Clerk's Stamp:

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COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, C. T-8, AS AMENDED, and IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge Trust")
APPLICANTS	ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the 1985 Sawridge Trust;
DOCUMENT	**RESPONDING BRIEF OF THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE ("OPGT")** **APPLICATION ON TRANSFER ISSUE AS DIRECTED BY THE COURT RETURNABLE NOVEMBER 27, 2019**

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I. INTRODUCTION

1. This application is concerned primarily with the effect of the asset transfer Consent Order (the ATO) granted August 24, 2016. The ATO "approved *nunc pro tunc*" the 1985 transfer of assets from the Sawridge Band Trust (the 1982 Trust) to the Sawridge Inter Vivos Settlement (the 1985 Trust).

2. The purpose and effect of the ATO was explicitly described by the 1985 Trustees at the outset of this proceeding. It was "to declare that the asset transfer was proper and that the assets in the 1985 Trust are held for the beneficiaries of the 1985 Trust."[1] The underlying pleadings and evidence, the circumstances and context in which the ATO was granted, and the terms of the ATO itself conclusively establish this to be the case.

3. This application also raises subsidiary questions concerning the validity of service of the ATO, and the ability of the 1985 Trustees to transfer the assets to another trust. With respect to these questions the OPGT submits:

    a. The ATO was served in the manner directed by the Order of Thomas J, pronounced on August 31, 2011 (the Procedural Order);

    b. There is no application before this Court to set aside the service provisions of the Procedural Order;

    c. The 1985 Trustees may transfer assets to another trust in a similar manner as approved by the ATO. This means any such transfer: (1) must be for the benefit of the beneficiaries of the 1985 Trust; and (2) must be to a trust whose beneficiaries are the same as the beneficiaries of the 1985 Trust;

    d. A transfer to the 1986 Trust is not possible on this basis.

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[1] Affidavit of Paul Bujold, September 12, 2011 (Bujold 12/11), para. 9 and 25, Exhibit "A" (the 1982 Trust) [Appendix C]

II. FACTS

The various Sawridge Trusts were established in response to legal and legislative developments, including the enactment of the *Constitution Act, 1982*.

4. The events concerning the establishment of the Sawridge Trusts took place against a backdrop of debate and controversy concerning the paternalistic and patriarchal nature of the *Indian Act*.[2]

5. The *Indian Act* provisions on First Nations' membership, established and administered by Canada, had long operated to grant membership rights preferentially to the male line, including removing membership rights from Status Indian women who married non-Indians. Legal challenges before the Supreme Court of Canada and the United Nations Human Rights Committee had sought, without success, to restore membership to individuals who had lost their rights through the operation of the *Indian Act*.[3]

6. With the advent of the *Charter* and its equality guarantees legislative changes to this patriarchal approach were required. At the same time, the constitutional protection of aboriginal and treaty rights also supported the growing demand for First Nations self-government, including First Nations control of their own membership.

7. Some First Nations, including the SFN, were concerned about their capacity to hold and manage revenues generated from their own reserve lands. This hampered their ability to pursue economic development utilizing their own resources. As a result, First Nations turned to various devices, including the use of trusts, to facilitate economic activity.

8. Each of these circumstances played a role in the creation of various trusts by the SFN and are necessary to an understanding of the events now in issue.

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[2] Hartley, Gerard, "The Search for Consensus: A Legislative History of Bill C-31, 1969-1985" (2007) *Aboriginal Policy Research Consortium International (APRCi)* [Authorities Tab 5]
[3] *Ibid*

The 1982 Trust was established by the SFN to hold land and business assets for the benefit of past and future members of the SFN

9. Commencing in the 1970s, the SFN began acquiring assets utilizing oil and gas royalties. These assets, which included land, hotels and other businesses, were held by individual band members as well as one of its former solicitors, Dave Fennell, on behalf of the SFN pursuant to informal trust arrangements. Mr. Bujold stated these arrangements were due to the SFN's concern regarding the SFN's capacity to hold the assets directly.[4]

10. The 1982 Trust was settled on April 15, 1982 by the late Walter Patrick Twinn, then Chief of the Sawridge First Nation (SFN), on behalf of the SFN. The 1982 Trust was intended as "a more formal vehicle to hold property for the benefit of present and future members of the Sawridge Indian Band." The 1982 Trust became the recipient of the assets which had previously been held by the individual trustees on informal trust terms.[5]

11. The beneficiaries of the 1982 Trust were described as "all members, present and future, of the Band". However, the Trust granted its Trustees the discretion to withhold any benefit to "any illegitimate children of Indian women even though that child or those children may be registered under the Indian Act and their status may not have been protested under s. 12(2) thereunder."[6]

12. The Trustees of the 1982 Trust were defined as "the Chief and Councillors of the Band, for the time being, as duly elected pursuant to section 74 through 80 of the *Indian Act*, R.S.C. 1970, c. I-6, as amended from time to time." Under sections 74-80 the Chief and Councillors held office for two years. The 1982 Trust provided that when a Chief or Councillor was replaced, they were also replaced as Trustees automatically.

13. This direct equivalence between the Trustees and Chief and Council was broken by an amendment to the 1982 Trust made by Court Order in 1983. The amendment provided for

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[4] Bujold 12/11 at para. 8 [Appendix C]
[5] Bujold 12/11, paras. 7-12 and Exhibit "D" [Appendix C]
[6] Bujold 12/11, para. 9, and Exhibit "A" (the 1982 Trust) at para. 6 [Appendix C]

staggered terms of office. It effect was to "increase of the terms of office for Trustees to 6 years for the Chief, four years for Councillor (a), 4 years for Councillor (b) and that the Trustees complete their terms before they are replaced."[7] It is not apparent from the terms of the Order or the 1982 Trust how it would be determined which Councillor was Councillor (a) and which was Councillor (b).

The 1985 Trust was established and received the assets of the 1982 Trust to "protect" those assets from members imposed on the SFN by Bill C-31.

14. While the *Charter* took effect April 17, 1982, the equality protection under s. 15 was suspended for three years, until April 17, 1985. The purpose of the suspension was to allow all levels of government an opportunity to review and amend discriminatory legislation. The *Indian Act*, and in particular its discriminatory membership provisions, was a particular subject of such review which engendered significant debate both within First Nations communities and between those communities and Canada.[8]

15. As a result of this review the Government of Canada passed legislation in 1985 effecting significant changes to the *Indian Act.* This legislation, known as Bill C-31:

    a. Eliminated several provisions concerning Indian status and band membership which discriminated on the basis of sex; and[9]

    b. Granted automatic entitlement to band membership in their former bands for certain categories of persons. This entitlement was effective regardless of the wishes of their Band. [10]

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[7] Order of Bowen J., June 15, 1983, Exhibit "C" to Bujold 12/11 [Appendix C]
[8] Hartley, Gerard, "The Search for Consensus: A Legislative History of Bill C-31, 1969-1985" (2007) *Aboriginal Policy Research Consortium International (APRCi)* [Authorities Tab 5]
[9] *Indian Act*, R.S.C. 1970, c.I-6, s.12 [Authorities Tab 6]; *Indian Act*, R.S.C. 1985, c. I-5, s. 6, 10 and 11 [Authorities Tab 7]
[10] *Sawridge Band v. Canada*, 2003 FCT 347, paras. 29, 34-38; upheld on appeal, *Sawridge Band v. Canada*, 2004 FCA 16 [Authorities Tab 10]

16. Bill C-31 also gave First Nations the ability to establish their own membership codes and thereby to assume control over their own membership. (Such codes were subject to the requirement that they could not exclude persons granted the automatic entitlement to membership.) First Nations which chose not to establish such codes remained subject to the membership regime under the *Indian Act*, as amended by Bill C-31.

17. While the SFN supported First Nation control of membership, it opposed the restoration of previously lost membership rights without its consent. As a result, the SFN took a number of steps arising from Bill C-31.

18. First, two days before s. 15 of the *Charter* came into force and Bill C-31 became effective the SFN established the 1985 Trust and approved the transfer to it of all assets held by the 1982 Trust. The purpose of this was to protect those assets from persons who would be imposed on SFN by automatic entitlement provisions of Bill C-31.[11]

19. Second, the SFN commenced a constitutional challenge to Bill C-31 in conjunction with other First Nations. It alleged the provisions giving certain persons automatic entitlement to band membership infringed constitutionally protected treaty and aboriginal rights.[12] The constitutional challenge and the asset transfer were complementary measures. Mr. Bujold stated that it was his information from Mr. Cullity that the intent of the 1985 Trust was to protect the assets from individuals whose entitlement to membership was restored by Bill C-31 pending the completion of the constitutional challenge.[13]

20. Third, the SFN exercised its right under Bill C-31 to establish its own membership code. The code was established by SFN resolution on July 4, 1985. On July 8, 1985 the SFN gave notice to the Minister of Indian Affairs that it was assuming control of its membership pursuant to the

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[11] Bujold 12/11 at paras. 15-22 [Appendix C]; Questioning of Paul Bujold on his September 12, 2011 Affidavit by counsel for SFN, July 27, 2016 (PB Questioning 27/07/16): p.22, l.1-27 and p.23, l.1-22 [Appendix G]; October 1993 Trial Evidence of Walter Patrick Twinn, p. 3906 line 4 to page 3908 line 20; Exhibit "B" to the Affidavit of Darcy Twinn sworn September 24, 2019 [Appendix N]

[12] PB Questioning 27/07/16, at p.22, l. 2-17 [Appendix G]; See also *Sawridge Band v. Canada*, 1997 CanLII 5294 (FCA), "Facts" [Appendix 9]

[13] *Ibid*

resolution. The SFN membership code has governed membership in the SFN since the date of that Notice.[14]

21. The creation of the 1985 Trust and the transfer of assets to it were carried out with the assistance of highly qualified accountants and legal counsel to the SFN, including Maurice Cullity of Davies Ward and Beck, (subsequently Mr. Justice Cullity of the Ontario Superior Court of Justice). The steps taken included:

    a. The establishment of the 1985 Trust on April 15, 1985. This was two days prior to the coming into force of s. 15 of the *Charter*, and also two days prior to the effective date of Bill C-31;

    b. The definition of beneficiaries of the 1985 Trust as those who would qualify as members of the SFN pursuant to the *Indian Act* as it read on April 15, 1982. This was the date on which the 1982 Trust had been established.

    c. A resolution of the Trustees of the 1982 Trust (the Old Trustees) who were also the Trustees of the 1985 Trust. The Old Trustees and the 1985 Trustees were also the only members of SFN Chief and Council at that time. The resolution authorized the transfer of the assets held by them as Trustees of the 1982 Trust to themselves as Trustees of the 1985 Trust;[15]

    d. The acceptance of the transfer by the 1985 Trustees, dated April 15, 1985;

    e. A resolution of the Members of the SFN (then called the Sawridge Band) dated April 15, 1985, approving and ratifying the transfer; and[16]

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[14] Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW000166 and #SAW00697 [Appendix K]
[15] Questioning of Darcy Twin, held October 18, 2019 (DT Questioning 18/10/19), p.14, l.19-27, p.15, l.1-3 and Exhibit "C" [Appendix 0 and P]
[16] DT Questioning 18/10/19, Exhibit "D" [Appendix P]

f. A Declaration of Trust dated April 16, 1985 whereby the Trustees of the 1982 and 1985 Trusts declared that assets that they had held as 1982 Trustees, they now held as 1985 Trustees.[17]

22. The beneficiary definition in the 1985 Trust, coupled with the timing of the asset transfer, ensured that when the asset transfer occurred on April 15, 1985, the beneficiaries of the 1985 Trust were exactly the same persons as the beneficiaries of the 1982 Trust.

