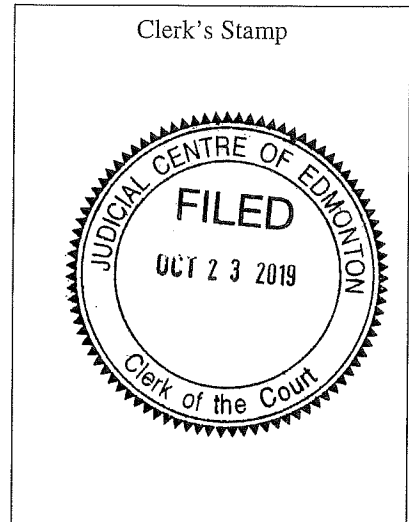


COURT FILE NO. 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

**IN THE MATTER OF THE TRUSTEE ACT R.S.A.
2000, CT-8 AS AMENDED
IN THE MATTER OF THE SAWRIDGE BAND
INTER VIVOS SETTLEMENT CREATED BY
CHIEF WALTER PATRICK TWINN, OF THE
SAWRIDGE INDIAN BAND, NO.19 now known as
SAWRIDGE FIRST NATION ON APRIL 15, 1985**



APPLICANTS

**ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN
TWIN AND DAVID MAJESKI, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST**

DOCUMENT **AFFIDAVIT OF SHELBY TWINN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Self-Represented
Telephone: 780-264-4822
c/o 10721-214 St, Edmonton,
AB, T5S 2A3
Email: S.twinn@live.ca
File No.: N/A

Sworn on the 25th day of October, 2019

I Shelby Twinn, of the City of Edmonton, make oath and say that:

1. I am a beneficiary of the 1985 Trust and as such have personal knowledge of the matters deposed to unless to be stated to be based upon information and belief, in which case I verily believe the same to be true.
2. It is my understanding that the Office of the Public Guardian and Trustee of Alberta represents all minor beneficiaries of the 1985 Trust in this litigation, including those beneficiaries who were minors at the beginning of the litigation and who have subsequently become adults.
3. The adult beneficiaries are not represented in this litigation, I am one of those persons.
4. I am currently 27 years old and was born on January 3, 1992.
5. As a beneficiary of the 1985 Trust, I have been attempting to follow this Court proceeding and retained counsel at one point to advise me. Although I have asked for and received some assistance in preparing this affidavit, I cannot afford counsel at this point.

Jurisdictional Applications

6. I am aware of a Consent Order issued by Justice Thomas on August 24, 2016 in this litigation which approved the transfer of assets from the 1982 Trust to the 1985 Trust (the "**Transfer Order**").
7. Prior to the Consent Order being issued, it was brought to my attention through my then legal counsel, Nancy Golding. Ms. Golding was present at the Court application on August 24, 2016 and did not object to the Consent Order. I understood the Order to be approving that all of the assets that had transferred to the 1985 Trust from the 1982 Trust were properly held by the 1985 Trust and were subject to the 1985 Trust terms. Attached as **Exhibit "A"** to my Affidavit is a copy of the relevant portions of the August 24, 2016 transcript.
8. I am aware that in 2019 the Court directed a hearing on the Transfer Order and the Trustees of the 1985 Trust filed an application on September 13, 2019 to address this matter. I am further aware that a hearing is pending on matters raised in a Consent Order filed on December 18, 2018. I understand these two applications are being collectively referred to as the "Jurisdictional Applications".

My Lineage and Membership Prospects in the Sawridge First Nation

9. I am a registered Indian with the federal government.
10. The late Chief Walter Twinn was my grandfather. The current Chief of the Sawridge First Nation, Chief Roland Twinn, is my uncle.
11. I applied for membership in the Sawridge First Nation in April 2018. Despite my application being submitted and my obvious lineage to the First Nation, I have yet to be approved for membership. In fact, I have not even received any form of substantive response to my application from the First Nation. Unfortunately, from what I understand from other applicants, this is pretty typical of the membership system at the First Nation. Attached as **Exhibit "B"** are various sworn statements I have reviewed that were made by other applicants about their experiences with the membership process, which leads to my belief that I am not alone in my experience.

12. It was a difficult decision for me to apply for membership in the First Nation as I know that the membership process is biased and, from my perspective, unfair. It is painful for me to have my heritage denied by my own family members.
13. I am aware that others struggle with these same concerns. I am aware that others are genuinely afraid to apply for membership in Sawridge as a result of their belief that the membership process is abusive and painful. Many of us believe that we will never be given membership unless we are political supporters or otherwise useful to the Chief. I note that the Band presently only has 45 members.
14. I am aware that Deborah Serafinchon (Daughter of late Chief Walter Twinn), Aspen Twinn (minor – father is Patrick Twinn and grandfather is late Chief Walter Twinn) and my uncle Cameron Shirt (brother to Patrick Twinn) applied for membership in April 2018. In speaking with Patrick, Cameron and Deborah, I understand their experiences have been the same as mine – namely they have heard nothing from the First Nation and neither Aspen, Cameron or Deborah have been admitted into membership.
15. Based on my personal experience and my discussions with others, it is my belief that the membership system at Sawridge is corrupt, biased and unfair and is unlikely to change anytime in the near future as not many people have the necessary financial resources to challenge the Chief and counsel who control membership.

Intervenor Status

16. I am aware the Trustees of the 1985 Trust have historically sought to change the current beneficiary definition of the 1985 Trust to include only those persons whose names appear on the Sawridge First Nation membership list that is controlled by Chief and Council. I am not a band member. I will lose my beneficiary status if the Trustees succeed in changing the current definition to their proposed definition.
17. I am aware that in August 2016 the Trustees made a proposal to Justice Thomas seeking this solution and stated that those who lost their beneficiary status could simply apply for membership in the First Nation. Attached as **Exhibit “C”** to my Affidavit is a copy of the Trustees’ Distribution Proposal as submitted in their written submissions filed August 5, 2016 (“Distribution Proposal”).
18. I am aware the Trustees premised this position on their belief that the current beneficiary definition of the 1985 Trust is discriminatory because it discriminates against Bill C-31 women who would not qualify for beneficiary status because they married non-indigenous men.
19. I understand that all Bill C-31 women were Court ordered on to their respective Band lists in 1985 as a consequence of amendments to the *Indian Act*. As such, the Sawridge Bill C-31 women have been able to enjoy all of the benefits of being a member of Sawridge.
20. I am aware that my status as a beneficiary of the 1985 Trust is contingent on me not marrying a non-indigenous man. In this way, I share the same concerns as the Bill C-31 women who came before me in 1985. However, unlike the Bill C-31 women, the Government of Canada is not helping me, and others like me, to gain membership in the First Nation. The 1985 Trust is the only official link to my heritage, identity and belonging.

21. From my perspective it is important to retain my beneficiary status on the terms currently set out in the 1985 Trust. If the definition was changed to membership in the First Nation, I have no control over whether I ever become a member and if I ever was to, I have no control over whether the First Nation elects to take that status away from me. It would be a significant change to lose clear beneficiary status than to leave my status to the whim of the First Nation.
22. I am aware the Trustees used me (personally) as an example of discrimination in their written submissions to the Court arising from the jurisdictional questions raised in the December 2018 Consent Order – see paragraph 46 of the Trustee written submissions filed on March 29, 2019. While the Trustees argue that my situation demonstrates inappropriate discrimination, I do not agree. The Trustees never consulted with me about my views on the subject before using me as an example to support their objectives.
23. I am aware Catherine Twinn must personally pay for her legal costs associated with this litigation. I am advised by Catherine that this makes it difficult for her to fully participate in the litigation as it is very expensive.
24. I am further advised by Catherine Twinn and do verily believe the Trustees have historically provided full indemnity funding to the Sawridge First Nation for its participation in this litigation, despite the fact that the Sawridge First Nation is not a beneficiary and has taken hostile positions against the 1985 Trust. Ms. Twinn has advised me that by November 2017 the First Nation has been indemnified over \$550,000 from the 1985 trust assets for their involvement in this litigation.
25. I do not believe the Trustees of the 1985 Trust are taking care of my best interests. I note that Chief Roland Twinn is a trustee of the 1985 Trust. I believe the trustees are motivated by the political agenda of the First Nation. This belief is founded in my personal experience with the Trustees and the documents that I have read from this Court file, which include:
 - (a) Their opposition to my application to be a party in this litigation, including aggressive cross examination and maintaining on appeal that they should be entitled to solicitor/client costs against me for my application. Attached as **Exhibit “D”** to my Affidavit are the relevant excerpts from the Trustees factum filed October 20, 2017.
 - (b) The trustees have elected not to examine Darcy Twinn on his application for intervenor status (a person who is clearly seeking to advocate for the demise of the 1985 trust), but yet were willing to mount a vigorous defense against my application and others who have attempted to interfere with their plans. Attached as **Exhibit “E”** to my Affidavit are the relevant excerpts from the transcript from questioning of Darcy Twinn from October 18, 2019.
 - (c) The trustees have opposed the participation of any party that seeks to object to their plan to have the beneficiary definition changed, for example:
 - (i) The application by myself, Patrick and Deborah Serafinchon for party status;
 - (ii) Party status for the Office of the Public Trustee and Guardian (see *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365);

- (iii) Indemnification funding for Catherine Twinn and took steps to block Ms. Twinn's access to information and legal counsel when she was a trustee (see application filed by Catherine Twinn on December 11, 2015 and Examination of Paul Bujold on Affidavit and undertakings conducted March 7-10, 2017 and June 20, 2017 ("**Bujold Transcript**") Exhibits 5, 6 and 9) .

Conversely, the Trustees have never taken a position adverse to the First Nation and are not opposing their involvement as an intervenor and I understand from Catherine Twinn they have even historically paid their legal fees.

- (d) The trustees have refused to properly identify all of the 1985 Trust beneficiaries and have taken the position that the beneficiaries aren't capable of ascertainment until the Court gives a ruling in this litigation. (see Bujold Transcript Page 526-527, Lines 11-24 and Pages 530-536, Lines 25-18);
- (e) The majority of the trustees are also members of the First Nation and thus would stand to personally benefit if the beneficiary group was reduced to only those on the Band list (currently 45 people);
- (f) To date and to my knowledge, the trustees have refused to acknowledge that they will protect the interests of *all existing and future beneficiaries of the 1985 trust*. Attached as **Exhibit "F"** to my Affidavit is a letter dated October 16, 2019 from counsel for Catherine Twinn to counsel for the Trustees seeking this confirmation. I understand from Ms. Twinn that the trustees have not yet responded. In fact, the Trustees have historically taken positions in this litigation that are obviously adverse to us, for example:
 - (i) Seeking the beneficiary definition to be amended to only allow for inclusion for Band members (see Affidavit of Paul Bujold filed February 15, 2017 at Exhibit "A" para. 33)
 - (ii) Distribution Proposal;
 - (iii) Settlement application to Justice Thomas filed June 12, 2015 and attached as **Exhibit "G"** which sought to change the beneficiary definition to only Band members with grandfathering for a select group of minor beneficiaries. This application had the potential to end this litigation. The settlement did not consider the impact on adult beneficiaries, unborn beneficiaries and was not transparent as to how the list of minors for grandfathering had been developed;
 - (iv) Accepted that their preferred outcome to this litigation would lead to "collateral damage" and "winners and losers" amongst the current beneficiary group (see Bujold Transcript Page 367, Lines 18-22 and Page 366, Lines 14-15).
- (g) Worked to further the interests of the First Nation, for example:
 - (i) The Trustees have been informed by Dr. Donovan Waters that the First Nation's membership code was likely discriminatory and not Charter

compliant and it was deficient in that the decision making criteria for membership was too subjective and delays in processing were inappropriate, yet still seek to change the 1985 Trust beneficiary definition to that standard – effectively exchanging what they say is a discriminatory definition for another one. (See Exhibits G and H to Affidavit of Catherine Twinn filed May 11, 2017);

- (ii) Were aware of the issues with the First Nation’s membership system and voted to proceed with this litigation on the basis that they work with the First Nation to ensure the application process was expedited (applications for membership determined within six months from receipt) and work with the First Nation to make amendments to its membership code to ensure its decision making criteria met appropriate legal standards (See Exhibit H to Affidavit of Catherine Twinn filed May 11, 2017) and that all existing 1985 beneficiaries were grandfathered (See Bujold Transcript Exhibit 10). Despite initiating the litigation on this basis, the Trustees have not followed through on these parameters;
- (iii) Failed to advise the Court of these issues with the membership process and in fact on more than one occasion represented to the Court that “the membership process is working” and “functioning” (see attached as **Exhibit “H”** transcripts from June 24, 2015 and September 2, 2015 Court dates).
- (iv) Stated that Catherine Twinn’s concerns about corruption within the membership process were “dramatic” and inciting investigation, based on information received only from Chief Roland Twinn and Bertha L’Hirondelle (former Chief) (see Bujold Transcript, page 6-7, Lines 26-13);
- (v) Asked Catherine Twinn to remove portions of affidavit evidence submitted in this litigation that speak to problems with the First Nation’s membership process (see undertakings requested of Catherine Twinn in 2016/17 – 32-33);
- (vi) Supported the First Nation in this litigation to oppose the OPGT’s attempts to inquire into its membership process (see *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799). I am advised by Catherine Twinn that they even indemnified the First Nation’s legal fees for this defence from the 1985 Trust’s assets;
- (vii) Have considered the controversy that may arise for the First Nation if the membership system is investigated in its approach to this litigation (See Bujold Transcript and Exhibit 11).

TAB A

This is **Exhibit "A"** referred to in the Affidavit of
SHELBY TWINN sworn before me on the 23 day
of October, 2019.

Catherine Twinn)

A Commissioner for Oaths in and)
for the Province of Alberta)

Barrister & Solicitor
Alberta

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

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

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

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

Applicants

P R O C E E D I N G S

Edmonton, Alberta
August 24, 2016

Transcript Management Services, Edmonton
1000, 10123 99th Street
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2

3 August 24, 2016

Morning Session

4

5 The Honourable

Court of Queen's Bench of Alberta

6 Mr. Justice Thomas

7

8 C.K.A. Platten, Q.C.

For Catherine Twinn

9 C. Osuladini

For Catherine Twinn

10 L. Maj

For the Minister of Aboriginal Affairs and

11

Northern Development

12 J.L. Hutchison

For the Public Trustee of Alberta

13 D.C. Bonora

For Sawridge Trustees

14 A. Loparco

For Sawridge Trustees

15 N.L. Golding, Q.C.

For Patrick Twinn, et al

16 E.H. Molstad, Q.C.

For Sawridge First Nation

17 G. Joshee-Arnal

For Sawridge First Nation

18 S.A. Wanke

For Morris Stoney, et al

19 C. Wilde

Court Clerk

20

21

22 **Discussions**

23

24 THE COURT:

Good morning.

25

26 Are you going to do the introductions?

27

28 MR. MOLSTAD:

I have been assigned that task, Sir.

29

30 THE COURT:

All right.

31

32 MR. MOLSTAD:

We have, representing the Sawridge Trustees,

33 Ms. Bonora and Ms. Loparco.

34

35 We have representing the Public Trustee, Ms. Hutchison. Mr. Meehan is not with us
36 today.

37

38 We have representing Catherine Twinn, Ms. Platten, and Ms. Osualdini.

39

40 We have myself, Sir, and Mr. Joshee-Arnal representing the Sawridge First Nation.

41

1 We have representing Mr. Morris Stoney, et al, Ms. Wanke.

2

3 And we have representing Patrick Twinn, et al, Ms. Golding.

4

5 We also have in attendance from the Minister of Aboriginal Affairs and Northern
6 Development, Ms. Maj from the Department of Justice.

7

8 We -- as you can see from the agenda that was sent to you yesterday, the first item on the
9 agenda is the Rule 5.13 application --

10

11 THE COURT: Yes.

12

13 MR. MOLSTAD: -- on membership and costs. And I'd like to
14 guess that the matters after that are not going to take too long, but that is a guess in terms
15 of the other matters (INDISCERNIBLE).

16

17 THE COURT: Yeah, I saw that revised agenda this morning.
18 Thanks for sending it in. But I think what I'm going to do is I'm going to reorder it,
19 because it looks to me from the revised agenda, the only matter that may take some time
20 is actually your application.

21

22 MR. MOLSTAD: That may be the case.

23

24 THE COURT: So let's see if we can move some of the
25 counsel along here.

26

27 MR. MOLSTAD: Well, I'm -- we're all in your hands, Sir, so. . .

28

29 THE COURT: All right.

30

31 MR. MOLSTAD: What order are you proposing in.

32

33 THE COURT: Oh, I'm proposing just normal chambers
34 process; that is the consent order first, get it resolved and dealt with. That would be --

35

36 MR. MOLSTAD: Number 4?

37

38 THE COURT: Number 4, the consent order. And then we'll
39 deal with these adjournment requests and --

40

41 MR. MOLSTAD: All right. Before I sit down, before we start the

1 Rule 5.13 application, I've had some discussion with my friend and I have a few
2 preliminary comments before we start that.

3

4 THE COURT: All right.

5

6 MR. MOLSTAD: Okay? Thank you, Sir.

7

8 THE COURT: Certainly. And I think I will -- that's useful,
9 because I think I've reviewed that material and I can narrow it down fairly quickly.

10

11 MR. MOLSTAD: Thank you.

12

13 THE COURT CLERK: Sorry, Sir, what was your name?

14

15 THE COURT: Mr. Molstad, Q.C.

16

17 MR. MOLSTAD: Sorry.

18

19 **Submissions by Ms. Bonora**

20

21 MS. BONORA: Sir, you'll recall that in this application, there
22 were basically two issues. One was the beneficiary designation and the second was to
23 confirm that the transfer of assets from the 1982 Trust to the 1985 Trust were -- was
24 appropriate, and that we've put that issue behind us. And through the work of counsel,
25 we've been able to reach agreement on the issue of the transfer of assets.

26

27 I believe, Sir, you received a brief from us and a copy of the consent order.

28

29 THE COURT: I did. And thank you very much for the brief,
30 because it makes it pretty clear --

31

32 MS. BONORA: Yeah. So --

33

34 THE COURT: -- well, what the basis for it is, and I'm
35 certainly satisfied that the consent order is appropriate and properly based in law.

36

37 MS. BONORA: Sir, I will not take any more time then. If
38 you've read the brief, I really have nothing else to add to the submissions that we've
39 made. And so, therefore, I think my friends would like to make a few comments, and I'll
40 just respond to those if there's anything else, unless you have any questions for me.

41

1 THE COURT: All right. I wonder if, counsel, if you wouldn't
2 mind just mentioning your name before you speak just so the clerk can keep track of
3 who's speaking?

4
5 MS. BONORA: Doris Bonora of Dentons just spoke. Thank
6 you, Sir.

7
8 THE COURT: Thanks, Ms. Bonora.

9

10 **Submissions by Ms. Hutchison**

11

12 MS. HUTCHISON: Good morning, My Lord. Janet Hutchison for
13 the Public Trustee of Alberta.

14

15 Very brief comments, My Lord, simply to give the Court some idea of why the OPTT,
16 and I believe Ms. Platten will speak to trustee Twinn, why we weren't able to arrive at a
17 joint brief, as well as a consent order. And it was simply a matter, My Lord, of some of
18 the wording around the facts and the evidence and what evidence was actually available,
19 as well as the final paragraph of the brief. Counsel just really weren't able to quite agree
20 how to characterize some of the issues around accounting.

21

22 The -- the Public Trustee would just like it noted on record that its position on the
23 consent order is that when it -- there is this reference to accounting in the preamble in
24 paragraph 2, that includes an individual accounting, as well as a passing of accounts.
25 And, of course, My Lord, for future reference, the passing of accounts for the five trusts
26 would occur logically within this proceeding, after beneficiary identification is dealt with.

27

28 But that's all we have to say, My Lord.

29

30 THE COURT: All right. Thank you. Ms. Platten?

31

32 **Submissions by Ms. Platten**

33

34 MS. PLATTEN: Sir, I think those are also our submissions, and
35 so we don't really anything further to say.

36

37 THE COURT CLERK: Sorry, your name, for the record?

38

39 MS. PLATTEN: Sorry, Karen Platten for Catherine Twinn.

40

41 **Submissions by Ms. Golding**

1
2 MS. GOLDING: Sir, Nancy Golding from Borden Ladner
3 Gervais in Calgary, and I am new to these -- this matter, acting on behalf of several of the
4 individual beneficiaries.

5
6 I just wanted to comment that my client wasn't involved in this order, and so we don't
7 intend to make any comment on it. However, we do want it noted that our understanding
8 is the order is without prejudice to the rights of our client to request an accounting as it
9 relates to the 1982 and 1985 Trusts, and for any relief that might come from that.

10
11 Thank you, Sir.

12
13 THE COURT: Thank you. Ms. Bonora, any --

14
15 MS. BONORA: Just one --

16
17 THE COURT: Look, I --

18
19 MS. BONORA: -- comment, Sir.

20
21 MS. MAJ: Sorry, sorry.

22
23 MS. BONORA: Oh, my -- my apologies.

24
25 THE COURT: You -- you can say something, but if --

26
27 MS. MAJ: That's all right. It's hard -- it's hard to see me
28 in the back.

29
30 THE COURT: Quite frankly, you are not a party at --

31
32 **Submissions by Ms. Maj**

33
34 MS. MAJ: I was simply going to actually echo
35 Ms. Platten's comments, My Lord.

36
37 THE COURT: Yeah. Well, okay. Well, just echo it and let's
38 get on with it.

39
40 Ms. Bonora?

41

1 Submissions by Ms. Bonora

2

3 MS. BONORA: Just one comment. Ms. Hutchison said that the
4 consent order was based on the accounting naturally occurring in this proceeding, and that
5 was not discussed until yesterday morning. So I don't think it is the basis for the consent
6 order, and that is a very live issue in terms of how the accounting will proceed. So I --
7 we just need to -- I'm not sure that you will be hearing that accounting. That is an issue
8 that you'll hear about later in terms of how that's going to happen, so. . .

9

10 THE COURT: All right. Mr. Molstad, you don't have
11 anything to say?

12

13 MR. MOLSTAD: I don't have anything to say. My name is
14 Mr. Molstad.

15

16 Order (Consent Order)

17

18 THE COURT: All right. The consent order being sent to me
19 with the brief, as I -- just so it's clear on the record, I did review that brief and it was
20 very helpful to me in terms of providing a legal basis for the consent order. Plus, the
21 Summary of Facts helped put me in the picture again.

22

23 So the consent order is granted, and there it is.

24

25 MS. BONORA: Thank you, Sir.

26

27 THE COURT: Madam Clerk, if you wouldn't mind handing
28 that to Ms. Bonora.

29

30 Submissions by Ms. Bonora (Distribution Proposal Adjournment)

31

32 MS. BONORA: Sir, perhaps I'll speak to the adjournment in
33 respect of the distribution proposal next.

34

35 THE COURT: All right. Sure.

36

37 MS. BONORA: Sir, the -- you'll recall in your December 17th,
38 2015, decision, you asked the Trustees to present a distribution proposal and to have it
39 approved by the Court, and so we, in fact, submitted the distribution proposal to the
40 Court. We then filed a brief in respect of approving that distribution proposal, and briefs
41 have been filed by the Office of the Public Guardian and Trustee, and by Catherine

TAB B

This is **Exhibit "B"** referred to in the Affidavit of
SHELBY TWINN sworn before me on the 23 day
of October, 2019.

Catherine Twinn)

A Commissioner for Oaths in and)
for the Province of Alberta)

Barrister & Solicitor
Alberta

TAB 1

SWORN STATEMENT OF GAIL O'CONNEL

I, Gail O'Connell, great daughter of Leon Ward and Josephine Cardinal, granddaughter of Elizabeth Mable Ward and daughter of Roseina Ward, of the City of Red Deer, in the Province of Alberta, do solemnly swear that:

Family History and Genealogy

1. I am the daughter of Roseina Lindberg nee Ward (hereinafter referred to as Roseina) who was born October 20, 1935.
2. Roseina, along with others, was Court ordered onto the Band List of the Sawridge First Nation (hereinafter referred to as the "Band") by Justice James Hugessen of the Federal Court by Order dated March 27, 2003. Attached to my Affidavit as **Exhibit "A"** is a true copy of the Court Order.
3. The reason Roseina was Court ordered onto the Band List is because the Band had not added her to the List they administer even though she was entitled, as the Court found, to be on the Band List without having to apply.
4. The Band appealed the Court Decision ordering Roseina and others be added to the Band List but the Band's Appeal failed. Attached as **Exhibit B** is a true copy of the Decision of the Court of Appeal dated January 19, 2004.
5. Roseina Lindberg was the daughter of Elizabeth Mable Ward. Attached as **Exhibit C** is a copy of the Certificate of Birth for Roseina.
6. Elizabeth Mable Ward, my grandmother, married Harry DeJong July 18, 1938, however, Harry DeJong is not my Grandfather. The Registration of Marriage Certificate of Elizabeth Ward who married Harry DeJong does not show her date of birth. It lists her age as 19 (she turned 20 the following month), her father as Leo Ward of Slave Lake, her mother as Josephine Cardinal and her name as Elizabeth Ward. Attached as **Exhibit D** is a copy of the Registration of Marriage Certificate of Elizabeth Ward and Harry DeJong.
7. Elizabeth Mable Ward had Roseina Ward (Lindberg) out of wedlock before she knew Harry DeJong.
8. Attached as **Exhibit E** is a copy of a letter dated September 6, 2000 from Indian Affairs and Northern Development indicating the reason for Roseina's omission from the Indian Register due to non-Indian paternity. It also notes that her parents are Leon Ward and Josephine Cardinal, registered under #7, Sawridge Band.
9. Elizabeth Mable Ward was born **August 18, 1918** and died September 6, 1951, only 33 years old. Attached as **Exhibit F** are true copies of the Baptismal Certificate dated September 7, 1918 and Birth Certificate for Elizabeth Mable Ward. On both documents her date of birth is August 18, 1918 and her parents are Leon Ward and Josephine Cardinal. Elizabeth's older sister, Philomine Ward, is listed as her godmother on the Certificate of Baptism.
10. Elizabeth Mable Ward is the daughter of Leon Ward and Josephine Cardinal, both Sawridge #7. Attached as **Exhibit G** is a true copy of a two page summary of the Band's Pay Lists from

October 3, 1910 to July 11, 1932 showing only Leon Ward as #7, his wife, their children and one copy of an Original Band Pay List dated June 19, 1931. The Band did not provide copies of any original Band Pay List. Through Access to Information, I obtained a copy of the original Band Pay List dated June 19, 1931. Most of the names on the original Pay List are redacted except for the name #7 Ward and #4 Ward. Under remarks, it states the woman is a duplicate of #51 and two boys not accounted for. I assume #4 must also be related to #7 or the name would have been redacted.

