

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

P R O C E E D I N G S

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

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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
12 C. Osualdini

For Catherine Twinn

13 D.D. Risling

For Catherine Twinn

14 J.L. Hutchison

For the Office of the Public Trustee

15 R.J. Faulds, Q.C.

For the Office of the Public Trustee

16 E.H. Molstad, Esq.

For the Sawridge First Nation

17 E. Sopko

For the Sawridge First Nation

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

38
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 of what we are going to be doing with these assets, these Trust assets. That's a foundational issue. You need to get that dealt with immediately. You may all agree that it's adequately dealt with and you -- I -- but I need to hear from you on that. I -- as I tried to explain last time, I just look at that 2016 Order and to me it doesn't do it, but I'm totally happy to hear from you. And you may persuade me that that was a stamp of approval of the transfer of the assets and a change of beneficiaries from 1982 to 1985. Maybe you can persuade me of that, and as I tried to indicate last time, every one of you knows much, much more about this than I do. I'm just coming in expressing concerns that I saw when I 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 between 1985 and 1985, why don't you just go ahead and do that very same thing again and see how far it gets you. I -- it's -- it strikes me as being a pivotal issue, and we need get that sorted out. Is -- does the -- does the 2016 Order mean that the monies or the assets are transferred from 1982 to 1985 and that those assets are then to be administered under the terms of the 1985 Trust for the benefit of those beneficiaries as described in the 1985, or are the 1985 Trustees holding the assets in some form, and I use the term loosely, so I -- without meaning to ascribe any legal definition to it, are they holding it by way of constructive trust for the beneficiaries as defined in the 1982 Trust? It may be -- it may be that it's completely clear. Mr. Faulds seems to indicate that it is, and he could well be 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 moment, and it's an issue that we need to sort out before we go any further down the path. This litigation's been going on for a long, long time, and it seems to me that that was an issue that probably should have been dealt with years and years ago, and it may have been 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 concern. It's a foundational concern. If we can't get by that hurdle, we've got a major problem. If we get by it, then we can go ahead and talk about what we can do to 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 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 application that is currently before me, that is whether or not the 1985 Trust terms should be modified so as to change the beneficiary, definition of beneficiaries, but as I tried to explain last time, one of the things that's -- if I can't satisfy this foundational problem, one of the options available to me is to say I'm not going to do anything to modify the definition of beneficiary in the 1985 Trust terms, because there are no Trust assets held for the benefit of the 1985 beneficiaries. They're being held for the benefit of 1982 beneficiaries. That's the Trust terms that we need to be dealing with. That's one of the options that's available. So unless we deal with this foundational issue, I'm not going to be able to carry forward and give you a meaningful answer in relation to the modification of the 1985 Trust terms.

14
15 MS. OSUALDINI:

Sir, I hear you describing what perhaps is a mootness issue, whether the issue is moot, but I would draw the Court's -- the Court's attention that the assets of the 1985 Trust are not only comprised of these transferred 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 other assets. So I guess in terms of procedural clarity, is there an application that needs to 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 probably deal with both of them at the same time, but at some point I need that argument 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 this, My Lord, in terms of beneficiary participation, because this has now really changed the complexion of what the jurisdiction application was initially thought to be when those submissions were made, because for individuals like Shelby Twinn --

38
39 THE COURT:

Yeah.

40
41 MS. OSUALDINI:

-- this could be a life changing --

1
2 THE COURT: Yeah, sure.

3
4 MS. OSUALDINE: -- decision for her. Presently the beneficiaries
5 are not represented by counsel, so this may, in terms as -- as we're talking about litigation
6 plans, involve an issue where these beneficiaries require participation and some rights to
7 be heard on this.

8
9 And then I guess in term -- you know, in terms of Mr. Molstad's participation, there isn't
10 an application before us, so it would it be very preliminary to comment on his
11 involvement, but there may be other applications that need to flow if the First Nation
12 becomes involved. We do note to the Court that the Chief of the First Nation is also a
13 trustee which will likely create some issues if they're taking an adverse position to the
14 beneficiaries of the 1985 Trust.

15
16 THE COURT: Okay. Mr. Molstad?

17
18 **Submissions by Mr. Molstad**

19
20 MR. MOLSTAD: Thank you, Mr. Justice Henderson.

21
22 We represent the Sawridge First Nation, instructed by council of the Sawridge First
23 Nation as they exist today, and on August 29th of this year we sent a letter to all legal
24 counsel that are before the Court advising that the Sawridge First Nation will be applying
25 to intervene in the jurisdiction application scheduled for November 27th.

26
27 We have a copy of that letter and we have not produced it, but we're prepared to produce
28 it. But we advised counsel in that letter that the position that the Sawridge First Nation
29 would be advancing would be that if the Consent Order of August 24th, 2016, stands, the
30 assets in the 1985 Trust must remain subject to the terms of the 1982 Trust which
31 prohibits their use for anyone other than the present and future members of the Sawridge
32 First Nation. We also advised them that, in the alternative, we would be advancing the
33 position that if the Consent Order stands, any jurisdiction to amend the beneficiary
34 definition in the 1985 Trust is restricted to making it consistent with the beneficiary
35 definition in the 1982 Trust which, as you know, is for the members of the Sawridge First
36 Nation. And in the alternative, in the further alternative, we advised that if the Consent
37 Order is not valid and does not bind the Sawridge First Nation, then the Court should
38 order that there was no effective transfer of the assets and that those assets remain in the
39 1982 Trust.

40
41 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 calendar
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 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.

5

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

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3 I, Deborah Jane Brower, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate transcript
7 of the contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11
12 Deborah Jane Brower, Transcriber.

13 Order Number: AL-JO-1003-9075

14 Dated: September 5, 2019
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