

Clerk's Stamp:



COURT FILE NUMBER: 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

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, MARGARET WARD, BERTHA
L'HIRONDELLE, EVERETT JUSTIN TWIN AND DAVID
MAJESKI as Trustees for the 1985 Sawridge Trust;

DOCUMENT **BACKGROUND DOCUMENTS FOR COURT'S
REFERENCE AT DECEMBER 18, 2018 APPEARANCE**

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TAB 1

Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365

Date: 20120612
Docket: 1103 14112
Registry: Edmonton

2012 ABQB 365 (CanLII)

In the Matter of the *Trustee Act*, R.S.A. 2000, c. T-8, as amended; and

In the Matter of The Sawridge Band *Inter Vivos* Settlement Created by
Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known as
the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust")

Between:

**Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle, and
Clara Midbo, As Trustees for the 1985 Sawridge Trust**

Respondent

- and -

Public Trustee of Alberta

Applicant

**Reasons for Judgment
of the
Honourable Mr. Justice D.R.G. Thomas**

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I. Introduction

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

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

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

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

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

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

II. The History of the 1985 Sawridge Trust

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

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

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

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

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

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

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

III. Application by the Public Trustee

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

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

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

[15] The Sawridge Trustees and the Band both argue that the Public Trustee is not a necessary or appropriate litigation representative for the minors, that the costs of the Public Trustee should not be paid by the Sawridge Trust and that the criteria and mechanisms by which the Sawridge

Band identifies its members is not relevant and, in any event, the Court has no jurisdiction to make such determinations.

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

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

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

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

A. Is a litigation representative necessary?

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

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

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

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

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

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

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

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

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

firstly, to revise and clarify the definition of “Beneficiaries” under the 1985 Sawridge Trust; and

secondly, then seek direction to distribute the assets of the 1985 Sawridge Trust with the new amended definition of beneficiary.

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

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

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

[27] The essence of the argument of the Sawridge Trustees is that there is no need to be concerned that the current and potential beneficiaries who are minors would be denied their share of the 1985 Sawridge Trust; that their parents, the Trustees, and the Chief and Council will only act in the best interests of those children. One, of course, hopes that that would be the case, however, only a somewhat naive person would deny that, at times, parents do not always act in the best interests of their children and that elected persons sometimes misuse their authority for personal benefit. That is why the rules requiring fiduciaries to avoid conflicts of interest is so strict. It is a rule of very longstanding and applies to all persons in a position of trust.

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

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

B. Which minors should the Public Trustee represent?

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

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

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

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

V. The Costs of the Public Trustee

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

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

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

[36] Further, the Public Trustee observes that the Sawridge Trustees are, by virtue of their status as current beneficiaries of the Trust, in a conflict of interest. Their fiduciary obligations require independent representation of the potentially affected minors. Any litigation representative appointed for those children would most probably require payment of legal costs. It is not fair, nor is it equitable, at this point for the Sawridge Trustees to shift the obligation of their failure to nominate an independent representative for the minors to the taxpayers of Alberta.

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

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

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

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

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

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

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

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

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

[43] The Public Trustee seeks authorization to make inquiries, through questioning under the *Rules*, into how the Sawridge Band determines membership and the status and number of applications before the Band Council for membership. The Public Trustee observes that the

application process and membership criteria as reported in the affidavit of Elizabeth Poitras appears to be highly discretionary, with the decision-making falling to the Sawridge Band Chief and Council. At paras. 25 - 29 of its written brief, The Public Trustee notes that several reported cases suggest that the membership application and review processes may be less than timely and may possibly involve irregularities.

[44] The Band and Trustees argue that the Band membership rules and procedure should not be the subject of inquiry, because:

- A. those subjects are irrelevant to the application to revise certain aspects of the 1985 Sawridge Trust documentation; and
 - B. this Court has no authority to review or challenge the membership definition and processes of the Band; as a federal tribunal decisions of a band council are subject to the exclusive jurisdiction of the Federal Court of Canada: *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.
- A. In this proceeding are the Band membership rules and application processes relevant?**

[45] The Band Chief and Council argue that the rules of the Sawridge Band for membership and application for membership and the existence and status of any outstanding applications for such membership are irrelevant to this proceeding. They stress at para. 16 of their written brief that the "Advice and Direction Application" will not ask the Court to identify beneficiaries of the 1985 Sawridge Trust, and state further at para. 17 that "... the Sawridge First Nation is fully capable of determining its membership and identifying members of the Sawridge First Nation." They argue that any question of trust entitlement will be addressed by the Sawridge Trustees, in due course.

[46] The Sawridge Trustees also argue that the question of yet to be resolved Band membership issues is irrelevant, simply because the Public Trustee has not shown that Band membership is a relevant consideration. At para. 108 of its written brief the Sawridge Trustees observe that the fact the Band membership was in flux several years ago, or that litigation had occurred on that topic, does not mean that Band membership remains unclear. However, I think that argument is premature. The Public Trustee seeks to investigate these issues not because it has *proven* Band membership is a point of uncertainty and dispute, but rather to reassure itself (and the Court) that the beneficiary class can and has been adequately defined.

[47] The Public Trustee explains its interest in these questions on several bases. The first is simply a matter of logic. The terms of the 1985 Sawridge Trust link membership in the Band to an interest in the Trust property. The Public Trustee notes that one of the three 'certainties' of a valid trust is that the beneficiaries can be "ascertained", and that if identification of Band membership is difficult or impossible, then that uncertainty feeds through and could disrupt the "certainty of object": *Waters' Law of Trusts* at p. 156-157.

[48] The Public Trustee notes that the historical litigation and the controversy around membership in the Sawridge Band suggests that the 'upstream' criteria for membership in the Sawridge Trust may be a subject of some dispute and disagreement. In any case, it occurs to me that it would be peculiar if, in varying the definition of "Beneficiaries" in the trust documents, that the Court did not make some sort inquiry as to the membership application process that the Trustees and the Chief and Council acknowledge is underway.

[49] I agree with the Public Trustee. I note that the Sawridge Band Chief and Council argue that the Band membership issue is irrelevant and immaterial because Band membership will be clarified at the appropriate time, and the proper persons will then become beneficiaries of the 1985 Sawridge Trust. It contrasts the actions of the Sawridge Band and Trustees with the scenario reported in *Barry v. Garden River Band of Ojibways* (1997), 33 O.R. (3d) 782, 147 D.L.R. (4th) 61 (Ont. C.A.), where premature distribution of a trust had the effect of denying shares to potential beneficiaries whose claims, via band membership, had not yet crystalized. While the Band and Trustees stress their good intentions, this Court has an obligation to make inquiries as to the procedures and status of Band memberships where a party (or its representative) who is potentially a claimant to the Trust queries whether the beneficiary class can be "ascertained". In coming to that conclusion, I also note that the Sawridge Trustees acknowledge that the proposed revised definition of "Beneficiaries" may exclude a significant number of the persons who are currently within that group.

B. Exclusive jurisdiction of the Federal Court of Canada

[50] The Public Trustee emphasizes that its application is not to challenge the procedure, guidelines, or otherwise "interfere in the affairs of the First Nations membership application process". Rather, the Public Trustee says that the information which it seeks is relevant to evaluate and identify the beneficiaries of the 1985 Sawridge Trust. As such, it seeks information in respect to Band membership processes, but not to affect those processes. They say that this Court will not intrude into the jurisdiction of the Federal Court because that is not 'relief' against the Sawridge Band Chief and Council. Disclosure of information by a federal board, commission, or tribunal is not a kind of relief that falls into the exclusive jurisdiction of the Federal Courts, per *Federal Court Act*, s. 18.

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

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

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

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

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

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

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

VII. Conclusion

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

Heard on the 5th day of April, 2012.

Dated at the City of Edmonton, Alberta this 12th day of June, 2012.

D.R.G. Thomas
J.C.Q.B.A.

Appearances:

Ms. Janet L. Hutchison
(Chamberlain Hutchison)
for the Public Trustee / Applicants

Ms. Doris Bonora,
Mr. Marco S. Poretti
(Reynolds, Mirth, Richards & Farmer LLP)
for the Sawridge Trustees / Respondents

Mr. Edward H. Molstad, Q.C.
(Parlee McLaws LLP)
for the Sawridge Band / Respondents

TAB 2

In the Court of Appeal of Alberta

Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2013 ABCA 226

**Date: 20130619
Docket: 1203-0230-AC
Registry: 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)**

Between:

**Roland Twinn, Catherine Twinn, Walter Felix Twinn, Bertha L’Hirondelle, and Clara
Midbo, as Trustees for the 1985 Sawridge Trust**

Appellants (Respondents)

- and -

Public Trustee of Alberta

Respondent (Applicant)

- and -

**Sawridge First Nation,
Minister of Indian Affairs and Northern Development,
Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney**

Interested Parties

The Court:

**The Honourable Mr. Justice Peter Costigan
The Honourable Mr. Justice Clifton O’Brien
The Honourable Mr. Justice J.D. Bruce McDonald**

Memorandum of Judgment

Appeal from the Order by
The Honourable Mr. Justice D.R.G. Thomas
Dated the 12th day of June, 2012
Filed on the 20th day of September, 2012
(Docket: 1103 14112)

Memorandum of Judgment

The Court:

I. Introduction

[1] The appellants are Trustees of the Sawridge Trust (Trust). They wish to change the designation of “beneficiaries” under the Trust and have sought advice and direction from the court. A chambers judge, dealing with preliminary matters, noted that children who might be affected by the change were not represented by counsel, and he ordered that the Public Trustee be notified. Subsequently, the Public Trustee applied to be named as litigation representative for the potentially interested children, and that appointment was opposed by the Trustees.

[2] The judge granted the application. He also awarded advance costs to the Public Trustee on a solicitor and his own client basis, to be paid for by the Trust, and he exempted the Public Trustee from liability for any other costs of the litigation. The Trustees appeal the order, but only insofar as it relates to costs and the exemption therefrom. Leave to appeal was granted on consent.

II. Background

[3] The detailed facts are set out in the Reasons for Judgment of the chambers judge: *1985 Sawridge Trust v Alberta (Public Trustee)*, 2012 ABQB 365. A short summary is provided for purposes of this decision.

[4] On April 15, 1985 the Sawridge First Nation, then known as the Sawridge Indian Band No. 19 (Sawridge) set up the 1985 Sawridge Trust (Trust) to hold certain properties in trust for Sawridge members. The current value of those assets is approximately \$70,000,000.

[5] The Trust was created in anticipation of changes to the *Indian Act*, RSC 1985, c I-5, which would have opened up membership in Sawridge to native women who had previously lost their membership through marriage. The beneficiaries of the Trust were defined as “all persons who qualified as a member of the Sawridge First Nation pursuant to the provisions of the *Indian Act* as they existed on April 15, 1982.”

[6] The Trustees are now looking to distribute the assets of the Trust and recognize that the existing definition of “beneficiaries” is potentially discriminatory. They would like to redefine “beneficiaries” to mean the present members of Sawridge, and acknowledge that no children would be part of the Trust. The Trustees suggest that the benefit is that the children would be funnelled through parents who are beneficiaries, or children when then become members when they attain the age of 18 years.

[7] Sawridge is currently composed of 41 adult members and 31 minors. Of the 31 minors, 23 currently qualify as beneficiaries under the Trust, and 8 do not. It is conceded that if the definition

of beneficiaries is changed, as currently proposed, some children, formerly entitled to a share in the benefits of the trust, will be excluded, while other children who were formerly excluded will be included.

[8] When Sawridge's application for advice and direction first came before the court, it was observed that there was no one representing the minors who might possibly be affected by the change in the definition of "beneficiaries." The judge ordered that the Public Trustee be notified of the proceedings and be invited to comment on whether it should act on behalf of the potentially affected minors.

[9] The Public Trustee was duly notified and it brought an application asking that it be named as the litigation representative of the affected minors. It also asked the court to identify the minors it would represent, to award it advance costs to be paid for by the Trust, and to allow it to make inquiries through questioning about Sawridge's membership criteria and application processes. The Public Trustee made it clear to the court that it would only act for the affected minors if it received advanced costs from the Trust on a solicitor and his own client basis, and if it was exempted from liability for costs to the other participants in the litigation.

III. The Chambers Judgment

[10] The chambers judge first considered whether it was necessary to appoint the Public Trustee to act for the potentially affected minors. The Trustees submitted that this was unnecessary because their intention was to use the trust to provide for certain social and health benefits for the beneficiaries of the trust and their children, with the result that the interests of the affected children would ultimately be defended by their parents. The Trustees also submitted that they were not in a conflict of interest, despite the fact that a number of them are also beneficiaries under the Trust.

[11] The chambers judge concluded that it was appropriate to appoint the Public Trustee to act as litigation representative for the affected minors. He was concerned about the large amount of money at play, and the fact that the Trustees were not required to distribute the Trust assets in the manner currently proposed. He noted, that while desirable, parents do not always act in the best interests of their children. Furthermore, he found the Trustees and the adult members of the Band (including the Chief and Council) are in a potential conflict between their personal interests and their duties as fiduciaries.

[12] The chambers judge determined that the group of minors potentially affected included the 31 current minors who were currently band members, as well as an unknown number of children of applicants for band membership. He also observed that there had been substantial litigation over many years relative to disputed Band membership, which litigation appears to be ongoing (para 9).

[13] The judge rejected the submission of the Trustees that advance costs were only available if the strict criteria set out in *Little Sisters Book and Art Emporium v Canada* (Commissioner of

Customs and Revenue), 2007 SCC 2, [2007] 1 SCR 38, were met. He stated that the criteria set out in *Little Sisters* applied where a litigant has an independent interest in the proceeding. He viewed the role of the Public Trustee as being “neutral” and capable of providing independent advice regarding the interests of the affected minors which may not otherwise be forthcoming because of the Trustees’ potential conflicts.

[14] In result, the chambers judge appointed the Public Trustee as litigation representative of the minors, on the conditions that it would receive advance costs and be exempted from any liability for costs of other parties. He finished by ordering costs of the application to the Public Trustee on a solicitor and its own client basis.

IV. Grounds of Appeal

[15] The appellants advance four grounds of appeal:

(a) The Chambers Judge erred in awarding the Respondent advance costs on a solicitor and his own client basis by concluding that the strict criteria set by the Supreme Court of Canada for the awarding of advance costs does not apply in these proceedings.

(b) In the alternative, the Chambers Judge erred in awarding advance costs without any restrictions or guidelines with respect to the amount of costs or the reasonableness of the same.

(c) The Chambers Judge erred in exempting the Respondent of any responsibility to pay costs of the other parties in the proceeding.

(d) The Chambers Judge erred in granting the Respondent costs of the application on a solicitor and his own client basis.

V. Standard of Review

[16] A chambers judge ordering advance costs will be entitled to considerable deference unless he “has misdirected himself as to the applicable law or made a palpable error in his assessment of the facts”: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, [2003] 3 SCR 371 at paras 42-43.

VI. Analysis

A. Did the chambers judge err by failing to apply the *Little Sisters* criteria?

[17] The Trustees argue that advanced interim costs can only be awarded if “the three criteria of impecuniosity, a meritorious case and special circumstances” are strictly established on the evidence before the court: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, [2003] 3 SCR 371, at para 36; as subsequently applied in the “public interest cases” of *Little Sisters* at para 37 and in *R v Caron*, 2011 SCC 5, [2011] 1 SCR 78 at paras 36-39. They go on to submit that none of these requirements were met in the present case. We are not persuaded that the criteria set out in *Okanagan* and *Little Sisters* were intended to govern rigidly all awards of advance funding and, in particular, do not regard them as applicable to exclude such funding in the circumstances of this case. As will be discussed, a strict application is neither possible, nor serves the purpose of protecting the interests of the children potentially affected by the proposed changes to the Trust.

[18] We start by noting that the rules described in *Okanagan* and *Little Sisters* apply in adversarial situations where an impecunious private party wants to sue another private party, or a public institution, and wants that party to pay its costs in advance. For one thing, the test obliges the applicant to show its suit has merit. In this case, however, the Public Trustee has not been appointed to sue anyone on behalf of the minors who may be affected by the proposed changes to the Trust. Its mandate is to ensure that the interests of the minor children are taken into account when the court hears the Trustees’ application for advice and direction with respect to their proposal to vary the Trust. The minor children are not, as the chambers judge noted, “independent” litigants. They are simply potentially affected parties.

[19] The Trustees submit the chambers judge erred by characterizing the role of the Public Trustee as neutral rather than adversarial. While we hesitate to characterize the role of the Public Trustee as “neutral”, as it will be obliged, as litigation representative, to advocate for the best interests of the children, the litigation in issue cannot be characterized as adversarial in the usual sense of that term. This is an application for advice and direction regarding a proposed amendment to a Trust, and the merits of the application are not susceptible to determination, at least at this stage. Indeed, the issues remain to be defined, and their extent and complexity are not wholly ascertainable at this time; nor is the identity of all the persons affected presently known. However, what can be said with certainty at this time is that the interests of the children potentially affected by the changes require independent representation, and the Public Trustee is the appropriate person to provide that representation. No other litigation representative has been put forward, and the Public Trustee’s acceptance of the appointment was conditional upon receiving advance costs and exemption.

[20] There is a second feature of this litigation that distinguishes it from the situation in *Okanagan* and *Little Sisters*. Here the children being represented by the Public Trustee are potentially affected parties in the administration of a Trust. Unlike the applicants in *Okanagan* and *Little Sisters*, therefore, the Public Trustee already has a valid claim for costs given the nature of the application before the court. As this court observed in *Deans v Thachuk*, 2005 ABCA 368 at para 43, 261 DLR (4th) 300:

In *Buckton, Re, supra*, Kekewich J. identified three categories of cases involving costs in trust litigation. **The first are actions by trustees for guidance from the court as to the construction or the administration of a trust. In such cases, the costs of all parties necessarily incurred for the benefit of the estate will be paid from the fund.** The second are actions by others relating to some difficulty of construction or administration of a trust that would have justified an application by the trustees, where costs of all parties necessarily incurred for the benefit of the trust will also be paid from the fund. The third are actions by some beneficiaries making claims which are adverse or hostile to the interests of other beneficiaries. In those cases, the usual rule that the unsuccessful party bears the costs will apply. [emphasis added]

[21] Moreover, the chambers judge observed that the Trustees had not taken any “pre-emptive steps” to provide independent representation of the minors to avoid potential conflict and conflicting duties (para 23). Their failure to have done so ought not now to be a reason to shift the obligation to others to bear the costs of this representation. The Public Trustee is prepared to provide the requisite independent representation, but is not obliged to do so. Having regard to the fact that the Trust has ample funds to meet the costs, as well as the litigation surrounding the issue of membership, it cannot be said that the conditions attached by the Public Trustee to its acceptance of the appointment are unreasonable or otherwise should be disregarded.

