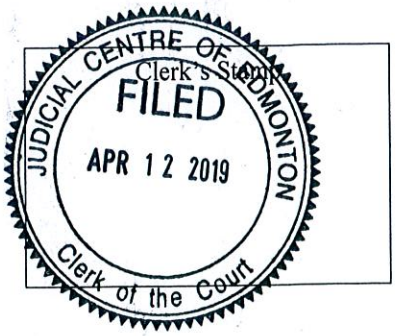

COURT FILE NO. 1103 14112

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

APPLICANT **ROLAND TWINN, EVERETT JUSTIN TWIN, MARGARET WARD, TRACEY SCARLETT and DAVID MAJESKI, as Trustees for the 1985 Trust**

RESPONDENTS **THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE and CATHERINE TWINN**

DOCUMENT **WRITTEN BRIEF OF SHELBY TWINN, PATRICK TWINN AND ANGIE WARD**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

All Self-Represented
c/o Telephone: 780-264-4822
Email: S.twinn@live.ca
c/o 10721-214 St, Edmonton, AB, T5S 2A3

1. These submissions are being filed on behalf of Shelby Twinn, Patrick Twinn and Angie Ward. We are all current beneficiaries of the 1985 Trust. We know there are other beneficiaries whose voices are not being heard. We know the Trustees made decisions based on legal advice dating back to June, 2004 to independently identify the beneficiaries but have yet to do so. In 2010, letters were sent and Notices published in newspapers where the Trustees invited applications from persons who believe they qualify as a beneficiary of one or both Trusts. See Tab 1, the January 4, 2010 letter from Paul Bujold, Trust Administrator.

2. The late Chief Walter Twinn is the grandfather of both Shelby Twinn, Aspen Twinn and the father of Patrick Twinn.

3. Angie Ward is the daughter of the late Frank Ward. Angie Ward is part of the Ward family that has historically comprised one of the family groups at Sawridge First Nation. Her two aunts, younger sisters to her father, were ordered onto the Band list by the Federal Court on March 27, 2003 (Tab 2, March 27, 2003 Federal Court Decision). Frank's mother was a Sawridge member. Frank, his wife Alvina and their children (4 surviving), qualify as beneficiaries. Frank Ward submitted a completed application to the Trust and is on the Trustees Applicant's List. The Trustees gave their word that persons who qualified as a beneficiary of one or both Trusts would be determined. They did not keep their word. Tab 3 is the January 7, 2011 letter from Paul Bujold to Frank Ward where the Trustees pre-determined, based on negotiations with the Sawridge First Nation and legal advice, that only band members on the Chief and Council Band List could be beneficiaries of the Trusts. The failure to determine existing beneficiaries and their issue and assure their rights and interests, has created divisions and conflicts within and between family systems.

4. Shelby Twinn, Aspen Twinn (Patrick's minor daughter) and Angie Ward are not members of the Sawridge First Nation. Patrick Twinn is a member, however, the Chief and Council at SFN could revoke his membership at any time. Patrick is very fearful that this will occur, and discretionary Trust benefits withheld or revoked, as retribution for his participation in these proceedings.

5. Shelby, Patrick and Angie are registered Indians with the Federal Government.

6. We have read the submissions filed by the Trustees in relation to the jurisdiction application. The Trustees make many statements about why the beneficiary definition in the 1985 Trust is not consistent with public policy. We are writing because we do not believe the Trustees have given the Court the full picture about the complex circumstances surrounding the existing beneficiary definition and why it is beneficial.

7. We wish to bring to the Court's attention the following:

    a. When Chief Walter Twinn created the 1985 Trust he knew there were changes coming in the way membership in the SFN was going to occur. It was important to him to make sure that a broad group of people who were connected to the SFN,

whether through membership or not, had a legal connection to their heritage, lineage and identity. They are part of the Sawridge life blood. This is why he created both the 1985 and 1986 Trust.

b. As indigenous persons, our indigenous identity and connection to our ancestor's lives and history is vital to us. They endured dark times when Indian status/membership were one and imposed many disadvantages including forced residential school attendance, the reserve system including travel permits and the denial of basic human rights and freedoms. As stated above, all of us are ancestors of the Sawridge First Nation. Unfortunately, whether we can join membership in the SFN is something that is out of our control. Shelby Twinn, with three others, applied for membership in the SFN. All four membership applications were hand delivered April 23, 2018. To this day, they have never even received an acknowledgment their applications were received, much less a decision on their membership. Unfortunately, this is pretty typical of the SFN. We are aware that membership applications can sit for years and can be denied for almost any reason. The SFN likes to keep its membership low and its population growth is distorted compared to other First Nations. That said, we are aware that in the case of Chief Roland Twinn's children, their membership applications were processed pretty quickly, just in time to make his eldest child an eligible voter for the 2015 Sawridge election in which Chief Roland Twinn was running for Chief and won by one vote. His children are not the only examples of rapid admission jumping the application queue. There are 30 plus examples where family/politics are in play. Membership at Sawridge is not based on principled criteria and procedural fairness but is highly politicized. Unfortunately this is just the way things work at Sawridge. While we feel it is wrong, there really aren't many people who have the financial resources to go to Court and try and change it and stand up to the litigation muscle of Sawridge. This Court has the Sworn Statements of some individuals filed by Catherine Twinn in her Affidavit in the 1103-14112 action, sworn May 10, 2017 and filed May 11, 2017.

c. For Angie Ward, she wanted to apply for membership, but has found the process to be very intimidating even the simple act of attending the Band office to ask for information.

d. When Chief Walter Twinn created the Sawridge Group of Companies, which both the 1985 and 1986 Trusts hold shares in, his vision was to create a legacy and opportunity system for the beneficiaries of the trusts, something for them to be proud of and a way for them to have access to good employment, positions, opportunity, networks, training, support and importantly, pride and purpose in being part of a healthy support system. It was to be a hand up, not a hand out, to help transform the reserve dependency and entitlement culture at SFN which has enabled addictions. If the beneficiary pool is reduced to just those lucky few who are able to make it on the SFN's band membership list, this will leave a very tiny pool of people that the companies can draw upon for employment and other positions to contribute to the growth, sustainability and vision of the Companies. The restricted pool of 44 band members is further reduced by addictions which

further limits who the Companies can engage. At present, there is only one beneficiary who works for the companies – Roy Twinn - Roland Twinn's son. If the companies have access to the broader pool of beneficiaries, this will be mutually advantageous and beneficial.

e. While we are aware that the version of the Indian Act the 1985 Trust relies on as its beneficiary definition has provisions that discriminate between men and women, this is but a piece in a larger picture. Today, the total number of Bill C-31 Sawridge women reinstated under Bill C-31 is five. All are elderly. They receive benefits through their band membership and through the 1986 Trust including $2,500 per month under the Senior's Benefit. The larger picture that must be looked at is that there are two trusts. Between these two trusts a larger and more inclusive segment of those with Sawridge identity, heritage and relationship are captured. Those left out by discrimination ought to be included in the 1986 Trust if its beneficiary definition is working as intended. In the case of Shelby and others, at least they have beneficiary status under the 1985 Trust. Pre Bill C-31 women avoided their individual "enfranchisement" from their marriage to non-Indians by refusing to submit enfranchisement forms and marriage evidence to Indian Affairs, and not accepting their per capita share of band monies. All persons who enfranchised prior to 1985 were paid their per capita share of band monies. One family received close to $1.2 million. For Shelby and others, having beneficiary status and choices is better than being stripped of beneficiary status.

