“(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section.”

(2) Section 81 of the said Act is renumbered as subsection 81(1).

(3) Section 81 of the said Act is further amended by adding thereto the following subsections:

Power to  
restrain by  
order where  
conviction  
entered

“(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Power to  
restrain by  
court action

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council.”

16. The said Act is further amended by adding thereto, immediately after section 85 thereof, the following section:

By-laws  
relating to  
intoxicants

“85.1 (1) Subject to subsection (2), the council of a band may make by-laws

- (a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;
- (b) prohibiting any person from being intoxicated on the reserve;
- (c) prohibiting any person from having intoxicants in his possession on the reserve; and
- (d) providing for exceptions to any of the prohibitions established pursuant to paragraph (b) or (c).

«r) l'imposition, sur déclaration sommaire de culpabilité, d'une amende n'excédant pas mille dollars ou d'un emprisonnement d'au plus trente jours, ou de l'amende et de l'emprisonnement à la fois, pour violation d'un statut administratif établi aux termes du présent article.»

(2) L'article 81 de la même loi devient le paragraphe 81(1).

(3) L'article 81 de la même loi est modifié par adjonction de ce qui suit :

Pouvoir de  
prendre une  
ordonnance

«(2) Lorsqu'un statut administratif d'une bande est violé et qu'une déclaration de culpabilité est prononcée, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, le tribunal dans lequel a été prononcée la déclaration de culpabilité, et tout tribunal compétent par la suite, peut rendre une ordonnance interdisant la continuation ou la répétition de l'infraction par la personne déclarée coupable.

Pouvoir  
d'intenter une  
action en justice

(3) Lorsqu'un statut administratif d'une bande est violé, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, cette violation peut être réfrénée par une action en justice à la demande du conseil de bande.»

16. La même loi est modifiée par insertion, après l'article 85, de ce qui suit :

Statuts  
administratifs  
sur les  
spiritueux

«85.1 (1) Sous réserve du paragraphe (2), le conseil d'une bande peut établir des statuts administratifs :

- a) interdisant de vendre, de faire le troc, de fournir ou de fabriquer des spiritueux sur la réserve de la bande;
- b) interdisant à toute personne d'être en état d'ivresse sur la réserve;
- c) interdisant à toute personne d'avoir en sa possession des spiritueux sur la réserve;
- d) prévoyant des exceptions aux interdictions établies en vertu des alinéas b) ou c).

Consent of electors

(2) A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law.

(2) Les statuts administratifs prévus au présent article ne peuvent être établis qu'avec le consentement préalable de la majorité des électeurs de la bande ayant voté à l'assemblée spéciale de la bande convoquée par le conseil de cette dernière pour l'étude de ces statuts.

Consentement des élections

Copies of by-laws to be sent to Minister

(3) A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made.

(3) Le chef ou un membre du conseil de la bande doit envoyer par courrier au Ministre une copie de chaque statut administratif prévu au présent article dans les quatre jours suivant son établissement.

Copie des statuts administratifs au Ministre

Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction

(4) Toute personne qui enfreint un statut administratif établi en vertu du présent article commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

Infraction

(a) in the case of a by-law made under paragraph (1)(a), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and

a) dans le cas d'un statut administratif établi en vertu de l'alinéa (1)a), une amende maximale de mille dollars et un emprisonnement maximal de six mois, ou une de ces peines;

(b) in the case of a by-law made under paragraph (1)(b) or (c), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both."

b) dans le cas d'un statut administratif établi en vertu des alinéas (1)b) ou c), une amende maximale de cent dollars et un emprisonnement maximal de trois mois, ou l'une de ces peines.»

17. Sections 94 to 100 of the said Act are repealed and the following substituted therefor:

17. Les articles 94 à 100 de la même loi sont abrogés et remplacés par ce qui suit :

#### "OFFENCES"

#### «PEINES»

18. Subsection 103(1) of the said Act is repealed and the following substituted therefor:

18. Le paragraphe 103(1) de la même loi est abrogé et remplacé par ce qui suit :

Seizure of goods

"103. (1) Whenever a peace officer, a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 85.1, 90 or 93 has been committed, he may seize all goods and chattels by means of or in relation to which he believes on reasonable grounds the offence was committed."

«103. (1) Chaque fois qu'un agent de la paix, un surintendant ou une autre personne autorisée par le Ministre a des motifs raisonnables de croire qu'une infraction aux articles 33, 85.1, 90 ou 93 a été commise, il peut saisir toutes les marchandises et tous les biens meubles au moyen ou à l'égard desquels il a des motifs raisonnables de croire que l'infraction a été commise.»

Saisie des marchandises

19. Sections 109 to 113 of the said Act are repealed.

19. Les articles 109 à 113 de la même loi sont abrogés.

20. (1) All that portion of subsection 119(2) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

Powers

“(2) Without restricting the generality of subsection (1), a truant officer may, subject to subsection (2.1),”

(2) Section 119 of the said Act is further amended by adding thereto, immediately after subsection (2) thereof, the following subsections:

Warrant required to enter dwelling-house

“(2.1) Where any place referred to in paragraph (2)(a) is a dwelling-house, a truant officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (2.2).

Authority to issue warrant

(2.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

(a) that the conditions for entry described in paragraph (2)(a) exist in relation to a dwelling-house,

(b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

he may issue a warrant under his hand authorizing the truant officer named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

Use of force

(2.3) In executing a warrant issued under subsection (2.2), the truant officer named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.”

Saving from liability

21. For greater certainty, no claim lies against Her Majesty in right of Canada, the Minister, any band, council of a band or member of a band or any other person or body in relation to the omission or deletion of

20. (1) Le passage du paragraphe 119(2) de la même loi qui précède l'alinéa a) est abrogé et remplacé par ce qui suit :

Pouvoirs

«(2) Sans qu'en soit restreinte la portée générale du paragraphe (1), un agent de surveillance peut, sous réserve du paragraphe (2.1) :»

(2) L'article 119 de la même loi est modifié par insertion, après le paragraphe (2), de ce qui suit :

Mandat : maison d'habitation

«(2.1) Lorsque l'endroit visé à l'alinéa (2)a) est une maison d'habitation, l'agent de surveillance ne peut y pénétrer sans l'autorisation de l'occupant qu'en vertu du mandat prévu au paragraphe (2.2).

Pouvoir de délivrer un mandat

(2.2) Sur demande *ex parte*, le juge de paix peut délivrer sous son seing un mandat autorisant l'agent de surveillance qui y est nommé, sous réserve des conditions éventuellement fixées dans le mandat, à pénétrer dans une maison d'habitation s'il est convaincu, d'après une dénonciation sous serment, de ce qui suit :

a) les circonstances prévues à l'alinéa (2)a) dans lesquelles un agent peut y pénétrer existent;

b) il est nécessaire d'y pénétrer pour l'application de la présente loi;

c) un refus d'y pénétrer a été opposé ou il y a des motifs raisonnables de croire qu'un tel refus sera opposé.

Usage de la force

(2.3) L'agent de surveillance nommé dans le mandat prévu au paragraphe (2.2) ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix.»

Aucune réclamation

21. Il demeure entendu qu'il ne peut être présenté aucune réclamation contre Sa Majesté du chef du Canada, le Ministre, une bande, un conseil de bande, un membre d'une bande ou autre personne ou organisme

the name of a person from the Indian Register in the circumstances set out in paragraph 6(1)(c), (d) or (e) of the *Indian Act*.

relativement à l'omission ou au retranchement du nom d'une personne du registre des Indiens dans les circonstances prévues aux alinéas 6(1)c), d) ou e) de la *Loi sur les Indiens*.

Report of  
Minister to  
Parliament

22. (1) The Minister shall cause to be laid before each House of Parliament, not later than two years after this Act is assented to, a report on the implementation of the amendments to the *Indian Act*, as enacted by this Act, which report shall include detailed information on

22. (1) Au plus tard deux ans après la sanction royale de la présente loi, le Ministre fait déposer devant chaque chambre du Parlement un rapport sur l'application des modifications de la *Loi sur les Indiens* prévues dans la présente loi. Le rapport contient des renseignements détaillés sur :

Rapport du  
Ministre au  
Parlement

(a) the number of people who have been registered under section 6 of the *Indian Act*, and the number entered on each Band List under subsection 11(1) of that Act, since April 17, 1985;

a) le nombre de personnes inscrites en vertu de l'article 6 de la *Loi sur les Indiens* et le nombre de personnes dont le nom a été consigné dans une liste de bande en vertu du paragraphe 11(1) de cette loi, depuis le 17 avril 1985;

(b) the names and number of bands that have assumed control of their own membership under section 10 of the *Indian Act*; and

b) les noms et le nombre des bandes qui décident de l'appartenance à leurs effectifs en vertu de l'article 10 de la *Loi sur les Indiens*;

(c) the impact of the amendments on the lands and resources of Indian bands.

c) l'effet des modifications sur les terres et les ressources des bandes d'Indiens.

Review by  
Parliamentary  
committee

(2) Such committee of Parliament as may be designated or established for the purposes of this subsection shall, forthwith after the report of the Minister is tabled under subsection (1), review that report and may, in the course of that review, undertake a review of any provision of the *Indian Act* enacted by this Act.

(2) Le Comité du Parlement que ce dernier peut désigner ou établir pour l'application du présent paragraphe doit examiner sans délai après son dépôt par le Ministre le rapport visé au paragraphe (1). Le comité peut, dans le cadre de cet examen, procéder à la révision de toute disposition de la *Loi sur les Indiens* prévue à la présente loi.

Examen par un  
comité  
parlementaire

Commence-  
ment

23. (1) Subject to subsection (2), this Act shall come into force or be deemed to have come into force on April 17, 1985.

23. (1) Sous réserve du paragraphe (2), la présente loi entre en vigueur ou est réputée être entrée en vigueur le 17 avril 1985.

Entrée en  
vigueur

Idem

(2) Sections 17 and 18 shall come into force six months after this Act is assented to.

(2) Les articles 17 et 18 entrent en vigueur six mois après que la présente loi a reçu la sanction royale.

Idem

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

Paul Bujold

Sworn before me this 12 day

September A.D., 20 11

A. Magnan

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

DECLARATION OF TRUST

Catherine A. Magnan

My Commission Expires

January 29, 2012

THIS DEED OF SETTLEMENT is made in duplicate the 15<sup>th</sup>  
day of April, 1985

B E T W E E N :

CHIEF WALTER PATRICK TWINN,  
of the Sawridge Indian Band,  
No. 19, Slave Lake, Alberta,  
(hereinafter called the "Settlor"),

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN,  
GEORGE V. TWIN and SAMUEL G. TWIN,  
of the Sawridge Indian Band,  
No. 19, Slave Lake, Alberta,  
(hereinafter collectively called  
the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day

of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Settlement, the following terms shall be interpreted in accordance with the following rules:

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time

would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band

No 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement; and

(b) "Trust Fund" shall mean:

- (A) the property described in the Schedule hereto and any accumulated income thereon;
- (B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;
- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and
- (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

- (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and
- (c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED in the presence of:

Bruce G Thom  
NAME

A. Settlor

[Signature]

Box 326, Slave Lake, Alta  
ADDRESS

B. Trustees:

Bruce G Thom  
NAME

1.

[Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Bruce G Thom  
NAME

2.

[Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Bruce G Thom  
NAME

3.

[Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Schedule

One Hundred Dollars (\$100.00) in Canadian Currency.

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

Paul Bujold

Sworn before me this 12 day of September A.D., 2011

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

Catherine A. Magnan My Commission Expires January 29, 2012

WHEREAS the undersigned are the Trustees of an inter vivos settlement (the "Sawridge Band Trust") made the 15th day of April, 1982 between Chief Walter Patrick Twinn, as Settlor, and Chief Walter Patrick G. Twinn, Walter Felix Twin and George V. Twin, as Trustees;

AND WHEREAS the beneficiaries of the Sawridge Band Trust are the members, present and future, of the Sawridge Indian Band (the "Band"), a band for the purposes of the Indian Act R.S.C., Chapter 149;

AND WHEREAS amendments introduced into the House of Commons on the 28th day of February, 1985 may, if enacted, extend membership in the Band to certain classes of persons who did not qualify for such membership on the 15th day of April, 1982;

AND WHEREAS pursuant to paragraph 6 of the instrument (the "Trust Instrument") establishing the Trust the undersigned have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries of the Trust;

AND WHEREAS for the purpose of precluding future uncertainty as to the identity of the beneficiaries of the Trust the Trustees desire to exercise the said power by resettling the assets of the Trust for the benefit of only those persons (the "Beneficiaries") who qualify, or would in the future qualify, for membership in the Band under the provisions of the Act in force on the 15th day of April, 1982;

APRIL 29, 1985 AND WHEREAS by deed executed the 15th day of March, 1985 between Chief Walter Patrick Twinn, as Settlor, and the undersigned as Trustees, an inter vivos settlement (the "Sawridge Band Inter Vivos Settlement") has been constituted for the benefit of the Beneficiaries;

NOW THEREFORE BE IT RESOLVED THAT

1. the power conferred upon the undersigned in their capacities as Trustees of the Trust pursuant to paragraph 6 of the Trust Instrument be and the same is hereby exercised by transferring all of the assets of the Trust to the

undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement; and

2. Chief Walter Patrick Twinn is hereby authorized to execute all share transfer forms and other instruments in writing and to do all other acts and things necessary or expedient for the purpose of completing the transfer of the said assets of the Trust to the Sawridge Band Inter Vivos Settlement in accordance with all applicable legal formalities and other legal requirements.

DATED the 15<sup>th</sup> day of <sup>APRIL</sup> ~~March~~, 1985.

Walter P. Twinn  
Chief Walter Patrick Twinn

Samuel G. Twinn  
Samuel G. Twinn

George V. Twinn  
George V. Twinn

ACCEPTANCE BY TRUSTEES

The undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement hereby declare that they accept the transfer of all of the assets of the Trust and that they will hold the said assets and deal with the same hereafter for the benefit of the Beneficiaries in all respects in accordance with the terms and provisions of the Sawridge Band Inter Vivos Settlement.

DATED the 15<sup>th</sup> day of <sup>APRIL</sup> ~~March~~, 1985.

Walter P. Twinn  
Chief Walter Patrick Twinn

Samuel G. Twinn  
Samuel G. Twinn

George V. Twinn  
George V. Twinn

21902 Trust Docs Does

SAWRIDGE BAND RESOLUTION

WHEREAS the Trustees of a certain trust dated the 15th day of April, 1982, have authorized the transfer of the trust assets to the Trustees of the attached trust dated the 15th day of April, A.D., 1985.

AND WHEREAS the assets have actually been transferred this 15th day of April, A.D. 1985.

THEREFORE BE IT RESOLVED at this duly convened and constituted meeting of the Sawridge Indian Band at the Band Office in Slave Lake, Alberta, this 15th day of April, A.D. 1985, that the said transfer be and the same is hereby approved and ratified.

WITNESS

As to all signatures  
Bruce & Thom

*Y. ...*  
Sam I  
Walter F Twin  
G V  
Walter  
Dellie L. Twin  
Cher Twin  
Jean Peterson  
Catherine Twin

This is Exhibit "I" referred to in the Affidavit of Paul Bujold Sworn before me this 12 day of September A.D., 2011 A. Magnan A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

Catherine A. Magnan My Commission Expires January 29, 2012

DECLARATION OF TRUST MADE THIS 16TH DAY OF APRIL,

1985.

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

Paul Bujold

Sworn before me this 12 day

of September A.D., 2011

A. Magnan

BETWEEN:

WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWIN  
in and for the Province of Alberta

(hereinafter referred to collectively as the "Old Trustees")

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

OF THE FIRST PART

AND:

WALTER PATRICK TWINN, SAM TWIN AND  
GEORGE TWIN

(hereinafter referred to collectively as the "New Trustees")

OF THE SAWRIDGE INTER VIVOS SETTLEMENT

OF THE SECOND PART

WHEREAS the "Old Trustees" of the Sawridge Band Trust (hereinafter referred to as the "trust") hold legal title to the assets described in Schedule "A" and settlor Walter P. Twinn by Deed in writing dated the 15th day of April, 1985 created the Sawridge Inter Vivos Settlement (hereinafter referred to as the "settlement").

AND WHEREAS the settlement was ratified and approved at a general meeting of the Sawridge Indian Band held in the Band Office at Slave Lake, Alberta on April 15th, A.D. 1985.

NOW THEREFORE this Deed witnesseth as follows:

The undersigned hereby declare that as new trustees they now hold and will continue to hold legal title to the assets described in Schedule "A" for the benefit of the settlement, in accordance with the terms thereof.

Further, each old trustee does hereby assign and release to the new trustees any and all interest in one or more of the promissory notes attached hereto as Schedule "B".

OLD TRUSTEES

WITNESS:  
*DAB*

*Walter J*  
\_\_\_\_\_  
\_\_\_\_\_

NEW TRUSTEES

*DAB*

*Walter J*  
\_\_\_\_\_  
\_\_\_\_\_

SCHEDULE "A"

SAWRIDGE HOLDINGS LTD. --- SHARES

WALTER PATRICK TWINN 30 CLASS "A" COMMON  
GEORGE TWIN 4 CLASS "A" COMMON  
SAM TWIN 12 CLASS "A" COMMON

SAWRIDGE ENERGY LTD. --- SHARES

WALTER PATRICK TWINN 100 CLASS "A" COMMON

SCHEDULE 'B'

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD, a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT (\$293,178.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19<sup>th</sup> day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to as "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19  
day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of SIXTY THOUSAND (\$60,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY FOUR THOUSAND, SIX HUNDRED AND TWO (\$24,602.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to as "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter J. Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY FOUR (\$20,184.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to as "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY ONE (\$20,181.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to as "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: *Walter Patrick Twinn*

Per: *George Twinn*

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of EIGHT THOUSAND, ONE HUNDRED AND THIRTY EIGHT (\$8,138.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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DATED at the City of Edmonton, in the Province of Alberta, this 19  
day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of FORTY FOUR THOUSAND, (\$44,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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DATED at the City of Edmonton, in the Province of Alberta, this 19  
day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED FIFTY ONE THOUSAND THREE HUNDRED (\$251,300.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 11 day of March, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Patrick Twinn

Per: George Twinn

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

Paul Bujold

Sworn before me this 12 day

of September A.D., 20 11

A. Magnan

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

Catherine A. Magnan

My Commission Expires

January 29, 20 12

THE SAWRIDGE TRUST

DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

BETWEEN:

CHIEF WALTER P. TWINN,  
of the Sawridge Indian Band, No. 19, Slave Lake, Alberta  
(hereinafter called the "Settlor")

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,  
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.
  