[22] It should be noted, parenthetically, that the Trustees rely on *Deans* as authority for the proposition that the *Okanagan* criteria will apply in pension trust fund litigation, which they submit is analogous to the situation here. But it is clear that the decision to apply the *Okanagan* criteria in *Deans* was based on the nature of the litigation in that case. It was an action against a trust by certain beneficiaries, was adversarial and fit into the third category described in the passage from *Buckton* quote above.

[23] In our view, there are several sources of jurisdiction for an order of advance costs in the case before us. One is section 41 of the *Public Trustee Act*, SA 2004, c P-44.1 which provides:

- 41 Unless otherwise provided by an enactment, where the Public Trustee is a party to or participates in any matter before a court,
 - (a) the costs payable to the Public Trustee, and the client, party or other person by whom the costs are to be paid, are in the discretion of the court, and
 - (b) the court may order that costs payable to the Public Trustee are to be paid out of and are a charge on an estate.

[24] It is evident that the court is vested with a large discretion with respect to an award of costs under section 41. While not dealing specifically with an award of advance costs, this discretionary power encompasses such an award. Further, the court has broad powers to “impose terms and conditions” upon the appointment of a litigation representative pursuant to Rule 2.21, which states:

2.21 The Court may do one or more of the following:

- (a) terminate the authority or appointment of a litigation representative;
- (b) appoint a person as or replace a litigation representative;
- (c) impose terms and conditions on, or on the appointment of, a litigation representative or cancel or vary the terms or conditions.

[25] The chambers judge also invoked *parens patriae* jurisdiction as enabling him to award advance costs, in the best interests of the children, to obtain the independent representation of the Public Trustee on their behalf. To the extent that there is any gap in statutory authority for the exercise of this power, the *parens patriae* jurisdiction is available. As this Court commented in *Alberta (Child, Youth and Family Enhancement Act, Director) v DL*, 2012 ABCA 275, 536 AR 207, in situations where there is a gap in the legislative scheme, the exercise of the inherent *parens patriae* jurisdiction “is warranted whenever the best interests of the child are engaged” (para 4).

[26] In short, a wide discretion is conferred with respect to the granting of costs under the *Trustee Act*, the terms of the appointment of a litigation representative pursuant to the *Rules of Court*, and in the exercise of *parens patriae* jurisdiction for the necessary protection of children. In our view, the discretion is sufficiently broad to encompass an award of advanced costs in the situation at hand.

[27] In this case, it is plain and obvious that the interests of the affected children, potentially excluded or otherwise affected by changes proposed to the Trust, require protection which can only be ensured by means of independent representation. It cannot be supposed that the parents of the children are necessarily motivated to obtain such representation. Indeed, it appears that all the children potentially affected by the proposed changes have not yet been identified, and it may be that children as yet unborn may be so affected.

[28] The chambers judge noted that there were 31 children potentially affected by the proposed variation, as well as an “unknown number of potentially affected minors” – the children of applicants seeking to be admitted into membership of the Band (para 31). He concluded that a litigation representative was necessary and that the Public Trustee was the appropriate person to be appointed. No appeal is taken from this direction. In our view, the trial judge did not err in awarding advance costs in these circumstances where he found that the children’s interest required protection,

and that it was necessary to secure the costs in such fashion to secure the requisite independent representation of the Public Trustee.

B. Did the chambers judge err in failing to impose costs guidelines?

[29] The Trustees submit the chambers judge erred by awarding advance costs without any restrictions or guidelines. In our view, this complaint is premature and an issue not yet canvassed by the court. We would add that an award of advanced costs should not be construed as a blank cheque. The respondent fairly concedes that the solicitor and client costs incurred by it will be subject to oversight and further direction by the court from time to time regarding hourly rates, amounts to be paid in advance and other mechanisms for ensuring that the quantum of costs payable by the Trust is fair and reasonable. The subject order merely establishes that advance costs are payable; the mechanism for obtaining payment and guidelines for oversight has yet to be addressed by the judge dealing with the application for advice and directions.

C. Did the chambers judge err in granting an exemption from the costs of other participants?

[30] Much of the reasoning found above applies with respect to the appeal from the exemption from costs. An independent litigation representative may be dissuaded from accepting an appointment if subject to liability for a costs award. While the possibility of an award of costs against a party can be a deterrent to misconduct in the course of litigation, we are satisfied that the court has ample other means to control the conduct of the parties and the counsel before it. We also note that an exemption for costs, while unusual, is not unknown, as it has been granted in other appropriate circumstances involving litigation representatives: *Thomlinson v Alberta (Child Services)*, 2003 ABQB 308 at paras 117-119, 335 AR 85; and *LC v Alberta (Metis Settlements Child and Family Services)*, 2011 ABQB 42 at paras 53-55, 509 AR 72.

D. Did the chambers judge err in awarding costs of the application to the Public Trustee?

[31] Finally, with respect to the appeal from the grant of solicitor and client costs on the application heard by the chambers judge, it appears to us that one of the subjects of the application was whether the Public Trustee would be entitled to such an award if it were appointed as litigation representative. The judge's award flowed from such finding. The appellant complains, however, that the judge proceeded to make the award without providing an opportunity to deal separately with the costs of the application itself. It does not appear, however, that any request was made to the judge to make any further representations on this point prior to the entry of his order. We infer that the parties understood that their submissions during the application encompassed the costs for the application itself, and that no further submission was thought to be necessary in that regard before the order was entered.

VII. Conclusion

[32] The appeal is dismissed.

Appeal heard on June 5, 2013

Memorandum filed at Edmonton, Alberta
this 19th day of June, 2013

Authorized to sign for: Costigan J.A.

O'Brien J.A.

McDonald J.A.

Appearances:

F.S. Kozak, Q.C.

M.S. Poretti

for the Appellants

J.L. Hutchison

for the Respondent

TAB 3

January 21, 2016

File No.: 551860-1

DELIVERED

The Honourable Mr. Justice D.R.G. Thomas
Law Courts Building
1A Sir Winston Churchill Square
Edmonton AB T5J 0R2

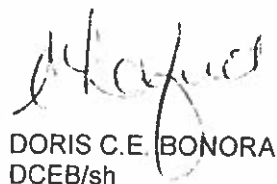
Dear Sir:

RE: 1985 Sawridge Trust - Action No. 1103 14112
December 17, 2015 – Reasons for Judgment
Distribution Scheme

Please find enclosed herein the proposed distribution arrangement for the 1985 Sawridge Trust, as approved by the Sawridge Trustees, in accordance with your Reasons for Judgment dated December 17, 2015.

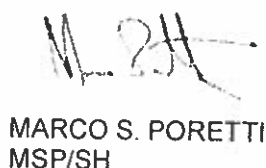
Yours truly,

Dentons Canada LLP


DORIS C.E. BONORA
DCEB/sh

Yours truly,

Reynolds, Mirth, Richards & Farmer LLP


MARCO S. PORETTI
MSP/SH

Enclosures

- c.c. Hutchison Law
Attn: Janet Hutchison (w/enclosures)
Eugene Meehan (w/enclosures) (EMAIL)
- cc E. Molstad, Q.C., Parlee McLaws LLP (w/enclosures)
(Sawridge First Nation)
- cc P. Kennedy, DLA Piper LLP (w/enclosures)
- cc K. Platten, Q.C., McLennan Ross (w/enclosures)
(Catherine Twinn)
- cc N. Cumming, Q.C./J. Kueber, Q.C., Bryan & Co. (w/enclosures)
(Four Trustees)

Proposed Distribution Arrangement
of the Sawridge Band Inter Vivos Settlement ("Trust")

A. Introduction

The court has directed that the trustees of the Trust propose a distribution scheme for the Trust. The Public Trustee has been tasked with ensuring fair treatment of minors in the distribution of assets, identifying potential minor beneficiaries and high level review of the distribution process but such supervision is to be done at the highest level and only to ensure a fair and equitable distribution.

This proposed distribution scheme is provided for information as we understand that the Court has concerns and jurisdiction over the protection of minors.

The Trust was established to invest assets of the Sawridge First Nation to provide funds for the members of the Sawridge First Nation and for the future generations of members of the Sawridge First Nation. (Paul Bujold Questioning on Affidavit: page 75 line 7-13) (Tab "A")

The application before the court is to determine a definition of beneficiaries and this proposed distribution scheme will address the payment of funds from the trust and to whom such payments should be made.

B. Intentions of the Settlor

In the trust deed, the opening paragraph says that the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution are members of Sawridge Indian band No. 19... and the future members of such band... and for that purpose has transferred to the trustees property. (See Trust Deed Tab "B").

The intentions of the Settlor were to set aside funds to provide for the members of the First Nation over many generations. The Settlor was the Chief at the time and he certainly would have had the ability to decide to pay out capital distributions to his members if he thought that was in their best interests. His desire and vision was not to squander the resources of the First Nation but instead to invest the assets so that the resources would be available for many successive generations.

C. Proposed Scheme of Distribution

1. Introduction

The distribution of funds from the Trust must be according to the Trust Deed. The Trust Deed says that the funds will be paid out according to the discretion of the Trustees and based on the benefit to the beneficiaries of the Trust (paragraph 6 of the Trust Deed Tab "B"). In the Trust Deed the Trustees may make payments from the income or the capital of the Trust as they see fit in their unfettered discretion, and as is appropriate for one or more beneficiaries. In paragraph 8 of the Trust Deed, the Trustees are authorized to do all acts necessary, or desirable for the purpose of administering the Trust for the benefit of the beneficiaries. Thus it is clear that the administration of the Trust and the payment to beneficiaries is to be focused on the benefit of the beneficiaries and their families.

2. Distribution of Funds as per the policies of the Trustees

Since the 1985 Trust was established, no distributions have been made from the Trust. Payments have been made from the 1986 Trust. In 2009, the Trustees engaged the Four Worlds Center for Development Learning to prepare recommendations for the development and implementation of the Sawridge Trust's beneficiary program. After consultation with the Trustees and members of the Sawridge First Nation, a number of balancing principles were identified in the report done by the Four Worlds Center for Development Learning. One of the balancing principles was to balance the needs of present and future generations. Further, the beneficiaries identified that there was a need for limits on benefits and understood that there are finite limits to benefits that can flow from the trust in order to benefit all beneficiaries and the community over time.

Following the release of the Four Worlds Center report, the Trustees engaged in a process to develop policies for the payment of funds from the 1985 and 1986 Trusts. The Trustees were exercising their discretionary power to determine which policies to put in place, and how funds would be paid under each policy. To date the policies have been used to make payments from the 1986 Trust. The Trustees will use the same policies for the 1985 Trust once the uncertainty around the beneficiary definition is solved.

The Sawridge Trustees passed a number of policies that provide for benefits to the beneficiaries of both the 1985 and 1986 Trusts and to the dependents of beneficiaries of both trusts. The policies are as follows:

- a) **Health, Dental, Vision Care and Life Insurance benefit** - program provides for health, dental, vision care to the beneficiaries and their dependents and life insurance benefit to the beneficiaries;
- b) **Education Support Fund benefit** - this benefit provides payments for the beneficiaries or their dependents to provide for tuition and fee support, support for books and equipment, living expense supports while the beneficiaries or their dependents are attending a recognized education program;
- c) **Addictions Treatment Support Fund benefit** - this benefit provides for the beneficiaries, or their dependents to attend eligible treatment programs;

- d) **Child and Youth Development benefit** - benefit provides up to \$10,000 per annum to assist with costs associated with caring and educating a special needs dependent on a reimbursement or prepaid basis and up to \$8,500 per annum to assist with childcare costs for a dependent on a reimbursement or prepaid basis;
- e) **Compassionate Care and Death benefit** - this benefit provides payments to a beneficiary for travel costs for family members travelling to visit an ill or injured family member, reasonable accommodation costs, reasonable meal costs for the beneficiary and family, parking costs and child care costs for underage children. It also provides for home modifications, special equipment or dietary supplies or special medications not covered by the health plans. The death benefit provides the cost of transporting remains of the deceased, cost of burial or cremation, cost of the wake, the funeral and headstones, cost of transporting the beneficiary and family to the funeral, costs of accommodation, meals for the beneficiary and family, if the funeral is held at some distance;
- f) **Seniors Support benefit** - this benefit is to provide support for elders who have provided much to the building of the community and is a monthly supplement to other government programs received by the senior;
- g) **Personal Development and Alternative Health benefit** - this benefit provides the beneficiaries, or their dependents, including children, money up to \$2,000 per annum for fitness and nutrition, self-esteem building programs, payments for alternative health, herbs and supplements and fitness equipment, visits to traditional healers, including the costs of transportation and other expenses;
- h) **Income Replacement benefit** - this benefit provides an income replacement of up to \$5,000 per year for any beneficiary if they lose income as a result of attending a personal healing program or because of extended sick leave from work because of an illness;
- i) **Recognition of Beneficiaries and Dependents Educational Achievements** - this benefit provide a recognition of \$250 or suitable gift along with a framed certificate to a graduate of a recognized educational program to assist with finding employment or celebrating their achievement;
- j) **One Time Only "Good Faith" Cash Disbursement** - this benefit provides a one-time payment to every beneficiary of \$2,500, either immediately if they are an adult or upon the beneficiary attaining the age of 18.

A copy of each of the policies is attached as Tab "C". The brochures provided in respect of each of the policies which are provided to each of the beneficiaries are attached as Tab "D".

At the present time, these are the policies which have been approved by the Trustees to support the beneficiaries of both the 1985 and 1986 Trusts. The Trustees continue to investigate the needs of the beneficiaries and their dependents and continue to discuss new policies for payment of benefits as needs arise. The principles behind the payments relate to strengthening individuals

in the community and strengthening the community as a whole. These principles were identified as important to the First Nation.

3. **Distributions Available to Minors**

Of interest to the Court and to the Public Trustee is how minor children who are the children of beneficiaries are treated. If a minor is a member of the First Nation then they are entitled to all the benefits under all of the policies. The following policies provide for the benefit of the families and dependents of a beneficiary, including their minor children and dependents who are not members:

- a) The **Health, Dental, Vision Care benefit** - program provides for health, dental, vision care for beneficiaries and their dependents who are under 18 or under 25 if they are attending a post-secondary institution.
- b) The **Education Support Fund benefit** provides funding to an eligible dependent who is a natural or adopted child of an eligible beneficiary which child is under 25 years of age and registered in a full-time or part-time education program with an accredited educational institution.
- c) The **Addictions Treatment Support Fund benefit** provides a benefit to an eligible dependent which will include a natural or adopted child of an eligible beneficiary which child is under 25 and living at home with the eligible beneficiary.
- d) The **Child and Youth Development benefit** provides funding for a child of the beneficiary who suffers a permanent physical or mental disability, who is a natural child or adopted child of an eligible beneficiary, as well as for child care, if required, for all children of beneficiaries who are working or going to school.
- e) The **Personal Development and Alternative Health benefit** provides funding for an eligible dependent of a beneficiary which will include a natural or adopted child who is under 25 years of age and living at home with an eligible beneficiary. This policy provides for the payment of all manner of programs for children including sports and fitness programs.
- f) The **Income Replacement benefit** provides a benefit to an eligible dependent of a beneficiary who is a natural or adopted child who is under 25 years of age and living at home with the eligible beneficiary.
- g) The **Recognition of Beneficiaries and Dependents Educational Achievements benefit** provides for the dependents of a beneficiary to receive recognition for educational achievements. A dependent is defined as a natural or adopted child of an eligible beneficiary provided the dependent is living with the beneficiary or still considered to be a dependent of the beneficiary.
- h) The **Compassionate Care and Death benefit** - provides payments to a beneficiary or their children for expenses as set out in the policy.

The policies that do not provide for minors are the Senior's Support benefit and the Cash Disbursement benefit.

Thus it can be said that almost all of the policies provide a benefit to minor dependents (up to the age of 25 or older) of beneficiaries even though the dependent is not a beneficiary. Once the child is no longer dependent as defined in the policies, the child is no longer eligible until they apply and become a member of the Sawridge First Nation. It is submitted that virtually all the needs of a minor child are covered by the policies. If there are needs identified that are not covered above, the Trustees have an ability to implement new policies to cover such needs. The Trustees recognize the need to assess the needs of the beneficiaries and their families and the needs of the community and implement new or replacement policies that best meet the needs of the beneficiaries and their dependents and that best meets the needs of the community.

We must be mindful of the fact that the First Nation considers itself to be a community and a family that supports one another. The principles identified in the Four Worlds Report clearly show that there is a focus on both individual and community development.

The minors of the Sawridge First Nation have not been forgotten in the trust or in the benefits paid by the trust. The Trustees know that the First Nation can only be successful by nurturing and providing for the children who will be the members and leaders of the First Nation in the future.

The struggle of the Trustees in making payments under the policies is that almost 50% of the annual funding provided to the trusts from the companies has been paid in legal fees in this and related litigation. The trusts could provide greater support for its members if this litigation could be concluded.

4. Proposed Distribution Scheme: Proposal to provide for Present Beneficiaries and their families into the future

The Trustees are requesting that the Court approve a distribution scheme that would allow the Trustees to follow the policies set out above and future similar policies for the benefit of the beneficiaries of the trust and their dependents as such are defined in each policy.

Beneficiaries: The beneficiaries of the Trust will be the members of the First Nation as is set out in the Membership List maintained by the First Nation. The dependents of those beneficiaries will receive the benefits set out in the policies. The Trustees propose to ask the court to amend the definition of beneficiary in the trust as set out in Tab "E" attached by striking the necessary words from the definition to remove the discriminatory language.

Trust Payments: There will be distributions whether of income or capital in accordance with the policies set out above and future policies passed. These payments are in accordance with the trust deed. In this way the Trust can continue to provide for the needs of the current beneficiaries and their families and for the beneficiaries and their families in the future.

Two Pools of Funds : The court identified the need to establish two pools of funds. The Trustees propose to satisfy this requirement by identifying those funds which are necessary for the provision of payments under the policies on an annual basis for those beneficiaries and their families which are identified at any given time and by keeping invested the funds for future generations of beneficiaries and their families.

Pool Number One: At the present time, the Trustees prepare a budget of their expected requirements and provide that budget to the directors of the corporations whose shares

are owned by the Trust. The directors then provide the trust with the necessary funds to meet the budget. The Trustees always have the ability to request further funds from the directors if the need arises. This will in essence be pool number one.

Pool Number Two: The second pool will be the current and future investments of the Trust, which will be available for the current and future beneficiaries and their dependents according to the policies in place at any given time.

5. Complete Capital Distribution

We do not interpret the Court judgment as directing a full and complete capital distribution of the trust but in the event that such is interpreted by any party we set out the dangers of such an interpretation below.

Capital distributions have been examined extensively and have been viewed as a dangerous exercise of discretion for First Nations. First, there would need to be a liquidation of the Sawridge branded hotels and businesses that are currently owned by the Trust. It would destroy the vision of the Settlor of the trust. The ability to know the numbers of future generations is limited and thus it will be very difficult to determine the people who are to be provided for in the future.

