

COURT FILE NUMBER 1103 14112

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE *TRUSTEE ACT*, RSA 2000, c T-8, AS AMENDED, and

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

APPLICANTS: ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust ("Sawridge Trustees")

DOCUMENT **AFFIDAVIT OF DARCY TWIN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Parlee McLaws LLP
Barristers and Solicitors
1700 Enbridge Centre
10175-101 Street
Edmonton, AB T5J 0H3
Attention: Edward H. Molstad, Q.C.
Telephone: 780-423-8503
Facsimile: 780-423-2870
File No.: 64203-7/EHM



AFFIDAVIT OF DARCY TWIN

Sworn on September 24, 2019

I, DARCY TWIN, of the Sawridge Indian Reserve 150G, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I have been a member of the Sawridge First Nation ("Sawridge") since my birth on August 9, 1977, I have been a Councillor of Sawridge since February 2015, I am a Trustee of the Sawridge Band Trust settled on April 15, 1982 (the "1982 Trust"), I am a beneficiary of the 1982 Trust, and my father, Chester Twin, was a Trustee of the Sawridge Inter Vivos Settlement (the "1985 Trust") from December 18, 1986 to January 22, 1996. As such, I have personal knowledge of the matters set out in this affidavit except where stated to be based upon information and belief, in which case I do verily believe the same to be true.

Sawridge First Nation and Chief and Council

2. Sawridge currently has 45 members, one of whom is a minor. These members are, by definition, the only beneficiaries of the 1982 Trust.
3. There are currently three members of Sawridge Chief and Council: Chief Roland Twinn, Councillor Gina Donald, and me. As duly elected Chief and Council, we represent the members of Sawridge.
4. Roland Twinn, who is also a Trustee of the Sawridge Band Inter Vivos Settlement (the "1985 Trust"), has abstained from involvement in this intervention application on behalf of Sawridge.

The Sawridge Band Trust settled on April 15, 1982 (the "1982 Trust")

5. I am informed by my review of Declaration of Trust for the 1982 Trust, a copy of which is attached hereto and marked as **Exhibit "A"** to this my affidavit, that the beneficiaries of the 1982 Trust are all present and future members of Sawridge and that the Trustees of the 1982 Trust are Chief and Council of Sawridge.
6. The Trustees of the 1982 Trust are, by definition, the current elected Chief and Council of Sawridge, being Chief Roland Twinn, Councillor Gina Donald, and me.

Source of Funds to Purchase the Trust Assets and Purpose of the Trusts

7. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of certain portions of the transcript of the testimony of Chief Walter Patrick Twinn in the first trial of Sawridge's constitutional challenge to Bill C-31, copies of which are attached hereto as **Exhibit "B"** to this my affidavit, and do verily believe the following:

- a. When Walter Patrick Twinn became Chief of the Sawridge in 1966, Sawridge did not have any businesses (p 3418).
 - b. Sawridge's goal was to save as much as possible and use the capital and revenue funds to become totally self-supporting one day. (pp 3885-3887)
 - c. Sawridge was concerned that Bill C-31 would result in automatic reinstatement of a large group to membership in Sawridge. (p 3761)
 - d. The 1985 Trust was created two days before Bill C-31 was enacted, in anticipation of the passage of Bill C-31, and with the objectives that the beneficiaries of the 1985 Trust would be people who were considered Sawridge members before the passage of Bill C-31, that the people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries for a short time until Sawridge could see what Bill C-31 would bring about. The people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries. (pp 3906-3909)
 - e. Ultimately, the intention was that the assets from the 1985 Trust would be placed in the 1986 Trust. (pp 3948-3949)
 - f. The primary source of income for Sawridge originated with the discovery of oil on the Sawridge reserve lands. The royalty monies resulting from the sale of oil and gas were received and held in Sawridge's capital account in accordance with the *Indian Act*, RSC 1970, c I-6. The Sawridge capital moneys were expended with the authority and direction of the Minister and the consent of the Council of Sawridge. The Sawridge capital moneys were used for economic development, specifically to invest in various companies carrying on business under the Sawridge name, and were placed in the Sawridge Trusts. (pp 3953-3957, 4004-4005)
8. In a letter dated December 23, 1993, a copy of which is attached hereto and marked as **Exhibit "C"** to this my affidavit, the Assistant Deputy Minister, Lands and Trust Services, Indian & Northern Affairs Canada, stated that the 1985 Trust held substantial sums which, to a large extent, had been derived from Sawridge capital and revenue moneys previously released by the Minister and that such moneys were expended pursuant to sections 64 and 66 of the *Indian Act*, for the benefit of the members of Sawridge.

The Jurisdiction Applications in the within Action

9. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibit "D" and do verily believe, that on August 24, 2016, the Honourable Mr. Justice D.R.G. Thomas granted a Consent Order (the "August 24, 2016 Consent Order") in the within Action approving the transfer of assets which occurred in 1985 from the

1982 Trust to the 1985 Trust *nunc pro tunc*. Attached hereto and marked as **Exhibit “D”** to this my affidavit is a copy of the August 24, 2016 Consent Order.

10. I am informed by our counsel, Edward H. Molstad, Q.C. and do verily believe, that counsel for Sawridge was in attendance at the August 24, 2016 hearing to speak to a Rule 5.13 Application brought by the Office of the Public Trustee and Guardian of Alberta for document production from Sawridge and, although the Court asked if counsel for Sarwridge had anything to say with regard to the August 24, 2016 Consent Order, Sawridge was not a party to the Consent Order and its counsel declined to make submissions on its behalf in relation to the Consent Order.
11. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits “D”, “E”, “F” and “G”, and do verily believe, that prior to and during the case management hearing in the within action on April 25, 2019 and again during the case management hearing on September 4, 2019, the Honourable Mr. Justice J.T. Henderson raised concerns about the August 24, 2016 Consent Order, and whether the trust assets transferred from the 1982 Trust are held pursuant to the terms of the 1982 Trust or the 1985 Trust. Attached hereto and marked as **Exhibit “E”** to this my affidavit is a copy of the April 25, 2019 email from the Honourable Mr. Justice J.T. Henderson. Attached hereto and marked as **Exhibit “F”** to this my affidavit is a copy of the transcript from the April 25, 2019 proceeding. Attached hereto and marked as **Exhibit “G”** to this my affidavit is a copy of the transcript from the September 4, 2019 proceeding.
12. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits “E”, “F” and “G”, and do verily believe that the Honourable Mr. Justice J.T. Henderson directed the filing of an application seeking a determination of the effect of the August 24, 2016 Consent Order, returnable November 27, 2019.
13. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibit “H”, and do verily believe, that on September 13, 2019, the Trustees of the 1985 Trust filed and served on him an application requesting a determination of the transfer of asset issue raised by the Honourable Mr. Justice J.T. Henderson, and the effect of the August 24, 2016 Consent Order, and a copy of the filed application is attached hereto as **Exhibit “H”** to this my affidavit.
14. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits “H” and “I” and do verily believe, that Sawridge, if granted status to intervene in in the hearing on the Jurisdictional Question ordered by the Honourable Mr. Justice J.T. Henderson pursuant to a Consent Order on December 18, 2018 and in the application filed by the Trustees of the 1985 Sawridge Trust on September 13, 2019 (collectively, the “Jurisdiction Applications”), would be the only participant that represents all members of Sawridge to the exclusion of other persons. Attached hereto and marked as **Exhibit “I”** to this my affidavit is a copy of the December 18, 2018 Consent Order.

- 15. Sawridge would be specially effected by the outcome of the Jurisdiction Applications as its members are the beneficiaries of the 1982 Trust, Sawridge Chief and Council are the Trustees of the 1982 Trust, and the source of funds used to purchase the assets held in the 1982 Trust are capital and/or revenue expenditures made pursuant to sections 64 and 66 of the *Indian Act*, which must only be used for the benefit of the members of Sawridge.
- 16. Sawridge has a unique perspective and insight concerning the issues raised by the Jurisdiction Applications, as the interests of the Trustees and the beneficiaries of the 1982 Trust are not currently represented by the parties to the within Action.

Purpose of this Affidavit

- 17. I swear this affidavit in support of an application for an Order, pursuant to Rule 2.10 of the *Alberta Rules of Court*, Alta Reg 124/2010, granting Sawridge status to intervene in the Jurisdiction Applications, copies of which are attached hereto and marked as Exhibits "H" and "I" to this my affidavit.

SWORN BEFORE ME at the Town of Slave Lake, in the Province of Alberta, this 24th day of September, 2019.



A Commissioner for Oaths in and for the Province of Alberta

**MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR**



DARCY TWIN

EXHIBIT "A"

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

DARCY TWIN

Sworn before me this 24TH day
of SEPTEMBER, 2019

A Commissioner for Oaths in and for Alberta
MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

This Declaration of Trust made the 15th day of April, A.D.
1982.

BETWEEN:

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

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band No. 190 N.S. respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
In the Presence of:

Walter J. P. J.
NAME

1100 One Thornton Court
ADDRESS

A. Settlor: Walter P. J.

Walter J. P. J.
NAME

1100 One Thornton Court
ADDRESS

B. Trustees: I. Walter P. J.

Heather Spivey
NAME

1100 One Fronton Court
ADDRESS

Heather Spivey
NAME

1100 One Fronton Court
ADDRESS

NAME _____

ADDRESS _____

2. [Signature]

3. Walter F. [Signature]

4. _____

5. _____

6. _____

7. _____

8. _____

EXHIBIT "B"

03324:01 IN THE FEDERAL COURT OF CANADA TRIAL DIVISION
02 Court File No. T-66-86

03 BETWEEN:

04 WALTER PATRICK TWINN, suing on his own behalf and on
05 behalf of all other members of the Sawridge Band,
06 WAYNE ROAN, suing on his own behalf and on behalf of
07 all other members of the Ermineskin Band,
08 BRUCE STARLIGHT, suing on his own behalf and on behalf
09 of all other members of the Sarcee Band

10 Plaintiffs,

11 -and-

12 HER MAJESTY THE QUEEN

13 Defendant

14 -and-

15 NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA
16 (ALBERTA), AND NON-STATUS INDIAN ASSOCIATION OF

ALBERTA

17 Interveners

18

19 PROCEEDINGS

20 October 26, 1993

21 Volume 22

22 Held at the Federal Court of Canada

23 Edmonton, Alberta

24 Pages 3324 to 3551

25

26 Taken before: The Honourable Mr. Justice F. Muldoon

03325:01 APPEARANCES

02 M. Henderson, Esq. For the Plaintiffs

03 C. M. Twinn, Ms.

04 P. Healey, Esq.

05 D. D. Akman, Esq. For the Defendant

06 E. Meehan, Esq. Intervener for the

07 Native Council of Canada

08

09 P. J. Faulds, Esq. Intervener for the Native

10 T. K. O'Reilly, Esq. Council of Canada (Alberta)

11

12 T. P. Glancy, Esq. Intervener for the

13 Non-Status Indian

14 Association of Alberta

15

16

17

18 June Rossetto Court Registrar

19

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

DARCY TWIN

Sworn before me this 24TH day

of SEPTEMBER, 2019

A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

20 Sandra German, CSR(A), RPR Court Reporter

21

22

23

24

25

26

03326:01

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WALTER PATRICK TWINN

09

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03327:01

THE REGISTRAR:

This Court is now resumed.

02

MR. HENDERSON:

My Lord, sorry, counsel had asked

03

for a bit more time and that's why we're late this

04

morning. I think Mr. Meehan and/or Mr. Glancy may want

05

to address the Court about the comments yesterday.

06

THE COURT:

Yes. Thank you.

07

MR. MEEHAN:

Good morning, Your Lordship.

08

Mr. Henderson and other counsel had a brief discussion

09

prior to court this morning, and there was a few

10

matters that we would wish to bring to the Court's

11

attention for your consideration.

12

THE COURT:

Yes.

13

MR. MEEHAN:

Yes, until yesterday, Your

19 have been entered into the band lists. They all will be
20 entered into the band lists.

21 Q These are children born to members who were members
22 before 1985?

23 A That's right.

24 Q And those children will all ultimately be entered on
25 the band lists as members?

26 A That's automatic.

03418:01 Q And in some cases that hasn't happened yet?

02 A It hasn't happened yet. For no real reason. Difficulty
03 the membership codes probably, whatever. We've got a
04 legal opinion. You can't just do that. You have to do
05 it in order that everyone has to apply which is not
06 automatic.

07 Q So the parents of the children would ask you to enter
08 the child and you would simply do that?

09 A They shouldn't have to ask, but that's when it comes.
10 It's not -- it hadn't been relevant unless they're
11 infants. Not that they would lose anything.

12 Q Now when you became chief in 1966, did Sawridge have
13 any businesses?

14 A No.

15 Q Now, you were a member of the Sawridge band in 1967. In
16 fact you were chief in 1967 and had been for one year
17 at that time. Now if you had voluntarily enfranchised
18 in 1967, how much money would you have received as your
19 per capita share in 1967?

20 A No more than \$1200 I believe.

21 Q And how do you know that?

22 A I believe we had about -- if I recall when I was chief
23 we had \$40,000 in the capital fund I believe. That's
24 the figure I can remember. And others later on had
25 voluntary -- or enfranchised either by marriage,
26 whatever. That was about the figure I believe. It's

03419:01 never -- the figure was never -- it's difficult.
02 Sometimes it would take us six months to get an
03 accounting of what was in the capital revenue funds.

04 Q But the overall account in 1967 was --

05 A Was about 40,000.

06 Q \$40,000?

07 A I'm not saying it's exact. It's about \$40,000.

08 Q So if there were 30 members, say, they would each get
09 1/30th of \$40,000.

10 A Yes, there was 38 members at '85.

11 Q I'm just asking a hypothetical question.

12 A Yes, right. About 1200 I said. No more.

25 back.
26 I'm looking at page 2 there on the
03761:01 left-hand side paragraph 5. And just directing your
02 attention to the first paragraph, I gather that treaty
03 8 and Sawridge welcomed the removal of discrimination
04 on the grounds of sex and welcomed the increase in
05 Indian control of band membership which Bill C-31
06 provided?
07 A Yes, to some extent.
08 Q Yes. Okay. And I gather that the reservation or the
09 concern that you had related to the fact that in return
10 for getting those things, Bill C-31 said that there was
11 a group of people whom you would have to accept back
12 into membership, and that was what you were concerned
13 about?
14 A Automatic reinstatement of a large group is what we
15 were --
16 Q Exactly. Okay.
17 A Yeah.
18 Q There's been a lot of discussion about who is
19 automatically reinstated under Bill C-31. I would like
20 you to turn to page 11, paragraph number 22.
21 At the time this brief was made,
22 the treaty 8 bands and the Sawridge band understood
23 that Bill C-31 did not reinstate first generation
24 descendants of people who had lost their status under
25 the act. You understood that the bill did not reinstate
26 children? Is that correct?
03762:01 A I don't want to be on a document committed to a
02 document that -- on a proposal.
03 Q No, I'm just saying that at the time that this document
04 was prepared based on whatever form the bill was --
05 whatever stage the bill was at then, you and your
06 professional advisors understood that bill did not
07 reinstate the first generation descendants or the
08 children of the people who had lost their status? That
09 was understood at that time?
10 A At that time, that was the negotiating that took place.
11 Q Sure. Okay. And that was -- how you understood the bill
12 was at that time?
13 A The bill kept changing from time to time. One day we
14 would come home and they had -- there was another
15 category. There was all sorts of pressures.
16 Q Well, Chief Twinn, in any event, we'll just deal with
17 what you understood at the time of this particular
18 brief.

21 business activity? That is what makes it distinct?
22 A That's right.
23 Q The Sawridge Band is essentially a business entity?
24 A The Sawridge Band is a group of people, a band, that we
25 use this for a common purpose. We believe that we have
26 to be strong financially.