23. The 1985 Trustees are satisfied that all assets held by the 1982 Trust were transferred to the 1985 Trust on April 15, 1985.[18] Paul Bujold stated the 1982 Trust no longer exists and that the cost of unravelling the 1985 Trust would be an "enormous detriment to the beneficiaries" because of the costs involved.[19]

24. The 1982 Trust was not the only source of assets held by the 1985 Trust. Pursuant to a SFN band council resolution, Chief Walter Patrick Twinn transferred to the 1985 Trust a demand debenture issued by Sawridge Enterprises Ltd. (SEL) for the sum of $12 million which Chief Twinn held individually for the SFN. The debenture was issued by SEL to Chief Twinn on January 21, 1985. It was given as security for advances to SEL made by Chief Twinn as Trustee for the SFN.[20]

The 1986 Trust was established to hold assets received by the SFN after Bill C-31. Its beneficiaries were SFN members under SFN's membership rules and customary laws.

25. In August 1986, after the SFN assumed control of its membership pursuant to Bill C-31, it established the Sawridge Trust (the 1986 Trust.) Its beneficiaries were defined as follows:

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[17] DT Questioning 18/10/19, Exhibit "B" [Appendix P]; PB Questioning 27/07/16, p.19-20 and 23-26 [Appendix G]
[18] PB Questioning 27/07/16, p.25, l.1-27, p.26, l.1-8 and p.27, l.15-27 [Appendix G]
[19] PB Questioning 27/07/16, p.27, l.15-27 and p.28, l.1-13 [Appendix G]
[20] Band Council Resolution dated April 15, 1985 (#SAW000240) Affidavit of Records of Sawridge Trustees, filed April 30, 2018 [Appendix K]; Demand Debenture - $12,000,000.00 (#SAW000495-#SAW000521) Affidavit of Records of Sawridge Trustees, filed April 30, 2018 [Appendix K]; Questioning of Paul Bujold, May 27, 2014 (Bujold Questioning 27/05/14), p.50, line 22 to page 52 line 14 [Appendix E]

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

Thereafter the SFN transferred cash and other assets into the 1986 Trust. No further assets were added to the 1985 Trust.[21]

26. Mr. Bujold described the effect of these various steps as follows in his September 12, 2011 Affidavit:

> "*31. Effectively, the assets in existence at April 15, 1985 were preserved for those who qualified as Sawridge members based on the definition of membership that existed at that time. The 1986 Trust was established so that assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed in the post-Bill C-31 era.*"

27. Despite the requirements of Bill C-31, the persons whose entitlement to SFN membership was restored were not recognized as members by the SFN at the time of the creation of the 1986 Trust. They remained excluded from membership pursuant to the SFN membership rules, and thus from beneficiary status under the 1986 Trust, until approximately 2003. At that time Canada sought and obtained an injunction requiring the SFN to recognize and act on their entitlement to membership.[22]

28. The October 1993 trial evidence of Chief Twinn and the evidence of Paul Bujold (based on information from Mr. Cullity) was that following the constitutional challenge the intent was to "merge" the 1985 and 1986 Trusts using the 1986 Trust beneficiary definition.

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[21] Bujold 12/11 at paras. 29-31, and Exhibit "K" [Appendix C,]
[22] ***Sawridge Band v. Canada***. *supra,* at footnote 10

29. Following two trials and ensuing appeals, the constitutional challenge was ultimately dismissed in December 2009. These proceedings were subsequently commenced in August 2011.[23]

In 1993 and 1994 Canada inquired about the trusts but did not interfere in their operation.

30. Following Chief Twinn's trial evidence in October 1993, the Department of Indian Affairs and Northern Development made inquiries concerning the Trusts, as referenced in Exhibit "C" of the Affidavit of Darcy Twin. The Department's letter referred to the fact that trust assets had been purchased with what are defined in the *Indian Act* as Indian Moneys. These included oil and gas royalty payments held by Canada for the SFN, and which had been released to the SFN pursuant to ss. 64 and 66 of the *Indian Act.*

31. Mr. Cullity responded to those inquiries on behalf of the SFN and took the position that Canada had no further interest in what the SFN had done with the moneys once they had been released to the First Nation.[24] There is no evidence how the exchange of correspondence concluded but the Crown did not interfere in the operation of the trusts.[25]

32. Mr. Cullity's position that Canada had no further interest in Indian moneys after their release to a band was subsequently affirmed by the Supreme Court of Canada in *Ermineskin Indian Band and Nation v. Canada*. It held: "Once a transfer is effected, the Crown's fiduciary obligations with regard to the funds in question must cease, as *it no longer has control over the funds and is not responsible for their management.*" (emphasis added).[26]

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[23] *Sawridge Band v. Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada AND BETWEEN Tsuu T'ina First Nation (formerly the Sarcee Indian Band)* v. *Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non Status Indian Association of Alberta and Native Women's Association of Canada,* 2009 CanLII 69744 (SCC) [Authorities Tab 11]

[24]Supplemental Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW001879, #SAW001881, #SAW001885, #SAW001886, #SAW001892 and #SAW001893 [Appendix L]

[25] DT Questioning 18/10/19, p.30, l.1-14 [Appendix O]

[26] *Ermineskin Indian Band and Nation* v. *Canada*, 2009 SCC 9, para 104, -106, 150-152 and 198-200 [Authorities Tab 3]; DT Questioning 18/10/19, p. 30, l.1-14 [Appendix O]

33. Counsel for Canada affirmed this position at the April 5, 2012 case management meeting He stated: "Our view is these are not Indian monies. These are the band's monies. The trust is out there in – the public domain, and it's dealt with according to those principles."[27]

These proceedings were initiated by the 1985 Trustees with the object of facilitating the distribution of benefits to the beneficiaries of the 1985 Trust.

34. Following the dismissal of the constitutional challenge, the Trustees of the 1985 and 1986 Trusts met to discuss the potential merger of the Trusts and the amendment of the beneficiary definition of the 1985 Trust.[28] The Trustees resolved to apply to the Court for advice and direction respecting these issues, giving rise to this proceeding.

35. This proceeding was commenced with the August 30, 2011 Affidavit of Paul Bujold. It was sworn in support of an application to establish the procedure for seeking advice and direction from the Court respecting the 1985 Trust. Mr. Bujold deposed the Trustees wished "to make some distributions to the Beneficiaries of the 1985 Trust" but had concerns respecting its beneficiary definition and the transfer of assets to it. The 1985 Trustees sought the advice and direction of the Court with respect to those issues. [29]

36. Mr. Bujold's affidavit gave rise to the Procedural Order. It directed the Trustees to bring an application to address the following issues:

    a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".

    b. To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust.[30]

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[27] Transcript of Case Management Hearing, held April 5, 2012, p.59, l.9-10 [Appendix D]
[28] Minutes of meeting of Sawridge Trustees, December 21, 2010; Affidavit of Records of Catherine Twinn, filed February 1, 2019, Document #TWN003087 [Appendix M]
[29] Affidavit of Paul Bujold dated August 30, 2011 (Bujold Affidavit 30/08) at paras 2 and 6 [Appendix A]
[30] Order of Thomas J., August 31, 2011, para. 1 [Appendix B]

The Procedural Order directed service of filed documents on beneficiaries and potential beneficiaries by posting to the Sawridge Trusts website. Service was effected accordingly.

37. The Procedural Order directed the Trustees to give notice of the application to a wide range of parties including all beneficiaries and potential beneficiaries of the 1985 Trust. Notice of the application on the beneficiaries and potential beneficiaries was to be effected by registered mail or email where such an address was known, and by newspaper advertisement and posting on the Sawridge Trusts website (www.sawridgetrusts.ca).[31] Between the notices effected by the Trustees and Canada, hundreds of individuals were notified of the proceeding, the Procedural Order and the existence of the website.[32]

38. Personal service on the beneficiaries and potential beneficiaries of any subsequent filed document, including any pleading, notice of motion, affidavit, exhibit or written legal argument, was dispensed with. Instead, all filed documents were to be posted on the Sawridge Trusts website within five business days of filing. Interested individuals also had the opportunity to apply to become formally involved in the proceeding and almost 30 individuals did so.[33]

39. Documents have been posted to the website since that time in accordance with these directions, including all filed applications, Affidavits, Questioning transcripts, briefs and Orders. These include the 1985 Trustees brief in support of the ATO and the ATO itself.[34]

The 1985 Trustees suggested limiting 1985 beneficiaries to members of the SFN. They acknowledged many current minor beneficiaries would lose beneficiary status as a result.

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[31] *Ibid*, paras. 2 and 4 [Appendix B]
[32] Newspaper Notice, High Prairie and Slave Lake, posted to website September 1, 2011 [Appendix R]; Email Notice, Paul Bujold to Beneficiaries and Potential Beneficiaries, re Court Application, posted to website September 1, 2011 [Appendix R]; Sample Notice Letter, Paul Bujold to Beneficiaries and Potential Beneficiaries, Sent by Registered Mail, re Court Application, posted to website September 1, 2011 [Appendix R]; Affidavit of Records of Catherine Twinn, filed February 1, 2019, Document #TWN003125 [Appendix M]
[33] Order of Thomas J., August 31, 2011, para. 6 [Appendix B]
[34] *Ibid*, at paras. 12 and 13 [Appendix B]

40. On September 12, 2011, Paul Bujold swore a second Affidavit in support of the advice and direction sought. It confirmed the Trustees' wish to make distributions "for the benefit of the beneficiaries of the 1985 Trust". It reiterated the issues concerning the beneficiary definition and asset transfer on which the Trustees sought court direction prior to such distribution.[35] It then detailed the origins of the 1982, 1985 and 1986 Trusts and described the circumstances of the transfer of the assets from the 1982 to the 1985 Trust as known to the Trustees.

41. With respect to the beneficiary definition contained in the 1985 Trust, Mr. Bujold deposed that the 1985 Trustees had determined it was "potentially discriminatory". Mr. Bujold also deposed to the belief of the 1985 Trustees that it would be appropriate to amend the beneficiary definition to define beneficiaries as members of the SFN.[36]

42. On subsequent Questioning on this Affidavit, Mr. Bujold testified that the Trustees had identified 23 beneficiaries of the 1985 Trust who were minors, 21 of whom were not members of the SFN. Mr. Bujold acknowledged those 21 persons would lose their status as beneficiaries of the 1985 Trust if the beneficiary definition was amended as proposed by the Trustees.[37]

43. The 1985 Trustees updated these figures in their case management application filed June 12, 2015. At that time there were 24 minor beneficiaries of the 1985 Trust. Twenty of those would lose their beneficiary status if the beneficiary definition was limited to SFN members.[38]

The 1985 Trustees proposed the ATO to confirm the transferred assets were held by the 1985 Trust for the benefit of the 1985 Trust beneficiaries.