Capital distributions from the trust can also be viewed as a form of welfare and can lead to a dependency on payments resulting in the same effect as federal welfare payments: thus, reduced interest in education and diminished motivation and work ethic leading to reduced employment- all contributing to greater social problems. If beneficiaries begin relying on capital distributions as a source of income, a full and complete capital distribution could also leave beneficiaries in a position where reckless decisions are made upon a receipt of a windfall that cannot be sustained by future distributions from the trust.

A full capital distribution would also divert resources away from the social programs outlined in the proposed distribution scheme that were established for the income beneficiaries of the Trust. Capital is a reserve source of funds to supplement the valuable social programs supported by Pool Number One.

An expectation for capital distributions can also lead to greater conflict in the question of tribal enrollment and disputes arising regarding tribal citizenship.

A consideration which is particularly striking given the current economic outlook in Alberta is the uncertainty and unpredictability of natural resource markets. Retaining trust capital will help moderate future uncertainties and can add to Pool Number One established for income beneficiaries in the trust and their dependents. Maintenance of capital will also allow diversification of investments to also moderate risk throughout a recessionary economy.

Some benefits to capital distributions have been identified, such as the ability for beneficiaries to meet their urgent needs and to shift agency in the determination of how the money should be used away from the tribal governments to individuals and families. As well, capital distributions can be used strategically as a policy tool and can incentivize certain goals such as school enrollment. Although, we acknowledge these benefits, in most cases these benefits would also be achieved with small, one-time capital distributions, such as the One-Time Good Faith Cash

Disbursement. The benefits could be eroded with larger capital distributions, if larger distributions exacerbate the dangers we have noted above.

Nature of a Discretionary Trust.

a. Discretionary payments for the needs of beneficiaries

The distribution of Trust funds is to be paid to the benefit of the beneficiaries and their families. The Trustees have an unfettered discretion as to how to direct the distribution of income and capital from the Trust in the nature of a discretionary trust. A discretionary trust is described in *Waters on Trusts* as a trust "in which the creator of the trust... imposes the duty upon the trustees to distribute income or capital among the beneficiaries described in the trust instrument... as the trustees think fit" [Donovan W.M. Waters, Mark Gillen & Lionel Smith, *Waters' Law of Trusts in Canada*, 4th ed. (Thomson Reuters Canada Limited: Toronto, 2012) at p 36 (*Waters on Trusts*).] It is the duty of the trustees to consider when and how the discretion ought to be exercised and the decision of the trustees must fall within the objects of the trust and the power conferred upon the trustees (*Waters on Trusts* at p 988). The trustees of a discretionary trust are also bound by the fundamental duties of a trustee, that is: not to delegate their duties; not to personally benefit from the trust property; to act with honesty and act with the prudence expected of a reasonable person administering their own affairs; and to decide on the exercise of their discretion in line with the best interests of the beneficiaries (*Ibid* at pp 906, 988).

b. Avoiding Capital Payments to beneficiaries which destroys the Trust

In circumstances where the trustees of a discretionary trust have unfettered discretion as to the distribution of income and capital, then their decision as to the quantum of the distribution, allocation of the distribution between income and capital and the recipients of the distribution should be deferred to by the court. The trustees have the duty to consider whether the discretion to distribute income or capital ought to be exercised; however, it may be the case that the trustees determine that it is in the best interests of the beneficiaries to annually distribute income to the benefit of the beneficiaries and their families but to postpone the collapse of the trust by distributing capital. As discussed below, the court should only interfere with the exercise of the trustees' discretion in exceptional circumstances.

c. Jurisdiction of the Court to direct payment of funds

The Court should only intervene to direct the payment of funds from the Trust when the Trustees fail to give proper consideration as to whether their discretion ought to be exercised. Or alternatively, when the discretion was exercised but the Trustees either acted outside the scope of the power conferred upon them in the trust deed or took into account irrelevant or unreasonable considerations in making their decision. No remedy has been sought in respect of distribution of the trust and there is no evidence of the Trustees acting outside the scope of their power or taking into account irrelevant or unreasonable considerations.

When considering the degree of control a court can exercise over a trustee that holds absolute discretion, *Waters on Trusts* notes that an axiomatic feature of a trustee's dispositive discretion in a discretionary trust is "that provided the trustees act with good faith (i.e., honestly, thoughtfully, objectively and fairly) in the exercise of their discretion, the court will not interfere or counter their decision" (*Ibid* at p 1203, fn 149). *Gisborne v Gisborne* [(1877), 2 App. Cas. 300 (H.L.)] is the

leading case from the House of Lords which represents the principle that the court should not interfere with the discretion of trustees unless there is some "*mala fides*", meaning bad faith or fraud. The Ontario Court of Appeal in *Fox v Fox Estate* extended the definition of *mala fides* to circumstances where the trustee's discretion is conducted in an undesirable manner or if the discretion is influenced by extraneous matters [28 O.R. (3d) 396 (1996) at para 12 (*Fox*)]. In *Fox*, the extraneous consideration impugned by the Court of Appeal was based on religious discrimination rather than a consideration of what would benefit the beneficiaries as specified in the trust deed.

Alberta courts have confirmed the principle adopted in *Fox* in *McNeil v McNeil* [2006 ABQB 636] and *Lecky Estate v Lecky* [2011 ABQB 802 (*Lecky*)]. Alberta courts have confirmed that if the trustees are acting within the scope of their duties conferred upon them by the trust deed, then their exercise of discretion should be "afforded considerable deference" (*Lecky* at para 50). *Waters on Trusts* summarizes the principle as established in Canadian law: the court will not intervene with the decision of the trustees who are exercising their discretion if they do not agree with the decision or would have not have made the same decision but will intervene if the decision was so unreasonable that no "honest or fair-dealing" trustee would have made it, if the trustee took into account irrelevant considerations with respect to the decision, or when the discretion was not exercised and the trustees could not show that proper consideration was given as to whether the discretion ought to be exercised (*Waters on Trusts* at pp 989-990).

F. Proposal to Provide for the protection of minors and reporting to the Public Trustee

The Trustees would propose to provide a report to the Public Trustee identifying the payments that have been made to beneficiaries from the 1986 trust since 2009. The report would not identify individuals, but would identify the amounts paid. This will allow the Public Trustee to assess whether the payments are being made in a fair and equitable manner.

G. Conclusion

We submit that the above proposed distribution scheme meets all criteria for this discretionary trust, meets the criteria set for the trust by the Court and allows the Public Trustee to satisfy its mandate. The Public Trustee is assured that the trust is providing benefits to minor dependents through their adult beneficiary or to the minor directly if the minor is a member. Parents can apply on behalf of a minor for the minor to become a member of the First Nation in order for the minor to become a beneficiary of the Trust. The child as an adult could on their own apply to become a member. The Sawridge Trust policies provide cradle to grave support programs which is a benefit to the future of the First Nation members.

TAB 4

Action No.: 1103 14112
E-File No.: EVQ16SAWRIDGEBAND3
Appeal No.: _____

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

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")

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

Applicants

PROCEEDINGS

Edmonton, Alberta
August 24, 2016

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

1 original issue in our action.

2

3 **Order (Distribution Proposal Adjournment)**

4

5 THE COURT:

That's -- well, I think it -- my goal here has

6 been to try and get this litigation focussed, or refocussed in some cases, and it does seem

7 that the issues are narrowing, which is sort of the function of a case manager. We're

8 down to the -- well, the distribution plan, I'll call it, appears to be generally acceptable,

9 subject to some latecomers having a look at it. Whether they'll have anything to say is

10 yet to be decided, but my thinking is that the distribution plan looks like it's -- I mean,

11 I've read it. It seems quite reasonable. It looks like that issue is going to get swept off

12 the table. The -- so the one outstanding issue is the -- the scope of the beneficiary group.

13

14 MS. BONORA:

Thank you, Sir.

15

16 THE COURT:

So your request for an adjournment on the

17 distribution proposal application and -- is adjourned *sine die*.

18

19 **Submissions by Ms. Bonora (Standing)**

20

21 MS. BONORA:

Thank you, Sir.

22

23 Perhaps, Sir, we could deal with number 3 on the list, because I don't believe Ms. Wanke

24 has any other matters that she would be attending to. I don't know that for sure, but

25 the -- so the application with respect to Mr. Stoney is an application for standing, an

26 application to be determined as a beneficiary. We're asking that matter to be adjourned.

27 We just got served with it. Obviously, there needs to be some discussion around exactly

28 what's going to happen with that, and questioning. And I don't think there's any

29 opposition to that request to adjourn, but I will leave it for Ms. Wanke to speak, and

30 Mr. Molstad would like to address it, as well.

31

32 THE COURT:

All right. Well, Ms. Wanke, you're the

33 applicant -- representing the applicant, so if you'd like to speak first?

34

35 **Submissions by Ms. Wanke (Standing)**

36

37 MS. WANKE:

I am, My Lord. We have no issue with

38 Ms. Bonora's request to adjourn the matter. She had proposed that counsel have a

39 conference and come to you with a proposal in terms of timelines and how the matter will

40 be heard, and we think that's reasonable. And we think counsel can certainly do that by

41 consent.

TAB 5

In the Court of Appeal of Alberta

Citation: Twinn v Twinn, 2017 ABCA 419

Date: 20171212
Docket: 1703-0193-AC
Registry: Edmonton

Between:

**Patrick Twinn, on his behalf, Shelby Twinn
and Deborah A. Serafinchon**

**Appellants
(Applicants)**

- and -

**Roland Twinn, Catherine Twinn, Walter Felix Twinn,
Bertha L'Hirondelle, and Clara Midbo,
as Trustees for the 1985 Sawridge Trust (the "1985 Sawridge Trustees" or "Trustees")**

**Respondents
(Respondents)**

- and -

Public Trustee of Alberta ("OPTG")

**Respondent
(Respondent)**

- and -

Catherine Twinn

**Respondent
(Respondent)**

- and -

**Patrick Twinn, on behalf of his infant daughter,
Aspen Saya Twinn, and his wife Melissa Megley**

**Not Parties to the Appeal
(Respondents)**

The Court:

**The Honourable Madam Justice Marina Paperny
The Honourable Madam Justice Barbara Lea Veldhuis
The Honourable Madam Justice Sheilah Martin**

Memorandum of Judgment

Appeal from the Order by
The Honourable Mr. Justice D.R.G. Thomas
Dated the 5th day of July, 2017
Filed on the 19th day of July, 2017
(2017 ABQB 377; Docket: 1103 14112)

Memorandum of Judgment

The Court:

Introduction

[1] This appeal is part of ongoing litigation involving the 1985 Sawridge Trust (the Trust), which was established by the Sawridge Indian Band No. 19 (the Band, now known as the Sawridge First Nation, or SFN) to hold certain assets belonging to the Band. Disputes regarding membership in the SFN have a history going back decades, but the current Trust litigation deals specifically with potential amendments to the Trust. The Trust litigation has been case managed since 2011, and several procedural orders have been made including the one on appeal: *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377 (Sawridge #5). The specific procedural issues on this appeal are straightforward: did the case management judge err in declining to add three potential parties to the Trust litigation, and did he err in awarding solicitor and his own client costs against those potential parties?

Background to the Sawridge Trust Litigation

[2] In 1982, various assets purchased with Band funds were placed in a formal trust for Band members. On April 15, 1985, then Chief Walter Patrick Twinn established the 1985 Sawridge Trust, into which those assets were transferred. The Trust was established in anticipation of proposed amendments to the *Indian Act*, RSC 1970, c I-6, intended to make the *Indian Act* compliant with the *Canadian Charter of Rights and Freedoms* by addressing gender discrimination in provisions governing band membership. It was expected that the legislative amendments (later known as Bill C-31) would result in an increase in the number of individuals included on the Band membership list. Specifically, it was expected that persons, mainly women and their descendants, who had been excluded from Band membership under earlier membership rules, would become members of the Band under the new amendments. Since 1985, and continuing to the present day, there has been extensive litigation regarding who is entitled to be a member of the SFN: see, eg., *Sawridge First Nation v Canada*, 2009 FCA 123, 391 NR 375, leave denied [2009] SCCA No 248; *Twinn v Poitras*, 2012 FCA 47, 428 NR 282; *Stoney v Sawridge First Nation*, 2013 FC 509, 432 FTR 253.

[3] The 1985 Sawridge Trust restricts the Beneficiaries of the Trust to those persons who qualified as members of the Band under the provisions of the *Indian Act* in existence as of April 15, 1982, that is before the legislative amendments of Bill C-31. The Trust is currently administered by five Trustees, at least four of whom are also Beneficiaries. In 2011, the Trustees sought advice and direction from the court with respect to possible amendments to the Trust, and specifically to the definition of Beneficiaries, which the Trustees recognize as potentially discriminatory. It is not clear how the Trust might be amended to address any discrimination,

although there is a suggestion that Beneficiaries could be defined as present members of the SFN. As of April 2012, the SFN had 41 adult and 31 minor members. Most, but not all, of those members qualify as Beneficiaries of the Trust under the existing definition. If the Trust is amended, some individuals may cease to be Beneficiaries, and others, not currently Beneficiaries, may come within the amended definition.

[4] On August 31, 2011, the case management judge issued a procedural order intended to provide notice of the application for advice and direction to potentially affected persons. The current parties to the litigation include four of the Trustees, Roland Twinn, Walter Felix Twinn, Berta L'Hirondelle and Clara Midbo. A fifth Trustee, Catherine Twinn, is a separately named and separately represented party. Ms. Twinn, who was married to the late Chief Walter Patrick Twinn, is a dissenting trustee; although her position is not entirely clear, she seems to take the position that the Trust does not necessarily have to be amended. In 2012, the Public Trustee was added as a party to act as litigation representative for affected minors and those who were minors at the commencement of the proceeding but who have since become adults: 2012 ABQB 365 (Sawridge #1).

The application to be added as parties (Sawridge #5)

[5] The application that gives rise to this appeal was filed by three individuals who wish to be added as party respondents to the Trust litigation. Each of the three is differently situated. Patrick Twinn is the son of Catherine Twinn. He is a member of the SFN and a beneficiary of the Trust. Shelby Twinn is Patrick Twinn's niece (she is the daughter of Paul Twinn, who is Patrick Twinn's half-brother). Roland Twinn, one of the trustees, is also Shelby's uncle. Catherine Twinn is her great-aunt. Shelby is a beneficiary of the Trust but not a member of the SFN. The third applicant, Deborah Serafinchon, is neither a member of the SFN nor a current beneficiary of the Trust. She says that her father is the late Walter Twinn. She is not currently a status Indian under the *Indian Act*.

[6] The appellants submit that their interests are directly affected by the Trust litigation and that they should be added as parties to that litigation. Shelby Twinn, in particular, wishes to argue that she may cease to be a beneficiary under the Trust if it is amended. Both she and Patrick Twinn wish to argue that the Trust cannot and ought not be amended. The position to be taken by Ms. Serafinchon is currently unclear.

[7] The first procedural order, as amended on November 8, 2011, provided that any person interested in participating in the advice and direction application was to file an affidavit no later than December 7, 2011. Two of the three applicants were served with that order. There was no suggestion any of the applicants was unaware of the application and the time lines.

[8] The case management judge denied the applications to be added as parties. He held that the addition of more parties would add to the complexity of the litigation, increase the costs to the

Trust and the assets held in it, and expand the issues beyond those identified during case management.

[9] With respect to the applications of Shelby and Patrick Twinn, the case management judge held that their participation in the advice and direction application would be redundant as their interests are already represented. He noted that both Shelby and Patrick are currently Beneficiaries under the Trust and opined that this status would not be eliminated by the outcome of the Trust litigation, a conclusion that is challenged by the appellants. He further held that the ongoing involvement of current Beneficiaries would be better served by transparent communications with the Trustees and their legal representatives, in order to ensure that their status as Beneficiaries is respected.

[10] With respect to the application of Deborah Serafinchon, the case management judge noted that she has not applied for membership in the SFN and apparently has no intention to do so. He also noted that the Trust litigation is not intended to address membership issues, and that the purpose of case management has been to narrow the issues in the litigation rather than expand them. He held that Ms. Serafinchon can monitor the progress of the Trust litigation, review proposals made by the Trustees as to the definition of Beneficiaries under the Trust, and provide comments to the Trustees and the court.

[11] The case management judge then went on to consider costs. He concluded that Patrick and Shelby Twinn “offer nothing and instead propose to fritter away the Trust’s resources to no benefit”. He concluded that they had no basis to participate in the Trust litigation, and that their proposed litigation would end up harming the pool of beneficiaries as a whole. They appeared late in the proceeding, and they did not promise to take steps to ameliorate the cost impact of their proposed participation, instead proposing to have the Trust pay for that participation. Based on the Supreme Court’s decision in *Hryniak v Mauldin*, 2014 SCC 7 at para 2, [2014] 1 SCR 87, he noted a “culture shift” toward more efficient litigation procedure and concluded that one aspect of that culture shift is to use costs awards to deter dissipation of trust property by meritless litigation activities. He therefore ordered Patrick and Shelby Twinn to pay solicitor and own client indemnity costs of the Trustees in respect of the application. He awarded party and party costs against Deborah Serafinchon in favour of the Trustees.

[12] All three applicants appeal the denial of their applications to be added as parties to the Trust litigation. Patrick and Shelby Twinn also appeal the award of solicitor and own client costs made against them.

Standard of review

[13] Case management decisions are entitled to considerable deference on appeal. Absent a legal error, this Court will not interfere with a case management judge’s exercise of discretion unless the result is unreasonable. This is particularly the case where a decision is made by a case management judge as part of a series of decisions in an ongoing matter: *Ashraf v SNC Lavalin ATP*

Inc, 2017 ABCA 95 at para 3, [2017] AJ No 276; *Goodswimmer v Canada (Attorney General)*, 2015 ABCA 253 at para 8, 606 AR 291; *Lameman v Alberta*, 2013 ABCA 148 at para 13, 553 AR 44.

[14] Cost awards are also discretionary, and are entitled to deference on appeal. The standard of review for discretionary decisions of a lower court was succinctly stated by the Supreme Court in *Penner v (Niagara Regional Police Services Board)*, 2013 SCC 19 at para 27, [2013] 2 SCR 125:

A discretionary decision of a lower court will be reversible where that court misdirected itself or came to a decision that is so clearly wrong that it amounts to an injustice. Reversing a lower court's discretionary decision is also appropriate where the lower court gives no or insufficient weight to relevant considerations [citations omitted].

[15] This Court has noted that when reviewing discretionary decisions, appellate intervention is required where a) a case management judge failed to give sufficient weight to relevant considerations; b) a case management judge proceeded arbitrarily, on wrong principles or on an erroneous view of the facts; or c) there is likely to be a failure of justice if the impugned decision is upheld: *Bröcker v Bennett Jones*, 2010 ABCA 67 at para 13, 487 AR 111.