2. In this Deed, the following terms shall be interpreted in accordance with the following rules:
  - (a) "Beneficiaries" at any particular time shall mean 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) "Trust Fund" shall mean:
    - (A) the property described in the Schedule attached hereto and any accumulated income thereon;
  
    - (B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed;

- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Deed;
- (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted; and
- (E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell, lease or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed.

4. The name of the Trust Fund shall be "The Sawridge Trust" and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, the Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner or to any extent detracted from the generality of the foregoing, the power

- (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with this Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of this Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provision of this Deed may be amended from time to time by a resolution of the Trustees that received the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

15. Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Trust shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED  
in the presence of:

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor

Walter P. Twinn  
CHIEF WALTER P. TWINN

B. Trustees:

1.

Walter P. Twinn  
CHIEF WALTER P. TWINN

2.

Catherine M. Twinn  
CATHERINE TWINN

3.

George Twinn  
GEORGE TWINN

SCHEDULE

One Hundred Dollars (\$100.00) in Canadian Currency.

This is Exhibit " L " referred to in the

Affidavit of

Paul Bujold

Sworn before me this 12 day

of September A.D., 2011

A. Magnan

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

Catherine A. Magnan

My Commission Expires

January 29, 2012

## SAWRIDGE BENEFICIARIES PROPOSED PROGRAM SUMMARY

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

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

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

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

	Clerk's stamp:
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	 <p>IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c, T-8, AS AMENDED</p> <p>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")</p>
APPLICANTS	<p>ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")</p>
DOCUMENT	<b>AFFIDAVIT OF ELIZABETH POITRAS</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<p>Attention: Janet L. Hutchison Chamberlain Hutchison #155, 10403 – 122 Street NW Edmonton, Alberta T5N 4C1</p> <p>Telephone: (780) 423-3661 Fax: (780) 426-1293 File No: 51433</p>

## AFFIDAVIT OF ELIZABETH POITRAS

Sworn on December 7, 2011

I, ELIZABETH POITRAS, of Elk Point, Alberta, SWEAR THAT:

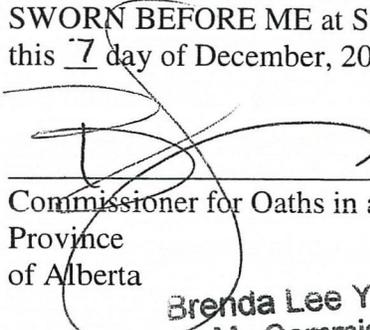
1. I am currently a member of the Sawridge Indian Band and a Sawridge Trust beneficiary, as such, have personal knowledge of the matters sworn to herein, unless stated to be based on information and belief, in which case I verily believe the same to be true.
2. I lost my Indian status and Sawridge Band membership as a young woman when I married Homer Poitras, who was not a registered Indian, on October 16, 1965. When the Indian Act was amended in 1985 to allow women such as myself to regain their status and membership, I applied for reinstatement of my Indian status and my Sawridge Band membership.
3. My Registered Indian Status was restored by the Department of Indian Affairs. I was told by the Department of Indian Affairs that the Sawridge Indian Band had taken control of its own membership effective July 8, 1985 and that I would have to apply directly to the Band for membership.
4. Shortly after I received that information, I verbally requested membership for myself and my children, all of whom except Tracey were minors at that time, in a phone conversation with Chief Walter Twinn. I understood from that conversation my children and I would be reinstated to Band membership but that did not occur.
5. I later learned from the Department of Indian Affairs that the Sawridge Indian Band had a membership code and required an application form to be filled out. I did not receive that information from the Sawridge Indian Band directly. I then began asking the Sawridge Indian Band to provide me with information on its membership process and its membership application form but received no response.
6. In 1988, I began a court action in the Federal Court of Canada to have my Band membership recognized. The action is Federal Court Action T-2655-89.
7. After a lengthy wait, I received an application form from Sawridge Indian Band and submitted it. My application was dated December 16, 1994. At that time, the application form was approximately 75 pages and requested extensive and often intrusive personal information. It was never clear to me, nor did Sawridge Indian Band explain, why that information was needed to decide my Band membership.
8. In my applications, I was also seeking membership for the children Homer and I had - namely Tracey, born in 1966; Crystal Marie, born in 1968; Heather, born in 1970; Nicole Tanya, born in 1974; and Bruce, born in 1978. We also adopted our grandson, Corbin, born in 1988, and I sought membership for him as well.

9. As of the date of this affidavit, I have never received a response or a decision from Sawridge Indian Band on my application for membership or on my children's right to membership.
10. My Band membership was eventually recognized as a result of an injunction issued by the Federal Court in Sawridge vs. Canada. Attached to this my Affidavit as Exhibits "A" and "B", respectively, are the Federal Court trial division and Federal Court of Appeal decisions on the injunction. In these decisions, the court referred to the women, including myself, who were restored to status by Bill C-31 as "acquired rights women".
11. While I do not know the dates on which this occurred, I know that three of the other acquired rights women, Clara Midbo, Bertha L'Hirondelle and Freida Draney, were not only restored to membership but had their children restored to membership. I am aware of this because I saw their names on a membership voting list posted for elections some time after my membership was restored. These ladies are also the sisters of the late Chief Walter Twinn.
12. I am informed by my daughter, Tracey Poitras-Collins, that she has been applying to Sawridge Indian Band for membership directly since approximately 1985 and has never received a response to her applications. Attached to this my Affidavit as Exhibit "C" is a true copy of a Sawridge application form that Tracey advises me that she received from the Sawridge Indian Band. I am informed by Tracey and do verily believe that this is a recent version of the Sawridge Indian Band Membership application.
13. On or about October 1<sup>st</sup>, 2011 I was at a Sawridge Band meeting and I took a copy of membership applications completed by my children, Tracey, Crystal, Corbin and Nicole and hand delivered them to Chief Roland Twinn. I also advised the originals were being delivered to the Band office. I am informed by my children and do verily believe that they have not received any response to their membership applications at this time.
14. I have never been able to get an explanation from the Sawridge Indian Band as to why my children have been treated differently from the children of the other acquired rights women.
15. I have attached as Exhibit "D" to this my affidavit, a true copy of what I understand to be the current version of the Sawridge membership code. As far as I am able to tell from comparing this Code to the ones I have seen in the past, the membership provisions have not changed from the membership code I saw in the 1980's.
16. Based on my knowledge and experience dealing with the Sawridge Indian Band membership process over the past 3 decades, I would say that the membership process is very unclear and lacks transparency. Applicants may not even receive a

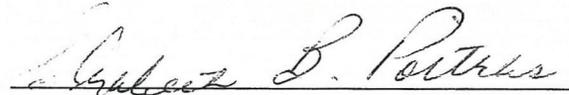
decision on applications. If applications are processed and accepted, it is not clear why those applications have been dealt with while others that have been submitted earlier have not yet been decided.

17. I make this application in relation to the application filed by the 1985 Sawridge Trust Trustees in the within action.

SWORN BEFORE ME at St. Paul, Alberta,  
this 7 day of December, 2011.

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

**Brenda Lee Yuschyshyn**  
My Commission will  
Expire June 4, 2014

  
\_\_\_\_\_  
ELIZABETH POITRAS

*Case Name:*  
**Sawridge Band v. Canada**

**Between**  
**Bertha L'Hirondelle suing on her own behalf and on**  
**behalf of all other members of the Sawridge Band,**  
**plaintiffs, and**  
**Her Majesty the Queen, defendant, and**  
**Native Council of Canada, Native Council of Canada**  
**(Alberta), Non-Status Indian Association of Alberta and**  
**Native Women's Association of Canada, interveners**

[2003] F.C.J. No. 723

[2003] A.C.F. no 723

2003 FCT 347

2003 CFPI 347

[2003] 4 F.C. 748

[2003] 4 C.F. 748

232 F.T.R. 54

[2003] 3 C.N.L.R. 344

123 A.C.W.S. (3d) 2

Docket T-66-86A

This is Exhibit "A" referred to in the  
Affidavit (or statutory declaration) of

Elizabeth Poitras

Sworn (or affirmed or declared)

before me this 7<sup>th</sup> day of

December A.D. 2001

Brenda Lee Yuschyshyn  
A Commissioner for Oaths in and for Alberta

Brenda Lee Yuschyshyn

My Commission will

Expire June 4, 2004

Federal Court of Canada - Trial Division  
Toronto, Ontario

**Hugessen J.**

Heard: March 19 and 20, 2003.

Judgment: March 27, 2003.

(40 paras.)

*Injunctions -- Interlocutory or interim injunctions -- Arguable issues of law involved or serious question to be tried -- Balance of convenience -- Requirement of irreparable injury -- Indians, Inuit and Metis -- Nations, tribes and bands -- Bands -- Membership.*

Motion by the defendant Crown for an interlocutory declaration, or in the alternative for an interlocutory mandatory injunction. The plaintiff Sawridge Band sued the Crown for a declaration that certain amendments to the Indian Act were unconstitutional. The amendments conferred on Indian bands the right to control their own band lists, but obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the amendments. The Crown alleged that the Sawridge Band refused to comply with the remedial provisions of the amending legislation, resulting in 11 former members of the Band being denied the benefits of the amendments. The 11 former members were women who lost both their Indian status and their Band membership for having married non-Indian men. The Crown sought an interlocutory declaration that, pending a final determination of the action, the individuals who acquired the right to be members of the Sawridge Band before it took control of its own band list be deemed to be registered on the band list with full rights and privileges. In the alternative, the Crown sought an interlocutory injunction requiring the Band to register the names of those individuals on the band list, with full rights and privileges.

HELD: Motion for an injunction allowed. An interim declaration of right was a contradiction in terms, since a right either existed or did not exist. Therefore, the motion was treated as seeking only an interlocutory injunction. The Band had created pre-conditions to membership, but the statutory amendments provided for an automatic entitlement to Band membership for women who had lost it by marriage to non-Indians. Therefore, the Band's membership rules contravened the legislation, such that the Band had effectively given itself an injunction to act as though the law did not exist. The Band was not entitled to such an injunction. Even though it had raised a serious issue, enforcement of a duly adopted law did not result in irreparable harm. The inconvenience to the Band in admitting the 11 individuals was outweighed by the damage to the public interest in having federal law flouted.

**Statutes, Regulations and Rules Cited:**

Canadian Charter of Rights and Freedoms, 1982, s. 15.

Federal Court Rules, Rule 369.

Indian Act, R.S.C. 1985, c. I-5, ss. 2(1), 5(1), 5(3), 5(5), 6(1)(c), 8, 9(1), 9(2), 9(3), 9(5), 10(1), 10(2), 10(4), 10(5), 10(6), 10(7), 10(8), 10(9), 10(10), 11(1)(c), 11(2), 12(1)(b).

**Counsel:**

Martin J. Henderson, Lori A. Mattis, Catherine Twinn and Kristina Midbo, for the plaintiffs.

E. James Kindrake and Kathleen Kohlman, for the defendant.

Kenneth S. Purchase, for the intervener, Native Council of Canada.

P. Jon Faulds, for the intervener, Native Council of Canada (Alberta).

Michael J. Donaldson, for the intervener, Non-Status Indian Association of Alberta.

Mary Eberts, for the intervener, Native Women's Association of Canada.

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## REASONS FOR ORDER AND ORDER

**1 HUGESSEN J.:**-- 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 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. I-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 Plaintiffs' 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.

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.

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.)

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 sup-

port 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.

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.

...

- (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.
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; ....
- (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 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 rule, 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 create 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 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)(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."

**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 conjunc-

tion 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 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. 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 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.

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 Poitras, 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.

HUGESSEN J.

cp/e/qlaimdrs/d/qw/qlbdp/qlsdd/qljal

*Case Name:*  
**Sawridge Band v. Canada**

**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)**

[2004] F.C.J. No. 77

[2004] A.C.F. no 77

2004 FCA 16

2004 CAF 16

[2004] 3 F.C.R. 274

[2004] 3 R.C.F. 274

316 N.R. 332

[2004] 2 C.N.L.R. 316

128 A.C.W.S. (3d) 856

Docket A-170-03

Federal Court of Appeal  
Calgary, Alberta

**Rothstein, Noël and Malone JJ.A.**

Heard: December 15 and 16, 2003.

Judgment: January 19, 2004.

This is Exhibit "B" referred to in the  
Affidavit (or statutory declaration) of

Elizabeth Poitras

Sworn (or affirmed or declared)

before me this 7<sup>th</sup> day of

December A.D. 2011

A Commissioner for Oaths in and for Alberta

Brenda Lee Yuschyshyn

My Commission will

Expire June 4, 2014

(61 paras.)

**Counsel:**

Martin J. Henderson and Catherine Twinn, for the appellant.  
E. James Kindrake and Kathleen Kohlman, for the respondent.  
Kenneth Purchase, for the intervener, Native Council of Canada.  
P. Jon Faulds, for the intervener, Native Council of Canada, Alberta.  
Mary Eberts, for the intervener, Native Women's Association of Canada.  
Michael J. Donaldson, for the intervener, Non-status Indian Association of Alberta.

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The judgment of the Court was delivered by

**1 ROTHSTEIN J.A.:**-- 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;

(a) a person who

...

(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),

unless, being a woman, that person is the wife or widow of a person described in section 11; and

- (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.
- (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.

\* \* \*

12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites :

- a) une personne qui, selon le cas :

...

- (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),

sauf si, étant une femme, cette personne est l'épouse ou la veuve de quelqu'un décrit à l'article 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) 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 con- signé 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 Abo-

iginal 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 raises 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 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.

- (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.

\* \* \*

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) 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] 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.

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 pub-

lic 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*, loose-leaf (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.); *Samoila 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] F.C.J. No. 1186, 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.

ROTHSTEIN J.A.

NOËL J.A.:-- I agree.

MALONE J.A.:-- I agree.

cp/e/qw/qlklc/qlhcs

## SAWRIDGE INDIAN BAND MEMBERSHIP APPLICATION FORM

The answers in this membership questionnaire will be kept confidential and shall be disclosed only to those persons involved in the membership determination process as well as appropriate Band employees and advisors unless otherwise necessary in respect of a membership matter before the courts.

This questionnaire has been created to assist the Band Council in assessing applicants who are seeking or surrendering membership in the Band. The data provided will also assist the Band in the planning, including programs and services, required to accommodate members.

### INSTRUCTIONS

1. Please print or type.
2. Please answer all questions, or indicate why no answer is provided.
3. If more space is required to fully answer a question, please attach additional sheets and indicate which question it applies to.
4. Please attach a current colour passport photo of yourself.
5. Please attach supporting documents as indicated.
6. Please attach a copy of your treaty "status" card.
7. This application may be followed by an interview. Additional questions may be asked at the interview.

<b>1. APPLICATION FOR (CHECK ONE)</b>												
APPLICATION FOR MEMBERSHIP IN THE BAND BY NON-MEMBER												
APPLICATION BY MEMBER TO SURRENDER MEMBERSHIP IN THE BAND												
<b>2. IDENTIFICATION</b>												
<b>A. NAME</b>		FIRST			MIDDLE			LAST				
Other Names You Have Used (Maiden/Nicknames/Alias):												
<b>B. ADDRESS</b>												
<b>MAILING ADDRESS (if different):</b>												
<b>C. PHONE NUMBERS</b>				HOME			WORK					
<b>D. Sex</b>		MALE		FEMALE		<b>E. BIRTHDATE</b>		Month	Day	Year	Attach Certificate	Birth
<b>F. PLACE OF BIRTH</b>						<b>G. MARITAL STATUS</b>						
<b>H. YOUR SOCIAL INSURANCE NUMBER</b>												
<b>I. YOUR DRIVERS LICENSE NUMBER</b>												
<b>J. WHAT IS YOUR HEIGHT</b>						<b>K. WHAT IS YOUR WEIGHT</b>						
<b>L. IF THIS IS AN APPLICATION FOR MEMBERSHIP PLEASE EXPLAIN THE BASIS OF YOUR APPLICATION</b>												
<b>M. HAVE YOU EVER BEEN A MEMBER OF THE SAWRIDGE BAND?</b>								YES		NO		
If yes,	<b>HOW DID YOU BECOME A MEMBER?</b>											
	<b>WHEN DID YOU BECOME A MEMBER?</b>											
	<b>HOW DID YOU CEASE TO BE A MEMBER?</b>											
	<b>WHEN DID YOU CEASE TO BE A MEMBER?</b>											
	<b>HOW MUCH OF THE BAND'S MONEY DID YOU RECEIVE?</b>											
	<b>WHEN DID YOU RECEIVE IT?</b>				<b>HOW MUCH IS LEFT?</b>							