03884:01 To do that, there's a lot of things
02 that people must be. It is not wrong for other people to
03 be strong and to be financially strong. All of the other
04 things that make society run, I guess we try to keep
05 up -- not keep up, but try to come to a level, if
06 possible.

07 This Country provides -- in
08 democracy and in free enterprise system, which I believe
09 very much -- opportunities for everyone to earn a living,
10 whatever. And that is the objective for us, is to
11 struggle.

12 Q Of course.
13 A I don't know what . . .
14 Q Of course. And what I'm saying is that when you talk
15 about the Sawridge Band and your concern for its future,
16 what you're really concerned about is the future of the
17 business activities of the Sawridge Band.

18 A If we were told initially by the oil companies an
19 estimate that the oil reserves would only be 20 years,
20 we've went that 20 years -- there is someone
21 speculating -- speculating -- it's going to be 30 years.
22 But it is our job that they don't diminish -- 15 million
23 hasn't -- it's been growing.

24 When we hold in common, the band --
25 and it goes for all bands, I think, in Canada, that these
26 assets -- I think I may be repeating myself. I'm
03885:01 sorry, but we cannot will our share. We do not -- a
02 child does not inherit. It's all in common.

03 It is our belief and it is our --
04 Sawridge -- that those lands that -- left to us by
05 someone else, those people that refuse to volunteer
06 enfranchise went through the hardships.

07 Like I said earlier, the band
08 council before me would not allow all the timber to be
09 cut all at once, as some people like to see. So . . .
10 Q Yes?
11 A So, in that respect, we try to save as much as possible,
12 all the capital funds, the revenue funds that are there,
13 and hopefully some day we can be totally
14 self-supporting. That is the goal.

15 But, as you know, if you're an
16 Albertan, Alberta Heritage Trust Fund had about
17 \$12 billion, and it wasn't very long ago it went down.
18 Whether the membership is large or
19 it's small, it's just as dangerous when it's political.
20 So, you know, I guess that is my
21 explanation for how we do things. No one is suffering, I
22 don't believe. If any of these individual members or
23 anyone -- I guess they could be middle income with very
24 slight effort.

25 Q My point, Chief Twinn, was simply that what you're
26 concerned about -- and perhaps what you've been doing is
03886:01 just confirming this for me -- what you're concerned
02 about is the future of the band's business activities.

03 A That's not what I said. I guess I'm not getting clear.
04 I'm saying to you that we're trying
05 to be self-supporting. And to keep using money -- I
06 think I have tried to say to you -- Alberta Heritage
07 Trust Fund had a lot of money. They're broke today.
08 It's dangerous, that competitive world. If Alberta has
09 some more problems or if Canada has problems, what do
10 these figures mean? What could they mean? Canadian
11 dollar drops, anything could happen.

12 But we, as people, like yourselves,
13 are trying to survive, and if we don't survive --
14 Sawridge does not survive in a healthy position and
15 somewhat -- a band that's got credibility -- do we
16 discredit all the Indian people in Canada?

17 You know, that is the reasoning. I
18 don't know what you -- how do you want me to explain it?
19 Just to make money, just businesses. The businesses are
20 a form of survival that is social -- that is a social
21 development also, that restores pride. Unless we're
22 self-supporting -- that is the only way we can walk tall
23 and proud.

24 So I don't know what else you want,
25 why you keep insinuating Sawridge is only interested in
26 businesses. We have to -- you know, if other people have
03887:01 opportunities, we'd be a bunch of lazy bums if we did not
02 utilize it properly and for the future, so . . .

03 Q Chief Twinn, I'm not suggesting that there is anything
04 wrong with being interested in business.

05 The reason that I'm suggesting that
06 the Sawridge's main concern is its position in the
07 business world is a letter that you wrote which appears
08 in your own documents. And I'd ask you to look at

09 Exhibit 26, Document Number 913.
10 THE COURT: 913, Mr. Faulds?
11 MR. FAULDS: 913, My Lord.
12 Q MR. FAULDS: It's a letter dated
13 November the 2nd of 1987, directed to the Right
14 Honourable Brian Mulroney, then-Prime Minister of
15 Canada. And that was signed by yourself, Chief Twinn?
16 A Mm-hmm.
17 Q And what I'd ask you to do is look at that letter and in
18 particular look at the second last paragraph.
19 MR. HENDERSON: I'm sorry. The Senator is talking
20 to me, but I don't think he remembers he has to talk out
21 loud, just to remind him of that.
22 THE COURT: Thank you for that disclosure,
23 Mr. Henderson.
24 A Okay, I read it.
25 Q MR. FAULDS: If you look at the second last
26 paragraph of that letter, Chief Twinn, in that letter,
03888:01 you say,
02 "The Sawridge Indian Band is in business and
03 cannot afford to be jeopardizing its position
04 in the business world, nor the security of its
05 four hundred (400), plus employees by
06 expending huge sums of money and time
07 stick-handling through the Justice
08 Department's delay tactics."
09 So I take it that the principal
10 activity of the Sawridge Band as a band is business.
11 A In order to survive, probably so. But that only confirms
12 what I have said, I think, earlier.
13 Q And that's really what this case is about. It's not
14 about native rights or culture or tradition or anything
15 like that; it's about the Sawridge Indian Band's
16 business?
17 A Well, I'd beg to differ.
18 MR. FAULDS: My Lord?
19 THE COURT: Yes?
20 MR. FAULDS: Mr. Henderson has passed me a note
21 to indicate that he has available some of the documents
22 that he had said that he would look for and that seem to
23 be relevant to this particular area of the
24 cross-examination. And I wonder if maybe we could have a
25 break at this point so that we could look at them. It's
26 a little bit early, but . . .
03889:01 THE COURT: All right. I have some questions
02 of Chief Twinn, and I want to pose them while you all

03905:01 documents relating to the trust arrangements involving
02 assets belonging to the members of the band. These are
03 the documents containing those trust arrangements that
04 you know of?
05 A That's what I know of; right.
06 Q Okay. We've had the assistance of your counsel in
07 tracking down all of the relevant documents, and this is
08 what has been located.
09 MR. HENDERSON: My Lord, I tracked the documents
10 down, and the Senator wasn't involved in the process at
11 all, and I've not discussed the contents of the documents
12 with him because I was worried about -- because the
13 subject has already gone into. So it was me that did it,
14 not the Senator, just so it's clear.
15 MR. FAULDS: Quite properly so.
16 Q MR. FAULDS: The search has been carried out by
17 legal counsel on your behalf?
18 A That's right.
19 Q Now, I'd like to refer you, Chief Twinn, if I could, to
20 Document 92(E), Exhibit 92(E).
21 THE COURT: B as in "baker"?
22 MR. FAULDS: E as in "Edward," My Lord. I'm
23 sorry.
24 THE COURT: Oh. Thank you.
25 MR. HENDERSON: I might say that the Senator hasn't
26 read these before they were produced, at least not in the
03906:01 last couple days, so . . .
02 THE COURT: Yes.
03 MR. FAULDS: Well, then we'll see how we do.
04 Q MR. FAULDS: This is a declaration of trust that
05 is dated the 15th of April, 1985. Correct?
06 A That's right.
07 Q And, as I think you're aware, that would be two days
08 before the effective date of Bill C-31. Bill C-31 became
09 effective as of April the 17th, 1985.
10 A That's right.
11 Q Do you recall that this declaration of trust document was
12 created in anticipation of the passage of Bill C-31 and
13 its coming into effect?
14 A That's right.
15 Q And the parties to this document are yourself -- you are
16 called the settlor, if you look at the top of the first
17 page. Correct?
18 A Right.
19 Q And you are the settlor as an individual, not as a
20 trustee on anybody's behalf, according to that

21 description?
22 A That's right.
23 Q And the beneficiaries of the trust are described on
24 page 2 of that document, and I'd ask you to look at the
25 definition there.
26 A Page . . .
03907:01 Q I'm sorry. Page 2, and it's paragraph 2(a) at the
02 bottom. And maybe what I could ask you to do,
03 Chief Twinn, is just read through that definition of
04 "beneficiaries." And it actually goes on to page 4.
05 A How far do you want me to go?
06 Q If you could finish where the definition of "trust fund"
07 starts. That would be the top of page 4.
08 Have you had a chance to look that
09 over?
10 A Yeah.
11 Q As I understand it, the people who are beneficiaries
12 under this settlement are people who would be considered
13 members of the Sawridge Band under the Indian Act as it
14 was in April of 1982.
15 Is that your understanding, too?
16 A That's right. '82?
17 Q I think they say -- the date is April -- I don't know
18 what the significance of it is, but if you look at the
19 top of page 3 --
20 A I just don't know why it wouldn't be '85. That's all.
21 That's fine. It's a legal document, so . . .
22 Q Sure. But, in any event, what it meant was that the
23 people who would be beneficiaries would be people who
24 would be considered members of the band before the
25 passage of Bill C-31?
26 A That's right.
03908:01 Q The object of that was to exclude people who might become
02 members of the Sawridge Band under Bill C-31 as
03 beneficiaries?
04 A Yes, to a certain extent, yeah.
05 Q Was it the intention that all of the assets of the band
06 would be covered by that agreement or only some?
07 A I believe all assets that are -- not including -- I'm
08 going to repeat -- I believe not including the capital --
09 the funds that are held in Ottawa.
10 Q So all assets other than that capital fund in Ottawa was
11 to be covered by this trust agreement?
12 A Mm-hmm, or whatever the documents are in there.
13 I can't . . .
14 Q But I just want to know, when this agreement was being

15 prepared, what your objective was. And your first
16 objective was that people who might become band members
17 under Bill C-31 wouldn't be beneficiaries?
18 A Mm-hmm.
19 Q That's correct? That was Objective Number 1?
20 A Right.
21 Q And Objective Number 2 was that the trust would cover all
22 of the assets of the Sawridge Band that were under the
23 Sawridge Band's control?
24 A Yes. What's on there, I believe. I don't want to be
25 saying something that --
26 Q I'm not trying to trick you. I'm wondering if that's
03909:01 what your objective was.
02 A That's the objective of those.
03 Q Sure. So that even if people under the bill became
04 members of the band, they would be excluded from sharing
05 in the assets of the band?
06 A For -- especially a short purpose, right, for a short
07 while there.
08 Q Until you changed the trust agreement?
09 A We didn't know what the Bill C-31 was going to bring
10 about.
11 Q So you tried to create a trust arrangement that would
12 prevent Bill C-31 members from having any share in the
13 band's assets?
14 A That's right, on this one, yeah.
15 Q Okay. Now, as far as whether or not -- it's a legal
16 question, I suppose, whether or not you succeed in doing
17 what you're trying to do. You hire lawyers to try and do
18 things for you, and sometimes they do it, and sometimes
19 they don't. You recognize that?
20 A I'm not saying the lawyers -- what they try to do or not.
21 But the document, you know -- I need professional help
22 for documents.
23 MR. HENDERSON: My Lord, just so it's clear on the
24 record -- I want to make sure it is. Because the Senator
25 has not had a chance to read through all of these
26 documents, I've been giving history to my friend.
03910:01 There's an '86 version of the same
02 trust where the definition of "beneficiary" would include
03 anyone, from time to time, becoming a member under the
04 Indian Act or otherwise. And that deals with the
05 circumstance where the bill is now law, and you have to
06 deal with people on that basis.
07 So just so it's not misleading,
08 there's a time period for each of these things.

16 June Rossetto Court Registrar
17 M. Andruniak, CSR(A) Court Reporter

18
19 * * * * *

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03948:01 (PROCEEDINGS RESUMED AT 9:05 A.M.)

02 MR. HENDERSON: My Lord, I'm going to ask for your
03 consent to excuse my friends. I've got them chugging
04 through the documents again today.
05 THE COURT: That's reasonable, Mr. Henderson.
06 Yes. Thank you.
07 MR. FAULDS: And with respect to Mr. Glancy,
08 My Lord, I believe Mr. Meehan is going to . . .
09 MR. MEEHAN: With your permission, My Lord, may

10 I act as agent for Mr. Glancy?
11 THE COURT: Of course. With his consent, of
12 course.
13 MR. MEEHAN: With his consent.
14 MR. FAULDS: And at his request.
15 THE COURT: Mr. Faulds?
16 MR. FAULDS: Thank you, My Lord.
17 MR. TWINN CROSS-EXAMINED FURTHER BY MR. FAULDS:
18 Q Chief Twinn, when we broke at the end of yesterday, you
19 had in front of you two documents. They were
20 Exhibits 92(E), and I believe it was 92(G).
21 THE COURT: G and E?
22 MR. FAULDS: E and G.
23 Q MR. FAULDS: Now, Chief Twinn, just to keep
24 things straight, 92(E), I understand, is -- I'll call it
25 the 1985 trust which did not include the Bill C-31 people
26 as beneficiaries, and 92(G) is the 1986 trust which would
03949:01 include the Bill C-31 people as beneficiaries.
02 What I was asking you about at the
03 end of the day was, as far as you can recall, were these
04 two trusts supposed to exist side by side? Were there
05 supposed to be two trusts?
06 A No. The second trust was made after that, after the '85
07 trust. I think the '86 was made after the '85.
08 Q Was every asset held by the 1985 trust supposed to be
09 placed into the 1986 trust?
10 A Probably everything, unless there was some new company
11 that had been -- between '85 and the '86 was made. I
12 don't know that off the top of my head.
13 Q But the intention was that the 1985 trust no longer be
14 effective and that everything be in the 1986 trust?
15 A That's right.
16 THE COURT: So it's a substitution.
17 THE WITNESS: That's right.
18 Q MR. FAULDS: And it appears that with the
19 exception of the documents that Mr. Henderson pointed
20 out, that is, Document 92(K), which was a trust
21 declaration over Plaza Food Fare Inc., we don't have any
22 records or documents of the assets actually being placed
23 into the 1986 trust. That's correct?
24 A That could be correct.
25 Q But that was the intention?
26 A That's the intention.
03950:01 Q And if we can look at the back page of Exhibit 92(G), the
02 second last page, page 8, that would be your signature as
03 the settlor under A there?