Did the case management judge err in declining to add the appellants as parties to the Sawridge Trust litigation?

[16] The Alberta *Rules of Court* provide a discretionary procedure for the addition of parties to litigation. Rule 3.75 applies to litigation commenced by way of originating application. It requires that the court be satisfied that the order adding a respondent *should* be made, and that the addition of the party will not result in prejudice that cannot be remedied through costs, an adjournment, or the imposition of terms.

[17] Two main questions have been identified when considering whether a party should be added to litigation under the Rules: (1) Does the proposed party have a legal interest (not only a commercial interest) that will be directly affected by the order sought? (2) Can the question raised be effectually and completely resolved without the addition of the party as a party? (*Amoco Canada Petroleum Co v Alberta & Southern Gas Co* (1993), 10 Alta LR (3d) 325 (QB) at paras 23-25). In a narrow sense, the only reason that it is necessary to make a person a party to an action is to ensure they are bound by the result: see *Amoco* at paras 13-15, citing *Amon v Raphael Tuck & Sons Ltd*, [1956] 1 QB 357 at 380. That the person may have relevant evidence or arguments does not make it necessary that they be added as a party. In the appropriate circumstances, such a person may be added as an intervenor, or may be a necessary witness.

[18] In this case, it is unclear what interest the individual appellants have that is not represented by the parties already before the court, or what position they would bring to the litigation, necessary to permit the issues to be completely and effectually resolved, that will not be presented

by those existing parties. As a matter of law, the Trustees represent the interests of the Beneficiaries, who include Patrick and Shelby Twinn. Catherine Twinn, as dissenting trustee, is separately represented, has taken an opposing view as to the need for amendment of the Trust, and will place that position before the court. The Public Trustee is tasked with representing the interests of all Beneficiaries who were minors when the litigation began, although it is acknowledged that the Public Trustee does not represent the interests of Patrick and Shelby Twinn (notwithstanding a comment made by the case management judge to the contrary).

[19] Neither the record, nor the oral or written submissions of the appellants, puts forward the positions each of the proposed parties intends to advance. As such, it is impossible for us to conclude that each proposed party has an interest that is not yet represented. Given the absence of information about the actual views of the appellants, we have no foundation to conclude otherwise. It is to be presumed that the Trustees and Public Trustee will put forward the various arguments regarding proposed amendments to the Trust and how those proposed amendments could affect the interests of various categories of current and potential beneficiaries. That there is a separately represented dissenting Trustee before the court adds to the likelihood that all views will be canvassed and all interests protected.

[20] The case management judge has been involved in the Trust litigation for several years, and deference is owed to his assessment of which parties need to be before the court in order for the questions raised in the litigation to be effectively resolved. His cautious approach to increasing the cost burden on the Trust and its beneficiaries, and unnecessarily expanding the Trust litigation, is well founded. Adding all the beneficiaries and potential beneficiaries as full parties to the Trust litigation is neither advisable nor necessary. We would not interfere with the case management judge's decision not to grant party status to the appellants.

[21] The appellants and Catherine Twinn also argue that the process followed here is flawed, as no originating application was filed to commence the Trust litigation. The Trustees say that it was always intended that the Procedural Order made by the case management judge on August 31, 2011 would be the constating document for the application for advice and direction. We agree with the Trustees that the lack of an originating application is not fatal to the litigation. However, the lack of an originating application, setting out specifics of the relief being sought, has resulted in a lack of clarity regarding if and how the Trust will be varied, whose interests will be affected by the variation, and how those interests might be affected. The Procedural Order provides details of how the litigation will proceed, including notice provisions and timelines, but it does not address the nature of the relief being sought.

[22] During the oral hearing, this issue and a number of others arose that have not yet been the subject of an application to, or direction from the case management judge. One such issue is whether there is a need for a formal pleading setting forth the position of the Trustees and the relief being sought; specifically, whether the Trust is discriminatory; and if so, what remedy is being sought. A second issue is what procedure will be implemented for beneficiaries and/or potential

beneficiaries to participate in the Trust litigation either individually or as representatives of a particular category of beneficiary. In addition, concern was raised to whether discrete legal issues could be determined prior to the merits of the Trust litigation being heard. These include whether the Trust is discriminatory, and whether s 42 of the *Trustee Act* applies. To date, we understand no formal application has been made to the case management judge on any of these matters. We strongly recommend that they be dealt with forthwith.

Did the case management judge err in awarding solicitor and own client costs?

[23] The case management judge awarded solicitor and own client costs against two of the appellants, Patrick and Shelby Twinn, in favour of the Trustees. His rationale for doing so was "to deter dissipation of trust property by meritless litigation activities by trust beneficiaries": see para 53.

[24] Solicitor and own client costs allow for a complete indemnification of legal fees and other costs for the successful party. This can include payment for "frills and extras" authorized by the client, but which should not fairly be passed on to a third party. They are distinct from solicitor-client costs, which allow for recovery of reasonable fees and disbursements, for all steps reasonably necessary within the four corners of the litigation: *Brown v Silvera*, 2010 ABQB 224 at para 8, 25 Alta LR (5th) 70; *Luft v Taylor, Zinkhofer & Conway*, 2017 ABCA 228 at para 77, 53 Alta LR (6th) 44.

[25] Awards of solicitor-client costs are reserved for exceptional circumstances constituting blameworthy conduct of litigation; cases where a party's litigation conduct has been described as reprehensible, egregious, scandalous or outrageous: see *Stagg v Condominium Plan 882-2999*, 2013 ABQB 684 at para 25; *Brown v Silvera* at paras 29-35; aff'd 2011 ABCA 109. The increased costs award is intended to deter others from like misconduct. This court has reiterated recently that awards of solicitor and client costs are rare and exceptional; awards of solicitor and "own client" costs are virtually unheard of except where provided by contract: see *Luft* at para 78.

[26] In an earlier case management decision in the Trust litigation, the case management judge issued an *obiter* warning to all parties, including counsel for Patrick Twinn, who seems to have been in attendance, of the possibility of awards for increased costs, saying:

I have taken a "costs neutral" approach to the Trust, the Band, and the Public Trustee in this litigation. That is because all three of these entities in one sense or another have key roles in the distribution process. However, this non-punitive and collaborative approach to costs has no application to third party interlopers in the distribution process as it advances to trial. The same is true for their lawyers. Attempts by persons to intrude into the process without a valid basis, for example, in an abusive attempt to conduct a collateral attack on a concluded court or tribunal process, can expect very strict and substantial costs awards against them (both applicants and lawyers) on a punitive or indemnity basis. True outsiders to the

Page: 7

Trust's distribution process will not be permitted to fritter away the Trust assets so that they do not reach the people who own that property in equity, namely, the Trust beneficiaries.

1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 299 (Sawridge #4) at para 30.


[27] The case management judge's concerns in this regard may provide the basis for an award of solicitor-client costs in appropriate circumstances, but they do not eliminate the requirement to assess the appropriateness of such an award on a case by case basis. The judgment under appeal here does not set out what exceptional circumstances existed to justify an award of solicitor and own client costs against these appellants on this application, nor is it apparent from the reasons, or from the record, what litigation misconduct on the part of these appellants led to the making of this costs award. Moreover, an award for increased or punitive costs ought not be made in the absence of notice of the possibility of such an order and an opportunity for parties to make submissions as to whether the order is warranted. Although the case management judge raised the prospect of punitive cost awards in Sawridge #4, there was no specific notice or specific submissions on the issue in this application and no party to the proceedings sought those costs. On that basis alone the costs award should be set aside.


[28] In the circumstances, we conclude that there was not a sufficient basis for the award of extraordinary costs against the appellants on this application, and the appeal from the costs award is allowed. The case management judge awarded party and party costs against Deborah Serafinchon in favour of the Trustees, and we make the same award against Patrick and Shelby Twinn.


Appeal heard on November 1, 2017

Memorandum filed at Edmonton, Alberta
this 12th day of December, 2017




Paperny J.A.


Veldhuis J.A.


Martin J.A.

Page: 8

Appearances:

N.L. Golding, Q.C.
for the Appellants

D.C. Bonora and A. Loparco
for the Respondents Roland Twinn, Catherine Twinn, Walter Felix Twinn, Bertha
L'Hirondelle and Clara Midbo, as Trustees for the 1985 Trust

J.L. Hutchison
for the Respondent The Office of the Public Guardian and Trustee

D.D. Risling
for the Respondent Catherine Twinn

TAB 6



Clerk's stamp:

COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

**Application (Statement of Issues and
Relief Sought)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5
Counsel for the Sawridge Trustees

Attention: Doris C.E. Bonora
Telephone: (780) 423-7188
Fax: (780) 423-7276
File No: 551860-001-DCEB

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Case Management Justice.

To do so, you must be in Court when the application is heard as shown below.

Date	To Be Determined
Time	To Be Determined
Where	Law Courts, 1 A Sir Winston Churchill Square, Edmonton
Before Whom	To Be Determined

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicants, the Sawridge Trustees, are the Trustees of the Sawridge Band Inter Vivos Settlement ("1985 Trust"). The Applicants seek determination of an issue and advice and directions from this Court. Pursuant to the comments of the Court of Appeal in *Twinn v Twinn*, 2017 ABCA 419, the Applicants file this document to set out and clarify the advice and directions sought in this Application.
2. The 1985 Trust was settled on April 15, 1985. Thereafter, section 15 of the *Canadian Charter of Rights and Freedoms* came into force, following the signing of the *Charter* into law.
3. After the 1985 Trust was settled, Bill C-31 was passed into law, making significant amendments to the *Indian Act*, R.S.C. 1970, Chapter I-6. Those amendments included the reinstatement of status and membership to women who had married non-Indigenous men and therefore lost their status and membership under the *Indian Act* prior to the amendments.
4. The definition of "Beneficiary" in the Trust Deed of the 1985 Trust makes specific reference to determining members of the Sawridge First Nation ("SFN") by reference to the *Indian Act* as it read as at April 15, 1982, before Bill C-31 was passed. The Trust Deed specifically prohibits amendment of the definition of "Beneficiary".
5. The 1985 Trust was funded from assets that had belonged to the SFN. Currently, there are members of SFN who are not beneficiaries of the 1985 Trust, such as the Bill C-31 women. There are beneficiaries of the 1985 Trust who are not members of SFN.
6. There may be other forms of discrimination in the definition of "Beneficiary".
7. The Applicants seek a determination of the following issue:

Is the definition of "Beneficiary" in the Trust Deed of the 1985 Trust discriminatory, insofar as the

definition refers to provisions of the *Indian Act*, R.S.C. 1970, c I-6, which have since been amended, and reads:

"Beneficiary" 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;

Remedy sought:

8. If the definition of "Beneficiaries" is found not to be discriminatory, then the Applicants do not expect to seek any other relief.
9. If the definition of "Beneficiary" is discriminatory, the Applicants seek direction from this Court as to the appropriate remedy, and particularly whether the appropriate remedy is:
 - (a) To modify the definition by striking out language that has a discriminatory effect such that the definition of "Beneficiary" in the 1985 Trust will be reduced to members of the Sawridge First Nation?
 - (b) If the remedy in paragraph 9(a) is not granted to determine if the 1985 Trust can be amended pursuant to,
 - (i) the amending provisions of the Trust Deed, or
 - (ii) Section 42 of the *Trustee Act*?
10. If the definition of "Beneficiary" is modified, by striking out language or otherwise, then:
 - (a) Should there be "grandfathering" such that any of the individuals who met the definition of "Beneficiary" before this relief is granted will remain Beneficiaries?

- (b) If the answer to 10(a) is "yes", what should the terms of such "grandfathering" be and who will be grandfathered?

11. Such further and other relief as this Court may deem appropriate.

Affidavit or other evidence to be used in support of this application:

12. Such material as has been filed to date and has been posted on the applicable court ordered website at www.sawridgetrusts.ca
13. Such further material as counsel may further advise and this Honourable Court may admit.

How the Application is to be heard:

14. The application is to be heard in Special Chambers before the presiding Justice at a date to be determined.

Applicable Acts and regulations and Orders:

15. *Alberta Rules of Court*, Alta Reg 124/2010;
16. *Trustee Act*, RSA 2000, c T-8;
17. Order of the Court of Queen's Bench of Alberta dated January 5, 2018 in case management.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

TAB 7



Clerk's stamp:

COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

**Application by the Sawridge Trustees
for Advice and Direction (Directed
Trial of Issue)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5
Counsel for the Sawridge Trustees

Attention: Doris C.E. Bonora
Telephone: (780) 423-7188
Fax: (780) 423-7276
File No: 551860-001-DCEB

Respondents:

Hutchison Law
#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park AB T8H 2A3
Attention: Janet L. Hutchison

Counsel for the Office of the Public
Guardian and Trustee

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton AB T5N 3Y4
Attention: Karen A. Platten, Q.C.

Counsel for Catherine Twinn as a Trustee of the
1985 Sawridge Trust

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Case Management Justice.

To do so, you must be in Court when the application is heard as shown below:

Date	January 19, 2018
Time	1:00 PM
Where	Law Courts, 1 A Sir Winston Churchill Square, Edmonton
Before Whom	Case Management Justice D.R.G. Thomas

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Sawridge Trustees request that the Court find that all parties have admitted that the definition of Beneficiary in the Trust Deed is discriminatory and thus declare that the definition of Beneficiary is discriminatory.
2. In the alternative, the Sawridge Trustees request that this Court grant an order for a question or issue to be determined, pursuant to Rule 7.1 of the *Alberta Rules of Court* ("Directed Issue Hearing"), with respect to the following issue:
 - (a) Is the definition of "Beneficiary" in the Trust Deed of the Sawridge Band Inter Vivos Settlement ("1985 Trust") discriminatory?
3. If the Directed Issue Hearing is ordered, the Sawridge Trustees further request that a timetable in respect of that Hearing be set according to Schedule "A" Litigation Plan attached.

4. The Sawridge Trustees also seek direction from this Court as to the method by which beneficiaries and/or potential beneficiaries may participate in the Trust litigation. The Court of Appeal, in paragraphs 21 and 22 of *Twinn v Twinn*, 2017 ABCA 419, recommended that further direction and clarification be sought with respect to the method of permitted participation by non-parties who are beneficiaries or potential beneficiaries of the 1985 Trust.

Grounds for making this application:

Directed Issue Hearing

5. The Trustees believe all the parties have admitted that the definition of "Beneficiary" in the Trust Deed is discriminatory and thus submit that, within the jurisdiction granted to a case management justice in Rule 4.14 of the *Alberta Rules of Court* to identify, simplify and clarify the real issues in dispute, the Court may determine that the 1985 Trust's definition of "Beneficiary" is discriminatory.
6. If the Court cannot determine this issue, the Trustees submit that the resolution of this question or issue meets the objectives in Subrule 7.1(1):
 - (a) Determining whether the definition of "Beneficiary" is discriminatory may dispose of the rest of the claim. If it is found that the definition is not discriminatory, that will likely make determination of the balance of the Application unnecessary, as the Sawridge Trustees will not seek a change to the definition of "Beneficiary" if it is not discriminatory.
 - (b) The Directed Issue Hearing will be a short hearing, and will not require much time before it is ready to be heard by the Court. The Directed Issue Hearing will substantially shorten the required final determination application or trial, as this narrow question will require far less evidence than the balance of the Application. It is likely that the determination can be made with only affidavit evidence or very little evidence as the argument will involve legal arguments on the statute.
 - (c) It will save expense, as a determination that the definition is not discriminatory would save the need for the more expansive and expensive trial that may be required for the balance of the Application.
7. If the definition of "Beneficiary" is found to be discriminatory, the parties can then focus on a hearing respecting the appropriate remedy. That remedy may involve striking the discriminatory language, amending the trust using the amending provisions of the 1985 Trust, or proceeding under section 42 of the *Trustee Act*.
8. The Sawridge Trustees submit that the 1985 Trust should be amended by striking language. Other parties have suggested that section 42 of the *Trustee Act* applies and thus all the beneficiaries would have to be identified and there would need to be 100% approval from the beneficiaries. The Court would have to consider the fact that the Trust Deed prohibits amendment. The Sawridge Trustees suggest that if the 1985 Trust needs to be amended, it may be amended under the provisions of the Trust Deed requiring only 80% approval of the beneficiaries. Which of these approaches is appropriate must be determined by the Court.
9. The Sawridge Trustees submit that the issue of the appropriate remedy is a discrete issue from the question of whether the 1985 Trust is discriminatory. There is little or no overlap between the evidence that will be required for the Directed Issue Hearing, which requires the interpretation of

a document and a statute and the evidence that will be required to determine the appropriate remedy. Further, if the definition is not discriminatory, it may be unnecessary to determine a remedy.

Method of Non-Party Beneficiary Participation

10. The Sawridge Trustees submit that it is their position that participation in writing only by any person who is a beneficiary and/or potential beneficiary will be the most effective and efficient method of participation in the Trust litigation. The Sawridge Trustees propose that the participation be limited to one submission per individual at each stage of the hearing of issues. (So, if this Court agrees to the Directed Issue Hearing, one submission could be made at that time, and one at the time of the final hearing with respect to remedy.)
11. There are many people who claim to be potential beneficiaries of whom the Trustees are aware. Given the number of such potential beneficiaries, the Sawridge Trustees further submit that a page limit of **5 pages per written submission** (including attachments) would provide an appropriate balance between the interests of the beneficiary/potential beneficiary in making a submission in respect of his or her interests, with the need to maintain proportionality and efficiency in the proceedings. The submissions are not to be duplicative of arguments already made. Any duplication could be subject to costs awards.
12. If the beneficiary or potential beneficiary wishes to file an affidavit, it can only do so to raise evidence that is unique and distinct to that evidence that has already been filed by the parties. If a beneficiary or potential beneficiary filed duplicative evidence, the issue of the duplicative nature of the evidence will be addressed in a costs application and there may be costs consequences for duplication of evidence.
13. If participation in this manner is directed, the Sawridge Trustees suggest that a deadline for beneficiary submissions in respect of the Directed Issue Hearing be incorporated into the proposed timetable, as shown in the proposed timetable attached as Schedule A. The Sawridge Trustees propose that notice be provided by way of case management order, which would be published on the website for this proceeding.
14. Further, the timeline for affidavit evidence can be incorporated in to the deadlines set out above so that the parties may know the evidence filed and then determine if they need to file further evidence. The Sawridge Trustees propose that non-party potential beneficiaries must file affidavit evidence for the Directed Issue Hearing by **February 15, 2018** and that notice of the same be provided by way of case management order, which would be published on the website for this proceeding.

Material or evidence to be relied on:

15. Proposed timetable for Directed Issue Hearing, attached as Schedule A.
16. Evidence already filed and posted on the website on the issue of discrimination.

Applicable Rules:

17. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 1.2, 4.14, 7.1.