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[35] Bujold Affidavit 12/11, at paras. 4 [Appendix C]
[36] Bujold 12/11, at paras. 32 and 33 [Appendix C]
[37] Bujold Questioning 27/05/14, page 122 line 15 to page 123 line 15 [Appendix E]
[38] Application of 1985 Trustees filed June 12, 2015, Schedule B, page 2 [Appendix F]

44. With respect to the asset transfer, Mr. Bujold deposed that it was carried out under the guidance of accountants and lawyers. He said that it was clear the transfers had been effected, although not all documentation was available. Given this, Mr. Bujold stated:

> "*25. The Trustees seek the Court's direction to declare that the asset transfer was proper* ***and that the assets in the 1985 Trust are held in trust for the beneficiaries of the 1985 Trust.***" (emphasis added)

Mr. Bujold went on to say that unravelling the assets of the 1985 Trust after 26 years would be very expensive and "would likely destroy the trust."[39]

45. Under subsequent Questioning on this Affidavit by counsel for the SFN Mr. Bujold gave evidence that the objective of the SFN and its Chief and Council had been to protect the assets in the 1982 Trust from individuals who might be "forced' on the SFN as members. The 1985 Trust was created and the assets of the 1982 trust were transferred to it for that purpose. This evidence was corroborated by the evidence of Chief Walter Patrick Twinn in October, 1993. Mr. Bujold also testified that the 1982 Trust no longer existed and that any attempt to return assets to the 1982 Trust would be an enormous detriment to the beneficiaries.[40]

46. Attempts were made to resolve the asset transfer issue by agreement among the parties confirming the validity of the transfer. However, the OPGT was concerned not all assets were accounted for. To address this concern the OPGT brought applications seeking production of records about the asset transfer from the SFN which the SFN opposed.

47. In order to address the OPGT concern, the 1985 Trustees proposed an Order confirming the validity of the transfer but preserving the right to an accounting of both the 1982 and 1985 Trusts. This draft Order, which became the ATO, was attached to a with prejudice proposal. In it the 1985 Trustees described the purpose of the Order as being to confirm that "the 1985

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[39] Bujold 12/11, at paras 23-25, 28 [Appendix C]
[40] PB Questioning 27/07/16, p.23, l.1-27 to p. 24, l.1-17; p. 27, l.23-24; p. 28, l.5-13 [Appendix G]
[40] Bujold 12/11, at paras. 32 and 33 [Appendix C]

Trust is the entity with which to deal." They urged the OPGT to consent to the Order on that basis.[41]

The SFN expressed its full support for the ATO on the basis proposed by the 1985 Trustees.

48. The SFN was copied with this proposal and expressed its full support. In correspondence to counsel for the OPGT, Counsel for the SFN stated:

> *"It is the position of the Sawridge First Nation that this settlement offer is reasonable and resolves any possible concerns with respect to approval of the transfer of assets from the 1982 Trust to the 1985 Trust."*[42]

Counsel for the SFN urged the OPGT to consent to the ATO and threatened it with costs in the production application if it did not consent.[43]

49. Counsel for the SFN also questioned Mr. Bujold on his affidavit with respect to the asset transfer and elicited evidence that:

i.) The purpose of the 1985 Trust was to protect the assets from individuals who might be "forced" on SFN as members;[44]

ii.) The objective of SFN and SFN Chief and Council's in 1985 was to, *inter alia*, transfer the 1982 assets to the 1985 Trust;[45]

iii.)The 1982 Trust no longer exists;[46]

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[41] DT Questioning 18/10/19, Exhibit "E" and "F" [Appendix O]
[42] *Ibid*, Exhibit "G"
[43] *Ibid*
[44] PB Questioning 27/07/16, p. 23, l.3-8 [Appendix G]
[45] *Ibid*, p. 23, l.16-27 and pg. 24, l.1-17 [Appendix G]
[46] *Ibid*, p. 27, l.23-24 [Appendix G]

iv.) SFN had cooperated with the 1985 Trustees in providing documents relevant to the asset transfer and Mr. Bujold did not believe any additional documents relevant to the asset transfer exist; and[47]

v.) Returning the assets to the 1982 Trust would be an enormous detriment to the beneficiaries.[48]

50. The reservation of rights in the proposed order addressed the OPGT concern about accounting for all assets. Accordingly, the OPGT consented to the Order based upon the representations of counsel for the 1985 Trustees.[49] Trustee Catherine Twinn also consented to the Order.

The ATO was approved by the Court based on written submissions by the 1985 Trustees who said its purpose was to protect the assets of the 1985 Trust for its beneficiaries

51. The ATO was submitted to the Court on August 24, 2016. Although consented to by all parties, the 1985 Trustees prepared a brief in support of its approval. The brief drew heavily on the Questioning of Mr. Bujold by Counsel for the SFN and included the following submissions:

> "*17. The Trustees have advised all parties that* ***the approval of the transfer of the assets from the 1982 Trust to the 1985 Trust is sought for certainty and to protect the assets of the 1985 Trust for the benefit of its beneficiaries.*** *To unravel the assets of the 1985 Trust after 30 years would create undue costs and would have the potential of destroying the trust.*
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> ...
>
> *20. In Pilkington v. Inland Revenue Commissioners HL 8 Oct 1962* ***Tab 3*** *the House of Lords approved as appropriate a transfer of part of one trust for the benefit of one beneficiary....Admittedly Pilkington dealt with a payment for the benefit of one beneficiary to a trust for the benefit of the beneficiary and in the Sawridge trusts, the transfer was of the whole trust fund of one trust to another trust.* ***However, it is submitted that the same principle is applicable as the transfer from the 1982 Trust to the 1985 Trust was for the benefit of the same***

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[47] *Ibid*, p.18, l.24-27, p.19, l. 1-5, p.24, l.24-27, p. 27, l.1-14, p.31, l. 26-27, and p.32, l. 1-27 [Appendix G]
[48] *Ibid*, p. 28, l.5-13 [Appendix G]
[49] *Ibid*, page 5 line 16 to page 8 line 13 [Appendix G]

> ***beneficiaries and preserved their interest in the trust assets.***" (emphasis added)

52. The ATO was approved by the Court at the case management meeting held August 24, 2016. Thomas J. referred to the 1985 Trustees brief, based on which he stated: "I'm satisfied the consent order is appropriate and properly based in law." Counsel for the OPGT, Trustee Twinn and the Minister of Aboriginal Affairs and Northern Development supported the ATO. Counsel for the SFN declined the Court's invitation to speak to it. However, following the granting of the ATO, in the course of submissions on another matter, counsel for the SFN endorsed the ATO to the Court. Counsel for the SFN stated:

> *"The purpose of the transfer in '82, '85, in terms of transfer from trust, was to avoid any claim that others might make in relation to those assets after the enactment of Bill C-31"*[50]

Counsel for the SFN also said that because of this that the SFN had been "highly motivated" to ensure the asset transfer was effective, and that "it was in everyone's best interest to make sure the transfer took place."[51]

53. The 1985 Trustees also submitted a distribution proposal filed August 5, 2016[52] for consideration by the Court at the case management meeting on August 24, 2016. That proposal contemplated the distribution of the 1985 Trust assets to the 1985 beneficiaries as determined in accordance with the Trustees proposed amendment to the 1985 beneficiary definition. Having granted the ATO and reviewed the distribution proposal the case management justice observed that the principal remaining issue to be determined was the definition of the beneficiary group.[53]

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[50] Transcript of Case Management Hearing, held August 24, 2016, p.39, l.1-3 [Appendix J]
[51] Transcript of Case Management Hearing, held August 24, 2016, p.39, l.4-7 [Appendix J]
[52] Proposed Distribution Arrangement of the Sawridge Band Inver Vivos Settlement (Tab 2 of 1985 Trustees Brief filed August 5, 2016) [Appendix J]
[53] Transcript of Case Management Hearing, held August 24, 2016, p.9, l.5-12 [Appendix]

54. Consistent with the stated purpose of the ATO there was no suggestion by any party, or the SFN, that the assets transferred to the 1985 Trust remained subject to the beneficiary definition of the 1982 Trust.

55. The SFN had the opportunity to make submissions respecting the granting of the ATO but chose to remain silent at that time. However, it did endorse the ATO at a later stage of the hearing. Counsel for the SFN referred to the fact the SFN was highly motivated to see the assets moved out of the 1982 Trust in order to protect them from claims by the members being imposed by Bill C-31.

III. ISSUES

56. What was the effect of the Consent Order made by Mr. Justice D.R.G. Thomas pronounced on August 24, 2016 ("the 2016 Consent Order")?

57. Was service of the 2016 Consent Order sufficient?

58. Is there a valid basis to do a transfer of assets from the 1985 Trust, similar to what was approved by the 2016 Order?

IV. SUBMISSIONS

A. Effect of the 2016 Asset Transfer Consent Order

The issue on this application is whether the ATO means the transferred assets are now held in the 1985 Trust for the benefit of the 1985 Trust beneficiaries

59. No one has appealed or otherwise challenged the validity of the ATO since it was granted on August 24, 2016. No one does so in this application. The issue before the Court is the interpretation of the ATO. This issue was described by the Court at the September 4 case management hearing as follows:

> *"...the single narrow issue...is what flows from the order of Justice Thomas on August 24, 2016, and whether, as a result of that order, the Trust assets are held subject to the terms of the 1985 Trust, whether the beneficiaries as described in*

> *the 1985 Trust are actually the beneficiaries of these Trust assets, and whether that took away the Trust obligations that existed in the 1982 Trust."*

The OPGT submits the answer to these questions is yes.

Court orders, including those granted on consent, are properly interpreted in light of the pleadings, the circumstances in which the order was granted, and the language of the order

60. Court orders are not interpreted in a vacuum. The accepted principles for interpretation of Court orders in Canada were recently summarized by the Saskatchewan Court of Appeal in *Campbell v. Campbell.* The interpretation of an order, whether granted on consent or otherwise, involves consideration of:

    a. The pleadings filed in the action in which the order was issued;
    b. The language of the order itself, and
    c. The circumstances in which the order was granted.[54]

61. The SKCA also cited with approval the UK Privy Council's statement that the construction of a judicial order:

> *"depends on what the language of the order would convey, in the circumstances in which the Court made it, so far as those circumstances were before the Court and patent to the parties...In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve."*

and the Australian Federal Court of Appeal holding that in construing a judgment it is proper if not essential "to have regard to the factual context in which the judgment was given and that this context includes the pleadings, the reasons for judgment and the course of evidence at the trial."[55]

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[54] *Campbell* v. *Campbell*, [2016] S.J. No. 149 (S.C.A.) at para 15, citing *Sutherland v. Reeves* 2014 BCCA 222 at para 53 [Authorities Tab 2]. These principles were recently adopted by Brooker J. of this Court in *Manseau & Perron Inc. v. ThyssenKrupp*, [2018] A.J. No. 1382 (Q.B.) at para 31 [Authorities Tab 8]

[55] *Ibid,* at paras. 16 and 17

62. The interpretation of an Order is an objective exercise which is not governed by the subjective, after-the-fact views of one or more of the parties.[56] The basis for rejecting a participant's subjective view is reinforced where the facts show that participant:

    i. Had input into the order;

    ii. Was present in Court when the order was made;

    iii. Failed to raise objections to the order; and

    iv. Failed to appeal the order.[57]

63. The application of these principles to the ATO leaves no doubt that the effect of the ATO was to confirm the transferred assets have since the date of transfer been held in the 1985 Trust for the benefit of the 1985 beneficiaries.