f. The Indian Act the 1985 Trust relies on as its beneficiary definition has provisions which ensure that the father, mother and children have the same status, unlike Bill C-31 which not only continued discrimination, but created new forms of discrimination, split families and excludes children from membership. In the SFN, only one of the 44 band members is a child. At the very least, the 1985 Trust rules ensures the inclusion of children and wives without the uncertainty of Band Membership Rules, Band Membership Applications and Indian status registration. Plus, beneficiary status is irrevocable unlike Band Membership. In one Abenaki First Nation, a 2016 change in political power led to the expulsion from membership of 278 band members, later overturned by the Courts.

g. The Trustees suggest that this is simple matter of discrimination when it is very complex, factually and legally. Those with lived experience know this. Our voices and views must be heard, somehow overcoming the power imbalance created by the Trustees in this litigation.

h. It is our understanding that there are currently more beneficiaries of the 1985 Trust than there are SFN Band members. The solution proposed by the Trustees would actually reduce the number of beneficiaries – how can this possibly be a path that is more inclusive and less discriminatory! How can it be less discriminatory for those with Sawridge identity and ancestry that are excluded from membership in the SFN through no fault of their own, to also be excluded from the benefits of our heritage that Chief Walter Twinn preserved for us? How is it more inclusive to allow the same tiny group of people, the 44 lucky already entitled few that are on

the SFN membership list, to have the benefits of both the 1985 and 1986 Trust? It makes little sense, misusing the issue of discrimination, to enrich the already entitled 44 band members by stripping us of our irrevocable beneficiary status.

i. Both Shelby Twinn and Angie Ward are denied the benefits of membership in the SFN and beneficiary status in the 1986 Trust under the guise of the Membership Rules. Bertha L'Hirondelle, Clara Midbo and Frieda Draney were admitted into membership before the 2003 Court Order. Unlike the three surviving Bill C-31 women who were blessed with the assistance of the Canadian Government to fight for their membership status and ultimately gain that membership in the SFN by the March 27, 2003 Court Order, there are many of us who have been left behind and our only connection to the benefits of our identity granted to us by our forbearers is through the 1985 Trust. Bertha L'Hirondelle and Clara Midbo, while Trustees, greatly influenced the Trustees goal of band membership. Roland Twinn and Justin Twin relied on the political support of Bertha L'Hirondelle, Clara Midbo and Frieda Draney and their families. Bertha and Clara were also elected Band officials.

j. It is our respectful belief that this connection to our identity and heritage, through the existing beneficiary definition in the 1985 Trust, cannot be something that is so offensive to Canadian values that it must be changed. Our inclusion ought to be protected and ensured. The 1985 beneficiary pool represents a new vision outside the Indian Act Band/reserve construct.

8. We also wish the Court to know that the Trustees have not been neutral in this application and have favoured the SFN. Patrick and Shelby attempted to gain party status and to be indemnified for our legal fees, only to face aggressive opposition from the Trustees, including being subjected to intimidating cross examination by their lawyer Doris Bonora. Contrary to the treatment Patrick and Shelby experienced from the trustees, we became aware through these proceedings that the SFN's legal fees to participate were being paid for by the 1985 Trust, which has been unfairly and retroactively burdened with all the legal costs in the Trustees goal of having its Trust property benefit only 44 band members. It is our perception that the trustees are simply acting as an extension of the SFN and are working to further the SFN's objectives, rather than worrying about our best interests. We know the Trustees, the Trusts Administrator Paul Bujold and the Trusts Chair Brian Heidecker, have been in lock step with the Band. Hundreds of thousands of 1985 Trust dollars been paid in legal fees to Parlee, while Parlee has threatened to dissolve our Trust. Paul Bujold has been very clear that the Band application to dissolve the Trust will be filed "*if any attempt is made to provide money to non-members.*" Trustee Roland Twinn, as Chief, gave this instruction. Both Trusts have been politically captured by the Band. This is why best Trust law practices prohibit elected Band officials from being Trustees. The SFN is not a beneficiary of either Trust.

9. We are aware that the trustees sent a letter to various people asking for their vote on a beneficiary definition. As beneficiaries, we found this letter difficult to understand and did not understand how our legal rights were affected by it. We are aware from speaking to others who received it that they felt the same way. In order to understand these types of communications and the information the trustees are seeking from us, we need legal advice.

10. I understand that the trustees regularly consult with the SFN in regards to their positions on this litigation, but yet they never consult with us! Even when they were apparently trying to build consensus amongst the beneficiary group for a new beneficiary definition.

11. We do not understand how the minor children of this Trust are known until the adult beneficiaries under the current definition are confirmed. We know who our children are!

12. Without confirming the current pool of adult beneficiaries how can any vote by the beneficiaries be legitimate? The October 2018 vote proposal was self-serving, a ruse to create evidence to persuade the Court to ignore s.42 of the Trustee Act which requires our consent. It is troubling our Trust funds are financing this.

13. Given the Trustees disloyalty, bias, and lack of neutrality and even-handedness, how can they be trusted to manage the s.42 process? If the current pool is confirmed, which should be done in a process approved by the Court, we can then be properly consulted on what a meaningful engagement process looks like. It is nonsense to say unanimity cannot be reached. People who were avowed enemies reached agreement, as described in Tab 4 by Adam Kahane in his book, Solving Tough Problems. They engaged in a Scenario Building process with neutral facilitators. This approach to solving complex problems was given to the Trustees who've ignored it even after they agreed in June 2011 they had to identify then collaborate with us immediately after initiating this litigation.

14. We feel betrayed by the trustees, how they have treated us in this litigation and abused our Trust property pursuing an improper goal using an authoritarian, colonial, parochial process. By last count, in 2018 more than $8 million of Trust money was spent on lawyers in pursuit of a beneficiary definition change. Living through this, knowing our rights are at risk and that we cannot afford legal counsel, has created highly toxic and stressful conditions. It is hurtful and divisive when only band members on the Band list are included in the first time ever Trust Annual General meeting ignoring the Court which said there should be transparent and meaningful communications between us and the Trustees.

15. We thank the Court for considering our submissions. We are not lawyers and are hopeful that these submissions are useful to the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 12th day of April, 2019.

Per: _____
Shelby Twinn, Patrick Twinn and Angie Ward

TABLE OF AUTHORITIES

TAB 1

SAWRIDGE TRUSTS

4 January 2010

Dear Applicant,

The Sawridge Trusts office, operating under the terms of the Trust Deeds for the Sawridge Band Inter-Vivos Settlement (1985) and the Sawridge Trust (1986) and reporting to five Trustees: Bertha L'Hirondelle, Clara Midbo, Walter Felix Twin, Catherine Twinn and Chief Roland Twinn, is in the process of identifying the various beneficiaries of the two Trusts. The attached notice was recently published in all weekly and major daily newspapers in Saskatchewan, Alberta and British Columbia.