How the Application is proposed to be heard or considered:

18. The Sawridge Trustees propose that this application proceed in the manner set out by the Court on January 5, 2018, in an oral hearing in Court on January 19, 2018.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

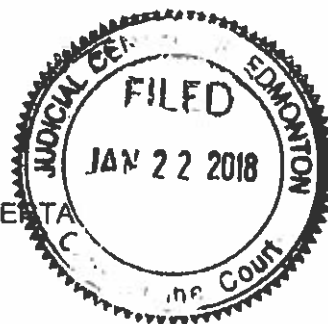
Schedule A – Proposed Litigation Timetable

NO.	ACTION	DEADLINE	PROPOSED DIRECTION
1.	All affidavits filed on issue of whether the trust beneficiary definition is discriminatory (Directed Issue Hearing)	By January 30, 2018.	Parties shall advise of affidavits which are previously filed upon which they intend to rely. All documents intended to be relied upon shall be included in affidavits. Parties will be directed to be focussed on the issue of discrimination alone, with cost consequences possible if parties file irrelevant materials in an affidavit.
2.	All questioning on affidavits filed for Directed Issue Hearing	By February 28, 2018	
3.	All undertakings answered	By March 30, 2018	
4.	All expert will say statements filed	By March 30, 2018	If any party wishes to call an expert witness for the Directed Issue Hearing, a procedure will be implemented to determine the relevance. The purpose of this procedure is to ensure that the Hearing remains focused on the discrimination issue, and not on matters that will be more properly heard with the application to resolve the discrimination. Any party wishing to rely on the evidence of an expert witness for the directed Hearing must serve a "will say" statement outlining the evidence that would be put forward by the expert witness and signed by the expert witness. The "will say" statements must be served on all other parties, and filed with the Court

5.	Any rebuttal expert will say statements filed	BY April 30, 2018	
6.	An application with respect to objections to experts based on relevance	By May 15, 2018	
7.	File written submissions on expert reports relevance	By May 31, 2018	If objections have been filed, or upon the initiative of the Court if it has concerns about relevance, the admissibility of such party's proposed expert evidence will be determined by the Case Management Justice by written submissions submitted by May 31, 2018.
8.	File expert reports	30 days following the filing of the will say or 30 days filing a written decision by the case management Justice on relevance	
9.	Non-party potential beneficiaries file non repetitive affidavits	By February 15, 2018	
10.	All submissions on the Directed Issue Hearing for parties	Will be made according to the practice Direction for special chambers applications or as directed by the court.	
11.	All submissions on the Directed Issue Hearing for non-parties and will be limited to 5 pages including attachments	Will be made one week following the applicant's and respondents' submissions	
12.	Determination of Directed Issue Hearing	Fall 2018	

TAB 8

Clerk's stamp:



COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT

ROLAND TWINN, CATHERINE TWINN, BERTHA
L'HIRONDELLE, CLARA MIDBO AND WALTER FELIX
TWIN, as Trustees for the 1985 Trust and the 1986 Trust
("Sawridge Trustees")

DOCUMENT

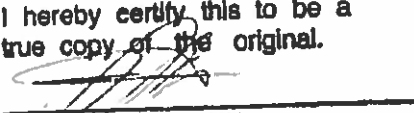
CONSENT ORDER (ISSUE OF DISCRIMINATION)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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

JUSTICE: DR. B. THORNTON
DATE: JAN 19, 2018
LOCATION: EDMONTON

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


for Clerk of the Court

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

UPON the Application by the Sawridge Trustees for advice and direction in respect of the
Sawridge Band Inter Vivos Settlement ("1985 Trust"), for which an Application for Advice and
Direction was filed January 9th, 2018;

AND WHEREAS the first question in the Application by the Sawridge Trustees on which
direction is sought is whether the definition of "Beneficiary" in the 1985 Trust is discriminatory,
which definition reads:

"Beneficiary" 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

31612369_1|NATDOCS

all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant 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 UPON being advised that the parties have agreed to resolve this specific question on the terms herein, and no other issue or question is raised before the Court at this time, including any question of the validity of the 1985 Trust;

AND UPON being advised the Parties remain committed to finding a remedy that will protect the existence of the 1985 Trust and the interests of the beneficiaries;

AND UPON there being a number of other issues in the Application that remain to be resolved, including the appropriate relief, and upon being advised that the parties wish to reserve and adjourn the determination of the nature of the relief with respect to the discrimination;

AND UPON this Court having the authority to facilitate such resolution of some of the issues raised in the Application prior to the determination of the balance of the Application;

AND UPON noting the consent of the Sawridge Trustees, consent of The Office of the Public Trustee and Guardian of Alberta ("OPGT") and the consent of Catherine Twinn;

IT IS HEREBY ORDERED AND DECLARED;

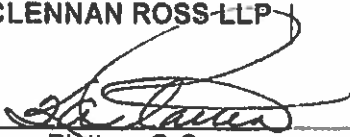
1. The definition of "Beneficiary" in the 1985 Trust is declared to be discriminatory insofar as it prohibits persons who are members of the Sawridge Indian Band No. 19 pursuant to the amendments to the *Indian Act* made after April 15, 1982 from being beneficiaries of the 1985 Trust.
2. The remaining issues in the Application, including the determination of any remedy in respect of this discriminatory definition, are to be the subject of a separate hearing. The timeline for this hearing will be as set out in Schedule "A" hereto and may be further determined at a future Case Management Meeting.
3. The Justice who hears and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief.

4. Nothing in this order may be construed to be a determination that the 1985 Trust is void or otherwise invalid. This Consent Order cannot be used in an application for dissolution as the ~~sole determinative factor~~ that the 1985 Trust should be dissolved. *a ground upon which* *could.*
5. The provisions in paragraph 4, above, will not prevent reliance on this Consent Order for any purpose in the within proceedings.


The Honourable D/R. G. Thomas
Thomas J

CONSENTED TO BY:

MCLENNAN ROSS LLP


Karen Platten, Q.C.
Counsel for Catherine Twinn as Trustee for
the 1985 Trust

DENTONS CANADA LLP


Doris Bonora
Counsel for the Sawridge Trustees

HUTCHISON LAW


Janet Hutchison
Counsel for the OPGT

SCHEDULE "A"

Clerk's stamp:

COURT FILE NUMBER 1103 14112
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT ROLAND TWINN, CATHERINE TWINN, BERTHA
L'HIRONDELLE, CLARA MIDBO AND WALTER FELIX
TWIN, as Trustees for the 1985 Trust and the 1986 Trust
("Sawridge Trustees")

DOCUMENT Litigation Plan January 19, 2018

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

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

NO.	ACTION	DEADLINE
1.	Case Management Meeting to address Trustee's application for an Order on the Discrimination Issue.	January 19, 2018
2.	Settlement meeting of all counsel for the Parties to continue to discuss remedies;	February 14, 15 or 16, 2018
3.	Interim payment on accounts made to OPGT from the Trustees	January 31, 2018 and February 28, 2018
4.	Agreed Statement of Facts to be circulated to all Parties, by the Trustees on the issue of the determination of the definition of beneficiary and grandfathering (if any).	By February 28, 2018
5.	Further Settlement meeting of all counsel for the Parties to continue to discuss remedies and draft Agreed Statement of Facts.	By March 30, 2018
6.	Responses from the Trustees to the OPGT regarding all outstanding issues on accounts to the end of 2017	March 30, 2018
7.	All Parties to provide preliminary comments on the Trustee's first draft of an Agreed Statement of Facts.	By May 30, 2018
8.	Concurrently with the preparation of the agreed statement of facts, all Parties to advise on whether they have any documents on which they respectively intend to rely on the issue of the remedies. If they have documents, they will file an Affidavit of Records	By February 28, 2018 <i>April 30</i>
9.	Concurrently with the preparation of the agreed statement of facts, all non-parties may provide records on which they intend to rely to all Parties who will determine if they are duplicates and if not, non party may file an Affidavit of Records	By February 28, 2018
10.	Third 2018 Settlement Meeting of all counsel to continue to discuss remedies and draft Agreed Statement of Facts.	By April 30, 2018
11.	Questioning on new documents only in Affidavits of Records filed, if required.	By May 30, 2018 <i>June 15</i>
12.	Non-party potential beneficiaries provide all Parties with any facts they wish to insert in the Agreed Statement of Facts.	By April 30, 2018

13.	Final Response by OPGT and any other recognized party on Agreed Statement of Facts.	By June 30, 2018
14.	Agreed Statement of Facts filed, if agreement reached.	By July 15, 2018
15.	Parties to submit Consent Order proposing revised Litigation Plan including a procedure for the remainder of the application including remedy for striking language or amending the trust under section 42 of the Trustee Act or amending the trust according to the trust deed. Alternatively, Trustees to file application re: same.	By July 15, 2018
16.	All other steps to be determined in a case management hearing	As and when necessary

TAB 9



Clerk's stamp:

COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

ROLAND TWINN, MARGARET WARD,
BERTHA L'HIRONDELLE, EVERETT JUSTIN
TWIN, and DAVID MAJESKI, as Trustees for the
1985 Sawridge Trust ("Sawridge Trustees")

DOCUMENT

**Application by the Sawridge Trustees
for Advice and Direction (returnable
September 25, 2018)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5
Counsel for the Sawridge Trustees

Attention: Doris C.E. Bonora
Telephone: (780) 423-7188
Fax: (780) 423-7276
File No: 551860-001-DCEB

Respondents:

Hutchison Law
#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park AB T8H 2A3
Attention: Janet L. Hutchison

Counsel for the Office of the Public
Guardian and Trustee

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton AB T5N 3Y4
Attention: Karen A. Platten, Q.C. and
Crista Osualdini

Counsel for Catherine Twinn

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Case Management Justice.

To do so, you must be in Court when the application is heard as shown below:

Date	September 25, 2018
Time	10:00 am
Where	Law Courts, 1 A Sir Winston Churchill Square, Edmonton
Before Whom	Case Management Justice D.R.G. Thomas

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

A. Privilege Order

1. The Sawridge Trustees request that this Court grant an order in the form attached as **Schedule "A"** to deem that lawyer-client privilege has not been waived in respect of the subject matter raised in a number of documents filed in these proceedings; the related Action 1403 04885 (the "1403 Action"); and the questionings on those documents (both in respect of oral responses to questionings, and in respect of written responses such as undertakings, interrogatories, and associated productions/filings).
2. The proposed order would allow the documents to be used in the form they are in and permit the litigation to proceed without delay. The only restriction sought is to protect privilege on documents that have not been released to date. The solution proposed by the Sawridge Trustees will permit any other privileged documents that a party may seek to rely on to be dealt with on a case-by-case basis.
3. The Sawridge Trustees believe that the proposal is efficient and an effective means of proceeding to reach a resolution. It is the quickest means of resolving this claim at the least expense.

4. If the proposed order is not granted, the Sawridge Trustees request that a timetable in respect of an application to determine how the issue of privilege should be dealt with be set according to **Schedule "B"**, attached.

B. Directed Issue Hearing and Litigation Plan

5. The Sawridge Trustees request that this Court grant an order for a question or issue to be determined, pursuant to Rule 7.1 of the *Alberta Rules of Court* ("**Directed Issue Hearing**"), with respect to the following issue:
 - (a) Given that the definition of "Beneficiary" in the 1985 Trust ("**Definition**") has been determined to be discriminatory, is it appropriate to change the Definition on the basis of public policy?
 - (b) If the answer to the above question is "yes", in what manner should it be changed and what should the Definition be?
 - (c) If the answer to the above question is "no", should the Definition be varied pursuant to s. 42 of the *Trustee Act*?
 - (d) If the Definition is not varied on the basis of public policy or s. 42 of the *Trustee Act*, does the definition remain the same?
6. The Sawridge Trustees request a direction that any party that is proposing a variation of the Definition pursuant to s. 42 of the *Trustee Act* must secure approval from the known beneficiaries prior to the Directed Issue Hearing. If 100% approval from known beneficiaries cannot be obtained, that will immediately address the question of whether that provision can be invoked.
7. If the Directed Issue Hearing is ordered, the Sawridge Trustees further request that a timetable in respect of that Hearing be set according to **Schedule "C"**, attached.

C. Non party participation

8. The Trustees seek direction on non party participation as was suggested in Sawridge #5 and as was sought but not dealt with in the January 2018 case management meeting.

Grounds for making this application:

A. Privilege Order

9. Catherine Twinn has sworn an Affidavit of Records on which she intends to rely. Included in that Affidavit of Records are documents that disclose the contents of solicitor-client communications between the Sawridge Trustees (of which Catherine Twinn formerly was one), and their lawyers.
10. A number of those documents were filed simultaneously in this proceeding and in the 1403 Action. Some of them were discussed during questioning, and some documents produced in response to undertakings and/or interrogatories contain such communications as well.
11. The Sawridge Trustees did not intend to broadly waive privilege over the subject matter of those communications. At the time those documents were filed, they were relevant to the issues in dispute.

between Catherine Twinn and the Sawridge Trustees. Those issues included the conduct of the Trustees and their possible removal based on conduct and also an indemnity application for costs by Catherine Twinn. The issues of conduct and indemnification were mostly unrelated to the issues in this 1103 Action.

12. The Sawridge Trustees seek an order clarifying and declaring that there is no broad waiver of solicitor-client privilege in respect of any subject matter that is raised in any of the documents filed in these proceedings, the 1403 Action, or the questionings and responses. Attached as **Schedule "D"** hereto is the proposed form of order.
13. This proposed order would permit the use of the documents filed to date, as well as the transcripts of the questionings of Catherine Twinn and Paul Bujold held to date and answers to Undertakings and Interrogatories. It would permit virtually all documents in Catherine Twinn's sworn Affidavit of Records, with the exception of four new documents she seeks to introduce. For any new documents such as those four new documents in Catherine Twinn's Affidavit of Records, the order permits them to be dealt with on a case-by-case basis on the agreement of the parties or the direction of the Court.
14. What the order does is declare that there is no broader waiver of privilege by the use of those documents, or responses, in these proceedings. As such, the Sawridge Trustees cannot be compelled, by anyone, to disclose any further documents or information regarding legal advice in respect of any subject matter raised in the documents and/or questionings.
15. The Sawridge Trustees believe that this declaration is critical to protect the 1985 Trust from arguments of broad waiver by anyone, including strangers to the 1985 Trust.
16. There is also an express provision in the proposed order to clarify that nothing in the order is meant to expand or limit the rights that any beneficiary of the 1985 Trust may have at law to request to see a trust document. Such requests will continue to be governed by the law respecting the rights of a beneficiary to request trust documents, including limits on those rights at law.
17. The Sawridge Trustees believe that this is a practical solution that will permit the parties to this Application to use documents that have been filed to date and use the questioning done to date, while providing critical protection to the 1985 Trust. Since the questionings of the Sawridge Trustees have been held, and all proposed documents have been listed in the parties' Affidavits of Records, the Sawridge Trustees do not see any prejudice to any party that may be caused by an order confirming that privilege is not broadly waived, particularly in contrast to the important role of protecting privilege of the 1985 Trust.
18. In keeping with Rule 1.2 of the Rules of Court, the order will facilitate the quickest means of resolving a claim at the least expense and will provide an effective, efficient system of enforcing the rules with respect to disclosure.
19. If this Honourable Court declines to grant the proposed order in **Schedule "D"**, the Sawridge Trustees request that a timeline be set for an application to determine how the documents that Catherine Twinn proposes to include in her Affidavit of Records should be dealt with in accordance with **Schedule "C"**.

B. Directed Issue Hearing on Definition of Beneficiary

20. The Definition has been deemed discriminatory, pursuant to the Order of this Court issued on January 19, 2018. A copy of that Order is attached for ease of reference as **Schedule "E"**.
21. The next issue, then, is whether the Definition will be changed, and by what procedure. The Sawridge Trustees raised this in their Application filed on January 9, 2018 (Application: Statement of Issues and Relief Sought). The application is attached as **Schedule "F"**.
22. The Sawridge Trustees sent a letter to the parties on June 22, 2018, proposing an Order for dealing with this issue. A copy of that letter is attached as **Schedule "G"**. In terms of the procedure to amend the Definition, the Sawridge Trustees requested that the OPGT and Catherine Twinn advise if they took the position that an application to vary the Trust pursuant to s. 42 of the *Trustee Act* was required, or whether an amendment pursuant to the Trust Deed was required..
23. The Sawridge Trustees propose that there be a Directed Issue Hearing because this question of procedure is essential in determining the course of remaining issues in the Application. The resolution of the Directed Issue Hearing meets the objectives in Subrule 7.1(1):
 - (a) Determining whether the Definition may be amended or modified may dispose of the rest of the claim. If it is found that the Definition should not or cannot be modified, the discriminatory nature of the Definition notwithstanding, then that will dispose of the rest of the Application in respect of grandfathering.
 - (b) The determination of whether the Definition may be amended or modified is a necessary precursor to any findings on what grandfathering, if any, is appropriate. Until it is known whether the Definition will change, and if so, then how it may change, there cannot be any determinations or meaningful discussions about whose rights may be affected by any such change.
 - (c) Having this early determination will save expense and court resources, as it will focus the hearing on the issue of grandfathering. Since it will be known in advance what the new Definition will be, then the parties will be in a better position to ascertain whose interests will be affected, and therefore what evidence may need to be led in respect of those individuals. In contrast, if it is not known what the Definition will be before any hearing on grandfathering, then there is likely to be evidence led in respect of individuals who will remain beneficiaries and do not need to be grandfathered. The trial on that issue will almost certainly be longer than necessary as a result, and the parties will be put to additional expense.
 - (d) The question of whether the Definition may be amended or modified is an issue of law. Little evidence will be required. It can proceed quickly in contrast, the remaining issue of grandfathering will require a significant amount of evidence on the issues of individual genealogies and the interpretation of the *Indian Act* as of April 15, 1982. It will require a longer hearing, which, for reasons above, may be entirely unnecessary, depending on how the DIH is determined.

The Sawridge Trustees are proposing that any change would be made pursuant to common law powers of the courts in respect of the administration of trusts and dealing with

public policy, and as such would not require 100% approval of beneficiaries. In contrast, s. 42 requires that 100% beneficiary approval be obtained in respect of any proposed change to the definition. The parties should take such steps prior to the Directed Issue Hearing as may be necessary to seek approval of any proposed definition. If there is even one beneficiary response opposing a proposed change, and the Court determines that it cannot proceed under the common law, then it will be quickly and readily apparent that such an application would not succeed and grandfathering will not be a question.

24. There is little to no overlap between the issue of whether and how the Definition is to be modified, and the issue of who may be grandfathered. The determination of the issue respecting the change to the Definition is a legal question
25. If the Directed Issue Hearing is granted, the Sawridge Trustees propose that a litigation plan in the form attached as **Schedule "A"** be approved by this Court. If this Honourable Court declines to grant the proposed order in **Schedule "D"**, the Sawridge Trustees propose that a litigation plan in the form attached as **Schedule "B"** be granted to accommodate the determination of the privilege issue.