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

Elizabeth Poiras

Sworn (or affirmed or declared)

before me this 7<sup>th</sup> day of

December A.D. 20 11

1  
Trenda Lee Yuschyshyn  
My Commission will  
Expire June 4, 20 14

[Signature]  
A Commissioner for Oaths in and for Alberta

ARE YOU WILLING TO REPAY PRINCIPLE AMOUNT WITH INTEREST OF MONIES RECEIVED WHEN YOU ENFRANCHISED?								
IF YOU DID NOT RECEIVE ANY MONEY PLEASE EXPLAIN								
N. HAVE YOU EVER BEEN ADOPTED?							YES	NO
IF YES, PLEASE PROVIDE FULL DETAILS.								
<b>3. RESIDENCE AND STATUS</b>								
A. HAVE YOU EVER RESIDED ON THE SAWRIDGE INDIAN RESERVE?							YES	NO
IF YES, PROVIDE DETAILS								
DATES FROM				TO				
WHO WITH								
LOCATION								
B. WHERE HAVE YOU RESIDED SINCE BIRTH?								
DATES FROM	TO	ADDRESS	ON A RESERVE			LANGUAGE(S) SPOKEN	WITH WHOM (parents, siblings, others)	
BIRTH			YES	NO				
			YES	NO				
			YES	NO				
			YES	NO				
C. HAVE YOU EVER BEEN OR ARE YOU NOW A MEMBER OF ANY INDIAN BAND OTHER THAN SAWRIDGE?							YES	NO
IF YES PROVIDE DETAILS OF EACH BAND INCLUDING NAME								
DATE OF BEGINNING AND ENDING MEMBERSHIP								
HOW YOU BECAME A MEMBER?								
WHY YOU CEASED TO BE A MEMBER								
D. ARE YOU A STATUS INDIAN?							YES	NO
E. HAVE YOU ALWAYS BEEN A STATUS INDIAN?							YES	NO
F. INDICATE DURING WHAT PERIOD OR PERIODS YOU WERE A STATUS INDIAN								
G. DATE AND REASON FOR THE CHANGE IN STATUS								
<b>4. SPOUSES</b>								
A. LIST ALL SPOUSES' NAMES ATTACH MARRIAGE CERTIFICATE OR IF COMMON-LAW PROVIDE DETAILS OF COHABITATION		#1	#2			#3		
NAME PRIOR TO MARRIAGE								
B. MARRIED OR COMMON-LAW (PRESENT STATUS)	MARRIED			MARRIED			MARRIED	
	COMMON-LAW			COMMON-LAW			COMMON-LAW	
C. DATE OF MARRIAGE								
D. PLACE OF MARRIAGE								
E. SPOUSES' STATUS PRIOR	INDIAN			INDIAN			INDIAN	
	NON-STATUS			NON-STATUS			NON-STATUS	

<b>TO MARRIAGE</b>	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
<b>F. NUMBER OF CHILDREN</b>						
<b>G. DATE AND PLACE OF DIVORCE/SEPARATION</b> (PLEASE ATTACH DIVORCE JUDEMENTS)						
<b>H. CURRENT STATUS OF SPOUSE</b>	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
	DECEASED		DECEASED		DECEASED	
	DATE OF DEATH		DATE OF DEATH		DATE OF DEATH	

## 5. CHILDREN

LIST NAMES OF ALL YOUR CHILDREN (USE ADDITIONAL SHEETS IF NECESSARY)

<b>A. NAME</b>						
<b>B. SEX</b>	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
<b>C. BIRTHPLACE</b>						
<b>D. OTHER PARENT'S NAME</b>						
<b>E. BIRTHDATE</b>						
<b>F. YOUR STATUS AT BIRTH OF CHILD</b>	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
<b>G. CHILD'S STATUS AT BIRTH</b>	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
<b>H. CHILD'S CURRENT STATUS</b>	INDIAN		INDIAN		INDIAN	
	NON STATUS		NON STATUS		NON STATUS	
	BAND MEMBER		BAND MEMBER		BAND MEMBER	
	NAME OF BAND		NAME OF BAND		NAME OF BAND	
	DECEASED		DECEASED		DECEASED	
	DATE OF DEATH		DATE OF DEATH		DATE OF DEATH	
<b>I. REASON FOR CHANGE IN STATUS</b>						
<b>J. RELATIONSHIP TO CHILD</b>	BIOLOGICAL		BIOLOGICAL		BIOLOGICAL	
	ADOPTED		ADOPTED		ADOPTED	
	NON-ADOPTED		NON-ADOPTED		NON-ADOPTED	
	STEP CHILD		STEP CHILD		STEP CHILD	
<b>K. HAVE EACH OF YOUR CHILDREN RESIDED WITH YOU SINCE BIRTH, AND HAVE YOU PROVIDED FOR THE CHILD SINCE BIRTH?</b>					YES	NO
IF NO, PLEASE PROVIDE DETAILS:						
<b>L. HAVE ANY OF YOUR CHILDREN EVER BEEN APPHREHENDED OR PLACED IN CARE?</b>					YES	NO
IF YES, PROVIDE DETAILS						
<b>M. HAVE ANY OF YOUR CHILDREN EVER BEEN THE SUBJECT OF A GUARDIANSHIP ORDER?</b>					YES	NO
IF YES, PROVIDE DETAILS:						

N. HAVE ANY OF YOUR CHILDREN EVERY BEEN ADOPTED OR PUT UP FOR ADOPTION? YES  NO

IF YES,	NAME OF CHILD(REN)			
	BIRTHDATE(S)			
	REASONS FOR ADOPTION			
	DATE OF ADOPTION(S)			

ADOPTING PARENT A RELATIVE YES  NO

O. NAME OF ADOPTING PARENT(S)  
(IF KNOWN)

**6. GENEALOGY**

FOR EACH OF YOUR PARENTS AND GRANDPARENTS, PLEASE PROVIDE THE INFORMATION SET OUT BELOW OR, IF YOU HAVE A GENEALOGY WHICH CONTAINS THIS INFORMATION, PLEASE PROVIDE A COPY:

- FULL NAME
- ANY ALIASES (INCLUDING MAIDEN NAME)
- RELATIONSHIP INCLUDING WHETHER BIOLOGICAL, ADOPTED OR STEP
- BIRTHDATE (COPY OF BIRTH CERTIFICATE)
- STATUS AT BIRTH (NON STATUS, INDIAN, BAND MEMBER (NAME OF BAND) OTHER)
- HOW STATUS ATTAINED (NON-STATUS, INDIAN, BAND MEMBER, ETC).
- MARITAL STATUS AT TIME OF YOUR BIRTH
- CURRENT STATUS (NON-STATUS, INDIAN, BAND MEMBER, ETC.)
- IF STATUS CHANGED, EXPLAIN
- LANGUAGE SPOKEN
- LEVEL OF EDUCATION ACHIEVED
- CONNECTION OR POSITION HELD IN THE BAND OR COMMUNITY.
- IF DECEASED, DATE OF DEATH

**7. SIBLINGS (USE ADDITIONAL SHEETS FOR ADDITIONAL BROTHERS AND SISTERS)**

A. HOW MANY BROTHERS DO YOU HAVE?				
B. NAME OF EACH BROTHER		#1	#2	#3
C. BIRTHDATE				
D. BIRTHPLACE				
E. FULL, HALF BROTHER, OR STEP	FULL		FULL	FULL
	HALF		HALF	HALF
	STEP		STEP	STEP
F. IF HALF OR STEP, WHICH PARENT IS COMMON	FATHER		FATHER	FATHER
	MOTHER		MOTHER	MOTHER
G. HOW MANY SISTERS DO YOU HAVE?				
H. NAME OF EACH SISTER		#1	#2	#3
I. BIRTHDATE				
J. BIRTHPLACE				
K. FULL, HALF SISTER, OR STEP	FULL		FULL	FULL
	HALF		HALF	HALF
	STEP		STEP	STEP
L. IF HALF OR STEP, WHICH PARENT IS COMMON	FATHER		FATHER	FATHER
	MOTHER		MOTHER	MOTHER

<b>8. FINANCIAL</b>	
A. WHAT RESOURCES ARE AVAILABLE TO YOU?	
B. WHAT ARE YOUR MEANS AND RESOURCES?	
C. ARE YOU LIVING WITHIN YOUR MEANS?	
D. ARE YOU SELF-SUFFICIENT? (IF NO, PLEASE EXPLAIN)	
E. DO YOU HAVE ANY DEPENDANTS? IF SO, HOW MANY?	
F. DO YOU OR ANY DEPENDANTS HAVE SPECIAL NEEDS? IF SO, PLEASE EXPLAIN.	
<b>9. CRIMINAL AND DRIVERS RECORD</b>	
A. LIST THE OFFENCE(S), OFFENCE DATE(S), CONVICTION DATE(S), AND SENTENCE(S).	USE ADDITIONAL SHEET IF NECESSARY
B. HAS YOUR DRIVER'S LICENSE EVEN BEEN SUSPENDED?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IF YES, PLEASE PROVIDE DETAILS INCLUDING DURATION, REASON(S), AND DETAIL(S) OF REINSTATEMENT	USE ADDITIONAL SHEET IF NECESSARY
<b>10. EMPLOYMENT HISTORY</b>	
STARTING WITH YOUR MOST RECENT JOB, LIST EVERY JOB (FULL TIME/YEAR ROUND) WHICH YOU HAVE HAD. (USE ADDITIONAL SHEET IF NECESSARY). HAVE YOU BEEN REGULARLY EMPLOYED?	
A. LIST YOUR SIGNIFICANT EMPLOYMENT RELATIONSHIPS, DATES AND REASON FOR LEAVING	
B. LIST ANY EXPERTISE AND INTEREST AND ANY EXPERIENCE AND TRAINING IN THESE AREAS	
C. WHAT AGE DID YOU ENTER THE WORKPLACE?	
<b>11. BACKGROUND &amp; PERSONAL INTERESTS (CAN BE DONE IN WRITING ON SEPARATE SHEET OR ORALLY THROUGH RECORDING DEVICE)</b>	
A. WHAT DO YOU KNOW ABOUT THE HISTORY OF THE SAWRIDGE INDIAN BAND (PRE-TREATY AND POST-TREATY)? WHAT ARE THE SOURCES OF YOUR KNOWLEDGE?	
B. WHAT ARE YOUR UNDERSTANDINGS OF THE TREATY AND TREATY LAW?	
C. WHAT DO YOU KNOW ABOUT THE CUSTOMS, THE LAWS, THE CULTURE, TRADITIONS AND PRACTICES VALUES AND PRINCIPLES OF THE SAWRIDGE INDIAN BAND	
D. WHO DO YOU HAVE A MEANINGFUL RELATIONSHIP WITH SOMEONE WHO IS A MEMBER OF THE SAWRIDGE INDIAN BAND? (PROVIDE NAMES, HOW LONG YOU HAVE KNOWN, AND DESCRIBE YOUR ACTIVITIES AND RELATIONSHIPS WITH EACH PERSON AS WELL AS THE HISTORY OF THAT RELATIONSHIP. ALSO INDICATE IF THAT PERSON IS A RELATIVE AND WHAT RELATION THEY ARE TO YOU).	
E. DO ANY CURRENT BAND MEMBERS SUPPORT YOUR BID FOR MEMBERSHIP? (FOR APPLICATIONS FOR MEMBERSHIP ONLY). IF YES, PLEASE PROVIDE THE NAME OR NAMES OF SUPPORTERS AND A LETTER SETTING OUT THEIR SUPPORT.	<input type="checkbox"/> YES <input type="checkbox"/> NO

- F. HOW WOULD YOU DESCRIBE YOUR LIFESTYLE?
- G. WHAT IS YOUR CURRENT INVOLVEMENT WITH THE BAND?
- H. WHAT ARE YOUR HOBBIES?
- I. WHAT ARE YOUR OTHER RECREATIONAL ACTIVITIES?
- J. WHAT DO YOU HOLD AS MOST IMPORTANT AND VALUABLE? WHY?
- K. DESCRIBE YOUR ATTITUDE TOWARDS THE BAND, ITS MEMBERS AND THE COUNCIL.
- L. WHAT DO YOU SEE AS YOUR ROLE AND RESPONSIBILITY AS A BAND MEMBER?

**12. FUTURE PLANS** (CAN BE DONE IN WRITING ON SEPARATE SHEETS OR ORALLY THROUGH A RECORDING DEVICE).

- A. WHY DO YOU WISH TO BECOME A MEMBER OF THE SAWRIDGE INDIAN BAND?
- B. WHAT ARE YOUR PLANS FOR THE FUTURE? (INCLUDING PLANS FOR RESIDENCY, EMPLOYMENT, OCCUPATION, EDUCATION, RETIREMENT, TRAVEL, MARRIAGE, FAMILY, RECREATION, ETC.).

**13. EDUCATION**

- A. PROVIDE A DETAILED HISTORY OF YOUR EDUCATION BOTH FORMAL AND TRADITIONAL
- B. ARE YOU WILLING UPON REQUEST TO PROVIDE A TRANSCRIPT OF ALL OF YOUR SECONDARY AND POST-SECONDARY EDUCATION, IF ANY.
- C. HONOURS, AWARDS, DISTINCTIONS, SCHOLARSHIPS, MERITS
- D. IF YOUR LEARNING WAS INTERRUPTED OR YOU WERE UNABLE TO COMPLETE EXPLAIN
- E. PLEASE PROVIDE A DETAILED HISTORY OF ALL OF YOUR EXTRA CURRICULAR ACTIVITIES
- F. WHAT ARE YOUR PLANS FOR FUTURE EDUCATION, IF ANY?

**14. HEALTH AND WELLNESS** (PLEASE NOTE THAT YOUR HEALTH IS IMPORTANT TO THE BAND, BUT IT IS NOT A SINGLY DETERMINATIVE FACTOR IN MAKING A DECISION ON MEMBERSHIP). THESE QUESTIONS CAN HELP DETERMINE WHETHER THE BAND NEEDS TO APPLY FOR FUTURE GRANTS, FUNDING, ETC.

- A. WHAT IS THE CONDITION OF YOUR HEALTH?
- B. DO YOU HAVE ANY PROBLEMS? LIST
- C. DO YOU HAVE ANY PHYSICAL OR MENTAL DISABILITIES (INCLUDING EMOTIONAL)?
 

YES		NO	
-----	--	----	--
- IF YES, EXPLAIN
- D. HAVE YOU EVER HAD ANY ALCOHOL OR DRUG RELATED ADDICTIONS OR ILLNESS?
 

YES		NO	
-----	--	----	--
- IF YES PLEASE EXPLAIN
- E. HAVE YOU EVER SUFFERED FROM MENTAL ILLNESS?
 

YES		NO	
-----	--	----	--
- IF YES (PLEASE EXPLAIN)

F. HOW DO YOU DEFINE YOUR PERSONAL WELLNESS AND HOW CAN YOU CONTRIBUTE TO THE WELLNESS OF THE SAWRIDGE INDIAN BAND?

G. WHAT IS YOUR PRESENT CODE OF CONDUCT?

**15. CONTRIBUTIONS**

PLEASE WRITE A BRIEF STATEMENT OR ORALLY RECORD YOUR ANSWER ON A RECORDING DEVICE ABOUT:

A. YOUR ROLE, PLACE AND RESPONSIBILITIES IN THE LIFE AND HEALTH OF THE COMMUNITY.

B. WHERE YOU CAN BEST CONTRIBUTE, INCLUDING CONTRIBUTIONS TO THE BAND.

C. THE SPIRITUAL VALUES AND PRINCIPLES THAT YOU LIVE BY AND ASPIRE TO IN ALL YOUR RELATIONSHIPS.

D. WHAT SUPPORT YOU HOPE FOR FROM THE BAND.

E. DESCRIBE THE RELATIONSHIP AND SUPPORT SYSTEM YOU HAVE WITH OUR FAMILY MEMBERS.

**16. REFERENCES (FOR THOSE SEEKING MEMBERSHIP ONLY)**

PLEASE PROVIDE FOUR LETTERS OF REFERENCE.

**17. PROBATIONARY PERIOD (FOR THOSE SEEKING MEMBERSHIP ONLY)**

A. ARE YOU PREPARED TO COME TO THE COMMUNITY TO PARTICIPATE AND/OR ASSIST THE BAND?  YES  NO

B. WHAT DO YOU FEEL DURING THE PERIOD THIS APPLICATION IS BEING ASSESSED YOU COULD DO TO CONTRIBUTE TO THE BAND AND TO SHOW YOUR COMMITMENT?

C. ARE YOU WILLING TO PARTICIPATE IN A COMMUNITY WELLNESS BUILDING PROCESS AS A CONDITION TO THIS APPLICATION AND/OR THE GRANTING OF MEMBERSHIP?  YES  NO

D. WHAT IS YOUR UNDERSTANDING OF THE RIGHT, OBLIGATIONS AND RESPONSIBILITIES OF MEMBERSHIP?

**18. FAMILY**

A. HOW OFTEN DO YOU VISIT OR TALK TO FAMILY MEMBERS AND WHAT ACTIVITIES DO YOU SHARE WITH THEM?

**19. GENERAL**

A. HOW DO YOU IDENTIFY YOURSELF?

B. DID YOU HAVE ANY ASSISTANCE IN COMPLETING THIS APPLICATION?  YES  NO

IF YES, WHO ASSISTED YOU?

**20. DO YOU HAVE ANY QUESTIONS, CONCERNS, OR COMMENTS?**

**CERTIFICATION**

I certify that all of the information provided in this application is complete and true. I understand that if any of the information provided is found to be false or misleading then this shall be sufficient grounds for the denial of my application, or if the application has been approved then it shall be sufficient grounds for the reversal of my application at the option of the Band at any time in the future. Such denial or reversal shall be final; there shall be no right of appeal and no right to reapply after any such denial or reversal. I hereby authorize Sawridge Indian Band to obtain any and all factual information regarding me from other persons, organizations, institutions, or government agencies. I hereby authorize any person, organization, institution, or government agency who has any information regarding me to release that information regarding me in confidence to the Sawridge Indian Band.

Dated at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Applicant Name

\_\_\_\_\_  
Applicant Signature

I was present and did see \_\_\_\_\_, the applicant herein sign above.  
(PLEASE PRINT)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

COPY

SAWRIDGE MEMBERSHIP RULES

1. These Rules shall come into force on the day on which the Band gives notice to the Minister pursuant to subsection 10(6) of the Act. [PASSED JULY 4, 1985]

2. On and after the day these Rules come into force the Band List of the Band shall be maintained by the Band under the direction and supervision of the Band Council and only those persons whose names are included therein, or who have rights to have their names entered therein, pursuant to these rules shall be members of the Band. [PASSED JULY 4, 1985]

3. Each of the following persons shall have a right to have his or her name entered in the Band List; [PASSED JULY 4, 1985]

(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;

(b) a natural child of parents both of whose names are entered on the Band List;

(c) with the consent of the Band Council, any person who

- (i) has applied for membership in the Band;
- (ii) is entitled to be registered in the Indian Register pursuant to the

Act;

(iii) is the spouse of a member of the Band, and

(iv) is not a member of another band;

(d) with the consent of the Band Council, any person who

(i) has applied for membership in the Band,

(ii) was born after the date these rules come into force, and

This is Exhibit "D" referred to in the Affidavit (or statutory declaration) of

Elizabeth Poiras

Sworn 'or affirmed or declared)

before me this 7 day of

December A.D. 20 11

[Signature]  
A Commissioner for Oaths in and for Alberta

Brenda Lee Yuschyshyn

My Commission will  
Expire June 4, 20 14

COPY

(iii) is the natural child of a member of the Band, and

(e) any member of another band admitted into membership of the Band with the consent of the council of both bands and who thereupon ceases to be a member of the other band.