24 A That's right.
25 Q Under the Sawridge Indian Band, again, that is your
26 signature?
03952:01 A That's right.
02 Q And the witness to your signature on behalf of the
03 Sawridge Indian Band, I believe, that would be
04 Mr. McKinney's?
05 A That's the last page?
06 Q Yeah, on the last page.
07 A That's right.
08 Q Yeah. He's the executive director?
09 A Right.
10 Q I gather from looking at those documents, Chief Twinn,
11 that you sign a variety of legal documents in different
12 capacities.
13 A Right.
14 Q And your capacities include as chief of the band?
15 A That's right.
16 Q As a director of various corporations?
17 A That's right.
18 Q As a trustee of the trusts that have been created?
19 A That's right.
20 Q And I just wanted to be sure that I understood the
21 various points that we talked about yesterday. I wonder
22 if maybe we could just go through a brief summary, and
23 you can tell me if this is correct.
24 First of all, I gather that the
25 primary source of -- originally, the primary source of
26 income for the Sawridge Band originated with the
03953:01 discovery of oil under the reserve lands.
02 A I'll call it capital funds.
03 Q And those capital funds grew with the discovery of oil
04 and the exploration and sale and royalties from that oil?
05 A Whatever that says with the Indian Act, that is capital
06 funds.
07 Q So the royalties from the oil are received, and those
08 royalties go into the band's capital account?
09 A That's right, in Ottawa.
10 Q That's right. And then funds can be drawn from that
11 capital account by the band on a resolution of the band
12 council?
13 A Sometimes it takes a membership. Sometimes, you know, it
14 takes a general meeting sometimes, depending on who . . .
15 Q Okay. Is it fair to say that in the majority of cases
16 where funds have been drawn from the capital account, in
17 the last few years that has been done on the basis of a

18 band council resolution?
19 A Everything has to be done at least by band council
20 resolution. Sometimes the department, from time to time,
21 requests the majority vote, et cetera.
22 Q Okay. Unless the department asks for something, it's
23 done on band council resolution?
24 A It always -- it has to be done by band council
25 resolution.
26 Q And band council resolution would involve a resolution
03954:01 which would be passed by -- well, the band council is you
02 and your two close relatives?
03 A And my two close relatives.
04 Q Yes. And when funds have been drawn from the capital
05 account, those funds have been invested in various
06 companies that carry on business under the Sawridge name?
07 A That's right.
08 Q And those companies are -- you and your two close
09 relatives are the directors and shareholders in those
10 companies?
11 A Myself and my two close relatives are.
12 Q And the shares in those companies that carry on business
13 under the Sawridge name have then been placed in a trust
14 for which you and your two close relatives are the
15 trustees?
16 A Sometimes it doesn't go necessarily directly. Sometimes
17 it goes directly to the company, and then the company
18 later on, at a convenient time, will go to the trust, as
19 accounting procedures require, to do audits, whatever. A
20 lot of this is done by accountants plus legal people.
21 Q So I understand you're talking about the financing of the
22 corporations.
23 A Not only financing, even the trust declarations there.
24 It's done with legal and accounting procedures. As
25 accountants become aware there is, you know -- they have
26 to be audited, so there is advice from two sources here
03955:01 that we get.
02 THE COURT: Is your question predicated,
03 Mr. Faulds, on net revenue from the business operations
04 going into the trust?
05 MR. FAULDS: No. My question related to the
06 shares in the corporation.
07 And perhaps that's where we're
08 missing each other, Chief Twinn.
09 Q MR. FAULDS: What I was suggesting was that the
10 shares in the Sawridge companies, I believe you've
11 indicated to us, have then been placed in the Sawridge

12 trust.
13 A I think generally it comes in directly to the company.
14 If it's a new company, something, say, like the food
15 store, something is coming in, if there is equity put in,
16 it goes into that. And generally, after awhile, when
17 that's been set up, on an appropriate time, accounting
18 procedures, whatever, then it's usually placed in a
19 trust.
20 Q Okay. So that in the end result -- and I think you've
21 said this was the intention of the trust -- the trust
22 holds the band's assets, and that means the shares of the
23 Sawridge companies?
24 A Let me put it -- I'll try and put it in simple terms
25 again, I guess.
26 The trust -- the companies go into
03956:01 the Sawridge trust after -- after some time the company
02 is formed, it generally goes into the Sawridge trust.
03 Q Sure. When you say "the companies go into the Sawridge
04 trust," that means that the shares are held by the trust?
05 A Right.
06 Q And the trustees of the Sawridge trust --
07 THE COURT: Could I interrupt, Mr. Faulds?
08 MR. FAULDS: I'm sorry.
09 THE COURT: The shares are held by the Sawridge
10 trust ultimately, sooner or later.
11 THE WITNESS: That's right.
12 THE COURT: Net revenues of the business
13 operations, what becomes of them?
14 THE WITNESS: The companies run -- the revenues
15 are in there. And when there is an overflow, which isn't
16 often, but, you know, if there is sometimes equities
17 needed for a new business, that plus some more funds
18 could go in. Like, if it's a food fare business or
19 something that's purchased to . . .
20 THE COURT: Do they touch base -- are they
21 placed in the trust and then spent for equities in the
22 new businesses, or do they go directly from the operation
23 of the corporation as net revenues to the equity fund for
24 new businesses?
25 THE WITNESS: Generally, I think what's done --
26 the companies are -- itself have the funds separately.
03957:01 The trust -- all the trust is doing, replacing -- in
02 essence, I guess, the band is not a legal entity, and
03 there is from time to time -- I guess it could be
04 difference of legal opinion or accounting opinion. So,
05 to be assured, our advice, that's what we've done. The

06 trust becomes the band, in essence.
07 THE COURT: All right. Thank you. That's
08 good.
09 Q MR. FAULDS: And the shareholders of trust,
10 again, Chief Twinn, are yourself and two close
11 relatives -- I'm sorry -- the trustees of the trust?
12 A That's right.
13 Q And the powers of the trustees under the trust are set
14 out in the trust document?
15 A That's right.
16 THE COURT: Which is Exhibit . . .
17 MR. FAULDS: That is Exhibit 92-G.
18 THE COURT: It's actually brackets, but that's
19 all right.
20 Q MR. FAULDS: In particular, Chief Twinn, if you
21 look at page 4 of 92(G) --
22 A G?
23 Q 92(G) as in "George."
24 A I've got it. What page again? Sorry.
25 Q Page 4. I'm sorry.
26 And we looked at this yesterday, I
03958:01 think, and I just want to be sure. At the bottom of the
02 page there, there is a paragraph that doesn't have a
03 number on it, which we looked at yesterday, and I think
04 that you agreed that that was the paragraph which set out
05 the powers of the trustees to deal with the income and
06 capital of the fund.
07 THE COURT: This is getting rather repetitive,
08 Mr. Faulds.
09 MR. FAULDS: I apologize, My Lord.
10 Q MR. FAULDS: That outline that you have just
11 described of the band council and the corporations -- I'm
12 'sorry -- the capital accounts of the band held in Ottawa,
13 the band council, the corporations, and the trust
14 comprise the political and economical structure of the
15 Sawridge Band?
16 A The band funds in Ottawa would not enter it here
17 necessarily. If there were a change of band council,
18 that would change. So the band itself is the bit, if
19 it's always the band council. And it's in the
20 Indian Act. It's done all across Canada. So it's
21 not . . .
22 Q Of course. And this structure that we've just been
23 describing, which involves the band council and the
24 corporations, that is the political and economic
25 structure of the Sawridge Band?

06 Department of Indian Affairs. They approve it.
07 Q What I am saying to you, sir, is, Was there a band vote
08 for that \$1,553,000 that the Sawridge Band withdrew?
09 A I cannot tell you exactly what that is right now -- right
10 here now. I'm telling you -- all I can answer you, the
11 Department approves these upon their requests. Sometimes
12 they'll want the band vote, or sometimes they won't.
13 Q Is it fair to say that the band takes for face value your
14 band council resolution and acts on it except in very
15 exceptional circumstances where they may ask you to hold
16 a band vote? Is that a fair statement?
17 THE COURT: The Department takes, not the band.
18 A The Department of Indian Affairs approves everything,
19 so . . .
20 Q MR. AKMAN: Sir, they take for face value, in
21 good faith and good credit, your band council resolutions
22 requesting payments out of capital account, and in very
23 exceptional circumstances they ask you for a vote. Is
24 that correct?
25 A That's right.
26 Q So that most of the funds that come out of the capital
04004:01 account, go into your companies, which go then into the
02 trusts, are all down on band council resolution?
03 A One intercompany, they're not done by band council
04 resolution.
05 Q Hmm?
06 A They're not done by one intercompany, once it gets from
07 one to . . .
08 THE COURT: I think Mr. Akman was asking,
09 Senator, whether transfers from the band accounts to any
10 of the companies, not intercompany transfers but from the
11 band's funds to the companies, if those are done by band
12 council resolution alone or by a vote. That's what he's
13 asking.
14 A At the best of my knowledge, because I don't have -- a
15 band council resolution stresses what it set out to do.
16 In order to get that audited, that has -- an auditor
17 could not at that level. Basically states what the use
18 of that capital fund is going to do, and then it goes
19 in. Then I thought it became legal at that point, when
20 the Minister approved it for that reason. That's what it
21 spent for.
22 Q MR. AKMAN: That's right. So the oil comes out
23 of the ground; it goes into the capital account; it comes
24 out of the capital account through band council
25 resolutions --

26 A Right.
04005:01 Q -- it goes into your companies --
02 A Some of it.
03 Q -- for economic development?
04 A Right.
05 Q And, from the companies, you, as director and shareholder
06 of these companies, put the company assets -- have placed
07 the company assets or intended to place all the company
08 assets in these trusts. Is that right?
09 A Right.
10 Q So that the undivided interests of the band members is
11 all to be found in these trusts?
12 A I think they'll all be traceable.
13 Q And we've already agreed that you have no consent or
14 permission to deal with this property from any band
15 member living off reserve? You have no authority or
16 permission from any of these people to be director or
17 shareholder or settlor or trustee; we've agreed on that,
18 too?
19 A What sets out from -- I guess consent is voting for chief
20 and council.
21 Q Good.
22 Now, then, I want you to turn to
23 Document 92(G), paragraph 6.
24 THE COURT: I think you said 92(G), did you?
25 MR. AKMAN: G, yes, My Lord.
26 Q MR. AKMAN: 92(G), second paragraph of 6,
04006:01 Clause 6, of page 4.
02 Now, this second paragraph of 6
03 says,
04 "During the existence of this trust, the
05 trustees shall have complete and unfettered
06 discretion to pay or to apply all or so much
07 of the net income of the trust fund, if any,
08 or to accumulate the same, or any proportion
09 thereof, and all or so much of the capital
10 trust fund as they in their unfettered
11 discretion from time to time deem appropriate
12 for any one or more of the beneficiaries. The
13 trustees may make such payments at such time
14 from time to time in such manner and such
15 proportions as the trustees in their
16 uncontrolled discretion deem appropriate."
17 Do you see that?
18 A I see that.
19 Q So, according to this trust fund created to promote the

EXHIBIT "C"



Indian and Northern
Affairs Canada

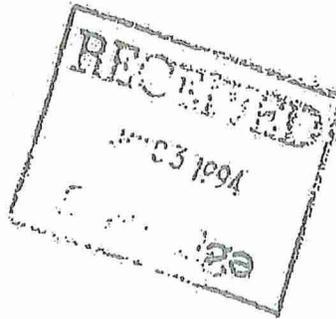
Affaires indiennes
et du Nord Canada

Assistant Deputy Minister. Sous-ministre adjoint

Ottawa, Canada
K1A 0H4

Wendy F. Porteous

DEC 23 1993



Chief Walter Twinn
Sawridge Band
P.O. Box 326
SLAVE LAKE AB T0G 2A0

Dear Chief Twinn,

As a result of the proceedings of the Bill C-31 legal action which is now before the courts, I have recently been informed of the existence of trusts which have been established on behalf of the members of the Sawridge Band.

I understand that these trusts hold substantial sums which, to a large extent, have been derived from band capital and revenue moneys previously released by the Minister of the Department of Indian Affairs and Northern Development. The capital and revenue moneys were expended pursuant to sections 64 and 66 of the Indian Act, for the benefit of the members of your band.

Along with Ken Kirby and Gregor MacIntosh from this department, I would be pleased to meet with you and your band council or other representatives in Alberta, preferably sometime in January 1994, to discuss these trusts.

I trust you will find this satisfactory. My office will contact you in January 1994, to make the necessary arrangements.

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

DARCY TWIN

Sworn before me this 24TH day
of SEPTEMBER, 2019

[Signature]
A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

Yours sincerely,

Wendy Porteous

Wendy F. Porteous
Assistant Deputy Minister
Lands and Trust Services

Canada

EXHIBIT "D"

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

M. O. Sullivan
for Clerk of the Court



Clerk's Stamp:

COURT FILE NUMBER
COURT
JUDICIAL CENTRE

1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA
EDMONTON

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

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c T-8, AS AMENDED

DARCY TWIN

Sworn before me this 24TH day of SEPTEMBER, 2019

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

A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

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

DOCUMENT

CONSENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. 108511-MSP

DATE ON WHICH ORDER WAS PRONOUNCED: August 24, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: **Edmonton, AB**

NAME OF JUSTICE WHO MADE THIS ORDER: **Mr. Justice D.R.G. Thomas**

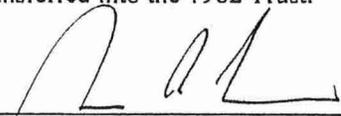
CONSENT ORDER

UPON HEARING representations from counsel for the Sawridge Trustees that the Sawridge Trustees have exhausted all reasonable options to obtain a complete documentary record regarding the transfer of assets from the 1982 Trust to the 1985 Trust; AND that the parties to this Consent Order have been given access to all documents regarding the transfer of assets from the 1982 Trust to the 1985 Trust that the Trustees have reviewed; AND that the Trustees are not

seeking an accounting of the assets transferred into the 1982 Trust; AND that the Trustees are not seeking an accounting of the assets transferred into the 1985 Trust; AND UPON noting that assets from the 1982 Trust were transferred into the 1985 Trust; AND UPON noting that little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

IT IS HEREBY ORDERED THAT:

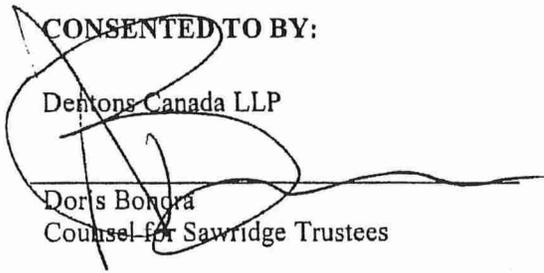
1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.
2. Without limiting the generality of the foregoing, the Trustees' application and this Consent Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust.



The Honourable Mr. Justice D.R.G. Thomas
Thomas J

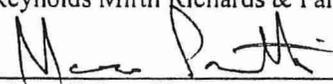
CONSENTED TO BY:

Dentons Canada LLP



Doris Bongra
Counsel for Sawridge Trustees

Reynolds Mirth Richards & Farmer LLP

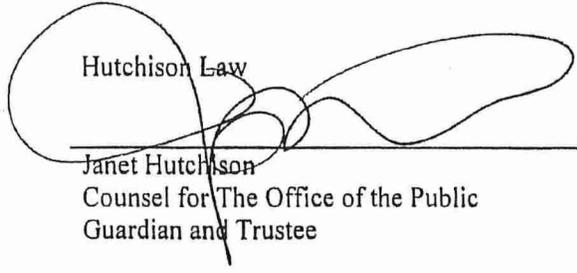


Marco S. Poretti
Counsel for Sawridge Trustees

McLennan Ross LLP

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

Hutchison Law



Janet Hutchison
Counsel for The Office of the Public
Guardian and Trustee

seeking an accounting of the assets transferred into the 1982 Trust; AND that the Trustees are not seeking an accounting of the assets transferred into the 1985 Trust; AND UPON noting that assets from the 1982 Trust were transferred into the 1985 Trust; AND UPON noting that little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.
2. Without limiting the generality of the foregoing, the Trustees' application and this Consent Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust.

The Honourable Mr, Justice D.R.G. Thomas

~~CONSENTED TO BY:~~

~~Dentons Canada LLP~~

~~Doris Boudra
Counsel for Sawridge Trustees~~

Reynolds Mirth Richards & Farmer LLP

Marco S. Poretti
Counsel for Sawridge Trustees

McLennan Ross LLP


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

Hutchison Law

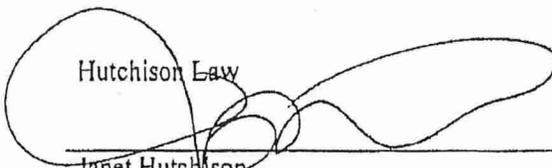

Janet Hutchison
Counsel for The Office of the Public
Guardian and Trustee

EXHIBIT "E"

Tracy L. Kaiser

From: Joy Jarvis <Joy.Jarvis@albertacourts.ca>
Sent: April 25, 2019 10:03 AM
To: Bonora, Doris <doris.bonora@dentons.com>; Sestito, Michael <michael.sestito@dentons.com>;
jfaulds@fieldlaw.com; jhutchison@jlhlaw.ca; S.twinn@live.ca; cosualdini@mross.com; kplatten@mross.com
Subject: Sawridge Trust matter, Court File No. 1103 14112
Importance: High

Good morning, counsel. Please see below an email from Mr. Justice Henderson:

The application regarding the "Jurisdictional Issue" will be heard this afternoon. I have reviewed the briefs which have been filed in relation to the motion and have also reviewed other parts of the file including in particular the Brief of the Trustees in relation to the proceedings which took place on August 24, 2016 before Justice Thomas. I have also reviewed the transcript of those proceedings and the Consent Order which was signed by Justice Thomas on August 24, 2016.