C. Litigation Plan

26. The Order of this Honourable Court issued January 19, 2018 attached and incorporated, as Schedule "A" thereto, a Litigation Plan. Step 15 of that Litigation Plan provided:

15	Parties to submit Consent Order proposing revised Litigation Plan including a procedure for the remainder of the application including remedy for striking language or amending the trust under section 42 of the Trustee Act or amending the trust according to the trust deed. Alternatively, Trustees to file application re: same.	By July 15, 2018
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27. The Sawridge Trustees and the Respondents did not reach such a Consent Order by July 15, 2018.
28. The Sawridge Trustees therefore bring the within application to seek assistance of this Court in setting a Litigation Plan for the remainder of the application as provided in Step 15 of the previous Litigation Plan.

D. Method of Non-Party Beneficiary Participation

29. The Sawridge Trustees submitted at the Case Management Conference held on January 19, and their submission remains, that participation in writing only by any person who is a beneficiary and/or potential beneficiary will be the most effective and efficient method of participation in the Trust litigation. The Sawridge Trustees propose that the participation be limited to one submission per individual at each stage of the hearing of issues and that this be incorporated into the Litigation Plan. (If this Court agrees to the Directed Issue Hearing, one submission could be made at that time, and one at the time of any subsequent hearing in respect of grandfathering.)
30. There are many people who claim to be potential beneficiaries of whom the Trustees are aware. Given the number of such potential beneficiaries, the Sawridge Trustees further submit that a page

limit of **5 pages per written submission** (including attachments) would provide an appropriate balance between the interests of the beneficiary/potential beneficiary in making a submission in respect of his or her interests, with the need to maintain proportionality and efficiency in the proceedings. The submissions are not to be duplicative of arguments already made. Any duplication could be subject to costs awards.

31. The Sawridge Trustees submit that, for the Directed Issue Hearing, beneficiary evidence from beneficiaries, or potential beneficiaries, would not be required, as it is a question of law. However, if this Court disagrees, the Sawridge Trustees propose that any beneficiary or potential beneficiary who wishes to file an affidavit can only do so to raise evidence that is unique and distinct from evidence that has already been filed by the parties. If a beneficiary or potential beneficiary filed duplicative evidence, the issue of the duplicative nature of the evidence will be addressed in a costs application and there may be costs consequences for duplication of submissions.
32. If participation in this manner is directed, the Sawridge Trustees suggest that a deadline for beneficiary submissions in respect of the Directed Issue Hearing be incorporated into the proposed timetable, as shown in the proposed timetable attached as **Schedule "A"** (or, in the alternative, **Schedule "B"**). The Sawridge Trustees propose that notice be provided by way of case management order, which would be published on the website for this proceeding.

Material or evidence to be relied on:

- D. Affidavits of Paul Bujold filed to date.
- E. The attached Schedules.
- F. Concise Bench Brief to be filed by the Applicants by August 24, 2018.
- G. Such further evidence as may be filed by the Applicant prior to the return date of the Application.

Applicable Rules:

- H. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 1.2, 4.14, 7.1, 6.44-46

How the Application is proposed to be heard or considered:

- I. The Sawridge Trustees propose that this application proceed by way of an oral hearing on the date set out above.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE A

**Schedule "A" – Litigation Plan for Directed Issue Hearing
if Privilege Issue Determined September 25, 2018**

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

NO.	ACTION	DEADLINE
1.	Case Management Meeting to address Trustees' Application for Advice and Direction	September 25, 2018
2.	Questioning by OPGT of Catherine Twinn on Affidavit of Records filed, if required, and further questioning of Paul Bujold (Sawridge Trustees) by OPGT on Affidavits of Records filed, if required.	By October 19, 2018
3.	Notice posted to the website of the Directed Issue Hearing. Letters sent to SFN members of the nature of the application and letters sent to identified potential beneficiaries of the application.	By October 19, 2018
4.	Parties to send any proposal(s) for a varied definition that might be relied on for dealing with s. 42 at the Directed Issue Hearing, with a request that responses to the proposal be returned by November 1, 2018	By October 19, 2018
5.	Brief of the Sawridge Trustees for Directed Issue Hearing filed	By November 9, 2018
6.	Briefs of the OPGT and Catherine Twinn for Directed Issue Hearing filed	By November 23, 2018
7.	Written submissions by any non-party beneficiaries/potential beneficiaries, including any submission by the SFN (maximum of 5 pages, including attachments)	By December 5, 2018
8.	Directed Issue Hearing (one half day)	Dependent on availability of Court (by December 21 if possible)
9.	A new litigation plan will be developed for the steps for grandfathering, if necessary: need witness lists; will-say statements; briefs; hearing date	

SCHEDULE B

**Schedule "B" – Litigation Plan for Directed Issue Hearing
If Privilege Issue Not Determined September 25, 2018**

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

NO.	ACTION	DEADLINE
1.	Case Management Meeting to address Trustees' Application for Advice and Direction	September 25, 2018
2.	Notice posted to the website of the Directed Issue Hearing. Letters sent to SFN members of the nature of the application and letters sent to identified potential beneficiaries of the application.	By November 19, 2018
3.	Parties to send any proposal(s) for a varied definition that might be relied on for dealing with s. 42 at the Directed Issue Hearing, with a request that responses to the proposal be returned by November 1, 2018	By November 19, 2018
4.	Questioning by OPGT of Catherine Twinn on Affidavit of Records filed, if required, and further questioning of Paul Bujold (Sawridge Trustees) by OPGT on Affidavits of Records filed, if required.	By December 14, 2018
5.	Brief of the Sawridge Trustees for Directed Issue Hearing filed	By December 21, 2018
6.	Briefs of the OPGT and Catherine Twinn for Directed Issue Hearing filed	By January 4, 2019
7.	Written submissions by any non-party beneficiaries/potential beneficiaries, including any submission by the SFN (maximum of 5 pages, including attachments)	By January 18, 2019
8.	Directed Issue Hearing (one half day)	Dependent on availability of Court (by February 1, 2019 if possible)
9.	A new litigation plan will be developed for the steps for grandfathering, if necessary: need witness lists; will-say statements; briefs; hearing date	

SCHEDULE C

Schedule "C" –Litigation Plan for Privilege Hearing

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

NO.	ACTION	DEADLINE
1.	Case Management Meeting to address Trustee's application for an Order on the Privilege Issue. If proposed order granted, issue is complete.	September 25, 2018
2.	If order not granted September 25, Trustees to put together all documents that contain privileged information and provide to Catherine Twinn to see if agreement can be reached on the exclusion of the whole document or on the exclusion of a redacted portion of the document	By September 28, 2018
3.	All non-contested documents from the Affidavit of Records of Catherine Twinn (i.e., documents over which no issues regarding privilege are raised) delivered to OPGT	By September 28, 2018
4.	If no agreement is reached on exclusions/redactions from contested documents by October 12, 2018, then the parties will agree on a referee to review the documents to determine what documents raise privilege issues. Referee to be appointed by agreement of the parties.	By October 19, 2018
5.	If no agreement is reached on a referee, the parties may apply in regular morning chambers to have a referee appointed.	By October 26, 2018
6.	Referee to make decision and provide report to the Court.	By November 2, 2018
7.	Trustees to file a brief outlining position on privilege.	By November 9, 2018
8.	Any responding briefs to be filed by Catherine Twinn and the OPGT on privilege.	By November 16, 2018
9.	Hearing in respect of the privilege issues	By November 30, 2018 (court time permitting)

SCHEDULE D

Schedule "D" – Proposed Privilege Order

Clerk's stamp:

COURT FILE NUMBER 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT ROLAND TWINN, MARGARET WARD, BERTHA
L'HIRONDELLE, EVERETT JUSTIN TWIN AND DAVID
MAJESKI, as Trustees for the 1985 Trust ("Sawridge
Trusts")

DOCUMENT ORDER (PRIVILEGE)

DATE ORDER PRONOUNCED
LOCATION WHERE ORDER
PRONOUNCED Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER Honourable Justice D.R.G. Thomas

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

UPON the Application by the Sawridge Trustees for advice and direction in respect of the Sawridge Band Inter Vivos Settlement ("**1985 Trust**") ("**Application**");

AND WHEREAS certain documents have been filed in these proceedings prior to the date of this Order that refer to legal advice provided to the Sawridge Trustees, including to Catherine Twinn while she was a Sawridge Trustee (the "**Filed Documents**");

AND WHEREAS certain of the Filed Documents have also been filed in Court File No. 1403 04885 (the "**1403 Filed Documents**");

AND WHEREAS the Sawridge Trustees, The Office of the Public Trustee and Guardian of Alberta ("**OPGT**") and Catherine Twinn agree that there is no intention to waive solicitor-client privilege over the subject matter of the communications contained in the Filed Documents and the 1403 Filed Documents;

AND WHEREAS the Sawridge Trustees, the OPGT and Catherine Twinn consent to this Order;

IT IS HEREBY ORDERED AND DECLARED;

1. Any waiver of solicitor-client privilege that may be implied from the contents of the Filed Documents, and/or the 1403 Filed Documents, is expressly limited to the contents of those documents.
2. No response in a questioning, whether by way of oral or written response including any answer recorded by transcript or answer to undertaking or interrogatories, that addresses the contents of the Filed Documents, and/or the 1403 Filed Documents (collectively "Questioning Responses"), can be construed as a general waiver of solicitor-client privilege over the subject matter of any communications contained therein.
3. The Sawridge Trustees are expressly declared not to have waived solicitor-client privilege over the subject matter of any matters discussed in the Filed Documents, the 1403 Filed Documents, and/or the Questioning Responses. Nothing in the contents of the Filed Documents, the 1403 Filed Documents, or any Questioning Responses given in these proceedings, can be used to compel the Sawridge Trustees to produce further documents or answer questions in respect of legal advice received by the Sawridge Trustees.
4. Nothing in the contents of the Filed Documents, the 1403 Filed Documents, or the Questioning Responses, can be used to compel the Sawridge Trustees to produce

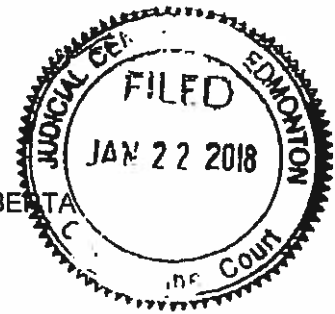
further documents or answer questions in respect of legal advice received by the Sawridge Trustees.

5. While this is a binding declaratory order, including on the parties to the Application and the beneficiaries of the 1985 Trust, nothing in this Order is intended to expand or limit the disclosure or production to which a beneficiary of the 1985 Trust may otherwise be entitled to at law to request as a beneficiary of the 1985 Trust.
6. If the Sawridge Trustees, the OPGT, Catherine Twinn, or any beneficiary of the 1985 Trust who may choose to participate in the manner permitted by this Court, seek to use any other document or record in this Application, other than those covered by this Order (being the Filed Documents, the 1403 Filed Documents, and the Questioning Responses) to which a claim of solicitor-client privilege may be made, the admissibility of such document and/or the terms for protecting the privilege of such document may be determined on a case-by-case basis, either by agreement of the Sawridge Trustees, the OPGT and Catherine Twinn, or by the direction of this Court.

The Honourable Justice D. R. G. Thomas

SCHEDULE E

Clerk's stamp:



COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT

ROLAND TWINN, CATHERINE TWINN, BERTHA
L'HIRONDELLE, CLARA MIDBO AND WALTER FELIX
TWIN, as Trustees for the 1985 Trust and the 1986 Trust
('Sawridge Trustees')

DOCUMENT

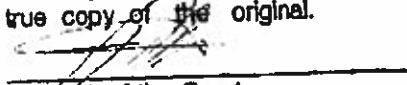
CONSENT ORDER (ISSUE OF DISCRIMINATION)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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

*JUSTICE: D.R.G. THOMPSON
DATE: JAN 19, 2018
LOCATION: EDMONTON*

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


Clerk of the Court

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

UPON the Application by the Sawridge Trustees for advice and direction in respect of the
Sawridge Band Inter Vivos Settlement ("1985 Trust"), for which an Application for Advice and
Direction was filed January 9th, 2018;

AND WHEREAS the first question in the Application by the Sawridge Trustees on which
direction is sought is whether the definition of "Beneficiary" in the 1985 Trust is discriminatory,
which definition reads:

"Beneficiary" 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 UPON being advised that the parties have agreed to resolve this specific question on the terms herein, and no other issue or question is raised before the Court at this time, including any question of the validity of the 1985 Trust;

AND UPON being advised the Parties remain committed to finding a remedy that will protect the existence of the 1985 Trust and the interests of the beneficiaries;

AND UPON there being a number of other issues in the Application that remain to be resolved, including the appropriate relief, and upon being advised that the parties wish to reserve and adjourn the determination of the nature of the relief with respect to the discrimination;

AND UPON this Court having the authority to facilitate such resolution of some of the issues raised in the Application prior to the determination of the balance of the Application;

AND UPON noting the consent of the Sawridge Trustees, consent of The Office of the Public Trustee and Guardian of Alberta ("OPGT") and the consent of Catherine Twinn;

IT IS HEREBY ORDERED AND DECLARED;

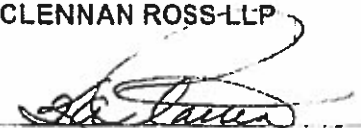
1. The definition of "Beneficiary" in the 1985 Trust is declared to be discriminatory insofar as it prohibits persons who are members of the Sawridge Indian Band No. 19 pursuant to the amendments to the *Indian Act* made after April 15, 1982 from being beneficiaries of the 1985 Trust.
2. The remaining issues in the Application, including the determination of any remedy in respect of this discriminatory definition, are to be the subject of a separate hearing. The timeline for this hearing will be as set out in Schedule "A" hereto and may be further determined at a future Case Management Meeting.
3. The Justice who hears and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief.

4. Nothing in this order may be construed to be a determination that the 1985 Trust is void or otherwise invalid. This Consent Order cannot be used in an application for dissolution as the ~~sole determinative factor~~ that the 1985 Trust ~~should be dissolved~~.
a ground upon which could
5. ~~The provisions in paragraph 4, above, will not prevent reliance on this Consent Order for any purpose in the within proceedings.~~


The Honourable D/R. G. Thomas
Thomas J

CONSENTED TO BY:

MCLENNAN ROSS-LLP


Karen Platten, Q.C.
Counsel for Catherine Twinn as Trustee for the 1985 Trust

HUTCHISON LAW


Janet Hutchison
Counsel for the OPGT

DENTONS CANADA LLP


Doris Bonora
Counsel for the Sawridge Trustees

SCHEDULE "A"

Clerk's stamp:

COURT FILE NUMBER 1103 14112
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT ROLAND TWINN, CATHERINE TWINN, BERTHA
L HIRONDELLE, CLARA MIDBO AND WALTER FELIX
TWIN, as Trustees for the 1985 Trust and the 1986 Trust
("Sawridge Trustees")

DOCUMENT Litigation Plan January 19, 2018

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

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

NO.	ACTION	DEADLINE
1.	Case Management Meeting to address Trustee's application for an Order on the Discrimination Issue.	January 19, 2018
2.	Settlement meeting of all counsel for the Parties to continue to discuss remedies;	February 14, 15 or 16, 2018
3.	Interim payment on accounts made to OPGT from the Trustees	January 31, 2018 and February 28, 2018
4.	Agreed Statement of Facts to be circulated to all Parties, by the Trustees on the issue of the determination of the definition of beneficiary and grandfathering (if any).	By February 28, 2018
5.	Further Settlement meeting of all counsel for the Parties to continue to discuss remedies and draft Agreed Statement of Facts.	By March 30, 2018
6.	Responses from the Trustees to the OPGT regarding all outstanding issues on accounts to the end of 2017	March 30, 2018
7.	All Parties to provide preliminary comments on the Trustee's first draft of an Agreed Statement of Facts.	By May 30, 2018
8.	Concurrently with the preparation of the agreed statement of facts, all Parties to advise on whether they have any documents on which they respectively intend to rely on the issue of the remedies. If they have documents, they will file an Affidavit of Records	By February 28, 2018 <i>April 30</i>
9.	Concurrently with the preparation of the agreed statement of facts, all non-parties may provide records on which they intend to rely to all Parties who will determine if they are duplicates and if not, non party may file an Affidavit of Records	By February 28, 2018
10.	Third 2018 Settlement Meeting of all counsel to continue to discuss remedies and draft Agreed Statement of Facts.	By April 30, 2018
11.	Questioning on new documents only in Affidavits of Records filed, if required.	By May 30, 2018 <i>June 15</i>
12.	Non-party potential beneficiaries provide all Parties with any facts they wish to insert in the Agreed Statement of Facts.	By April 30, 2018

13.	Final Response by OPGT and any other recognized party on Agreed Statement of Facts.	By June 30, 2018
14.	Agreed Statement of Facts filed, if agreement reached.	By July 15, 2018
15.	Parties to submit Consent Order proposing revised Litigation Plan including a procedure for the remainder of the application including remedy for striking language or amending the trust under section 42 of the Trustee Act or amending the trust according to the trust deed. Alternatively, Trustees to file application re: same.	By July 15, 2018
16.	All other steps to be determined in a case management hearing	As and when necessary

SCHEDULE F

Clerk's stamp:



COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

**Application (Statement of Issues and
Relief Sought)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5
Counsel for the Sawridge Trustees

Attention: Doris C.E. Bonora
Telephone: (780) 423-7188
Fax: (780) 423-7276
File No: 551860-001-DCEB

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Case Management Justice.