4. For the purpose of section 3(a)(i) and section 6 the question whether a person is lawfully resident on the reserve shall be determined exclusively by reference to by-laws made by the Band Council pursuant to section 81 of the Act except that, at any time when there are no such applicable by-laws in force, no person shall be considered to be lawfully resident on the reserve for the purpose of section 3(a)(i) and section 6 unless the residence of such person on the reserve has been approved or ratified by a resolution of the Band Council that is expressed to be made for the purpose of these Rules. **[PASSED JULY 4, 1985]**

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. **[PASSED JULY 4, 1985]**

6. The Band Council may at any time delete from the Band List the name of any person who has applied to the Band Council to have his or her name deleted from the Band List or the name of any person who is not then lawfully resident on the reserve and who, in the judgment of the Band Council, either does not have a significant commitment to the history, customs, traditions, culture and communal life of the Band or has a character or lifestyle that would cause his or her continued membership in the Band to be seriously detrimental to the future welfare or advancement of the Band; provided that, before a decision to delete the name of any person from the Band List is made under this section, otherwise than pursuant to an application by such person, the Band Council shall give fifteen days notice to such person who shall then be entitled to make representation to the Band Council in writing, in person or through an agent or counsel within such period of fifteen days. **[PASSED JULY 4, 1985]**

7. Where the name of a person is deleted from the Band List pursuant to section 6, the names of his or her minor children may, in the discretion of the Band Council, also be deleted from the Band List. **[PASSED JULY 4, 1985]**

8. Notwithstanding section 6 the Band Council shall delete from the Band List the name of any person who has been admitted into membership of another band with the consent of both the Band council and the admitting band. **[PASSED JULY 4, 1985]**

9. Except as otherwise expressly provided in these Rules, no application shall be required before the Band Council may enter in the Band List the name of any person who has a right to have his or her name entered in the Band List pursuant to these Rules. **[PASSED JULY 5, 1985]**

10. Where, pursuant to section 3 of these Rules, an application is required before a person has a right to have his or her name entered in the Band List, such application may be made in such manner and form as the Band Council may determine from time to time and, for greater certainty, the Band Council may permit applications to be made

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under section 3(d) by a parent or guardian of a natural child referred to therein who is an infant at the time the application is made. **[PASSED JULY 5, 1985]**

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and at 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. **[PASSED JULY 5, 1985]**

12. Any person whose application for membership in the Band pursuant to section 3 of these Rules has been denied, or whose name has been deleted from the Band List pursuant to section 6, by the Band Council may appeal such decision to the electors of the Band by delivering notice in writing to the Band Council at the office of the Band within 15 days after communication to him or her of the decision of the Band Council. **[PASSED JULY 5, 1985]**

13. Within 60 days after receipt of a notice of appeal pursuant to section 12 of these Rules the Band Council shall convene a meeting of the electors of the Band for the purpose of disposing of the appeal and the applicant shall be entitled to be present at such meeting and make representations thereto in person or through an agent or counsel. **[PASSED JULY 5, 1985]**

14. Each discretionary power conferred upon the Band Council under these rules shall be exercised by the Band Council in good faith, without discrimination on the basis of sex and in accordance with its judgment of the best interests and welfare of the Band. **[PASSED JULY 5, 1985]**

15. No person shall have a right to have his or her name entered in the Band List except as provided in section 3 of these Rules **[PASSED JULY 5, 1985]** and, for greater certainty, no person shall be entitled to have his or her name included in the Band List unless that person has, at some time after July 4, 1985, had a right to have his or her name entered in the Band List pursuant to these Rules. **[PASSED JUNE 24, 1987]**

16. In the event that any of the foregoing provisions of these Rules is held by a court of competent jurisdiction to be invalid in whole or in part on the ground that it is not within the power of the Band to exclude any particular person or persons from membership in the Band, these Rules shall be construed and shall have effect as if they contained a specific provision conferring upon each such person a right to have his or her name entered in the Band List, but for greater certainty, no other person shall have a right to have his or her name entered or included in the Band List by virtue of the provisions of this Section and, in particular, no person referred to in Subsection 11(2) of the Act shall be entitled to membership in the Band otherwise than pursuant to Section 3 of these Rules. **[PASSED JUNE 24, 1987]**

17. In the event that any provision, or part of any provision, of these Rules is held to be invalid or of no binding force or effect by any court of competent jurisdiction, these Rules shall be construed and applied as if such provision or part thereof did not apply to or in the circumstances giving rise to such invalidity and the effect of the remaining provisions, or parts thereof, of these Rules shall not be affected thereby. **[PASSED JUNE 24, 1987]**



CANADA

CONSOLIDATION

CODIFICATION

## Indian Act

## Loi sur les Indiens

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

L.R.C., 1985, ch. I-5

Current to February 20, 2012

À jour au 20 février 2012

Last amended on January 31, 2011

Dernière modification le 31 janvier 2011

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Application for entry	<p>(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.</p> <p>R.S., 1985, c. I-5, s. 9; R.S., 1985, c. 32 (1st Supp.), s. 4.</p>	<p>(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné, à moins qu'une demande à cet effet soit présentée au registraire.</p> <p>L.R. (1985), ch. I-5, art. 9; L.R. (1985), ch. 32 (1<sup>er</sup> suppl.), art. 4.</p>	Demande
Band control of membership	<p><b>10.</b> (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.</p>	<p><b>10.</b> (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.</p>	Pouvoir de décision
Membership rules	<p>(2) A band may, pursuant to the consent of a majority of the electors of the band,</p> <p>(a) after it has given appropriate notice of its intention to do so, establish membership rules for itself; and</p> <p>(b) provide for a mechanism for reviewing decisions on membership.</p>	<p>(2) La bande peut, avec l'autorisation de la majorité de ses électeurs :</p> <p>a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs;</p> <p>b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs.</p>	Règles d'appartenance
Exception relating to consent	<p>(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.</p>	<p>(3) Lorsque le conseil d'une bande prend, en vertu de l'alinéa 81(1)p.4), un règlement administratif mettant en vigueur le présent paragraphe à l'égard de la bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande âgés d'au moins dix-huit ans.</p>	Statut administratif sur l'autorisation requise
Acquired rights	<p>(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.</p>	<p>(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.</p>	Droits acquis
Idem	<p>(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.</p>	<p>(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.</p>	Idem
Notice to the Minister	<p>(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</p>	<p>(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le ministre du fait que celle-ci décide désormais de l'appartenance à ses effec-</p>	Avis au ministre

assuming control of its own membership and shall provide the Minister with a copy of the membership rules for the band.

tifs et lui transmet le texte des règles d'appartenance.

Notice to band and copy of Band List

(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

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies :

Transmission de la liste

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

a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs;

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

b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

Effective date of band's membership rules

(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.

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au ministre a été donné en vertu du paragraphe (6); les additions ou retranchements effectués par le registraire à l'égard de la liste de la bande après cette date ne sont valides que s'ils sont effectués conformément à ces règles.

Date d'entrée en vigueur des règles d'appartenance

Band to maintain Band List

(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.

(9) À compter de la réception de l'avis prévu à l'alinéa (7)b), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le ministre, à compter de cette date, est dégagé de toute responsabilité à l'égard de cette liste.

Transfert de responsabilité

Deletions and additions

(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.

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste.

Additions et retranchements

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché.

Date du changement

R.S., 1985, c. I-5, s. 10; R.S., 1985, c. 32 (1st Supp.), s. 4.

L.R. (1985), ch. I-5, art. 10; L.R. (1985), ch. 32 (1<sup>er</sup> suppl.), art. 4.

Membership rules for Departmental Band List

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

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 :

Règles d'appartenance pour une liste tenue au ministère

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have it entered in the Band List for that band, immediately prior to April 17, 1985;

a) son nom a été consigné dans cette liste, ou elle avait droit à ce qu'il le soit le 16 avril 1985;

Clerk's stamp:



COURT FILE NUMBER 1103 14112  
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

**SUPPLEMENTAL AFFIDAVIT OF PAUL  
BUJOLD on advice and direction in the  
1985 trust**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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

Attention: Doris C.E. Bonora  
Telephone: (780) 425-9510  
Fax: (780) 429-3044  
File No: 108511-001-DCEB

**SUPPLEMENTAL AFFIDAVIT OF PAUL BUJOLD**

**Sworn on September 30, 2011**

I, Paul Bujold, of Edmonton, Alberta swear and say that:

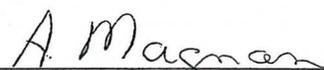
1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985

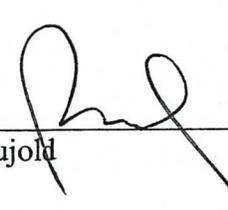
Trust”) and the Sawridge Band Trust created in 1986 (hereinafter referred to as the “1986 Trust”), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust. This affidavit is supplemental to the affidavit sworn by me on September 12, 2011 in the within proceedings (hereinafter referred to as the “Original Affidavit”). The defined terms in the Original Affidavit have the same meaning herein.
3. There are currently 41 members of the Sawridge First Nation, all of whom are older than 18 years of age (hereinafter referred to as the “Sawridge Members”). The Sawridge Members are, by definition, the only beneficiaries of the 1986 Trust.
4. The Sawridge Members currently have 31 dependant children younger than 18 years of age (hereinafter referred to as the “Minor Dependants”). Twenty-three of the Minor Dependants qualify as beneficiaries of the 1985 Trust (hereinafter referred to as the “1985 Minor Beneficiaries”), and there are no other beneficiaries of the 1985 Trust younger than 18 years of age. The other eight Minor Dependants do not qualify as beneficiaries of the 1985 Trust.
5. Exhibit “L” of the Original Affidavit is a summary chart of recommendations taken from the Four Worlds report, which chart identifies the types of programs, services and other benefits that should be offered to the beneficiaries of the Sawridge Trusts. These programs, services and other benefits will be offered equally to the beneficiaries of the 1985 Trust and the 1986 Trust. Further, these programs, services and other benefits will be offered not only to the beneficiaries of the 1985 Trust and 1986 Trust, but to the Minor Dependants as well, regardless of their status as a beneficiary under either of the Sawridge Trusts, so long as they are under 18 years of age.
6. For example, the same programs, services and other benefits that will be offered to the 1985 Minor Beneficiaries will also be offered to the eight Minor Dependants who do not

qualify as beneficiaries of the 1985 Trust. This is because the programs, services and other benefits are offered equally between the 1985 Trust and the 1986 Trust, and the eight Minor Dependants that do not qualify as beneficiaries under the 1985 Trust will nonetheless have these benefits offered to them because they are dependants of beneficiaries of the 1986 Trust.

SWORN before me at Edmonton  
in the Province of Alberta,  
on the 30th day of September, 2011.

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

}   
\_\_\_\_\_  
Paul Bujold

Catherine A. Magnan  
My Commission Expires  
January 29, 2012

822774; September 30, 2011

COURT FILE NUMBER

COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE



Clerk's stamp:

1103 14112

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

**Affidavit of Paul Bujold for Procedural  
Order**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Attention: Doris C.E. Bonora

Reynolds, Mirth, Richards & Farmer LLP

3200 Manulife Place

10180 - 101 Street

Edmonton, AB T5J 3W8

Telephone: (780) 425-9510

Fax: (780) 429-3044

File No: 108511-001-DCEB

**AFFIDAVIT OF PAUL BUJOLD**

Sworn on August 30, 2011

I, Paul Bujold, of Edmonton, Alberta swear and say that:

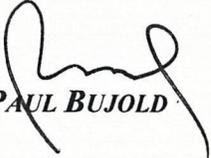
1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985 Trust") and the Sawridge Band Trust created in 1986 (hereinafter referred to as the "1986 Trust"), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I make this affidavit in support of an application for setting the procedure for seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust.
3. On April 15, 1982, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "A" to this my affidavit ("1982 Trust").
4. On April 15, 1985, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "B" to this my affidavit ("1985 Trust").
5. On August 15, 1986, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "C" to this my affidavit ("1986 Trust").
6. The Trustees of the 1985 Trust have been managing substantial assets, some of which were transferred from the 1982 Trust, and wish to make some distributions to the Beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees of the 1985 Trust with respect to the following:
  - a. Determining the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary varying the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".
  - b. Seeking direction with respect to the transfer of assets to the 1985 Sawridge Trust.
7. In order to determine the beneficiaries of the 1985 Trust, the Trustees of the 1985 Trust directed me to place a series of advertisements in newspapers in Alberta, Saskatchewan, Manitoba and British Columbia to collect the names of those individuals who may be beneficiaries of the 1985 Trust.
8. As a result of these advertisements I have received notification from a number of individuals who may be beneficiaries of the 1985 Trust.
9. I have corresponded with the potential beneficiaries of the 1985 Trust and such correspondence is attached hereto as Exhibit "D".
10. I have compiled a list of the following persons who I believe may have an interest in the application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust:
  - a. Sawridge First Nation;

- b. All of the registered members of the Sawridge First Nation;
  - c. All persons known to be beneficiaries of the 1985 Sawridge Trust and all former members of the Sawridge First Nation who are known to be excluded by the definition of "Beneficiaries" in the 1986 Sawridge Trust, but who would now qualify to apply to be members of the Sawridge First Nation;
  - d. All persons known to have been beneficiaries of the Sawridge Band Trust dated April 15, 1982 (hereinafter referred to as the "1982 Sawridge Trust"), including any person who would have qualified as a beneficiary subsequent to April 15, 1985;
  - e. All of the individuals who have applied for membership in the Sawridge First Nation;
  - f. All of the individuals who have responded to the newspaper advertisements placed by the Applicants claiming to be a beneficiary of the 1985 Sawridge Trust;
  - g. Any other individuals who the Applicants may have reason to believe are potential beneficiaries of the 1985 Sawridge Trust;
  - h. The Office of the Public Trustee of Alberta (hereinafter referred to as the "Public Trustee") in respect of any minor beneficiaries or potential minor beneficiaries;  
  
(those persons mentioned in Paragraph 10 (a) – (h) are hereinafter collectively referred to as the "Beneficiaries and Potential Beneficiaries"); and
  - i. Those persons who regained their status as Indians pursuant to the provisions of *Bill C-31* (An Act to amend the *Indian Act*, assented to June 28, 1985) and who have been deemed to be affiliated with the Sawridge First Nation by the Minister of Aboriginal Affairs and Northern Development Canada (hereinafter referred to as the "Minister").
11. The list of Beneficiaries and Potential Beneficiaries consists of 194 persons. I have been able to determine the mailing address of 190 of those persons. Of the four individuals for whom I have been unable to determine a mailing address, one is a person who applied for membership in the Sawridge First Nation but neglected to provide a mailing address when submitting her application. The other three individuals are persons for whom I have reason to believe are potential beneficiaries of the 1985 Trust and whose mother is a current member of the Sawridge First Nation.
12. With respect to those individuals who regained their status as Indians pursuant to the provisions of *Bill C-31* and who have been deemed to be affiliated with the Sawridge First Nation by the Minister, the Minister will not provide us with the current list of these individuals nor their addresses, citing privacy concerns. These individuals are not members of the Sawridge First Nation but may be potential beneficiaries of the 1985 Trust due to their possible affiliation with the Sawridge First Nation.
13. A website has been created and is located at [www.sawridgetrust.ca](http://www.sawridgetrust.ca) (hereinafter referred to as the "Website"). The Beneficiaries and Potential Beneficiaries and the Minister have

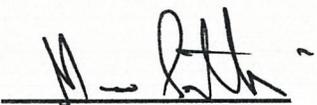
access to the Website and it can be used to provide notice to the Beneficiaries and Potential Beneficiaries and the Minister and to make information available to them.

14. The Trustees seek this Court's direction in setting the procedure for seeking the opinion, advice and direction of the Court in regard to:
- a. Determining the Beneficiaries of the 1985 Trust.
  - b. Reviewing and providing direction with respect to the transfer of the assets to the 1985 trust.
  - c. Making any necessary variations to the 1985 Trust or any other Order it deems just in the circumstances.

SWORN OR AFFIRMED BY THE DEPONENT BEFORE A COMMISSIONER FOR OATHS  
AT EDMONTON, ALBERTA ON AUGUST 30, 2011.

  
**PAUL BUJOLD**

810070; August 29, 2011  
810070; August 30, 2011

  
\_\_\_\_\_  
Commissioner's Name:  
Appointment Expiry Date:  
**MARCO S. PORETTI**  
Barrister & Solicitor

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

Paul Bujold

Sworn before me this 30 day of August A.D., 2011

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

**MARCO S. PORETTI**

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

1982.

This Declaration of Trust made the 15th day of April, A.D.

BETWEEN:

**CHIEF WALTER PATRICK TWINN**  
of the Sawridge Indian Band  
No. 19, Slave Lake, Alberta

(hereinafter called the "Settlor")

of the First Part

AND:

**CHIEF WALTER PATRICK TWINN,**  
**WALTER FELIX TWINN and GEORGE TWINN**  
Chief and Councillors of the  
Sawridge Indian Band No. 150 G & R respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

Whereas the Settlor is Chief of the Sawridge Indian Band No. 19, and in that capacity has taken title to certain properties on trust for the present and future members of the Sawridge Indian Band No. 19 (herein called the "Band"); and,

Whereas it is desirable to provide greater detail for both the terms of the trust and the administration thereof; and,

Whereas it is likely that further assets will be acquired on trust for the present and future members of the Band, and it is desirable that the same trust apply to all such assets;

NOW, therefore, in consideration of the premises and mutual promises contained herein, the Settlor and each of the Trustees do hereby covenant and agree as follows:

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.
2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions properly made therefrom by the Trustees.
3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.
4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.
5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

through 80 inclusive of the Indian Act, R.S.C. 1970, c. I-6, as amended from time to time. Upon ceasing to be an elected Chief or Councillor as aforesaid, a Trustee shall ipso facto cease to be a Trustee hereunder; and shall automatically be replaced by the member of the Band who is elected in his stead and place. In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased, it being the intention that the Chief and all Councillors should be Trustees. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

6. The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of twenty one (21) years after the death of the last descendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and

their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries set out above; and the Trustees may make such payments at such time, and from time to time, and in such manner as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investment authorized for Trustees' investments by The Trustees' Act, being Chapter 373 of the Revised Statutes of Alberta 1970, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or desirable to give effect to the trust purposes set out above,

and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power

- a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and
- c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by Federal, Provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them

by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take with notice of and subject to this clause.