Who Is Really Elizabeth's Father?

11. The Band admits that Leon Ward, Josephine Cardinal and their children were members of Sawridge and Leon Ward is listed as #7. The Band disputes that Elizabeth Mable Ward is the child of Leon Ward. Attached as **Exhibit H** is a document prepared by or for the Band titled "The Issue Is How Is "Elizabeth Ward" Related to Sawridge" (hereinafter referred to as the "**Band Genealogy**"). It concludes that Elizabeth's father was George Hamelin, #51, from the Driftpile First Nation (hereinafter referred to as Driftpile).
12. I am informed by Sam Twinn and do verily believe that when my Appeal first came to the Electors January 5, 2013 an elected Elder and Trustee, Bertha L'Hirondelle, suggested I belonged to Driftpile. Sam Twinn and others requested that a Genealogy be drafted in collaboration with our family prior to the Appeal being heard. The Genealogy would provide facts and relevant information from both sides on contested facts. My Appeal was rescheduled for March 9, 2013 to enable preparation of the collaborative Genealogy to assist the Electors.
13. There was no follow up or outreach to me to confirm or discuss the Band Genealogy by anyone from the Band.
14. The Band Genealogy prepared for my Appeal heard March 9, 2013, I believe, influenced the outcome of my Appeal. The Electors who attended were mostly supporters of the Chief and Council. The electors upheld the Council's decision denying my application for membership. Many of the members voting on my Appeal believed I belong to Driftpile, not Sawridge, because of the Band Genealogy. I am informed by Catherine Twinn and do verily believe she overheard Paul Twinn say about me, "she belongs to Driftpile."
15. The Band Genealogy refers to "Pay Lists" but not the original Pay Lists. It relies on Analyses prepared by the Lesser Slave Lake Indian Regional Council, Treaty and Aboriginal Rights Research, Genealogical Project, 1999-2000. The Band places inordinate weight on these Band Pay List Analyses. The original Pay Lists are notorious for mistakes and vagueness and I understand there was controversy around Indian Agent Harold Laird (1911-1930) of Lesser Slave Lake and his record keeping.
16. The Band Analyses add researcher comments under the Indian Agent column that do not appear in the original Pay list. Attached as **Exhibit "I"** is a copy of the Driftpile Pay List for George Hamelin dated July 5, 1934 and the Band Analysis of that Pay List showing the addition of the researchers comments under the Indian Agent column.
17. The Band Genealogy disputes my great grandfather Leon Ward's paternity of my grandmother Elizabeth Ward. It says, "Among the possible answers is that she is the daughter of Egbert Ward. Or that she is the daughter of Leon Ward. Or none of the above." It dismisses Elizabeth as the daughter of Egbert Ward and Leon Ward and concludes she is the daughter of George Hamelin, #51, from Driftpile.

18. The Band's reasons for concluding my grandmother is the daughter of George Hamelin #51 appear to rest on the following:
 - a. A Driftpile Pay List for #51 George Hamelin dated October 12, 1920 records "girl born" and the Band researcher's comments are "Elizabeth Ward Hamelin born in 1917";
 - b. The June 19, 1931 Sawridge Pay List for #7 Ward that says the woman is a duplicate of #51;
 - c. On October 12, 1920 the Indian Agent, under #51, records "girl born". She is never given a name while under #51. The Researcher later assumes this girl becomes #101, first appearing on the July 5, 1934 Driftpile Pay List until 1940;
 - d. On June 23, 1939, according to the Driftpile Pay List Analysis, the Indian Agent adds comments to the Driftpile Pay List that #101, Elizabeth Ward Hamelin, age 22, married H. De Gong, a white trader, at Prairie River on June 14, 1938. The 1939 date for the Analysis is incorrect. The actual date for the Pay List is June 23, 1938;
 - e. She remained on the Driftpile Pay List until June 21, 1940, when she was given "commutation authority" Sept 13, 1939;
 - f. Her name never appeared on the Sawridge Pay List;
19. The Band Genealogy states "What is clear is that although Elizabeth Ward Hamelin becomes the wife of Harry DeGong, and while it is likely that they are the parent of Fleury DeJong, she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist....If the woman who is the grandmother of Gaile O'Connell is the same person who married Harry DeGong and is the mother of Fleury Degong/DeJong, then the proper First Nation for Gaile O'Connell to direct her application for membership is Driftpile. There is not and never has been any connection with Sawridge."
20. The authorship of this Band Genealogy was not identified at the time of the Appeal and all supporting sources of information in the possession of the Band were not provided to me.
21. I was informed by Catherine Twinn that Mike McKinney, Executive Director/General Counsel to the Band, recently advised that Rarihokwats, Chair of the Appeal Committee (e.g. the Electors), is believed to have authored the Band Genealogy.
22. To dismiss Elizabeth Mable Ward as Leon Ward's daughter, the Band Genealogy ignores the best evidence, makes unsubstantiated assumptions, fails to disclose all relevant evidence and is inherently speculative and biased in selecting information to support a pre-determined conclusion, particulars of which include:
 - a. The birth and baptismal certificates for Elizabeth Mable Ward, born August 18, 1918 lists her parents as Leon Ward and Josephine Cardinal who are on the Sawridge Pay list;
 - b. The copy of the Birth Certificate provided to Rarihokwats at the March 9, 2013 Appeal;
 - c. I do not believe any proper weight was given by the Electors to the Birth Certificate evidence;
 - d. The Registration of Marriage Certificate for Elizabeth Ward, **Exhibit D**, dated July 18, 1938 naming Leo Ward and Josephine Cardinal as her mother and father;
 - e. The Band Analyses of the Sawridge Pay Lists, Exhibit "G", for Lion/Leon Ward, #7, from October 3, 1910 to July 11, 1932;
 - f. The Band did not produce any original Pay Lists or all its Analyses of Band Pay Lists including past 1932 for Leon Ward and his children with Josephine Cardinal;
 - g. The Band did not produce any birth, baptismal, marriage or other certificates to support its position that George Hamelin, not Leon Ward, fathered Elizabeth Mable Ward;
 - h. The woman listed on the Driftpile Pay lists as Elizabeth Ward Hamelin, appears to not be the same woman as my Grandmother Elizabeth Mable Ward, for a number of reasons including:
 - My Grandmother's Birth and Baptismal certificates list her birth date as August 18, 1918 and her father as Leon Ward, not George Hamelin;

- My Grandmother's Registration of Marriage lists her father as Leo Ward and my Grandmother's name as Elizabeth Ward, not Hamelin;
 - This Marriage Certificate does not identify my Grandmother as Elizabeth Ward Hamelin;
 - My grandmother never had the name "Elizabeth Ward Hamelin";
 - My Grandmother had a child in 1935 and in 1938. No mention is made on the Driftpile Pay List of those children born during that time period;
 - My Grandmother was 19 years old when she married July 18, 1938. The woman named Elizabeth Ward Hamelin is listed as being 22 years old on the June 23, 1939 Driftpile Pay List;
- i. Our family oral history told to me by my mother Roseina is that my Grandmother was raised by Bernard and Louisa Halcrow. Elizabeth lived with them for a long period of time. The Halcrows' took care of my grandmother but they did not adopt her;
 - j. The Band Genealogy says that Leon Ward became #7 Sawridge in 1910. A Sawridge Paylist dated July 14, 1919 showed "Girl Born, Man Died". July 14, 1919 is not the date of Elizabeth Mable Ward's birth. She was, according to her Birth, Baptismal and Marriage Certificates, born August 18, 1918.
 - k. Elizabeth's August 18, 1918 birth occurred one month after the July 20, 1918 entry to the 1918 Pay List. Elizabeth Mable Ward is the last daughter born to Leon Ward. July 14, 1919 is simply the annual date when the Indian Agent recorded notations onto the Pay List as to what has occurred in the year prior, from the previous entries made to the Pay List July 20, 1918. These facts are contrary to the Band Genealogy that 'she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist'.
 - l. The Band assumed that the August 10, 1917 Pay List entry "Girl Born", who is transferred the following year to #5, the widow of John Ward (e.g. Leon Ward's father) eventually becomes Mary DeLorme. The Band says that John's widow dies in 1918, the girl is transferred to #15 St Pierre Nesootasis as "other relative" and that from then until 1936 when St. Pierre dies, the girl becomes Mary DeLorme and paid as a girl, even though she is 19 years of age;
 - m. The Band assumed that the July 14, 1919 entry of "Girl Born" is "Philomene". My mother always stated that Philomene was older than Elizabeth. This is corroborated by Elizabeth's Baptismal Certificate dated September 7, 1918 which names "Philomine Ward" as Elizabeth's godmother;
 - n. From the July 25, 1921 Pay List the Band states that "in 1921 the 2nd daughter is transferred to #20, Sucker Creek Reserve" and "This daughter is transferred back to Sawridge #41 in 1930...and the "two daughters of Leon's, one #5 Sawridge and the other #41 Sawridge - and neither of them are Elizabeth Ward". The Band Genealogy fails to provide evidence to support this and other assumption and statements;
 - o. The Band Genealogy assumes that Josephine Cardinal marries George Hamelin, #51 Driftpile, and is listed with a "newborn boy, Norman" on George's Driftpile Pay List July 24, 1918. How could she be giving birth to another newborn, Elizabeth Ward, one month later, August 18, 1918?;
 - p. The Band suggests that Josephine Cardinal, mother to Elizabeth Ward, married George Hamelin. They point to a woman and new born infant Norman being recorded on the July 24, 1918 Driftpile Pay List under George Hamelin #51. This is one month before Elizabeth Ward was born, while Leon Ward was alive and married to Josephine and both were listed on the Sawridge Pay List;
 - q. The Band Genealogy identifies the wife of George Hamelin as the daughter of William Giroux #13. This cannot be my great grandmother Josephine Cardinal as her parents were Casimir Cardinal and Sophie Masiniyoneb Willier;
 - r. The Band provided Driftpile Pay Lists for the period July 24, 1918 to June 24, 1944 for George Hamelin #51. The June 23, 1939 Driftpile Pay List shows "girl born" to George Hamelin#51. If his wife/the mother is Josephine Cardinal, in 1939 she is 48 years old. Giving birth at this age is an inordinately long fertility period;

- s. The June 23, 1939 Driftpile Pay List lists the names and ages of George Hamelin's family. He and Josephine Cardinal are listed as 44 years old. My great grandmother Josephine Cardinal was born December, 1891 making her 48 years old;
 - t. The Driftpile Pay Lists are problematic. Whoever is accepting Treaty money for "Elizabeth Ward Hamelin" allegedly Elizabeth Mable Ward, does not know the correct date when my grandmother married DeJong or that my grandmother had two children prior to the marriage, including my mother Roseina, born October 20, 1935;
 - u. Pay Lists only indicated where a person was paid at, not where their Band Membership was. If Elizabeth Ward lived near Driftpile her Treaty payments could be made at Driftpile. This does not change her band membership to Driftpile from Sawridge, it just means her Treaty money was paid at Driftpile;
 - v. Because Elizabeth's father is Leon Ward, not George Hamelin #51, under the Indian Act, her membership was in her father's Band, which is Sawridge;
 - w. Elizabeth Ward's father died while she was an infant. Elizabeth Ward was given to Bernard and Louisa Halcrow to raise. They did not adopt Elizabeth;
 - x. The Band failed and/or refused to provide evidence as to which Band Elizabeth Mable Ward, born August 18, 1918, was paid out when she married a non-Indian and was "commuted";
 - y. In 2003 my mother Roseina Ward Lindberg was Court added to the Sawridge Band List. The Crown lawyer relied on evidence the Court accepted in support of Roseina Ward being added to the Sawridge Band List. None of this evidence was successfully appealed, disclosed to me or provided at my March 9, 2013 Appeal. How can the Band now challenge this?
 - z. The Band unsuccessfully challenged the paternity of Elizabeth Courtreille, who was also added to the Band List by the same Court Order that added my mother Roseina;
23. The Band Genealogy confuses, disputes and distorts facts including:
- a. the recorded paternity of Elizabeth Mable Ward on her birth, baptismal and marriage certificates;
 - b. the entitlement of Leon's children and wife to membership in his Band;
 - c. the 1917 and 1919 Sawridge Pay List evidence showing 2 girls born;
 - d. the evidence tendered by the Crown, accepted by the Court, adding my mother to the Band List, upheld on Appeal;
 - e. Other evidence including that set out in paragraph 22;
24. The Band did not produce all the evidence and none of the original Pay Lists it relied on or other evidence including the Band which paid the per capita share to Elizabeth Mable Ward when she was enfranchised for marrying a non-Indian. It selected some Analyses of Pay Lists. There is some evidence showing that researcher comments were later added to the Pay List Analyses as comments of the Indian Agent.
25. The Band did not make timely disclosure of who authored the Band Genealogy and failed to collaborate with us in creating our Ward family genealogy. Were there other Josephine Cardinal's? Our family research suggests that the Josephine Cardinal who was the widow of Leon Ward was born in December 1891 and baptized January 23, 1892. She married Leon Ward September 9, 1906 and gave birth to their first child in 1908-1910. Her parents were Casimir Cardinal and Sophie Masiniyoneb Willier. The Band document identifies the wife of George Hamelin as the daughter of William Giroux #13. This suggests there is more than one Josephine Cardinal.

The Appeal Ignored Our Family's Oral History Evidence

- 26. At the time of the 1918 Pay Lists, a flu epidemic killed many people in the Lesser Slave Lake area. I do not have a copy of the Death Certificate for Leon Ward but our family oral history evidence suggests he may have died in that epidemic leaving infant Elizabeth fatherless.

27. Our oral history evidence suggests that following the death of Leon Ward, Josephine Cardinal gave Elizabeth Mable Ward to Bernard and Louisa Halcrow to take care of. This was not a legal adoption. According to my mother, Elizabeth Mable Ward lived with Bernard and Louisa Halcrow.
28. Elizabeth Mable Ward was never a part of the George Hamelin family. Elizabeth Mable Ward never was a Hamelin and never lived with the Hamelins nor is George Hamelin listed on her birth, baptism or marriage certificates.
29. Philomene was Elizabeth's older sister.
30. Attached as **Exhibit J**, is an application for admission to St. Andrews Indian Residential School dated September 14, 1931 by Bernard and Louisa Halcrow as Guardians to Elizabeth Ward. On the backside of that document, there is a Certificate of Health for Elizabeth Ward. Both sides of the application states her age as 13 years old. This further corroborates the birth, baptismal and marriage certificate evidence that Elizabeth was born August 18, 1918 and is the daughter of Leon Ward and Josephine Cardinal.
31. Elizabeth Ward is never listed as a Hamelin on her Marriage Certificate, Baptismal or Birth Certificate or application for admission to school. She was always a Ward and never a Hamelin. The lineage of Elizabeth Mable Ward is that she is the daughter of Leon Ward, which the Court confirmed when it recognized her daughter, Roseina, as belonging to the Sawridge Band.
32. The Band has placed much weight on oral history evidence, however, not our family's oral history evidence or the conclusive and best evidence, the Birth, Baptismal, School Application and Marriage Certificates of Elizabeth Mable Ward, all recording her parents as Leon Ward and Josephine Cardinal.
33. Consistent with the Sawridge Pay Lists, we were told that Leon Ward and Josephine Cardinal had three other children besides Elizabeth Mable Ward. These were:
 - a. Norman Ward
 - b. John Ward
 - c. Philomene Ward
34. The Band did not seek our oral history evidence or other evidence nor did it's author collaborate with us in creating the Band Genealogy. I believe the Band Genealogy influenced those voting on my Appeal, arguing that I belong at Driftpile, not Sawridge.

The Band Membership Application and Process

35. In December 2003, I requested from the Band an application form for Membership.
36. On January 22, 2004 I received a letter from Mike McKinney, Executive Director/General Counsel for the Band, attached as **Exhibit K** with a membership application form of about 43 pages with instructions to return the form with a copy of my status card. In addition, I was to include numerous essays, letters of character reference, and copies of vital documents.
37. On March 25, 2004 the completed application for membership, with required documentation, was sent via registered mail and received by the Band.
38. On November 25, 2004 I placed a phone call to the Band to ask about the status of my application for membership. I spoke to Lorna at the Chief's office and was told my application

had not been reviewed. She undertook to have someone call me as to when I will receive a response. I never received a return call.

39. Between 2004 and 2010 I periodically called the Band office at least once a year. There was no progress on my application. I always received the same type of response. No one wanted to know who I was. When I would express my concern about how long the process was taking, I was told they had a lot of applications to go through.
40. On December 9, 2010 I placed another phone call to the Band inquiring about the status of my application. I was told the Council was going through applications on Tuesday December 14, 2010. The person I spoke to would not take down my name or give me any further information. I asked if there were some sort of statute of limitations and was informed there was not. She was not concerned that my application was dated 2004.
41. I was never informed or given the opportunity to answer any questions or concerns the Band had or to participate in a meeting or interview with the Chief and Council or it's designate.
42. On November 8, 2012, attached as **Exhibit L**, I received a registered letter signed by Mike McKinney, Executive Director/General Counsel to the Band, dated October 31, 2012 advising me the Council had denied my application for membership. Their reasons were:
 - a. They do not recognize my connection to Sawridge through my mother, Roseina Lindberg, because they do not recognize my mother's connection to Sawridge. Yet my mother is on the Band List, pursuant to the Court Order by Justice James Hugessen dated March 27, 2003;
 - b. I do not have any specific "right" to have my entered on the Band list;
 - c. Even if I had shown a connection, they didn't feel it was in the Band's best interests;
 - d. They took into account my character and lifestyle without any evidence of the standard set by existing band members if judged on the same subjective criteria.
43. My application demonstrates I am of good character and an absolute family oriented person who has worked hard to teach my children values and morals of a higher standard.
44. On November 13, 2012 I sent a Letter of Appeal to the Band via registered mail.
45. On November 21, 2012 I received, via regular mail, a Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. The notice is dated November 21, 2012, the same date I received it. Attached to this my Affidavit is **Exhibit "M"**, a true copy of the November 21, 2012 Notice.
46. The Band, included their membership processing form in **Exhibit M**, and agreed my character and lifestyle was 'not a detriment'. **Exhibit M** was mailed with the Notice of Appeal to be held January 5, 2013. The form indicates the following:
 - I am employed, debt free;
 - own my own home;
 - no criminal record;
 - no driver's license suspension;
 - hardworking and self-sufficient;
 - good student;
 - positive letters of reference from 3 people who have known me – one reference knew me for 25 years);
47. On December 13, 2012 I received, via Registered mail, a second Notice of Meeting of the Electors to hear my Appeal on January 5, 2013. The notice is dated November 21, 2012. The only difference between the two notices, in my view, is that in the mail out received December 13,

2012, the Membership processing form is now marked "Draft". Attached as **Exhibit "N"** is a true copy of the notice I received December 13, 2012.

48. I decided not to attend the Appeal at Slave Lake on January 5, 2013. I felt it was all just a matter of formality, my exclusion from membership a foregone conclusion. Given the time the process had taken, the lack of a fair process, the denial by Chief and Council using subjective criteria without any interview or effort to fairly assess me or afford me a reasonable chance to address their concerns and questions, no discussion of balanced options such as a probationary period, and other factors, all pointed to a foregone conclusion. I believed there was no point in attending.
49. On February 19, 2013 I received a notice of a new date to hear my Appeal, March 9, 2013 Attached as **Exhibit "O"** are true copies of same.
50. On February 21, 2013 I received the Band Genealogy, attached as **Exhibit H**, dated February 19, 2013 from Donna Brown, administrative assistant, and copies of various pay lists. Information in the Band document, as explained elsewhere, was not in the least accurate, fair or balanced.
51. On March 9, 2013 I attended the Appeal with my mother Roseina and my sister Gina. From the moment we arrived, the hostility, unfriendliness, tension, unease and suspicion was palpable. A person named Rarihokwats, who chaired the Appeal, suggested my mother, an elderly Band Member, wait in the waiting room before the voting occurred even though she had a right as a member to be present. The underlying suggestion was that we did not belong to Sawridge and were not welcome. It was clear that minds were made up.
52. At the Appeal I was taken aback by the suggestion we belong to Driftpile. We have no roots or relatives in the Driftpile First Nation.
53. I became so unnerved by the atmosphere I was hindered in speaking to the 5 pages of documents and other information I had. I gave Rarihokwats the Birth Certificate for my grandmother Elizabeth Mable Ward listing her parents as Leon Ward and Josephine Cardinal. I do not know if copies were given to and read by the Band Members. I believe members who voted against allowing my Appeal may have been influenced by the Band document endorsed by their leaders and professional advisors that Elizabeth Mable Ward was not the daughter of Leon Ward but the daughter of George Hamelin #51 and she belonged to Driftpile, not Sawridge.
54. The March 9, 2013 Appeal including the deliberations of the electors lasted the full day. They were unable to reach a consensus. A secret vote was taken and later I learned my Appeal was denied.
55. Sometime in April, 2013, I received from Ed Molstad, of Parlee McLaws LLP, present at my Appeal as one of the paid professionals, a copy of the Decision from the Appeal Committee chaired by Rarihokwats. My Appeal was denied. This Decision is attached as **Exhibit "P"**.

My Concerns With the Process and Membership Rules

56. The Membership Application form I filled out was about 43 pages and extremely invasive.
57. The decision making process took almost 10 years.
58. The Applicant should not have to "prove" they are worthy or meet some other subjective criteria that can easily be abused. If they are the child of a band member this should be of considerable if not decisive weight. Descent should be conclusive of membership and only in rare circumstances be overruled.

59. There is a power imbalance, lack of fairness and impartiality against applicants inherent in the process. Members who reside close to the Band office and their close family may be unlikely to dissent from the decision of Chief and Council and allow an applicant's Appeal.
60. The process did not allow a fair opportunity to know in advance, present and ask questions on all relevant facts, concerns, reasons and principles both prior to the Chief and Council decision or on Appeal.
61. The decision making process for band membership should ensure that applicants are equally entitled to a fair process and equality of the law like other people in Canada.
62. There should be a period of time before the Decision and the Appeal in which the applicant can meet with Chief and Council and electors one on one, and address any questions or concerns.
63. Issues should be clearly identified in advance of the Decision and Appeal with a fair process to address these.
64. All applicants should have timely and full disclosure of all information the Band has gathered relevant to their application and Appeal.
65. Applicants on Appeal should be given the names and contact information for all electors. All electors should be allowed to vote, not just those who live close by to the Band office or their close family who come to support their family members living on reserve. Some members may be dependent on Band resources and the decisions of Chief and Council for their necessities.
66. A period of probation and/or conditional membership should be granted where existing members and the applicant, through no one's fault, do not know one another. Not knowing one another should not be an excuse to deny someone the same birthright members enjoy.
67. The discriminatory provisions of the Membership Rules should be changed particularly as it impacts children. All applicants should be treated equally, not based on who likes, supports or knows who.
68. Discriminatory thinking and mindsets should not determine membership. I should not be discriminated against because of a circumstance that existed or an action that was taken by my mother, grandmother, the Indian Agent, the Band or others.
69. The rules should provide for certainty based on descent and relationship. Subjective factors such as "character", "lifestyle" and "knowledge of the history and customs" should be re-assessed as these are too subjective.
70. The Chief and Council should not decide membership applications. They have a vested interest in satisfying their current political constituency who arguably have an interest in excluding people from membership to retain control and maintain a larger per capita share of resources. The process needs an independent, impartial and unbiased decision maker like a Tribunal or body with security of remuneration and tenure. I am advised by Catherine Twinn and do verily believe she recommended this but it has not been implemented.
71. Despite Sam Twinn specifically requesting such, the Band did not collaborate with me in building the Band Genealogy for my family and did not take into account critical evidence we provided or had.

72. The "Chair" of the Appeal process should in fact be independent, neutral and impartial. Rarihokwats influenced and controlled the Appeal process under the guise of being an impartial, independent, neutral party. I am informed by Catherine Twinn and do verily believe he is a paid consultant to the Chief and Council, has refused to disclose his compensation and performs multiple paid tasks for the Band including:

- Assisting the Band on litigation;
- Conducting Research;
- Drafting Court documents including the Band's Statement of Claim filed March 31, 2015 in the Court of Queen's Bench as Action 1503-04882 contesting compliance with the First Nations Financial Transparency Act;
- Drafting Laws and the Constitution of the First Nation at the direction of the Chief and Council;
- Drafting Policies for the Band;
- Acting as Speaker of the Sawridge Legislative Assembly to push through the laws he has drafted;
- Supporting the Chief in securing speaking opportunities and making presentations;
- Supporting Mike McKinney the in house Band lawyer on issues including drafting Permit forms so Chief and Council control if spouses, children and others can live with a band member on reserve;
- Recommending a legislative strategy and timetable for Band laws;
- Other;

73. There are no objective criteria in the Band's Rules, just vague, subjective and uncertain criteria such as character and lifestyle with no fair process to assess this. Transparency and disclosure well in advance of any decision should be required including disclosure of information that is being considered with a fair and meaningful opportunity to reply. The process must be fair, reasonable, timely, transparent, accountable, unbiased and non-discriminatory.

Post Appeal

74. There was no honest effort to identify and resolve contested facts in advance of the Chief and Council Decision on my application or my Appeal. There was not a clear and balanced presentation of all the evidence at the March 9, 2013 hearing. Band members were not enabled, even if so motivated, to make a fair, unbiased and informed decision on my Appeal.

75. I was not invited or given a fair opportunity to have input into the Band Genealogy about my grandmother's paternity presented to the Band members March 9, 2013 or collaborate in addressing a fair and balanced presentation of contested facts.

76. The Band is very small, only 44 members. The Band imported outside paid professionals for my Appeal. Rarihokwats chaired the Appeal, led the process, controlled information, inappropriately influenced decision making and without disclosure, authored the Band Genealogy. I consider the paid professionals to have played an enabling role in this gross wrongdoing and obvious manipulation of the vote to deny my Appeal. Their combined conduct enabled the Chief and Council in an improper purpose of unfairly considering and excluding my equal entitlement to membership.

77. The Band Genealogy that is supposedly my family genealogy still makes my head spin and I wonder if that was the author's intention. Being a reasonable person, I could see how assumptions could be made from historical entries, however, the assumptions and conclusions in the Band Genealogy are speculative and unreasonable. The Band should disclose all its research and information it uses with regard to membership applications, which it has not.