The pleadings show the ATO was sought to confirm the validity of the asset transfer so that the assets might be distributed to the 1985 Trust beneficiaries

64. As is evident from the pleadings, since the inception of this Advice and Direction proceeding its ultimate objective has been to facilitate distribution of the assets of the 1985 Trust to its beneficiaries. This is evident from the initiating document, the Affidavit of Paul Bujold for Procedural Order, which stated:

> *"The Trustees of the 1985 Trust have been managing substantial assets, some of which were transferred from the 1982 Trust, and wish to make some distributions to the Beneficiaries of the 1985 Trust."*[58]

65. This purpose has remained unchanged throughout the course of the litigation. It was the basis for the 1985 Trustees distribution proposal which was before the Court on the same day the ATO was approved.

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[56] *Yu* v. *Jordan*, [2012] B.C.J. No. 1863 (B.C.C.A) at para.53 [Authorities Tab 13]
[57] *Manseau & Perron Inc. v. ThyssenKrupp*, [2018] A.J. No. 1382 (Q.B.) at para 24, 34 and 73 [Authorities Tab 8]
[58] Bujold Affidavit 30/08 at para. 6 [Appendix A]

66. It was reiterated in the 1985 Trustees' overview of the proceedings for the December 18, 2018 case management meeting:

> *"There have been no distributions to beneficiaries from the 1985 trust since its creation in 1985. It would be in the best interests of the beneficiaries to conclude this litigation so that the beneficiaries can begin to receive payments from the trust."*

67. This purpose was recognized and affirmed by the Court, *inter alia*, in its decision referred to as ***Sawridge #4***. The Court stated: "This decision is the most recent step in a case management process which has the ultimate objective of distributing funds held in the 1985 Sawridge Trust [the "Trust"] to its beneficiaries."[59] The OPGT notes the decision in ***Sawridge #4*** arose from an application heard on August 24, 2016, during the same case management meeting at which the ATO was approved.

68. The two principal directions sought by the 1985 Trustees to achieve their objective have been:

    a. Approval of the transfer of the assets of from the 1982 Trust to the 1985 Trust,[60] and

    b. Resolution of issues respecting the definition of beneficiaries under the 1985 Trust.

    The first of these directions was obtained with the granting of the ATO on August 24, 2016. Since that date the proceeding has focussed on whether or not the Court can or should amend the beneficiary definition of the 1985 Trust.

69. The first specific reference to the proposed ATO made to the Court is found in the 1985 Trustees Application filed June 12, 2015 seeking approval of a litigation plan for further steps in the proceeding. The application attached a "With Prejudice" settlement proposal by the 1985 Trustees. One element of this proposal was "the nunc pro tunc approval of the transfer of assets from the 1982 Trust to the 1985 Trust." The proposal went on to say: "To be clear, if the transfer is not approved we believe the assets would need to return to the 1982 trust in

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[59] *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 299, at para 1 [Authorities Tab 12]
[60] Application for Advice and Direction in Respect of the transfer of assets, August 11, 2016 [Authorities Tab I]

which the definition of beneficiary is the members of the First Nation and thus the children you represent would not be included."

70. The 1985 Trustees subsequently filed a specific application for approval of the asset transfer, on August 11, 2016. The Application cited and relied on the Affidavits of Paul Bujold and the Questioning thereon, including Mr. Bujold's affidavit in which he deposed the Trustees sought a declaration that the asset transfer was "proper" and that the assets in the 1985 Trust were held for the benefit of the 1985 Trust's beneficiaries.

71. This purpose of the ATO was further confirmed by the written submission filed on behalf of the 1985 Trustees. Those submissions informed the Court that the approval of the asset transfer was sought "to protect the assets of the 1985 Trust for the benefit of the beneficiaries." and that "it is in the best interests of the beneficiaries of the 1985 Trust that the transfer of assets be approved *nunc pro tunc*.

72. These clear and explicit references in the pleadings to the purpose of the proceedings as a whole, and the ATO in particular, establish beyond doubt the effect of the order that was sought and granted. It was to confirm the validity of the asset transfer to the 1985 Trust so that the 1985 Trustees might deal with and distribute those assets to the 1985 Trust beneficiaries.

The circumstances confirm the ATO was intended to resolve any doubts respecting the asset transfer, and to confirm the assets were held in the 1985 Trust for its beneficiaries.

73. Other circumstances pertaining to the ATO underscore its purpose and effect. These include the evidence that was before the Court respecting the asset transfer, the representations of the 1985 Trustees and the SFN concerning the purpose of the Order, the submissions before the Court when the ATO was granted and the conduct of the parties thereafter.

74. The evidence overwhelmingly demonstrates the purpose of the ATO was to confirm the transferred assets were being held for the benefit of the 1985 beneficiaries. That evidence includes:

    a. The affidavits of Paul Bujold described above;

    b. The evidence of Paul Bujold on Questioning by counsel for the SFN that:

        i. The objective of SFN and SFN Chief and Council's in 1985 was to, *inter alia*, transfer the 1982 assets to the 1985 Trust;[61]

        ii. All of the assets of the 1982 Trust were in fact transferred to the 1985 Trust;

        iii. The 1982 Trust no longer exists;[62]

        iv. Returning the assets to the 1982 Trust would be an enormous detriment to the beneficiaries.[63]

75. The purpose of the ATO was further described by the 1985 Trustees in their "With Prejudice" proposal to the other parties on June 22, 2016. At that time discussions pertaining to the ATO focussed on the OPGT's concerns that not all trust assets had been accounted for. In response to this concern the 1985 Trustees proposed an Order which explicitly preserved the right to an accounting of both the 1982 and 1985 Trusts. In urging the OPGT to accept the proposed Order the 1985 Trustees stated:

> *"We note the Sawridge Trustees are the applicants in this application. To that end it is up to the applicants to define the issue they wish to address and the relief they seek. No accounting relief is being sought, no relief is sought to prevent a beneficiary from seeking an accounting.*
> *...We simply wish to have the court agree that the transfer is approved and the 1985 trust is the entity with which to deal."*[64]

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[61] PB Questioning 27/07/16, p. 23, l.16-27 and pg. 24, l.1-17 [Appendix G]
[62] PB Questioning 27/07/16, p. 27, l.23-24 [Appendix G]
[63] PB Questioning 27/07/16, p. 28, l.5-13 [Appendix G]
[64] June 22, 2016 letter to Hutchison Law from counsel for the 1985 Trustees; Exhibit "F", Questioning on Affidavit of Darcy Twin, October 18, 2019 [Appendix P]

All parties, including the OPGT, subsequently consented to the proposed Order, which became the ATO, on this basis.

76. The 1985 Trustees' proposal, and the Order it proposed, were fully endorsed by the SFN. In correspondence to counsel for the OPGT, the SFN's counsel wrote: "It is the position of the Sawridge First Nation that this settlement offer is reasonable and resolves any possible concerns with respect to approval of the transfer of assets from the 1982 Trust to the 1985 Trust." So earnest was its support, Counsel for the SFN went so far as to threaten the OPGT with costs of the related production application if the OPGT did not consent to the Order. [65]

77. The SFN was offered the opportunity to make submissions respecting the ATO at the August 24, 2016 appearance and chose not to do so.[66] Neither the SFN, nor any party, objected to the ATO nor suggested there were any outstanding issues with respect to the asset transfer. No suggestion was made that the assets might remain tied to the 1982 Trust, or that any provisions of the *Indian Act* were relevant. The clear purpose of the ATO was to confirm the assets had been successfully transferred to the 1985 Trust.

78. In addition to its application for the ATO, the 1985 Trustees submitted to the Court a distribution proposal for the 1985 Trust which was spoken to at the same hearing at which the ATO was approved. The proposal clearly demonstrated that the assets of the 1985 Trust, including those transferred from the 1982 Trust, were to be distributed among the 1985 beneficiaries.

79. Thereafter, the attention of the parties turned to the issue of the 1985 Trust beneficiary definition which the Court described as "the one outstanding issue". All parties moved forward on the understanding that the asset transfer had been approved, and that the remaining issue to be addressed was the identity of the 1985 beneficiaries entitled to share in distribution of the assets. Prior to the question being raised by the Court, no party, nor the SFN, made any

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[65] Questioning of Darcy Twin, held October 18, 2019, Exhibit "G" [Appendix P,]
[66] Transcript of Case Management Hearing, held August 24, 2016, p.6, l.10-14 [Appendix J]

suggestion that the notwithstanding the ATO, the transferred assets were subject to the 1982 Trust in any way.

80. The OPGT notes that it was well known to the parties and the SFN that in addition to the assets transferred from the 1982 Trust, the 1985 Trust contained a $12 million debenture transferred to it by Chief Walter Patrick Twinn. This asset is clearly held by the 1985 Trust for its beneficiaries. An order respecting the transfer of the 1985 Trust assets which did not have the effect of confirming they were held for the benefit of the 1985 beneficiaries would have created two classes of assets. There is nothing in the circumstances pertaining to the granting of the ATO to suggest this was contemplated, or that there would be a distinction between the assets received from Chief Twinn and those received from the 1982 Trust.

The language of the ATO clearly approves the asset transfer retroactively to 1985. Nothing in the ATO suggests any outstanding issues, or a continuing tie to the 1982 Trust

81. The operative provisions of the ATO are clear and straightforward. The transfer of assets to the 1985 Trust is approved retroactively to when it occurred. While rights to an accounting are preserved, nothing in the Order suggests any issues concerning the transfer itself remain to be resolved or that those assets remain tied to the 1982 Trust in any way.

82. The language of the ATO, taken together with the pleadings, submissions and surrounding circumstances clearly show its effect is exactly what was intended. The ATO confirms the 1982 assets were validly transferred to the 1985 Trust in which they are held by the 1985 Trustees for the beneficiaries of the 1985 Trust.

83. Finally, the OPGT submits that if this were not the effect of the ATO, then the question of the terms on which the transferred assets are held would remain to be determined. There is nothing in the pleadings, circumstances or the ATO itself from which the Court could find the ATO had the effect of subjecting the assets to the 1982 Trust's beneficiary definition. Whether or not this were the case would involve consideration of the effect of the asset transfer itself, as opposed to the effect of the ATO. Such a determination, which might require the production

of further records and other evidence, falls outside the scope of this application.[67] As such, the eventuality addressed in paragraphs 4 and 5 of the brief of the 1985 Trustees does not arise.