In my view it is necessary, as part of the Jurisdictional Issue, to consider the terms of the Consent Order and to fully consider what impact that Order has on the trust terms pursuant to which the trust assets are currently being held. One possibility is that the trust assets are being held for the benefit of the "Beneficiaries" as defined in the 1985 Trust and the 1985 Trust terms govern. However, that is not the only possibility. The Consent Order says that the transfer of assets is "approved *nunc pro tunc*". But the Order does not address the issue of the terms under which the assets are being held. The Consent Order does not appear to be a variation of the 1982 Trust and a variation would likely not be possible without the consent of the beneficiaries (although this clearly looks like what the trustees were attempting to do in 1985). It is possible that the 1985 Trust is a successor trust, but again that does not address the question of the terms on which the trust assets are being held or whether there is an ongoing requirement for the 1985 Trust to account to the 1982 Trust with respect to the trust assets.

I raise these issues so that you will be aware that I am concerned about them. Counsel may have a simple explanation which I have overlooked. In any event this is a foundational issue which needs to be addressed before considering whether the 1985 trust can be varied.

Thank you.

Joy M. Jarvis
Judicial Assistant
Court of Queen's Bench
Edmonton, AB

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

DARCY TWIN

Sworn before me this **24TH** day
of **SEPTEMBER**, 20**19**


A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

EXHIBIT "F"

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF 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 VIROS
SETTLEMENT CREATED BY CHIEF WALTER PATRICK
TWINN, OF THE SAWRIDGE INDIAN BAND, NO, 19, now
known as SAWRIDGE FIRST NATION ON APRIL 15, 1985
(the "1985 Sawridge Trust")

ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT,
EVERETT JUSTIN TWIN AND DAVID MAJESKI, as Trustees for
the 1985 Trust ("Sawridge Trustees")

Applicants

PROCEEDINGS

Edmonton, Alberta
April 25, 2019

Transcript Management Services
Suite 1901-N, 601-5th Street, SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392 Fax: (403) 297-7034

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

DARCY TWIN

Sworn before me this **24TH** day
of **SEPTEMBER**, 20**19**


A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

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2 _____

3

4 April 25, 2019 Afternoon Session

5

6 The Honourable Court of Queen's Bench
7 Mr. Justice Henderson of Alberta

8

9 D.C.E. Bonora For R. Twinn, M. Ward, B. L'Hirondelle, E.
10 Twinn, and D. Majeski

11 M.S. Sestito For R. Twinn, M. Ward, B. L'Hirondelle, E.
12 Twinn, and D. Majeski

13 C. Osualdini For Catherine Twinn

14 D.D. Risling For Catherine Twinn

15 J.L. Hutchison For the Office of the Public Trustee

16 R.J. Faulds, Q.C. For the Office of the Public Trustee

17 N. Varevac Court Clerk

18 _____

19

20 **Discussion**

21

22 THE COURT: Good afternoon, please be seated. Okay.

23

24 MS. BONORA: Good afternoon, Sir. Perhaps I'll just start with
25 some introductions.

26

27 THE COURT: Sure.

28

29 MS. BONORA: So Doris Bonora on behalf of the trustees with
30 my partner Michael Sestito. And then for Catherine Twinn is Crista Osualdini and Dave
31 Risling. And then for the Office of the Public Trustee and Guardian Janet Hutchison and
32 John Faulds.

33

34 THE COURT: Okay, good.

35

36 MS. BONORA: Sir, you've asked us to address a foundational
37 question --

38

39 THE COURT: Yes.

40

41 MS. BONORA: -- by email and there have been some discussions

1 around the issue.

2

3 THE COURT: Yes.

4

5 MS. BONORA: And I also in my discussions with Ms. Osualdini
6 was reminded that Mr. Molstad was also involved in that matter so I also called him.

7

8 I thought I'd just address a couple of points but I will tell you that Ms. Hutchison and Mr.
9 Faulds have advised that they would like time to consider this issue. Mr. Molstad has also
10 asked for some time. And I think all of the parties might benefit from some advice from
11 you in respect of exactly how it collides with the jurisdictional issue.

12

13 THE COURT: Sure. Would you like me to speak to that?

14

15 MS. BONORA: Sure.

16

17 THE COURT: Let me start by saying I've approached this case
18 with a fresh set of eyes. So the way I view it may not be the way you view it or the way
19 other parties have viewed it or the way other judges have viewed it. So I've approached it
20 from a fresh perspective with a view to ensuring that I have sufficient information available
21 to come to a correct decision with respect to the jurisdictional issue that you've properly
22 raised.

23

24 So I went back to the original documentation, the 1982 trust deed, and I compared it to the
25 1985 trust deed, Declaration of Trust, and I guess I was a little surprised to see the close
26 parallels between the two. And I also would premise all of my comments on this: I've not
27 made any decision about anything. I'm raising concerns that I have. I'm sure we've got
28 more than enough capable lawyers here to sort out my concerns. These are my concerns
29 and I can tell you they're genuine, otherwise, I wouldn't be taking your time with them.

30

31 So I compared these two trust deeds and I said to myself, my goodness, this isn't really
32 what I expected to see. I saw such close parallels that really the only fundamental difference
33 between 1982 and 1985 from my perspective, other than some flowery language in some
34 portions which is largely irrelevant -- the only difference is the definition of beneficiaries.
35 I did also see a prohibition on -- in the 1982 trust deed, a prohibition on the use or diverting
36 any of the trust assets for any purpose other than for the purposes identified in the trust, i.e.
37 for the benefit of the beneficiaries who are defined to be present and future members of the
38 band.

39

40 So I then began to look to see how we transition from 1982 to 1985. Saw very little
41 information but I was able to locate the August 2016 materials and I read your materials. I

1 saw that there was limited evidence available to provide an explanation for what had
2 transpired. But we do also have other background information of a circumstantial nature
3 that does assist in understanding what went on and we know, at least one can infer -- and
4 I'm happy to hear if you don't accept the inferences or where I'm headed but we do see
5 that the 1985 trust was created for a very specific purpose. That purpose was to ensure that
6 the trust assets were not going to be shared with a group of people who were likely to
7 become members of the band as a result of proposed modifications to the *Indian Act* in
8 1985, which were imminent, and which would permit women, primarily, to re-join the band
9 as members. And, therefore, if that happened without the trust being changed, they would
10 then become beneficiaries of the trust.

11
12 So I confess that I had some concern with respect to what I was seeing. I asked myself how
13 it could possibly be that we had really substantial assets -- I don't know, there's evidence
14 or numbers kicking around 70 million or 220 million or whatever they are -- whatever the
15 number is, it's a lot of money. So I had concerns with respect to how we were seeing a
16 modification of a trust without any judicial approval, without any compliance with section
17 42, without anything other than simply the creation of a new trust. So I questioned -- and I
18 could totally be wrong about this and I'm more than happy to hear all of you out -- I
19 question the legitimacy of the 1985 trust declaration at all.

20
21 I did consider Justice Thomas' order -- a consent order of August 24th, 2016. You may
22 consider that to be the total answer to all of the problems and you could well be right and
23 I'm happy to hear you on that. On the surface I don't accept that but I'm open minded and
24 I'm happy to hear from you. But I can tell you that I have fundamental concerns. So how
25 does that relate to the issue that the parties together have defined for today the jurisdictional
26 issue. I think you are all on board that there are three ways in which a trust can be varied.
27 One is the reservation in the trust declaration. All of you are in agreement that that's not
28 the case here so we put that aside.

29
30 Secondly is section 42 of the *Trustee Act*. We all agree that that's properly enforced and
31 must be complied with. There's some disagreement with respect to whether enough effort
32 has been made to try to comply but I would say -- again, without hearing more argument -
33 - that section 42 is definitely available. Whether it is practically available is really the issue
34 and because we have competing interests the likelihood of getting a hundred percent
35 approval is slim to nil and I would think nil is probably closer than slim. So practically
36 speaking, section 42 doesn't look like a way to achieve the result that everyone would like.

37
38 Which leads to the ability of the Court at common law through the exercise of discretion
39 to amend the terms of the trust apart from section 42 of the *Trustee Act*. And I think it's
40 fair to say that the law in terms of my ability -- any Court's ability to modify the terms of
41 a trust on that basis is quite limited. And to achieve that result through the common law or

1 through the exercise of my discretion as a result of the inherent powers that the Court may
2 have is limited and I would have to go probably further to achieve that in this case than the
3 law has gone to date, which means that I would need to proceed very cautiously. Not that
4 I wouldn't proceed -- not that I wouldn't proceed cautiously but I would need to proceed
5 cautiously.

6
7 If I am going to go down a path where I need to consider whether or not to exercise my
8 discretion to develop the common law in a way that it hasn't quite been developed before,
9 I need to consider as part of that analysis the other alternatives. What other alternatives are
10 available that would make it unnecessary for me to go down the path which would extend
11 the law beyond where it is today. One of the possibilities -- and again, I want to emphasize
12 I've not made any decisions on any of this, I'm at the moment just talking so that you will
13 collectively have an understanding as to what my level of concern is here and what the
14 concern is.

15
16 One of the options here that is easily available is this 1985 trust doesn't have anything to
17 do with anything we're talking about here today. The assets, while they may be situated in
18 the 1985 trust -- because Justice Thomas said that they were -- are still subject to the 1982
19 trust terms. The definition of beneficiaries is members or future members of the band, that's
20 the end of it. There still is some discrimination in the 1982 trust, which we would need to
21 deal with because it -- it does contain identical language to the 1985 trust which deals with
22 illegitimate children. So we would still have that hurdle but I see that as a much smaller
23 hurdle than sort of the broader picture.

24
25 So the easiest thing to do here is just to say you haven't satisfied me that this 1985 trust is
26 relevant. I'm not going to exercise my discretion to modify the definition of beneficiaries
27 in the 1985 trust. 1982 is where we're going, that's where we are. Let's deal with
28 illegitimate children. I'm not saying I've come to that conclusion but that -- that is an
29 avenue that is in my mind available subject to counsel telling me that there are roadblocks
30 that prevent that from happening. And I would say that I would not come to that conclusion,
31 if that is my conclusion ultimately -- I would not come to that conclusion lightly because I
32 am conscious of the fact that there are potential consequences that could flow from that
33 and that would obviously be troubling to me. But my primary responsibility is to determine
34 what the facts are and apply the law to those facts. And if that drives me in one direction
35 that none of the parties like, that's an unfortunate consequence.

36
37 So my plan is to figure out what the facts are, determine what the law is. I'm not afraid to
38 extend the common law if that's where we need to go. Incrementally all that's probably
39 something more appropriately done in the Court of Appeal or higher courts but I -- I say
40 all of this only to let you know that this is a concern for me. I see that you tried to clean it
41 up in 2016 but to me that isn't the answer. So that's where we are.

1
2 MS. BONORA: Sir, given those comments, I think certainly we
3 would like an opportunity to research this issue and come --
4
5 THE COURT: Yes, that's --
6
7 MS. BONORA: -- back to you.
8
9 THE COURT: Yes.
10
11 MS. BONORA: I think Mr. Molstad probably does as well, that's
12 what he told me on the phone.
13
14 THE COURT: Sure.
15
16 MS. BONORA: Certainly we need some instructions from our
17 client. And I feel that, you know, short of making a few more arguments on public policy
18 and quasi-community trusts, you've essentially said my argument on the jurisdictional
19 issue. So I feel that perhaps today we should adjourn so that we can all consider this issue
20 for you and come back. Perhaps we could set -- I'm guessing some written materials would
21 be helpful to you --
22
23 THE COURT: Yes, it would.
24
25 MS. BONORA: -- and perhaps we could set some dates for those
26 materials and find some time with you.
27
28 THE COURT: Sure, yes. And I apologize for sort of raising this
29 issue at the last minute but I can tell you that this has been an evolving process for me --
30
31 MS. BONORA: Yes.
32
33 THE COURT: -- as I've read your briefs and I chipped away at
34 the ten boxes of materials downstairs that are not well organized. So when I write to you
35 asking for materials, it's not because the materials aren't here, it's just that they're not
36 readily available to me.
37
38 MS. BONORA: We are so happy to provide those to you and we
39 thank you very much for your comments today. I mean, obviously, that issue of the transfer
40 between the two trusts was an issue identified. We thought we had solved it but we
41 obviously need to satisfy you better that that is in fact solved and perhaps in our

1 investigations we'll find some other law that hasn't solved hat issue entirely so ...

2
3 THE COURT: Well, maybe it has been solved. I don't see it
4 right now but I'm looking with open eyes just to see what I can find. So I'm not sure if any
5 of the other counsel are concerned about the way we've gone but -- is everyone board with
6 simply adjourning the jurisdictional issue so that briefs can be filed to supplement what's
7 currently been filed to address some of the concerns that I've raised today?

8
9 UNIDENTIFIED SPEAKER: Yes, My Lord.

10
11 THE COURT: The problem that we're going to have, I tell you
12 this right now, is that you are not going to find time with my assistant any time soon. That's
13 -- you're certainly free to tell her that you need time quickly but there's -- the practical
14 reality is that you're going to have a hard time finding something until probably into
15 September.

16
17 MS. BONORA: Sir, maybe then we won't take more of the
18 Court's time this afternoon and we'll just speak with your assistant to try and find time.

19
20 THE COURT: Sure.

21
22 MS. BONORA: We'll speak amongst ourselves in terms of
23 setting times for briefs, I'm sure that we can do that on our own, and perhaps even consider
24 the possibility of just writing to you and seeing if you will make a decision just on bases
25 of written materials. We'll speak amongst ourselves whether that's a possibility as well.

26
27 THE COURT: If your written materials cover the waterfront, as
28 much as I'm happy to hear from you I could also deal with it in written form. The one other
29 thing I didn't say that I should say is I know that you presented a consent order to Justice
30 Thomas and he signed it and I know that all of you have agreed that that order should be
31 signed so it was truly a consent order. But you have to ask yourself a couple of questions
32 with respect to that order. One is how solid is that order in the sense that it is ex parte vis-
33 à-vis some potentially interested parties. I would not want to go down the path of spending
34 another year or two or three years of applications and spending money that's ultimately
35 coming out of the trust only to find that we have one individual who pops up and says,
36 well, just hold on a minute now. I was -- I was a band member in 1982, I got married in
37 1983. I lost my band membership. I was just ready to come back in and lo and behold I had
38 the rug pulled out from underneath me and I didn't hear about this application before
39 Justice Thomas. I want that set aside. And you know what, there's -- there's a good
40 argument to be made that it might be set aside there.

41

1 So you could spend a lot of time and effort going down a path which is premised on a
2 consent order which could fall and take you right back. Not wanting to alarm anyone but
3 it did occur to me that you've got people here who -- I mean, one, we've got enough lawyers
4 here to sink a ship but not all of the interests are properly cared for. Not everyone is
5 represented here. And I read someplace and I think it's quite appropriate, this is not a truly
6 adversarial process. This is a problem that we need solved. So it's a problem that needs to
7 be solved collectively but if we try to do that and we leave out one interested party who
8 steps up at the end of the day and says not for me and we have to unwind the whole thing,
9 we haven't advanced the situation very far. So in my mind we need to see if we can't do
10 this correctly the first time.