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

Gail O'Connell

Sworn before me this 21 day
of May A.D., 2015

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

Andrew Hypos
Barrister & Solicitor

Date: 20030327

Docket: T-66-86A

Neutral citation: 2003 FCT 347

BETWEEN:

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

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

- and -

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

Interveners

REASONS FOR ORDER AND ORDER

HUGESSEN, J.:

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

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

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

[Sawridge Band v. Canada (C.A.), [1997] 3 F.C. 580 at paragraph 2]

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

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

b. In the alternative, an interlocutory mandatory injunction, pending a final resolution of the Plaintiff's action, requiring the Plaintiff to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

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

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

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

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

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

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

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

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

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

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

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

What
evidence?
They want
even all
women

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

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

2.(1) "member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List.

5. (1) There shall be maintained in the Department an Indian Register in which shall be recorded the name of every person who is entitled to be registered as an Indian under this Act.

(3) The Registrar may at any time add to or delete from the Indian Register the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in the Indian Register.

(5) The name of a person who is entitled to be registered is not required to be recorded in the Indian Register unless an application for registration is made to the Registrar.

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

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

8. There shall be maintained in accordance with this Act for each band a Band List in which shall be entered the name of every person who is a member of that band.

9. (1) Until such time as a band assumes control of its Band List, the Band List of that band shall be maintained in the Department by the Registrar.

(2) The names in a Band List of a band immediately prior to April 17, 1985 shall constitute the Band List of that band on April 17, 1985.

(3) The Registrar may at any time add to or delete from a Band List maintained in the Department the name of any person who, in accordance with this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...
(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph; ...

(2) Commencing on the day that is two years after the day that an Act entitled An Act to amend the Indian Act, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(a) if that person is entitled to be registered under paragraph 6(1)(d) or (e) and ceased to be a member of that band by reason of the circumstances set out in that paragraph;
or

(b) if that person is entitled to be registered under paragraph 6(1)(f) or subsection 6(2) and a parent referred to in that provision is entitled to have his name entered in the Band List or, if no longer living, was at the time of death entitled to have his name entered in the Band List.

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

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

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

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

3. Each of the following persons shall have a right to have his or her name entered in the Band List:

(a) any person who, but for the establishment of these rules, would be entitled pursuant to subsection 11(1) of the Act to have his or her name entered in the Band List required to be maintained in the Department and who, at any time after these rules come into force, either

(i) is lawfully resident on the reserve; or

(ii) has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band;

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force.

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and as such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

... today, I am asking Hon. Members to consider legislation which will eliminate two historic wrongs in Canada's legislation regarding Indian people. These wrongs are discriminatory treatment based on sex and the control by Government of membership in Indian communities.

[Canada, House of Commons Debates, March 1, 1985, p. 2644]

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

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

[Debates, *supra* at 2645]

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

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

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

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

[*Debates, supra* at 2646]

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

Several members of this committee said during the debate on Friday that this bill is just a beginning and not an end in itself, but rather the beginning of a process aimed at full Indian self-government. I completely agree with that view. But before we can create the future, some of the wrongs of the past have to be corrected. That is, in part, the purpose of Bill C-31...

[*Canada, House of Commons, Minutes of the Proceedings of the Special Committee on Indian Affairs and Northern Development, Issue no. 12, March 7, 1985 at 12:7*]

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

"James K. Hugessen"
Judge

Edmonton, Alberta
March 27, 2003

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FEDERAL COURT OF CANADA
Names of Counsel and Solicitors of Record

DOCKET: T-66-86
STYLE OF CAUSE: Bertha L'Hirondelle et al v. Her Majesty The Queen et al
PLACE OF HEARING: TORONTO, ONTARIO
DATE OF HEARING: MARCH 19 AND 20, 2003
REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE HUGESSEN.

DATED: March 27, 2003

APPEARANCES BY:

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

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WOMEN'S ASSOCIATION OF
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Federal Court of Appeal Decisions

Case name: L'Hirondelle v. Canada
Court (s) Database: Federal Court of Appeal Decisions
Date: 2004-01-19
Neutral citation: 2004 FCA 16
File numbers: A-170-03

Date: 20040119

Docket: A-170-03

Citation: 2004 FCA 16

CORAM: ROTHSTEIN J.A.

NOËL J.A.

MALONE J.A.

BETWEEN:

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

Plaintiffs (Appellants)

and

HER MAJESTY THE QUEEN

Defendant (Respondent)

and

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

Intervenors (Respondents)

Heard at Calgary, Alberta, on December 15 and 16, 2003.

REASONS FOR JUDGMENT BY:
ROTHSTEIN J.A.

This is Exhibit "B" referred to in the
Affidavit of
Gail O'Connell
Sworn before me this 21 day
of May A.D., 2004

[Signature]
A Notary Public; A Commissioner for Oaths
in and for the Province of Alberta

Andrew Phipps
Barrister & Solicitor

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Publications	CORAM: ROTHSTEIN J.A.	
	NOËL J.A.	
	MALONE J.A.	
	BETWEEN:	
	BERTHA L'HIRONDELLE, suing on her own behalf	
	and on behalf of all other members of the Sawridge Band	
		Plaintiffs
		and
		HER MAJESTY THE QUEEN

Defendant

FAQs

(Respondent)

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NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA),

Legal
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NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN

ASSOCIATION OF ALBERTA

Self-
Represented
Litigants

(Respondents)

Interveners

Heard at Calgary, Alberta, on December 15 and 16, 2003.

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REASONS FOR JUDGMENT BY:

ROTHSTEIN J.A.

CONCURRED IN BY:

NOËL

J.A.

MALONE

J.A.

Date: 20040119

Docket: A-170-03

Citation: 2004 FCA 16

CORAM: ROTHSTEIN J.A.

NOËL J.A.

MALONE J.A.

BETWEEN:

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

Plaintiffs

(Appellants)

and

HER MAJESTY THE QUEEN

Defendant

(Respondent)

and

NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA),

NATIVE WOMEN'S ASSOCIATION OF CANADA, and NON-STATUS INDIAN

ASSOCIATION OF ALBERTA

Interveners

(Respondents)

REASONS FOR JUDGMENT

ROTHSTEIN J.A.

[1] By Order dated March 27, 2003, Hugessen J. of the Trial Division (as it then was) granted a mandatory interlocutory injunction sought by the Crown, requiring the appellants to enter or register on the Sawridge Band List the names of eleven individuals who, he found, had acquired the right to be members of the Sawridge Band before it took control of its Band list on July 8, 1985, and to accord the eleven individuals all the rights and privileges attaching to Band membership. The appellants now appeal that Order.

HISTORY

[2] The background to this appeal may be briefly stated. An Act to amend the Indian Act, R.S.C. 1985, c. 32 (1st Supp.) [Bill C-31], was given Royal Assent on June 28, 1985. However, the relevant provisions of Bill C-31 were made retroactive to April 17, 1985, the date on which section 15, the equality guarantee, of the Canadian Charter of Rights and Freedoms [the Charter] came into force.

[3] Among other things, Bill C-31 granted certain persons an entitlement to status under the Indian Act, R.S.C. 1985, c. I-5 [the Act], and, arguably, entitlement to membership in an Indian Band. These persons included those whose names were omitted or deleted from the Indian Register by the Minister of Indian and Northern Affairs prior to April 17, 1985, in accordance with certain provisions of the Act as they read prior to that date. The disqualified persons included an Indian woman who married a man who was not registered as an Indian as well as certain other persons disqualified

by provisions that Parliament considered to be discriminatory on account of gender. The former provisions read:

12. (1) The following persons are not entitled to be registered, namely,

(a) a person who

...

(iii) is enfranchised, or

(iv) is born of a marriage entered into after September 4, 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

unless, being a woman, that person is the wife or widow of a person described in section 11; and

(b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if on the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

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

a) une personne qui, selon le

cas :

...

(iii) est émancipée,

(iv) est née d'un mariage célébré après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a, b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e),

sauf si, étant une femme, cette personne est l'épouse ou la veuve de quelqu'un décrit à l'article 11;

b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11.

(2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e) peut faire l'objet d'une protestation dans les douze mois de l'addition; si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa.

[4] Bill C-31 repealed these disqualifications and enacted the following provisions to allow those who had been stripped of their status to regain it:

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

...

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under subparagraph 12(1)(a)(iv), paragraph 12(1)(b) or subsection 12(2) or under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as any of those provisions;

...

11. (1) Commencing on April 17, 1985, a person is entitled to have his name entered in a Band List maintained in the Department for a band if

...

(c) that person is entitled to be registered under paragraph 6(1)(c) and ceased to be a member of that band by reason of the circumstances set out in that paragraph;

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

... c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)a)(iv), de l'alinéa 12(1)b) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)a)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version antérieure au 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions;

...

11. (1) À compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes_:

...

c) elle a le droit d'être inscrite en vertu de l'alinéa 6(1)c) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa;

[5] By an action originally commenced on January 15, 1986, the appellants claim a declaration that the provisions of Bill C-31 that confer an entitlement to Band membership are inconsistent with section 35 of the Constitution Act, 1982 and are, therefore, of no force and effect. The appellants say that an Indian Band's right to control its own membership is a constitutionally protected Aboriginal and treaty right and that legislation requiring a Band to admit persons to membership is therefore unconstitutional.

[6] This litigation is now in its eighteenth year. By Notice of Motion dated November 1, 2002, the Crown applied for:

an interlocutory mandatory injunction, pending a final resolution of the Plaintiff's action, requiring the Plaintiffs to enter or register on the Sawridge Band List the names of the individuals who acquired the right to be members of the Sawridge Band before it took control of its Band list, with the full rights and privileges enjoyed by all band members.

[7] The basis of the Crown's application was that until legislation is found to be unconstitutional, it must be complied with. The mandatory injunction application was brought to require the Band to comply with the provisions of the Act unless and until they are determined to be unconstitutional. By Order dated March 27, 2003, Hugessen J. granted the requested injunction.

[8] This Court was advised that, in order for the Band to comply with the Order of Hugessen J., the eleven individuals in question were entered on the Sawridge Band list. Nonetheless, the appellants submit that Hugessen J.'s Order was made in error and should be quashed.

ISSUES

[9] In appealing the Order of Hugessen J., the appellants raises the following issues:

1. Does the Band's membership application process comply with the requirements of the Act?

2. Even if the Band has not complied with the Act, did Hugessen J. err in granting a mandatory interlocutory injunction because the Crown lacks standing and has not met the test for granting interlocutory injunctive relief.

APPELLANTS' SUBMISSIONS

[10] The appellants say that the Band's membership code has been in effect since July 8, 1985 and that any person who wishes to become a member of the Band must apply for membership and satisfy the requirements of the membership code. They say that the eleven individuals in question have never applied for membership. As a result, there has been no refusal to admit them. The appellants submit that the code's requirement that all applicants for membership go through the application process is in accordance with the provisions of the Act. Because the Band is complying with the Act, there is no basis for granting a mandatory interlocutory injunction.

[11] Even if the Band has not complied with the Act, the appellants say that Hugessen J. erred in granting a mandatory interlocutory injunction because the Crown has no standing to seek such an injunction. The appellants argue that there is no lis between the beneficiaries of the injunction and the appellants. The Crown has no interest or, at least, no sufficient legal interest in the remedy. Further, the Crown has not brought a proceeding seeking final relief of the nature sought in the mandatory interlocutory injunction application. In the absence of such a proceeding, the Court is without jurisdiction to grant a mandatory interlocutory injunction. Further, there is no statutory authority for the Crown to seek the relief in question. The appellants also argue that the Crown has not met the three-part test for the granting of an interlocutory injunction.

ARE THE APPELLANTS COMPLYING WITH THE INDIAN ACT?

The Appropriateness of Deciding a Legal Question in the Course of an Interlocutory Injunction Application

[12] The question of whether the Sawridge Band membership code and application process are in compliance with the Act appears to have been first raised by the appellants in response to the Crown's injunction application. Indeed, the appellants' Fresh As Amended Statement of Claim would seem to acknowledge that, at least when it was drafted, the appellants were of the view that certain individuals could be entitled to membership in an Indian Band without the consent of the Band. Paragraph 22 of the Fresh as Amended Statement of Claim states in part:

The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection.

[13] There is nothing in the appellants' Fresh As Amended Statement of Claim that would suggest that an issue in the litigation was whether the appellants were complying with the Act. The entire Fresh As Amended Statement of Claim appears to focus on challenging the constitutional validity of the Bill C-31 amendments to the Indian Act.

[14] The Crown's Notice of Motion for a mandatory interlocutory injunction was based on the appellants' refusal to comply with the legislation pending determination of whether the legislation was constitutional. The Crown's assumption appears to have been that there was no dispute that, barring a finding of unconstitutionality, the legislation required the appellants to admit the eleven individuals to membership.

[15] Be that as it may, the appellants say that the interpretation of the legislation

and whether or not they are in compliance with it was always in contemplation in and relevant to this litigation. It was the appellants who raised the question of whether or not they were in compliance in response to the Crown's motion for Injunction. It, therefore, had to be dealt with before the Injunction application itself was addressed. The Crown and the interveners do not challenge the need to deal with the question and Hugessen J. certainly accepted that it was necessary to interpret the legislation and determine if the appellants were or were not in compliance with it.

[16] Courts do not normally make determinations of law as a condition precedent to the granting of an interlocutory injunction. However, that is what occurred here. In the unusual circumstances of this case, I think it was appropriate for Hugessen J. to have made such a determination.

[17] Although rule 220 was not expressly invoked, I would analogize the actions of Hugessen J. to determining a preliminary question of law. Rules 220(1) and (3) read as follows:

220. (1) A party may bring a motion before trial to request that the Court determine

(a) a question of law that may be relevant to an action;

...

(3) A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

220. (1) Une partie peut, par voie de requête présentée avant l'instruction, demander à la Cour de statuer sur :

a) tout point de droit qui peut être pertinent dans l'action;

...

(3) La décision prise au sujet d'un point visé au paragraphe (1) est définitive aux fins de l'action, sous réserve de toute modification résultant d'un appel.

[18] Although the appellants did not explicitly bring a motion under Rule 220, the need to determine the proper interpretation of the Act was implicit in their reply to the respondent's motion for a mandatory interlocutory injunction. It would be illogical for the appellants to raise the issue in defence to the injunction application and the Court not be able to deal with it. There is no suggestion that the question could not be decided because of disputed facts or for any other reason. It was raised by the appellants who said it was relevant to the action. Therefore, I think that Hugessen J. was able to, and did, make a preliminary determination of law that was final and conclusive for purposes of the action, subject to being varied on appeal.

Does the Band's Membership Application Process Comply with the Requirements

of the Indian Act?

[19] I turn to the question itself. Although the determination under appeal was made by a case management judge who must be given extremely wide latitude (see *Sawridge Band v. Canada*, [2002] 2 F.C. 346 at paragraph 11 (C.A.)), the determination is one of law. Where a substantive question of law is at issue, even if it is decided by a case management judge, the applicable standard of review will be correctness.

[20] The appellants say there is no automatic entitlement to membership and that the Band's membership code is a legitimate means of controlling its own membership. They rely on subsections 10(4) and 10(5) of the Indian Act which provide:

10(4) Membership rules established by a band under this section may not deprive any person who had the right to have his name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force.	10(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce que son nom soit consigné dans la liste de bande avant leur établissement du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet.
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(5) For greater certainty, subsection (4) applies in respect of a person who was entitled to have his name entered in the Band List under paragraph 11(1)(c) immediately before the band assumed control of the Band List if that person does not subsequently cease to be entitled to have his name entered in the Band List.	(5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)c) avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné.
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[21] The appellants say that subsections 10(4) and (5) are clear and unambiguous and Hugessen J. was bound to apply these provisions. They submit the words "by reason only of" in subsection 10(4) mean that a band may establish membership rules as long as they do not expressly contravene any provisions of the Act. They assert that the Band's code does not do so. The code only requires that if an individual is not resident on the Reserve, an application must be made demonstrating, to the satisfaction of the Band Council, that the individual:

has applied for membership in the band and, in the judgment of the Band Council, has a significant commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the Band and a character and lifestyle that would not cause his or her admission to membership in the Band to be detrimental to the future welfare or advancement of the Band (paragraph 3(a)(ii)).

[22] With respect to subsection 10(5), the appellants say that the words "if that person does not subsequently cease to be entitled to have his name entered in the Band List" mean that the Band is given a discretion to establish membership rules that may disentitle an individual to membership in the Band. They submit that nothing in the Act precludes a band from establishing additional qualifications for membership.

[23] The Crown, on the other hand, says that persons in the position of the individuals in this appeal have "acquired rights." I understand this argument to be that paragraph 11(1)(c) created an automatic entitlement for those persons to membership in the Indian Band with which they were previously connected. The Crown submits that subsection 10(4) prohibits a band from using its membership rules to create barriers to membership for such persons.

[24] Hugessen J. was not satisfied that subsections 10(4) and (5) are as clear and unambiguous as the appellant suggests. He analyzed the provisions in the context of related provisions and agreed with the Crown.

[25] The appellants seem to object to Hugessen J.'s contextual approach to statutory interpretation. However, all legislation must be read in context. Driedger's well known statement of the modern approach to statutory construction, adopted in countless cases such as *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 21, reads:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87).

Hugessen J. interpreted subsections 10(4) and (5) in accordance with the modern approach and he was correct to do so.

[26] I cannot improve on Hugessen J.'s statutory construction analysis and I quote the relevant portions of his reasons, which I endorse and adopt as my own:

[24] It is unfortunate that the awkward wording of subsections 10(4) and 10(5) does

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

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

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

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

...

[36] Subsection 10(5) is further evidence of my conclusion that the Act creates an automatic entitlement to membership, since it states, by reference to paragraph 11(1)(c), that nothing can deprive acquired rights individual [sic] to their automatic entitlement to membership unless they subsequently lose that entitlement. The band's

membership rules do not include specific provisions that describe the circumstances in which acquired rights individuals might subsequently lose their entitlement to membership. Enacting application requirements is certainly not enough to deprive acquired rights individuals of their automatic entitlement to band membership, pursuant to subsection 10(5). To put the matter another way, Parliament having spoken in terms of entitlement and acquired rights, it would take more specific provisions than what is found in section 3 of the membership rules for delegated and subordinate legislation to take away or deprive Charter protected persons of those rights.

[27] I turn to the appellants' arguments in this Court.

[28] The appellants assert that the description "acquired rights" used by Hugessen J. reads words into the Indian Act that are not there. The term "acquired rights" appears as a marginal note beside subsection 10(4). As such, it is not part of the enactment, but is inserted for convenience of reference only (Interpretation Act, R.S.C. 1985, c. I-21, s. 14). However, the term is a convenient "shorthand" to identify those individuals who, by reason of paragraph 11(1)(c), became entitled to automatic membership in the Indian Band with which they were connected. In other words, the instant paragraph 11(1)(c) came into force, i.e. April 17, 1985, these individuals were entitled to have their names entered on the membership list of their Band.

[29] The appellants say that the words "by reason only of" in subsection 10(4) do not preclude an Indian Band from establishing a membership code, requiring persons who wish to be considered for membership to make application to the Band. I acknowledge that the words "by reason only of" could allow a band to create restrictions on continued membership for situations that arose or actions taken after the membership code came into force. However, the code cannot operate to deny membership to those individuals who come within paragraph 11(1)(c).

[30] A band may enact membership rules applicable to all of its members. Yet subsections 10(4) and (5) restrict a band from enacting membership rules targeted only at individuals who, by reason of paragraph 11(1)(c), are entitled to membership. That distinction is not permitted by the Act.

[31] The appellants raise three further objections. First, they say that their membership code is required because of "band shopping." However, in respect of persons entitled to membership under paragraph 11(1)(c), the issue of band shopping does not arise. Under paragraph 11(1)(c), the individuals in question are only entitled to membership in the band in which they would have been a member but for the pre-April 17, 1985 provisions of the Indian Act. In this case, those individuals would have been members of the Sawridge Band.

[32] Second, the appellants submit that the opening words of subsection 11(1), "commencing on April 17, 1985," indicate a process and not an event, i.e. that there is no automatic membership in a band and that indeed some persons may not wish to be members; rather, the word "commencing" only means that a person may apply at any time on or after April 17, 1985. I agree that there is no automatic membership. However, there is an automatic entitlement to membership. The words "commencing on April 17, 1985" only indicate that subsection 11(1) was not retroactive to before April 17, 1985. As of that date, the individuals in question in this appeal acquired an automatic entitlement to membership in the Sawridge Band.

[33] Third, the appellants say that the individuals in question have not made application for membership. Hugessen J. dealt with this argument at paragraph 12 of his reasons:

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

[34] The appellants submit, contrary to Hugessen J.'s finding, that there was no evidence that the individuals in question here wanted to become members of the Sawridge Band. A review of the record demonstrates ample evidence to support Hugessen J.'s finding. For example, by Sawridge Band Council Resolution of July 21, 1988, the Band Council acknowledged that "at least 164 people had expressed an interest in writing in making application for membership in the Band." A list of such persons was attached to the Band Council Resolution. Of the eleven individuals in question here, eight were included on that list. In addition, the record contains applications for Indian status and membership in the Sawridge Band made by a number of the individuals.

[35] For these persons entitled to membership, a simple request to be included in the Band's membership list is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant. As Hugessen J. found, requiring acquired rights individuals to comply with the Sawridge Band membership code, in which preconditions had been created to membership, was in contravention of the Act

[36] Of course, this finding has no bearing on the main issue raised by the appellants in this action, namely, whether the provisions entitling persons to membership in an Indian band are unconstitutional.

THE INJUNCTION APPLICATION

Standing

[37] I turn to the Injunction application. The appellants say that there was no lis between the Band and the eleven persons ordered by Hugessen J. to be included in the Band's Membership List. The eleven individuals are not parties to the main action. The appellants also say that the Crown is not entitled to seek interlocutory relief when it does not seek the same final relief.

[38] I cannot accept the appellants' arguments. The Crown is the respondent in an application to have validly enacted legislation struck down on constitutional grounds. It is seeking an injunction, not only on behalf of the individuals denied the benefits of that legislation but on behalf of the public interest in having the laws of Canada obeyed. The Crown, as represented by the Attorney General, has traditionally had standing to seek injunctions to ensure that public bodies, such as an Indian band council, follow the law (see Robert J. Sharpe, *Injunctions and Specific Performance*, looseleaf (Aurora, ON: Canada Law Book, 2002) at paragraph 3.30; *Ontario (Attorney General) v. Ontario Teachers' Federation* (1997), 36 O.R. (3d) 367 at 371-72 (Gen. Div.)). Having regard to the Crown's standing at common law, statutory authority, contrary to the appellants' submission, is unnecessary. Hugessen J. was thus correct to find that the Crown had standing to seek the injunction.

[39] I also cannot accept the argument that the Crown may not seek interlocutory relief because it has not sought the same final relief in this action. The Crown is defending an attack on the constitutionality of Bill C-31 and is seeking an interlocutory injunction to require compliance with it in the interim. If the Crown is successful in the main action, the result will be that the Sawridge Band will have to enter or register on its membership list the individuals who are the subject of the injunction application. The Crown therefore is seeking essentially the same relief on the injunction application as in the main action.

[40] Further, section 44 of the Federal Courts Act, R.S.C. 1985, c. F-7, confers jurisdiction on the Federal Court to grant an injunction "in all cases in which it appears to the Court to be just or convenient to do so." The jurisdiction conferred by section 44 is extremely broad. In *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998]

1 S.C.R. 626, the Supreme Court found that the Federal Court could grant injunctive relief even though there was no action pending before the Court as to the final resolution of the claim in issue. If section 44 confers jurisdiction on the Court to grant an injunction where it is not being asked to grant final relief, the Court surely has jurisdiction to grant an injunction where it will itself make a final determination on an interconnected issue. The requested injunction is therefore sufficiently connected to the final relief claimed by the Crown.

The Test for Granting an Interlocutory Injunction

[41] The test for whether an interlocutory injunction should be granted was set out in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) and adopted by the Supreme Court in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 and *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 where, at 334, Sopinka and Cory JJ. summarized the test as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

[42] The appellants submit that Hugessen J. erred in applying a reverse onus to the test. Since, as will be discussed below, the Crown has satisfied the traditional test, I do not need to consider whether the onus should be reversed.

Serious Question

[43] In *RJR-Macdonald* at 337-38, the Court indicated that the threshold at the first branch is low and that the motions judge should proceed to the rest of the test unless the application is vexatious or frivolous.

[44] The appellants say that in cases where a mandatory injunction is sought, the older pre-American Cyanamide test of showing a strong prima facie case for trial should continue to apply. They rely on an Ontario case, *Breen v. Farlow*, [1995] O.J. No. 2971 (Gen. Div.), in support of this proposition. Of course, that case is not binding on this Court. Furthermore, it has been questioned by subsequent Ontario decisions in which orders in the nature of a mandatory interlocutory injunction were issued (493680 *Ontario Ltd. v. Morgan*, [1996] O.J. No. 4776 (Gen. Div.); *Samoila v. Prudential of America General Insurance Co. (Canada)*, [1999] O.J. No. 2317 (S.C.J.)). In *Morgan*, Hockin J. stated that *RJR-Macdonald* had modified the old test, even for mandatory interlocutory injunctions (paragraph 27).

[45] The jurisprudence of the Federal Court on this issue in recent years is divided. In *In Relais Nordik Inc. v. Secunda Marine Services Ltd.* (1988), 24 F.T.R. 256 at paragraph 9, Pinar J. questioned the applicability of the American Cyanamide test to mandatory interlocutory injunctions. On the other hand, in *Ansa International Rent-A-Car (Canada) Ltd. v. American International Rent-A-Car Corp.* (1990), 36 F.T.R. 98 at paragraph 15, MacKay J. accepted that the American Cyanamide test applied to mandatory injunctions in the same way as to prohibitory ones. Both of these cases were decided before the Supreme Court reaffirmed its approval of the American Cyanamide test in *RJR-Macdonald*. More recently, in *Patriquen v. Canada (Correctional Services)*, 2003 FC 927 at paragraphs 9-16, Blais J. followed the *RJR-Macdonald* test and found that there was a serious issue to be tried in an application for a mandatory interlocutory injunction (which he dismissed on the basis that the applicant had not shown irreparable harm).

[46] Hugessen J. followed *Ansa International* and held that the *RJR-Macdonald* test should be applied to an interlocutory injunction application, whether it is prohibitory or mandatory. In light of *Sopinka* and Cory J.'s caution about the difficulties of engaging in an extensive analysis of the constitutionality of legislation at an interlocutory stage (*RJR-Macdonald* at 337), I think he was correct to do so. However, the fact that the Crown is asking the Court to require the appellants' to take positive action will have to be considered in assessing the balance of convenience.

[47] In this case, the Crown's argument that Bill C-31 is constitutional is neither frivolous nor vexatious. There is, therefore, a serious question to be tried.