As part of this process, the Trustees have hired a legal team to determine the rules governing the determination of who is eligible to be a beneficiary of the Trusts. The enclosed form requests information that is necessary to make this determination. We ask that you fill out the form and return it to our office as soon as possible. You may copy to form for others who feel that they may also qualify.

The eligibility process is expected to take some months. Information concerning progress on this issue will be available on the website, through regular mail-outs to potential applicants and through this office.

Cordially,

Paul Bujold,
Trusts Administrator

Attachments

801, 4445 Calgary Trail NW, Edmonton, Alberta T6H 2R7 Canada | P: (780) 988-7723 | F: (780) 988-7724 | general @sawridgetrusts.ca

SAWRIDGE TRUSTS

NEWSPAPER NOTICE

NOTICE TO PERSONS WHO ARE OR MAY BE BENEFICIARIES OF THE SAWRIDGE BAND INTER-VIVOS SETTLEMENT (1985) OR BENEFICIARIES OF THE SAWRIDGE TRUST (1986).
The beneficiaries of The Sawridge Band Inter-Vivos Settlement at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band No. 454 pursuant to 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 April 15, 1985, all persons at such particular time as would qualify for such membership pursuant to the said provisions as they existed on April 15, 1985.
The beneficiaries of The Sawridge Trust at any particular time are all persons who at that time qualify as members of The Sawridge Indian Band under the laws of Canada in force at that time, including the membership rules and customary laws of The Sawridge Indian Band as they may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by the laws of Canada.
All person who believe that they qualify or may qualify as beneficiaries of either or both of The Sawridge Band Inter-Vivos Settlement or The Sawridge Trust are asked to contact Paul Bujold, Trust Administrator by mail at 801, 4445 Calgary Trail NW, Edmonton, AB T6H 5R7 or by email at paul@sawridgetrusts.ca or by telephone at (780) 988-7723 or by fax at (780) 988-7724 listing the particulars supporting their claim to be a beneficiary of The Sawridge Band Inter-Vivos Settlement or The Sawridge Trust.

BENEFICIARY APPLICATION FORM

PERSONAL INFORMATION

NAME	First Name(s)	Middle Name(s)	Last Name(s)

MAILING ADDRESS	Apt/P.O. Box	Street Address	Town	Prov	Postal Code	Country

DATE OF BIRTH	Day	Month	Year	BIRTH CERTIFICATE[1]	Number
PLACE OF BIRTH				COUNTRY	

Telephone	Home Phone	Home Fax	Cell Phone	Work Phone	Email Address

STATUS NUMBER		ARE YOU MARRIED TO A BAND MEMBER?	☐YES ☐NO	IF YES, BAND NUMBER?		DID YOU ENFRANCHISE?	☐YES ☐NO	IF YES, WHEN, WHICH CATEGORY?	

IF YOU ENFRANCHISED UNDER THE INDIAN ACT, PROVIDE DETAILS INCLUDING SHARE OF PER CAPITA MONIES RECEIVED.	

ARE YOU DESCENDED FROM, MARRIED TO OR ADOPTED BY ONE OF THE ORIGINAL SAWRIDGE TREATY 8 SIGNATORIES?	☐YES ☐NO	IF YES, PROVIDE DETAILS	

IF MARRIED, DID YOUR MARRIAGE PRODUCE AND CHILDREN? IF YES, DETAIL NAMES OF CHILDREN.		DID YOU SUBSEQUENTLY RE-MARRY TO ANOTHER PERSON? IF YES, DETAIL NAMES OF CHILDREN AND SPOUSE.	

YOUR STATUS UNDER INDIAN ACT OR PAY LIST AT TIME OF APPLICATION[2,3]	
WHY DO YOU FEEL YOU ARE ELIGIBLE AS A TRUST BENEFICIARY?	

HAVE YOU OR YOUR ANCESTORS LIVED ON THE SAWRIDGE LANDS INCLUDING POST TREATY LANDS SET ASIDE FOR THE EXCLUSIVE USE OF THE SAWRIDGE BAND?	☐YES ☐NO	IF YES, PROVIDE DETAILS	

MARITAL STATUS (check one)	Married	Single	Divorced	Widowed	Common-Law	Other (Specify)

BE SURE TO FILL IN OTHER SIDE OF THIS FORM AS WELL

[1] A copy of the certificate of birth or baptism must be produced with the application. If no certificate is available, then applicants must produce an affidavit confirming the materials contained in the application with the application.

Parents Information

Name of Mother				Name of Father			
Date of birth	Day	Month	Year	Date of birth	Day	Month	Year
Status under Indian Act or Pay List at birth[2,3]				Status under Indian Act or Pay List at birth[2,3]			
Is your Mother a Sawridge Band member?	☐Yes ☐No	If Yes, what is her Band Number?		Is your Father a Sawridge Band member?	☐Yes ☐No	If Yes, what is his Band Number?	
Did your Mother enfranchise?	☐Yes ☐No	If Yes, when and in which category?		Did your Father enfranchise?	☐Yes ☐No	If Yes, when and in which category?	
Address	Apt/ P.O. Box, Street Address, Town, Province, Postal Code, Country			Address	Apt/ P.O. Box, Street Address, Town, Province, Postal Code, Country		
If deceased – date of death	Day	Month	Year	If deceased – date of death	Day	Month	Year

Grandparents Information

Name of Maternal Grandmother				Name of Maternal Grandfather			
Date of birth	Day	Month	Year	Date of birth	Day	Month	Year
Status under Indian Act or Pay List at birth[2,3]				Status under Indian Act or Pay List at birth[2,3]			
Did your Maternal Grandmother enfranchise?	☐Yes ☐No	If Yes, when and in which category?		Did your Maternal Grandfather enfranchise?	☐Yes ☐No	If Yes, when and in which category?	
Name of Paternal Grandmother				Name of Paternal Grandfather			
Date of birth	Day	Month	Year	Date of birth	Day	Month	Year
Status under Indian Act or Pay List at birth[2,3]				Status under Indian Act or Pay List at birth[2,3]			
Did your Paternal Grandmother enfranchise?	☐Yes ☐No	If Yes, when and in which category?		Did your Paternal Grandfather enfranchise?	☐Yes ☐No	If Yes, when and in which category?	

Signature	I hereby certify that the information in this form is true and correct. I give permission to Sawridge Trusts to share this information with those who need it to determine my status as a beneficiary.	Date	

PLEASE DO NOT FORGET TO SEND COPIES OF RELEVANT DOCUMENTS LISTED BELOW, IF APPLICABLE.