12. A majority of the Trustees shall be required for any action taken on behalf of the Trust. In the event that there is a tie vote of the Trustees voting, the Chief shall have a second and casting vote.

Each of the Trustees, by joining in the execution of this Trust Agreement, signifies his acceptance of the Trust herein. Any Chief or Councillor or any other person who becomes a Trustee under paragraph 5 above shall signify his acceptance of the Trust herein by executing this Trust Agreement or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Trust Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Trust Agreement.

SIGNED, SEALED AND DELIVERED  
In the Presence of:

Deather Spk  
NAME

1100 One Thornton Court  
ADDRESS

A. Settlor: Walter P. J.

Deather Spk  
NAME

1100 One Thornton Court  
ADDRESS

B. Trustees: 1. Walter P. J.

Weather Upk  
NAME

1100 One Fronton Court  
ADDRESS

Weather Upk  
NAME

1100 One Fronton Court  
ADDRESS

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

2. Q/1/5

3. Walter F. ...

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

Paul Bujold

before me this 30 day

August A.D., 2011

[Signature]

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

SAWRIDGE BAND INTER VIVOS SETTLEMENT MARCO S. PORETTI

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15th day of April, 1985

B E T W E E N :

CHIEF WALTER PATRICK TWINN, of the Sawridge Indian Band, No. 19, Slave Lake, Alberta, (hereinafter called the "Settlor"),

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN, GEORGE V. TWIN and SAMUEL G. TWIN, of the Sawridge Indian Band, No. 19, Slave Lake, Alberta, (hereinafter collectively called the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day

of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Settlement, the following terms shall be interpreted in accordance with the following rules:

- (a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time

would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band

No 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement; and

(b) "Trust Fund" shall mean:

- (A) the property described in the Schedule hereto and any accumulated income thereon;
- (B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;
- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and
- (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

- (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and
- (c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED in the presence of:

Bruce & Thom  
NAME

A. Settlor

[Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Bruce & Thom  
NAME

B. Trustees:

1. [Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Bruce & Thom  
NAME

2. [Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Bruce & Thom  
NAME

3. [Signature]

Box 326, Slave Lake, Alta  
ADDRESS

Schedule

One Hundred Dollars (\$100.00) in Canadian Currency.

Exhibit " C " referred to in the Affidavit of

Paul Bujold

before me this 30 day

August A.D., 2011

*M. A. H.*

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

THE SAWRIDGE TRUST  
DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

MARCO S. PORETTI

BETWEEN:

CHIEF WALTER P. TWINN,  
of the Sawridge Indian Band, No. 19, Slave Lake, Alberta  
(hereinafter called the "Settlor")

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,  
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Deed, the following terms shall be interpreted in accordance with the following rules:

(a) "Beneficiaries" at any particular time shall mean 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) "Trust Fund" shall mean:

(A) the property described in the Schedule attached hereto and any accumulated income thereon;

(B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed;

- 3 -

- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Deed;
- (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted; and
- (E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell, lease or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed.

4. The name of the Trust Fund shall be "The Sawridge Trust" and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, the Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

- 5 -

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner or to any extent detracted from the generality of the foregoing, the power

- (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

- 6 -

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with this Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of this Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provision of this Deed may be amended from time to time by a resolution of the Trustees that received the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

- 7 -

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

15. Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Trust shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

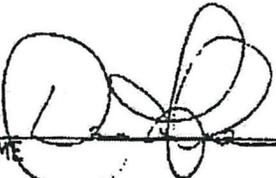
IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED  
in the presence of:

  
NAME

#1-12220 Stony Plain Road, Alta.  
ADDRESS

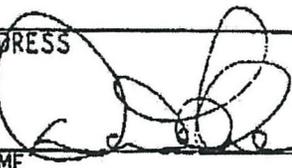
A. Settlor Walter P. Twinn  
CHIEF WALTER P. TWINN

  
NAME

B. Trustees:

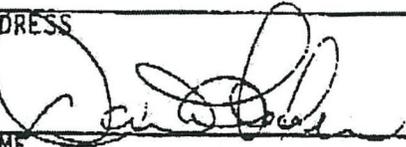
1. Walter P. Twinn  
CHIEF WALTER P. TWINN

ADDRESS

  
NAME

2. Catherine M. Twinn  
CATHERINE TWINN

ADDRESS

  
NAME

3. George Twinn  
GEORGE TWINN

ADDRESS

- 9 -

SCHEDULE

One Hundred Dollars (\$100.00) in Canadian Currency.



# SAWRIDGE TRUSTS

24 November 2009

Dear Sawridge Trusts Potential Beneficiary,

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

Paul Bejold

Sworn before me this 30 day of August A.D., 2011

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

MARCO S. PORETTI

During the consultations carried out by Four World Centre for Development Learning (Four Worlds), some of those consulted raised some questions regarding either the Sawridge Band Inter-Vivos Settlement (1985 Trust) or the Sawridge Trust (1986 Trust) or both (Trusts). The Trustees of the Trusts are pleased to try to answer your questions to the best of our ability based on information available at this time. The questions asked were:

- *Who are the trustees and how are they appointed?*
- *Are the children of individuals who became eligible under Bill C-31 also eligible as beneficiaries?*
- *What about the children of those individuals who are now deceased?*
- *What is the process whereby decisions are made about who is or is not a beneficiary?*
- *How do we get to the place where we can operate the Trusts without being forced into boxes originated with the Indian Act and that continue to cause disunity?*
- *If I am a beneficiary under a Trust and I receive benefits, am I taking something from someone else's table?*
- *Do "new" beneficiaries get the same benefits as those who have been eligible for their whole lives?*
- *Can benefits to seniors be structured to avoid tax consequences and not impact old age benefits?*
- *How can we ensure equity for all beneficiaries when the Band only serves those individuals who live on the Reserve?*
- *What happens to the Trust programs if the trustees change and new trustees have a different set of ideas?*

Attached to this letter is a copy of each of the deeds setting out the terms of each of the Trusts. These are the basic governing documents which, along with generally applicable principles and the rules of trust law, determine how the Trusts are operated.

Currently, the trustees of the two Trusts are the same, namely, Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland (Guy) Twinn and Walter Felix Twin. The trustees can be reached through the Trusts' office located in Edmonton, Alberta. The address, telephone number, fax number and email address for the Trusts is listed below on the letterhead. According to the trust deeds, the existing trustees select new trustees as trustees leave. The number of possible trustees for each trust is slightly different but the trustees have chosen to appoint five trustees for both trusts and have appointed the same trustees to each trust so that the two trusts can operate together.

## Letter to Beneficiaries, 24 November, 2009

Paragraph 6 of the deeds applying to each of the Trusts provides that the trustees have power to distribute income or capital of the Trusts “as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the trustees may make such payment at such time and from time to time, in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.”

Although this provision refers to the Trustees’ discretion as “unfettered”, it is in fact controlled by the requirements of trust law. These requirements, which have been laid down in case law and are expressed in fairly general terms, can be summarized as follows:

- Trustees must give their active consideration to the exercise of their discretionary powers.
- Trustees must act in good faith, in the sense that they must take account of relevant factors and must not take account of irrelevant factors.

Whatever is relevant for these purposes depends on the circumstances of each particular case. However, the basic idea is that trustees should take account of factors relevant to the purposes of the Trusts.

The trustees have recently hired a Trust Administrator and Program Manager, Paul Bujold, to administer the benefits, develop the programs and run the office of the Trusts. Paul can be reached at the address and telephone/fax numbers below, by email at [paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca) or on his cell at (780) 270-4209.

Sawridge Trusts are developing a web site that will be accessible to all beneficiaries. Certain parts of the site will contain documents that are of interest to all beneficiaries while other parts will only be accessible to the particular beneficiary as it will contain private information about that person. The Web site will also list the programs currently available through the Trusts and how to access them and will provide useful links to other sites that can provide information or support programs to the beneficiaries.

Each of the Trusts owns all the shares in a separate holding company. In the case of the 1985 Trust, that company is Sawridge Holdings Ltd. and in the case of the 1986 Trust it is 352736 Alberta Ltd. Through these companies, the Trusts have invested in a number of businesses. The assets of Sawridge Holdings Ltd. and 352736 Alberta Ltd. are listed on the attached flow chart. The Directors of the holding companies and their subsidiaries, called the Sawridge Group of Companies, are independent individuals who have been chosen for their skills and experience in overseeing business enterprises such as those owned by the companies.

The Trusts were established to provide on-going benefits to the beneficiaries from the revenue generated by the Trusts’ investments. This revenue fluctuates with the economic climate. The success of the businesses vary, accordingly. The resources of each Trust are limited and any system of programs has to be based on views about equitable and appropriate use of the resources available.

It is for the trustees to consider the weight to be given to particular factors. They may consider the length of time a person has been a beneficiary as one relevant factor if this is appropriate to the nature of the particular program or benefit being provided.

Another factor the trustees may consider is the impact of taxation, both generally and in the circumstances of particular beneficiaries. The trustees may be able to attempt to structure distributions in a way that will be as tax-efficient as reasonably possible. It is possible, however, that a particular distribution from the Trusts may have an impact on a person's entitlement to other programs such as Old Age Security. In considering the appropriate programs, the trustees may consider it relevant that certain programs and other benefits are only available to beneficiaries who live on the Reserve and other programs may only be available to beneficiaries living off the Reserve.

As trustees of discretionary trusts, the trustees have a broad discretion to develop those benefits through the Trusts that they feel would, from time to time, assist the individual beneficiaries and the Sawridge Band community grow and develop to better meet their own needs, the costs of which are consistent with the revenues available to the Trusts. Following the Four Worlds report, the trustees adopted a list of potential benefits suggested by the beneficiaries and Four Worlds. These benefits will be put in place gradually as more work is done on planning the financial impact of the programs on the Trusts and as the programs are matched with other programs already existing through the Regional Council, the Alberta Government, the Canadian Government or other agencies.

The trustees are responsible for exercising their discretion in respect of the programs while they are trustees. They will be responsible for evaluating the success of the programs on an on-going basis and therefore would be expected to make changes when they determine that changes are required. They also have the power to make changes based on their having, as phrased in the question asked by a beneficiary, "a different set of ideas". However, in order to make any such change they would need to consider whether replacing an already existing program would be reasonable in all the circumstances. The trustees may also, from time to time, have to take into consideration the cost of a program in relation to the amount of revenue available to the Trusts.

The rules for eligibility as a beneficiary are presently being worked out for each of the trusts. According to the trust deeds, the persons who qualify as beneficiaries are to some extent different for the 1985 Trust and for the 1986 Trust. In the 1985 Trust (paragraph 2(a) of the Deed), 'beneficiaries' are defined as persons who are also qualified to be Band members in accordance with the criteria provided in the Indian Act as at 15 April 1982. In the 1986 Trust (paragraph 2(a) of the Deed), 'beneficiaries' are defined as "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 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."

The trustees are presently in the process of having some research carried out by experts in Canadian law and First Nations and Cree traditional law to develop a clear list of criteria. This

**Letter to Beneficiaries, 24 November, 2009**

will help in the process of determining who is an eligible beneficiary, especially under the 1985 Trust where the rules are more complex.

As part of this process, the trustees will post a notice in newspapers in British Columbia, Alberta and Saskatchewan asking anyone who thinks that they may be a beneficiary under either trust to provide the Trusts with information about why they feel they are eligible. Based on the facts determined and the legal advice received, the Trusts will then develop a list of qualified beneficiaries. Where it is still not clear after this process whether someone is or is not a beneficiary, the Trusts will apply to the Alberta Court for its advice on the matter.

We hope that this information answers most people's questions. As more information becomes available we will keep the beneficiaries informed, either by newsletter or through the web site. If you have any questions, please do not hesitate to contact our office and the Trusts Administrator will try to assist you.

Cordially



Paul Bujold,

Interim Chair

Sawridge Trusts Board of Trustees

Attachments



## 1995 Volume 1

# Canada Supreme Court Reports

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**Richard B. and Beena B. Appellants**

v.

**Children's Aid Society of Metropolitan Toronto, the Official Guardian for Sheena B., an Infant, and the Attorney General for Ontario Respondents**

and

**The Attorney General of Canada and the Attorney General of Quebec Intervenors**

INDEXED AS: B. (R.) v. CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO

File No.: 23298.

Hearing and judgment on appeal: March 17, 1994.

Reasons and judgment on cross-appeal delivered: January 27, 1995.

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Constitutional law — Charter of Rights — Right to liberty — Fundamental justice — Parents objecting to blood transfusion for their infant for religious reasons — Children's Aid Society granted temporary wardship of infant under Child Welfare Act — Infant receiving blood transfusion — Whether provisions of Child Welfare Act infringe parents' right to choose medical treatment for their infant contrary to s. 7 of Canadian Charter of Rights and Freedoms — Child Welfare Act, R.S.O. 1980, c. 66, ss. 19(1)(b)(ix), 21, 27, 28(1), (10), (12), 30(1)2, 41.*

*Constitutional law — Charter of Rights — Freedom of religion — Parents objecting to blood transfusion for their infant for religious reasons — Children's Aid Society granted temporary wardship of infant under Child Welfare Act — Infant receiving blood transfusion — Whether provisions of Child Welfare Act infringe parents' freedom of religion — If so, whether infringement*

**Richard B. et Beena B. Appelants**

c.

**Children's Aid Society of Metropolitan Toronto, le tuteur public de Sheena B., mineure, et le procureur général de l'Ontario Intimés**

et

**Le procureur général du Canada et le procureur général du Québec Intervenants**

RÉPERTORIÉ: B. (R.) c. CHILDREN'S AID SOCIETY OF METROPOLITAN TORONTO

N° du greffe: 23298.

Audition et jugement quant au pourvoi principal: 17 mars 1994.

Motifs et jugement quant au pourvoi incident déposés: 27 janvier 1995.

Présents: Le juge en chef Lamer et les juges La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

*Droit constitutionnel — Charte des droits — Droit à la liberté — Justice fondamentale — Parents opposés pour des motifs religieux à ce que leur enfant en bas âge reçoive une transfusion sanguine — Tutelle de l'enfant accordée temporairement à la Children's Aid Society en application de la Child Welfare Act — Transfusion sanguine pratiquée sur l'enfant — Les dispositions de la Child Welfare Act portent-elles atteinte au droit des parents de choisir un traitement médical pour leur enfant, contrairement à l'art. 7 de la Charte canadienne des droits et libertés? — Child Welfare Act, R.S.O. 1980, ch. 66, art. 19(1)(b)(ix), 21, 27, 28(1), (10), (12), 30(1)2, 41.*

*Droit constitutionnel — Charte des droits — Liberté de religion — Parents opposés pour des motifs religieux à ce que leur enfant en bas âge reçoive une transfusion sanguine — Tutelle de l'enfant accordée temporairement à la Children's Aid Society en application de la Child Welfare Act — Transfusion sanguine pratiquée sur l'enfant — Les dispositions de la Child Welfare Act por-*

*justified as reasonable limit — Canadian Charter of Rights and Freedoms, ss. 1, 2(b) — Child Welfare Act, R.S.O. 1980, c. 66, ss. 19(1)(b)(ix), 21, 27, 28(1), (10), (12), 30(1)2, 41.*

*Costs — Judicial discretion — Parents objecting to blood transfusion for their infant for religious reasons — Children's Aid Society granted temporary wardship of infant under Child Welfare Act — District Court judge dismissing parents' appeal and awarding costs against intervening Attorney General — Whether costs order should be overturned.*

S.B. was born four weeks prematurely. Within the first few weeks of her life she exhibited many physical ailments and received a number of medical treatments, to which her parents, the appellants, consented. At their request the attending physicians avoided the use of a blood transfusion because, as Jehovah's Witnesses, the appellants objected to it for religious reasons; they also claimed it was unnecessary. When S.B. was a month old, her haemoglobin level had dropped to such an extent that the attending physicians believed that her life was in danger and that she might require a blood transfusion to treat potentially life-threatening congestive heart failure. Following a hearing on short notice to the appellants, the Provincial Court (Family Division) granted the respondent Children's Aid Society a 72-hour wardship. At a status review two doctors testified that although the child's condition had improved, it was still marginal, and they wished to maintain the ability to transfuse in case of an emergency. The head of ophthalmology at the hospital testified that he suspected the child had infantile glaucoma and needed to undergo exploratory surgery within the following week to confirm the diagnosis. This procedure had to be performed under general anaesthetic, and another doctor testified that a blood transfusion would be necessary. The wardship order was extended for a period of 21 days. S.B. received a blood transfusion as part of the examination and operation for the suspected glaucoma. A second Provincial Court order then terminated the respondent's wardship, and the child was returned to her parents. The appellants appealed both orders to the District Court, which dismissed the appeal and awarded costs against the Attorney General of Ontario, who had intervened in the proceedings. The Court of Appeal dismissed the appellants' appeal and the Attorney General of Ontario's cross-appeal on the issue of costs. This appeal is to determine whether s. 19(1)(b)(ix) of the Ontario

*tent-elles atteinte à la liberté de religion des parents? — Dans l'affirmative, cette atteinte est-elle justifiée en tant que limite raisonnable? — Charte canadienne des droits et libertés, art. 1, 2b) — Child Welfare Act, R.S.O. 1980, ch. 66, art. 19(1)(b)(ix), 21, 27, 28(1), (10), (12), 30(1)2, 41.*

*Dépens — Pouvoir discrétionnaire judiciaire — Parents opposés pour des motifs religieux à ce que leur enfant en bas âge reçoive une transfusion sanguine — Tutelle de l'enfant accordée temporairement à la Children's Aid Society en application de la Child Welfare Act — Rejet par un juge de la Cour de district de l'appel des parents et condamnation aux dépens du procureur général intervenant — L'ordonnance relative aux dépens devrait-elle être écartée?*

S.B. est née quatre semaines avant terme. Au cours des premières semaines de sa vie, elle a reçu, afin de remédier à de nombreux troubles physiques, plusieurs traitements médicaux auxquels ses parents, les appelants, ont consenti. Ces derniers ont demandé aux médecins traitants de ne procéder à aucune transfusion sanguine, parce qu'en tant que témoins de Jéhovah ils s'y opposaient pour des motifs religieux; ils soutenaient également qu'une telle procédure n'était pas nécessaire. Un mois après sa naissance, le taux d'hémoglobine de S.B. a chuté à tel point que les médecins traitants ont craint pour sa vie et ont estimé qu'il pourrait être nécessaire de procéder à une transfusion sanguine pour traiter une insuffisance cardiaque globale qui risquait d'être fatale. À la suite d'une audience tenue après que les appelants eurent été avisés à la dernière minute, la Cour provinciale (Division de la famille) a accordé une tutelle de 72 heures à la société d'aide à l'enfance intimée. Lors d'une instance en révision du statut de l'enfant, deux médecins ont témoigné que, malgré son amélioration, l'état de santé de l'enfant était encore précaire, et qu'ils souhaitaient demeurer en mesure de pratiquer une transfusion en cas d'urgence. Le chef du département d'ophtalmologie de l'hôpital a témoigné qu'il redoutait que l'enfant soit atteinte de glaucome infantile et doive subir une chirurgie exploratoire dans les semaines suivantes afin de confirmer le diagnostic. Cette procédure nécessitait une anesthésie générale et un autre médecin a témoigné qu'une transfusion sanguine serait nécessaire. La tutelle a été prolongée pour une période de 21 jours. S.B. a reçu une transfusion sanguine dans le cadre de l'examen et de l'opération pour le glaucome redouté. Une seconde ordonnance de la Cour provinciale a ensuite mis fin à la tutelle de l'intimée, et l'enfant a été rendue à ses parents. Les appelants ont interjeté appel contre les deux ordonnances devant la Cour de district qui a rejeté l'appel et condamné aux dépens le procureur

*Child Welfare Act, s. 19(1)(b)(ix), and the Child Welfare Act, s. 19(1)(b)(ix), deny parents their infant's rights to freedom of religion, and under appeal costs*

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*Child Welfare Act*, which defines "child in need of protection", together with the powers in ss. 30(1)2 and 41 and the procedures in ss. 21, 27, 28(1), (10) and (12), deny parents a right to choose medical treatment for their infants, contrary to s. 7 of the *Canadian Charter of Rights and Freedoms*, or infringe the appellants' freedom of religion as guaranteed under s. 2(a) of the *Charter*, and, if so, whether the infringement is justifiable under s. 1 of the *Charter*. The issue raised in the cross-appeal is whether the District Court erred in awarding costs against the Attorney General of Ontario.