Irreparable Harm

[48] Ordinarily, the public interest is considered only in the third branch of the test. However, where, as here, the government is the applicant in a motion for interlocutory relief, the public interest must also be considered in the second stage (*RJR-Macdonald* at 349).

[49] Validly enacted legislation is assumed to be in the public interest. Courts are not to investigate whether the legislation actually has such an effect (*RJR-Macdonald* at 348-49).

[50] Allowing the appellants to ignore the requirements of the Act would irreparably harm the public interest in seeing that the law is obeyed. Until a law is struck down as unconstitutional or an interim constitutional exemption is granted by a court of competent jurisdiction, citizens and organizations must obey it (*Metropolitan Stores* at 143, quoting *Morgentaler v. Ackroyd* (1983), 42 O.R. (2d) 659 at 666-68 (H.C.)).

[51] Further, the individuals who have been denied membership in the appellant band are aging and, at the present rate of progress, some are unlikely ever to benefit from amendments that were adopted to redress their discriminatory exclusion from band membership. The public interest in preventing discrimination by public bodies will be irreparably harmed if the requested injunction is denied and the appellants are able to continue to ignore their obligations under Bill C-31, pending a determination of its constitutionality.

[52] The appellants argue that there cannot be irreparable harm because, if there was, the Crown would not have waited sixteen years after the commencement of the action to seek an injunction. The Crown submits that it explained to Hugessen J. the reasons for the delay and stated that the very length of the proceedings had in fact contributed to the irreparable harm as the individuals in question were growing older and, in some cases, falling ill.

[53] The question of whether delay in bringing an injunction application is fatal is a matter of discretion for the motions judge. There is no indication that Hugessen J. did not act judicially in exercising his discretion to grant the injunction despite the timing of the motion.

Balance of Convenience

[54] In Metropolitan Stores at 149, Beetz J. held that interlocutory injunctions should not be granted in public law cases, "unless, in the balance of convenience, the public interest is taken into consideration and given the weight it should carry." In this case, the public interest in seeing that laws are obeyed and that prior discrimination is remedied weighs in favour of granting the injunction requested by the Crown.

[55] As discussed above and as Hugessen J. found, there is a clear public interest in seeing that legislation is obeyed until its application is stayed by court order or the legislation is set aside on final judgment. As well, Bill C-31 was designed to remedy the historic discrimination against Indian women and other Indians previously excluded from status under the Indian Act and band membership. There is therefore a public interest in seeing that the individuals in this case are able to reap the benefits of those amendments.

[56] On the other hand, the Sawridge Band will suffer little or no damage by admitting nine elderly ladies and one gentleman to membership (the Court was advised that one of the eleven individuals had recently died). It is true that the Band is being asked to take the positive step of adding these individuals to its Band List but it is difficult

to find hardship in requiring a public body to follow a law that, pending an ultimate determination of its constitutionality, is currently in force. Even if the Band provides the individuals with financial assistance on the basis of their membership, that harm can be remedied by damages against the Crown if the appellants subsequently succeed at trial. Therefore, as Hugessen J. found, the balance of convenience favours granting the injunction.

CONCLUSION

[57] The appeal should be dismissed.

COSTS

[58] The Crown has sought costs in this Court and in the Court below. The interveners have sought costs in this Court only.

[59] In his Reasons for Order, Hugessen J. reserved the question of costs in favour of the Crown, indicating that the Crown should proceed by way of a motion for costs under rule 369. He awarded no costs to the interveners. It is not apparent from the record that the Crown made a costs motion under rule 369 and in the absence of an order for costs and an appeal of that order, I would not make any award of costs in the Court below.

[60] As to costs in this Court, the Crown and interveners are to make submissions in writing, each not exceeding 3 pages, double-spaced, on or before 7 days from the date of these reasons. The appellants shall make submissions in writing, not exceeding 10 pages, double-spaced, on or before 14 days from the date of these reasons. The Court will, if requested, consider the award of a lump sum of costs inclusive of fees, disbursements, and in the case of the interveners, GST (See *Consorzio del Prosciutto di Parma v. Maple Leaf Meats Inc.*, [2003] 2 F.C. 451 (C.A.)).

[61] The Judgment of the Court will be issued as soon as the matter of costs is determined.

"Marshall Rothstein"

J.A.

"I agree Marc Noël J.A."

"I agree B. Malone J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-170-03

STYLE OF CAUSE: BERTHA L'HIRONDELLE ET AL. v.

THE QUEEN ET AL.

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: December 15 and 16, 2003

REASONS FOR JUDGMENT

BY: ROTHSTEIN J.A.

CONCURRED IN BY: NOÉL J.A.

MALONE J.A.

DATED: January 19, 2004

APPEARANCES:

Mr. Martin J. Henderson

Ms. Catherine Twinn FOR THE APPELLANT

Mr. E. James Kindrake

Ms. Kathleen Kohlman FOR THE RESPONDENT

Mr. Kenneth Purchase FOR INTERVENER, NATIVE COUNCIL OF CANADA

Mr. P. Jon Faulds FOR INTERVENER, NATIVE COUNCIL OF CANADA, ALBERTA

Ms. Mary Eberts FOR INTERVENER, NATIVE WOMEN'S ASSOCIATION OF CANADA

Mr. Michael J. Donaldson FOR INTERVENER, NON-STATUS INDIAN
ASSOCIATION OF ALBERTA

SOLICITORS OF RECORD:

AIRD & BERLIS, Toronto, ON

TWINN LAW OFFICE

FOR THE APPELLANT

Morris Rosenberg

Deputy Attorney General of Canada

FOR THE RESPONDENT

LANG MICHENER

Ottawa, ON
CANADA

FOR INTERVENER, NATIVE COUNCIL OF

FIELD ATKINSON PERRATON,

Edmonton, AB
CANADA, ALBERTA

FOR INTERVENER, NATIVE COUNCIL OF

EBERTS SYMES STREET & PALMER LLP FOR INTERVENER, NATIVE

Toronto, ON

WOMEN'S ASSOCIATION OF CANADA

BURNET DUCKWORTH & PALMER LLP FOR INTERVENER,

Calgary, AB
ALBERTA

NON-STATUS INDIAN ASSOCIATION OF

Alberta CANADA

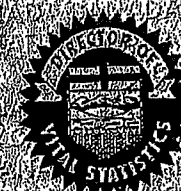
CERTIFICATE
OATH TAKEN

3108022

08-29-1995

Aug 26 2000

Aug 22 2000



This is Exhibit "C" referred to in the
Affidavit of
Gail O'Connell

Sworn before me this 21 day
of MAY A.D., 20 15


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

Andrew Phipps
Barrister & Solicitor

This is Exhibit "E" referred to in the _____

Affidavit of
Gail O'Connell Page 1 of 1

Sworn before me this 21 day
of May A.D., 2015

 Indian and Northern
Affairs Canada
www.inso.gc.ca

Affaires Indiennes
et du Nord Canada
www.aicn.gc.ca


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

*Andrew Hughes
Barrister & Solicitor*

SEP 6 2000

Membership Administrator
Lesser Slave Lake Indian Registration Council
P.O. Box 269
SLAVE LAKE, Alberta
T0G 2A0

Your file - *Henry Robinson*
Our file - *Henry Robinson*
E6000-454(Dowsley)
LD928

Date of Application: June 22, 2000
Date of Receipt: June 30, 2000

REGISTRATION PARTICULARS:

Name: Rosina Ann Lindberg
Date of Birth: October 20, 1935
Entitlement under the *Indian Act* to:
Registration: Section 6(1)(c)
Band Code: 454
Name of Registry Group: Sawridge
Rationale: Omitted from the Indian Register due to non-Indian paternity.

REGISTRY NO.: 4540040701

Mother: Elizabeth Ward, born August 19, 1918, entitled to be registered under section 6(1)(c) of the Indian Act. Married Harry Dejong, a non-Indian, on July 18, 1938. Her parents, Leon Ward and Josephine Cardinal, were registered under No. 7 Sawridge Band, (454) Sawridge Registry Group.

Father: Douglas McMullen, non-Indian

Remark: The applicant is affiliated with the (454) Sawridge Registry Group.

Name added to Register: Rosina Anna Ward

Canada

.../2
Printed on recycled paper - Recycle our paper, recycle!

- 2 -

I hereby enter the above particulars in the Indian Register. For your information, the applicant has been advised of her registry number.

Suzanne Lebell

M. M. MacDonald
Registrar
OTTAWA, Ontario
K1A 0H4

c.c. Manager, Indian Registration
Lands and Trust Services
Alberta Region

Alberta CANADA

B184734

DIVISION OF VITAL STATISTICS

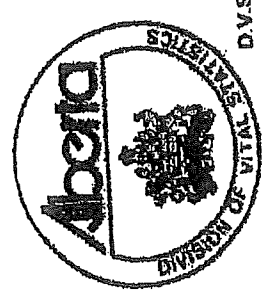
This is to Certify that the particulars of the undernoted birth which is on record in this Department are as follows:

Name **WARD, ELIZABETH MABLE** Sex **FEMALE**
 Date of Birth **AUG 18, 1918** Place of Birth **KINUSO**
 Name of Father **WARD, LEON**
 Name of Mother **CARDINAL, JOSEPHINE**
 Registered at **EDMONTON**

This is Exhibit "F" referred to in the Affidavit of **Gail O'Connell**
 Sworn before me this **21** day of **May** A.D., 20**12**
 A Notary Public, A Commissioner for Oaths in and for the Province of Alberta.
Andrew Proffers
Notarier & Solicitor

His Birthplace
 Her Birthplace
 on **NOV 02, 1989** on **NOV 02, 1989**
 (Month) (Day) (Year) (Month) (Day) (Year)
 Given under my hand and seal of the Director.

Registration No. **1918-08-019120**
 This **22** Day of **NOV 19 89**
 Certified Extract From
 Registration of Birth
 Issued at Edmonton,
 Alberta, Canada.



446298

D.V.S. 24

Bill Gilroy
 Director

CERTIFICATE OF BAPTISM

CERTIFICAT DE BAPTÊME

Paroisse de Kinross, Alberta
Parish of

This is Exhibit "F" referred to in the
Affidavit of Gail O'Connell

CECI CERTIFIE - THIS CERTIFIES

Sworn before me this 21 day
of May A.D., 2015

Que Elizabeth Marie Ward
That

Enfant de Leon Ward
Child of

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

et de Josephine Cardinal
and of

Andrew (Phyper)
Boisier Solicitor

qui est né(a) le 18th jour de August 1918
Born on the day of

a été baptisé(e) - was Baptised

le 7th jour de September 1918
the day of

Conformément aux Rites de l'Eglise Catholique Romaine
According to the Rites of the Roman Catholic Church

par le Rév. S. Pitre, omi
by the Rev.

Parrain Philomène Ward
Sponsors

Marraine

Confirmé(e) à
Confirmed at

par
by

le jour de 19
the day of

Conformément au Régistre de la dite Paroisse
As appears from the Baptismal Register of said Church

daté le September 7th 1989
Dated

Rev. Raphael Leusard, omi

B-12A BETH
M P B P R D
Aug 18, 1918

SAWRIDGE FIRST NATION ANNUITY PAYLIST ANALYSIS

BAND NAME	NO.	HEAD OF FAMILY	M	W	B	G	H	F	TOTAL PAID	AMOUNTS PAID	LESSER SLAVE LAKE DISTRICT COMMENTS BY INDIAN AGENT	RESEARCHERS COMMENTS	PAGE 1 of ANNUITY & GRATUITY
Oct 3, 1910	7	LION WARD	1	1	1				3		PAID TO SELF		15.00
Sept 16, 1911	7	LION WARD	1	1	1				3		PAID TO FATHER No. 5		15.00
Sept 21, 1912	7	LION WARD	1	1	1				3		Advanced 5.00 (ADRIAN)		20.00
Sept 18, 1913	7	LION WARD	1	1	1				4		PAID TO SELF		20.00
Sept 21, 1914	7	LION WARD	1	1	2				4				20.00
Aug 14, 1915	7	LEON WARD	1	1	2				4				25.00
Aug 14, 1916	7	LEON WARD	1	1	2				5		GIRL BORN (PILDOMINE)		25.00
Aug 10, 1917	7	LEON WARD	1	1	2				5		GIRL TRANSFERRED TO No. 5. (NOT RECORDED)		25.00
July 20, 1918	7	LEON WARD	1	1	3				5		GIRL BORN. (MAY GIRD)		25.00
July 19, 1919	7	LEON WARD	1	1	3				5		GIRL TRANSFERRED TO No. 5. (NOT RECORDED)		25.00
Sept 10, 1920	7	LEON WARD	1	1	3				4		GIRL TRANSFERRED TO No. 5. (NOT RECORDED)		20.00
July 25, 1921	7	LEON WARD	1	1	3				4		PAID AT GEORIAN		20.00
July 22, 1922	7	LEON WARD	1	1	3				4		PAID AT SUKKA CREEK		20.00
Aug 6, 1923	7	LEON WARD	1	1	3				4		PAID AT SUKKA CREEK		20.00
June 26, 1924	7	LEON WARD	1	1	3				4				20.00
June 10, 1925	7	LEON WARD	1	1	3				4		PAID SUKKA CREEK		20.00
Aug 2, 1926	7	LEON WARD	1	1	3				4				20.00
Aug 4, 1927	7	LEON WARD	1	1	3				4		PAID TO THE STATE AT GEORIAN		20.00
June 26, 1928	7	LEON WARD	1	1	3				4				20.00
June 21, 1929	7	LEON WARD	1	1	3				4				20.00
June 20, 1930	7	LEON WARD	1	1	2				3		GIRL TRANSFERRED TO No. 5. (NOT RECORDED)		15.00

LESSER SLAVE LAKE INDIAN REGIONAL COUNCIL TREATY AND ABORIGINAL RIGHTS RESEARCH GENEALOGICAL PROJECT 1999 - 2000

This is Exhibit "S" referred to in the Affidavit of Gail O'Connell
Sworn before me this 21 day of May AD. 2015

*Notary Public & Commissioner for Oaths in and for the Province of Alberta
Page 1 of 1
50 Keillor

The Issue Is How Is "Elizabeth Ward" Related to Sawridge

The issue is Elizabeth Ward's (Mother of Rosina Ward, Grandmother of Gail O'Connell) relationship to Sawridge. Among the possible answers is that she is the daughter of Egbert Ward. Or that she is the daughter of Leon Ward. Or none of the above.

Egbert Ward, Son of John Baptiste Ward #4

John Baptiste Ward #4 was placed on the Sawridge payroll in 1910 with wife, five boys and two girls. He died, likely in the flu epidemic, in 1918/1919. In 1922, one of the boys was "transferred to #32, Egbert Ward."

In 1938, Egbert's age is given as 39, his wife 30. That would mean Egbert was born in 1899. He gets his own Sawridge number, #32, at age 23, married with no children. His first daughter is born in 1939, name given as [Marie Rose]. It would be impossible for that daughter to be Elizabeth, since Elizabeth is the mother of Rosina (b. 1935).

Leon Ward, son of John Baptiste Ward:

Leon Ward became #7 Sawridge in 1910. He has three sons (b. 1910, 1914, and 1918). A daughter is born 1917. In 1918-1919, Leon dies, likely in the flu epidemic. The baby girl is transferred to #5, her grandmother, the widow of John Ward. The widow died in 1918 and the baby girl is transferred to #15, St. Pierre Nesootasis and appears on his payroll as "other relative". She continues as such until 1936. In that year, two things happened: Headman St. Pierre Nesootasis died, and the relative is "now paid as a girl" -- but her name is given as "Mary Delorme".

A second daughter of John Ward is born in 1919, apparently Leon's widow having been pregnant at the time of her husband's death. In 1921, the second daughter is transferred to #20 Sucker Creek Reserve (Leon's wife Josephine Oubichon Cardinal was from Sucker Creek). This daughter was transferred back to Sawridge #41 in 1930 -- Philomene ("Flemming") Ward \ Loyer. So, to summarize to this point, there are two daughters of Leon's, one #5 Sawridge and the other #41 Sawridge -- and neither of them are "Elizabeth Ward."

This is Exhibit "H" referred to in the
Affidavit of
Gail O'Connell
Sworn before me this 21 day
of May A.D., 2015

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

Andrew Phipps
Barrister & Solicitor

NEW INFORMATION FROM DRIFTPILE PAYLISTS

George Hamelin #51 Driftpile

George Hamelin appears on 24 July 1918 as #51 Driftpile, with a woman and a newborn boy, Norman (he later becomes #97). George is from #30 (Leo Chalifoux), she is from #13 (William Giroux).¹ A daughter is added to the payroll in 1920, with a note that she was born in 1917. A second daughter (Mary Jane) in 1923 and 1924. One of the daughters died in 1926. A daughter was born in 1928, another in 1929. Another daughter died in 1930, and still another in 1931. A girl Bertha is born in 1932.

Elizabeth Hamelin Ward, Driftpile #101

On 5 July 1934, one "Elizabeth Ward Hamelin" was added to the Driftpile Cree Nation annuity list as #51. It is likely she was just 18, giving her a birthdate of about 1916 (this is confirmed in 1939 when her age is given as 22, and 1917 is given on her father's payroll as her birthdate). In 1932, Elizabeth is paid at Whitefish Lake, and a child is born (Elie Walker Hemelin) - he is apparently "adopted" and appears later as #115 Elie Badger. Elizabeth's annuity is paid to the priest, Father Falher. In 1939, it is indicated that she is "wife of Harry de Gong, W.M. ("white male"). A "comment by Indian Agent" states, "Prairie Lake. H. DeGong is a white trader at Prairie River. Were married June 14 1938 ('87). "Woman given commutation [authority] 25-131 Sept 13 1939". Elizabeth remained on the Driftpile list until 21 June 1940.

What is clear is that although Elizabeth Ward Hamelin becomes the wife of Harry DeGong, and while it is likely that they are the parents of Fleury deJong, she never was a member of the Sawridge Band and never appeared on a Sawridge Paylist. This Elizabeth Hamelin Ward deGong ceased to be an Indian pursuant to the Indian Act on 13 September 1939. It is also clear that this Elizabeth cannot be the same person as the "Elizabeth Ward" who appeared on the Sawridge list as #65. In fact, "Ward" appears to be only a given middle name and her proper name is Elizabeth Hamelin.

If the woman who is the grandmother of Gaile O'Connell is the same person who married Harry DeGong and is the mother of Fleury DeGong \ DeJong, then the proper First Nation for Gaile O'Connell to direct her application for membership is Driftpile. There is not and never has been any connection with Sawridge.

¹ For further research if more Driftpile annuity paylists or summaries are available. +

Elizabeth Ward #65

There is also "Elizabeth Ward #65." She is placed on the Sawridge payroll in 1941 "Girl Trans. from No. 118 D'pile [Age 20, which would make her born around 1920.] Although she is described as a "girl", she enters as a "woman". She married Colin Courtoreille (half-breed) on August 5, 1947, and is dropped from the payroll.

An examination of the Drifpile paylists indicates that she became #118 when she was moved from the list of Johnny Chalifoux. This fits the theory that at the time of her birth, the then unmarried parents (Egbert Ward and Mary Chalifoux) placed the paper with a family in Drifpile. If the parent of Felix Chalifoux is Johnny Chalifoux, and Felix is actually the natural father of Elizabeth (as the payroll implies), this would explain why Elizabeth was raised in the Chalifoux family, but when it was time to have her own number, she was moved to the First Nation of her legal father, Egbert Ward, namely Sawridge First Nation. None of this has anything to do with the Elizabeth Ward who is the grandmother of Gaile O'Connell.

TREATY

No. 1000

380

377
Kinnosay Band Paid at Shippagan

July 5 1924

No.	NAME	AMOUNT	DATE	REMARKS	SIGNATURE OF RECEIPT	Date	
						Month	Day
49	Through Account	16 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1923					
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51	Amelien	1112	5.25.7				
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83							
84							
85							
	Census Account		26, 27, 28, 29, 30, 31, 1924				

Remained by logs from #21
Paid to #21 - Aug 6 1927
Paid manual to #21 manual

paid done

paid done

paid done

paid done

2 logs - 1 paid from #21

paid done

paid done

paid done - by done

Printed Oct 1, 1924

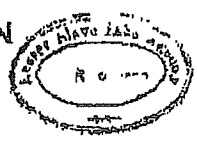
Remained by logs
Paid to #21 - Aug 6 1927

s.19(1)

Indian Affairs, Treaty Annuity Payers
Trustees No. 6, 7, 8, 12 and 11, Part 2, 1924
(R.S. 10, Volume 9072)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

APPLICATION FOR ADMISSION



To the
Deputy Superintendent General
of Indian Affairs,
Ottawa, Canada

September 14th 1931

This is Exhibit "J" referred to in
Affidavit of
Gail Oronell
Sworn before me this 21
of May A.D., 1931
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Andrew Pyper
Barrister & Solicitor

Sir,
I hereby make application for admission of the undermentioned child into
the St. Andrews Indian Residential School; to remain
therein under the guardianship of the Principal for such term as the Department
of Indian Affairs may deem proper.

Indian name of child.....
English name Elizabeth David
Age 19
Name of Band Huron Huron
No. of ticket under which child's annuity is paid 2
Father's full name and No. 2 Bernard Halcrow (Guardian)
Mother's full name and No. 2 Louise Louise
Parents living or dead.....
State of child's health Good
Religion Roman Catholic
Does applicant speak English? No
Previously attended..... school for..... years

Bernard Halcrow (Guardian)
(Signature of Father)

Note—If mother or guardian signs, agent must forward full explanatory notes.

I hereby certify that the above application for admission has been read over and interpreted to the parent or guardian and that the contents were understood by him or her and that I witnessed his or her signature to this document.

I recommend the admission of the above child, who is of good moral character and is eligible to be admitted as a grant-earning pupil.

(Signature)
Signature of Missionary or other Witness Agent

*Principal or other official of the school must not sign as witness.

Note—All the above particulars must be fully given, especially the "Name of Band", "No. of ticket under which child's annuity is paid" and "Religion." The minimum age for admission is seven (7) years, except in the case of an orphan, illegitimate or neglected child. When application is made for the admission of such cases, full particulars should accompany the application.

Form No. 21. (over)

U48-071195 (000-000)

WFL-071195/1

A0223724_2-000021

Agency
School
108

CERTIFICATE OF HEALTH

Annulity Ticket, Name and Number and Hand of Parent or Guardian:-

Candidate's Name Elizabeth Ward

Age 13

Height 5 feet 1 inch

Weight 117 lbs

State defects of limbs, if any none

State defects of eyesight, if any none

State defects of hearing, if any none

State signs of scrofula or other forms of tubercular disease, if any none

Describe what cutaneous diseases, if any none

State whether subject to fits no

State whether child has had small pox no

State whether vaccinated, and if so, in what year yes / vaccinated today 10/15/43

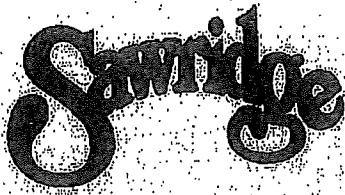
Is this candidate generally of sound and healthy constitution, and fitted to enter an Indian School

Candidate generally of sound and healthy constitution and fitted to enter an Indian school

I certify that I have made a personal examination of the above-named applicant, and that the answers set down by me are correct.

M.D.

N.B.—No child suffering from scrofula or any form of tubercular disease is to be admitted to school; if in any special case it is thought that this rule should be relaxed, a report should be made to the Department setting forth the facts.



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

Gail O'Connell
Sworn before me this 21 day
of May A.D., 2015

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

Andrew Phipps
Barrister & Solicitor

January 22, 2004

Ms. Gail O'Connell
3 Dodge Avenue
Red Deer, Alberta
T4R 3H6

Dear Madam:

RE: Band Membership Application

Further to your request of December 19th, 2003 and January 14th, 2004, enclosed please find the Sawridge Indian Band Membership Application form. Upon completion please forward same along with a copy of your status card.

If you should have any questions or concerns, please do not hesitate to contact us.

Yours truly,

SAWRIDGE BAND

Per:

Michael R. McKinney, B. Comm., LL.B.
Executive Director



REGISTERED MAIL

October 31, 2012

Gail E. O'Connell
3 Dodge Avenue
Red Deer, Alberta
T4R 3H6

Dear Ms. O'Connell:

RE: Membership Application

Your application for membership in the Sawridge First Nation has been reviewed by the Council. ~~Please take notice that the Council has denied your application for Membership in the Sawridge First Nation.~~ This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

- 1) You claim a connection to the Sawridge First Nation through Rosina Lindberg. No information was provided about Rosina Lindberg that would establish that she was ever a Member of the Sawridge First Nation before Bill C-31, or if she was a Member of the Sawridge First Nation, how she ceased to be a Member of the Sawridge First Nation. We do not have information about Rosina that would connect her to Sawridge. Rosina was born in 1935. Your Application indicates that Rosina Lindberg's mother was Elizabeth Ward and that she lost her status when she got married. Elizabeth Ward appears to have been on the Sawridge Pay list once in 1920, but then appears on the Sucker Creek and Driftle pay lists. We believe that your connection is with the Sucker Creek or Driftle First Nation.
- 2) You do not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 3) Even if you had shown a connection to the Sawridge First Nation the Council concluded that it would not be compelled to exercise its discretion to add your name to the Membership List as it did not feel, in its judgment, that your admission into Membership of the First Nation would be in the best interests and welfare of the First Nation. The Council considered your commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the First Nation and your character and lifestyle in making this determination.

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,
SAWRIDGE FIRST NATION
Per:


Michael R. McKinney
Executive Director

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

Gail O'Connell

Sworn before me this 21 day
of 2015 MAY, A.D., 2015


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

Andrew Magper
Clerk & Solicitor

TAB 2

SWORN STATEMENT OF HEATHER JACQUELINE POITRAS


I, Heather Jacqueline Poitras, of the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

Family Background and Roots in the Sawridge Band

1. I am an individual who resides in the City of Edmonton in the Province of Alberta and, as such, have personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born July 24, 1970. I have two older sisters, one late older brother, one younger sister, and two adopted younger brothers. We have the same parents. Elizabeth (Potskin) Poitras (hereinafter called "mother") was legally married when she had all of us.
3. My late father, Homer Poitras, could have been a registered Treaty Status Indian and a member of the Kehewin Cree Nation, but chose not to.
4. The effect of my parent's marriage was to enfranchise my mother from being a Treaty Status Indian and Band Member of the Sawridge Band (hereinafter referred to as the "Band") and to exclude all of us from being recognized as Band Members.
5. My grandmother, Jean Potskin proudly lived on the Band reserve for decades until her death, as did many of my relatives including my grandfather who was a Band Councillor.
6. My grandmother sought my inclusion as a Band Member, despite concerns of reprisal. Her efforts for our inclusion were unsuccessful and certain members of the Band made it well-known that they disliked her. She resisted inequality, unfairness, discrimination and hierarchy that demands silent obedience. She was always spirited this way. For example, she told us the story of the police coming to her home on the reserve to take the children to Indian Residential School which she resisted and prevented.