To do so, you must be in Court when the application is heard as shown below:

Date	To Be Determined
Time	To Be Determined
Where	Law Courts, 1 A Sir Winston Churchill Square, Edmonton
Before Whom	To Be Determined

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicants, the Sawridge Trustees, are the Trustees of the Sawridge Band Inter Vivos Settlement ("1985 Trust"). The Applicants seek determination of an issue and advice and directions from this Court. Pursuant to the comments of the Court of Appeal in *Twinn v Twinn*, 2017 ABCA 419, the Applicants file this document to set out and clarify the advice and directions sought in this Application.
2. The 1985 Trust was settled on April 15, 1985. Thereafter, section 15 of the *Canadian Charter of Rights and Freedoms* came into force, following the signing of the *Charter* into law.
3. After the 1985 Trust was settled, Bill C-31 was passed into law, making significant amendments to the *Indian Act*, R.S.C. 1970, Chapter I-6. Those amendments included the reinstatement of status and membership to women who had married non-Indigenous men and therefore lost their status and membership under the *Indian Act* prior to the amendments.
4. The definition of "Beneficiary" in the Trust Deed of the 1985 Trust makes specific reference to determining members of the Sawridge First Nation ("SFN") by reference to the *Indian Act* as it read as at April 15, 1982, before Bill C-31 was passed. The Trust Deed specifically prohibits amendment of the definition of "Beneficiary".
5. The 1985 Trust was funded from assets that had belonged to the SFN. Currently, there are members of SFN who are not beneficiaries of the 1985 Trust, such as the Bill C-31 women. There are beneficiaries of the 1985 Trust who are not members of SFN.
6. There may be other forms of discrimination in the definition of "Beneficiary".
7. The Applicants seek a determination of the following issue:

Is the definition of "Beneficiary" in the Trust Deed of the 1985 Trust discriminatory, insofar as the

definition refers to provisions of the *Indian Act*, RSC 1970, c I-6, which have since been amended, and reads:

"Beneficiary" 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 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;

Remedy sought:

8. If the definition of "Beneficiaries" is found not to be discriminatory, then the Applicants do not expect to seek any other relief.
9. If the definition of "Beneficiary" is discriminatory, the Applicants seek direction from this Court as to the appropriate remedy, and particularly whether the appropriate remedy is:
 - (a) To modify the definition by striking out language that has a discriminatory effect such that the definition of "Beneficiary" in the 1985 Trust will be reduced to members of the Sawridge First Nation?
 - (b) If the remedy in paragraph 9(a) is not granted to determine if the 1985 Trust can be amended pursuant to,
 - (i) the amending provisions of the Trust Deed, or
 - (ii) Section 42 of the *Trustee Act*?
10. If the definition of "Beneficiary" is modified, by striking out language or otherwise, then:
 - (a) Should there be "grandfathering" such that any of the individuals who met the definition of "Beneficiary" before this relief is granted will remain Beneficiaries?

- (b) If the answer to 10(a) is "yes", what should the terms of such "grandfathering" be and who will be grandfathered?

11. Such further and other relief as this Court may deem appropriate.

Affidavit or other evidence to be used in support of this application:

12. Such material as has been filed to date and has been posted on the applicable court ordered website at www.sawridgetrusts.ca

13. Such further material as counsel may further advise and this Honourable Court may admit.

How the Application is to be heard:

14. The application is to be heard in Special Chambers before the presiding Justice at a date to be determined.

Applicable Acts and regulations and Orders:

15. *Alberta Rules of Court*, Alta Reg 124/2010;

16. *Trustee Act*, RSA 2000, c T-8;

17. Order of the Court of Queen's Bench of Alberta dated January 5, 2018 in case management

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE G

June 22, 2018

File No.: 551860-1

SENT VIA E-MAIL:

Janet Hutchison
Unit #190 Broadway Business Square,
130 Broadway Boulevard,
Sherwood Park, Alberta, T8H 2A3

Karen Platten, Q.C. and Crista Osualdini
McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton AB T5N 3Y4

Dear Sir/Madam:

**RE: Beneficiary Definition in 1985 Sawridge Trust
Court File No. 1103 14112**

We write further to our letter dated March 21, 2018, to which we have not received a response. A copy of our letter is attached for your ease of reference.

One of the issues in our Application (Statement of Issues and Relief Sought) filed on January 9, 2018 ("Application") has been resolved by way of consent order dated January 19, 2018, with the definition of "Beneficiary" in the Trust Deed having been declared discriminatory.

As you are aware, the current litigation plan has no scheduled steps beyond July 15, 2018. In terms of the next steps, we write to propose that the issue of remedying the definition also be resolved by an order which can either be by consent or by having the parties signify that they do not oppose the order.

Law on amending the trust

Our view is that there is sound legal basis upon which the Court may strike language in the definition of "beneficiary" on the basis that such language has a discriminatory effect.

Two other possible methods of proceeding have been raised during the course of discussions: seeking variation pursuant to s. 42 of the *Trustee Act*, or amending pursuant to the terms of the Trust Deed

If we were to proceed by way of s. 42 of the *Trustee Act*, which requires 100% consent, the views of even one beneficiary would prevent a remedy even if the substantial majority of other beneficiaries approve. Given the contentious nature of the litigation to date, we doubt that 100% approval of a definition is possible. In addition, there are substantial issues with ascertaining the identities of all of the beneficiaries of the Trust

thus it will not be certain that we have 100% approval. It also perpetuates the discrimination because the very women who are impacted by the discrimination do not have a vote, as they are not beneficiaries.

Our view is that amending pursuant to the Trust Deed is not possible, insofar as paragraph 10 specifies that no change can be made to the definition of "beneficiary" by way of the variation clause in the Trust Deed.

Amendment must precede Grandfathering

We believe that we cannot proceed with discussions about "grandfathering" individuals who may be impacted by a change to the definition until we know how the definition will be amended, as we cannot know if someone needs to be grandfathered until we know what the definition will be and whether they will be excluded. The change of definition must precede the grandfathering issue. Otherwise, we will be spending a great deal of time and expense to discuss what amounts to hypotheticals, and in our view, there is no time or expense to be wasted.

Proposal to Proceed

We therefore are of the view that it is advisable to proceed by seeking the direction of the Court to amend the definition by striking language as follows:

~~"Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 10 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter 1-6 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. 10 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. 10 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. 10 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter 1-6 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 10 under the Indian Act R.S.C. 1970, Chapter 1-6, 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;~~

We have enclosed a draft Order to this effect. If agreed to by the parties, we can present that Order to the Court, together with a brief that sets out the law respecting the Court's authority to strike discriminatory language in a trust such as this one, and seek the Court's approval.

If you do not agree with our analysis, or with the terms this Order, we ask that you outline your position for our consideration. If either of your clients oppose this approach, it is important that we be advised of that position.

We look forward to your response, which we request be provided before July 15, 2018.

Yours truly,
Dentons Canada LLP

per 
Doris C.E. Bonora

Encl.

Clerk's stamp:

COURT FILE NUMBER 1103 14112
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT ROLAND TWINN, CATHERINE TWINN, BERTHA
L'HIRONDELLE, CLARA MIDBO AND WALTER FELIX
TWIN, as Trustees for the 1985 Trust and the 1986 Trust
("Sawridge Trustees")

DOCUMENT ORDER (DEFINITION OF BENEFICIARY)

DATE ORDER PRONOUNCED
LOCATION WHERE ORDERED Edmonton, Alberta
PRONOUNCED
NAME OF JUSTICE WHO MADE Honourable Justice D.R.G. Thomas
THIS ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

UPON the Application by the Sawridge Trustees for advice and direction in respect of the
Sawridge Band Inter Vivos Settlement ("1985 Trust") ("Application");

AND WHEREAS one issue in the Application by the Sawridge Trustees on which direction was
sought was whether the definition of "Beneficiary" in the 1985 Trust is discriminatory;

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AND WHEREAS the definition was declared discriminatory by way of Consent Order issued January 19, 2018;

AND WHEREAS another question in the Application on which direction is sought is what remedy is appropriate in respect of changing the definition that has been declared discriminatory;

AND UPON being advised that the parties ask the Court to consider resolving the definition of Beneficiary on the terms herein, and no other issue or question is raised before the Court at this time, including any question of the validity of the 1985 Trust;

AND UPON there being one remaining substantive issue in the Application to be resolved, being whether there should be any grandfathering of individuals whose status as beneficiaries would be affected by this change of definition, and upon being advised that the parties wish to reserve and adjourn the determination of this issue;

AND UPON this Court having the authority to facilitate such resolution of some of the issues raised in the Application prior to the determination of the balance of the Application;

AND UPON the Court being satisfied that it has the authority to amend a Trust Deed by striking discriminatory language;

AND UPON the form of this Order having been approved by the Sawridge Trustees, The Office of the Public Trustee and Guardian of Alberta ("OPGT") and Catherine Twinn;

IT IS HEREBY ORDERED AND DECLARED;

1. The definition of "Beneficiary" in the 1985 Trust be amended by striking out portions of the language in the Trust Deed, as follows:

"Beneficiary" 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;~~

2. The definition of Beneficiary for the 1985 Trust will be:

"Beneficiary" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band.

3. The remaining substantive issue in the Application, being the determination of whether any individual whose status as a Beneficiary is affected by this amendment to the definition should be grandfathered as a Beneficiary, is adjourned *sine die*. The timeline for advancing that issue will be agreed by the parties or may be further determined at a future Case Management Meeting.
4. Nothing in this order may be construed to be a determination that the 1985 Trust is void or otherwise invalid. This Order cannot be used in an application for dissolution as a ground upon which the 1985 Trust could be dissolved.

The Honourable Justice D. R. G. Thomas

APPROVED BY:

MCLENNAN ROSS LLP

HUTCHISON LAW

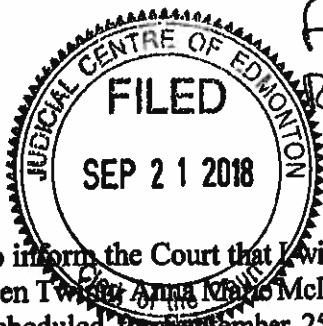
Karen Platten, Q.C.
Counsel for Catherine Twinn

Janet Hutchison
Counsel for the OPGT

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

TAB 10



Action No 1103 14112
Roland Twinn et al

September 21, 2018

My name is Shelby Twinn. I am writing to inform the Court that I will be appearing, along with Deborah Serafinchon, Melissa Megley, Aspen Twinn, Anna Marie McDonald, Cameron Shirt, and others at the case management meeting scheduled for September 25, 2018 for the purpose of speaking to how non-party beneficiaries and potential beneficiaries should be able to participate in the future steps in the litigation. Patrick Twinn, Isaac Twinn, Julie Rudkowski, Sam Twinn, Kiki Twinn and Wesley Twin and others cannot attend but agree on what is required to assure our meaningful and just participation in our Trust. I am aware that the Sawridge Trustees have made beneficiary participation an agenda item for the case management meeting. (See paragraphs 24-29 of the written submissions of the Sawridge Trustees filed August 24, 2018).

You will recall that myself, along with Patrick Twinn and Deborah Serafinchon were represented by Nancy Golding of Borden Ladner Gervais at an application where we were seeking party status in the litigation. The decision that your Honour issued as a result of that application declared that myself and Patrick Twinn are current beneficiaries of the 1985 Trust. You also stated that you could not foresee a circumstance where my status as a beneficiary of the 1985 Trust would be eliminated.

The legal fees that myself, Patrick and Deborah incurred as a result of our attempts to gain party status were significant. Unfortunately, the costs of these prior applications have left us in a position where we can no longer afford legal representation. This is why I, rather than Ms. Golding, am writing to you today. Late afternoon, September 20, 2018 Dentons' emailed Ms. Golding the Trustees' brief, but Ms. Golding is not acting for us.

I understand that the Court of Appeal in their December 12, 2017 decision suggested that class counsel for current and potential adult beneficiaries may be appropriate and that this issue should be dealt with in case management. The purpose of my letter is that at the September 25, 2018 case management meeting, we are seeking the appointment of class counsel for the current and potential adult beneficiaries of the 1985 Trust and that such lawyer be paid for by the 1985 Trust. Our free, prior and informed consent requires we have access to independent class counsel.

Briefly put, the reasons we believe class counsel is needed are:

- Myself, Patrick and Deborah have not been able to establish a dialogue with the Trustees for the purpose of ensuring our status is respected or to provide comments in respect of the "beneficiary" definition. See paragraphs 39 and 43 of your decision on party status that directed this to occur. We understand that settlement meetings have been occurring between the Trustees' lawyers and the other parties' lawyers, but we have not been invited by the Trustees to attend these meetings or our input sought. It is very difficult to protect our interests when we are not privy to how the parties are trying to resolve the litigation.
- I understand that the Trustees are seeking to schedule an application for the purpose of changing the current beneficiary definition to only include members of the SFN without concurrently considering how existing beneficiaries, like myself, will be protected. If the trustees are successful, then my status as a beneficiary could be eliminated. It is very

concerning to me that the Trustees are doing this given your comments that my beneficiary status would be respected. I note that I did apply for membership in the SFN on April 23, 2018, but have yet to hear anything from the SFN, not even an acknowledgment of receipt of my application. It is very unclear whether I will ever be a member of the SFN, despite being the late Chief Walter Twinn's granddaughter, and therefore entitled to beneficiary status on this basis;

- I have come to learn from Patrick Twinn that the Trustees are holding a meeting "only with approved beneficiaries of the Sawridge Trust (1986 Trust) ...that includes only members of the Sawridge First Nation" the weekend of October 13-14, 2018. It is my understanding that the "approved beneficiaries" would only be band members of the SFN. See attached letter. It is disappointing that given the significant legal issues facing the current beneficiaries of the 1985 Trust, that the trustees are not reaching out to the adult beneficiaries and potential beneficiaries, including those who applied to the Trust in 2009/10 to keep us informed given the significant threat to our legal interests;
- We do not believe the Trustees are trying to meaningfully consult with the affected beneficiaries and are instead solely focused on changing the definition to band membership. Myself and those in my circumstances cannot rely on the trustees to represent our interest as my perception is that they favour the interest of the SFN over ours. This perception is also informed by my understanding that the Trustees have been paying the SFN's legal fees to participate in this litigation, despite their vigorous opposition to the payment of mine. In June 2015 the Trustees filed then later withdrew a Settlement Proposal with the Court. Had it been accepted, my beneficiary status would have ended, and the irrevocable status of other beneficiaries, like Patrick Twinn, would be revocable;
- I have reviewed the written submissions provided by the Trustees for this case management meeting and in particular their proposal on how non party beneficiaries like myself, can participate. I am very afraid of their proposals regarding cost consequences for failure to comply with their process. I am not a lawyer. I genuinely wish to comply with the process that is ultimately set out by the Court, however, my lack of legal training may result in me, and others like me, making mistakes. In order to properly represent my interests, I very much need a lawyer, which is why I am asking for class counsel to be appointed.
- I understand that the trustees are seeking to set timelines to have the issue of the beneficiary definition change heard. Their application could result in me being disentitled as a beneficiary. I believe that appointing counsel for me and the other adult beneficiaries would not result in unnecessary expense as the ultimate issue is on the verge of being decided and justice requires we be heard about our Trust.

With Respect,



Shelby Twinn



NOTICE OF BENEFICIARY ANNUAL GENERAL MEETING 2018

The Trustees of the Sawridge Trust (1986 Trust) have recently passed a policy to hold an annual meeting with the beneficiaries of the Trusts. The first such meetings will be held on:

Saturday, 13 October 2018
10:00 AM to 4:00 PM
Sawridge First Nation Office, Slave Lake, AB

AND

Sunday, 14 October 2018
10:00 Am to 4:00 PM
Jasper Room, Sawridge Inn-Edmonton South, Edmonton, AB

At this meeting, Trustees will present:

- An explanation of the Trusts,
- An explanation of the current actions being undertaken by the Trusts,
- An explanation of the benefits, and
- The audited financial statements for 2017.

In addition, the Trustees will consult with the beneficiaries about future directions for the Trusts and the benefits programs.

Only approved beneficiaries of the Sawridge Trust (1986 Trust) may attend this meeting. That includes only members of the Sawridge First Nation. If you are receiving this notice, you may attend but are not permitted to bring any guests or non-approved beneficiaries. You may attend either one of these meetings as the same information will be presented at each meeting.

PLEASE LET ME KNOW WHICH MEETING YOU WILL BE ATTENDING SO THAT WE CAN PLAN THE MEALS AND REFRESHMENTS.

214, 10310-124 Street NW
Edmonton, AB T5N 1R2
Office: 780-988-7723
Fax: 780-988-7724
Toll Free: 888-988-7723
Email: general@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

TAB 11



PARLEE McLAWS^{LLP}
BARRISTERS & SOLICITORS | PATENT & TRADEMARK AGENTS

November 5, 2018

EDWARD H. MOLSTAD, Q.C.
DIRECT DIAL: 780.423.8506
DIRECT FAX: 780.423.2870
EMAIL: emolstad@parlee.com
OUR FILE #: 64203-7/EHM

Via email only

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

Hutchison Law
190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park, Alberta T8H 2A3

Attention: Doris Bonora

Attention: Ms Janet Hutchison

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

**Attention: Karen Platten, Q.C. and
Crista Osualdini**

Dear Madams:

**Re: In the Matter of the Trustee Act, RSA 2000, c T-8, as Amended et al v. Roland
Twinn, Catherine Twinn et al
Court of Queen's Bench Action No: 1103 14112**

The Sawridge First Nation is considering what position it will take in relation to its participation in these proceedings and what, if any, application they will consider advancing.

In order to assist, the Sawridge First Nation requests that each of you answer the following questions:

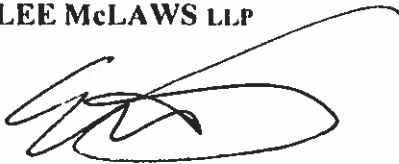
1. What is your client's position in relation to modification of the definition of beneficiary in the 1985 Sawridge Trust Deed by striking out the language that has a discriminatory effect such that the definition of beneficiary in the Trust Deed would be Members of the Sawridge First Nation? (See Denton's letter – June 22nd, 2018)
2. If your client is not prepared to support the modification as described in paragraph 1 above, what is your client's position with respect to how the definition of beneficiary should be modified?

3. What is your client's position with respect to who are beneficiaries of the 1985 Sawridge Trust that are not Members of the Sawridge First Nation?
4. What is your client's position with respect to whether there should be grandfathering such that certain individuals who are not Members of the Sawridge First Nation should be granted beneficiary status in relation to the 1985 Sawridge Trust?
5. What is your client's position with respect to who should be grandfathered and the reason for grandfathering that person?
6. If it is your client's position that persons who are not Members of the Sawridge First Nation should be grandfathered and be made beneficiaries of the 1985 Sawridge Trust, what does your client propose to be the terms of such grandfathering?
7. If it is your clients position that persons, who are not members of the Sawridge First Nation, qualify to be beneficiaries under the current definition of beneficiaries of the 1985 Sawridge Trust, who are these persons and what is their history that is the basis for your position that they qualify to be beneficiaries?

We would ask that you provide us with the answers to these questions on or before November 30th, 2018. Should your client decide not to provide us with the answers to these questions, we would appreciate your advice in that respect on or before November 30th, 2018.

Yours truly,

PARLEE McLAWS LLP



EDWARD H. MOLSTAD, Q.C.