MAIL APPLICATION AND DOCUMENTS TO:

Sawridge Trusts
801, 4445 Calgary Trail NW
Edmonton, AB T6H 5R7

TAB 2

Date: 20030327

Docket: T-66-86A

Neutral citation: 2003 FCT 347

BETWEEN:

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

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

- and -

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

Interveners

REASONS FOR ORDER AND ORDER

HUGESSEN, J.:

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

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

> Briefly put, this legislation, while conferring on Indian bands the right to control their own band lists, obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the 1985 legislation. Such persons included: women who had become disentitled to Indian status through marriage to non-Indian men and the children of such women; those who had lost status because their mother and paternal grandmother were non-Indian and had gained Indian status through marriage to an Indian; and those who had lost status on the basis that they were illegitimate offspring of an Indian woman and a non-Indian man. Bands assuming control of their band lists would be obliged to accept all these people as members. Such bands would also be allowed, if they chose, to accept certain other categories of persons previously excluded from Indian status.
>
> [Sawridge Band v. Canada (C.A.), [1997] 3 F.C. 580 at paragraph 2]

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

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

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

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

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

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

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

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

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

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

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

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

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

-what evidence? They weren't even all women

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

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

> 2.(1) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List.
>
> 5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.
>
> ...
>
> (3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.
>
> ...
>
> (5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.
>
> 6. (1) Subject to section 7, a person is entitled to be registered if
>
> ...
>
> (c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;
>
> ...
>
> 8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.
>
> 9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.
>
> (2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.
>
> (3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.
>
> ...

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

> 11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if
>
> ...
>
> (c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; ....
>
> (2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band
>
> (a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; or
>
> (b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

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

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

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

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

> 3. Each of the following persons shall have a right to have his or her name entered in the Band List:
>
> (a) any person who, but for the establishment of these rule, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band List required to be maintained in the Department and who, at any time after these rules come into force, either
>
> (i) is lawfully resident on the reserve; or
>
> (ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;
>
> ...
>
> 5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.
>
> ...
>
> 11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and as such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

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

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

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

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

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

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

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

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

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

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

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

[27] Although it deals specifically with Band Lists maintained in the Department, section 11 clearly distinguishes between automatic, or unconditional, entitlement to membership and conditional entitlement to membership. Subsection 11(1) provides for automatic entitlement to certain individuals as of the date the amendments came into force. Subsection 11(2), on the other hand, potentially leaves to the band's discretion the admission of the descendants of women who "married out."

[28] The debate in the House of Commons, prior to the enactment of the amendments, reveals Parliament's intention to create an automatic entitlement to women who had lost their status because they married non-Indian men. Minister Crombie stated as follows :

> ... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.
>
> [Canada, *House of Commons Debates*, March 1, 1985, p. 2644]

[29] A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombie referred to the difference between status and membership. He stated that, while those persons who lost their status and membership should have both restored, the descendants of those persons are only automatically entitled to status:

> This legislation achieves balance and rests comfortably and fairly on the principle that those persons who lost status and membership should have their status and membership restored. While there are some who would draw the line there, in my view fairness also demands that the first generation descendants of those who were wronged by discriminatory legislation should have status under the Indian Act so that they will be eligible for individual benefits provided by the federal Government. However, their relationship with respect to membership and residency should be determined by the relationship with the Indian communities to which they belong.
>
> [*Debates*, *supra* at 2645]

[30] Still further on, the Minister stated the fundamental purposes of amendments, and explained that, while those purposes may conflict, the fairest balance had been achieved:

> ... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may

be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.

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

[*Debates, supra* at 2646]

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

> Several members of this committee said during the debate on Friday that this bill is just a beginning and not an end in itself, but rather the beginning of a process aimed at full Indian self-government. I completely agree with that view. But before we can create the future, some of the wrongs of the past have to be corrected. That is, in part, the purpose of Bill C-31...
>
> [Canada, House of Commons, *Minutes of the Proceedings of the Special Committee on Indian Affairs and Northern Development*, Issue no. 12, March 7, 1985 at 12:7]

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

"James K. Hugessen"
Judge

Edmonton, Alberta
March 27, 2003

FEDERAL COURT OF CANADA
Names of Counsel and Solicitors of Record

DOCKET: T-66-86

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

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 19 AND 20, 2003

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

DATED: March 27, 2003

APPEARANCES BY:

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

SOLICITORS OF RECORD:

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Morris Rosenberg Deputy Attorney General of Canada	FOR THE DEFENDANT
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Field Atkinson Perraton LLP Edmonton, Alberta	FOR THE INTERVENER, NATIVE COUNCIL OF CANADA (ALBERTA)
Burnet Duckworth & Palmer LLP	FOR THE INTERVENER, NON-STATUS INDIAN ASSOCIATION OF ALBERTA
Eberts Symes Street & Corbett Toronto, Ontario	FOR THE INTERVENER, NATIVE WOMEN'S ASSOCIATION OF CANADA

TAB 3

SAWRIDGE
TRUSTS

7 January 2011

Frank Ward
P.O. Box 1155
Slave Lake, AB T0G 2A0

Dear Frank,

Based on extensive legal advice and negotiations with the Sawridge First Nation, the Sawridge Trusts Trustees have come to the conclusion that the provisions of the two trust documents envision that all beneficiaries of the Trusts must be Band members and that the only body able to make a determination as to who qualifies as a Band member is the Sawridge First Nation through its Chief and Council, Membership Committee and Legislative Assembly using the Membership Code established by the Sawridge First Nation.

As such, the Sawridge Trusts have decided to abandon their previous decision to appoint a tribunal to review the applications you and other persons submitted to the Trusts to be considered as beneficiaries in favour of having the Membership Committee of the Sawridge First Nation make a determination of who qualifies to be a member of the First Nation.

The definition of beneficiaries for the Sawridge Trust of 15 August 1986 is quite clear:

> "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada.

Since the Sawridge First Nation has a Membership Code in force, the Trust definition of a beneficiary to the Sawridge Trust can be taken to mean "anyone who has been accepted as a member of the Sawridge First Nation according to the Membership Code".

The definition of beneficiaries for the Sawridge Intervivos Settlement of 15 April 1985, which reads:

> "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter 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

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Email general@sawridgetrusts.ca
Web. www.sawridgetrusts.ca

> 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 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 19 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

is also quite clear that "beneficiaries" are clearly meant to be persons who are members of the Sawridge First Nation except for a select few who qualified as Band members under the 1982 provisions of the Indian Act but may no longer qualify under the current Act. The definition, though, refers to a section of the Indian Act that has since been repealed.

As a result of this reference to a section of the Indian Act that is no longer in force, the Trustees have decided to ask the Alberta Court to provide its advice as to whether or not this definition is still valid. All parties having an interest in this application to the Court will be notified when the application is submitted. The application is not likely to affect the requirement that, for the most part, beneficiaries must also be members of the Sawridge First Nation.