1985 Bill C-31

7. When Bill C-31 was passed in 1985 I became a registered Treaty Status Indian and was given the Band number. But the Band had control of its Band List and I was never added to the Band List. During this period, my mother applied for all us to be included as Band Members, but was unsuccessful in accomplishing this while we were minors.
8. I am informed by my mother that other children in the same circumstance as me, such as Vera Twin-McCoy, somehow retained their registration as Treaty Status Indians and full Band Membership even though their mothers married non-Indians. At least two of Vera's children were fathered by a non-Indian man yet all three children are Treaty Status Indians and Band Members. Vera McCoy married Jody McCoy who is the father of two of her children. Jody McCoy was a non-Indian with no aboriginal descent. I




wonder why I am treated differently, especially when both my parents are of Aboriginal descent and Cree speaking.

9. My mother and my older sister, Tracey Poitras-Collins, are Band members. I am a Treaty Status Indian, but do not yet have Band Membership even though I applied to the Band after I became an adult.
10. My mother was Court ordered onto the Band List, along with others, by Justice James Hugessen of the Federal Court by Order dated March 27, 2003.

My Experience Applying to the Band for Band Membership

11. As an adult, in the 90's, I requested a Band Membership application form, but did not complete it or submit it because the form was so long, inappropriate, offensive and invasive. A few years ago, I again requested a new application form, because I was informed that the application form changed. I completed it and couriered it to the Band office in March 2013.
12. I contacted the Band in September 2013 via a registered letter to notify them of my new home address. In that letter I asked for information on the application process and the status of my application to become a recognized full Band Member.
13. On October 2, 2014, my oldest son, Theoren Gregory Poitras, was murdered. I sent another registered letter to the Band to update my Band Membership application. I have not received any response from the Band Chief or Council, or the Band's legal counsel, Mike McKinney.
14. I recently learned from various band members including my mother, that the Chief's son, Roy Twinn, whose mother is a non-Indian and not of Aboriginal descent:
 - o is now a Band member;
 - o voted in the February 17, 2015 election;
 - o applied for Band Membership in 2013, the same year I submitted my application as an Aboriginal person of descent from both parent's;
 - o within months of applying, his application was approved; and,
 - o just months before the February 17, 2015 election, was admitted into Band and now has Band Membership and voting rights;
15. There are only three minor children who are Band members and all three are the children of elected Band officials Roland Twinn and Winona Twin. They admitted their children during their 2011-2015 term as Band Chief and Band Councillor. It appears their children did not have to wait. This preferential space and discriminatory system determines who is admitted into band membership and who isn't;


- 
16. The elected Band Chief and Council have refused and/or failed to make a timely, unbiased and fair decision on my completed application, thus denying me the right to be a Band Member and vote in Band elections like their children.

Others In Like Circumstances

17. My two daughters, Anastasia Chanel Poitras (4540019902) and Tamara Jacqueline Poitras (4540019903), are Treaty Status Indians and should belong to the Band. Like my mother, I want my children to be accepted as Band members. I am also proud that my first grand-daughter, Carmella Mary, was born on March 18, 2015. Her father is a Treaty Status Indian, and we want her to become a Band Member too.

18. I am aware of other members of the Potskin family who applied for Band Membership. They too have waited a number of years for a response. During the wait they have received little or no response from the Band or if a decision was made, their application was denied by the Chief and Council.

19. I am aware of at least one case, Alfred Potskin, who was denied membership by the Chief and Council who considered his commitment to and knowledge of the history, customs, traditions, culture and communal life of the Band and his character and lifestyle. The Chief and Council did not give Alfred an interview or any fair process to determine if the subjective criteria they used to deny his application were correct, true and fair. My uncle Alfred was by all accounts a loving, kind, sober and hardworking man. At the time he was denied band membership by the Chief and Council, he was suffering from cancer.

- 
20. I am aware there are 8 or more Potskin family members who have applied including:

- I. Crystal Poitras-John;
- II. Nicole Poitras;
- III. Gina Donald;
- IV. Tracey-Poitras Collins submitted a Band Membership application three times, over a 28 year time-frame before she was finally admitted into Band membership after a grueling and biased process:
 - The first application was submitted to the Band in 1985. The Band did not acknowledge her application, offered no follow up, and failed to respond to Tracey's inquiries, despite her many calls to the Band office.
 - The second application was hand-delivered January 6, 2005 to the Band office with no subsequent response from the Band.

TAB 3

SWORN STATEMENT OF GINA DONALD

I, Gina Donald, of the City of Edmonton in the Province of Alberta, SWEAR AND SAY THAT:

Family Background and Roots in the Sawridge Band

1. I am an individual who is resident in the City of Edmonton in the Province of Alberta and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born September 17, 1979. I have two older brothers. We have the same parents. My mother, Lillian Potskin (hereinafter called "mother") was 5 months pregnant with me when she married my father, Lyle Donald, now a registered Indian and a member of the Mikisew First Nation. At the time, he was not recognized as an Indian.
3. The effect of their marriage was to enfranchise my mother from Indian status and membership in the Sawridge Band (hereinafter referred to as the "Band") and to exclude me from being registered as an Indian and Band Member like my older brothers Jonathon and Brent, who were registered and retained their status and membership despite the marriage of our parents.
4. After my birth, my mother received and signed enfranchisement papers and later upon her enfranchisement, a per capita payment after my birth.
5. Following my birth and before 1985, my mother applied for my band membership many times but these efforts were unsuccessful.
6. I am informed by my mother that other children in the same circumstance as me, such as Vera Twin-McCoy, somehow retained their registration as an Indian and membership in the Band even though our mothers married non-Indians and our fathers were non-Indian. Vera Twin-McCoy's three children are registered Indians and Band members even though the two children fathered by Vera's husband, Jody McCoy, is a non-Indian. I wonder why I am treated differently.
7. My mother and brother, Jonathon Potskin, are presently Band members. My brother, Brent, was a Band Member until he enfranchised his membership in or around 1995. I am a status Indian, but do not have membership in any Band.

1985 Bill C-31

8. The Band passed Membership Rules in 1985 and took control of its Band List. My mother was not added to the Band List by the Band.
9. After Bill C-31 my mother applied to the Band for me to have Band Membership while I was still a minor. The form used by the Band was for adults and not appropriate for children.

10. My mother was Court ordered onto the Sawridge Band List, along with others, by Justice James Hugessen of the Federal Court by Order dated March 27, 2003.

My Experience Applying to the Band for Band Membership

11. When I became an adult I first applied to the Band Council in the 1990s for membership in the Band. Sometime later, the Band advised me they had lost my application. I reapplied for membership in the Band in 2005. Once again, I was advised that my application had been lost by the Band.

12. My grandmother, Jean Potskin, who lived until her death on the Band reserve, was a Band Member and sought my inclusion as a Band Member despite concerns of reprisal. Her efforts were unsuccessful and certain members of the Band made it well known that they disliked her.

13. I applied yet again to the Band Council for membership on February 27, 2009. On September 9, 2013 and again on December 30, 2013. The Band Council requested that I modify my application. I complied with these requests and modified my application as requested. To my knowledge, my application is complete per the Band's requested modifications since at least 2013.

14. Since December 2013, I have not heard from the Band Council in regards to my application for membership in the Band.

15. I've called the Band office many times seeking an update on the status of my application, but have not received any information. I have not received a return phone call from the Chief or Council, or the Band's legal counsel, Mike McKinney.

16. I recently learned from my mother that the Chief's son, Roy Twinn, whose mother is a non-Indian:

- o is now a Band member;
- o voted in the February 17, 2015 election;
- o applied for Band Membership in 2013;
- o within months of applying, his application was approved; and,
- o just months before the February 17, 2015 election, was admitted into Band membership;

17. There are only three minor children who are Band members and all three are the children of elected Band officials Roland Twinn and Winona Twin. They admitted their children while they held office as Chief and Councilor. It appears their children do not have to wait. This preferential space and system determines who is admitted into band membership and who isn't;

18. I've been denied the right to vote in many Band elections by the refusal or failure of the Chief and his Council to make a decision on my completed application.

Others in Like Circumstances as Me

19. My brother Brent Potskin has a daughter, Elizabeth, born Aug 4, 1994. My brothers Brent and Jonathon Potskin went to the Band office to apply for Elizabeth's band membership. At the time of Elizabeth's birth her father Brent was a band member. Yet Elizabeth was not added to the Band List. Since she turned 18 years of age, in 2012, I believe Elizabeth applied for membership but is still not a member.
20. The children of two women, members of the Twin family, were admitted without delay into Band membership. These are the children of Frieda Draney and Clara Midbo.
21. Other members of the Potskin family have applied for Band Membership. They too have waited a number of years for a response. During the wait they have received little or no response from the Band or if a decision was made, their application was denied by the Chief and Council.
22. I am aware of at least one case, Alfred Potskin, who was denied membership by the Chief and Council who considered his commitment to and knowledge of the history, customs, traditions, culture and communal life of the Band and his character and lifestyle. The Chief and Council did not give Alfred an interview or any fair process to determine if the subjective criteria they used to deny his application were correct, true and fair. My uncle Alfred was by all accounts a loving, kind, sober and hardworking man. At the time of his denial, he was suffering from cancer.
23. I am aware there are other Potskin family members who have applied including:
 - i. Crystal Poitras-John;
 - ii. Nicole Poitras;
 - iii. Heather Poitras;
 - iv. Tracey-Poitras Collins submitted a Band Membership application three times, over a 28 year time-frame before she was finally admitted into Band membership after a grueling and biased process:
 - The first application was submitted to the Band in 1985. The Band did not acknowledge her application, offered no follow up, and failed to respond to Tracey's inquiries, despite her many calls to the Band office.
 - The second application was hand-delivered January 6, 2005 to the Band office with no subsequent response from the Band.
 - The third application was submitted in 2012. The Chief and Council denied her application. Tracey's Appeal was heard January 26, 2013, and narrowly succeeded because not enough of the Chief and Council's supporters were present. The Chief and Council participated fully in Tracey's Appeal including the secret voting.

TAB 4

SWORN STATEMENT OF LARRY CARDINAL

I, Larry Cardinal, retiree, and adoptive father of Kieran Cardinal, of the Hamlet of Calling Lake, in the Province of Alberta, do solemnly swear that:

Family Background

1. I am the adoptive father of Kieran Trevor Cardinal, (hereinafter referred to as Kieran) born March 20, 1985.
2. Sandy Cardinal nee Schroder (hereinafter referred to as Sandy) is Kieran's adoptive mother.
3. Kieran was the biological son of Ardell Twinn (hereinafter referred to as Ardell) and Pamela Masuda (hereinafter referred to as Pamela) and given up for adoption at birth.
4. Pamela was 15 years old when she became pregnant and 16 years when she gave birth to Kieran.
5. Pamela lived with Sandy and myself for the last 6 months of her pregnancy. Sandy is Pamela's maternal Aunt and sister to Pamela's mother.
6. Pamela thought of giving up her baby to Children Services but asked us to adopt her baby which we were honored to do and did. Kieran is my only and much loved child.
7. Ardell abandoned Pamela shortly after she became pregnant and thereafter engaged in avoidance and denial patterns. He was enabled by leaders of the Sawridge Band (hereinafter referred to as the "Band") that he was the father of Kieran and his lineage entitled Kieran to be on the Band List.

Sawridge Band Membership

8. At the time of Kieran's birth the 1970 Indian Act rules were in force and had not yet been amended by Bill C-31, enacted on or about June 27, 1985.
9. Kieran as the illegitimate child of a male Indian should have been on the Band list at birth.
10. Kieran's biological mother Pamela is now a registered Indian. Both of Kieran's biological parents are registered Indians and Ardell Twinn is a member of the Band.
11. On July 4, 1985 the Band was given notice by the Minister of then Indian Affairs (hereinafter referred to as "INAC") that the Registrar was transferring the Band List to the Band, thereafter administratively responsible for maintaining the List.
12. I am aware of others not on the Band List who the Court ordered be put on the Band List without having to apply to the Band. Sandy and I talked about this wondering why Kieran had to apply.
13. In December, 1985 Kieran's adoption was finalized.
14. On or about August 16, 1988 I applied to Indian affairs for Kieran's treaty status. I received a letter from INAC requesting Ardell's declaration he was the biological father of Kieran.

22 Years of Avoidance, Denial, Uncertainty

15. From 1988-1999 I tried many different ways to get the declaration from Ardell, all of which failed. The avoidance and denial patterns included:
 - a. Ardell being very hard to contact.
 - b. Ardell and the Band not returning calls.
 - c. When I was able to reach Ardell he claimed the Band did not want him to sign the declaration.
 - d. When I contacted the Band, their story was that the Declaration had nothing to do with them and it was Ardell's decision.
16. In June 2000 I hired a lawyer from a law firm, McBean Becker Cochard, to seek a Court order to compel paternity testing.
17. On or about February 15, 2001 the paternity tests were presented to the Court who declared Ardell the biological father.
18. On March 16, 2001 Kieran was finally registered as a Treaty Indian under 6(1)(a) of the Indian Act.
19. In April 2001 I attended the Band office requesting a band membership application form that was some 43 pages long.
20. In May 2001 Sandy had a telephone conversation with then Chief Bertha L'Hirondelle, a Twinn family member, to discuss the membership application form and process. Sandy kept detailed notes which I've reviewed. One topic discussed was the inappropriateness of many questions which requires essays. Kieran was a minor at this time. Bertha L'Hirondelle indicated that the Chief and Council were re-evaluating the application for minors. Bertha L'Hirondelle questioned Kieran's right to membership as he did not know the Twinn family and denied knowledge of occasions when Kieran was in the community. Bertha L'Hirondelle also suggested Kieran did not have a right to be on the Band List, as the Band decides, and we should talk to someone who can inform us of this. Bertha L'Hirondelle refused to offer her support for Kieran's application. Notes of that conversation were documented and retained.
21. In October 24, 2001 I called then Chief Bertha L'Hirondelle about the membership application. I was told we did not need to include the requested passport, birth/death certificates as Chief and Council were familiar with all the parties concerned. That conversation was documented.
22. In February 2003 I hand delivered the completed application and reference letters under a cover letter dated February 24, 2003 signed by Kieran to the Band office. I asked the Band secretary to bring this to Ardell's attention, a Council member, and that it go before the next Council meeting. Attached as **Exhibit A** is Kieran's February 24, 2003 letter to the Band without the enclosures.
23. In July 2003, I spoke to Roland Twinn, now Chief of the Band whose Aunt, Bertha L'Hirondelle, remained on Council, about the status of Kieran's application. Roland Twinn claimed the Band had no knowledge of the application and Ardell did not bring it to Council. I travelled to Slave Lake from Fort McMurray and hand delivered another copy to Roland Twinn.

24. On or about December 10, 2004 Kieran was now an adult and wrote the Band asking for a copy of the Membership Rules and authorizing me to communicate and receive information on his behalf.
25. From July 2003 to May 2006 I and Kieran regularly made inquiries of Ardell, Bertha L'Hirondelle, Roland Twinn and in house lawyer, Mike McKinney about the status of Kieran's application. Again they were virtually impossible to get a hold of. When I did make contact the answer was the same - the Band is busy with other matters and will get to it eventually.
26. In May 2005 I contacted Catherine Twinn out of frustration. She undertook to bring Kieran's application to the attention of Mike McKinney and the Chief and Council and asked a series of questions as to who I had contacted.
27. On or about June 2005 I contacted Catherine Twinn again letting her know I contacted Mike McKinney about a meeting with Kieran and the Chief and Council.
28. From June 2005 forward it was the same pattern - repeated calls and/or communications to the Band with no response.
29. March to April 2006 Kieran and I called the Band many times to check on progress. We always got the same answer - the Chief, Council and Mike McKinney are in meetings or out. We left many messages but not one of them replied. In particular, Kieran called Chief Roland Twinn, his uncle, who did not reply.
30. In April 2006 I again drove to Slave Lake and attended at the Band office. I was told Bertha L'Hirondelle and Roland Twinn were out of town. I ran into Paul Twinn, Ardell's brother, who was on his way to see Ardell. I gave Paul Twinn my card with my cell phone number and asked him to have Ardell call me. Ardell never called me.
31. Kieran had graduated from high school and was interested in taking a management degree and music courses at Mount Royal College, being very talented in music. He was living on his own and discovering how tough it is to be on his own, and simultaneously attend school. I wanted to talk to the Band about what support there might be for Kieran to go to school. I was helping Kieran financially but my capacity to do so was very limited.
32. At this point we were totally frustrated and ready to again take legal action. Four years had passed since the application was submitted. I had incurred significant legal costs in relation to Kieran's paternity and application process. I advised Roland Twinn I did not want to take legal action and was told to "*go ahead, it's just another law suit*".
33. Ardell made no effort to build a relationship with Kieran and had only seen him once, shutting Kieran out, as had influential members of Ardell's family. Kieran tried to communicate with Ardell but gave up. Kieran had lived in Slave Lake for 2 years and no one from the Twinn family talked to him when they saw him.
34. In May, 2006 I again contacted Catherine Twinn apprehensive about involving her but with nowhere else to turn. I was aware Catherine Twinn had invited Kieran to dinner and ordered by Ardell, who had been a Band Councilor, to stay away from Kieran. I explained to her that the Band officials were ignoring us, that we took a lot of time to fill out the 43 page Questionnaire and the Band should have the courtesy of letting Kieran know where he stands. Kieran, Sandy and I fully believed Kieran was entitled to band membership, did not understand why he had to apply and why the process was so difficult. I was ready to go to Court.

35. I was informed by Catherine Twinn she again raised the issue of Kieran's membership with the Band and its advisors.
36. In mid-August, 2006 Kieran got a call from the Band office to set up an interview September 27, 2006. Kieran was now interested in taking an Instrumentation Technologist Program at SAIT.
37. On about September 27, 2006 Kieran was finally granted an interview of about 45 minutes with Mike McKinney, Chief Roland Twinn, Councilor Bertha L'Hirondelle and a male person. Kieran immediately reported to me that he was not impressed, felt it was a waste of his time driving 6 hours one way and taking time off work and was upset at what had occurred:
- Roland Twinn and Mike McKinney did all the talking, starting off by asking Kieran what he wanted, what he was after, if it was a cheque he wanted;
 - Kieran was also asked many questions about me;
 - Kieran would have to come back for a 2nd interview with all the band members.

I immediately called Mike McKinney for clarification on questions asked about me, what happens next and a time line. As usual, I never got a reply back but I kept calling leaving messages.

38. In about the second week of January, 2007 Kieran had his second meeting, again immediately reporting to me about what happened as follows:
- Present from the Band was Ardell, his sister Arlene Twinn, Elder Walter Felix Twin, and two other people, including possibly Paul Twinn;
 - With the exception of Elder Walter Felix Twinn, Kieran was asked many questions by some of those present. The line of questioning was hurtful and upsetting, rooted in suspicion that he just wanted membership for financial gain;
 - He expressed his anger at how he felt he was being treated without respect or open mindedness, as though he was not a human being and not family in any way;
 - The absence of relationship they blamed on Sandy's family who allegedly limited Kieran's contact with them.
39. Shortly after this 2nd interview, in mid to late January, 2007 Kieran was asked by the Band for a copy of his birth certificate which he provided.
40. On April 25, 2007 Kieran received a call from Chief Roland Twinn that his application for membership had been accepted.
41. If we had not persisted, spending time, money and resources including hiring lawyers, Kieran's exclusion from birth to then would undoubtedly have continued. It took **22** years of dogged persistence to have his name added to the Band list.


Aftermath of Band Membership and Healing the Trauma

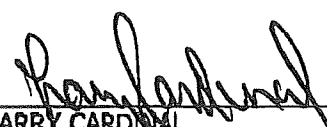
42. By the spring of 2007, with Kieran living in Calgary, we decided to sell our home in Fort McMurray. I received a call from David Midbo asking for help to secure an apprenticeship in Fort McMurray and I helped him. David Midbo is the son of Clara Midbo, Bertha L'Hirondelle's sister and Roland Twinn's Aunt. Clara Midbo and her sister Frieda Draney applied for Band Membership in February 2001 and by April, 2002 were admitted into membership. Their five children applied for band membership in March, 2003 and were admitted into band membership by April, 2003.
43. While Kieran was working as an instrument technician in Calgary, he was taking a fourth class power engineering course on his own and asked the Band for tuition and books fees of \$700. He was denied this assistance.

44. In March, 2010 Kieran was hit with a large tax bill for a web based company he ran selling and producing music. This ate up all his savings for school, delaying an April start until at least October, 2010. Kieran was devastated. He now considered enfranchising from the Band like former members, including his biological paternal grandmother, Terry Auger. It was well known that the Band's per capita payouts to then enfranchising Band members exceeded \$600,000 in today's dollars.
45. I urged him to carefully consider such a drastic step. However Kieran had lost confidence and trust in the Band's leaders who also ran the Trusts and influenced the Lesser Slave Lake Indian Regional Council. To him, they were a source of trauma he needed to remove from his life. They had unreasonably delayed adding his name to the Band List by engaging in administrative exclusion and discrimination. They had demonstrated they had no interest in supporting, knowing, understanding, including and relating to him.
46. To date, there is no relationship between Kieran and Ardell or members of Ardell's family. Kieran deleted Ardell from his Facebook, as have I.
47. By 2012 Kieran was still considering surrendering his band membership. The Band introduced a Repeal of the Per Capita Pay Out on the Surrender of Membership Act, in October, 2013 which was passed in early 2014.
48. I could not understand – and still don't – why Kieran was not simply put on the Band List by the Band leaders' whose actions demonstrated they were incapable of running the Band's membership affairs. I lost confidence and trust in the Band's handling of membership and feel their misconduct limits whatever right they claim to decide membership. There is no certainty or fairness for applicants like Kieran including those with a clear right to be added to the Band List.
49. Kieran has abandonment and trauma issues from the maltreatment he experienced, before and after birth, including denial and rejection by his biological father and other Twinn family members, because his biological mother was too young to keep him and our traumatizing experience having his name included on the Band list which should have been from birth.
50. He has anxiety and anger as a result of this history which is slowly healing. He is determinedly making his own way forward as an adult. He is gainfully employed, in a committed and loving relationship, has many hobbies, works out regularly, takes care of his health and has assumed home ownership. He receives no help from the Band and very little from the Trusts although he is a beneficiary of both Trusts. He was a beneficiary of the 1985 Trust before his name was added to the Band List but never received benefits from that Trust.
51. I swear this as evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the
 Hamlet of Calling Lake,
 in the Province of Alberta
 the 1st day of April, 2015

Clarence Cardinal
 A Commissioner for Oaths in and
 for the Province of Alberta

Clarence Cardinal
 A Commissioner for Oaths
 in and for the Province of Alberta
 M.D. of Opportunity No. 17
 Councillor
 Expiry Date: October 2017
 Signature: 


 LARRY CARDINAL

February 24, 2003

KEEP COPY

Chief Bertha Twinn/L'Hirondelle and Council
Sawridge Band
Box 326
Slave Lake, Alberta
T0G 2A0

Dear Chief and Council

This application for Band Membership was completed by myself (Kieran), my Dad (Larry Cardinal), and my Mom (Andi Cardinal). Being a minor I found that a lot of the questions do not apply to me and are more suited and applicable to adults. We have tried to answer all of the questions that apply to my situation and have noted those that are not applicable to me.

Also to note, that during a telephone conversation between my Dad and Chief Bertha on October 24, 2001, my Dad was directed by Chief Bertha that we did not need to provide a passport, birth, marriage, and death certificates as asked for in the application. Chief Bertha stated that she and the Council are familiar with all the parties (family) on my application. They also concluded that a lot of the questions do not pertain to me as I am a minor and to fill out only those that we can.

I am looking forward to hearing from the Chief and Council on your decision or approval of my application to the Sawridge Band.

Yours sincerely

Kieran T. Cardinal

RECEIVED
DEC 19 2003
Sawridge

Delivered by
Larry Cardinal

Cc: file

This is Exhibit "A" referred to in the
Sworn Statement of
Larry Cardinal
Sworn before me this 1st day
of April A.D., 2003
Clarence Cardinal
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Clarence Cardinal
A Commissioner for Oaths
in and for the Province of Alberta
M.D. of Opportunity No. 17
Councillor
Expiry Date: October 2017
Signature:

TAB 5

SWORN STATEMENT OF DEBORAH SERAFINCHON

I, Deborah Serafinchon, office worker, and daughter of the late Walter Patrick Twinn, of the City of Edmonton, in the Province of Alberta, do solemnly swear that:

Family Background

1. I am the eldest daughter of the late Walter Patrick Twinn, Settlor of the Sawridge Band Inter Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the "Trusts"), and former Chief of the Sawridge Band (hereinafter called the "Band") and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. I was born on October 2, 1961, the illegitimate daughter of my late father Walter Patrick Twinn (hereinafter called "Father") and Lillian McDermott (hereinafter called "Mother") of Faust. Both were Indians and attended Indian Residential School at Grouard.
3. At birth I was placed into foster care and grew up in that system. I never felt I belonged and struggled with knowing my identity, where I came from, who I came from and what caused me to grow up in foster care. I experienced abuse.
4. After I became an adult, I searched for my birth parents.
5. I discovered my biological mother first; who informed me Walter Patrick Twinn was my Father. Both of my parents died young, shortly after I found them. My Father was born March 29, 1934 and died October 30, 1997.
6. I contacted my Father in 1996, the year before he died and we spoke a number of times, but before we could meet, he died suddenly. The day he died, I fell in my bathroom and have been wheel chair bound since. I've had 3 back surgeries.
7. About a year after his death, I was contacted by Catherine Twinn, my Father's widow. I am informed by Catherine Twinn that my Father told her shortly after they married he had fathered a little girl he had no contact with, wondered about and had offered to marry my Mother. My mother independently confirmed the marriage offer.

Taking Action to Establish Meaning and Recognition, Identity, Security & Connectedness

8. Catherine Twinn and I began a relationship. However, I was more interested in building a relationship with my Father's five children, closest in age to me, from his first marriage to Theresa Auger. They are Irene Twinn, Roland Twinn, Arlene Twinn, Ardell Twinn and Paul Twinn. Arlene first contacted me by mail in 2000 and I met Irene Twinn and Ardell Twinn around Christmas 2001.
9. Initially, I had a positive reception from Arlene Twinn and Ardell Twinn and a conflicting reaction from Irene Twinn.
10. My primary relationship was with Arlene Twinn and through her, incidental contact with her twin brother, Ardell Twinn with whom no relationship emerged.