EHM/tlk

TAB 12

Clerk's stamp:

COURT FILE NUMBER 1103 14112
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

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

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 Trust") and the SAWRIDGE TRUST ("Sawridge
Trust")

APPLICANT ROLAND TWINN, MARGARET WARD, BERTHA
L'HIRONDELLE, EVERETT JUSTIN TWINN AND DAVID
MAJESKI, as Trustees for the 1985 Trust ("Sawridge
Trusts")

DOCUMENT CONSENT ORDER (Hearing of Jurisdictional Question)

DATE ORDER PRONOUNCED
LOCATION WHERE ORDER PRONOUNCED Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER Honourable Justice J.T. Henderson

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

UPON the Application by the Sawridge Trustees for advice and direction in respect of the
Sawridge Band Inter Vivos Settlement ("1985 Trust") ("Application");

AND WHEREAS the Sawridge Trustees seek direction respecting the source and nature of the
jurisdiction of this Court to make changes to the definition of "Beneficiary" as set out in the 1985 Trust;

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AND WHEREAS a Case Management Justice has authority under Rule 4.14 of the *Alberta Rules of Court* to make interlocutory orders;

AND WHEREAS the Sawridge Trustees, the OPGT and Catherine Twinn consent to this Order;

IT IS HEREBY ORDERED AND DECLARED;

1. A hearing on a directed issue will be held, prior to trial, and the issues to be determined (the "Jurisdictional Question") will be as follows:
 - (a) Does the Court have jurisdiction to amend the beneficiary definition contained in the 1985 Trust (the "Definition"), on the basis of public policy, its inherent jurisdiction or any other common law plenary power?
 - (b) If the answer to question (a) is yes, what is the scope of the Court's jurisdiction to amend the Definition, including can the Court:
 - (i) Add words to the 1985 Trust deed;
 - (ii) Delete words contained in the 1985 Trust deed; or
 - (iii) Engage in a combination of addition and deletion of words to the 1985 Trust deed?
 - (c) If the answer to question (a) is no, is the Court's jurisdiction limited to what is permitted by s. 42 of the *Trustee Act*? If so, what evidence would be required by the Court to amend the Definition using s. 42 of the *Trustee Act*?
 - (d) If the Court does not have jurisdiction under any of the methods set out in paragraphs (a), (b) or (c) above, do the Sawridge Trustees have jurisdiction under the existing terms of the Trust Deed of the 1985 Trust to amend the Definition?
 - (e) If the Court proceeds pursuant to paragraph 1(c) or 1(d) above, is the Court's jurisdiction in this application affected by the Minors Property Act, and specifically, does the Court require evidence of consent to the application for a beneficiary definition change from minor beneficiaries who are over the age of 14?
2. This Jurisdictional Question will be heard and determined by the Case Management Justice.

The Honourable Justice J.T. Henderson

CONSENTED TO BY:
MCLENNAN ROSS LLP

Crista Osualdini
Counsel for Catherine Twinn

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

HUTCHISON LAW



Janet Hutchison
Counsel for the OPGT

TAB 13

Court of Queen's Bench Action #1103 14112
Chronology of Steps/ Events to Date

**Provided for the Court's and parties' ease of reference. This document does not purport to fully summarize all relevant aspects of each step/event noted.*

DATE	SOURCE	STEP/EVENT
August 31, 2011	Court Order	Direction to the Trustees to notify the Public Trustee of the proceeding and invite comments on whether it should represent affected minors in the proceeding.
February 14, 2012	Application by the OPGT	OPGT bring application indicating a willingness to act as litigation representative for affected minors, on conditions that: <ul style="list-style-type: none"> i.) The OPGT receive advance costs, on a solicitor and own client basis, to be paid by the Sawridge Trustees; ii.) The OPGT be exempted from liability for the costs of other litigation participants.
April 5, 2012		Appearance to argue <i>Sawridge #1</i>
June 12, 2012	<i>Sawridge #1</i> (2012) ABQB 365 Reasons for Judgment of Justice Thomas	Findings included: <ul style="list-style-type: none"> • Appointment of the OPGT as litigation representative for minors involved in the case is appropriate (para. 28) • Immunization against costs of other parties and full and advance indemnity are appropriate as terms of the OPGT's appointment. (para 39 and 42) • Public Trustee represents 31 minors and "an unknown number of potentially affected minors, namely children of applicants seeking to be admitted into membership" (para. 31)
September 20, 2012	Notice of Appeal	Trustees appeal <i>Sawridge #1</i> re: the costs award.

DATE	SOURCE	STEP/EVENT
June 5, 2013		Court of Appeal Appearance to argue <i>Sawridge #2</i>
June 19, 2013	<i>Sawridge #2</i> (2013) ABCA 226	Court of Appeal upholds Thomas, J.'s decision to grant the OPGT a full and advance costs indemnity and exemption from costs liability.
May 27-28, 2014	Questioning of Paul Bujold	On the Trustees' Affidavits filed to that point. Questioning by the OPGT.
May 29, 2014	Questioning of Elizabeth Poitras	On her 2011 Affidavit filed by the OPGT. Questioning by the Trustees.
April 9, 2015	Questioning of Elizabeth Poitras	Continuation of questioning by Trustees.
June 1, 2015	Trustees' With Prejudice Offer	Trustees' offer beneficiary status to a list of minors, including offering to "grandfather" minors who would lose beneficiary status if the Trustees' proposed definition were adopted. Offer filed with Court.
June 12, 2015	Application by the Trustees	Application by the Trustees seeking advice and direction on matters including: i) a litigation plan; ii) the June 1, 2015 settlement offer; iii) the OPGT retaining out of province lawyers (Supreme Advocacy);
June 12, 2015	Application by the OPGT	Application by the OPGT seeking advice and direction on matters including: i) Document production from the Sawridge First Nation; ii) Payment of OPGT accounts.
June 24, 2015		Case Management Meeting
June 30, 2015		Case Management Meeting

DATE	SOURCE	STEP/EVENT
July 16, 2015	Amended Application by the OPGT	Amended June 12, 2015 Application.
September 2 and 3, 2015		Court appearance to argue <i>Sawridge #3</i>
September 23, 2015	Affidavit	Catherine Twinn files affidavit in relation to pending applications.
October 5, 2015	Letter from Justice Thomas	Directions re: Trustee's issues with OPGT accounts, including guidelines on details OPGT should include in submitted accounts.
October 15, 2015	Order by Justice Thomas	Procedural Order by Justice Thomas to adjourn the Trustee's settlement application.
October 22, 2015	Order by Justice Thomas	Order of Justice Thomas <ul style="list-style-type: none"> • Trustees to prepare and file an Affidavit of Records • Confirming the Trustees withdraw their Settlement Application and Litigation Plan application
December 17, 2015	<i>Sawridge #3</i> (2015) ABQB 799 Reasons for Judgment of Justice Thomas	<ul style="list-style-type: none"> • OPGT application for production by the SFN denied. • Court issues directions to refocus the activities of the OPGT to ensure it meets its dual objectives of: <ul style="list-style-type: none"> a) assisting this Court in directing a fair distribution scheme for assets; and b) the representation of potential minor beneficiaries. [Para 7] • Directs the OPGT is to represent the following categories of minors: <ul style="list-style-type: none"> a) Category #2: Minors who are children of members of the SFN; b) Category #4: Children of adults who have unresolved applications to join the SFN; c) Category #6: Children of persons in category 5 (Adults who have applied for membership in the SFN but have had that application rejected and are challenging that rejection by appeal or

DATE	SOURCE	STEP/EVENT
		<p>judicial review; and) above. (para 56/57)</p> <ul style="list-style-type: none"> • Directs Sawridge First Nation to provide the OPGT with: <ol style="list-style-type: none"> 1. The names of individuals who have: <ol style="list-style-type: none"> a) made applications to join the SFN which are pending (category 3); and b) had applications to join the SFN rejected and are subject to challenge (category 5); and 2. Contact information for those individuals where available. (para 57)
January 18, 2016	Notice of Appeal	OPGT and Catherine Twinn file an appeal of <i>Sawridge #3</i> .
February 1, 2016	Application by the OPGT	Application by the OPGT requesting document production from SFN, under Rule 5.13 (*as directed in <i>Sawridge #3</i>).
March 24, 2016	Discontinuance of Appeal	OPGT and Catherine Twinn file a discontinuance of January 18, 2016 Appeal
April 1, 2016		Case Management Meeting
July 27, 2016	Questioning of Paul Bujold	Questioning by SFN and OPGT on Affidavits filed in relation to s.5.13 applications.
August 11, 2016	Application by the Trustees	Application by the Trustees for Advice and Direction on the transfer of assets from the 1982 Trust to the 1985 Trust.
August 12, 2016	Application to be added as a Party or Intervenor (filed by DLA Piper)	For Maurice Stoney and his brothers and sisters
August 17, 2016	Application for standing, filed by BLG	Application by Patrick Twinn, on his behalf and on behalf of his infant daughter, Aspen Saya Twinn, and his wife Melissa Megley; and Shelby Twinn; and Deborah A. Serafinchon, to be added as parties.

DATE	SOURCE	STEP/EVENT
August 24, 2016		Court appearance to argue <i>Sawridge #4</i>
August 25, 2016	Order Re: Asset Transfer	Parties consent to an Order re: the transfer of assets from the 1982 Trust to the 1985 Trust.
September 6, 2016	Questioning of Catherine Twinn	On Affidavit dated September 23, 2015. Questioning on by Trustees.
September 7, 2016	Application by Catherine Twinn	Application by Catherine Twinn requesting a scheduling Order for deadlines to complete all steps necessary for payment of her legal costs
September 22 and 23, 2016	Questioning of Shelby Twinn, Deborah Serafinchon, Patrick Twinn and Maurice Stoney	On affidavits filed in support of standing applications. Questioning by Trustees and C. Twinn.
September 30, 2016	Application by the Trustees	Application by the Trustees for Security for Costs in the Stoney Application
September 30, 2016	Application by the Sawridge First Nation	Application by the Sawridge First Nation for Intervenor Status in the Stoney Application
November 9 and 10, 2016	Questioning of Catherine Twinn	Continuation of September 2016 questioning by Trustees
December 1, 2016		Case Management Meeting
December 15, 2016	Questioning of Catherine Twinn	Continuation of September 2016 questioning by Trustees
February 15, 2017	Affidavit	Affidavit of Paul Bujold, filed on behalf of Trustees, in response to Catherine Twinn's Affidavits.
March 7-10, 2017	Questioning of Paul Bujold	On February 15, 2017 Affidavits. Questioning by C. Twinn.

DATE	SOURCE	STEP/EVENT
April 4, 2017		1 st Settlement Meeting.
April 27, 2017	<i>Sawridge #4</i> 2017 ABQB 299 Reasons for Judgment of Justice Thomas	SFN' application for costs award against the OPGT denied. Court confirms the exemption from costs liability for OPGT, as ordered in <i>Sawridge #1</i> applies to the SFN.
June 20, 2017	Questioning of Paul Bujold	Continuation of March 2017 questioning by C. Twinn
June 26, 2017		Second Settlement Meeting
July 5, 2017	<i>Sawridge #5</i> 2017 ABQB 377 Reasons for Judgment of Justice Thomas	Denies applications for standing by Patrick Twinn, Shelby Twinn and Deborah Serafinchon. Findings include: <ul style="list-style-type: none"> • Patrick and Shelby are confirmed to be 1985 Trust beneficiaries (para 27 and 35-36) • Court indicates it cannot foresee circumstances where Patrick and Shelby could lose beneficiary status. (para. 33 and 37) • Suggests Patrick and Shelby's involvement in the litigation is best served by "transparent and civil communications with the Trustees and their legal counsel." (para 39) • Deb Serafinchon can monitor progress of litigation and provide comments to the Trustees and the Court. (para 43) • Award solicitor-client costs against Patrick and Shelby; party-party against Deborah Serafinchon (para 53-54)

DATE	SOURCE	STEP/EVENT
July 5, 2017	<i>Sawridge #6</i> 2017 ABQB 436 Reasons for Judgment of Justice Thomas	Denies applications for Standing by Maurice Stoney. Orders submissions on vexatious litigant issue.
July 20 and 21, 2017	Questioning of Catherine Twinn	Continuation of September 2016 questioning by Trustees.
July 27, 2017		Court appearance to argue <i>Sawridge #7</i>
August 31, 2017	<i>Sawridge #7</i> 2017 ABQB 530 Reasons for Judgment of Justice Thomas	Finds litigation misconduct by Maurice Stoney. Awards SFN and Trustees' solicitor client costs for <i>Sawridge #6</i> , as against Ms. Kennedy, personally, and Maurice Stoney, holding them jointly and severally liable.
September 12, 2017	<i>Sawridge #8</i> 2017 ABQB 548 Reasons for Judgment of Justice Thomas	Order to restrict Maurice Stoney's future litigation activities.
September 18, 2017	Parlee McLaws LLP Correspondence to Justice Thomas	Advises the Court, <i>inter alia</i> : "...Chief and Council have instructed our offices to review the evidence and the Record in this matter and to consult with them in relation to an application to dissolve the 1985 Trust on grounds that it fails as being discriminatory and contrary to public policy and other grounds."
September 29, 2017	Application of Priscilla Kennedy	Application of Priscilla Kennedy for Advice and Direction on Permission to Appeal and Permission to Appeal if Required.
November 1, 2017		Court of Appeal Appearance to argue appeal of <i>Sawridge #5</i>

DATE	SOURCE	STEP/EVENT
November 8, 2017	Application of Priscilla Kennedy	Application of Priscilla Kennedy for Intervenor Status on <i>Sawridge #6</i> and consolidation of the two appeals relating to Kennedy.
November 10, 2017	Amended Application of Priscilla Kennedy	Amended Application of Priscilla Kennedy for Party or Intervenor Status on <i>Sawridge #6</i> and consolidation of the two appeals relating to Kennedy
November 16, 2017	Application by the Sawridge First Nation	Application by the Sawridge First Nation for Security of Costs Against Maurice Stoney in <i>Sawridge #6</i> Appeal.
November 17, 2017	Application by the Trustees	Application by the Trustees for Security of Costs Against Maurice Stoney in <i>Sawridge #6</i> Appeal.
November 24, 2017	Application by the Sawridge First Nation	Application by the Sawridge First Nation for Dismissal of Appeal
December 7, 2017		Third Settlement meeting
December 12, 2017	Court of Appeal Decision (re: <i>Sawridge #5</i>) 2017 ABCA 419 Reasons for Judgment of Justice Marina Paperny, Barbara Lea Veldhuis and Sheilah Martin	<ul style="list-style-type: none"> • Upholds decision not to grant party status to Patrick Twinn, Shelby Twinn or Deb Serafinchon. • Provides direction on need for originating document and procedure for beneficiaries and potential beneficiaries' participation (para.21-22) • Overturns solicitor client costs award against Patrick Twinn and Shelby Twinn- party-party costs substituted (para 28).
December 19, 2017	Court of Appeal Decision	Grants the application by the Trustees and SFN for security of costs against Maurice Stoney.
January 5, 2018		Case Management Meeting
January 9, 2018	Application by the Trustees re: Directed Trial of Issue	<ul style="list-style-type: none"> • Seeks decision on whether 1985 Trust beneficiary definition is discriminatory and directions on beneficiary and (or potential beneficiary) definition.

DATE	SOURCE	STEP/EVENT
January 9, 2018	Application by the Trustees re: Application for Advice and Direction	<ul style="list-style-type: none"> • Originating document by Trustees – sets out the remedy they seek in the proceeding.
January 19, 2018		Case Management Appearance re: January 9, 2018 applications and Discrimination Order.
January 22, 2018	Consent Order	The “Discrimination” Order filed – deals with one element of Directed Trial of an Issue Application.
February 15, 2018		Fourth Settlement Meeting
February 28, 2018	Agreed Statement of Facts from the Trustees	<p>Exchange of First Draft of Agreed Statement of Facts.</p> <p>*document itself is without prejudice.</p>
March 29, 2018		Fifth Settlement Meeting
April 4, 2018		Court of Appeal Appearance to argue appeal of <i>Sawridge #9</i>
April 27, 2018	Agreed Statement of Facts from the Trustees	<p>Exchange of Revised Agreed Statement of Facts.</p> <p>*document itself is without prejudice.</p>
May 30, 2018	Agreed Statement of Facts	<p>Preliminary comments on the Agreed Statement of Facts by the OPGT.</p> <p>*document itself is without prejudice.</p>
May 30, 2018	Agreed Statement of Facts	<p>Preliminary comments on the Agreed Statement of Facts by Catherine Twinn.</p> <p>*document itself is without prejudice.</p>
May 30, 2018	Agreed Statement of Facts	Comments on behalf of Shelby Twinn, Patrick Twinn and Deb Serafinchon.

DATE	SOURCE	STEP/EVENT
April 10, 2018	<i>Sawridge #9</i> 2018 ABCA 137 Reasons for Judgment of Justice Jack Watson	Grants leave to appeal costs decisions related to <i>Sawridge</i> #7, #8 and #9
April 30, 2018	Affidavit of Records	McLennan Ross files and serves Catherine Twinn's Affidavit of Records.
April 30, 2018	Affidavit of Records	Dentons files and serves Paul Bujold November 2, 2015 Affidavit of Records and April 27, 2018 Supplemental Affidavit of Records.
June 11, 2018	Questioning of Paul Bujold	By OPGT on Bujold Supplementary Affidavit of Records.
June 22, 2018	Correspondence from Dentons to Hutchison Law and McLennan Ross (with prejudice)	Seeking agreement to the Trustees' proposed deletions from the existing beneficiary definition in the 1985 Trust. (found at Schedule "G" of Trustees August 10, 2018 Application)
July 27, 2018	Agreed Statement of Facts	OPGT provides a further version of the Agreed Statement of Facts and Law to the parties. *document itself is without prejudice.
July 27, 2018	Correspondence from Hutchison Law to Dentons and McLennan Ross	Responds to Trustees' June 22, 2018 proposal on beneficiary definition. (found at Tab D of Trustees August 24, 2018 Brief)
August 10, 2018	Trustees' Application for Advice and Direction	A. Seeks an order to declare solicitor-client privilege has not been waived for documents filed in this Action and 1403 04885. B. Seeks an order for a Directed Issue hearing (under Rule 7.1) to decide the beneficiary definition separately from the "grandfathering". C. Seeks Court direction on "non-party participation".

DATE	SOURCE	STEP/EVENT
August 13-14, 2018	Agreed Statement of Facts	Further responses from Trustees on draft Agreement Statement of Facts and Law. *document itself is without prejudice.
September 7, 2018	Agreed Statement of Facts	OPGT' s further response. *document itself is without prejudice.
September 21, 2018	Letter from Shelby Twinn to Court	"I am writing to inform the Court that I will be appearing, along with Deborah Serafinchon, Melissa Megley, Aspen Twinn, Anna Marie McDonald, Cameron Shirt, and others at the case management meeting scheduled for September 25, 2018 for the purpose of speaking to how non-party beneficiaries should be able to participate in the future steps in the litigation."
September 21, 2018		September 25, 2018 Case Management meeting scheduled is cancelled.
October 9, 2018	Letter from Trustees to Beneficiaries ("Mailout Letter")	Letters lists two possible definitions for beneficiary. No accompanying explanations/ commentary.
October 23, 2018	Letter from the Justice Thomas	Advising management of the action has been transferred to Justice Henderson.
November 8, 2018	Affidavit of Records	Catherine Twinn swears a Supplemental Affidavit of Records.