*Held* (L'Heureux-Dubé J. dissenting on the cross-appeal): The appeal and the cross-appeal should be dismissed.

#### 1. Appeal

##### Section 7

*Per La Forest, L'Heureux-Dubé, Gonthier and McLachlin JJ.*: The liberty protected by s. 7 of the *Charter* does not mean unconstrained freedom. Freedom of the individual to do what he or she wishes must, in any organized society, be subjected to numerous constraints for the common good. The state undoubtedly has the right to impose many types of restraints on individual behaviour, and not all limitations will attract *Charter* scrutiny. On the other hand, liberty does not mean mere freedom from physical restraint. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance.

The right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent. The common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being. This recognition was based on the presumption that parents act in the best interest of their child. Although the philosophy underlying state intervention has changed over time, most contemporary statutes deal-

général de l'Ontario qui était intervenu dans l'instance. La Cour d'appel a rejeté l'appel des appelants ainsi que l'appel incident du procureur général de l'Ontario sur la question des dépens. Le présent pourvoi vise à déterminer si le sous-al. 19(1)b(ix) de la *Child Welfare Act* de l'Ontario, qui définit l'expression «enfant ayant besoin de protection», ainsi que les pouvoirs conférés à l'al. 30(1)2 et à l'art. 41, et les procédures énoncées aux art. 21 et 27 et aux par. 28(1), (10) et (12), privent les parents du droit de choisir un traitement médical pour leurs enfants en bas âge, contrairement à l'art. 7 de la *Charte canadienne des droits et libertés*, ou s'ils portent atteinte à la liberté de religion que garantit aux appelants l'al. 2a) de la *Charte*, et, dans l'affirmative, si cette atteinte est justifiable en vertu de l'article premier de la *Charte*. La question soulevée dans le pourvoi incident est de savoir si la Cour de district a commis une erreur en condamnant aux dépens le procureur général de l'Ontario.

*Arrêt* (le juge L'Heureux-Dubé est dissidente quant au pourvoi incident): Les pourvois principal et incident sont rejetés.

#### 1. Pourvoi principal

##### Article 7

*Les juges La Forest, L'Heureux-Dubé, Gonthier et McLachlin*: La liberté garantie à l'art. 7 de la *Charte* n'est pas synonyme d'absence totale de contrainte. La liberté de l'individu de faire ce qu'il entend doit, dans toute société organisée, être assujettie à de nombreuses contraintes au nom de l'intérêt commun. L'État a certes le droit d'imposer de nombreuses formes de restrictions au comportement individuel et ce ne sont pas toutes les restrictions qui feront l'objet d'un examen fondé sur la *Charte*. D'autre part, la liberté ne signifie pas simplement l'absence de toute contrainte physique. Dans une société libre et démocratique, l'individu doit avoir suffisamment d'autonomie personnelle pour vivre sa propre vie et prendre des décisions qui sont d'importance fondamentale pour sa personne.

Les droits d'éduquer un enfant, de prendre soin de son développement et de prendre des décisions pour lui dans des domaines fondamentaux comme les soins médicaux, font partie du droit à la liberté d'un parent. La common law reconnaît depuis longtemps que les parents sont les mieux placés pour prendre soin de leurs enfants et pour prendre toutes les décisions nécessaires à leur bien-être. Cette reconnaissance est fondée sur la présomption que les parents agissent dans l'intérêt de leur enfant. Bien que la philosophie qui sous-tend l'in-

ing with child protection matters, and in particular the Ontario Act, while focusing on the best interest of the child, favour minimal intervention. In recent years, courts have expressed some reluctance to interfere with parental rights, and state intervention has been tolerated only when necessity was demonstrated, thereby confirming that the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society.

While parents bear responsibilities toward their children, they must enjoy correlative rights to exercise them, given the fundamental importance of choice and personal autonomy in our society. Although this liberty interest is not a parental right tantamount to a right of property in children, our society is far from having repudiated the privileged role parents exercise in the upbringing of their children. This role translates into a protected sphere of parental decision-making which is rooted in the presumption that parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself. While the state may intervene when it considers it necessary to safeguard the child's autonomy or health, such intervention must be justified.

While children undeniably benefit from the *Charter*, most notably in its protection of their rights to life and to the security of their person, they are unable to assert these rights, and our society accordingly presumes that parents will exercise their freedom of choice in a manner that does not offend the rights of their children. If one considers the multitude of decisions parents make daily, it is clear that in practice, state interference in order to balance the rights of parents and children will arise only in exceptional cases. The state can properly intervene in situations where parental conduct falls below the socially acceptable threshold, but in doing so it is limiting the constitutional rights of parents rather than vindicating the constitutional rights of children.

In the present case the application of the Act deprived the appellants of their right to decide which medical treatment should be administered to their infant and in so doing has infringed upon the parental "liberty" protected in s. 7 of the *Charter*. This deprivation, however,

intervention de l'État ait évolué au fil des ans, la plupart des lois contemporaines en matière de protection des enfants et, en particulier, la Loi de l'Ontario, tout en mettant l'accent sur l'intérêt de l'enfant, favorisent une intervention minimale. Au cours des dernières années, les tribunaux ont fait preuve d'une certaine hésitation à s'immiscer dans les droits des parents et l'intervention de l'État n'a été tolérée que lorsqu'on en avait démontré la nécessité, ce qui confirme que le droit des parents d'élever, d'éduquer et de prendre soin de l'enfant, notamment de lui procurer des soins médicaux et de lui offrir une éducation morale, est un droit individuel d'importance fondamentale dans notre société.

Bien que les parents aient des responsabilités envers leurs enfants, ils doivent jouir de droits corrélatifs de s'en acquitter, étant donné l'importance fondamentale du choix et de l'autonomie personnelle dans notre société. Quoique ce droit à la liberté ne soit pas un droit parental équivalent à un droit de propriété sur les enfants, notre société est loin d'avoir répudié le rôle privilégié que les parents jouent dans l'éducation de leurs enfants. Ce rôle se traduit par un champ protégé de prise de décision par les parents, fondé sur la présomption que ce sont eux qui devraient prendre les décisions importantes qui touchent leurs enfants parce qu'ils sont plus à même d'apprécier ce qui est dans leur intérêt et que l'État n'est pas qualifié pour prendre ces décisions lui-même. Même si l'État peut intervenir lorsqu'il considère nécessaire de préserver l'autonomie ou la santé de l'enfant, cette intervention doit être justifiée.

Bien que les enfants bénéficient indéniablement de la protection de la *Charte*, plus particulièrement en ce qui concerne leur droit à la vie et à la sécurité de leur personne, ils ne sont pas en mesure de faire valoir ces droits et notre société présume donc que leurs parents exerceront leur liberté de choix d'une manière qui ne violera pas les droits de leurs enfants. Si l'on considère la multitude de décisions que les parents prennent tous les jours, il est évident qu'en pratique l'intervention de l'État visant à soulever les droits des parents et ceux des enfants n'aura lieu que dans des cas exceptionnels. L'État peut à bon droit intervenir dans les cas où le comportement des parents ne respecte pas la norme minimale socialement acceptable, mais ce faisant, il restreint les droits constitutionnels des parents plutôt que de défendre les droits constitutionnels des enfants.

En l'espèce, l'application de la Loi a privé les appellants de leur droit de décider quel traitement médical devrait être administré à leur enfant, et la Loi a donc enfreint la «liberté» parentale garantie à l'art. 7 de la *Charte*. Cette privation était toutefois conforme aux

*Case Name:*

**V.B. v. Alberta (Minister of Children's Services)**

**Between**

**V.B., A.B., A Minor by Her Next Friend, V.B., K.B.,  
A Minor, by His Next Friend V.B. and B.B., A Minor  
by His Next Friend, V.B., plaintiffs, and  
Her Majesty the Queen In Right of Alberta As  
Represented by Iris Evans, the Minister of Children's  
Services, Paula Tyler, the Deputy Minister of  
Children's Services, Keray Henke, the Assistant  
Deputy Minister of Children's Services, Jackie  
Stewart, Manager of Litigation Support for  
Children's Services, Laura Alcock, Acting Director  
of Child Welfare, Bill Meade, Acting Director of  
Child Welfare and John Doe, defendants**

[2004] A.J. No. 1391

2004 ABQB 788

365 A.R. 179

7 C.P.C. (6th) 174

Docket: 0403 09593

Alberta Court of Queen's Bench  
Judicial District of Edmonton

**Slatter J.**

Heard: October 29, 2004.

Judgment: November 3, 2004.

(31 paras.)

*Guardian and ward -- Public trustee or guardian -- Powers -- To commence legal action -- Practice  
-- Persons who can sue and be sued -- Individuals and corporations, status or standing -- Pleadings*

*-- Striking out pleadings -- Grounds, failure to disclose a cause of action or defence -- Grounds, abuse of process, hopeless suit -- Stay of proceedings.*

Application by the defendants to strike out the statement of claim as an abuse of process and to stay the action. The basis of the application was that the adult plaintiff VB lacked standing to launch the action on behalf of the infant plaintiffs because they were subjects of permanent guardianship orders that named the Director of Child Welfare as their guardian. VB was the natural mother of the three infant plaintiffs who were aged 15, 13 and 11. She had consented to the guardianship orders. VB claimed that the children did not receive proper care while they were in the defendants' care. One of the children was sexually assaulted in a group home.

HELD: Application allowed. The Public Trustee was the sole trustee of the children. Under the Child Welfare Act it was prima facie the person who should advance claims on behalf of the infant plaintiffs. VB had no legal authority to take steps regarding the children since the guardianship order remained in force. The proper course of action for her was to provide the relevant information to the Public Trustee so that it could make an informed decision as to whether the cause of action justified prosecution. VB's cause of action for personal relief was also struck out. Although she relied upon the Canadian Charter of Rights and Freedoms she failed to plead supporting facts. Her claim for emotional distress because of the denial of access to her children was an improper collateral attack on the guardianship order. The claim for loss of consortium was not available as it only accrued to married persons. The action was stayed pending the Public Trustee's decision whether the action was worth pursuing. If it decided in the affirmative it could apply to be substituted as plaintiff.

**Statutes, Regulations and Rules Cited:**

Alberta Rules of Court, Rules 58, 129,

Canadian Charter of Rights and Freedoms, 1982.

Child Welfare Act, R.S.A. 2000, c. C-12, ss. 32, 34(1), 34(4), 36, 36(1), 36(4), 40, 40(2).

Dependent Adults Act.

Domestic Relations Act, R.S.A. 2000, c. D-14, s. 50.

Public Trustee Act, R.S.A. 2000, c. P-44, s. 2(1).

**Counsel:**

Robert P. Lee for the Plaintiffs

S.L. Bercov for the Defendants

C.S. McAfee for the Public Trustee

## REASONS FOR JUDGMENT

**1** SLATTER J.:-- This is an application by the Defendants to strike out this claim as an abuse of process. The basis of the application is that the adult Plaintiff V.B. has no standing to launch this action on behalf of the infant Plaintiffs, because they are all the subjects of Permanent Guardianship Orders naming a director of Child Welfare as their guardian.

### Facts

**2** The Plaintiff V.B. is the natural mother of the three infant Plaintiffs, who are respectively 15, 13 and 11 years of age.

**3** All three of the infant Plaintiffs are the subject of consent Permanent Guardianship Orders dated June 26, 1995. The orders were consented to by V.B. as well as her counsel. The orders read in part as follows:

Upon the application by a Director; and upon hearing and being satisfied:

- A) this child is in need of protective services;
- B) the survival, security or development of this child cannot be adequately protected if the child remains with or is returned to his/her guardian;
- C) it cannot be anticipated that this child could or should be returned to the custody of his/her guardian within a reasonable time;

It is ordered that the Director be appointed the Permanent Guardian of the said child.

None of these orders was appealed, and they remain in force.

**4** The Plaintiff V.B. commenced this action on behalf of her children. She alleges that the children have not been receiving proper care while they have been in the care of the Defendants. The particulars include inadequate medical care, inappropriate placement in unsatisfactory foster and group homes, negligent selection, training and monitoring of foster parents, and other similar matters. It is alleged that the children have suffered damage as a result.

**5** A particular allegation is that two of the children were placed in a group home with an older boy. It is alleged that the older boy (who is not a Defendant) sexually assaulted one of the children, and that the other child heard the assault taking place. It is further alleged that when the other child "ran to the group home staff for help, he was ignored." It is alleged that V.B. attempted to obtain legal counsel to permit the children to sue this older boy, and also to sue the Defendants for their negligent care of the children, but that the Defendants have interfered with her efforts to do so.

### Proceedings to Date

**6** The Defendants now bring this application to strike out the Statement of Claim. The position of the Defendants is that the director of Child Welfare is the guardian of the three infant Plaintiffs. The Defendants argue that the Plaintiff V.B. has no standing to prosecute this action, at least without the prior permission of the Court, and that the action is accordingly an abuse of process. The Plaintiff responds that the Defendants are in a conflict of interest. The breach of duty of which the children complain is a breach by their own guardian, and the Plaintiff argues that it is unrealistic to

expect the director of Child Welfare to commence and vigorously prosecute an action against himself. Therefore the Plaintiff asserts a right to commence this action on behalf of the infant Plaintiffs.

7 After service of the Statement of Claim, the Defendants questioned the standing of the Plaintiff V.B. to launch this action. In response, the Plaintiff V.B. brought an application to be appointed the Guardian ad litem or Next Friend of the children, with authority to continue the litigation. An affidavit in support of that motion was filed. The Defendants wished to examine on the affidavit, but Ms. V.B. was not available for several months as she was due to give birth in the near future. All parties were agreeable to postponing the examination on affidavit until a suitable time after the birth of the new baby, but the Plaintiffs wished to have the Defendants file their Statement of Defence forthwith. The Plaintiffs threatened to note the Defendants in default.

8 Since it seemed inefficient to require the Defendants to file a Statement of Defence before it was even established that the Plaintiff V.B. had standing to bring the action, an order was granted deferring the filing of the defence until the Guardian ad litem motion was heard. Upon that order being made, the Plaintiff V.B. for tactical reasons, abandoned the application. In order to raise the issue of the standing of the Plaintiff, the Defendants then indicated that they would bring an application to strike the pleadings under Rule 129. This application was therefore scheduled.

9 The motion to strike first came on for argument on September 28, 2004. At that time it was represented to me by counsel for the Plaintiff that the Public Trustee took no interest in actions of this sort, and that the Public Trustee had declined to act. It appears that the Public Trustee had not been contacted about this particular litigation, but counsel for the Plaintiff indicated that in other similar litigation the Public Trustee had generally declined to act. Counsel also advised me that in a similar action a consensus had been reached resulting in the appointment of a barrister as the next friend of the infant plaintiffs, and that this similar action was now proceeding in that fashion.

10 During the argument it came to my attention that s. 34(4) of the Child Welfare Act (see *infra*, para. 12) appoints the Public Trustee as the sole trustee of the estate of a child in care. I accordingly directed that notice of the application be given to the Public Trustee. Argument on the motion resumed on October 29, 2004, with counsel for the Public Trustee in attendance. Counsel indicated that the Public Trustee was prepared to get involved in this litigation, and had retained outside counsel to provide an opinion as to whether the complaints set out in the Statement of Claim justified the commencement of an action on behalf of the infant Plaintiffs.

11 In response to the position of the Public Trustee, counsel for the Plaintiffs continued in the assertion that the Public Trustee was in a conflict of interest, because the Public Trustee was essentially being asked to inquire into the suitability of an action against another division of government. The Plaintiffs took the position that the Court continued to have a role to play in the selection of independent counsel to assess the action, the selection of a next friend, the choice of counsel of record if an action was started, and generally in the supervision of the whole action. Counsel for the Public Trustee did not disagree with the suggestion that the Court had a continuing role to play in the supervision of the litigation.