11. I have no relationship with Roland Twinn and only met him once, accidentally, in a Toys R Us Store when I was with Arlene Twinn.
12. Paul Twinn refused to be in the same room as me when I was in Arlene Twinn's house. I have never had a relationship or contact with Paul Twinn.
13. I quickly learned they hated Catherine Twinn and had no relationship with her or their young half-brothers.
14. I felt caught in the middle. I felt I had to choose between having a relationship with the first or second family, that the first family would reject me if I had a relationship with the second family.

Irene Twinn

15. Irene Twinn in particular made it clear I could not fence sit – telling me I had to choose one family or the other. Irene Twinn had an extreme hatred towards Catherine Twinn. This made me wonder what was wrong with Catherine Twinn to be so hated.
16. I chose my siblings from the first family and for years tried to build a stable relationship with those of them who were interested.
17. One Christmas I and my 3 children but not my husband stayed with Irene Twinn and her 2 sons. Christmas Eve, Irene Twinn told me that I am not liked by the Twinn family; I am not and never will be a part of the family; I should stop trying to belong; and she is the oldest sibling and protector of her siblings.
18. Christmas morning my daughter Lisa and her brothers woke up very early, accidentally awakening Irene Twinn, who became very angry. Irene Twinn verbally attacked me, my parenting skills, and my children she called spoiled rotten and inconsiderate for waking her up.
19. My daughter Lisa called her father who quickly came and took us home. I left crying and never spoke to Irene Twinn again. I was shocked at how cruel Irene Twinn could be while coating cruel words with facial smiles and a pretext of friendliness.
20. I had no further contact with Irene Twinn.

Arlene Twinn

21. My relationship with Arlene Twinn lasted from October 2000 until July 2010.
22. Arlene Twinn was forced to meet me August 2000 before she was ready. I had attended my mother's funeral in August 2000. Elsie Stenstrom was a friend of my mother and Arlene Twinn's mother. At the funeral Elsie Stenstrom gave me a sympathy card from Arlene Twinn. We had corresponded prior but were not ready to meet in person.
23. On October 13, 2000 I went to Slave Lake to put a cross on my father Walter's grave. I stopped at Elsie Stenstrom's home who asked if i wanted to meet Arlene Twinn. I said no, she is not ready. Elsie Stenstrom took me to the restaurant in the Sawridge Truck Stop, left the table and unbeknownst to me, went to the C-Store at the Truck Stop where Arlene Twinn worked and brought her to meet me. That was the first time we met in person.

24. I experienced at least 2 volatile occasions where Arlene Twinn suddenly turned on me, leaving me baffled. Once when Arlene Twinn thought I, unemployed at the time, was trying to get a job with the Sawridge Group of Companies through Catherine Twinn. I had shared with Arlene Twinn that I had given my Resume to Catherine Twinn asking if she knew of any jobs. Arlene Twinn screamed at me assuming I wanted a job with the Sawridge Group. I reassured her I did not want a job with Sawridge Group, had no intention of moving to Slave Lake and was seeking help for a job search in Edmonton, specifically not with the Sawridge Group of Companies.
25. The other occasion I was yelled at by Arlene Twinn remains a mystery. I still do not know what I did but I apologized, and about 1 week later Arlene Twinn called and apologized.
26. In July 2010 I and my family went to Slave Lake on Arlene Twinn's birthday and checked into a Motel. Arlene Twinn's son Chase swam with my children during the day. That night I met Arlene Twinn at the Fairgrounds and watched the fireworks. Arlene Twinn did not sit with me, sitting with Haitina Twinn, Roland Twinn's wife. Arlene Twinn made little effort to spend time with me and I felt rebuffed. The next day I called her to say goodbye and felt coldly and angrily dismissed. It was unpleasant. Thereafter, Arlene Twinn deleted me from Facebook and dismissed me from her life. There has been no contact since.
27. My reaching out to my older half siblings led to challenges with my foster family who, hurt, withdrew from me.
28. Today the only members of the Twinn family I have relationships with are Catherine Twinn and her sons, my half-brothers.

DNA Testing, Indian Status, Band Membership & Beneficiary Status

29. During the time Arlene Twinn spoke to me, I had conversations with her whether she, her mother and her siblings would provide blood samples to prove my paternity. I remember washing dishes in Arlene Twinn's kitchen and discussing this. She indicated her Mom was willing however they never acted on it. I bear a striking resemblance to my Father. Because of this, Arlene and Irene Twinn expressed apprehension about me meeting their Mother who they said has negative feelings and thoughts towards my Father.
30. I began to feel it was obvious that the first family would not provide blood samples, so I turned to Catherine Twinn. She and her sons' blood samples proved my paternity, that I am the eldest daughter of Walter Patrick Twinn.
31. Catherine Twinn encouraged me to apply to the Trust and the Band to ascertain my entitlement at birth under the 1970 Indian Act rules that I qualify as a member of the Sawridge Band, being the illegitimate daughter of a male Indian, and a Beneficiary under the 1985 Trust. If I were to apply and be admitted into Band membership I would become a beneficiary of the 1986 Trust.
32. In about 2002 I applied for Indian Status registration through the office of Lesser Slave Lake Indian Regional Council (LSLIRC) governed by a Board of 5 Chiefs, Roland Twinn being one of the Chiefs. The CEO, Al Willier, is Roland Twinn's good friend. I was never registered even though both my parents qualify as Indians. At some point, I was informed by the LSLIRC the DNA result proving Walter was my Father was inadequate and I would need 2 of my Father's sisters to attest I was his daughter. I believed this requirement was impossible and gave up pursuing Indian Status registration.

33. I had raised the issue of applying for Band membership with Arlene Twinn and was led to believe I would never be accepted into membership because the aunties, my Father's sisters, would never allow it. Discouraged, I never applied and/or finalized my application for Indian Status, Band Membership or Beneficiary status. It was evident to me that any application would upset my half siblings and I put relationship ahead of applying.
34. I have not applied to the Trusts and the Trust Administrator has never contacted me. My half siblings, except Cameron Shirt, are members of the Sawridge Band through our Father, Walter Patrick Twinn.
35. I've been informed by Catherine Twinn and do verily believe that Cameron Shirt applied to the Trust for beneficiary status but his status was resisted and he has never received benefits.
36. I have not applied for band membership for the same reason I have not applied to the Trusts. Some of the principal leaders of the Sawridge Band govern the Trusts, and those like Roland Twinn, have made it clear to me I'm not wanted and my application would be denied. I do not have the resources to challenge this and endure a difficult process.
37. As Walter's daughter, I'd like to be equally included as a beneficiary and a band member as are the children of my Father, his brothers and his sisters.
38. Through my Mother, I have direct lineage to the Sawridge Band. My Mother's Indian Registry number had the Sawridge Band 454 number. My Mother and Father were related which is why they did not marry. At the time they became involved, and I was conceived, they did not know they were related. They later learned they were related after my Father offered to marry my Mother. Not knowing they were related was one of many impacts from Indian Residential School, along with addictions and shortened life spans. I am the "*bruised generation*", deeply impacted by Indian Residential School which continues to alter the course of my life and that of my family.

I swear this evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the
CITY of EDMONTON,
 in the Province of Alberta
 the 1 day of APRIL, 2015

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

Deborah Serafinchon
 DEBORAH SERAFINCHON

Marvin J. H. Braud
 BARRISTER + SOLICITOR

TAB 6

SWORN STATEMENT OF SHANNON TWINN

I, Shannon Twinn, recently of the City of Edmonton, in the Province of Alberta, do solemnly swear that:

FAMILY BACKGROUND

1. I am the daughter-in-law of the late Walter Patrick Twinn, Settlor of the Sawridge Band Inter Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the "Trusts"), and former Chief of the Sawridge First Nation (hereinafter called the "Band") and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. I was born and raised in Slave Lake and resided there all my life until a very recent move in October, 2014 to the City of Edmonton.
3. I am of Aboriginal descent. My mother is a member of the Sinclair family. My late father is also of Aboriginal descent.
4. I am forty years old. When I was 17 years old, in September 1991, I began to cohabit with Ardell Twinn, son of my later father in law Walter Twinn and his first wife, Theresa Maltere Auger.
5. I married Ardell Twinn February 9, 1992, shortly before the birth of our first son Cody Twinn who was born in 1992, followed by our second son, Cory, who was born in 1994.
6. Because the Sawridge Band is so small, there is no choice but to marry someone from outside the Band.
7. At the time of my marriage in 1992, the 1970 Indian Act rules that included the wives of Indian men and their children as members of the Sawridge Band were no longer operating although I knew women in the Band "who had married in" under those rules.
8. The 1985 Trust continues the 1970 Indian Act rules that include me as a beneficiary under the 1985 Trust.
9. I contributed half my life to creating a home and raising a family on the reserve. I worked hard, bringing two children into the world and contributing to my home and community.
10. I separated from Ardell Twinn January, 2012 and left the matrimonial home on the reserve. Being a non-band member of the Sawridge Band I had to leave what had been my home my whole adult life. When my marriage collapsed I did not ask for anything, and no support was offered by Sawridge. I left with nothing and am rebuilding my life.
11. I lived in the Sawridge Staff Apartments on reserve where I paid rent from February, 2012 until mid-September, 2012. I ceased my employment with the Sawridge Group of Companies, owned by the Sawridge Trusts, August 2012. I commenced new employment at the Family Clinic in Slave Lake September 10, 2012. I believe other family members lived in the Staff Apartments and I do not know if they were required to pay rent.

12. After leaving, I had no resources to speak of and never received any support from Ardell Twinn, the Trusts or the Band.

BAND MEMBERSHIP APPLICATIONS OF MY TWO SONS CODY AND CORY

13. Many years ago, I completed and submitted applications for my 2 sons to become members of Sawridge which took many years for the Band to process. They only became members in 2013 when they were 21 and 19. I have no idea why it took so long or what caused the delay. No one from the Band ever explained this to me.
14. As a result of my sons' being admitted into band membership, they are now beneficiaries of the 1986 Trust.
15. I became aware that Sawridge elected leaders started processing membership applications in 2013.
16. I am aware the Band spent millions of dollars on their right to decide membership yet their rules and process of deciding, based on the experience with the applications of my sons, is very poorly done. The delay led to strife, uncertainty and anxiety.
17. I would not apply for Band membership. Under the leadership that was in place for some time, my application would never be accepted. I've had to remove myself from the reserve. On the breakdown of my marriage I had no right to stay on the reserve.
18. Before I left Ardell, he encouraged me to apply for band membership. Now separated from Ardell, I would especially feel uncomfortable and unsafe applying.

SAWRIDGE TRUSTS AND COMPANIES AND INTERACTIONS WITH THE BAND

19. The same people who have majority control over the Trusts have controlled the Band through their elected positions. I was employed by the Sawridge Group of Companies from about 2001 – 2012. I have never received any kind of benefit from the Sawridge Trust.
20. While I was employed by the Sawridge Group of Companies, the Companies, not the Trust, paid my tuition at "Northern Lakes College" in 2000, to further my education.
21. I enjoyed working for the Sawridge Group of Companies and had many wonderful teachers, colleagues and mentors.
22. I ceased my employment with the Sawridge Group of Companies. In part because of the marriage breakdown and because I felt mistreated and discriminated by at least one Trustee and their family member also working for the Sawridge Group of Companies. It is difficult to explain this as I fear reprisal against my sons and I do not wish them harm.
23. I was aware of my facts that qualified me as a Beneficiary under the 1985 Trust. But I remained silent and passive, in part because of my experience with the resentments about my employment with the Sawridge Companies from some members in power.

24. I felt my loved ones were treated poorly by many of the Band members in power. There were many occasions where I was frustrated and hurt by the actions and accusations, gossip and innuendo towards me, my ex-spouse and my children.
25. I felt it was unsafe to remain as an employee for the Group of Companies and live on the Sawridge reserve. I felt treated as unwanted, disposable, without value and not belonging.
26. I was never advised by Paul Bujold, Roland Twinn, Bertha L'Hirondelle, the late Clara Midbo, Justin Twin or Brian Heidecker about ascertaining my beneficiary status. I never received any communication about this.
27. I have never been contacted by Paul Bujold or anyone about any process or actions I might take to ascertain whether I am a beneficiary.
28. I see an obvious conflict of interest in having elected Band leaders sitting as Trustees. Because I know them, I also know they are biased and ruled by their personal feelings.
29. I never applied for band membership or pushed for inclusion as a beneficiary for many reasons. I felt the incessant conflicts amongst the members and the hostile environment. As someone marrying in, the messages were communicated, including by some of those in control of the Band and Trusts, that women who married in are not true members. I did not want to put myself through that kind of stress. For these reasons, I would not apply for Band Membership;
30. I positively contributed positively to Sawridge for years. While I had no political voice and was not a member of the Band, I was a member of the community and family and worked hard at raising and supporting my family, the community and the Sawridge Group of Companies as a loyal employee.
31. I was kind and loving to everyone regardless of how I was treated.
32. I am very close and attached to my sons.
33. On September 27, 2013 I discussed with Catherine Twinn the rules of the 1970 Indian Act, my facts and Beneficiary Status under the 1985 Trust. Prior to, I had some knowledge of the history of the Trusts having worked for the Sawridge Group of Companies, but no real knowledge as to the different ways one could be a beneficiary and what that beneficiary status might mean in terms of my life. I was not aware of any "public notices" from the Trusts to beneficiaries or potential beneficiaries.
34. I believe Ardell and our two sons are beneficiaries under both Trusts. I believe I qualify as a beneficiary under the 1985 Trust.
35. Ardell was born into the Band and has been a member since birth under then Indian Act rules which define 1985 Trust Beneficiaries.
36. Having "married in", I felt the discrimination from some of the women who "married out" and witnessed the treatment of women who married in who were treated as outsiders and scapegoated.

- 37. As a woman and mother who contributed and became part of the Sawridge community while still a teenager, a hand up from the 1985 Trust would be comforting and affirming.
- 38. I want a fair, honest and transparent process to ascertain my beneficiary status that is not at the will and discretion of the Trustees and elected Band leaders.
- 39. I swear this Statement for the Court and for no improper purpose.

SWORN BEFORE ME at the _____)
 _____ of _____,)
 in the Province of Alberta)
 the ___ day of _____, 2015)
 _____)
 _____)
 A Commissioner for Oaths in and)
 for the Province of Alberta)

 SHANNON TWINN

TAB 7

COURT FILE NO. 1403 04885

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE SAWRIDGE BAND INTER
VIVOS SETTLEMENT, APRIL 15, 1985 (the "1985
Trust") and THE SAWRIDGE TRUST, AUGUST 15,
1986 (the "1986 Trust")

APPLICANT CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986 Trust

RESPONDENTS ROLAND TWINN, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN and MARGARET
WARD as Trustees for the 1985 Trust and the 1986 Trust

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McLENNAN ROSS LLP
#600 West Chambers
12220 Stony Plain Road
Edmonton, AB T5N 3Y4

Lawyer: Karen A. Platten, Q.C.
Telephone: (780) 482-9200
Fax: (780) 482-9102
Email: kplatten@mross.com
File No.: 281946

AFFIDAVIT OF ALFRED POTSKIN

SWORN ON THE 26th DAY OF NOVEMBER, 2014

I, Alfred Potskin, of the Town of Slave Lake, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am an individual who is resident in the Town of Slave Lake in the Province of Alberta and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I was born on April 26, 1946.
3. I grew up on the Sawridge First Nation Reserve and was a member of the Sawridge Band through my father's status as a Sawridge Band member. My father was a member of the Sawridge Band until he applied to Indian Affairs to enfranchise in or around 1954 due to the social, legal and other circumstances affecting status Indians at that time. As a result of my father's decision to enfranchise, I lost my status as a Sawridge Band member.
4. As a child, my family moved around between the Sawridge First Nation Reserve and another First Nation Reserve in the Lesser Slave Lake area. I often lived with my Uncle Albert and Jean



Rec'd
12/12/2013
Reg. mail

REGISTERED MAIL

December 10, 2013

Mr. Alfred Joseph Potskin
P.O. Box 1826
Slave Lake, AB T0G 2A0

Dear Mr. Potskin,

RE: Membership Application

Your application for membership in the Sawridge First Nation has been reviewed by the Council. Please take notice that the Council has denied your application for Membership in the Sawridge First Nation. This decision was made pursuant to the Membership Rules.

Based on your application it was determined that:

- 1) You do not have any specific "right" to have your name entered in the Membership List of the Sawridge First Nation.
- 2) The Council concluded that it would not be compelled to exercise its discretion to add your name to the Membership List as it did not feel, in its judgment, that your admission into Membership of the First Nation would be in the best interests and welfare of the First Nation. The Council considered your commitment to, and knowledge of, the history, customs, traditions, culture and communal life of the First Nation and your character and lifestyle in making this determination.

Pursuant to Section 12 of the Membership Rules, you are entitled to appeal this decision to the Electors of the First Nation by delivering a Notice in Writing to the Council at the First Nation Office within 15 days of receipt by you of this letter.

Yours truly,
SAWRIDGE FIRST NATION
Per:


Michael R. McKinney
Executive Director

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

Alfred Potskin

Sworn before me this 26 day
of November 20 14

Crista C. Osualdini

A Commissioner for Oaths
in and for the Province of Alberta

Crista C. Osualdini
a Notary Public and Commissioner for Oaths
in and for the Province of Alberta
My Appointment expires at the pleasure
of the Lieutenant Governor

TAB C

This is **Exhibit "C"** referred to in the Affidavit of SHELBY TWINN sworn before me on the 23 day of October, 2019.

Catherine Twinn)
A Commissioner for Oaths in and)
for the Province of Alberta)

Barrister & Solicitor
Alberta

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

A. Introduction

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

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

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

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

B. Intentions of the Settlor

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

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

C. Proposed Scheme of Distribution

1. Introduction

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

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

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

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

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

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

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

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

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

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

3. Distributions Available to Minors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Complete Capital Distribution

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

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

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

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

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

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

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

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

Nature of a Discretionary Trust

a. Discretionary payments for the needs of beneficiaries

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

b. Avoiding Capital Payments to beneficiaries which destroys the Trust

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

c. Jurisdiction of the Court to direct payment of funds

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

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

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

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

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

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

G. Conclusion

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

TAB D

This is **Exhibit "D"** referred to in the Affidavit of
SHELBY TWINN sworn before me on the 23 day
of October, 2019.

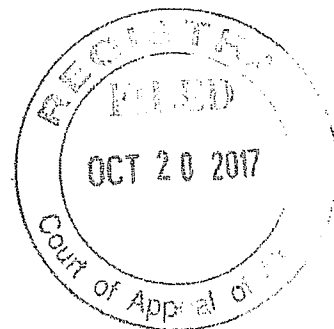
Catherine Twinn)

A Commissioner for Oaths in and)
for the Province of Alberta)

Barrister's Solicitor
Alberta

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER: 1703-0193AC
TRIAL COURT FILE NUMBER: 1103-14112
REGISTRY OFFICE: Edmonton
PLAINTIFF/APPLICANT: Patrick Twinn, on his behalf,
Shelby Twinn and Deborah A. Serafinchon
STATUS ON APPEAL: Appellant
DEFENDANT/RESPONDENT: Roland Twinn, Catherine
Twinn, Walter Felix Twin,
Berta L'Hirondelle, and Clara
Midbo, As Trustees For The
1985 Sawridge Trust (The
"1985 Sawridge Trustees" Or
"Trustees")
STATUS ON APPEAL: Respondent
DEFENDANT/RESPONDENT: Public Trustee Of Alberta
("OPGT")
STATUS ON APPEAL: Respondent
DEFENDANT/RESPONDENT: Catherine Twinn
STATUS ON APPEAL: Respondent
DEFENDANT/RESPONDENT: Patrick Twinn, on behalf of his
infant daughter, Aspen Saya
Twinn, and his wife Melissa
Megley
STATUS ON APPEAL: Not a party to the Appeal
DOCUMENT: FACTUM



Fast Track

Appeal from the Order of
The Honourable Mr. Justice D.R.G. Thomas
Dated the 5th day of July, 2017
Filed the 19th day of July, 2017

FACTUM OF THE RESPONDENTS, THE TRUSTEES

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Counsel for the Respondents

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Felix Twin, Bertha L'Hirondelle and

Carla Midbo, as Trustees for the 1985

Trust

HUTCHISON LAW

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The Office of the Public Guardian and

Trustee

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Counsel for the Respondent

Catherine Twinn

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Canada Trust Co v Ontario Human Rights Commission, 69 DLR (4th) 321, 1990 CarswellOnt 486 (“*Leonard Foundation Trust*”) at paras 48, 49, and 53 [BOA, Tab 12].
 Bruce Ziff, “Welcome the Newest Unworthy Heir”, (2014) 1 ETR (4th) 76 at 80 and 81 [BOA, Tab 13].

44. By its very nature, a discriminatory trust leaves out individuals from its beneficiary ranks. Only Courts can remedy this situation by amending the trust by striking words to ensure that trusts are no longer discriminatory. Hence, the Trustees’ Application was advanced.
45. The application for party status is subject to the standard of review of palpable and overriding error. The application of Rules 1.2 and 3.75 to the facts of this case make it clear that the application should be denied as it causes irreparable prejudice.
46. This action is in its advanced stages. The Appellants chose not to abide by a court-ordered imposed deadline. Moreover, they have not advanced any novel arguments.
47. Permitting further parties to be added at this stage causes clear prejudice to the Trustees and all the beneficiaries of the Trust. The Court has already narrowed the focus and made several key decisions with the goal of setting the matter down in the near future for a hearing. The Trustees believe they are very close to a resolution of this matter. To start fresh with three new litigants will jeopardize the significant progress made.
48. The addition of parties at this late juncture would unnecessarily expand the scope of the Trustees’ Application and increase legal expenses, which, given the Applicants’ inability to contribute to pay costs, would result in prejudice to the Trustees and the beneficiaries of the Trust. This protracted litigation and opening up the floodgates to hundreds of potential parties will risk bankrupting the Trust.

B. Judge Had Discretion to Award Application Costs on Solicitor and own Client Basis

49. The decision to award costs of the application on a solicitor and its own client basis is an exercise of discretion. However, whether the Chambers Judge failed to consider or properly apply the applicable legal principle or test in exercising his discretion is a question of law, and the standard of review is correctness.

Half Moon Lake Resort Ltd v Strathcona (County), 2001 ABCA 50 at para 47, 2001 CarswellAlta 245 [BOA, Tab 14].
Dreco, *supra* para 20 at paras 8-11 [BOA, Tab 5].

50. Costs are a wholly discretionary matter for the Court pursuant to Rule 10.33 and in accordance with the basic principle set out in the foundational Rule 1.2.

51. The Case Management Judge held that Patrick and Shelby Twinn offer nothing and instead propose to fritter away Trust resources to no benefit.

Sawridge #5, supra para 23 at para 47 [AR, Tab 3].

52. The CM Judge cited *Babchuk v Kutz* for the proposition that the Court must investigate the role of the unsuccessful litigant when awarding costs. He concluded that Patrick and Shelby had no basis to participate and would end up harming the pool of beneficiaries. In this new reality of litigation in Canada, the purpose of cost awards is to “shape improved litigation practices by creating consequences for bad litigation practices”.

Babchuk v Kutz, 2007 ABQB 88, 411 AR 181, aff'd in toto 2009 ABCA 144, 457 AR 44 [BOA, Tab 15].

Sawridge #5, supra para 23 at paras 49, 51 [AR, Tab 3].

53. Justice Thomas found that elevated solicitor and own client indemnity costs were appropriate to deter dissipation of trust property as this application involved meritless activities by trust beneficiaries Patrick and Shelby Twinn. In addition, Justice Thomas warned Patrick and Shelby Twinn that their involvement appeared duplicitous on August 24, 2016.

Case Management August 24, 2016 Transcript at 14:31-41 and 15:1-6 [AR, Tab 6].

54. In *Serdahely (Estate of)*, Johnstone J held that at some point during the disclosure of information, they should have withdrawn their claim, which was meritless. Justice Graesser in *Footte Estate (Re)* reaffirmed this principle that the ‘modern’ approach to costs in estate litigation requires careful scrutiny of the litigation to restrict unwarranted litigation and protect estates from being depleted.

Serdahely (Estate of), 2005 ABQB 861 at paras 55-60, 2005 CarswellAlta 1751 [BOA, Tab 16].

Footte Estate (Re), 2010 ABQB 861 at para 16, 2010 CarswellAlta 513 [BOA, Tab 17].

55. More recently, in *McDonald Estate*, a matter under Case Management by Justice Gates, it was held that the Respondent was ordered to pay costs personally on a solicitor and own client basis due to what was determined to be unnecessary litigation.

McDonald Estate, 2012 ABQB 704 at paras 113-14, 2012 CarswellAlta 2235 [BOA, Tab 18].

56. In *Brill v Brill*, the Alberta Court of Appeal summarized the law on costs by stating that Rule 14.5(1)(e) of the *Rules of Court* requires permission to appeal "a decision as to costs

only" and that permission should be granted sparingly. The predecessor to this rule was meant "to bring finality to cost orders and to conserve this Court's time by screening out hopeless appeals on the issues of costs alone."

Brill v Brill, 2017 ABCA 235 at paras 2 and 6, 2017 CarswellAlta 1246 [BOA, Tab 19].

57. In *British Columbia (Minister of Forests) v Okanagan Indian Band*, the Supreme Court held that "the discretion of a trial court to decide whether or not to award costs has been described as unfettered and untrammelled, subject only to any applicable rules of court." The trial judge's decision was "based on his judicial experience, his view of what justice required, and his assessment of the evidence; it is not to be interfered with lightly."

British Columbia (Minister of Forests) v Okanagan Indian Band, 2003 SCC 71, [2003] 3 SCR 371 at para 42 [BOA, Tab 20].

58. In *Bun v Seng*, the Court of Appeal confirmed the above principle and stated that "the case law is clear that permission to appeal costs orders should be granted sparingly, and a party seeking permission to appeal such an award must meet a high threshold."

Bun v Seng, 2015 ABCA 165 at paras 4-5, 2015 CarswellAlta 854 [BOA, Tab 21].

59. Given the warnings, the Appellants ought to have carefully considered their position. Rather than ensure they had a proper basis to be added to the litigation so late in the game, the Appellants merely repeated their entitlement and proffered no evidence to distinguish their interests from those already represented.
60. Courts do not require egregious conduct in order to award solicitor-client costs. The modern trend in trust litigation favours a discretionary award of solicitor and own client costs in this case given the lengthy delay, the lack of necessity to the Appellants' application and the prejudice caused to the Trust.
61. At paras 44 and 47 of the Appellants' factum, they argue that solicitor and client costs are to be awarded only where egregious conduct is present in a case. However, one case they cite, *Meads v Meads*, 2012 ABQB 571, demonstrates that there are many other factors to be considered.