B. Service of the ATO

84. The ATO was served in the precise manner directed by the Court's 2011 Procedural order. That Order required notice of the Advice and Direction Application be given to the beneficiaries and potential beneficiaries by letter, email, newspaper notice and posting to the Sawridge Trust's website. Thereafter, the Order dispensed with service of filed documents on Beneficiaries and Potential Beneficiaries other than by posting on the website. The application for the ATO, the filed submissions in support and the ATO itself were all posted as required.[68]

85. Mr. Bujold's Affidavit in support of the Procedural Order stated that he had identified 194 potentially interested persons and had mailing addresses for 190 of them.[69] Under the terms of the Procedural Order, the 190 individuals were sent notice of the Application for Advice and Direction, and of the existence of the website containing Court documents.[70] The Notice was also published in the newspaper and on the website.[71]

86. Mr. Bujold acknowledged in his Affidavit the Trustees had no way to contact Registered Indians considered to be affiliated with SFN, but who were not members. The Procedural Order required the Trustees to provide notice of the Advice and Direction application to the Department of Indian Affairs, which then mailed a notice of the proceeding to those affiliated

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[67] This point was raised, and recognized by the Court, in the course of the SFN intervention application. Transcript of proceedings, October 30, 2019, page 56, lines 4-32 [Appendix Q]
[68] Order of Thomas J., August 31, 2011 [Appendix B]
[69] Bujold Affidavit 30/08 at para. 10-11 [Appendix A]
[70] Order of Thomas J., August 31, 2011 at para. 4 [Appendix B]
[71] Order of Thomas J., August 31, 2011 at para. 4 [Appendix B,]; Newspaper Notice, High Prairie and Slave Lake, posted to website September 1, 2011 [Appendix R]; Email Notice, Paul Bujold to Beneficiaries and Potential Beneficiaries, re Court Application, posted to website September 1, 2011 [Appendix R]; Sample Notice Letter, Paul Bujold to Beneficiaries and Potential Beneficiaries, Sent by Registered Mail, re Court Application, posted to website September 1, 2011 [Appendix R]

individuals. Canada's notice also provided the Sawridge Trust website address and recommended recipients monitor the website regularly.[72]

87. The notices produced a considerable response, with over 27 individuals filing affidavits to support their interest in the proceeding by the deadline set by the Court.[73] As well, several individuals such as Shelby Twinn, Patrick Twinn, Deb Serafinchon and the Stoney family were sufficiently aware of the steps in the process to be able to bring applications to become involved in the proceeding.

88. The Procedural Order was posted on the website, and was mailed out to hundreds of beneficiaries or potential beneficiaries over 8 years ago. There has been no application during that time to set aside, or amend, the aspects of the Procedural Order relating to service. The onus on any individual seeking to challenge the adequacy of service at this late date would be weighty, as the Court must consider when an individual should have learned of the issue and assess whether they moved to address the matter in a reasonable time.[74]

89. The ATO has been publicly available on the Sawridge website for over 3 years. There is no evidence, nor any suggestion, that it was not posted in compliance with the Procedural Order.

90. Until SFN's recent application to intervene, no SFN member, trust beneficiary or interested party has attempted to appeal, challenge or in any way raise concerns about the ATO or its effect.

91. Were the Court to consider a finding that the ATO was not properly served despite having been posted to the Sawridge Trusts website in accordance with the Procedural Order, it would call into question every step taken in this proceeding since the issuance of the Procedural

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[72] Bujold Affidavit 30/08 at para. 12 [Appendix A]; Order of Thomas J., August 31, 2011 at para. 2(i) [Appendix B]; Affidavit of Records of Catherine Twinn, filed February 1, 2019, Document #TWN003125 [Appendix M]

[73] see https://sawridgetrusts.ca/courtdoc/

[74] *Alberta Rules of Court*, Alta. Reg. 124/2010, Rule 2.10 [Authorities Tab 1]; Hanraj v. Ao [2004] A.J. No. 734 (C.A.) para 15 and 30-32 [Authorities Tab 5]

Order. The parties have incurred great expense to take this proceeding to its current stage. Such a finding could potentially set the proceeding back by 8 years.

C. Ability to Perform a Subsequent Asset Transfer from the 1985 Trust

92. The Trustees submit that if the 1982 to 1985 asset transfer is valid, a similar transfer of assets from the 1985 Trust can occur to the 1986 Trust.[75]

93. The OPGT agrees that under specific circumstances, a trust to trust asset transfer similar to the one done in 1985 could occur. However, at the present time, such a transfer could not occur between the 1985 and 1986 Trust.

94. An asset transfer of this nature can only occur where the trusts concerned have the same beneficiaries and the transfer is for their benefit. At the time of the 1985 Asset Transfer, the 1982 and 1985 Trusts' beneficiaries were the same group of individuals. As a result, the assets could be transferred from one trust to the other without affecting their beneficial interests. The transfer was also in their interests given its intention to protect the assets for them.

95. The same circumstances do not exist with respect to the 1985 and 1986 Trusts. While there is some overlap between the beneficiary groups under the 1985 Trust and 1986 Trust, the groups are not identical. For example, the 1985 Trust has many beneficiaries who are not members of the SFN and thus are not beneficiaries under the 1986 Trust. A transfer would not be in their interests because many of them would lose beneficiary status as a result. As such, the principles that permitted the 1982 to 1985 Trust transfer cannot currently be applied to allow an asset transfer from the 1985 Trust to the 1986 Trust.[76]

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[75] see Paragraph 6 of the Brief of the Sawridge Trustees filed November 1, 2019

[76] Pilkington v Inland Revenue Commissioners, [1964] A.C. 612 (1962) [Tab A-3, Brief of the Sawridge Trustees filed November 1, 2019]

V. RELIEF REQUESTED

96. The OPGT requests the following relief:

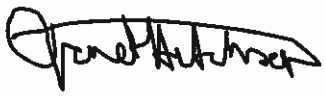
a. The OPGT respectfully submits the Court find and confirm that the effect of the consent order granted August 24, 2016 respecting the transfer of assets from the 1982 Trust to the 1985 Trust is that the assets were properly transferred and are, and have been since the date of transfer, held in the 1985 Trust for the beneficiaries of the 1985 Trust.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of November, 2019.

HUTCHISON LAW

Per:



JANET L. HUTCHISON

Solicitors for the Office of the Public Guardian and Trustee of Alberta

FIELD LAW

Per:

P. JONATHAN FAULDS, Q.C.

Solicitors for the Office of the Public Guardian and Trustee of Alberta

LIST OF APPENDICIES

Tab	Appendices
A.	Affidavit of Paul Bujold dated August 30, 2011
B.	Order of Thomas J., August 31, 2011
C.	Affidavit of Paul Bujold, September 12, 2011
D.	Transcript of Case Management Hearing, held April 5, 2012
E.	Transcript from Questioning of Paul Bujold, held May 27, 2014
F.	Application of 1985 Trustees filed June 12, 2015
G.	Transcript from Questioning of Paul Bujold, held July 27, 2016
H.	Proposed Distribution Arrangement of the Sawridge Band Inver Vivos Settlement (Tab 2 of 1985 Trustees Brief filed August 5, 2016)
I.	Application for Advice and Direction, filed August 11, 2016
J.	Transcript of Case Management Hearing, held August 24, 2016
K.	Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW000166, #SAW000240, #SAW000495-#SAW000521 and #SAW00697
L.	Supplemental Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW001879, #SAW001881, #SAW001885, #SAW001886, #SAW001892 and #SAW001893
M.	Affidavit of Records of Catherine Twinn, filed February 1, 2019, Document #TWN003087 and #TWN003125
N.	Affidavit of Darcy Twinn sworn September 24, 2019
O.	Transcript from Questioning of Darcy Twin, held October 18, 2019
P.	Exhibit "B", Questioning of Darcy Twin, held October 18, 2019, Exhibits for Identification
Q.	Transcript of Case Management Hearing, held October 30, 2019
R.	Documents posted to https://sawridgetrusts.ca/courtdoc/

LIST OF AUTHORITIES

Tab	Authorities
1.	*Alberta Rules of Court*, Alta. Reg. 124/2010
2.	*Campbell* v. *Campbell*, [2016] S.J. No. 149 (S.C.A.)
3.	*Ermineskin Indian Band and Nation* v. *Canada*, 2009 SCC 9
4.	Hartley, Gerard, "The Search for Consensus: A Legislative Hisotry of Bill c-31, 1969-1985" (2007) *Aboriginal Policy Reasearch Consortium International (APRCi)*
5.	Hanraj v. Ao [2004] A.J. No. 734 (C.A.)
6.	*Indian Act*, R.S.C. 1970, c.I-6
7.	*Indian Act*, R.S.C. 1985, c. I-5
8.	*Manseau & Perron Inc. v. ThyssenKrupp*, [2018] A.J. No. 1382 (Q.B.)
9.	*Sawridge Band v. Canada*, 1997 CanLII 5294 (FCA)
10.	*Sawridge Band v. Canada*, 2003 FCT 347; upheld on appeal, *Sawridge Band v. Canada*, 2004 FCA 16
11.	*Sawridge Band* v. *Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada AND BETWEEN Tsuu T'ina First Nation (formerly the Sarcee Indian Band)* v. *Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non Status Indian Association of Alberta and Native Women's Association of Canada*, 2009 CanLII 69744 (SCC)
12.	*1985 Sawridge Trust v. Alberta (Public Trustee), 2017 ABQB 299*
13.	*Yu* v. *Jordan*, [2012] B.C.J. No. 1863 (B.C.C.A)

TAB 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
DOCUMENT	**Affidavit of Paul Bujold for Procedural Order**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Doris C.E. Bonora Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-DCEB

JUDICIAL CENTRE OF EDMONTON FILED SEP 06 2011 Clerk of the Court of Queen's Bench

AFFIDAVIT OF PAUL BUJOLD

Sworn on August 30, 2011

I, Paul Bujold, of Edmonton, Alberta swear and say that:

1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985 Trust") and the Sawridge Band Trust created in 1986 (hereinafter referred to as the "1986 Trust"), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for setting the procedure for seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust.

3. On April 15, 1982, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "A" to this my affidavit ("1982 Trust").

4. On April 15, 1985, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "B" to this my affidavit ("1985 Trust").

5. On August 15, 1986, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "C" to this my affidavit ("1986 Trust").

6. The Trustees of the 1985 Trust have been managing substantial assets, some of which were transferred from the 1982 Trust, and wish to make some distributions to the Beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees of the 1985 Trust with respect to the following:

   a. Determining the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary varying the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".

   b. Seeking direction with respect to the transfer of assets to the 1985 Sawridge Trust.

7. In order to determine the beneficiaries of the 1985 Trust, the Trustees of the 1985 Trust directed me to place a series of advertisements in newspapers in Alberta, Saskatchewan, Manitoba and British Columbia to collect the names of those individuals who may be beneficiaries of the 1985 Trust.

8. As a result of these advertisements I have received notification from a number of individuals who may be beneficiaries of the 1985 Trust.

9. I have corresponded with the potential beneficiaries of the 1985 Trust and such correspondence is attached hereto as Exhibit "D".

10. I have compiled a list of the following persons who I believe may have an interest in the application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust:

    a. Sawridge First Nation;

b. All of the registered members of the Sawridge First Nation;

c. All persons known to be beneficiaries of the 1985 Sawridge Trust and all former members of the Sawridge First Nation who are known to be excluded by the definition of "Beneficiaries" in the 1986 Sawridge Trust, but who would now qualify to apply to be members of the Sawridge First Nation;

d. All persons known to have been beneficiaries of the Sawridge Band Trust dated April 15, 1982 (hereinafter referred to as the "1982 Sawridge Trust"), including any person who would have qualified as a beneficiary subsequent to April 15, 1985;

e. All of the individuals who have applied for membership in the Sawridge First Nation;

f. All of the individuals who have responded to the newspaper advertisements placed by the Applicants claiming to be a beneficiary of the 1985 Sawridge Trust;

g. Any other individuals who the Applicants may have reason to believe are potential beneficiaries of the 1985 Sawridge Trust;

h. The Office of the Public Trustee of Alberta (hereinafter referred to as the "Public Trustee") in respect of any minor beneficiaries or potential minor beneficiaries;

(those persons mentioned in Paragraph 10 (a) – (h) are hereinafter collectively referred to as the "Beneficiaries and Potential Beneficiaries"); and

i. Those persons who regained their status as Indians pursuant to the provisions of *Bill C-31* (An Act to amend the *Indian Act,* assented to June 28, 1985) and who have been deemed to be affiliated with the Sawridge First Nation by the Minister of Aboriginal Affairs and Northern Development Canada (hereinafter referred to as the "Minister").