Status of the Director and the Public Trustee

12 A director of Child Welfare was appointed the guardian of the infant Plaintiffs under the Child Welfare Act in 1995. Since there has been no substantive change in the legislation, it is convenient to cite the relevant portions of R.S.A. 2000 c. C-12 which are:

34(1) The [Provincial] Court, on application pursuant to this Part by a director, may make a permanent guardianship order appointing the director as guardian of the child.

...

(4) If the Court makes a permanent guardianship order, the director is the sole guardian of the person of the child and the Public Trustee is the sole trustee of the estate of the child.

36(1) If a child is the subject of a permanent guardianship agreement or order, any adult may make an application in the prescribed form to the Court to be appointed as guardian of the child jointly with the director.

- (4) If the Court makes an order under subsection (3), the director
- (a) subject to any order of the Court under subsection (5), may exercise all the authority of a guardian of the child to *the exclusion of the other guardian*, and
  - (b) has sole authority to consent to the adoption of the child.

40(2) A permanent guardianship agreement or order remains in effect until

- (a) the agreement or order is terminated by a court,
- (b) a private guardianship order is made in respect of the child,
- (c) an adoption order is made in respect of the child,
- (d) the child attains the age of 18 years, or
- (e) the child marries,

whichever occurs first.

(emphasis added)

**13** It is not disputed that the Plaintiff V.B. as the natural mother of the infant Plaintiffs, would prima facie be a guardian of her children: Domestic Relations Act, R.S.A. 2000, c. D-14, s. 50. However, it is clear from s. 34(4) of the Act that once the Court makes a Permanent Guardianship Order, the director becomes the sole guardian to the exclusion of any others who might have a claim to guardianship. Of more importance to the present issue is s. 34(4) of the Act, which provides that the Public Trustee is the sole trustee of the estate of the child. I interpret this to mean that all assets of the child (including choses in action and potential claims) vest in the Public Trustee. Since the Permanent Guardianship Orders were never appealed, they raise an issue estoppel, and the Plaintiff V.B. is not a guardian of the infant Plaintiffs, and the Public Trustee is their sole trustee.

**14** The Act accords a high degree of finality to Permanent Guardianship Orders. While s. 32 permits the review of a Temporary Guardianship Order, there is no equivalent provision for Permanent Guardianship Orders. Although s. 36 does permit the appointment of a joint guardian, it is clear from s. 36(4) that even if a joint guardian is appointed the Director has final authority over all issues. From a reading of other parts of the Act, it appears that a Joint Guardianship Order is only de-

signed to allow some access between the joint guardian and the children. Significantly, there is no provision in the Act allowing for the appointment of a co-trustee to act alongside the Public Trustee.

**15** Section 40 of the Act allows for the termination of a Permanent Guardianship Order. It does not appear to contemplate the variation of a Guardianship Order to limit the powers of the director or the Public Trustee. It appears that once the director is appointed a guardian, the director has plenary authority over the children which authority can only be terminated but not reduced. Likewise the Public Trustee has a plenary jurisdiction over the estate of the child.

**16** In my respectful view, the statute makes it clear that the Public Trustee is *prima facie* the person who should be advancing this claim on behalf of the infant Plaintiffs. The Public Trustee does not of course have to advance any and all claims that an estate under his care might possess: the Public Trustee is entitled to assess claims to see if they are of sufficient merit to justify the expense and risks of prosecution. If the Public Trustee comes to the conclusion that the claims are not sufficiently meritorious, or cannot be economically pursued, then the Public Trustee (like any other litigant) is entitled to abandon the cause of action. In the context of child welfare cases, the Public Trustee, in consultation with the director of Child Welfare, should also consider whether the litigation is in the best interests of the children. These decisions can be supervised by the Court, if necessary, but the primary decision-making power rests with the Public Trustee.

#### Status of the Plaintiff

**17** Because the Permanent Guardianship Orders have not been appealed or set aside, and because of the wording of the Act, it is clear that the Plaintiff V.B. is not the guardian or trustee of the children. She has no obvious legal authority to take any steps with respect to the children. The Plaintiff V.B. states that if she is an inappropriate Next Friend, then someone else could be appointed. She has identified two senior members of the bar who are prepared to act. However, those members of the bar have no greater capacity than the Plaintiff V.B. herself. They also cannot act in the face of any opposition by the lawful guardian and trustee of the infants. Counsel for the Plaintiffs argues that the infant Plaintiffs have personally expressed a wish to retain him, but in civil matters an infant cannot retain counsel except through a next friend or trustee: *R. v. W.W.W.*, [1985] 5 W.W.R. 147, 34 Man. R. (2d) 134 (C.A.).

**18** It is clear that at common law an infant did not have capacity to sue. If an infant had assets, it might be necessary to appoint a trustee for the estate of the infant. The trustee could then sue with respect to matters relating to the estate, because the assets would be vested in the trustee. If the trustee had a conflict of interest, the solution would be to replace the trustee, something that is not possible where the trustee is appointed by statute. Trusteeship is a rather cumbersome procedure if there is otherwise no need to have a trustee. The procedure accordingly developed whereby a next friend could commence an action on the part of an infant, without having to actually appoint a trustee. The procedure is an ancient one, and can be traced back to the first Statute of Westminster (1275), 3 Edw. I., ch. 48, "The Remedy Where a Guardian Maketh a Feoffment of his Ward's Land", which reads in part:

. . . And if the Infant be carried away, or disturbed by the Guardian, or by the Feoffee, or by other, by Reason whereof he cannot sue his Assise, then may One of his next Friends (*proscheinis amys*) sue for him, which shall be thereto admitted.

It is interesting that this early recorded use of the procedure relates to actions against the guardian of the infant. The procedure is now set out in Rule 58, which states that the infant "may" sue by a next friend.

**19** The Plaintiff argues that anybody can act as a next friend, and that even though the Plaintiff V.B. is neither a guardian nor a trustee, she can commence this action on behalf of her children. The Plaintiff cites *Thomlinson v. Alberta (Child Services)* 2003 ABQB 308, 335 A.R. 85. While it is undoubtedly true that the Court could appoint "anybody" as the next friend, there is obviously a strong presumption in favour of appointing the guardian or trustee of the child as the next friend: *Woolf v. Pemberton* (1877), 6 Ch. D. 19 (C.A.); *In re Taylor's Application*, [1972] 2 Q.B. 369 (C.A.). In the case of any competition between the guardian and a third party to be the next friend, the Court would almost invariably choose the guardian. One exception to this rule would be where the guardian had a conflict of interest with the infant. The Plaintiffs argue that this is such a case, and a next friend independent of the Defendants should be appointed.

**20** Rule 58 appears to be permissive and empowering; it states that the infant "may" sue by a next friend. If however there is actually a trustee appointed for the infant, then the next friend provisions are arguably not needed where the litigation concerns the estate of the child. Under s. 34(4) of the Act, the Public Trustee is the "sole trustee" of the estate of the children. In those circumstances the proper plaintiff is arguably the trustee and no next friend need be appointed. However, if the Public Trustee concludes that this case presents a conflict of interest that cannot be handled through institutional safeguards, some procedure will have to be developed, and I leave open the question whether a next friend might be appointed in place of the Public Trustee.

**21** As noted, the Act states that the Public Trustee is the trustee of the estates of the infant children, it allows for no exceptions, and it gives the Court no power to appoint anyone else. When the Act was passed, the Legislature must have known that from time to time estates under the control of the Public Trustee (under the Child Welfare Act, the Dependent Adults Act, or by any ad hoc appointment of the Public Trustee) might be in a position adverse to that of the government. Since someone has to act in these circumstances, the Legislature must have been satisfied that the conflicts could be dealt with. A number of control mechanisms come to mind:

- (a) Under the terms of the Public Trustee Act, R.S.A. 2000, c. P-44, s. 2(1) the Public Trustee must be a barrister and solicitor of at least ten years' seniority. It is clear that the Public Trustee is intended to be a person with some independence and fortitude, who is in a position to stand up vigorously for the estates under his or her charge, even when those estates are adverse in interest to the Province of Alberta.
- (b) Since the office of Public Trustee is created by statute, the courts would be in a position to grant public law remedies should anyone try to interfere with the performance of the office: *Roncarelli v. Duplessis*, [1959] S.C.R. 121.
- (c) The Public Trustee can put in place internal controls in situations of this kind. For example, the Public Trustee has obtained independent counsel to review the complaints made by the Plaintiff on behalf of her children. The Public Trustee might choose to put in place other mechanisms for ensuring that he receives independent advice in matters of this sort.

- (d) As counsel pointed out, the Court plays a continuing role in monitoring the estates of infants, and litigation commenced on behalf of infants. This is particularly true with children who are in care under the Child Welfare Act. Again, if any interested person believes that the rights of the children are not being properly attended to, they could bring the matter to the attention of the Court.

While there may well be an appearance of conflict in cases of this sort, it is not obvious that an actual conflict will arise, or that the interests of the infants will be compromised. Given the mandatory wording of the statute, there is no reason to displace the Public Trustee as the trustee of the children until he has had time to review the situation and report back.

**22** What the Plaintiff V.B. is attempting is a form of collateral attack on the orders of the Provincial Court. Those orders are final, and may not be attacked except possibly for a defect in jurisdiction which would make the orders void. Even then, it is a matter of statutory interpretation and judicial discretion whether the orders can be collaterally attacked: *R. v. Consolidated Maybrun Mines*, [1998] 1 S.C.R. 706; and *R. v. Al Klippert Ltd.*, [1998] 1 S.C.R. 737. The conflict of interest being alleged by the Plaintiff does not in any respects go to the jurisdiction of the Provincial Court, making any form of collateral attack inappropriate.

**23** If the Plaintiff V.B. has information that tends to show the infant children have a cause of action, her proper course of action is to provide all that information to the Public Trustee. The Public Trustee can then make an informed decision whether the cause of action justifies prosecution. He has now retained counsel to do that. The Public Trustee, as another branch of government, should consider any issues of conflict of interest. It is up to the Public Trustee to deal with those conflicts within his institutional setting if that is possible.

Personal Claim of V.B.

**24** The Defendants also apply to strike out the claim of V.B. on the basis that it discloses no cause of action. There are only two paragraphs in the Statement of Claim which assert a claim on behalf of V.B.:

38. The actions and inactions of Her Majesty the Queen in right of Alberta violated the rights of the [B.] children and [V.B.] under s. 15 and s. 7 of the Charter of Rights and Freedoms.
47. [V.B.] has been denied access with her children and has suffered emotional distress as a result. She has also suffered a loss of consortium with her children as a result of the injuries that child welfare has caused to her children.

The issue is whether these pleadings disclose a cause of action.

**25** A breach of the Charter of Rights and Freedoms does of course disclose a cause of action. However, there are no other facts pleaded in the Statement of Claim which would support this bare allegation that there has been a breach of the Charter rights of V.B. The pleading in this form cannot support an action by V.B.

**26** The first sentence of paragraph 47 appears to be a collateral attack on the Permanent Guardianship Orders. Some interference with access is a natural result of a Permanent Guardianship Order, and it does not give rise to any claim for damages. The second sentence of paragraph 47 alleges

a loss of consortium. That is a statutory claim under Part 5 of the Domestic Relations Act, R.S.A. 2000, c. D-14, and accrues only to married persons. Accordingly paragraph 47 discloses no cause of action.

**27** Counsel for the Plaintiff argued that paragraph 47 alleged breaches of various court orders, presumably orders providing access to V.B. The pleading certainly does not state that, and in any event it does not provide sufficient particulars to support any such claim. Furthermore, the remedy for a breach of a court order is an application for contempt, or an application to the court for other mechanisms of enforcing the order. A separate claim for damages for breach of the order is not an appropriate remedy, at least in the first instance.

**28** In the result, the claims of V.B. do not disclose a cause of action, and the application to strike her claims is granted.

### Conclusion

**29** In summary, the procedure to be followed in the case of a child in care who potentially has a cause of action against someone should be roughly as follows:

- (a) A person who discovers information suggesting that a child in care has a cause of action has a moral obligation, and in some cases a legal obligation, to bring that information to the attention of the Public Trustee and a director of Child Welfare.
- (b) If the information has an air of reality to it, the Public Trustee has an obligation under the Act to
  - (i) investigate the claim to see if it has sufficient merit, and is of sufficient value, to justify proceedings on behalf of the child, and
  - (ii) ascertain whether the prosecution of the claim would be in the best interests of the child.

This inquiry could be made in consultation with the director, and might be done by the Public Trustee's office or outside counsel, as the circumstance require.

- (c) If the action is found to be of merit, and its prosecution in the best interests of the child, then the Public Trustee has a duty to see that it is prosecuted in a reasonable way:
  - (i) in most cases the Public Trustee would commence proceedings himself, as the trustee of the child.
  - (ii) it is unclear whether in some cases the Public Trustee might seek and nominate a third party to sue as next friend of the child, for example where the Public Trustee thought that the action presented a conflict of interest that could not be handled adequately by internal controls. In such cases the Public Trustee would in any event continue to play a role in monitoring the litigation and the next friend.
- (d) The Public Trustee as trustee, or the next friend, would then be required to retain and instruct counsel to prosecute the action.

- (e) At any stage of the proceedings the Public Trustee or the next friend could consult with the child and other family members, but the conduct of the litigation is not under the control of the child or the family.
- (f) The Court retains a supervisory jurisdiction over the whole process. The Public Trustee or the next friend could apply for advice and directions where appropriate. Any interested person could apply to the Court for a review of decisions made during the conduct of the litigation, to ensure that the best interests of the child are paramount.

**30** It will be apparent that in this case this procedure was not followed. It appears that no one advised the Public Trustee of the potential claim until recently. Instead the Plaintiff took it upon herself to launch an action as next friend of her children. Where by statute one officer has been designated the sole guardian of the child, and another has been designated the sole trustee, I can see no room for a third party to unilaterally undertake the role of next friend. That is particularly so where that third person is the person who would otherwise have been the guardian, consented to the orders that resulted in the officials becoming the guardian and trustee, and can show no reason why she should be allowed to ignore the issue estoppel created by the orders. The Public Trustee has commenced an investigation of the claim, and the results of that investigation will dictate the next step.

**31** The Plaintiff V.B. has not demonstrated that she should be allowed to act as next friend for the three infant Plaintiffs. As she has commenced this action without authority, it is an abuse of process of the Court. Since striking the action might prejudice the infant Plaintiffs because of the expiry of limitation periods, the appropriate remedy is to stay the action. The Defendants' application for a stay of the children's claim is accordingly granted. After the Public Trustee has decided if the action is worth pursuing, an application could be made to substitute the Public Trustee as a plaintiff. The parties may within 30 days of the date of these reasons, if necessary, arrange to speak to costs.

SLATTER J.

\* \* \* \* \*

#### CORRIGENDUM

Released: December 3, 2004.

A Restriction on Publication notice was added to the front page of this judgment, and the plaintiffs' names were replaced with initials.

cp/ci/e/qw/qlmmm/qlfxs

*Case Name:*

**C.H.S. v. Alberta (Director of Child Welfare)**

**Between**

**C.H.S., T.S., by His Next Friend, C.H.S., J.S., by His  
Next Friend, C.H.S., and D.S., by His Next Friend,  
C.H.S. and John Doe, Plaintiffs, and  
Her Majesty the Queen in Right of Alberta, as  
Represented by the Director of Child Welfare, Defendant**

[2008] A.J. No. 1123

2008 ABQB 620

452 A.R. 98

66 C.P.C. (6th) 83

2008 CarswellAlta 1419

172 A.C.W.S. (3d) 962

Docket: 0503 12123

Registry: Edmonton

Alberta Court of Queen's Bench  
Judicial District of Edmonton

**D.R.G. Thomas J.**

Heard: September 29, 2008.

Judgment: October 9, 2008.

(29 paras.)

*Civil litigation -- Civil procedure -- Parties -- Class or representative actions -- Representative plaintiff -- Representation of -- Children or incompetent persons -- Litigation guardian or next friend -- Application by plaintiffs to add three new representative plaintiffs in a proposed class action -- Plaintiffs sued Director for failure to file service plans within 30 days from issuance of*

*Temporary Guardianship Orders as required by legislation -- Mother of infant plaintiffs acted as next friend -- Plaintiffs sought to add two other parents and an advocate of the rights of children and Metis people -- Application dismissed -- Proposed parents not proper representative plaintiffs -- No evidence Public Trustee had been apprised of the litigation or that mother no longer wished to act as next friend or consented to being substituted.*

Application by the plaintiffs to add three new representative plaintiffs in a proposed class action and for production of the Director's files. The plaintiffs sued the defendant Director for failure to file service plans within 30 days from the issuance of Temporary Guardianship Orders as required by the child welfare legislation. The proposed class members were children subject to temporary orders who had been removed from their parents and retained in the defendant's custody after the expiry of the 30 day period. The personal claims of CHS, the mother of the plaintiff children had all been struck out. The plaintiffs now proposed to add three plaintiffs to act as Next Friend of the children. Two of the proposed plaintiffs already acted as Next Friends for their own children in separate actions involving similar claims. The third plaintiff, Venne, was an advocate of the rights of children and Metis people in Alberta. The plaintiffs admitted that the two proposed plaintiffs who already acted as Next Friends for their own children in other action were not proper representative plaintiffs.

HELD: Application dismissed. There was no evidence that counsel for the plaintiffs had communicated full details of the surviving claims of the plaintiff children to the Office of the Public Trustee, or that after considering a complete set of such information, the Public Trustee had declined to represent the children as Next Friend. It was not sufficient for plaintiffs' counsel to simply suggest that the Public Trustee was precluded from acting on behalf of these children because such actions would automatically result in a conflict of interest with another government department. There was no indication that the Public Trustee had ever been asked to review the full circumstances of any of the claims advanced by the remaining infant plaintiffs. The plaintiff children already had a next friend, namely their mother. There was no evidence by the mother to indicate either that she was no longer willing to act as the next friend of her children, or that she consented to Venne being substituted as the next friend for her children. It was not appropriate to order the defendant to produce the contents of its files to counsel for the plaintiffs at the present time. This request was an obvious attempt to gain access to information which could lead to more potential claims. It would be entirely contrary to public policy to intrude into these otherwise confidential records.