11
12 MS. BONORA: Well, and, Sir, that's why we raised the issue of
13 the transfer because we didn't want to go through this whole process --
14

15 THE COURT: Yes.
16

17 MS. BONORA: -- only to have somebody suggest that the
18 transfer wasn't proper right from the start.
19

20 THE COURT: Well, it looks like Justice Thomas said the
21 transfer is proper but what flows from that I don't know.
22

23 MS. BONORA: Right.
24

25 THE COURT: And I wouldn't, as I said earlier, immediately
26 conclude that what flows from that is that these trust assets are subject to the definition of
27 beneficiary in the 1985 trust.
28

29 MS. BONORA: So we'll address the issue of services as well for
30 you and whether it binds all people, certainly. Okay. So we will try and work out a
31 schedule. We'll try and find time before you or agree that it will be in writing, and we thank
32 you very much today. So subject to anything my friends might have to say, I think we're
33 perhaps concluded for today.
34

35 THE COURT: Okay.
36

37 MS. BONORA: So thank you.
38

39 THE COURT: Good. Anything else? No. Any concerns? No,
40 okay. All right. So we'll adjourn then and we will resume when we can.
41

1 MS. BONORA:

Thank you, Sir.

2

3 UNIDENTIFIED SPEAKER:

Thank you, My Lord.

4

5

6

7 PROCEEDINGS ADJOURNED

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1 **Certificate of Record**

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I, Natalija Varevac, certify that this recording is the record made of the evidence of the proceedings in Court of Queen's Bench, held in courtroom 517 at Edmonton, Alberta, on the 25th day of April, 2019, and that I was the court official in charge of the sound recording machine during these proceedings.

1 **Certificate of Transcript**

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I, Su Zaherie, certify that

(a) I transcribed the record, which was recorded by a sound recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record and

(b) the Certificate of record for these proceedings was included orally on the record and is transcribed in this transcript.

TEZZ TRANSCRIPTION, Transcriber
Order Number: AL-JO-1003-0576
Dated: April 26, 2019

EXHIBIT "G"

Action No.: 1103-14112
E-File No.: EVQ19TWINNR
Appeal No.: _____

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

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

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

ROLAND TWINN, MARGARET WARD, TRACEY
SCARLETT, EVERETT JUSTIN TWIN AND DAVID
MAJESCKI, as Trustees for the 1985 Sawridge Trust

Applicants

PROCEEDINGS

Edmonton, Alberta
September 4, 2019

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392 Fax: (403) 297-7034

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

DARCY TWIN

Sworn before me this **24TH** day
of **SEPTEMBER**, 20**19**


A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3

4 September 4, 2019

Morning Session

5

6 The Honourable Mr. Justice Henderson

Court of Queen's Bench of Alberta

7

8 D.C.E. Bonora

For R. Twinn, M. Ward, B. L'Hirondelle, E.
Twinn and D. Majeski

9

10 M.S. Sestito

For R. Twinn, M. Ward, B. L'Hirondelle, E.
Twinn and D. Majeski

11

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18 M. O'Sullivan

Court Clerk

19

20

21 **Discussion**

22

23 THE COURT CLERK:

Order in court. All rise.

24

25 THE COURT:

Good morning. Please be seated.

26

27 MS. BONORA:

Good morning.

28

29 MS. OSUALDINI:

Good morning, My Lord.

30

31 MR. FAULDS:

Good morning, My Lord.

32

33 THE COURT:

Good morning.

34

35 **Submissions by Ms. Bonora**

36

37 MS. BONORA:

Thank you, My Lord, for seeing us today and

38 making the time for us. I'll just do some introductions.

39

40 Doris Bonora and Michael Sestito of Dentons on behalf of the Sawridge Trustees.

41 John Faulds and Janet Hutchison are representing the Office of the Public Trustee and

1 Guardian. Crista Osualdini and Dave Risling are here for Catherine Twinn. And Mr.
2 Molstad, at Molstad, and Ellery Sopko from Parlee are here on behalf of the Sawridge
3 First Nation. And while they're not parties or intervenors, I'll be asking to hear -- or to
4 have you hear them this morning.

5
6 In terms, we assume you have some limited time this morning, so we've all agreed that
7 we'd try and limit our submissions to ten minutes, and -- and then you can decide with
8 respect to Mr. Molstad, but he told me to advise you that he would only be ten minutes as
9 well.

10
11 THE COURT: Okay.

12
13 MS. BONORA: Just a bit of history. We last appeared before
14 you in April. You gave us some directions about something you wanted to hear about
15 which was with respect to your concerns around the transfer of assets from the 1982
16 Sawridge Trust to the 1985 Sawridge Trust. We suggested, and you agreed to adjourn the
17 application so that we could make further submissions to you on that point, and we also
18 agreed to try and work out a schedule which, unfortunately, we've not been able to do.

19
20 We secured the date of November 27th for that application with respect to the transfer.
21 We did prepare a draft litigation plan and exchanged that with the parties. We have not --
22 really didn't receive a response to the first draft application plan. In late July, the parties
23 advised us -- well, for sure Office of the Public Trustee advised us they had concerns over
24 the procedure and the remedies that were being sought and how we would do the
25 application, and they're going to address that --

26
27 THE COURT: Okay.

28
29 MS. BONORA: -- for you today, and so then we wrote to secure
30 this date. I think joining in that concern is Catherine Twinn, and they will address that
31 with you today.

32
33 We did prepare another draft litigation plan, and I'll just hand that up for reference. We're
34 hoping to get some direction from you today with respect to getting to -- getting us to
35 November 27th and making sure that goes ahead.

36
37 The parties have advised that they think that litigation plan is premature, because they
38 need some direction on procedure. We thought your direction was clear, but we certainly
39 understand the other parties' needs to speak to you about that today. And while I think
40 there's been a bit of a leisurely stroll to getting to today and raising some objections about
41 the procedure around November 27th, we're sincerely asking you to now push the parties

1 to get to November 27th and have that go ahead --

2

3 THE COURT: Yeah.

4

5 MS. BONORA: -- as you have expressed the last time. This
6 litigation has been dragging on and we -- and your time, of course, is very precious and
7 limited in terms of trying to get in front of you. So we're asking you very sincerely to try
8 and get us to that date so that we can have that application on the transfer of assets.

9

10 With respect to Mr. Molstad, I advised you when I was here last that he had some
11 concerns about the application and wanted some time to consider it. He is here today. He
12 will be speaking about becoming an intervenor as -- because, as you know, in the 1982
13 Trust, the trustees of that Trust are the Sawridge First Nation council, chief and council,
14 and there is no one, despite all of the lawyers here today, it's -- it would only be Mr.
15 Molstad and Ms. Sopko who would be representing chief and council. And so in the
16 event that we've --

17

18 THE COURT: Chief and council from --

19

20 MS. BONORA: Sawridge --

21

22 THE COURT: -- 1982.

23

24 MS. BONORA: That's right. Well --

25

26 THE COURT: Or today --

27

28 MS. BONORA: -- it would be --

29

30 THE COURT: -- or --

31

32 MS. BONORA: Yeah. I think that the Trust would be that it
33 would be the chief and council, the current chief and council.

34

35 THE COURT: M-hm.

36

37 MS. BONORA: At any given time.

38

39 THE COURT: M-hm.

40

41 MS. BONORA: That's the way I would read the Trust.

1
2 THE COURT: Okay.

3
4 MS. BONORA: There was a subsequent order that extended the
5 length of time for any trustee so there was continuity, but I think that's the way I would
6 read the Trust, would be --

7
8 THE COURT: Okay.

9
10 MS. BONORA: -- current chief and council.

11
12 The -- in respect of that intervenor application, just in terms of getting to November 27th,
13 we would ask that if, in fact, there is opposition to that, that it be done in writing. The test
14 for becoming an intervenor is obviously not very onerous. There just needs to be an
15 interest in the outcome. So we're hoping that that might be some consensual matter, but
16 in any event, if that has to be determined by you, then we would ask that it be done in
17 writing so there doesn't need to be yet another court application.

18
19 So my last comment, although I'd ask for time to reply if there's anything I need to say, is
20 just that we sincerely ask you to help us with getting to November 27th.

21
22 THE COURT: Okay.

23
24 MS. BONORA: Thank you.

25
26 THE COURT: Mr. Faulds?

27
28 **Submissions by Mr. Faulds**

29
30 MR. FAULDS: Thank you, My Lord. The genesis of this
31 appearance before you is, of course, the remarks that you made on April the 25th.

32
33 THE COURT: Right.

34
35 MR. FAULDS: And in the subsequent discussions between the
36 parties it became clear that the implications of what Your Lordship had said were not --
37 there wasn't necessarily consensus on what those implications were and nor was there
38 agreement on what the procedural way forward was and, as a result of that, we asked our
39 friends if they could arrange this hearing and we're grateful to them for doing so.

40
41 THE COURT: M-hm.

1
2 MR. FAULDS: Just by way of very brief background, the role of
3 the Office of the Public Guardian and Trustee is, of course, to protect the interests of
4 minor beneficiaries who are beneficiaries under the 1985 Trust and its definition of who
5 its beneficiaries are. A reversion to the kind of definition in the 1982 Trust, as was
6 referred to in our brief for April 25, would result in a number of those individuals losing
7 their status as beneficiaries and having an interest in the Trust, because while they fall
8 under the definition of beneficiaries in 1985 in that they would be members of the band if
9 the 19 -- if the 1982 *Indian Act* was still in effect, they are -- would not be beneficiaries
10 under the current definition.

11
12 So the --

13
14 THE COURT: Yeah, I'm not -- I'm not sure I follow that or
15 accept it, but you -- you could well be right, but I would have thought that the breadth of
16 the definition in 1982 is broader than 1985. I -- you -- you know more about it than I, so
17 I'm --

18
19 MR. FAULDS: In certain respects it is, My Lord.

20
21 THE COURT: Yeah.

22
23 MR. FAULDS: But remember the 1985 definition is
24 beneficiaries are persons who would be entitled to membership in the band under the
25 provisions of the *Act* as it read on April the 15th, 1982.

26
27 THE COURT: Yes?

28
29 MR. FAULDS: The way in which membership is determined
30 has changed very dramatically --

31
32 THE COURT: Okay.

33
34 MR. FAULDS: -- since that day, and persons who would have
35 qualified in 1982 and who are beneficiaries on that basis --

36
37 THE COURT: Okay.

38
39 MR. FAULDS: -- are no longer beneficiaries if we revert to the
40 1982 definition which requires actual membership in the band.

41

1 THE COURT: So --
2
3 MR. FAULDS: So this is --
4
5 THE COURT: -- this is -- this is a more complex issue than I
6 would have thought.
7
8 MR. FAULDS: Yeah.
9
10 THE COURT: Not surprisingly, but --
11
12 MR. FAULDS: And that --
13
14 THE COURT: So if you have -- if you have the band
15 membership ebbing and flowing at the discretion of what? Council or --
16
17 MR. FAULDS: Yes.
18
19 THE COURT: -- someone?
20
21 MR. FAULDS: Yes.
22
23 THE COURT: You can take -- add or remove beneficiaries
24 from the Trust, is that what you're telling me?
25
26 MR. FAULDS: Well, what I'm -- what I'm saying is that the
27 1982 definition requires actual membership in the band.
28
29 THE COURT: M-hm.
30
31 MR. FAULDS: And that actual membership in the band is
32 currently determined by -- by the band itself.
33
34 THE COURT: Okay.
35
36 MR. FAULDS: Pursuant -- pursuant to the rules.
37
38 THE COURT: So --
39
40 MR. FAULDS: So there's a --
41

1 THE COURT: -- I -- I accept that there are implications.
2
3 MR. FAULDS: Yeah.
4
5 THE COURT: And I --
6
7 MR. FAULDS: And -- and --
8
9 THE COURT: And I knew there would be when I made my
10 comments. And when I was making my comments, as I -- as I tried to make clear, it was
11 -- it was a concern I was expressing, and I wasn't able to work it out on my own and I
12 need to hear from you on that.
13
14 MR. FAULDS: Yes, and --
15
16 THE COURT: Hear from all of you on that.
17
18 MR. FAULDS: Yes.
19
20 THE COURT: It's a concern.
21
22 MR. FAULDS: And that -- and I -- and I raise that point, My
23 Lord, just to say this is a matter of grave concern --
24
25 THE COURT: Sure.
26
27 MR. FAULDS: -- to the OPGT because of that.
28
29 THE COURT: Okay.
30
31 MR. FAULDS: The second thing --
32
33 THE COURT: Well, we're -- we're not going to deal with it
34 lightly, I can tell you that.
35
36 MR. FAULDS: Yes. The second thing is that -- that there has
37 been, throughout the history of these proceedings, a certain lack of procedural clarity at
38 times which has caused problems, and we are anxious not to replicate that --
39
40 THE COURT: Right.
41

- 1 MR. FAULDS: -- in these circumstances.
2
- 3 THE COURT: Yeah.
4
- 5 MR. FAULDS: And therefore when, as my friend correctly
6 points out, we were unable to agree with the litigation plan that was presented, it was
7 because we felt we needed further direction on exactly what we were litigating, and how,
8 and with who.
9
- 10 THE COURT: M-hm.
11
- 12 MR. FAULDS: And that's why again we thought further
13 direction --
14
- 15 THE COURT: M-hm.
16
- 17 MR. FAULDS: -- was required.
18
- 19 So that brings us really to what -- what we're looking for for some further direction on
20 today, and that is this. In Your Lordship's comments on April 25th, you raised questions
21 which -- which concern both the validity of the Consent Order which was entered into in
22 August, of 2016.
23
- 24 THE COURT: Yeah.
25
- 26 MR. FAULDS: And the meaning of that Order.
27
- 28 THE COURT: Well, the consequence, what -- what flows from
29 that Order.
30
- 31 MR. FAULDS: Exactly.
32
- 33 THE COURT: Yeah.
34
- 35 MR. FAULDS: Exactly. And we wanted to note that in the four
36 and a half months since Your Lordship made those observations, no one has -- no party
37 has stepped forward and brought any kind of application to challenge or --
38
- 39 THE COURT: M-hm.
40
- 41 MR. FAULDS: -- you know, to set aside or vary in any way --

1
2 THE COURT: Yeah.
3
4 MR. FAULDS: -- that order, and no interested or concerned
5 nonparty has done so either and, therefore, it seemed to us that on the face of it, that order
6 stands, and that the issues which are determined by that order are *res judicata* and that we
7 should not be, when we come back in front of you on -- in November, be arguing about
8 the validity of the litigants or rearguing -- or rearguing what led to that Order, because
9 that's been decided.
10
11 THE COURT: Sure. But what hasn't been decided is what
12 flows from that.
13
14 MR. FAULDS: Right. And so that is -- and we wanted to see if,
15 in fact -- or we wanted to be sure that the parties were proceeding on some sort of
16 common understanding of what was going to happen in November 27th and what was --
17
18 THE COURT: Okay.
19
20 MR. FAULDS: -- on the table, because, of course --
21
22 THE COURT: Right.
23
24 MR. FAULDS: -- you know, the proposed litigation plan has
25 opportunities for filing new affidavits and documents and records, all that kind of thing.
26
27 THE COURT: M-hm.
28
29 MR. FAULDS: And we were concerned that those -- that that
30 not be used to, in effect, relitigate what's already decided.
31
32 THE COURT: Well, there wasn't much litigation involved in
33 that 2016 Order. It was a Consent Order.
34
35 MR. FAULDS: That --
36
37 THE COURT: So we have not wasted a lot of energy on that.
38
39 MR. FAULDS: Well, it is true, My Lord, but the order was
40 supported by a brief.
41

- 1 THE COURT: Yeah, I read the brief.
2
- 3 MR. FAULDS: Which -- so it was not -- it was not a bare order,
4 and it was preceded by a great deal of negotiation.
5
- 6 THE COURT: M-hm. Yeah. Okay.
7
- 8 MR. FAULDS: And had a great deal of litigation.
9
- 10 THE COURT: Okay.
11
- 12 MR. FAULDS: So it was not a -- it was not lightly arrived at.
13
- 14 So that's that -- but that's the issue that we're concerned about. What is it exactly that we
15 should be addressing when we come back before you?
16
- 17 THE COURT: M-hm.
18
- 19 MR. FAULDS: And our view is, quite simply, the Order is what
20 it is, says what it says. In our view, it settles two questions. It settles the fact of the
21 transfer, that the assets were, in fact, transferred.
22
- 23 THE COURT:
24
- 25 MR. FAULDS: And it settles the authority of 1982 Trustees to
26 make that transfer.
27
- 28 THE COURT: H-mm.
29
- 30 MR. FAULDS: Under the terms of the -- under the terms of the
31 Trust, because that was the subject of the brief that was presented to --
32
- 33 THE COURT: Okay.
34
- 35 MR. FAULDS: -- to the Court.
36
- 37 THE COURT: Well, okay.
38
- 39 MR. FAULDS: But that -- so we seek that kind of direction
40 from Your Lordship so that we don't go off in very widely divergent directions --
41

1 THE COURT:

M-hm.