11. The list of Beneficiaries and Potential Beneficiaries consists of 194 persons. I have been able to determine the mailing address of 190 of those persons. Of the four individuals for whom I have been unable to determine a mailing address, one is a person who applied for membership in the Sawridge First Nation but neglected to provide a mailing address when submitting her application. The other three individuals are persons for whom I have reason to believe are potential beneficiaries of the 1985 Trust and whose mother is a current member of the Sawridge First Nation.

12. With respect to those individuals who regained their status as Indians pursuant to the provisions of *Bill C-31* and who have been deemed to be affiliated with the Sawridge First Nation by the Minister, the Minister will not provide us with the current list of these individuals nor their addresses, citing privacy concerns. These individuals are not members of the Sawridge First Nation but may be potential beneficiaries of the 1985 Trust due to their possible affiliation with the Sawridge First Nation.

13. A website has been created and is located at www.sawridgetrust.ca (hereinafter referred to as the "Website"). The Beneficiaries and Potential Beneficiaries and the Minister have

access to the Website and it can be used to provide notice to the Beneficiaries and Potential Beneficiaries and the Minister and to make information available to them.

14. The Trustees seek this Court's direction in setting the procedure for seeking the opinion, advice and direction of the Court in regard to:

    a. Determining the Beneficiaries of the 1985 Trust.

    b. Reviewing and providing direction with respect to the transfer of the assets to the 1985 trust.

    c. Making any necessary variations to the 1985 Trust or any other Order it deems just in the circumstances.

SWORN OR AFFIRMED BY THE DEPONENT BEFORE A COMMISSIONER FOR OATHS AT EDMONTON, ALBERTA ON AUGUST 30, 2011.

PAUL BUJOLD

Commissioner's Name:
Appointment Expiry Date:
MARCO S. PORETTI
Barrister / Solicitor

This is Exhibit " A " referred to in the Affidavit of
Paul Bujold
Sworn before me this 20 day of August A.D., 20 11
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
MARCO S. PORETTI

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

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

BETWEEN:

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

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band No. 150 A B C respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

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

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

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

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

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.

2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions porperly made therefrom by the Trustees.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.

4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.

5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

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

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

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

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

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

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

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

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

a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
In the Presence of:

Heather Lyle
NAME
1100 One Thornton Court
ADDRESS

A. Settlor: Walter P. [illegible]

Heather Lyle
NAME
1100 One Thornton Court
ADDRESS

B. Trustees: 1. Walter P. [illegible]

NAME Heather York

ADDRESS 1100 One Thornton Court

NAME Heather York

ADDRESS 1100 One Thornton Court

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

2. [redacted]

3. Walter F [redacted]

4.

5.

6.

7.

8.

This is Exhibit " B " referred to in the Affidavit of Paul Bujold
Sworn before me this 30 day of August A.D., 20 11
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
MARCO S. PORETTI

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15th day of April, 1985

B E T W E E N :

CHIEF WALTER PATRICK TWINN,
of the Sawridge Indian Band,
No. 19, Slave Lake, Alberta,
(hereinafter called the "Settlor"),

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN,
GEORGE V. TWIN and SAMUEL G. TWIN,
of the Sawridge Indian Band,
No. 19, Slave Lake, Alberta,
(hereinafter collectively called
the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day

of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Settlement, the following terms shall be interpreted in accordance with the following rules:

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time

would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band

No 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement; and

(b) "Trust Fund" shall mean:

(A) the property described in the Schedule hereto and any accumulated income thereon;

(B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;

(C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and

(D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

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

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

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

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

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

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

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

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

Bruce & Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

A. Settlor

B. Trustees:

Bruce & Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

1.

Bruce & Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

2.

Bruce & Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

3.

Schedule

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit " C " referred to in the Affidavit of Paul Bujold
Sworn before me this 30 day of August A.D., 20 11
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
MARCO S. PORETTI

THE SAWRIDGE TRUST

DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

BETWEEN:

CHIEF WALTER P. TWINN,
of the Sawridge Indian Band, No. 19, Slave Lake, Alberta
(hereinafter called the "Settlor")

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Deed, the following terms shall be interpreted in accordance with the following rules:

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

(b) "Trust Fund" shall mean:

(A) the property described in the Schedule attached hereto and any accumulated income thereon;

(B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed;

(C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Deed;

(D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted; and

(E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell, lease or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed.

4. The name of the Trust Fund shall be "**The Sawridge Trust**" and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, the Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner or to any extent detracted from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

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

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

11. The provision of this Deed may be amended from time to time by a resolution of the Trustees that received the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

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

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

NAME

#[illegible] 12729 Stony Plain Road, [illegible].
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor
CHIEF WALTER P. TWINN

B. Trustees:

1.
CHIEF WALTER P. TWINN

2. Catherine M Twinn
CATHERINE TWINN

3.
GEORGE TWIN

860647-1/6

SCHEDULE

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit "D" referred to in the Affidavit of Paul Bujold
Sworn before me this 30 day of August A.D., 20 11
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
MARCO S. PORETTI

SAWRIDGE TRUSTS

24 November 2009

Dear Sawridge Trusts Potential Beneficiary,

During the consultations carried out by Four World Centre for Development Learning (Four Worlds), some of those consulted raised some questions regarding either the Sawridge Band Inter-Vivos Settlement (1985 Trust) or the Sawridge Trust (1986 Trust) or both (Trusts). The Trustees of the Trusts are pleased to try to answer your questions to the best of our ability based on information available at this time. The questions asked were:

- *Who are the trustees and how are they appointed?*
- *Are the children of individuals who became eligible under Bill C-31 also eligible as beneficiaries?*
- *What about the children of those individuals who are now deceased?*
- *What is the process whereby decisions are made about who is or is not a beneficiary?*
- *How do we get to the place where we can operate the Trusts without being forced into boxes originated with the Indian Act and that continue to cause disunity?*
- *If I am a beneficiary under a Trust and I receive benefits, am I taking something from someone else's table?*
- *Do "new" beneficiaries get the same benefits as those who have been eligible for their whole lives?*
- *Can benefits to seniors be structured to avoid tax consequences and not impact old age benefits?*
- *How can we ensure equity for all beneficiaries when the Band only serves those individuals who live on the Reserve?*
- *What happens to the Trust programs if the trustees change and new trustees have a different set of ideas?*

Attached to this letter is a copy of each of the deeds setting out the terms of each of the Trusts. These are the basic governing documents which, along with generally applicable principles and the rules of trust law, determine how the Trusts are operated.

Currently, the trustees of the two Trusts are the same, namely, Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland (Guy) Twinn and Walter Felix Twin. The trustees can be reached through the Trusts' office located in Edmonton, Alberta. The address, telephone number, fax number and email address for the Trusts is listed below on the letterhead. According to the trust deeds, the existing trustees select new trustees as trustees leave. The number of possible trustees for each trust is slightly different but the trustees have chosen to appoint five trustees for both trusts and have appointed the same trustees to each trust so that the two trusts can operate together.

Paragraph 6 of the deeds applying to each of the Trusts provides that the trustees have power to distribute income or capital of the Trusts "as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the trustees may make such payment at such time and from time to time, in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate."

Although this provision refers to the Trustees' discretion as "unfettered", it is in fact controlled by the requirements of trust law. These requirements, which have been laid down in case law and are expressed in fairly general terms, can be summarized as follows:

- Trustees must give their active consideration to the exercise of their discretionary powers.
- Trustees must act in good faith, in the sense that they must take account of relevant factors and must not take account of irrelevant factors.

Whatever is relevant for these purposes depends on the circumstances of each particular case. However, the basic idea is that trustees should take account of factors relevant to the purposes of the Trusts.

The trustees have recently hired a Trust Administrator and Program Manager, Paul Bujold, to administer the benefits, develop the programs and run the office of the Trusts. Paul can be reached at the address and telephone/fax numbers below, by email at paul@sawridgetrusts.ca or on his cell at (780) 270-4209.

Sawridge Trusts are developing a web site that will be accessible to all beneficiaries. Certain parts of the site will contain documents that are of interest to all beneficiaries while other parts will only be accessible to the particular beneficiary as it will contain private information about that person. The Web site will also list the programs currently available through the Trusts and how to access them and will provide useful links to other sites that can provide information or support programs to the beneficiaries.

Each of the Trusts owns all the shares in a separate holding company. In the case of the 1985 Trust, that company is Sawridge Holdings Ltd. and in the case of the 1986 Trust it is 352736 Alberta Ltd. Through these companies, the Trusts have invested in a number of businesses. The assets of Sawridge Holdings Ltd. and 352736 Alberta Ltd. are listed on the attached flow chart. The Directors of the holding companies and their subsidiaries, called the Sawridge Group of Companies, are independent individuals who have been chosen for their skills and experience in overseeing business enterprises such as those owned by the companies.

The Trusts were established to provide on-going benefits to the beneficiaries from the revenue generated by the Trusts' investments. This revenue fluctuates with the economic climate. The success of the businesses vary, accordingly. The resources of each Trust are limited and any system of programs has to be based on views about equitable and appropriate use of the resources available.

It is for the trustees to consider the weight to be given to particular factors. They may consider the length of time a person has been a beneficiary as one relevant factor if this is appropriate to the nature of the particular program or benefit being provided.

Another factor the trustees may consider is the impact of taxation, both generally and in the circumstances of particular beneficiaries. The trustees may be able to attempt to structure distributions in a way that will be as tax-efficient as reasonably possible. It is possible, however, that a particular distribution from the Trusts may have an impact on a person's entitlement to other programs such as Old Age Security. In considering the appropriate programs, the trustees may consider it relevant that certain programs and other benefits are only available to beneficiaries who live on the Reserve and other programs may only be available to beneficiaries living off the Reserve.

As trustees of discretionary trusts, the trustees have a broad discretion to develop those benefits through the Trusts that they feel would, from time to time, assist the individual beneficiaries and the Sawridge Band community grow and develop to better meet their own needs, the costs of which are consistent with the revenues available to the Trusts. Following the Four Worlds report, the trustees adopted a list of potential benefits suggested by the beneficiaries and Four Worlds. These benefits will be put in place gradually as more work is done on planning the financial impact of the programs on the Trusts and as the programs are matched with other programs already existing through the Regional Council, the Alberta Government, the Canadian Government or other agencies.

The trustees are responsible for exercising their discretion in respect of the programs while they are trustees. They will be responsible for evaluating the success of the programs on an on-going basis and therefore would be expected to make changes when they determine that changes are required. They also have the power to make changes based on their having, as phrased in the question asked by a beneficiary, "a different set of ideas". However, in order to make any such change they would need to consider whether replacing an already existing program would be reasonable in all the circumstances. The trustees may also, from time to time, have to take into consideration the cost of a program in relation to the amount of revenue available to the Trusts.