We are contacting you because you applied to be considered as a beneficiary to one or both of the Sawridge Trusts. We are now informing you that you should do the following:

1. **If you have not already done so, you should apply to Indian and Northern Affairs Canada to register for Indian status** which you can access at http://www.ainc-inac.com/ai/scr/bc/proscr/fnp/regscd/regapp/index-eng.asp if you have access to the Internet or by contacting one of the offices listed below:

Ontario Region
Indian and Northern Affairs Canada
8th Floor 25 St. Clair Avenue East
Toronto, Ontario
M4T 1M2
(416) 973-6234
fax: (416) 954-6329

Saskatchewan Region
Indian and Northern Affairs Canada
Room 200, 1 First Nations Way
Regina, Saskatchewan
S4S 7K5
(306) 780-5945 or 780-5392
fax: (306) 780-5733

Alberta Region
Indian and Northern Affairs Canada
630 Canada Place
9700 Jasper Avenue
Edmonton, Alberta
T5J 4G2
(780) 495-2773
fax: (780) 495-4088

British Columbia Region
Indian and Northern Affairs Canada
Suite 600
1138 Melville Street
Vancouver, B.C.
V6E 4S3
(604) 775-7114
(604) 775-5100
fax: (604) 775-7149.

2. **If you have not already done so, you should apply for membership in the Sawridge First Nation** by contacting the Sawridge First Nation office to request a copy of the Membership Code and Membership Application Form. **If you have already applied, you should check into the current status of your application.** The address is listed below:

Sawridge First Nation
P.O. Box 326
806 Caribou Trail NE
Slave Lake, AB T0G 2A0
(780) 849-4331
fax: (780) 849-3446
email: Sawridge@sawridgefirstnation.com

The Sawridge Trusts have offered to assist the Sawridge First Nation in any way that they can in order to help the First Nation deal with the volume of applications in an efficient and effective manner. If there is anything that we can do to assist you in this process, please contact us at the address listed below:

Sawridge Trusts
801, 4445 Calgary Trail
Edmonton, AB T6H 5R7
(780) 988-7723

(888) 988-7723
fax: (780) 988-7724
email: paul@sawridgetrusts.ca

We hope that this will help to resolve the issue of beneficiaries to the Sawridge Trusts and that it will help you resolve whether or not you are one of the beneficiaries.

Cordially,

Paul Bujold,
Trusts Administrator

TAB 4

BUSINESS

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Adam Kahane has worked on some of the toughest problems in the world—in organizations and in societies—from South Africa during its transition away from apartheid, to Colombia during the civil war, Argentina during the collapse, Guatemala after the genocide, Israel-Palestine, Northern Ireland, Cyprus, and the Basque Country. Through these experiences, he has learned how to create environments that enable creative new ideas and solutions to emerge and be implemented even in the most challenging contexts. Here Kahane tells his stories and distills from them an approach that all of us can use to solve our own toughest problems.

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— **William Ury**, Associate Director, Program on Negotiation, Harvard University, and coauthor of *Getting to Yes* and *The Third Side*

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— **Peter Senge**, Senior Lecturer, Massachusetts Institute of Technology; Chairman of the Society for Organizational Learning; and author of *The Fifth Discipline*

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— **Debra Dunn**, Senior Vice President, Hewlett-Packard Company

"This book should be read by everyone who is concerned with the quality of decision-making in our democracies."

— **Elena Martinez**, Assistant Secretary General, United Nations

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— **Peter Block**, author of *Flawless Consulting, Stewardship,* and *The Answer to How Is Yes*

Adam Kahane is a leading designer and facilitator of processes through which business, government, and civil society leaders can together solve their toughest problems. He has worked in more than fifty countries, in every part of the world. He is a founding partner of Reos Partners and of Generon Consulting.

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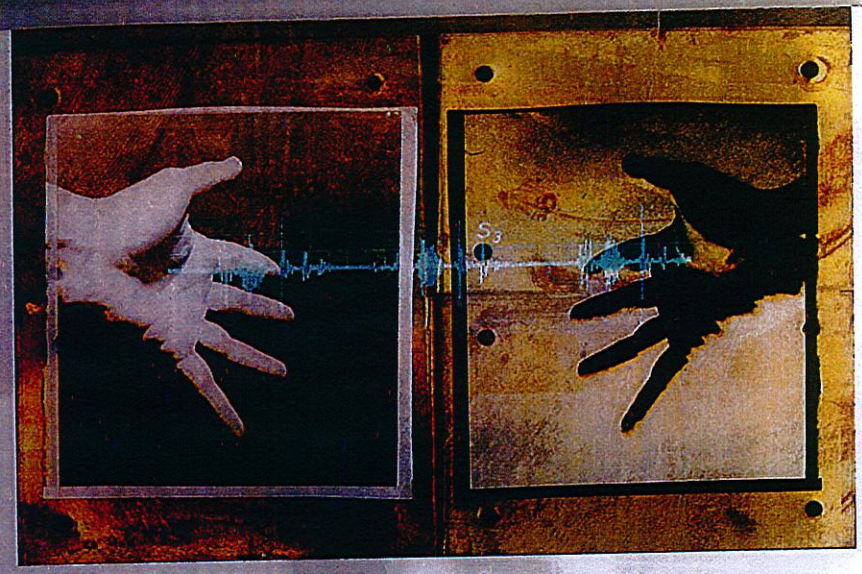

solving tough problems

An Open Way of Talking, Listening, and Creating New Realities

ADAM KAHANE

Foreword by Peter Senge

"This breakthrough book addresses the central challenge of our time: finding a way to work together to solve the

The Miraculous Option

IN THE MIDDLE OF 1991, Jaworski was in his office at Shell when he received a telephone call from Pieter le Roux, a professor at the left-wing, black University of the Western Cape in South Africa.

One year before, the white minority government of F. W. de Klerk had released Nelson Mandela from prison after twenty-seven years, and simultaneously legalized all the black opposition parties, including Mandela's African National Congress (ANC). This broke a deadlock in one of the world's most stuck political situations. Now the government and the opposition were trying to do what nobody believed could be done: negotiate a peaceful transition from an authoritarian apartheid regime to a racially egalitarian democracy.

Le Roux wanted to organize a scenario project to help the opposition develop its strategy for this unprecedented transition. South Africa had had two previous scenario projects, both of which had been sponsored by big South African companies and advised by Pierre Wack, by then long-retired from Shell. Le Roux liked the idea of using a corporate methodology for "the world's first scenario planning exercise of the left." He also wanted an advisor from Shell and so called Jaworski to ask for one.

Shell executives were still smarting from the criticism they had endured during the years when their products had been boycotted internationally because of Shell's investments in South Africa. And Jaworski was keen to find ways for the company to get

engaged in creating *New Frontiers*. It was therefore agreed that I would provide methodological advice to the project team and facilitate their scenario workshops. This sounded interesting to me, and so in September 1991 I flew from London to Cape Town for the project's first workshop.

The workshop venue was the Mont Fleur Conference Center on a wine estate in the mountains just outside Cape Town. Le Roux had assembled a group of twenty-two influential South Africans. He had invited leaders from all the main groups within the left-wing opposition: the ANC, the radical Pan-Africanist Congress (the PAC, which had not yet renounced their "armed struggle"), the powerful National Union of Mineworkers, and the South African Communist Party. He had also, daringly, invited some of their longtime adversaries from the white business community and academia. The team therefore represented, unofficially, parts of both the existing establishment and the establishment-to-be—a microcosm of the future South Africa.