2

3 MR. FAULDS:

-- in terms of what we're putting in front of you

4 --

5

6 THE COURT:

M-hm.

7

8 MR. FAULDS:

-- in November. And then the last point I just

9 simply wanted to make is we -- we understand Mr. Molstad will wish to be heard and will
10 be bringing some kind of application to participate, and we -- and we haven't seen an
11 application from him so we can't say specifically what our view is, but the one thing we
12 do want to say is the Sawridge First Nation was the engineer of the transfer, and if they
13 are to participate in these proceedings and if there are substantive issues which remain to
14 be resolved --

15

16 THE COURT:

M-hm.

17

18 MR. FAULDS:

-- we think the terms of such participation

19 should include some kind of obligation, production obligation in relation to those
20 substantive matters. Those are my submissions.

21

22 **Submissions by Ms. Osualdini**

23

24 MS. OSUALDINI:

Good morning, My Lord. Osualdini, first initial

25 C. As my friend indicated, we act for Catherine Twinn. She's a former trustee of the
26 1985 Trust. She's continued her party status in this application as though she were a
27 trustee, and carries forward those concerns.

28

29 I echo my friend Mr. Faulds' concerns about the implications of a reversion back to the
30 terms of the 1982 Trust deed. We're aware of many individuals who would be adversely
31 affected and then lose their status as a beneficiary. One of those individuals is actually in
32 the courtroom today, Shelby Twinn. She's an example of an individual who currently
33 qualifies as a beneficiary under the 1985 terms, but is not a member of the First Nation.
34 So she is a practical example of someone who would be affected.

35

36 Sir, we think it might be helpful to reiterate to the Court the party's understanding of the
37 consent order that was entered into in 2016, or at least our understanding. We agree with
38 Mr. Faulds' submissions in terms of procedural clarity. It's very important to our client, as
39 was reiterated by the Court of Appeal in regards to some of the procedural issues that
40 have plagued this litigation, that there be clarity as to what the parties are arguing and
41 what issues are before the Court in this matter.

1
2 So in terms of the 2016 order that Your Lordship has raised query with, your email of
3 April 25th, 2019, that initially flagged this matter for the parties, asked the parties to
4 consider the terms of the consent order and what impact the order has on the Trust. And,
5 Sir, today we can advise the Court that our understanding of the scope of the order is that
6 it approved the irrevocable transfer of assets from the 1982 Trust to the trustees of the
7 1985 Trust to be held pursuant to the terms of the 1985 Trust, and we have not heard any
8 of the parties to this application suggest otherwise. And we do note that in the affidavit of
9 the trustees, of their representative, Paul Bujold, that was before the Court on that
10 application, it expressly says so at paragraph 25 of that affidavit, that what the trustees
11 were seeking is confirmation that the transferred assets are held in trust for the benefit of
12 the beneficiaries in the 1985 Trust.

13
14 So from our perspective, Sir, none of the parties -- or all of the parties appear to be on the
15 same page in terms of what flows, or what the intention of that 2016 Order was.

16
17 THE COURT: M-hm. I guess you'd have to look at the express
18 terms of the Order, what does it actually say, and I don't have it here with me today, but --
19 so I hear you at this time. The best I can do is I hear you.

20
21 MS. OSUALDINI: Yeah, but --

22
23 THE COURT: I know that's your position.

24
25 MS. OSUALDINI: Yeah, and we would just bring that to the
26 Court's attention --

27
28 THE COURT: Sure. Yeah.

29
30 MS. OSUALDINI: -- which is partly, in part, why we seek
31 procedural clarity --

32
33 THE COURT: Yeah.

34
35 MS. OSUALDINI: -- as to what the Court is seeking.

36
37 THE COURT: Yeah.

38
39 MS. OSUALDINI: And we query whether the Court is seeking an
40 application to determine the scope of the 2016 Order before we move forward with other
41 matters.

1
2 THE COURT: Well, it seems to me that that is the foundation
3 of what we are going to be doing with these assets, these Trust assets. That's a
4 foundational issue. You need to get that dealt with immediately. You may all agree that
5 it's adequately dealt with and you -- I -- but I need to hear from you on that. I -- as I tried
6 to explain last time, I just look at that 2016 Order and to me it doesn't do it, but I'm totally
7 happy to hear from you. And you may persuade me that that was a stamp of approval of
8 the transfer of the assets and a change of beneficiaries from 1982 to 1985. Maybe you can
9 persuade me of that, and as I tried to indicate last time, every one of you knows much,
10 much more about this than I do. I'm just coming in expressing concerns that I saw when I
11 initially looked at it.

12
13 If it was as easy to change the terms of the Trust as to go ahead and do what was done
14 between 1982 and 1985, why don't you just go ahead and do that very same thing again
15 and see how far it gets you. I -- it's -- it strikes me as being a pivotal issue, and we need
16 get that sorted out. Is -- does the -- does the 2016 Order mean that the monies or the
17 assets are transferred from 1982 to 1985 and that those assets are then to be administered
18 under the terms of the 1985 Trust for the benefit of those beneficiaries as described in the
19 1985, or are the 1985 Trustees holding the assets in some form, and I use the term loosely,
20 so I -- without meaning to ascribe any legal definition to it, are they holding it by way of
21 constructive trust for the beneficiaries as defined in the 1982 Trust? It may be -- it may
22 be that it's completely clear. Mr. Faulds seems to indicate that it is, and he could well be
23 right, but as I look at it superficially, I don't see it, but I intend to look at it in great detail.

24
25 So that's where I'm at, and that seems to me to be the core issue that's troubling me at the
26 moment, and it's an issue that we need to sort out before we go any further down the path.
27 This litigation's been going on for a long, long time, and it seems to me that that was an
28 issue that probably should have been dealt with years and years ago, and it may have been
29 dealt with in 2016. It may have been.

30
31 So I don't know that I'm saying anything more than I did on April 25th, but I have that
32 concern. It's a foundational concern. If we can't get by that hurdle, we've got a major
33 problem. If we get by it, then we can go ahead and talk about what we can do to
34 potentially amend the 1985 Trust, but it --

35
36 MS. OSUALDINI: And, Sir, from a procedural perspective --

37
38 THE COURT: Yeah?

39
40 MS. OSUALDINI: -- my understanding is none of the parties to this
41 litigation have brought an application challenging the terms upon which the assets are

1 held. So I think that's an area that we could use procedural clarity on, is what --

2

3 THE COURT: Well, you can go ahead and continue with the
4 application that is currently before me, that is whether or not the 1985 Trust terms should
5 be modified so as to change the beneficiary, definition of beneficiaries, but as I tried to
6 explain last time, one of the things that's -- if I can't satisfy this foundational problem, one
7 of the options available to me is to say I'm not going to do anything to modify the
8 definition of beneficiary in the 1985 Trust terms, because there are no Trust assets held
9 for the benefit of the 1985 beneficiaries. They're being held for the benefit of 1982
10 beneficiaries. That's the Trust terms that we need to be dealing with. That's one of the
11 options that's available. So unless we deal with this foundational issue, I'm not going to
12 be able to carry forward and give you a meaningful answer in relation to the modification
13 of the 1985 Trust terms.

14

15 MS. OSUALDINI: Sir, I hear you describing what perhaps is a
16 mootness issue, whether the issue is moot, but I would draw the Court's -- the Court's
17 attention that the assets of the 1985 Trust are not only comprised of these transferred
18 assets. Mr. Bujold's affidavit speaks to there being other assets transferred --

19

20 THE COURT: Okay.

21

22 MS. OSUALDINI: -- after the fact. So it's not a mootness issue.

23

24 THE COURT: Transferred from where?

25

26 MS. OSUALDINI: It doesn't indicate, but it does say that there's
27 other assets. So I guess in terms of procedural clarity, is there an application that needs to
28 occur on this transfer issue prior to getting to the jurisdiction issue?

29

30 THE COURT: Well, I -- you know, I'm not sure. We could
31 probably deal with both of them at the same time, but at some point I need that argument
32 and I'm going to -- I'll give you a decision on it.

33

34 MS. OSUALDINI: And then some other issues may arise out of
35 this, My Lord, in terms of beneficiary participation, because this has now really changed
36 the complexion of what the jurisdiction application was initially thought to be when those
37 submissions were made, because for individuals like Shelby Twinn --

38

39 THE COURT: Yeah.

40

41 MS. OSUALDINI: -- this could be a life changing --

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THE COURT: Yeah, sure.

MS. OSUALDINI: -- decision for her. Presently the beneficiaries are not represented by counsel, so this may, in terms as -- as we're talking about litigation plans, involve an issue where these beneficiaries require participation and some rights to be heard on this.

And then I guess in term -- you know, in terms of Mr. Molstad's participation, there isn't an application before us, so it would be very preliminary to comment on his involvement, but there may be other applications that need to flow if the First Nation becomes involved. We do note to the Court that the Chief of the First Nation is also a trustee which will likely create some issues if they're taking an adverse position to the beneficiaries of the 1985 Trust.

THE COURT: Okay. Mr. Molstad?

Submissions by Mr. Molstad

MR. MOLSTAD: Thank you, Mr. Justice Henderson.

We represent the Sawridge First Nation, instructed by council of the Sawridge First Nation as they exist today, and on August 29th of this year we sent a letter to all legal counsel that are before the Court advising that the Sawridge First Nation will be applying to intervene in the jurisdiction application scheduled for November 27th.

We have a copy of that letter and we have not produced it, but we're prepared to produce it. But we advised counsel in that letter that the position that the Sawridge First Nation would be advancing would be that if the Consent Order of August 24th, 2016, stands, the assets in the 1985 Trust must remain subject to the terms of the 1982 Trust which prohibits their use for anyone other than the present and future members of the Sawridge First Nation. We also advised them that, in the alternative, we would be advancing the position that if the Consent Order stands, any jurisdiction to amend the beneficiary definition in the 1985 Trust is restricted to making it consistent with the beneficiary definition in the 1982 Trust which, as you know, is for the members of the Sawridge First Nation. And in the alternative, in the further alternative, we advised that if the Consent Order is not valid and does not bind the Sawridge First Nation, then the Court should order that there was no effective transfer of the assets and that those assets remain in the 1982 Trust.

We would propose that, subject to the Court's direction, that the application to intervene

1 that we file be heard, be made in writing and be heard on that basis. We've asked counsel
2 if they would be prepared to consent, but in light of the short notice, we understand that
3 they would want to see the application before they provide us with a response.
4

5 And I would just add that I know Mr. Faulds has advised you of his view in terms of the
6 definition of beneficiary under the 1985 Trust. I can tell you that we don't agree with that,
7 but that's a matter that you'll be addressing in the future in terms of the respective
8 positions of the parties.
9

10 So we will be making an application to intervene, and we would appreciate your direction
11 as to whether that application should be dealt with in writing.
12

13 THE COURT: Well, Mr. Molstad, what about the issue of
14 conflict that your friend has raised? If it is the case, and I know you may not agree with
15 this, but if it is the case that there are some beneficiaries of the 1985 Trust who would
16 lose their status if the assets are held subject to the terms of the 1982 Trust, do you, acting
17 on behalf of the band, have a conflict with respect to those people, or not?
18

19 MR. MOLSTAD: Well, we're talking about people that are or not
20 members, and we're talking about --
21

22 THE COURT: Well, I'm hearing Mr. Faulds say, and this is
23 new to me so I'm not --
24

25 MR. MOLSTAD: Right.
26

27 THE COURT: -- not really totally understanding, but in broad
28 terms he's saying if these assets are held subject to the terms of the 1982 Trust for people
29 who are currently beneficiaries under the definition of the 1985 Trust who will lose that
30 status --
31

32 MR. MOLSTAD: And --
33

34 THE COURT: -- those people -- those people's rights are being
35 affected by what we're doing here today or what we will likely do in November.
36

37 MR. MOLSTAD: Yeah. And what I -- what I can --
38

39 THE COURT: You know, do --
40

41 MR. MOLSTAD: Yeah.

1
2 THE COURT: -- do they need representation and --
3

4 MR. MOLSTAD: What I can tell you is that generally speaking,
5 and I'd have to get instructions, the Sawridge First Nation takes the position that there are
6 some who should be grandfathered in terms of continuing to be beneficiaries, but I would
7 have to get specific instructions in terms of who.
8

9 THE COURT: Okay.
10

11 MR. MOLSTAD: And when they would, in fact, qualify for that
12 grandfather, but the Sawridge First Nation does not take the position that the beneficiaries
13 of the 1985 Trust will continue to grow, notwithstanding they're not members of the
14 Sawridge First Nation.
15

16 THE COURT: Okay.
17

18 MR. MOLSTAD: Thank you, Sir.
19

20 THE COURT: Mr. Faulds?
21

22 **Discussion**
23

24 MS. BONORA: Sir, I wonder if I might just address the last --
25

26 THE COURT: Sure.
27

28 MS. BONORA: -- comment? In respect of those beneficiaries
29 that are not -- that may not be beneficiaries under 1982, that's exactly true in terms of
30 what Mr. Faulds has said. I think there's sort of a Venn diagram of people who are
31 members, nonmembers and where they fit in terms of beneficiaries. So there is a group of
32 people who would not be members and, thus, not -- as we read it, potentially not
33 beneficiaries under the 1982 Trust.
34

35 In terms of who represents them or who speaks on their behalf, we have always taken the
36 position that as trustees of the 1985 Trust, we represent those people and we are speaking
37 on their behalf. You've obviously heard Ms. Osualdini speak eloquently about the fact
38 that she's very concerned about Shelby Twinn. The OPGT has concerns about those
39 people. So I think all of those beneficiaries --
40