C. Within Jurisdiction of Court to Declare Patrick and Shelby Twinn Beneficiaries

62. The history of the Advice and Direction Application was set out in previous decisions known as *Sawridge #1-4*, and multiple Court Orders, all of which are now *res judicata*.

Sawridge #5, supra para 23 at paras 2-3 [AR, Tab 3].

63. The Appellants state that the Trustees have not filed an application on the issue of the definition of beneficiaries and that the CM Judge has exceeded his jurisdiction in determining matters related to the Trust in the absence of a constating application.
64. In para 57 of their factum, the Appellants complain that the determination of beneficiary status is *ultra vires*. This argument demonstrates Patrick and Shelby's litigious nature given that this ruling is in their best interest.
65. Both the Appellants and the Respondent Trustees agreed that Patrick and Shelby are beneficiaries and thus, there was a desirable narrowing of issues made by the CM Judge. His role is to identify, simplify and clarify the issues in dispute and make orders to promote the fair and efficient resolution of the action (Rule 4.14).

Case Management August 24, 2016 Transcript at 14:35 [AR, Tab 6].
 Patrick Affidavit at paras 7 and 9 [EKE, Tab 4].
 Shelby Affidavit at paras 4, 9, and 10 [EKE, Tab 5].
Rules of Court, supra para 23 at R 4.14 [BOA, Tab 7].

66. The Procedural Orders operated as the *de facto* constating application regarding the determination of the beneficiary definition in the Trust. In *Chisholm v Lindsay*, the Court held: "A judgment or Order of the Court...is the governing document".

Chisholm v Lindsay, 2017 ABCA 21 at para 8, 2017 CarswellAlta 41 [BOA, Tab 22].

67. In para 58, the Appellants state that dismissing the claim for an accounting was not proper. It was dismissed on a without prejudice basis as no submissions were made. The Appellants have the ability to bring this application again. This is another example of needless complication. An accounting application is not related to Advice and Direction.

VII. PART 5 – RELIEF SOUGHT

68. The Trustees pray that the appeal be dismissed in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2017.

Estimated Time of Argument: 45 minutes

Dentons Canada LLP



Doris Bonora and Anna Loparco
 Solicitors for the Trustees

TAB E

This is **Exhibit "E"** referred to in the Affidavit of SHELBY TWINN sworn before me on the 23 day of October, 2019.

Catherine Twinn)

A Commissioner for Oaths in and)
for the Province of Alberta)

Barrister & Solicitor
Alberta

COURT FILE NUMBER: 1103 14112

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")

APPLICANT: SAWRIDGE FIRST NATION

RESPONDENTS: ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT,
EVERETT JUSTIN TWINN AND DAVID MAJESKI,
AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST, THE
OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE
OF ALBERTA, AND CATHERINE TWINN

Questioning on Affidavit of **DARCY ALEXANDER TWINN**, sworn September 24,
2019, taken at the offices of Parlee McLaws LLP, Barristers &
Solicitors, 1700, 10175 - 101 Street, Edmonton, Alberta, at 10 a.m.,
on the 18th day of October, 2019

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For the Applicant

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For the Respondents
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Ward, Tracey Scarlett,
Everett Justin Twinn and
David Majeski, as
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Sawridge Trust

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and Trustee of Alberta

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Slave Lake, Alberta T0G 2A0
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On Her Own Behalf

Shelley Becker, CSR(A)

Court Reporter

1 (PROCEEDINGS COMMENCED AT 10:04 A.M., OCTOBER 18, 2019)

2 DARCY ALEXANDER TWIN, SWORN, QUESTIONED BY MS. HUTCHISON:

3 MR. MOLSTAD: Ms. Hutchison, before you begin
4 your questioning of Mr. Twin, I believe Ms. Bonora
5 wants to make a statement for the record.

6 MS. BONORA: Yes, I just want to say that we
7 won't be questioning today, so the majority of the
8 trustees have made the decision that it isn't necessary
9 to question, but I thought it was important to put on
10 the record that we are here and but that we won't be
11 doing any questioning today. Thank you.

12 MS. HUTCHISON: Thank you. Anything else
13 before --

14 MR. MOLSTAD: No.

15 MS. HUTCHISON: No? Wonderful. Thank you.

16 Q MS. HUTCHISON: Mr. Twin, I just want to
17 confirm that you are the Darcy Twin that swore an
18 Affidavit on September 24th in Action Number 1103
19 14112, Court of Queen's Bench of Alberta?

20 A Yeah.

21 Q And you have your Affidavit in front of you?

22 A Yes.

23 Q Wonderful, thank you. Mr. Twin, you indicate that you
24 have been a member of Sawridge First Nation since your
25 birth in 1977?

26 A Yes.

27 Q Have you lived on the reserve that entire time as well?

TAB F

This is **Exhibit "F"** referred to in the Affidavit of SHELBY TWINN sworn before me on the 23 day of October, 2019.

Catherine Twinn)
A Commissioner for Oaths in and)
for the Province of Alberta)

Barrister & Solicitor
Alberta



MCLENNAN ROSS LLP
LEGAL COUNSEL

Our File Reference: 144194

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PLEASE REPLY TO EDMONTON OFFICE

October 16, 2019

WITH PREJUDICE

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Field Law
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Edmonton, AB T5J 0H3

Attention: **Janet Hutchison**
(JHutchison@jlhlaw.ca)

Attention: **Jonathan Faulds, QC**
(jfaulds@fieldlaw.com)

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Attention: **Doris Bonora**
(doris.bonora@dentons.com)

Attention: **Michael Sestito**
(michael.sestito@dentons.com)

Counsel:

Re: **1985 Sawridge Trust**

We have reviewed Ms. Bonora's recent letter of October 11, 2019 to Mr. Faulds. We have been following the exchange of correspondence between counsel for the trustees and the OPGT that has led up to this letter. Our client is, and has always, been interested in exploring resolution. We note Ms. Bonora's concern that we have been "speaking in generalities" for some time. Our client shares the desire to engage in productive and cost effective settlement meetings. From our perspective, rather than engaging in a debate on "wordsmithing" a revised definition, we must first understand whether the parties are

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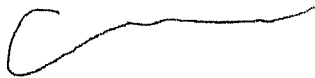
committed to the same fundamental objectives. Failing such commonality, any further settlement discussions are bound to fail.

From our client's perspective, a fundamental criteria of any settlement is the protection of the existing beneficiary class. More particularly, all current *and future* beneficiaries under the existing definition, must not lose beneficiary status. We are writing to seek the trustees' position on this issue. Are the trustees also committed to requiring any settlement to meet this criteria? We note Ms. Bonora expressed caution at taking positions on the record, however, in light of the trustee's fiduciary duty to the beneficiaries of the 1985 trust, we would not anticipate this to be a controversial matter for a trustee to take a position on – especially with the comfort of the recent Ginoogaming First Nation decision out of Ontario which upholds administering a trust with a beneficiary class defined by a repealed version of the *Indian Act*.

We look forward to the trustees' response. Assuming the trustees' also hold this objective as a pillar of their negotiation parameters, we would be pleased to enter into further dialogue with the parties to attempt resolution. However, if the trustees' are not committed to ensuring the protection of existing and future right holders, then further settlement discussions are not likely to be fruitful.

We look forward to your response.

Yours truly,

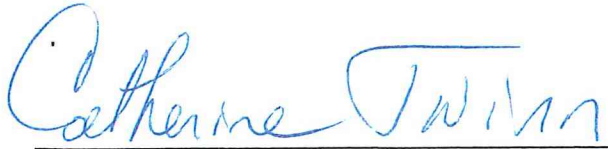


CRISTA OSUALDINI

CCO/pmd
00144194 - 4140-6024-1951 v.1

TAB G

This is **Exhibit "G"** referred to in the Affidavit of SHELBY TWINN sworn before me on the 23 day of October, 2019.


_____)
A Commissioner for Oaths in and)
for the Province of Alberta)



Clerk's stamp:

COURT FILE NUMBER

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

APPLICATION

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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File No: 551860-001-DCEB

Reynolds Mirth Richards & Farmer LLP
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Attention: Marco S. Poretti
Telephone: (780) 497-3325
Fax: (780) 429-3044

NOTICE TO RESPONDENT

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

You have the right to state your side of this matter before the judge.

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

Date

June 30, 2015

Time	2:00pm
Where	Law Courts Building, Edmonton Alberta
Before Whom	Justice D. Thomas

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. Advice and direction with respect to the litigation plan which is attached hereto as Schedule "A".
2. Advice and direction with respect to the offer of settlement which is attached hereto as Schedule "B".
3. Advice and direction with respect to the Public Trustee of Alberta retaining out-of-province lawyers to advise and provide research at significant costs to the trustees, when able lawyers exist in Alberta.
4. Advice and direction with respect to a full audit and review of this matter with all accounts including those of agents retained by the Public Trustee, produced in full without redaction.
5. Such further and other relief as this Honourable Court deems just and appropriate.

Grounds for making this application:

6. The litigation in this action seems to have stalled and the trustees seek the direction of the Court to set a litigation plan as set out in Schedule "A" or as may be directed by the Court.
7. The trustees have made a settlement offer to the Public Trustee of Alberta which settles all issues for the minor children who are affected by a change in definition of the 1985 Sawridge Trust. The trustees seek direction on the narrow issues which must be addressed if all the minor children who would be excluded by the change in definition are given irrevocable beneficiary status in the 1985 Sawridge Trust.
8. The Court in its inherent jurisdiction in the protection of minors and its *parens patriae* jurisdiction, must review the settlement and determine if it is appropriate for the Public Trustee of Alberta to refuse the generous settlement that is offered to the minor children. There are significant benefits to being granted beneficiary status without the need to apply for membership in the Sawridge Band. Such an offer should not be disregarded. There is no guarantee that these minors would be granted beneficiary status in the final result of this action.
9. The Public Trustee of Alberta was granted advance costs in this action. The expenditures are reviewable by this Court. To date the accounts of the Public Trustee have been paid without question although given the redacting of the accounts, it is difficult for the trustees to challenge the accounts.
10. The Public Trustee has now requested that out-of-province lawyers at significantly higher hourly rates than the Alberta lawyers involved in this action be retained and paid. The first account was submitted in excess of \$5,000 as a disbursement to the account of Ms. Hutchison. The account and letter from Ms. Hutchison are attached hereto as Schedule "C".

11. The applicants will rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

12. Schedules to this Application.
13. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

14. Alberta Rules of Court.
15. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

16. *Trustee Act*, RSA 2000, c. T-8, and regulations and amendments thereto.
17. *Minors' Property Act*, SA 2004, CM-18.1, and regulations and amendments thereto.
18. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

How the application is proposed to be heard or considered:

19. In person, with all parties present.

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 this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

CLERK'S STAMP

COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF
ALBERTA JUDICIAL CENTRE

Edmonton

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

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

APPLICANTS

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

DOCUMENT

PROPOSED LITIGATION PLAN

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

ATTENTION: DORIS BONORA
DENTONS CANADA LLP
#2900, 10180 - 101 STREET
EDMONTON, AB T5J 3V5

FILE NUMBER : 551860-1-DCEB
PH : 780-423-7100
FAX : 780-423-7276

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

ACTION	DUE ON OR BEFORE
Questioning of Paul Bujold on documents and undertakings	July 30, 2015
Application on Objections and documents	September 30, 2015
Questioning resulting from Application	November 30, 2015
Mediation to come up with joint proposal	December 31, 2015
Briefs for Applicant	January 31, 2016
Brief for Respondent	February 29, 2016
Application	March 31, 2016

This Litigation Plan is agreed to by the Parties

Dentons Canada LLP

Reynolds Mirth Richards & Farmer LLP

Per: _____
Doris Bonora
Solicitors for the Applicants

Per: _____
Marco S. Poretti
Solicitors for the Applicants

Chamberlain Hutchison

Per: _____
Janet L. Hutchison
Solicitors for the Office of the Public Trustee
of Alberta

SCHEDULE "B"

DENTONS

Doris C.E. Bonora

dorls.bonora@dentons.com
D +1 780 423 7188

Selans FMC SNR Denton
dentons.com

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

T +1 780 423 7100
F +1 780 423 7278

June 1, 2015

File No.: 551860-1

SENT VIA E-MAIL

WITH PREJUDICE

Chamberlain Hutchison
Suite 155, Glenora Gates
10403 - 122 Street
Edmonton AB T5N 4C1

Attention: Ms. Janet L. Hutchison

Dear Madam:

RE: **Sawridge Band Inter Vivos Settlement ("1985 Sawridge Trust" or "Trust" Action No. 1103 14112**

These proceedings were initiated on August 31, 2011. At that time, the trustees of the 1985 Sawridge Trust obtained an Order directing that an application for advice and directions was to be brought regarding the definition of "beneficiaries" contained in the Trust deed. It is coming upon 4 years since the issuance of that Order, and despite great expense incurred by our clients, we are no nearer resolution of this issue. The time that has elapsed and the costs that have been incurred are detrimental to the Trust and are not in the best interests of the beneficiaries.

We are now in receipt of your letter dated May 15, 2015, wherein you advise that you will be seeking joinder of our action with Action No. 1403 04885. It is our respectful view that the two actions are unrelated, and joinder of these actions would result in further significant delay and expense to the Trust.

Our clients have considered how to best proceed given the circumstances and we wish to propose a settlement. As you know, the concern of the trustees is that the current definition of "beneficiaries" is discriminatory, and we are seeking the advice and direction of the Court to address this concern. By changing the definition of "beneficiaries" to one that references membership in the Band, it was thought that this would best express the intentions of all parties concerned including the settlors and trustees of the original trust. However, we acknowledge that such a change is a concern to your client and the minors that you represent. We have our list of beneficiaries and have included beneficiaries who were born after the litigation began and included children who have become adults and further included children who have become members. In particular, there are 24 children that are currently beneficiaries of the 1985 Sawridge Trust, and all but 4 of them would lose their beneficiary status should the definition of "beneficiaries" be changed to equate to membership. There are 4 children who have attained

membership status and thus they will continue to be beneficiaries if the definition of beneficiary changed to "members". See table 1 for a list of the children who would lose beneficiary status. See Table 2 for a list of the children who have been admitted as members. There are 4 minors who have become adults since the litigation began (or will be adults in 2015). They have remained on the tables despite becoming adults.

Our client is prepared to "grandfather" the 20 children who have not yet been admitted to membership whereby they would not lose their beneficiary status, despite the change in the definition. These individuals would maintain their beneficiary status throughout their lifetime. Thus we are essentially offering these minors a complete victory in this matter. They would not be excluded from the trust regardless of their ability to obtain membership. While we maintain that they are likely to become members, we would now guarantee their beneficiary status in the trust which could offer them significant benefits in the future. There is no guarantee that a change in definition if approved by the court would provide benefits for these children.

The perpetuation of discrimination in the current definition of beneficiaries is evident in respect the women who were excluded from beneficial status in the 1985 Trust by the Indian Act, 1970 even though they may have regained membership in the Sawridge First Nation. These women were granted membership in the Sawridge First Nation as a result of Bill C-31 either through application to the First Nation or as a result of a Court Order. Since these women are all current members of the Sawridge First Nation and since it is the intent of the Trustees to apply for a variance to the 1985 Trust definition of beneficiary which includes all members of the Sawridge First Nation as beneficiaries, these women will be included as beneficiaries in the 1985 Trust should the Court agree to the proposed variance to the 1985 Trust. The delay in this litigation and the delay in the change of definition perpetuates the discrimination for these women. They cannot receive benefits from this trust and they continue to be singled out as members who do not enjoy the same status as other members of the First Nation. A change in definition is a very good step to remedying the discrimination for these women as they are presently excluded from the trust and with the change in definition will be included as beneficiaries.

We believe that such a solution of grandfathering the minors on Table 1 is not only fair but provides the Public Trustee with everything that it could reasonably expect in these proceedings. Not only is the discriminatory provision removed, but all of the minor "beneficiaries" who would lose their status are protected. While we acknowledge that the Court will ultimately have to decide whether such a proposal is appropriate, we are hopeful that a joint submission to that effect will convince Justice Thomas of the same. We are also hopeful that your client will view such a proposal as a good faith attempt by the trustees to address the interests of the minor beneficiaries, and that you will agree to join us in seeking the necessary Order from the Court without delay. As noted above, we are essentially offering these minors a complete victory in this matter.

As we are proposing to grandfather as beneficiaries all of the minor children who would lose their status we feel that the Public Trustee has fulfilled the mandate provided to it by the court. We are offering to grandfather all of these children in the interests of fairness and in the interests of stopping the litigation and proceeding to use the trust assets for the benefit of the beneficiaries instead of the costs of litigation.

We would also seek consent or at least no opposition to the nunc pro tunc approval of the transfer of assets from the 1982 trust to the 1985 trust. We believe that this was clearly intended and the trust has been operating since 1982. It would be impossible to overturn the transactions and events that have occurred since 1982. Thus we seek the approval for the transfer of assets. It is a benefit to all the beneficiaries to remove this uncertainty. To be clear, if the transfer is not approved we believe that the assets would need to return to the 1982 trust in which the definition of beneficiary is the members of the First Nation and thus the children you represent would not be included.

Thus we seek your approval for an order

1. To amend the definition of beneficiaries as follows:

"Beneficiaries" at any particular time shall mean:

- a. all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada;
- b. the individuals who are listed as Schedule A to this trust (Schedule A would include all the individuals listed on Table 1).

2. Approving the transfer of assets from the 1982 trust to the 1985 trust nunc pro tunc.

This offer is open for acceptance until **June 29, 2015**. We look forward to hearing from you.

Yours very truly,
Dentons Canada LLP


Doris C.E. Bonora

Reynolds Mirth Richards & Farmer LLP

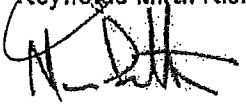

Marco Poretti
DCEB/pach

Table 1: Minor Beneficiaries of the 1985 Trust as at August 31, 2011 updated to 2015

Beneficiary	Birthdate	Age in 2015	Category
1. Lamouche-Twin, Everett (Justin Twin)	05/10/2003	12	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
2. Lamouche-Twin, Justice (Justin Twin)	02/04/2001	14	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
3. Lamouche-Twin, Kalyn (Justin Twin)	24/08/2007	8	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
4. Lamouche-Twin, Maggie (Justin Twin)	27/03/2009	6	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
5. Moodie, Jorja L. (Jeanine Potskin)	29/01/2008	7	Illegitimate Child of Female Band member Not Protested
6. Potskin, Ethan E.R. (Trent Potskin)	15/01/2004	11	Illegitimate Child of Male Illegitimate Child of Female Band member Not Protested
7. Potskin, Jaise A. (Jeanine Potskin)	25/03/2003	12	Illegitimate Child of Female Illegitimate Child of Female Band member Not Protested
8. Potskin, Talia M.L. (Trent Potskin)	16/03/2010	5	Illegitimate Child of Male Illegitimate Child of Female Band member Not Protested
9. Robberstad, Jady (Jaclyn Twin)	04/07/2011	4	Illegitimate Child of Female Band member Not Protested
10. Twin, Alexander L. (Wesley Twin)	23/01/2005	10	Child of Married Male Band member
11. Twin, Autumn J. (Darcy Twin)	26/09/2002	13	Child of Married Male Band member
12. Twin, Destin D. (Jaclyn Twin)	24/06/2008	7	Illegitimate Child of Female Band member Not Protested
13. Twin, Justice W. (Wesley Twin)	20/09/2001	14	Child of Married Male Band member
14. Twin, Logan F. (Darcy)	17/04/2007	8	Child of Married Male Band member

Beneficiary	Birthdate	Age in 2015	Category
Twin)			
15. Twin, River C. (Darcy Twin)	03/05/2010	5	Child of Married Male Band member
16. Twinn, Clinton (Irene Twinn)	03/02/1997	18	<ul style="list-style-type: none"> ➤ Illegitimate Child of Female Band Member Not Protested ➤ Adult after 30 August 2011
17. Twinn-Vincent, Seth (Arlene Twinn)	01/07/2001	14	Child of Female Band member who married Non-Band member
18. Twinn-Vincent, W. Chase (Arlene Twinn)	31/07/1998	17	Child of Female Band member who married Non-Band member
19. Potskin, William (Aaron Potskin)	19/09/2013	2	<ul style="list-style-type: none"> ➤ Child of Male band member ➤ Born after the litigation began
20. Twinn, Kaitlin (Paul Twinn)	23/02/1995	20	<ul style="list-style-type: none"> ➤ Child of male band member ➤ Adult after 30 August 2011

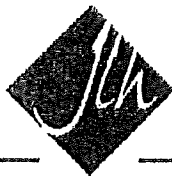
Table 1: Minor Beneficiaries of the 1985 Trust as at August 31, 2011 updated to 2015

Table 2: Beneficiaries to the 1985 Trust who have become members

Non-Beneficiary	Birthdate	Age in 2015	Category
1. Twinn, Alexander G. (Roland Twinn)	01/10/1997	18	<ul style="list-style-type: none"> ➤ Child of Married Male Band member ➤ Admitted as a member of the First nation ➤ Adult (this year) after 30 August 2011
2. Twinn, Corey (Ardell Twinn)	18/01/1994	21	<ul style="list-style-type: none"> ➤ Child of male band member ➤ Admitted as a member of the First nation ➤ Adult after 30 August 2011
3. Twin, Starr (Winona Twin)	29/11/2002	13	<ul style="list-style-type: none"> ➤ Illegitimate Child of Female Band member Not Protested ➤ Admitted as a member of the First nation
4. Twin, Rainbow (Winona Twin)	31/05/1998	17	<ul style="list-style-type: none"> ➤ Illegitimate Child of Female Band member Not Protested ➤ Admitted as a member of the First nation

Table 2: Beneficiaries to the 1985 Trust who have become members

SCHEDULE "C"



HUTCHISON LAW

#155 Glenora Gates
10403 122 Street
Edmonton, Alberta
T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jhlhlaw.ca
Website: www.jhlhlaw.ca

* Janet L. Hutchison, L.L.B.
Rebecca C. Warner, B.A., J.D., Student-at-Law

Our File: 51433 JLH

SENT BY EMAIL ONLY

May 22, 2015

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

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

Attention: Marco Poretti

Attention: Doris Bonora

Dear Sir and Madam:

Re: In the Matter of the Sawridge Band Inter Vivos Settlement – Court of Q.B. Action No. 1103 14112

We are taking this opportunity to enclose our Statement of Account, File 51433, Invoice #4015, for services rendered between April 16, 2015 and May 19, 2015, balance owing \$19,369.69. In accordance with our agreement with the Sawridge Trustees, we are providing you with an account showing total time and charges but with privileged information blocked out. Should you have any questions or concerns on the account, please contact me directly.

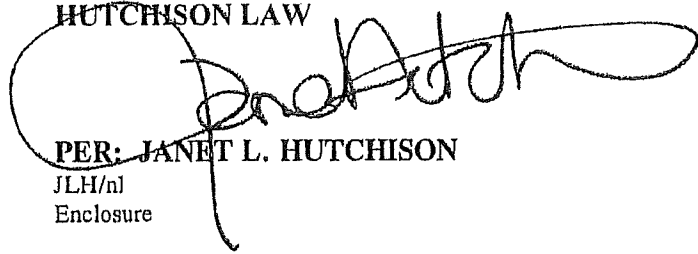
We look forward to receiving payment of this account in the amount of \$19,369.69 within 30 days of the issuance of this account.

If the Sawridge Trustees are objecting to Supreme Advocacy charges, we would request that all amounts other than the Supreme Advocacy disbursement be paid as per our costs agreement.

We look forward to continuing to provide you with quality legal services in this matter.

Yours truly,

HUTCHISON LAW

A large, stylized handwritten signature in black ink, appearing to read "Janet L. Hutchison". The signature is written over the printed name and extends upwards and to the right.

PER: JANET L. HUTCHISON

JLH/nl

Enclosure



HUTCHISON LAW

#155, Glenora Gates
10403 122 Street
Edmonton, AB T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

STATEMENT OF ACCOUNT

Public Trustee of Alberta
400 South, 10365 97 Street
Edmonton, Alberta T5J 3Z8

File #: 51433
Inv #: 4015
May 21, 2015

RE: In the Matter of the Sawridge Band Inter Vivos Settlement - Court of Q.B. Action No.
1103 14112

To all legal services rendered in connection with the above-noted matter, including the following:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
Apr-15	Review file; Receipt and review of correspondence [REDACTED]; Correspondence to [REDACTED]		
Apr-15	Receipt and review of correspondence from D. Bonora and M. Poretti; Correspondence to M. Poretti; Receipt and review of correspondence [REDACTED] [REDACTED]; Correspondence to [REDACTED]; Receipt and review of correspondence from D. Bonora. Review file; Correspondence to D. Bonora.		
Apr-15	Receipt and review of correspondence from D. Bonora, M. Poretti and N. Cummings; Review file; Correspondence to D. Bonora and N. Cummings; Correspondence [REDACTED]; Teleconference [REDACTED] [REDACTED] Review file [REDACTED]; Review file re: questioning on P. Bujold's undertakings; Draft correspondence [REDACTED] [REDACTED]		
Apr-15	Receipt and review of correspondence; Review file [REDACTED]; Meeting with [REDACTED] [REDACTED] Review P. Bujold answers to undertakings; Draft correspondence.		
Apr-15	Legal research [REDACTED]		

[REDACTED]; Review file [REDACTED]
May-15 Receipt and review of correspondence from Dentons; 2.80

Receipt and review of correspondence [REDACTED]
[REDACTED]; Legal research; Teleconference
[REDACTED]; Correspondence [REDACTED];
Correspondence [REDACTED].

May-15 Review file re: preparation for P. Bujold
questioning; Draft and revise [REDACTED];
Legal research; Draft and revise correspondence to
M. Poretti and D. Bonora; Receipt and review of
correspondence [REDACTED]; Receipt
and review of correspondence [REDACTED];
Correspondence [REDACTED]; Receipt and review of
correspondence [REDACTED]; Correspondence [REDACTED]
[REDACTED]; Update [REDACTED].
(full day)

May-15 Review and [REDACTED]
[REDACTED]; Telephone consultation [REDACTED]
[REDACTED] Receipt and review of correspondence
[REDACTED]; Receipt and review of correspondence
[REDACTED].