The experience of constructing Shell-type scenarios in a group dominated by leftist African activists was an adventure for the participants and for me. Trevor Manuel, head of the ANC's Economics Department, introduced me to the group as "a representative of International Capital."

I could see that this scenario meeting was not going to be like the Shell ones I was used to. We were not working on an ordinary problem of organizational strategy but on an extraordinary national transformation. The team members had not come to the meeting because they had been told to or because it was their job, or because they or their satisfied organizations wanted to adapt as best they could to an uncertain future. They came because they were all deeply dissatisfied with the status quo and committed to changing it. They saw this project as an opportunity to participate in giving birth to the "New South Africa."

The composition of the team had two benefits for our scenario work. First, the team wouldn't have to seek out other people in order to accomplish their core scenario-building task—"breathing in" the reality of South Africa from multiple perspectives—because most of the key perspectives were already represented. Secondly, le Roux had begun the project with the endorsement of three top black leaders: Thabo Mbeki of the ANC, who later succeeded Mandela as president of the country; Anglican Archbishop Desmond Tutu; and Deputy President Dikgang Moseneke of the Pan-Africanist Congress. So we already had links to the opposition leaders whose strategies we were trying to inform.

The team started off in mixed small groups, brainstorming possible scenarios for South Africa over the decade ahead. I asked them to use the Shell convention and to talk not about what they or their party wanted to happen—their usual way of talking about the future—but simply about what might happen, regardless of what they wanted. Each small group could present back to the whole group any story they wanted, as long as they could argue that it was logical and plausible. The listeners in the plenary were not permitted to shout down the story with "That couldn't happen" or "I don't want that to happen." They could only ask "Why would that happen?" or "What would happen next?"

The team found this scenario game to be fabulously liberating. They told stories of left-wing revolution, right-wing revolts, and free market utopias. They told some politically incorrect stories, such as "Growth through Repression" (a play on words on the left's slogan of "Growth through Redistribution"), in which a Chilean-type authoritarian government produces strong economic growth. They also rejected as implausible some politically correct stories, such as one in which the People's Republic of China provides the military support that enables a victorious socialist insurrection in South Africa.

The workshop was taking place just after the white government had relaxed its "petty apartheid" restrictions on social interaction. The scenario team was excited to be able to work together across white-black, establishment-opposition lines. Many of them were meeting for the first time, and the relaxed, residential setting helped them to get to know one another. We had the whole of

the beautiful Mont Fleur center to ourselves. During breaks in the workshop we went for walks on the mountain or played volleyball or billiards. In the evenings we had long conversations in the lounge, which had a well-stocked wine cellar sponsored by one of the participating companies. I chatted by the fireplace with Dorothy Boesak, a black community leader who was coordinating the project. This whole scene was remarkable for many reasons, but especially because only a few years before, South African laws would have prohibited any such socializing between whites and blacks.

The first brainstorming exercise produced thirty stories. The team combined these and narrowed them down to nine for further work, and set up four subteams to flesh out the scenarios along social, political, economic, and international dimensions. The subteams worked from September through December, when the whole team reconvened at Mont Fleur for a second workshop. They first addressed the nine scenarios in more depth and then narrowed the field to four that they thought, given the current situation in the country, were the most plausible and important. After that workshop, the team went back to their own organizations and networks to test these four scenarios. At a third workshop, in March 1992, the participants reviewed and refined the write-ups of the final scenarios and agreed how they would be published and disseminated. Finally, in August, the team held a fourth, one-day workshop—with a four-hour break in the middle so that participants could watch an important rugby game—to present and test the logic of the scenarios with a broader and more senior group, including politicians from the white liberal Democratic Party, the right-wing Conservative Party, and the governing National Party.

The team's final scenarios asked the question: How will the South African transition go, and will the country succeed in "taking off"? Each of the four stories gave a different answer and had a different message that mattered to the country in 1992. South Africa was in the middle of the contentious and risky transition

negotiations. Nobody knew how or even whether they would succeed, or if the country would remain stuck, closed, embattled, and isolated. As a set, the scenarios provided a provocative road map for this transition. There were three dark prophecies of futures to avoid: *Ostrich*, in which the nonrepresentative white government sticks its head in the sand to try to avoid a negotiated settlement with the black majority; *Lame Duck*, in which there is a prolonged transition with a constitutionally weakened government which, because it purports to respond to all, satisfies none; and *Icarus*, in which a constitutionally unconstrained black government comes to power on a wave of popular support and noble intentions, and embarks on a huge and unsustainable public spending program, which crashes the economy. Then there was one bright vision of a future to work towards: *Flight of the Flamingoes*, in which the transition is successful because all the key building blocks are put in place, with everyone in the society rising slowly and together.

Once the four scenarios had been agreed upon, the team introduced them into the national conversation. They inserted a twenty-five-page booklet into the leading weekly newspaper, arranged for the work to be discussed in the media, and distributed a cartoon video of the four stories. Most importantly, they ran more than 100 workshops for leadership groups of their own and other influential political, business, and civic organizations, where the four scenarios were presented and debated. President de Klerk reacted to Mont Fleur by saying, "I am not an Ostrich."

Icarus got the most attention. Here the leading economists of the left were warning their comrades of the dangers of irresponsible left-wing economic policies. Mosebyane Malatsi of the Pan-Africanist Congress, the ANC's main rival on the left, presented *Icarus* to his own top leaders. He said, "This is a scenario of what will happen if the ANC comes to power. And if they don't do it, we will push them into it." Malatsi was showing his colleagues both an unfamiliar and undesirable economic scenario for South Africa and the role that their own policies and actions would play

in such a scenario. His presentation produced a long, intense, self-critical discussion among the PAC leaders. Soon after this meeting, the PAC changed their economic policies and then decided to abandon their armed struggle and join the constitutional negotiations.

A similar shift in thinking occurred among the top leaders of the ANC. Trevor Manuel and his deputy Tito Mboweni led the presentation to this group, which included Nelson Mandela, Oliver Tambo (president of the ANC), and Joe Slovo (chairperson of the South African Communist Party). At the time, the ANC's leadership was focused primarily on achieving a political, constitutional, governmental, and military transition. Their economic thinking, formed during the Cold War and the South African guerrilla war, was tightly held. Their general view was that the country was rich and that an ANC government could simply redistribute money from rich whites to poor blacks. *Icarus*, presented at this meeting by their own top two economists, was therefore a direct attack on the party's orthodoxy. When some participants demurred, it was Slovo, citing his personal experience with failed socialist programs in the Soviet Union and elsewhere, who argued that *Icarus* needed to be taken seriously.