41 THE COURT: Okay.

1
2 MS. BONORA: -- who might be left behind, are -- have a voice
3 --
4
5 THE COURT: Someone is speaking for them.
6
7 MS. BONORA: -- at this table. In addition, in the litigation
8 plan, to address another concern of Ms. Osualdini's, number 9 has the participation of
9 beneficiaries or potential beneficiaries to file written submissions not to exceed five pages
10 in respect of any position they want to put forward, and we have had that in litigation
11 plans before and they have filed materials. So there is an opportunity --
12
13 THE COURT: Yeah.
14
15 MS. BONORA: -- for their participation in respect of that.
16
17 The other issue on the conflict, my understanding is the Chief has been very concerned
18 about his role as Chief and as Trustee, has sought counsel in respect of when he should
19 act and has been very careful not to be involved in the issue on both sides of that table.
20 That's my understanding.
21
22 So then finally I guess in reply, we're asking that you approve our litigation plan so that
23 we can move forward, and use your comments that you made on April 25th and today in
24 respect of the issues that are before the Court.
25
26 THE COURT: I guess that step 1 is to determine whether or not
27 Mr. Molstad's application can be made in writing. Does anyone have any issue with
28 respect to that? Can that be dealt with in writing, or do we need a hearing on that?
29
30 MR. FAULDS: I think the -- from the -- from the position of the
31 OPGT, the primary issue is what are the terms of that going to be?
32
33 THE COURT: You want some disclosure.
34
35 MR. FAULDS: Yeah, exactly.
36
37 THE COURT: Disclosure vis-a-vis what?
38
39 MR. FAULDS: Disclosure vis-a-vis whatever the issues are that
40 are --
41

- 1 THE COURT: Okay. Well, we're going to come around to, I
2 think, clearly defining what issue we're going to be dealing with --
3
- 4 MR. FAULDS: Right.
5
- 6 THE COURT: -- on --
7
- 8 MR. FAULDS: Yes.
9
- 10 THE COURT: -- November 27th, or whatever day has been
11 booked.
12
- 13 MR. FAULDS: Just --
14
- 15 THE COURT: November 27th.
16
- 17 MR. FAULDS: Just so Your Lordship understands, the Consent
18 Order of 2016 was preceded by an enormous amount of argument concerning potential
19 production by the First Nation. That got short circuited when the parties all con -- agreed
20 to --
21
- 22 THE COURT: Okay. All right.
23
- 24 MR. FAULDS: -- consent to the terms of that order, and we
25 never finished that -- finished that up. So that's been kind a kind of an issue that's been
26 under the surface for quite a while.
27
- 28 MS. BONORA: Sorry, Mr. Faulds, I -- I appreciate you haven't
29 been involved, but there was an extensive application on production of records, so it
30 wasn't short circuited by this order. That application was made by the Public Trustee, so
31 --
32
- 33 MS. HUTCHISON: With respect, Sir, the 513 application about
34 assets was withdrawn on the basis of this consent order being negotiated.
35
- 36 MR. FAULDS: That's what I meant by short circuited.
37
- 38 MS. BONORA: That is not my recollection, but in any event, I'm
39 just going to hand you the Consent Order in case you want to take a look. I mean, the -- I
40 think it's important to know that, certainly I agree with Mr. Faulds, that an extensive
41 amount of negotiation in respect of that order, especially with respect to --

- 1
2 MR. FAULDS: Yeah.
3
- 4 MS. BONORA: -- leaving open certain issues. So if you see the
5 whole issue around the accounting with respect to the assets being transferred in, so
6 there's no question we were trying to get an approval of the transfer, but I think it's
7 important that the Court is aware in looking exactly at that order, that it wasn't just a
8 simple order saying the transfer is done; that the parties were very concerned about
9 leaving open the whole question around accounting, and that, of course, can leave open
10 many issues. So I just want to make sure that that was -- that everyone was aware of that.
11 In any event, those are my submissions.
12
- 13 MR. FAULDS: And, My Lord, if I -- if I might just conclude the
14 remark I was making, and I appreciate Mr. Bonora's comment. The other thing relating to
15 Mr. Molstad's application is this. He indicated when he set out the various kind of suite
16 of possible arguments or positions that would be advanced, one of them, as I heard him
17 describe it, was that the transfer of assets from the 1982 to the 1985 Trust be, in effect, I
18 don't know if he used the word vacated or not to -- to be null or something of that sort, as I
19 -- as I understood it, that would fly in the face of the order which has been consented to
20 and which stands and would involve an application of a nature that's, you know --
21
- 22 THE COURT: Well, I think -- I mean, I heard Mr. Molstad, but
23 the practical reality is we have an Order of the court which has not been subject to appeal.
24 No one has applied to set it aside. The Order is there and there's nothing I can do about it
25 other than look at the Order and try to determine what consequences flow from it. When
26 the Order says that the transfer of assets from 1985 to 1982 is approved, it's approved, so
27 the assets are here to there. On what terms are those assets then being held?
28
- 29 MR. FAULDS: Right.
30
- 31 THE COURT: Are they being held subject to 1985 or subject to
32 1982? That's the issue for me.
33
- 34 MR. FAULDS: And I appreciate Your Lordship's setting that
35 out clearly. My concern was that if Mr. Molstad seeks the kind of relief to which he
36 referred, that might actually involve an application to set a side the Order.
37
- 38 THE COURT: Well, when -- if there's an application, I will
39 deal with it. Right now there's no application.
40
- 41 MR. FAULDS: Right, and --

1
2 THE COURT: He's, as I understand it, seeking status to
3 intervene on the jurisdictional issue which has, as part of it, the issue I raise that -- and
4 that that relates to the transfer of assets from 1982 to 1985.
5
6 MR. FAULDS: In the circumstances, My Lord, I think the
7 OPGT would prefer not to commit itself to any particular approach until we've seen Mr.
8 Molstad's intervention --
9
10 THE COURT: Okay.
11
12 MR. FAULDS: -- application and know its scope.
13
14 THE COURT: Okay. Well, listen. That -- when can you file
15 your application, Mr. Molstad?
16
17 MR. MOLSTAD: The -- I believe the litigation plan provides for it
18 to be filed by September 27th.
19
20 THE COURT: And is that with a brief?
21
22 MR. MOLSTAD: Well, that would be with a motion and an
23 affidavit in support.
24
25 THE COURT: Okay. Well, I think Mr. Faulds needs to have
26 something more substantial from you to explain why you think you're entitled to
27 intervene.
28
29 MR. MOLSTAD: Well, we can -- we can include the brief at that
30 time.
31
32 THE COURT: That wouldn't be a very lengthy brief, it seems
33 to me.
34
35 MR. MOLSTAD: Sure.
36
37 THE COURT: And then he would be able to tell you whether
38 he -- we need a hearing --
39
40 MR. MOLSTAD: Right.
41

- 1 THE COURT: -- on the issue.
2
- 3 MR. MOLSTAD: We'll file the motion, the affidavit and the briefs
4 --
5
- 6 THE COURT: Okay.
7
- 8 MR. MOLSTAD: -- on the 27th.
9
- 10 THE COURT: Good. And then say a week later any of the
11 parties can let me know whether or not you need an oral hearing on that, and if you need
12 an oral hearing, we'll deal one -- deal with it in mid-October some time. It's -- it will be a
13 short hearing, I'm thinking. So you can contact my assistant and say you need a time at
14 8:45 one morning, knowing that I will be gone by 10. So the 15th or 16th or 17th or 18th
15 of October, if need be, but if you all agree that we can deal with it in writing, I'll just give
16 you a response. Okay?
17
- 18 MR. FAULDS: That would certainly be agreeable.
19
- 20 THE COURT: Good. So that the second major issue that we've
21 got to deal with today is defining with precision what it is we're going to do on November
22 27th, and really there are two options. One is whether we're going to deal with a whole
23 suite of issues relating to the jurisdictional question, or whether we're going to target this
24 one issue. Those are -- those are the two options.
25
- 26 So the first option is to deal with it narrowly. The question that would be put, presumably
27 someone would file a motion, and I don't know, the Trustees perhaps would file a motion
28 to have the issue of the meaning and consequences that flow from Justice Thomas' order
29 of August 24th, 2016, specifically with respect to whether or not after the transfer of
30 assets to the 1985 Trust, those assets are being held subject to the terms of the 1985 Trust,
31 or whether they're being held subject to the terms of the 1982 Trust.
32
- 33 MS. BONORA: Sir, we'll take that on to file a motion in respect
34 of those questions to be answered.
35
- 36 THE COURT: So that's the first option. The second option is
37 we try to deal with that, as well as everything else that we had originally planned to deal
38 with, and then if -- now, I can tell you this before you make submissions on that. If you
39 were to phone down today to book a time, January and February and March, the calender
40 hasn't been set for that, so you could jump the cue by booking a date in January. So you
41 could -- you -- we could deal with a narrow issue on November 27th, and you could come

1 back fairly quickly to deal with the jurisdictional issue once I've given a decision with
2 respect to what I would describe as the fundamental problem I've been having.

3
4 MR. FAULDS: Might I -- might I suggest, My Lord, that
5 dealing with the -- with the narrow issues you've described with the motion which my
6 friends will file, it would seem to be perhaps more logical since, depending on the
7 outcome of that motion, the jurisdiction -- what we are arguing about on jurisdiction may
8 or may not be there. And so I -- I'd submit that doing it sequentially, and hopefully in
9 short order, would be the -- would be the preferable course.

10
11 THE COURT: Well, as I say, we're -- the timing is good,
12 because the spring schedule hasn't been set. So if you -- if you were to book a day in the
13 next few days, there would be no problem getting a quick -- and you could book a full
14 day.

15
16 MS. BONORA: We agree to the sequential, as well. We think
17 that's the appropriate way to deal with things.

18
19 THE COURT: Mr. Molstad? Yeah, I know you're not a party
20 to this --

21
22 MR. MOLSTAD: We -- yeah, we're not a party.

23
24 THE COURT: -- just yet, but --

25
26 MR. MOLSTAD: But we would agree with that too, Sir.

27
28 MS. OSUALDINI: And, Sir, we also agree with it being dealt with
29 sequentially.

30
31 THE COURT: Okay.

32
33 MS. OSUALDINI: I should also draw to the Court's attention, now
34 that we have more clarity in terms of what we're arguing in November is that we
35 potentially have a relevant witness, Maurice Cullity, who was the lawyer behind the
36 drafting who might be available to give *viva voce* evidence on the matter, because if the
37 Court's looking at --

38
39 THE COURT: Well, I'm just wondering how that evidence
40 would be relevant in terms of the issue that I'm trying to deal with.

41

1 MS. OSUALDINI: Well, my understanding, sir, of the direction is
2 that first we'll be analyzing whether the issue was dealt with by the 2016 order.

3
4 THE COURT: Right.

5
6 MS. OSUALDINI: And if it's not dealt with by the two-six -- the
7 2016 order, then -- then how are the assets being held? So the architect of the transfer, the
8 lawyer behind it may have additional information as to the intention and how the matter
9 was structured.

10
11 THE COURT: Yeah, he might have some information.
12 Whether that's admissible or not I guess is another question, but --

13
14 MS. OSUALDINI: But we just draw that -- for now we just draw
15 that to the Court's attention, that there may be an application for *viva voce* evidence.

16
17 THE COURT: Do we have a full day booked for November
18 27th?

19
20 MS. BONORA: No, just an afternoon, Sir.

21
22 THE COURT: Okay.

23
24 MS. BONORA: I wonder if it has to be *viva voce*? I mean, then
25 we have to have some kind of -- we can't just have a surprise witness with not knowing
26 what he's going to say. I wonder if that's absolutely necessary and relevant, whether it can
27 be done by affidavit so that we can have questioning before? And it can be done -- most
28 of the evidence in this whole matter has been done by affidavit evidence. I'm not sure
29 why it would be necessary. It's not going to be a credibility issue, I'm guessing. So if it's
30 informational, it could be done by affidavit.

31
32 THE COURT: Well, we are not going to be having time for
33 *viva voce* evidence if we have half a day booked for November 27th. That just isn't
34 feasible. Is there a problem doing it by way of affidavit?

35
36 MS. OSUALDINI: Sir, the problem is is Mr. Cullity is likely the
37 Trustee's witness, because he was an advisor to the Trustees. So I imagine he'd probably
38 have confidentiality or privilege concerns with providing an affidavit to an -- at this point
39 in time, a non-Trustee. So perhaps the only way for my client to be able to obtain his
40 evidence is to have him directed to give *viva voce* evidence, because the Trustees are
41 certainly able to talk with him and gain information from him. We could perhaps deal

1 with it by way of affidavit if we had consent of the Trustees to allow him to speak freely
2 to our client about -- about what occurred on the transfer.

3

4 THE COURT: Mr. Molstad?

5

6 MR. MOLSTAD: Oh, I don't -- I'm sorry. I was just speaking to
7 my friend --

8

9 THE COURT: M-hm.

10

11 MR. MOLSTAD: -- that the Trustees may want to speak to Mr.
12 Cullity.

13

14 THE COURT: Yeah.

15

16 MS. BONORA: Yeah, this is surprise to us. We're -- I -- so I
17 don't have -- I really can't say. I don't know that the *viva voce* evidence releases him from
18 his obligations to solicitor-client privilege. So I'm not sure what the difference would be,
19 but I certainly can't you give you my decision on that now. I don't think he's a relevant
20 witness to the issue you've addressed at this point, but I can certainly consider it and
21 speak to my friend in terms of what she thinks would be important for him to testify to.

22

23 THE COURT: Well, listen. Why don't -- why don't I leave that
24 issue with you and if you can't sort it out, get right back to me.

25

26 MS. BONORA: Thank you, Sir.

27

28 THE COURT: And we'll find time to see you.

29

30 MS. BONORA: Thank you, Sir.

31

32 MR. FAULDS: In a way, My Lord, the question is whether the
33 -- whether evidence about what the parties thought they were doing in 1985 is now
34 relevant to the interpretation of the order that approved what they did in 1985.

35

36 THE COURT: M-hm. Yeah. I -- yeah, and I hear you, yeah,
37 but if someone wants to put forward evidence, they're entitled to make submissions as to
38 whether or not they should do that, and I'll make a ruling as to whether or not that
39 evidence is admissible.

40

41 But so the best we can do on that is to leave that in the air. If you can sort it out in the

1 next week or two, good. If you can't sort it out, come back and see me at 8:45 one
2 morning and we'll deal with that discrete issue, but in the -- in the interim, we will then
3 deal on November 27th with the single narrow issue and that is what flows from the order
4 of Justice Thomas on August 24th, 2016, and whether, as a result of that order, the Trust
5 assets are held subject to the terms of the 1985 Trust, whether the beneficiaries as
6 described in the 1985 Trust are actually the beneficiaries of these Trust assets, and
7 whether that took away the Trust obligation that existed in the 1982 Trust.

8
9 MS. BONORA: Sir, and I wonder if the -- with respect to the
10 balance of the litigation plan, subject to Mr. Cullity, although he might fit in the litigation
11 plan if he files an affidavit, I wonder if the rest of the litigation plan can, in fact, be dealt
12 with just so we have a plan to get to November 27th, and we know that if parties are
13 going to be failing any other materials, then we have a date for that and a plan to get to
14 November 27th.

15
16 THE COURT: Okay. So are there concerns here? The
17 problem is we don't know if Mr. Molstad is going to be participating and we won't know
18 that probably until some time in early to mid-October. That's the problem.

19
20 MS. HUTCHISON: My Lord, we would suggest the most efficient
21 process would be to get Mr. Molstad's application, to get the Trustee's application that
22 you directed the morning.

23
24 THE COURT: M-hm.

25
26 MS. HUTCHISON: The parties will evaluate that and then prepare
27 an appropriate litigation plan to submit to you.

28
29 THE COURT: So if we look at this narrow issue that we're
30 going to deal with on November 27th, I mean, I can't see that there's going to be more
31 affidavit evidence on that issue. It's a question of looking at what has previously been
32 filed that went before Justice Thomas, and trying to interpret the terms of his order. So I
33 can't see any additional evidence being required here. Am I wrong about that?

34
35 MS. HUTCHISON: My Lord, I think that's unclear, and certainly
36 until we see Sawridge First Nation's affidavit, the Court will be unaware, of course, of the
37 513 application the OPGT had brought on assets, but there was a desire, there was an
38 identified need at that point in time to seek additional evidence around what had occurred
39 in the transfer. It became unnecessary once the matter was dealt with by consent. So I --
40 I'm not confident in being able to say to you today that there is no other evidence, and I
41 don't think we'll know that until we see affidavits.