**Statutes, Regulations and Rules Cited:**

Child, Youth and Family Enhancement Act, RSA 2000, c. C-12, s. 34(4)

Rules of Court, Rule 58, Rule 62, Rule 129

**Counsel:**

Mr. Robert P. Lee (Old Strathcona Law Offices): for the Plaintiffs.

Mr. G. Alan Meikle, Q.C. and Ms. Susan L. Bercov (Alberta Justice - Civil Law Branch): for the Defendant - The Director of Child Welfare.

Mr. Ward Branch (Branch MacMaster): for the Defendant - The Director of Child Welfare.

Mr. James R. Weir: Office of the Public Trustee.

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I. Introduction II. Procedural History III. Analysis IV. Disposition

**Reasons for Judgment**

D.R.G. THOMAS J.:--

**I. Introduction**

1 This Action arises out of the Defendant's failure to file service plans within 30 days from the issuance of Temporary Guardianship Orders ("T.G.O.s"), as required by the child welfare legislation in force at that time. The proposed class members are children subject to the T.G.O.s who had been removed from their parents and retained in the Defendant's custody after the expiry of the 30 day period.

2 The Plaintiffs apply to add three new representative plaintiffs to the proposed class action. To date, the Plaintiffs have not applied to have the Action certified.

**II. Procedural History**

3 This Action has been in case management since May 19, 2005. On August 15, 2008, I granted, in part, a Rule 129 application brought by the Defendant to have certain portions of the Statement of Claim struck for not disclosing a cause of action: *C.H.S. v. Alberta (Director of Child Welfare)*, [2008] A.J. No. 920, 2008 ABQB 513. However, I allowed the claims of false imprisonment related to the infants named as Plaintiffs to proceed.

4 My decision of August 15, 2008 also directed that if the remaining Plaintiffs intended to add or substitute potential representative plaintiffs, such an application had to be heard by September 30, 2008 and that date was preemptory.

5 At a case management meeting held on September 18, 2008, the Court was advised that a notice of appeal had been filed in respect of the judgment of August 15, 2008. No date has yet been set for that appeal to be heard.

**III. Analysis**

6 The remaining Plaintiffs are concerned that C.H.S., the mother of the Plaintiff children, is not an appropriate representative for the proposed class proceeding. I note that C.H.S. would be bringing the claims of her children in her capacity as their Next Friend, and not in her personal capacity

because her personal claims were all struck from the Statement of Claim in *C.H.S.*, *supra*. Three new representative plaintiffs are proposed, namely: A.F. and T.W., who already act as Next Friends for their own children in separate actions involving similar claims related to void T.G.O.s; and Muriel Stanley Venne (hereinafter referred to as "Ms. Venne"), an advocate of the rights of children and Metis people in Alberta. The remaining Plaintiffs argue that if a representative plaintiff is not chosen to act on behalf of the class members, then a vulnerable group of individuals who are incapable of acting and speaking for themselves may lose an opportunity to have their legal rights protected. Such a result would be at odds with Alberta's class proceedings legislation, which the Plaintiffs submit is intended to protect vulnerable individuals who might not otherwise be able to have legal representation and to have their legal rights considered by this Court.

7 In response, the Defendant argues that the affidavit evidence filed by the Plaintiffs is highly improper and should be given little weight, as much of it consists of legal counsel giving evidence or making argument in another guise. Further, the Defendant submits that the evidence and record show that the claims of the proposed substitute plaintiffs do not fall within the ambit of what remains of the Statement of Claim. According to the Defendant, the proposed plaintiffs do not have an interest in the outcome of the litigation, given that they do not fit within the class definition.

8 Further, the Defendant argues that it should not be required to defend a proposed class action without there being a real plaintiff who fits within the few remaining allegations left in the Statement of Claim. There is no evidence that it is impossible to find a real plaintiff and no evidence has been filed of any efforts to locate a real plaintiff.

9 At the outset of oral argument, counsel for the remaining Plaintiffs confirmed that he would not be pursuing this application in respect of T.W., given her involvement in another potential class action against the Defendant arising out of a similar set of circumstances. I dismissed the application to substitute T.W. as a potential representative plaintiff from the Bench.

10 Further during the course of oral argument counsel for the remaining Plaintiffs conceded that the proposed representative plaintiff A.F. would not fall within the class definition as set out in my August 15, 2008 decision, and consequently I dismissed that application from the Bench as well.

11 I now turn to consider whether it is appropriate to substitute Ms. Venne as the sole remaining proposed representative plaintiff in this Action.

12 The Plaintiffs submit that Ms. Venne is a highly respected advocate for the rights of children and Metis people in Alberta. She has received the Order of Canada and is the current Vice-President of the Metis Nation of Alberta. Ms. Venne has indicated that she is willing to accept the role of representing the proposed class members.

13 The Defendant responds that if the Plaintiffs are attempting to add Ms. Venne as a Next Friend, such an attempt should fail for lack of evidence. In particular, there is no evidence that C.H.S. has consented to this proposed substitution to allow her children to continue as named representative plaintiffs in this action. Counsel for the Defendant says that this is of particular concern, given certain statements made by counsel for the Plaintiffs in the course of various case management conferences in this Action, regarding his difficulties in seeking and obtaining instructions from the Plaintiffs. Further, the proposed representative plaintiffs have made statements in their affidavits to the effect that they have been advised by counsel for the Plaintiffs that C.H.S. and her

children are unable to continue with the Action due to "emotional and psychological problems", without providing proper evidence of those conditions.

14 The Defendant also submits that the willingness of Ms. Venne to act as a representative plaintiff is contingent on a funding application for Legal Aid that has not yet been made and is unlikely to be granted. The Defendant is concerned about the four outstanding cost awards made against C.H.S., and the limited willingness of Ms. Venne to pay future costs awards.

15 Although I am mindful of the objectives of Alberta's class proceedings legislation, I note that this Action has not yet reached the certification stage. The threshold question at this stage is not whether Ms. Venne would make an appropriate representative plaintiff, but whether it is appropriate to appoint her as the replacement next friend of the infant Plaintiffs.

16 Under the Alberta Rules, an infant may sue or counterclaim by his or her next friend (Rule 58).

17 Further, Rule 62 requires that:

Unless otherwise ordered, before the name of any person is used as next friend that person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the office in which the proceeding is commenced.

18 As noted by the Defendant, no evidence of such written authority from Ms. Venne has been placed before this Court. However, failure to file consent of a next friend is an irregularity which can be cured: see *Consiglio Trusts (No. 2)*, [1973] 3 O.R. 329 (Ont. C.A.).

19 While it is open for a willing stranger to be appointed as the next friend of an infant plaintiff, ideally a parent or guardian would consent to act as next friend: *Thomlinson v. Alberta (Child Services)*, [2003] A.J. No. 716, 2003 ABQB 308 ["*Thomlinson*"]. At para. 107 of that decision, Brooker J also seemed to suggest that the Public Trustee should be approached before a willing stranger is appointed as the next friend:

Ideally a parent or guardian would consent to act as next friend. Where a parent is not interested in acting as next friend or does not have the financial resources to act in the capacity of next friend, it is open to the court to appoint the Public Trustee: *Salomon v. Alberta (Minister of Education)* (1991), 120 A.R. 298 (C.A.) application for leave to appeal to S.C.C. dismissed without reasons [1991] S.C.C.A. No. 535. **Here, however, the Public Trustee has declined to act.** Neither of the parties has presented any authority to the effect that the court has the jurisdiction to compel the Public Trustee to act as next friend where there is a good reason for it having declined to do so. In this regard also see: *Starkman v. Starkman*, [1964] 2 O.R. 99 (H. C.). In my view the obvious conflict of interest that arises here provides such a reason.

(Emphasis added.)

20 In this case, there is no evidence before me that counsel for the Plaintiffs has communicated full details of the surviving claims of the Plaintiff children to the Office of the Public Trustee, or that after considering a complete set of such information that the Public Trustee has declined to represent the children in pursuing their possible claims against the Defendant. There was some cor-

respondence between Mr. Lee and the Office of the Public Trustee prior to the hearing of the application which gave rise to the August 15, 2008 decision. Those letters were little more than inquiries as to whether the Public Trustee had open files with respect to claims. There is no evidence of any communication after the August 15, 2008 decision, other than some sort of informal invitation to Mr. Weir to attend in Chambers on September 29.

**21** It is not sufficient for Plaintiffs' counsel to simply suggest that the Public Trustee is precluded from acting on behalf of these children because such actions would automatically result in a conflict of interest with another government department. I note that Mr. Weir, a legal counsel with the Office of the Public Trustee, was initially present at this application, having been invited to attend by counsel for the Plaintiffs. Mr. Weir indicated to the Court on behalf of the Public Trustee that should the Plaintiffs' claims be certified as a class action, the Public Trustee would likely be involved with regard to any minor children subject to Permanent Guardianship Orders (based on operation of s. 34(4) of the *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12). There was no indication from Mr. Weir that the Public Trustee had ever been asked to review the full circumstances of any of the claims advanced by the remaining infant Plaintiffs.

**22** A more important factor in this case is that the Plaintiff children already have a next friend, namely their mother C.H.S. It is of significance to me that no affidavit has been sworn by C.H.S. to indicate either that she is no longer willing to act as the next friend of her children, or that she consents to Ms. Venne being substituted as the next friend for her children. This is troubling, particularly given the statements by the counsel for the Plaintiffs over the course of various case management meetings indicating his difficulties in communicating with and receiving instructions from C.H.S. who seems reluctant to continue to pursue the claims in this Action. It may be that C.H.S. no longer wishes to act as the next friend for her children, but would rather prefer someone else to represent their interests in this lawsuit. However, there is very little, if any, evidence before me to indicate that this is the case. In any event, I decline to make such a finding. In the absence of a proper evidentiary basis to explain why C.H.S. can no longer act as the next friend for her children, I am not able to conclude in these circumstances that it would be appropriate to appoint Ms. Venne as the replacement next friend of the children of C.H.S.

**23** A brief comment is appropriate in respect to the relationship between a next friend and costs. The function of the next friend is to answer for costs: see *Crothers v. Simpson Sears Ltd.* (1988), 59 A.L.R. (2d) 1 (C.A.). However, the Court may exercise its discretion in certain cases to order that a next friend not be personally responsible for costs: see *Thomlinson*, at paras. 113-119. It would be premature to make a ruling on whether the replacement next friend should or should not be responsible for costs. More information is needed as to whether the next friend, whether it be Ms. Venne or someone else, will actually proceed with the litigation. More information is required as to the means of any proposed replacement next friend to meet both existing and future costs awards.

**24** Lastly, the Plaintiffs submit that if the Court does not replace C.H.S. as the representative plaintiff with Ms. Venne, then the Defendant has an obligation to disclose the identity of other class members to counsel for the Plaintiffs. The Plaintiffs argue that a person who discovers information suggesting that a child in care has a cause of action has a moral obligation, and in some cases a legal obligation, to bring that information to the attention of the Public Trustee and the Director of Child Welfare. Once this information has been received, the Public Trustee and the Director then have a duty to inquire into the potential cause of action and to take appropriate steps. However, the Plain-

tiffs submit that the Public Trustee and the Director are in a conflict of interest to the potential class members and therefore, to ensure the rights of the class members are protected, the Plaintiffs argue that the Defendant must provide the Plaintiffs with information about potential class members so that a suitable representative plaintiff can be identified.

**25** The Defendant argues that this request is highly inappropriate at a pre-certification stage. There are serious and significant privacy concerns about producing personal information in respect to children to the counsel for the Plaintiff. Although a solicitor-client relationship would arise upon certification, and the appointed representative plaintiff may request documents with proper notice and disclosure of the intent to seek such information after the opt-out period has expired, counsel for the Plaintiffs is nowhere near to achieving such status at this time.

**26** It is not appropriate to order the Defendant to produce the contents of its files to counsel for the Plaintiffs at the present time. This Court is well aware that the counsel for the Plaintiffs has other legal actions underway, e.g. the action of Ms. T.W., where certification will be sought based on the same underlying assertion of void T.G.O.s. This motion by the counsel for the Plaintiffs is an obvious attempt to gain access to information which could lead to more potential claims. I have referred to this motion as akin to a trolling operation. The Defendant has more aptly described this aspect of the application as a client development initiative. There are too many unanswered concerns in respect to the privacy rights of many adults and children within a large group for release of information on this motion. It would be entirely contrary to public policy to intrude into these otherwise confidential records, especially given the involvement of the claimant's counsel who seems to change direction in these pieces of litigation on a whim. For all of these reasons, this aspect of the application is dismissed.

#### **IV. Disposition**

**27** In summary, the applications by the Plaintiffs to substitute T.W., A.F. and Ms. Venne as potential representative Plaintiffs are all dismissed with costs. Further, the application to gain access to the records of the Director of Child Welfare for the purpose of spawning future actions of a similar nature is also dismissed.

**28** Because Mr. Weir of the Office of the Public Trustee appeared at the hearing on September 29, 2008, I am including him as one of the counsel to whom this set of Reasons for Judgment is being copied, even though he had no formal status before the Court on the application. I am doing this because I am concerned that the Plaintiff children are not being properly represented by their current counsel, who appears to have failed to fully disclose to the Office of the Public Trustee details of whatever limited cause of action may survive in the much modified Statement of Claim following my August 15 decision.

**29** The *parens patriae* power gives this Court the jurisdiction to protect the interests of those who cannot protect themselves. Given the failure by the counsel for the Plaintiffs to provide complete and up-to-date information about the Action to the Office of the Public Trustee, I invoke that power to require Mr. Robert Lee and C.H.S. to provide forthwith and in no event later than October 31, 2008, all information in Mr. Lee's possession about the claims of the remaining Plaintiffs to the Office of the Public Trustee such that the Public Trustee can determine in a timely way whether

there is a valid claim on the part of the remaining Plaintiffs and, if there is, to refer that claim, if any, to some independent counsel for further review and action.

D.R.G. THOMAS J.

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made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

RSA 1980 cT-10 s40

### **Personal liability**

**41** If in any proceeding affecting trustees or trust property it appears to the court

- (a) that a trustee, whether appointed by the court or by an instrument in writing or otherwise, or that any person who in law may be held to be fiduciarily responsible as a trustee, is or might be personally liable for any breach, whether the transaction alleged or found to be a breach of trust occurred before or after the passing of this Act, but
- (b) that the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which the trustee committed that breach,

then the court may relieve the trustee either wholly or partly from personal liability for the breach of trust.

RSA 1980 cT-10 s41

## **Variation of Trusts**

### **Variation of trusts**

**42(1)** In this section, “beneficiary”, “beneficiaries”, “person” or “persons” includes charitable purposes and charitable institutions.

**(2)** Subject to any trust terms reserving a power to any person or persons to revoke or in any way vary the trust or trusts, a trust arising before or after the commencement of this section, whatever the nature of the property involved and whether arising by will, deed or other disposition, shall not be varied or terminated before the expiration of the period of its natural duration as determined by the terms of the trust, except with the approval of the Court of Queen’s Bench.

**(3)** Without limiting the generality of subsection (2), the prohibition contained in subsection (2) applies to

- (a) any interest under a trust where the transfer or payment of the capital or of the income, including rents and profits
  - (i) is postponed to the attainment by the beneficiary or beneficiaries of a stated age or stated ages,

- (ii) is postponed to the occurrence of a stated date or time or the passage of a stated period of time,
- (iii) is to be made by instalments, or
- (iv) is subject to a discretion to be exercised during any period by executors and trustees, or by trustees, as to the person or persons who may be paid or may receive the capital or income, including rents and profits, or as to the time or times at which or the manner in which payments or transfers of capital or income may be made,

and

- (b) any variation or termination of the trust or trusts
  - (i) by merger, however occurring;
  - (ii) by consent of all the beneficiaries;
  - (iii) by any beneficiary's renunciation of the beneficiary's interest so as to cause an acceleration of remainder or reversionary interests.

**(4)** The approval of the Court under subsection (2) of a proposed arrangement shall be by means of an order approving

- (a) the variation or revocation of the whole or any part of the trust or trusts,
- (b) the resettling of any interest under a trust, or
- (c) the enlargement of the powers of the trustees to manage or administer any of the property subject to the trusts.

**(5)** In approving any proposed arrangement, the Court may consent to the arrangement on behalf of

- (a) any person who has, directly or indirectly, an interest, whether vested or contingent, under the trust and who by reason of minority or other incapacity is incapable of consenting,
- (b) any person, whether ascertained or not, who may become entitled directly or indirectly to an interest under the trusts as being, at a future date or on the happening of a future event, a person of any specified description or a member of any specified class of persons,
- (c) any person who after reasonable inquiry cannot be located, or

- (d) any person's that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined.
- (6) Before a proposed arrangement is submitted to the Court for approval it must have the consent in writing of all other persons who are beneficially interested under the trust and who are capable of consenting to it.
- (7) The Court shall not approve an arrangement unless it is satisfied that the carrying out of it appears to be for the benefit of each person on behalf of whom the Court may consent under subsection (5), and that in all the circumstances at the time of the application to the Court the arrangement appears otherwise to be of a justifiable character.
- (8) When an instrument creates a general power of appointment exercisable by deed, the donee of the power may not appoint to himself or herself unless the instrument shows an intention that he or she may so appoint.
- (9) When a will or other testamentary instrument contains no trust, but the Court is satisfied that, having regard to the circumstances and the terms of the gift or devise, it would be for the benefit of a minor or other incapacitated beneficiary that the Court approve an arrangement whereby the property or interest taken by that beneficiary under the will or testamentary instrument is held on trusts during the period of incapacity, the Court has jurisdiction under this section to approve that arrangement.

RSA 2000 cT-8 s42;2004 cP-44.1 s52

#### **Application to court for advice**

- 43(1)** Any trustee may apply in court or in chambers in the manner prescribed by the rules of court for the opinion, advice or direction of the Court of Queen's Bench on any question respecting the management or administration of the trust property.
- (2) The trustee acting on the opinion, advice or direction given by the Court is deemed, so far as regards the trustee's own responsibility, to have discharged the trustee's duty as trustee in respect of the subject-matter of the opinion, advice or direction.
- (3) Subsection (2) does not extend to indemnify a trustee in respect of any act done in accordance with the opinion, advice or direction of the Court if the trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining that opinion, advice or direction.

RSA 1980 cT-10 s43