The economic message of Mont Fleur affected ANC thinking profoundly. Derek Keys, minister of finance in the de Klerk government, attended the fourth Mont Fleur workshop, and one evening he offered to share some material from a briefing on the economy he had just given to the de Klerk cabinet. Manuel and others said they were interested, and a long conversation ensued. Reporter Patti Waldmeir later described it this way:

> Keys gave ANC economics head Trevor Manuel a briefing on the economy, and Manuel repeated it to Mandela. "And I got frightened," Mandela recalls. "Before Trevor finished, I said to him, 'Now what does this mean as far as negotiations are concerned? Because it appears to me that if we allow the situation to continue . . . the economy is going to be so destroyed that when a democratic government comes to power, it will not be able to solve it.'" Mandela made a decision—the deadlock [in the then-stalled negotiations on a post-apartheid political order] must be broken.

So Mont Fleur helped to shift the economic thinking and acting of the ANC and other left-wing parties and to avert an economic disaster. One of the most important surprises and successes of the post-1994 ANC government has been its strict and consistent fiscal discipline, as articulated in the 1996 Growth, Employment, and Reconstruction (GEAR) policy. In his history of this transition, Allister Sparks refers to this fundamental (and still controversial) change in economic policy, incubated at Mont Fleur, as "The Great U-Turn." In 2000, seven years after the project ended, Trevor Manuel, who by then had succeeded Keys as the country's first black minister of finance, had this to say:

> It's not a straight line [from Mont Fleur to GEAR]. It meanders through, but there's a fair amount in all that going back to Mont Fleur . . . I could close my eyes now and give you those scenarios just like *this*. I've internalized them, and if you have internalized something then you probably carry it for life.

Businessman and political analyst Vincent Maphai, one of the convenors of Mont Fleur and an intimate observer of the ANC cabinet, said, "Trevor Manuel and Tito Mboweni are aimed at one thing: preventing the *Icarus* scenario." In 1999, Mboweni, at the official banquet for his inauguration as the country's first black governor of the Reserve Bank, reassured his audience of local and international bankers by saying, "We are not *Icarus*; there is no need to fear that we will fly too close to the sun."

Looking back, South Africans have since 1994 been on a slow, steady, collaborative ascent: a *Flight of the Flamingoes*.

I was delighted and fascinated by all of these impacts of the Mont Fleur team's work. This was the first time that I had descended from observing complex problems from above and outside as a researcher and corporate planner, to engaging right up close with a group of people who were in the middle of working through solutions. Their process did not work the way I expected it to. There were no clever viewgraphs or brilliant experts or anonymous decision makers in the picture. The stories had played a part in solving an important set of national problems, but they were really quite simple, even simplistic—not nearly as sophisticated and carefully thought through as our Shell scenarios.

The essence of the Mont Fleur process, I saw, was that a small group of deeply committed leaders, representing a cross-section of a society that the whole world considered irretrievably stuck, had sat down together to talk broadly and profoundly about what was going on and what should be done. More than that, they had not talked about what other people—some faceless authorities or decision makers—should do to advance some parochial agenda, but what they and their colleagues and their fellow citizens had to do in order to create a better future for everybody. They saw themselves as part of—not apart from—the problem they were trying to solve. The scenarios were a novel means to this engaged problem-solving end.

The Mont Fleur scenario team had used the same methodology as the Shell team, but for a fundamentally different purpose. At Shell we built scenarios to improve our managers' ability to adapt to whatever happened in the future. At Mont Fleur, by contrast, the team built scenarios not only to understand what was happening and might happen in the future, but also to influence and improve the outcome. At Shell we were observers and reactors; at Mont Fleur, team members were actors. The Mont Fleur team's fundamental orientation—and the primary message they gave to the leadership groups they engaged with—was that more than one future was possible and that the actions they and others took would determine which future would unfold. The team did not believe they had to wait passively for events to occur. They believed they could actively shape their future. They understood that one reason the future cannot be predicted is that it can be influenced.

This was the same point that Jaworski had been making to our team at Shell. In his book *Synchronicity: The Inner Path of Leadership*, Jaworski later wrote:

> If individuals and organizations operate from the generative orientation, from possibility rather than resignation, we can create the future into which we are living, as opposed to merely reacting to it when we get there. . . . All human beings are part of that unbroken whole which is continually unfolding from the implicate and making itself manifest in our explicate world. One of the most important roles we can play individually and collectively is to create an opening, or to "listen" to the implicate order unfolding, and then to create dreams, visions, and stories that we sense at our center want to happen. . . . Using scenarios in this way can be an extraordinarily powerful process—helping people to sense and actualize emerging new realities.

At Mont Fleur the team was not only doing something essentially different from anything I had ever seen, but they were doing it with an oddly different spirit. They were working on big, serious issues over which they had been engaged in life-and-death struggles for decades. But they were doing this openly, creatively, and lightheartedly, having fun with their ideas and with each other.

My own stance as a facilitator helped. I joined the Mont Fleur team with what was, for me, an exceptional orientation. In the weeks preceding the first workshop, I had been busy with my Shell work and so did not have time to prepare as I usually would have: reading up on South Africa and then, on the long flight from London to Cape Town, composing my expert view on what the country and the team ought to do. I also did not know much

about the members of the team, except that they were a heroic group, many of whom had been beaten, jailed, or exiled for their work. I was, therefore, both neutral and respectful—which turned out, unintentionally and synchronistically, to be the perfect recipe for being a facilitator. The more I worked with the team, the more impressed I became with them, and as I opened up, this inspired reciprocal opening by them. One team member later said to me, "When we first met you, we couldn't believe that anyone could be so ignorant. We were sure that you were trying to manipulate us. But when we realized that you really didn't know anything, we decided to trust you." Both the team and I were able, at least for a while, to give up knowing and take up learning.

For me, the Mont Fleur process was a revelation and awakening. I knew that I had witnessed something unusual and important—a Grail—even though I wasn't sure exactly what it meant. I had walked through a doorway, even though I wasn't sure what was on the other side. I had fallen in love with this way of working on the toughest of problems, with the vitality and openheartedness of South Africans, and also with Dorothy Boesak. It was all quite jumbled up in my mind, but I did not have to decide what to do. I knew. In 1993, I resigned from Shell, emigrated to South Africa, and married Dorothy. I exchanged the controlled neatness of my Shell, London, bachelor life for the messiness of self-employment, in a country undergoing a revolution, with a wife and four teenage stepchildren.

Dorothy and I had a joyful wedding at the Mont Fleur Conference Center. Many of the team members, pleased to have been party to the romance, were there. It was a real New South Africa affair: my Jewish family from Canada, Dorothy's family and her Dutch Reformed minister, a Xhosa marimba band, a Zulu singer, a Muslim jazz pianist. Although the day was mostly a blur, I distinctly remember turning and facing the guests just after we had said our vows and feeling an unexpected, overwhelming wave of love engulfing all of us. At that moment, the whole tent full of people seemed one.

The Mont Fleur experience left me with two questions. First, Why was the Mont Fleur work unusual and important? Observation and reflection revealed the answer to this question over the following months. Second, How had the team members done this work? I could only come up with an answer to this question from the inside, subjectively, as a participant in the work, and it came to me gradually over the ten years that followed.