1
2 THE COURT: Okay. And we -- and we won't see that then
3 until October 4th which is the Trustee's deadline for filing the application. Okay?
4
5 MS. BONORA: So we'll --
6
7 THE COURT: And we still -- we still don't know what's going
8 on with Mr. Molstad on October 4th, in all likelihood.
9
10 MS. BONORA: Correct. We'd like an opportunity to just get the
11 transcript from today before we file the application so we can incorporate --
12
13 THE COURT: Sure.
14
15 MS. BONORA: -- some of the language --
16
17 THE COURT: Yeah.
18
19 MS. BONORA: -- which I think is possible in a week. So if we
20 have ten days to file our application, we'll do that in ten days.
21
22 THE COURT: Okay. So that would take us to mid-September
23 some time?
24
25 MS. BONORA: Correct, yeah. The 13th of September, m-hm.
26
27 THE COURT: Okay. So then we need a time for response
28 which I think is what Ms. Hutchison is concerned about. So --
29
30 MR. FAULDS: It would seem, My Lord, that if we have the
31 Trustee's application by mid-September and we have Mr. Molstad's application by
32 September 27th, then we will know the parameters of what is being sought to be done and
33 whether are not, in the views of the other parties, other evidence may or may not be
34 required. So it would seem after September 27th we'll be in a position to evaluate.
35
36 THE COURT: So just so that we -- there's no risk of this thing
37 going off the rails for November 27th, if Mr. Molstad files his application and if I deal
38 with it in written form and give a decision, say, for example, I approved his participation
39 as an intervenor, for the November 27th application, would you be seeking disclosure for
40 that narrow application? And, if so, can you tell Mr. Molstad what it is you want?
41

- 1 MR. FAULDS: No, I don't think we'd be seeking disclosure for
2 that.
3
- 4 THE COURT: Okay. So --
- 5
- 6 MR. FAULDS: I think it's disclosure --
- 7
- 8 THE COURT: -- that would be for --
- 9
- 10 MR. FAULDS: -- flowing from whatever terms of interventions
11 he's granted.
12
- 13 THE COURT: Okay.
- 14
- 15 MR. FAULDS: Yes.
- 16
- 17 THE COURT: So we -- if we follow that path, we would -- we
18 would lead to November 27th without any real difficulty.
19
- 20 MS. HUTCHISON: And, Sir, just to reiterate, as you had said, all
21 the parties will notify you one week after September 27th in respect of the intervenor
22 status of Sawridge First Nation.
23
- 24 MR. FAULDS: My Lord, I may have misheard the dates. What
25 I intended to convey was we're not seeking disclosure of anything from Mr. Molstad prior
26 to his September 27th intervention application.
27
- 28 THE COURT: Oh, I thought -- I thought November 27th. That
29 was my question.
30
- 31 MR. FAULDS: Right. Right, yes. We are seeking -- depending
32 upon what he seeks by way of intervention, we may be seeking disclosure obligations
33 from him for the purpose of the November 27th hearing, but that depends on what he -- on
34 the scope of his intervention application, what it is he's seeking to do and what positions
35 he wants to advance and whether or not those trigger the need for further disclosure. So
36 we won't know whether or not we need to seek disclosure from him until we see his
37 intervention application.
38
- 39 THE COURT: I -- that's fine, but what you're -- what you're
40 telling me is that November 27th is looking like it's in risk.
41

1 MR. FAULDS: I'm not sure, My Lord, that that -- that that
2 necessarily knows depending upon -- we would see if, in our view, his intervention
3 application triggers a need for disclosure for the purposes of the ultimate hearing, that
4 would be part of our response to his intervention application which would be ruled upon
5 by Your Lordship, and then whatever disclosure would happen in the run-up to the
6 hearing. That -- that's how -- that's all we're trying to -- trying to suggest.

7
8 MS. BONORA: Sir, just with respect to disclosure, Mr. Faulds
9 has said a couple of things this morning that I think are important to clarify. Mr. Faulds
10 said Sawridge First Nation was the engineer of the transfer, but that -- we have to
11 remember that Sawridge First Nation is a different entity. It was the 1982 Trustees that
12 engineered the transfer, and the 1985 Trustees received that transfer of assets. So it's in
13 the Trust concept and construct that this transfer occurred, and it would be Trust
14 documents which we believe have all been produced, because we produced not only
15 significant affidavits, but an Affidavit of Records in respect of this. And so I caution -- I
16 just want it on record that we are cautioning the parties about going behind the Trust to
17 the Sawridge First Nation, because this is a Trust issue.

18
19 MS. HUTCHISON: My Lord, with respect, and clearly this morning
20 is not to argue about production and scope of production, but the evidence that did
21 become very clear in the last discussion around asset -- asset transfer and production of
22 documents is that the former solicitor for the Trust, Mr. Fennell, put his entire file in the
23 hands of the Sawridge First Nation, the Sawridge companies, not the Trust. And so we've
24 really -- the OPGT is very hopeful, in fact, that we're not about to reopen discovery, but
25 the reality is we've put production and discovery of the asset transfer issue to bed with the
26 consent order, without fully exploring it, and so I simply have to disagree a bit with our
27 friend.

28
29 We also know that Sawridge First Nation was very involved in that 1982 to 1985 Trust
30 transfer. It's not quite as simple as it just being a Trust process, Sir.

31
32 MR. FAULDS: May I just add, My Lord, that we heard and
33 appreciate your comment that this may well be an issue for which evidence is not
34 relevant, and the -- and or not required, and so we understand that. If, for example, the
35 Sawridge First Nation were to bring forward an intervention application in which it
36 sought, say, to set aside the consent order, then -- then, you know, new -- that that may
37 trigger, you know, requirements for further evidence, disclosure and so forth. If, on the
38 other hand, they seek simply to add additional argument or argue from their perspective
39 on the interpretation consequences of the consent order, that's a -- that's a very different
40 thing. That's why I -- that's why I simply kind of wanted to reserve the position that
41 depending on what we see in their intervention application, you know, it may be that there

1 -- that there's some kind of disclosure required.

2
3 THE COURT: Okay. Well, when Mr. Molstad files his
4 materials, we will know, but -- so, Mr. Molstad, it looks to me like when you file your
5 materials, you're going to need to apply for intervention status and explain in a little more
6 detail exactly what it is you are seeking, particularly --

7
8 MR. MOLSTAD: Absolutely. Yeah, we will be doing that, Sir.

9
10 THE COURT: Particularly, I'm hearing Mr. Faulds say, do you
11 have any intention of attempting to set aside the order of Justice Thomas? So if you -- if
12 that's your intention, say so clearly so that Mr. Faulds can then respond.

13
14 MR. MOLSTAD: We will do that, Sir.

15
16 THE COURT: Okay, good. Good. So do we know -- now
17 know we're going leading to November 27th? I would really like to keep that date and do
18 something to move this thing along. It's time. This action is now ripe and needs to --
19 needs to get forward.

20
21 MS. BONORA: Sir, I think we have a number of dates from you
22 and I think the parties have said they'd like some time to consider the applications. So
23 perhaps if -- with your indulgence, if we have trouble scheduling, we can come back at
24 8:45 again.

25
26 THE COURT: Okay. Yeah, just --

27
28 MS. BONORA: After we have -- deal with these first dates that
29 you've set.

30
31 THE COURT: Please do that, yeah. We will --

32
33 MS. BONORA: Thank you.

34
35 THE COURT: We will make time for you sometime someplace
36 somewhere.

37
38 MS. BONORA: Thank you so much, Sir.

39
40 THE COURT: Okay.

41

1 MS. BONORA:

Thank you for hearing us this morning.

2

3 THE COURT:

Nothing else? No? Okay. Thank you very

4 much.

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6 THE COURT CLERK:

Order in court.

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10 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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I, Morag O'Sullivan, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench held in courtroom 315 at Edmonton, Alberta, on the 4th day of September, 2019; that I, Morag O'Sullivan, was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

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I, Deborah Jane Brower, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Deborah Jane Brower, Transcriber.

Order Number: AL-JO-1003-9075

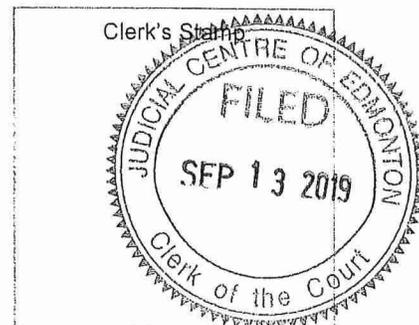
Dated: September 5, 2019

EXHIBIT "H"

COURT FILE NUMBER 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON



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

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

APPLICANT ROLAND TWINN, MARGARET WARD,
TRACEY SCARLETT, EVERETT JUSTIN
TWIN AND DAVID MAJESKI, as Trustees
for the 1985 Sawridge Trust ("Sawridge
Trustees")

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

Sworn before me this 24TH day
of SEPTEMBER, 2019

DOCUMENT APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Dentons Canada LLP
2500 Stantec Tower
10230 – 103 Avenue
Edmonton, AB T5J 0K4

A Commissioner for Oaths in and for Alberta
MICHAEL R MCKINNEY Q.C.
BARRISTER & SOLICITOR

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

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

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

Date: **Wednesday, November 27, 2019**
Time: **10:00 a.m.**
Where: **Law Courts, 1A Sir Winston Churchill Square,
Edmonton, Alberta T5J 0R2**
Before Whom: **The Honourable Mr. Justice J.T. Henderson**

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

Remedy claimed or sought:

1. Determination and direction of the affect of the consent order made by Mr. Justice D.R.G. Thomas pronounced on August 24, 2016 (the "**2016 Order**") respecting the transfer of assets from the Sawridge Band Trust dated April 15, 1982 (the "**1982 Trust**") to the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the "**1985 Trust**"), more particularly described below.
2. Determination of the sufficiency of service of the 2016 Order.
3. Alternatively, the determination of the ability to perform a subsequent trust to trust transfer, similar to what was approved by the 2016 Order.

Grounds for making this application:

4. In 1982, the Sawridge Band decided to establish a formal trust in respect of property held in trust by individuals on behalf of the present and future members of the Sawridge band. On April 15, 1982, a declaration of trust establishing the 1982 Trust was executed.
5. On April 15, 1985, the trustees of the 1982 Trust resolved to transfer the assets of the 1982 Trust to the 1985 Trust (the "**1985 Transfer**").
6. In 2016, the Sawridge Trustees, the Office of the Public Guardian and Trustee and Catherine Twinn (collectively, the "**Parties**") agreed to the terms of the 2016 Consent Order respecting the 1985 Transfer.
7. On April 25, 2019, the Parties appeared before His Lordship Mr. Justice Henderson who advised of some concerns with respect to the 1985 Transfer, the consequences of the 2016 Order and the service of the 2016 Order.
8. On September 4, 2019, His Lordship Mr. Justice Henderson invited a party to draft and file an application to determine: "what flows from the 2016 Order, and whether, as a result of that order, the Trust assets are held subject to the terms of the 1985 Trust, whether the beneficiaries as described in the 1985 Trust are actually the beneficiaries of these Trust assets, and whether that took away the Trust obligation that existed in the 1982 Trust." (Transcript of Proceedings – September 4, 2019 26:3-8).
9. His Lordship also commented: "If it was as easy to change the terms of the Trust as to go ahead and do what was done between 1985 [sic] and 1985, why don't you just go ahead and do that very same thing again and see how far it gets you." (Transcript of Proceedings – September 4, 2019 13:13-15)
10. The Sawridge Trustees have volunteered to file the within application, consistent with The Court's invitation.

Material or evidence to be relied on:

11. Affidavits previously filed in this action;
12. Questionings filed in this action;
13. Undertakings filed in this action;
14. Affidavits of records and supplemental affidavits of records in this action;
15. Such further material as counsel may further advise and this Honourable Court may permit.

Applicable rules:

16. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 4.11, 4.14, 6.3,
17. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts, regulations and Orders:

18. *Trustee Act*, RSA 2000, c T-8, as amended;
19. Various procedural orders made in the within action;
20. Such further and other acts, regulations, and orders as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

21. None.

How the application is proposed to be heard or considered:

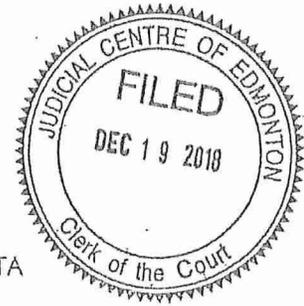
22. In person before the Case Management Justice.

WARNING

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

EXHIBIT "I"

Clerk's stamp:



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

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

DARCY TWIN

Sworn before me this 24TH day of SEPTEMBER, 2019

A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.
APPLICANT
BARRISTER & SOLICITOR

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

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

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

DOCUMENT CONSENT ORDER (Hearing of Jurisdictional Question)

DATE ORDER PRONOUNCED
LOCATION WHERE ORDER PRONOUNCED

December 18, 2018
Edmonton, Alberta

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

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

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

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

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

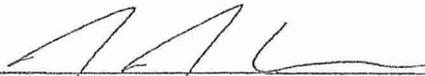
AND WHEREAS the Sawridge Trustees seek direction respecting the source and nature of the jurisdiction of this Court to make changes to the definition of "Beneficiary" as set out in the 1985 Trust;

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

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

IT IS HEREBY ORDERED AND DECLARED;

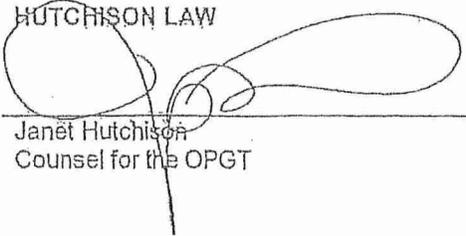
1. A hearing on a directed issue will be held, prior to trial, and the issues to be determined (the "Jurisdictional Question") will be as follows:
 - (a) Does the Court have jurisdiction to amend the beneficiary definition contained in the 1985 Trust (the "Definition"), on the basis of public policy,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


The Honourable Justice J.T. Henderson

CONSENTED TO BY:
MCLENNAN ROSS LLP

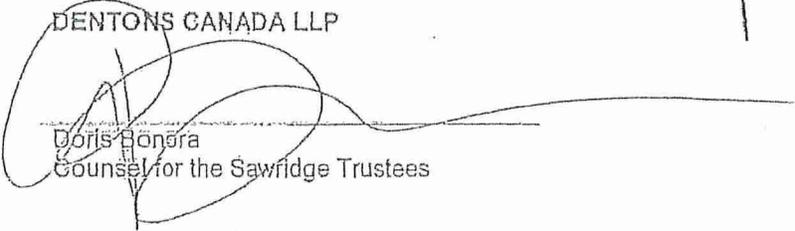
Crista Osualdin
Counsel for Catherine Twinn

HUTCHISON LAW



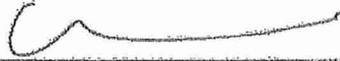
Janet Hutchison
Counsel for the OPGT

DENTONS CANADA LLP



Doris Bonera
Counsel for the Sawridge Trustees

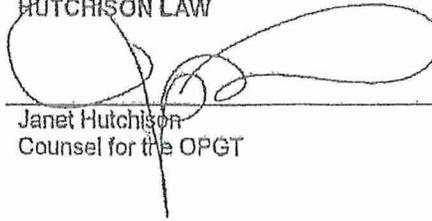
CONSENTED TO BY:
MCLENNAN ROSS LLP



Crista Osualdini
Counsel for Catherine Twinn

DENTONS CANADA LLP

HUTCHISON LAW



Janet Hutchison
Counsel for the OPGT

Doris Bonora
Counsel for the Sawridge Trustees