The rules for eligibility as a beneficiary are presently being worked out for each of the trusts. According to the trust deeds, the persons who qualify as beneficiaries are to some extent different for the 1985 Trust and for the 1986 Trust. In the 1985 Trust (paragraph 2(a) of the Deed), 'beneficiaries' are defined as persons who are also qualified to be Band members in accordance with the criteria provided in the Indian Act as at 15 April 1982. In the 1986 Trust (paragraph 2(a) of the Deed), 'beneficiaries' are defined as "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 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.".

The trustees are presently in the process of having some research carried out by experts in Canadian law and First Nations and Cree traditional law to develop a clear list of criteria. This

will help in the process of determining who is an eligible beneficiary, especially under the 1985 Trust where the rules are more complex.

As part of this process, the trustees will post a notice in newspapers in British Columbia, Alberta and Saskatchewan asking anyone who thinks that they may be a beneficiary under either trust to provide the Trusts with information about why they feel they are eligible. Based on the facts determined and the legal advice received, the Trusts will then develop a list of qualified beneficiaries. Where it is still not clear after this process whether someone is or is not a beneficiary, the Trusts will apply to the Alberta Court for its advice on the matter.

We hope that this information answers most people's questions. As more information becomes available we will keep the beneficiaries informed, either by newsletter or through the web site. If you have any questions, please do not hesitate to contact our office and the Trusts Administrator will try to assist you.

Cordially

Paul Bujold,

Interim Chair

Sawridge Trusts Board of Trustees

Attachments

TAB B

	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
DOCUMENT	**Order**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Doris C.E. Bonora Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-DCEB

Date on which Order Pronounced: August 31, 2011

Name of Justice who made this Order: D. R. G. Thomas

UPON the application of the Trustees of the 1985 Sawridge Trust (the "Applicants" or the "Trustees"); AND UPON hearing read the Affidavit of Paul Bujold, IT IS HEREBY ORDERED AND DECLARED as follows:

Application

1. An application shall be brought by the Trustees of the 1985 Sawridge Trust for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Sawridge Trust (hereinafter referred to as the "Advice and Direction Application"). The Advice and Direction Application shall be brought:

   a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".

   b. To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust.

Notice

2. The Trustees shall send notice of the Advice and Direction Application to the following persons, in the manner set forth in this Order:

   a. The Sawridge First Nation;

   b. All of the registered members of the Sawridge First Nation;

   c. All persons known to be beneficiaries of the 1985 Sawridge Trust and all former members of the Sawridge First Nation who are known to be excluded by the definition of "Beneficiaries" in the Sawridge Trust created on August 15, 1986, but who would now qualify to apply to be members of the Sawridge First Nation;

   d. All persons known to have been beneficiaries of the Sawridge Band Trust created on April 15, 1982 (hereinafter referred to as the "1982 Sawridge Trust"), including any person who would have qualified as a beneficiary subsequent to April 15, 1985;

   e. All of the individuals who have applied for membership in the Sawridge First Nation;

   f. All of the individuals who have responded to the newspaper advertisements placed by the Applicants claiming to be a beneficiary of the 1985 Sawridge Trust;

   g. Any other individuals who the Applicants may have reason to believe are potential beneficiaries of the 1985 Sawridge Trust;

   h. The Office of the Public Trustee of Alberta (hereinafter referred to as the "Public Trustee") in respect of any minor beneficiaries or potential minor beneficiaries; and

   i. The Minister of Aboriginal Affairs and Northern Development Canada (hereinafter referred to as the "Minister") in respect, *inter alia,* of all those

persons who are Status Indians and who are deemed to be affiliated with the Sawridge First Nation by the Minister.

(those persons mentioned in Paragraph 2 (a) – (i) shall collectively be referred to as the "Beneficiaries and Potential Beneficiaries")

3. Notice of the Advice and Direction Application on any person shall not be used by that person to show any connection or entitlement to rights under the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to entitle a person to being held to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to determine or help to determine that a person should be admitted as a member of the Sawridge First Nation. Notice of the Advice and Direction Application is deemed only to be notice that a person may have a right to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust and that the person must determine his or her own entitlement and pursue such entitlement.

Dates and Timelines for Advice and Direction Application

4. The Trustees shall, within 10 business days of the day this Order is made, provide notice of the Advice and Direction Application to the Beneficiaries and Potential Beneficiaries in the following manner:

   a. Make this Order available by posting this Order on the website located at www.sawridgetrusts.ca (hereinafter referred to as the "Website");

   b. Send a letter by registered mail to the Beneficiaries and Potential Beneficiaries for which the Applicants have a mailing address and by email to the Beneficiaries and Potential Beneficiaries for which the Applicants have an email address, advising them of the Advice and Direction Application and advising them of this Order and of the ability to access this Order on the Website (hereinafter referred to as the "Notice Letter"). The Notice Letter shall also provide information on how to access court documents on the Website;

   c. Take out an advertisement in the local newspapers published in the Town of Slave Lake and the Town of High Prairie, setting out the same information that is contained in the Notice Letter; and

   d. Make a copy of the Notice Letter available by posting it on the Website.

5. The Trustees shall send the Notice Letter by registered mail and email no later than September 7, 2011.

6. Any person who is interested in participating in the Advice and Direction Application shall file any affidavit upon which they intend to rely no later than September 30, 2011.

7. Any questioning on affidavits filed with respect to the Advice and Direction Application shall be completed no later than October 21, 2011.

8. The legal argument of the Applicants shall be filed no later than November 11, 2011.

9. The legal argument of any other person shall be filed no later than December 2, 2011.

10. Any replies by the Applicant shall be filed no later than December 16, 2011.

11. The Advice and Direction Application shall be heard January 12, 2012 in Special Chambers.

Further Notice and Service Provisions

12. Except as otherwise provided for in this Order, the Beneficiaries and Potential Beneficiaries need not be served with any document filed with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument.

13. The Applicants shall post any document that they file with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument, on the Website within 5 business days after the day on which the document is filed.

14. The Beneficiaries and Potential Beneficiaries shall serve the Applicants with any document that they file with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument, which service shall be completed by the relevant filing deadline, if any, contained in this Order.

15. The Applicants shall post all of the documents the Applicants are served with in this matter on the Website within 5 business days after the day on which they were served.

16. The Applicants shall make all written communications to the Beneficiaries and Potential Beneficiaries publicly available by posting all such communications on the Website within 5 business days after the day on which the communication is sent.

17. The Beneficiaries and Potential Beneficiaries are entitled to download any documents posted on the Website by the Applicants pursuant to the terms of this Order.

18. Notwithstanding any other provision in this Order, the following persons shall be served with all documents filed with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument:

    a. Legal counsel for the Applicants;

    b. Legal counsel for any individual Trustee;

    c. Legal counsel for any Beneficiaries and Potential Beneficiaries;

    d. The Sawridge First Nation;

    e. The Public Trustee; and

f. The Minister.

Variation or Amendment of this Order

19. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order on not less than 7 days' notice to those persons identified in paragraph 17 of this Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Justice of the Court of Queen's Bench in Alberta

809772;August 31, 2011

TAB C

	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
DOCUMENT	**AFFIDAVIT OF PAUL BUJOLD on advice and direction in the 1985 trust**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Attention: Doris C.E. Bonora Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-DCEB

AFFIDAVIT OF PAUL BUJOLD

Sworn on September 12, 2011

I, Paul Bujold, of Edmonton, Alberta swear and say that:

1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985

Trust") and the Sawridge Band Trust created in 1986 (hereinafter referred to as the "1986 Trust"), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust.

Issues for this Application

3. At present, there are five trustees of the 1985 Trust: Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland C. Twinn and Walter Felix Twin (hereinafter referred to as the "Trustees").

4. The Trustees would like to make distributions for the benefit of the beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees:

   a. Regarding the definition of "Beneficiaries" contained in the 1985 Trust.

   b. Regarding the transfer of assets into the 1985 Trust.

5. Accordingly, the Trustees seek the opinion, advice and direction of the Court in regard to these matters.

Background

6. In 1966, Chief Walter Patrick Twinn (hereinafter referred to as "Chief Walter Twinn") became the Chief of the Sawridge Band No. 454, now known as Sawridge First Nation (hereinafter referred to as the "Sawridge First Nation" or the "Nation"), and remained the Chief until his death on October 30, 1997.

7. I am advised by Ronald Ewoniak, CA, retired engagement partner on behalf of Deloitte & Touche LLP to the Sawridge Trusts, Companies and First Nation, and do verily believe, that Chief Walter Twinn believed that the lives of the members of the Sawridge First Nation could be improved by creating businesses that gave rise to employment opportunities. Chief Walter Twinn believed that investing a portion of the oil and gas royalties received by the Nation would stimulate economic development and create an avenue for self-sufficiency, self-assurance, confidence and financial independence for the members of the Nation.

8. I am advised by Ronald Ewoniak, CA, and do verily believe, that in the early 1970s the Sawridge First Nation began investing some of its oil and gas royalties in land, hotels and other business assets. At the time, it was unclear whether the Nation had statutory ownership powers, and accordingly assets acquired by the Nation were registered to the names of individuals who would hold the property in trust. By 1982, Chief Walter Twinn, George Twin, Walter Felix Twin, Samuel Gilbert Twin and David Fennell held a number of assets in trust for the Sawridge First Nation.

Creation of the 1982 Trust

9. I am advised by Ronald Ewoniak, CA, and do verily believe, that in 1982 the Sawridge First Nation decided to establish a formal trust in respect of the property then held in trust by individuals on behalf of the present and future members of the Nation. The establishment of the formal trust would enable the Nation to provide long-term benefits to the members and their descendents. On April 15, 1982, a declaration of trust establishing the Sawridge Band Trust (hereinafter referred to as the "1982 Trust") was executed. Attached as **Exhibit "A"** to my Affidavit is a copy of the 1982 Trust.

10. In June, 1982, at a meeting of the trustees and the settlor of the 1982 Trust, it was resolved that the necessary documentation be prepared to transfer all property held by Chief Walter Twinn, George Vital Twin and Walter Felix Twin, in trust for the present

and future members of the Nation, to the 1982 Trust. Attached as **Exhibit "B"** to my Affidavit is a copy of the resolution passed at the said meeting dated June, 1982.

11. The 1982 Trust was varied by a Court Order entered on June 17, 2003, whereby paragraph 5 of the 1982 Trust was amended to provide for staggered terms for the trustees. Attached as **Exhibit "C"** to my Affidavit is a copy of the Court Order entered on June 17, 2003 varying the 1982 Trust.

12. On December 19, 1983, a number of properties and shares in various companies which had been held by Chief Walter Twinn, Walter Felix Twin, Samuel Gilbert Twin and David Fennell in trust for the present and future members of the Nation were transferred into the 1982 Trust. Attached as **Exhibit "D"** to my Affidavit is an agreement dated December 19, 1983, transferring certain assets into the 1982 Trust. Attached as **Exhibit "E"** to my Affidavit is a transfer agreement dated December 19, 1983 transferring certain assets from the 1982 Trust to Sawridge Holdings Ltd.