Review and revise correspondence to D. Bonora
and M. Poretti; Review file [REDACTED]
[REDACTED]

May-15 Review file [REDACTED]; Meeting [REDACTED]
[REDACTED]

May-15 Receipt and review of correspondence [REDACTED]
[REDACTED]; Review file [REDACTED]
[REDACTED] Review correspondence [REDACTED]; Draft
correspondence [REDACTED]; Draft
[REDACTED]; Draft correspondence [REDACTED]; Draft
correspondence [REDACTED]
[REDACTED]

May-15 Receipt and review of correspondence [REDACTED]
[REDACTED]; Review and revise
correspondence [REDACTED].

May-15 Review file; Telephone consultation [REDACTED]
[REDACTED] Revise
correspondence to Dentons and RMRF.

FEES FOR PROFESSIONAL SERVICES

32.10

\$13,642.50

Total Hours: 32.10 X \$425/Hr (J. L. Hutchison)

OTHER CHARGES

Photocopies

\$272.75

Total Other Charges

\$272.75

DISBURSEMENTS

Accuscript Reporting Services Invoice #17739

\$221.00

Parking - Meeting

\$5.71

Supreme Advocacy Invoice #2254

\$4,955.00

Total Disbursements

\$5,181.71

GST

\$272.73

Total Fees, Disbursements & GST

\$19,369.69

Balance Due

\$19,369.69

Hutchison Law

E. & O.E.

* tax-exempt

Per: 

Janet L. Hutchison

GST #

87325 1573

Payable upon receipt. Interest charged at 18% per annum on accounts over 30 days.

TRUST STATEMENT

DISBURSEMENTS

RECEIPTS

May-05-15	Received From: Sawridge Trust Conduct Monies for Elizabeth Poitras		338.76
May-06-15	Paid To: Liz Poitras Payment of Conduct money to witness	288.76	
	Paid To: Janet Hutchison Prof Corp Reimbursement of Conduct money advance to witness	50.00	
	Total Trust	<u>\$338.76</u>	<u>\$338.76</u>
	Trust Balance		\$0.00

Invoice # 2254
 Date: 05/15/2015
 Due On: 06/14/2015

ADVOCACY

340 Gilmour Street Suite 100
 Ottawa, Ontario
 K2P 0R3
 Phone: 613-695-8855
 613-695-8580

Janet L. Hutchison
 Hutchison Law
 #155, Glenora Gates
 10403 - 122 Street
 Edmonton, Alberta
 T5N 4C1

0274-006

1985 Sawridge Trust v. Alberta (Public Trustee)

Attorney	Description	Date
TS	Receive emails from client and review same; discussion prepare for teleconference; teleconference	April 2015
MFM	Review of email sent	April 2015
EM	Email correspondence, detailed review of same, & making notes, meeting	April 2015
TS	Discussion	April 2015
EM	Email teleconference meetings	April 2015
TS	Review summary email ; discussion review	April 2015
MFM	Review	April 2015

Time Keeper	Position	Quantity	Rate	Total
Marie-France Major	Attorney	2.05	\$500.00	\$1,025.00
Eugene Meehan	Attorney	4.3	\$750.00	\$3,225.00

Thomas Slade	Attorney	2.35	\$300.00	\$705.00
			Subtotal	\$4,955.00
			HST (13.0%)	\$644.15
			Total	\$5,599.15

All invoice totals are in CDN funds.

HST #839003308

Please make all amounts payable to: Supreme Advocacy LLP

Please pay within 30 days.

E & OE

Supreme Advocacy LLP



Per: Eugene Meehan, Q.C.

TAB H

This is **Exhibit "H"** referred to in the Affidavit of
SHELBY TWINN sworn before me on the 23 day
of October, 2019.

Catherine Twinn

A Commissioner for Oaths in and
for the Province of Alberta

)
)
)
)

TAB 1

Action No.: 1103 14112
E-File No.: EVQ15SAWRIDGEBAND
Appeal No.: _____

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

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
June 24, 2015

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

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Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge First Nation Only)	10
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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2
3 June 24, 2015

Morning Session

4
5 The Honourable

Court of Queen's Bench

6 Justice Thomas

of Alberta

7
8 M.S. Poretti/ D.C.E Bonora

For the Trustees of the 1985 Sawridge Trust

9 K.A. Platten, Q.C.

For the Applicant Catherine Twinn

10 E.H. Molstad, Q.C.

For the Sawridge First Nation

11 J.L. Hutchison

For the Office of the Public Trustee

12 J.J. Kueber, Q.C.

For all Trustees (Except Catherine Twinn)

13 M. O'Sullivan

Court Clerk

14
15

16 **Discussion**

17
18 THE COURT:

What is the next number matter you have got

19 on, Madam Clerk?

20

21 Ma'am, what are you on?

22

23 MS. PLATTEN:

I'm -- My Lord, I'm here on the Sawridge

24 matter.

25

26 THE COURT:

Sawridge. Okay.

27

28 So is everybody here on Sawridge? Okay. We will wait for Mr. Molstad to come back.

29

30 MR. PORETTI:

I think we're all here on Sawridge --

31

32 THE COURT:

So come on forward, yes.

33

34 MR. PORETTI:

-- My Lord.

35

36 THE COURT:

Sorry. I did not recognize some of you.

37

38 Okay. Yes, you are excused, thanks, and you are excused too.

39

40 THE SHERIFF'S OFFICER:

Oh.

41

1 THE COURT: I do not --
2
3 THE SHERIFF'S OFFICER: Thank you, My Lord.
4
5 THE COURT: -- think we will need security for this.
6
7 MS. BONORA: My Lord, while we are waiting for
8 Mr. Molstad, do you know everyone?
9
10 THE COURT: Well, actually --
11
12 MS. BONORA: Do you know --
13
14 THE COURT: -- thanks, Ms. Bonora. I was just going to ask
15 you if somebody would not mind doing that.
16
17 MS. BONORA: Not at all, so Doris Bonora from Dentons
18 Canada, Marco Poretti from --
19
20 THE COURT: Mm-hm.
21
22 MS. BONORA: -- Reynolds Mirth --
23
24 THE COURT: Right.
25
26 MS. BONORA: -- Joe Kueber from Bryan & Company --
27
28 THE COURT: Yes.
29
30 MS. BONORA: -- Karen Platten from McLennan Ross, and
31 Janet Hutchison from Hutchison Law --
32
33 THE COURT: Mm-hm.
34
35 MS. HUTCHISON: Good morning, My Lord.
36
37 MS. BONORA: -- and Ed Molstad I think you know.
38
39 THE COURT: Who needs no introduction.
40
41 MS. BONORA: And in the courtroom is also Catherine Twinn.

1
2 THE COURT: Mm-hm. And the other gentleman at the back?
3
4 MS. BONORA: And Glenn Godfrey --
5
6 MS. HUTCHISON: Oh --
7
8 MS. BONORA: -- from the Public Trustee's --
9
10 MS. HUTCHISON: -- of the --
11
12 MS. BONORA: -- office.
13
14 MS. HUTCHISON: -- Public Trustee's office.
15
16 THE COURT: Oh, Public Trustee, okay. All right.
17
18 MR. MOLSTAD: This is my application, My Lord.
19
20 THE COURT: All right. Now, I know there was a flurry of
21 material that --
22
23 MR. MOLSTAD: Do you have that, My Lord?
24
25 THE COURT: I saw it --
26
27 MR. MOLSTAD: I --
28
29 THE COURT: -- land on my desk, but --
30
31 MR. MOLSTAD: -- I've got extra --
32
33 THE COURT: -- I do not have --
34
35 MR. MOLSTAD: -- copies if you'd --
36
37 THE COURT: -- of it.
38
39 MR. MOLSTAD: -- like it? I'm not sure that -- I don't even
40 refer to, but others may. This is the package there. This is just the correspondence that
41 has --

1
2 THE COURT:

Okay.

3
4 MR. MOLSTAD:

-- been exchanged.

5
6 THE COURT:

All right. Thanks, Mr. Molstad.

7
8 **Submissions by Mr. Molstad (Adjournment of Matters Directed at the Sawridge First**
9 **Nation Only)**

10

11 MR. MOLSTAD:

And briefly, My Lord, I represent Sawridge

12 First Nation who are not a party to these proceedings. If you recall a few years back, we
13 did appear. They were served with notice in relation to the Public Trustee's application,
14 and following that, enquiries were made as to whether we wished to become a party; and
15 we indicated that we did not feel that was necessary and declined.

16

17 But notwithstanding that, on May 15th, 2015, we received a letter from Ms. Hutchinson
18 on behalf of the Public Trustee, and you have a copy of that in material I have provided
19 to you, advising you that I was included in this communication to deal with the
20 possibility, and I emphasize that word, that Sawridge First Nation may wish to participate
21 or take a position in the pending application. There was nothing in this letter indicating
22 that an application would be made with Sawridge First Nation as a respondent and that
23 this application would substantially affect the rights of Sawridge First Nation.

24

25 On June 15th, 2015 -- and I think the correspondence indicates that my friend had it
26 delivered Friday at 4:51, but on June 15th, the following Monday, the box arrived on my
27 desk; and it was a box that was close to being full of material. It included the Public
28 Trustee's application. Sawridge First Nation was not named as a respondent; however, no
29 one was named as a respondent in that application. It did appear obvious that the
30 application intended to request relief directly affecting Sawridge First Nation. It also
31 included a lengthy affidavit of a deponent for the Public Trustee. Mr. Roman Bombak,
32 and excerpts from pleadings, transcripts, exhibits, and answers to undertakings, and the
33 written brief of the Public Trustee.

34

35 The application, in reviewing it, purports to require production from Sawridge First
36 Nation, a non-party, pursuant to Rule 5.13; and included is a request for documents
37 described as, quote:

38

39 Documents produced in Federal Court Action T-66-86.

40

41 In fact, those were two actions in the Federal Court, T-66-86A and 86B, which were

1 the Sawridge membership process is relevant and material to dealing with at least one
2 certainty of this trust, the certainty of objects. It's also relevant to the interest of the
3 candidate children. The certainty of objects is relevant to the interests of all of the minor
4 beneficiaries including the ones that may be grandfathered or not.

5
6 So to ask the Court to proceed forward and deal with the settlement application without
7 that evidence, I would submit to the Court, is going to quite literally waste the Court's
8 time on the 30th when we obviously have a great deal -- a great many other issues that do
9 require the Court's time and the Court's attention and direction so that we can move
10 forward with the application.

11
12 So, My Lord, the Public Trustee would refer you back to the June 17th, 2015, letter. We
13 would suggest that the list on page 3 of that letter is an appropriate and manageable
14 agenda for the time we had allocated on June 30th with the addition of arguing the
15 prematurity of the settlement application, My Lord.

16
17 Subject to questions, My Lord --

18
19 THE COURT:

All right.

20
21 MS. HUTCHISON:

-- that -- those are my submissions.

22
23 THE COURT:

Thanks. What about this point of there is no

24 evidence or fresh --

25
26 **Further Submissions by Ms. Bonora (Adjournment of Matters Directed at the Sawridge**
27 **First Nation Only)**

28
29 MS. BONORA:

Well, My Lord, certainly we had expected that
30 our transcripts, which are examinations on affidavits, are evidence before the Court as are
31 the undertaking responses; and that is the evidence that will show the membership process
32 and criteria, and so that is the evidence that will be before you.

33
34 Not -- I've just -- Mr. Poretti and I were talking about whether it's been filed yet. We'll
35 obviously have it filed before June 30th, but we don't believe the evidence is that
36 extensive for you to review in terms of making sure that the process and criteria is
37 ascertainable and working.

38
39 THE COURT:

Am I to understand then that, at this stage,
40 insofar as the briefs are concerned, you have not tied that evidence from the transcripts
41 and undertakings back into your submissions in the briefs?

1
2 MS. BONORA: We certainly have made representations about
3 the membership process and the membership criteria and the fact that that evidence has
4 been produced in our brief.
5
6 THE COURT: Okay, and are those submissions tied into
7 specific transcript -- excerpts from transcripts and undertakings?
8
9 MS. BONORA: Yes. I'm trying to remember our brief.
10
11 THE COURT: Mm-hm.
12
13 MS. BONORA: Certainly we've made reference to how the
14 membership process works, the fact that it's gone to the Fed -- three decisions have --
15
16 THE COURT: Mm-hm.
17
18 MS. BONORA: -- gone to the Federal Court of Appeal, the fact
19 that four members -- four minors have been made members, so I think that we have made
20 reference to the evidence. I don't know --
21
22 THE COURT: Okay.
23
24 MS. BONORA: -- about the specificity --
25
26 THE COURT: Okay.
27
28 MS. BONORA: -- of -- blah, blah, blah, anyway, of the actual
29 references to it, but I believe that evidence is there and not extensive; so we didn't file
30 another affidavit because, of course, the evidence is already there. There would be no
31 need to file another --
32
33 THE COURT: Mm-hm.
34
35 MS. BONORA: -- affidavit.
36
37 THE COURT: It is there in the sense of in transcripts and in
38 undertakings?
39
40 MS. BONORA: Yes, and the -- and --
41

1 THE COURT:

The responses?

2

3 MS. BONORA:

-- and we've made the submissions in our brief about the fact that that information is available and shows that that membership process is working. The way we interpreted your decision was you had to look at process and criteria, so we provided the criteria. We've shown that the process works for the 20 people, I think, who've been --

8

9 THE COURT:

Mm-hm.

10

11 MS. BONORA:

-- admitted so far and that, because it's gone to the Court of Appeal, it addresses all those issues of bias and all those things because the Court of Appeal could have looked at that in terms of saying this process didn't work under judicial review -- sorry, not the Court of Appeal, the Federal Court, and so we believe that evidence is all there in terms of dealing with our settlement offer and the fact that there is enough evidence before this Court to say that that membership process is working.

18

19 THE COURT:

Okay.

20

21 MS. BONORA:

And it is -- you know, I don't think we should lose sight of the fact that the grandfathering of these 23 children is not automatic. That is, I think, a very significant offer. It could be that the Court would simply decide that the membership definition changes from what it is now to members which excludes those 23. It's the very reason you appointed the Public Trustee because they could be excluded, and so that's why our settlement offer is so significant to include those 23 people and then provide a process in case anybody was missed, I think, is a very significant offer which we have difficulty that the Public Trustee does not want to address it and that's why we felt the need to bring it to the Court because of the significant dollars that are being spent now and the significant dollars that will certainly be spent if we embark on this document production and all the other issues.

32

33 THE COURT:

Okay. Thanks.

34

**35 Further Submissions by Ms. Hutchison (Adjournment of Matters Directed at the
36 Sawridge First Nation Only)**

37

38 MS. HUTCHISON:

My Lord, I apologize.

39

40 THE COURT:

Mm-hm.

41

TAB 2

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

2

3 September 2, 2015

Morning Session

4

5 The Honourable Justice Thomas

Court of Queen's Bench of Alberta

6

7 D.C.E. Bonora

For the Sawridge Trustees

8 M.S. Poretti

For the Sawridge Trustees

9 J.J. Kueber, Q.C.

For 4 other Trustees in Action No. 1403 04885

10 E.H. Molstad, Q.C.

For Sawridge First Nation

11 J.L. Hutchison

For the Public Trustee of Alberta

12 E. Meehan, Q.C.

For the Public Trustee of Alberta

13 K.A. Platten, Q.C.

For C. Twinn

14 C. Osualdini

For C. Twinn

15 M. Lacasse

Court Clerk

16

17

18 THE COURT:

Have a seat.

19

20 MS. BONORA:

Thank you.

21

22 THE COURT:

I will just get sorted out here. All right. I saw

23 a flurry of correspondence arriving on my desk this morning including material which
 24 indicated a debate over the agenda. So we are going to skip the debate and I will tell
 25 you what we are going to be doing this morning.

26

27 We will spend 15 minutes trying to sort what is going on in respect to the proposition or
 28 settlement offer proposal of the trustees to the Public Trustee in respect to production of
 29 documents disclosure. Once that 15 minutes is up, we are going to go onto deal with the
 30 production application made by the Public Trustee involving Ms. Hutchison and
 31 Mr. Molstad. That is what we are going to deal with today, at 2:30 we are breaking. If
 32 we have to go straight through, we will go straight through, but that is the application we
 33 are going to deal with today. All of the other material issues are over till tomorrow. All
 34 right.

35

36 The matter that was set down for today was essentially the production issues, right? So if
 37 you want to go first in respect to the -- whether you have got a resolution or not on this --
 38 as between the trustees?

39

40 MS. BONORA:

Sure and I would -- after the last application

41 and your direction that the production application would happen first, we reconsidered and

1 decided that it was probably best just to deal with production. You'll hear later that the
2 costs are becoming astronomical and we need to be sufficient.

3

4 THE COURT: Yes, I do not need to hear about that.

5

6 MS. BONORA: No I'm just telling you how we led up to --

7

8 THE COURT: I want to hear about whether you have got this
9 issue resolved as between the Public Trustee and the trustees.

10

11 **Submissions by Ms. Bonora (Settlement Offer Proposal)**

12

13 MS. BONORA: It is not resolved, in the sense that we offered
14 to provide an affidavit of records. That's what parties are obligated to do under the *Rules*
15 *of Court* and we said we would do that and follow the *Rules of Court*.

16

17 My friend at the Public Trustee's office has said that that is not sufficient. That, in fact,
18 in addition to that there needs to be a number of issues determined with respect to
19 relevant documents and determining relevancy in advance of any production done. And
20 so it's our submission that these additional requests, at this time, with no foundation for
21 these requests, with no examination on the affidavit, without a chance for the parties to
22 come together and produce their affidavit and then see if they have done what they're
23 supposed to is, is not supposed to be dealt with at this stage.

24

25 I would also say that, my friend, has altered her application so she filed an amended
26 application as she was directed to do. When she sent us the issues that were outstanding
27 and sent us a form of consent order, rather than narrowing the issues, in fact, she
28 expanded the issues that she wanted us to deal with. So if we look at the things that she
29 now wants to address and deal with in respect of the application --

30

31 THE COURT: Yeah, what are you looking at?

32

33 MS. BONORA: So I'm looking at the amended application.

34

35 THE COURT: Okay, let me just get that. Got that.

36

37 MS. BONORA: And there would be a -- I think it's in the
38 agenda and then she -- my friend provided a form of order that deals with the four
39 remaining issues that she believes are still outstanding that need determination on.

40

41 THE COURT: Okay, now what letter -- what material is that?

1 again, the number is significant, and I want to be clear that that number of 16 applications
2 that have been accepted do not include the Hugesson 11 people who were court-ordered,
3 and so if you were just looking just generally at numbers, which is what the court order
4 that you gave said to do, is look at -- looking at the numbers of applications and the
5 process therein, those two charts in and of themselves show that that information in fact
6 has already been provided.

7
8 If you turn to the next page in tab 3, you'll see that there is, I believe, a series of letters,
9 and those show applications that have either been denied -- and so we have the people
10 who have been given the letter saying they've been denied, and we also have letters in
11 respect of the people who have been accepted, and so again, Sawridge First Nation
12 provided that information to show what -- where those applications are at, and those were
13 entered as Exhibit 7 and 8 of Paul Bujold's affidavit. The letters are -- and I think my
14 friend referred to them yesterday as form letters, but in fact, if we're looking to satisfy
15 your order with respect to the status and number of Band membership applications, I think
16 that significant amount of information has already been provided.

17
18 And, Sir, I think it's also -- so I'm going to go away from -- but please keep that book of
19 evidence because I want to show you some more things, but I want to just take you to our
20 reply brief of June 19th.

21
22 THE COURT: Okay. Now it's the -- okay. Just let me get
23 that.

24
25 MS. BONORA: I feel like we should have picked a colour at
26 the beginning --

27
28 THE COURT: Yeah. I think it's --
29
30 MS. BONORA: -- of this case management.

31
32 THE COURT: Yeah. Just let me organize things a bit.

33
34 MS. BONORA: M-hm.

35
36 THE COURT: What was that date again? Sorry.

37
38 MS. BONORA: It is the June -- it was filed on June the 19th.

39
40 THE COURT: And has it got a buff-coloured --

41

1 MS. BONORA: It -- yes, unfortunately.
2

3 THE COURT: Okay.
4

5 MS. BONORA: It's about this size.
6

7 THE COURT: Did we look at it yesterday?
8

9 MS. BONORA: We -- I'm not sure if we looked at it
10 yesterday. Mr. Poretti has --
11

12 THE COURT: Okay.
13

14 MS. BONORA: -- the body of it, which is what I would like to
15 read to you, so --
16

17 THE COURT: So --
18

19 MS. BONORA: -- I'll just hand this to you.
20

21 THE COURT: It doesn't seem to be in my stacks. Thanks.
22

23 MS. BONORA: Sir, and I just would like to refer you to
24 paragraph 6 of our reply brief this is a quote from Ms. Hutchison in respect of the
25 application that was made before you on June the 12th, and Ms. Hutchison says: (as read)
26

27 Your indulgence, but I'm just going to respond very quickly on
28 that last point. I have to disagree with my friend that to determine
29 functionality you would have to engage in a -- such a detailed
30 analysis. For instance, if we're able to determine that chief and
31 council actually occasionally meets to review membership
32 applications as opposed to they're (sic) never met to review
33 membership applications, I would suggest that's very large
34 indicator of functionality that doesn't require you to go into
35 assessing the merits of each individual application, and at least my
36 current instructions, if we are acting, is not to go into the minutia
37 of every membership application; it's to try and assess whether or
38 not there's actually some function process.
39

40 And I'm sure Ms. Hutchison didn't say "some function process," but that's what the
41 transcript says. So I think that's important. It could be that her instructions have changed.

1 I certainly would say that that may be the case, but the -- I think what's important is that
 2 when she was making submissions in front of you -- and obviously, those are the
 3 submissions you took into consideration in making your decision -- she said that
 4 functionality could be determined by whether the chief and council actually occasionally
 5 meets, and that would be in fact a very large indicator of functionality. Well, we know
 6 just from looking at tab 33 and tab 3 that they are meeting, and so I pointed you to the 16
 7 applications that were accepted because obviously that just shows that people can be
 8 accepted and therefore can become beneficiaries if the definition were to change, but it's
 9 also important to know that they also met a lot to deny applications. And so if we're
 10 looking at an indicator of functionality being 'do they meet,' we know they meet quite
 11 often and that they have met and that they have made decisions. And not only has that
 12 happened, but there have been several appeals. So they've met. Band -- the council has
 13 met and make decisions, and the appeal committee has met and made decisions. And so I
 14 think -- I think that's an important consideration.

15
 16 If you look at tab 41 of that evidence excerpts, you will see that that's the membership
 17 rules, and if you turn a few pages in in respect of the tab, it starts with the resolutions to
 18 appoint -- or to approve the membership rules, but ultimately you will get to the
 19 membership rules. And I think it's important to note that the membership rules are in
 20 force and in place, and they are a certain process. They have been in place since 1985.
 21 And if we look at them, we see in section 10 of the rules that it is the Band council that
 22 is to make these decisions. It's the Band council who determines what the application
 23 would look like. It's the Band council that may conduct interviews, and then there's an
 24 appeal to the entire electors of the First Nation, and it ends in those rules at section 13 by
 25 saying that every discretionary power exercised is to be exercised in good faith, without
 26 discrimination and in accordance with judging the best interests and welfare of -- and they
 27 use the word "Band" because it was done in 1985. So this was -- these membership rules
 28 were approved by the electors. It went to the minister of Indian and Northern Affairs, and
 29 these are the rules that are in place, and they set out a process that we would submit is
 30 functioning and also certain in the sense that if we chose to change the definition to
 31 members, now everyone knows what process needs to be followed.

32
 33 In the *Huzar* decision, which is at tab 2 of our reply brief of August 21st --

34
 35 THE COURT:

Okay. I think I can probably find that one.

36 Just a minute.

37
 38 MS. BONORA:

This one will have a green cover.


39
 40 THE COURT:

Right. And document production? Is that the

41 one?



1
2 MS. BONORA: It's, yes, in document production. Thank you.
3 Filed August 21st.
4
5 THE COURT: Okay. And you wanted to take me to that case,
6 which is?
7
8 MS. BONORA: The *Huzar* case at tab 2, --
9
10 THE COURT: M-hm.
11
12 MS. BONORA: -- which is from the Federal Court of Appeal.
13
14 THE COURT: Got that. It's from -- right.
15
16 MS. BONORA: And on the second page, at paragraph 5, the
17 Court says, (as read)
18
19 It is clear that until the Band's membership rules are found to be
20 invalid, they govern membership of the Band, and the
21 respondents --
22
23 In this case, these are the respondents, including Kolosky and the Huzar and Stoney,
24 which I'll talk about later.
25
26 -- have a right to apply to the Band for membership. . .
27
28 And so these rules have not been struck. They are in force, and in this case in fact, there
29 was a application to amend the statement of claim to declare that the rules were
30 discriminatory and exclusionary, and that was struck, and so now it's clear that until these
31 are declared invalid, these are the rules that are in place, and I don't think there's
32 anything unclear about them, and they appear to be functioning. And I think as
33 Mr. Molstad told you yesterday, the rules were approved by the minister in the first
34 instance, and I think that is shown to you in the first page of 41.
35
36 THE COURT: Just let me double check that. And I hope we're
37 all talking about the same thing, but what I've got and I've been looking at, there's --
38 appears to be a minute of the meeting of the electors and.
39
40 MS. BONORA: Okay. I think that there is something that says
41 that these went to the minister, and perhaps I -- when I -- when -- later, I can find it and



1 just point it to you, but we can tell you that the process in 1985 was that when the
2 membership rules were going to be put in place for any First Nation at that point, they
3 had to be approved by the minister.

4

5 THE COURT: Okay.

6

7 MS. BONORA: Yesterday, Mr. Molstad also took you through
8 the application. The purpose of that application -- or the purpose of those submissions, I
9 think, was to show you the amount of personal information that is obtained through an
10 application, and there have been different versions of the application, but I can tell you
11 that at this point there have been no challenges with respect to that application. Some
12 people have found it unfair. There have been some submissions about that. But at this
13 point, the rules say that the Band and council can certainly suggest that -- can make the
14 application, and in fact, at this point, that is the application that is in force, and there have
15 been no challenges to that.

16

17 THE COURT: So when you say "application," you mean the
18 form and the process? Is that what you're saying?

19

20 MS. BONORA: Well, I would just say the actual form. That's
21 my submission.

22

23 THE COURT: Okay. Okay.

24

25 MS. BONORA: M-hm. My Lord, my friend has referred me to
26 our reply brief on August 21st.

27

28 THE COURT: M-hm.

29

30 MS. BONORA: And in reference to looking at tab 3.

31

32 THE COURT: M-hm. *Stoney*?

33

34 MS. BONORA: Yes. And paragraph 4.

35

36 THE COURT: Oh. Just in terms of delivered its membership
37 rules, supporting documentation --

38

39 MS. BONORA: Right.

40

41 THE COURT: Okay.