The South Africa that I traveled to in 1991 and 1992, and moved to in 1993, was a country between regimes. The 1980s had ended in a stalemate: both the white minority government and the radical opposition had tried to win by force, and both had failed. In 1990, de Klerk broke the stalemate by releasing Mandela and legalizing the opposition groups, but the country's first all-race elections were not held until 1994. This four-year transitional period was a roller coaster of euphoric highs and bloody lows, agreements and assassinations, breakthroughs and breakdowns.

South Africa's system of governance during this period was extraordinary. The old order was dying, but the new order had not yet been born. There were no agreed rules for making national decisions. The de Klerk government was formally in charge, but its legitimacy and power were slipping away, and it had to consult the ANC on most major issues. Just after I immigrated in 1993, for example, the popular black politician Chris Hani was assassinated by a white conservative, and de Klerk, fearing a black uprising, had to rush Mandela onto national television to appeal for calm.

In this governance vacuum, South Africans were cobbling together a variety of ad hoc processes. The most prominent and visible of these was the series of official conferences among the political parties to negotiate a political settlement and a new constitution, complete with scrupulously balanced delegations, position papers, and formal rules of order. But less visible were hundreds of "forums," covering every imaginable issue and scale:

the National Housing Forum, the National Education Forum, the Orange Free State Drought Committee, the Western Cape Regional Economic Development Forum, and many others. Each of these forums had its own idiosyncratic structure and process, but all of them brought together the actors with a stake in a particular problem—from government, opposition parties, companies, trade unions, community groups, universities, and so on—to develop a shared understanding of the problem and to find ways to solve it. These actors participated in the forums because they believed they were facing problems that none of them could solve alone through ordinary, established processes. They therefore needed these extra-ordinary, multi-stakeholder, dialogue-and-action processes.

The forums became the mechanism through which specific transitional agreements were reached. Equally important was their function as the mechanism through which a cross-sectoral network of trusting relationships—what Robert Putnam calls "social capital"—was built. The dramatic overall political and constitutional settlements that South Africans achieved in 1994 rested on the relationships they built through these many dialogic processes. The Mont Fleur project was both an example and a part of this larger problem-solving process.

A popular joke at the time said that, faced with the country's daunting challenges, South Africans had two options: a practical option and a miraculous option. The practical option was that we would all get down on our knees and pray for a band of angels to come down from heaven and fix things for us. The miraculous option was that we would continue to talk with each other until we found a way forward together. In the end, South Africans, contrary to everybody's predictions, succeeded in implementing the miraculous option. Forums like Mont Fleur were miracle-implementing processes.

My key insight was that South Africans had discovered an exceptionally effective way to solve tough problems. I proved this to myself with the painstaking logic of an ex-physicist. I knew

that problems are tough because they are complex, and that there are three types of complexity: dynamic, generative, and social.

A problem has low *dynamic* complexity if cause and effect are close together in space and time. In a car engine, for example, causes produce effects that are nearby, immediate, and obvious; and so, why an engine doesn't run can usually be understood and solved by testing and fixing one piece at a time. By contrast, a problem has high dynamic complexity if cause and effect are far apart in space and time. For example, economic decisions in New York affect the price of gold in Johannesburg, and apartheid-era educational policies affect present-day black employment prospects. Such problems—management theorist Russell Ackoff calls them "messes"—can only be understood systemically, taking account of the interrelationships among the pieces and the functioning of the system as a whole.

A problem has low *generative* complexity if its future is familiar and predictable. In a traditional village, for example, the future simply replays the past, and so solutions and rules from the past will work in the future. A problem has high generative complexity if its future is unfamiliar and unpredictable. South Africa, for example, was moving away from the peculiar rigidities of apartheid and into a new, post–Cold War, rapidly globalizing and digitizing world. Solutions to problems of high generative complexity cannot be calculated in advance, on paper, based on what has worked in the past, but have to be worked out as the situation unfolds.

A problem has low *social* complexity if the people who are part of the problem have common assumptions, values, rationales, and objectives. In a well-functioning team, for example, members look at things similarly, and so a boss or an expert can easily propose a solution that everyone agrees with. A problem has high social complexity if the people involved look at things very differently. South Africa had the perspectives of black versus white, left versus right, traditional versus modern—classic conditions for polarization and stuckness. Problems of high social

complexity cannot be peacefully solved by authorities from on high; the people involved must participate in creating and implementing solutions.

My analysis gave me a neat answer to my first question: Why was the Mont Fleur work unusual and important? Simple problems, with low complexity, can be solved perfectly well—efficiently and effectively—using processes that are piecemeal, backward looking, and authoritarian. By contrast, highly complex problems can only be solved using processes that are systemic, emergent, and participatory. The Mont Fleur approach was important and unusual because it was exceptionally well suited to solving highly complex problems—to enacting profound social innovations. Our process was *systemic*, building scenarios for South Africa as a whole, taking account of social, political, economic, and international dynamics. It was *emergent*, because it recognized that precedents and grand plans would be of limited use, and instead used creative teamwork to identify and influence the country's critical current choices. And it was *participatory*, involving leaders from most of the key national constituencies. The mother of this South African invention was the necessity of its transitional vacuum: a highly complex system, in a fundamentally new context, in which no single authority had the wisdom or legitimacy to enforce solutions. With the practical option of intervention from "above" unavailable, South Africans had no choice but to rely on the miraculous option of working together.

My analysis also allowed me to recognize a widespread "apartheid syndrome." By this I mean trying to solve a highly complex problem using a piecemeal, backward-looking, and authoritarian process that is suitable only for solving simple problems. In this syndrome, people at the top of a complex system try to manage its development through a divide-and-conquer strategy: through compartmentalization—the Afrikaans word *apartheid* means "apartness"—and command and control. Because the people at the bottom resist these commands, the system either becomes stuck, or ends up becoming unstuck by force.

This apartheid syndrome occurs in all kinds of social systems, all over the world: in families, organizations, communities, and countries.

South Africa is in many ways a microcosm; the country is, as Allister Sparks observes,

> where the First and Third Worlds meet, . . . the developed and developing worlds, the dark-skinned and light-skinned worlds, the rich and the poor, in the same proportions as the rest of the global village of roughly one to five. It is where the white-skinned First Worlders tried to keep the dark-skinned Third Worlders out of their islands of affluence in the cities with pass laws and influx control regulations, just as the developed nations try to stop them from crossing the global poverty barriers of the Rio Grande, the Mediterranean, and the Pacific Rim, and with as little success.

Apartheid could not be sustained in South Africa, and it cannot be sustained elsewhere—except by force. Everywhere, people are struggling to overcome their own apartheids. They are struggling to find peaceful ways to solve their own highly complex problems. The lessons of the South African transition and of Mont Fleur are therefore relevant to many other contexts.

This realization brought me back, with even greater interest, to my second, unanswered question: How had the Mont Fleur team members done their work? The only way I was going to understand this was to immerse myself in this work and observe the people who were doing it up close.

Soon I would have many opportunities to do just that.