Changes in Legislation – The *Charter of Rights and Freedoms* and *Bill C-31*

13. On April 17, 1982, the *Constitution Act, 1982*, which included the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the "*Charter*"), came into force. Section 15 of the *Charter* did not have effect, however, until April 17, 1985, to enable provincial and federal legislation to be brought into compliance with it.

14. After the *Charter* came into force, the federal government began the process of amending the *Indian Act*, R.S.C. 1970, c. I-6 (hereinafter referred to as the "1970 *Indian Act*"). Following the federal election in 1984, the government introduced *Bill C-31*, a copy of which is attached as **Exhibit "F"** to my Affidavit. *Bill C-31* was introduced to address concerns that certain provisions of the 1970 *Indian Act* relating to membership were discriminatory.

15. It was expected that *Bill C-31* would result in an increase in the number of individuals included on the membership list of the Sawridge First Nation. This led the Nation to settle a new trust, the 1985 Trust, within which assets would be preserved for the Band members as defined by the legislation prior to *Bill C-31*.

Creation of the 1985 Trust

16. Attached as **Exhibit "G"** to my Affidavit is a copy of the 1985 Trust dated April 15, 1985.

17. The 1985 Trust provides that the "Beneficiaries" are:

> "Beneficiaries at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band No. 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement."

18. The 1985 Trust effectively "froze" the definition of beneficiaries according to the legislation as it existed prior to *Bill C-31*.

19. Attached as **Exhibit "H"** to my Affidavit is a copy of a Resolution of Trustees dated April 15, 1985, whereby the trustees of the 1982 Trust resolved to transfer all of the assets of the 1982 Trust to the 1985 Trust.

20. On April 15, 1985, the Sawridge First Nation approved and ratified the transfer of the assets from the 1982 Trust to the 1985 Trust. Attached as **Exhibit "I"** to my Affidavit is a Sawridge Band Resolution dated April 15, 1985 to this effect.

21. On April 16, 1985 the trustees of the 1982 Trust and the trustees of the 1985 Trust declared:

a. that the trustees of the 1985 Trust would hold and continue to hold legal title to the assets described in Schedule "A" of that Declaration; and

b. that the trustees of the 1985 Trust had assigned and released to them any and all interest in the Promissory Notes attached as Schedule "B" of that Declaration.

Attached as **Exhibit "J"** to this my Affidavit is the Declaration of Trust made April 16, 1985.

22. Based upon my review of the exhibits attached to this my affidavit and upon the knowledge I have acquired as Chief Executive Officer of the Sawridge Trusts, I believe that all of the property from the 1982 Trust was transferred to the 1985 Trust. Further, there was additional property transferred into the 1985 Trust by the Sawridge First Nation or individuals holding property in trust for the Nation and its members.

23. The transfers were carried out by the trustees of the 1982 Trust under the guidance of accountants and lawyers. The Trustees have been unable to locate all of the necessary documentation in relation to the transfer of the assets from the 1982 Trust to the 1985 Trust or in relation to the transfer of assets from individuals or the Nation to the 1985 Trust.

24. It is clear that the transfers were done but the documentation is not currently available. The Trustees have been operating on the assumption that they were properly guided by their advisors and the asset transfer to the 1985 Trust was done properly.

25. The Trustees seek the Court's direction to declare that the asset transfer was proper and that the assets in the 1985 Trust are held in trust for the benefit of the beneficiaries of the 1985 Trust.

26. The 1985 Trust is the sole shareholder of Sawridge Holdings Ltd. I am advised by Ralph Peterson, Chairman of the Board of Directors of the Sawridge Group of Companies, and do verily believe that an approximate value of the 1985 Trust investment in Sawridge Holdings Ltd. as at December 31, 2010 is $68,506,815. This represents an approximate value of the net assets of Sawridge Holdings Ltd., assuming all assets could be disposed of at their recorded net book value and all liabilities are settled at the recorded values as at that date, with no consideration for the income tax effect of any disposal transactions.

27. Taking into account the other assets and liabilities of the 1985 Trust, the approximate value of the net assets of the 1985 Trust as at December 31, 2010 is $70,263,960.

28. To unravel the assets of the 1985 Trust after 26 years would create enormous costs and would likely destroy the trust. Assets would have to be sold to pay the costs and to pay the taxes associated with a reversal of the transfer of assets.

Creation of the 1986 Trust

29. Attached to my affidavit as **Exhibit "K"** is a copy of the 1986 Trust dated August 15, 1986. The beneficiaries of the 1986 Trust included all members of the Sawridge First Nation in the post-*Bill C-31* era.

30. The Sawridge First Nation transferred cash and other assets into the 1986 Trust to further the purposes of the trust. After April 15, 1985 no further funds or assets were put into the 1985 Trust.

31. Effectively, the assets in existence as at April 15, 1985 were preserved for those who qualified as Sawridge members based on the definition of membership that existed at that time. The 1986 Trust was established so that assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed in the post-*Bill C-31* era.

Identification of Beneficiaries Under the 1985 Trust and the 1986 Trust

32. The Trustees have determined that maintaining the definition of "Beneficiaries" contained in the 1985 Trust is potentially discriminatory. The definition of "Beneficiaries" in the 1985 Trust would allow non-members of the Nation to be beneficiaries of the 1985 Trust and would exclude certain members of the Nation (such as those individuals acquiring membership as a result of *Bill C-31*) from being beneficiaries.

33. The Trustees believe that it is fair, equitable and in keeping with the history and purpose of the Sawridge Trusts that the definition of "Beneficiaries" contained in the 1985 Trust be amended such that a beneficiary is defined as a member of the Nation, which is consistent with the definition of "Beneficiaries" in the 1986 Trust.

Current Status

34. The Trustees have been administering the Sawridge Trusts for many years. In December of 2008, the Trustees retained the Four Worlds Centre for Development Learning (hereinafter referred to as "Four Worlds") to conduct a consultation process with the beneficiaries of the Sawridge Trusts. Four Worlds prepared a report identifying the types of programs and services that the Sawridge Trusts should offer to the beneficiaries and

the types of payments the Trustees should consider making from the trusts. Attached hereto as **Exhibit "L"** is a summary chart of recommendations taken from the said report.

35. Having undertaken the consultation process, the Trustees have a desire to confer more direct benefits on the beneficiaries of the Sawridge Trusts. The Trustees require clarification and amendment of the 1985 Trust such that the definition of "Beneficiaries" in the 1985 Trust is varied to make it consistent with the definition of "Beneficiaries" in the 1986 Trust. In this way the members of the Nation are the beneficiaries of both the 1985 Trust and the1986 Trust and the assets that once belonged to the Nation can be distributed through the trusts to the members of the Nation.

SWORN before me at Edmonton
in the Province of Alberta,
on the 12 day of September, 2011.

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

Catherine A. Magnan
My Commission Expires
January 29, 2012

Paul Bujold

809051_2;September 12, 2011

This is Exhibit " A " referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 2012
A Magnan
A ~~Notary Public~~, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 2012

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

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

BETWEEN:

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

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band No. 150 A S R respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

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

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

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

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

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.

2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions porperly made therefrom by the Trustees.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.

4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.

5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

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

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

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

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

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

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

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

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

a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

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

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED
In the Presence of:

Heather Lyle
NAME
1100 One Thornton Court
ADDRESS

A. Settlor: Walter P. Twin

Heather Lyle
NAME
1100 One Thornton Court
ADDRESS

B. Trustees: 1. Walter P. Twin

NAME Heather Ifork

ADDRESS 1100 One Thornton Court

NAME Heather Ifork

ADDRESS 1100 One Thornton Court

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

2. 

3. Walter F Ifork 

4. _____

5. _____

6. _____

7. _____

8. _____

Meeting of the Trustee's and Settlors of the
SAWRIDGE BAND TRUST
June, 1982, held at Sawridge Band Office
Sawridge Reserve, Slave Lake, Alberta

IN ATTENDANCE:

WALTER P. TWINN
GEORGE TWIN
WALTER FELIX TWIN

All the Trustees and Settlors being present, formal notice calling the meeting was dispensed with and the meeting declared to be regularly called. Walter P. Twinn acted as Chairman, and called the meeting to order. George Twinn acted as secretary.

IT IS HEREBY RESOLVED:

1. THAT the Solicitors and David A. Fennell and David Jones and the Accountants, Ron Ewoniak of Deloitte, Haskins & Sells presented to the Settlors a Trust Settlement document which settled certain of the assets of the Band on the Trust.

2. THAT this document was reviewed by the Settlors and approved unanimously.

3. THAT the Trustees then instructed the Solicitors to prepare the necessary documentation to transfer all property presently held by themselves to the Trust and to present the documentation for review and approval.

There being no further business, the meeting then adjourned.

WALTER P. TWINN

GEORGE TWINN

WALTER FELIX TWINN

This is Exhibit " B " referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day
of September A.D., 2011
A Magnan
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 2012

This is Exhibit " C " referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day
of September A.D., 2011
A Magnan
~~A Notary Public~~, A Commissioner for Oaths
in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 2012

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

IN THE MATTER OF THE SAWRIDGE BAND TRUST:

BETWEEN:

WALTER P. TWINN, GEORGE TWINN
AND SAMUEL TWINN

APPLICANTS

AND:

WALTER P. TWINN (as representative
of the beneficiaries)

RESPONDENT

BEFORE THE HONOURABLE
MR. JUSTICE D. H. BOWEN
IN CHAMBERS
LAW COURTS, EDMONTON

) ON WEDNESDAY, THE 15TH DAY
) OF JUNE, A.D. 1983.

ORDER

UPON HEARING THE APPLICATION of the Applicant in the matter of the variation of the Sawridge Band Trust to amend paragraph 5 of the original trust deed made on the 15th day of April, 1982 (a copy of which is attached) pursuant to the Alberta Trustee Act, R.S.A. 1980 c. T-10, s.42(1);

IT IS ORDERED that the Sawridge Band Trust be amended to allow the increase of the terms of office of the Trustees to 6 years for the Chief, 4 years for the Councillor (a), 2 years for Councillor (b) and that the Trustees complete their terms before they are replaced.

Clerk of the Court

Entered this 17 day
June A.D. 1983
Clerk of the Court

No: 8303 15822 A.D. 1983

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE SAWRIDGE BAND TRUST:

BETWEEN:

WALTER P. TWINN, GEORGE TWINN
AND SAMUEL TWINN

APPLICANTS

AND:

WALTER P. TWINN (as representative
of the beneficiaries)

RESPONDENT

ORDER

David A Fennell
Professional Corporation
910, 10310 Jasper Avenue
Edmonton, Alberta

THIS AGREEMENT made with effect from the 19th day of December A.D. 1983.

This is Exhibit "D" referred to in the Affidavit of Paul Buisold
Sworn before me this 12 day of September A.D., 20 11
A. Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

BETWEEN:

WALTER PATRICK TWINN, WALTER FELIX TWINN, SAM TWINN, and DAVID A. FENNELL (each being Trustees of certain properties for the Sawridge Indian Band, herein referred to as the "Old Trustees")

Catherine A. Magnan
My Commission Expires January 29, 20 12

OF THE FIRST PART

and:

WALTER PATRICK TWINN, SAM TWINN and GEORGE TWINN (together being the current Trustees of the Sawridge Band Trust, herein referred to as the "New Trustees")

OF THE SECOND PART

WHEREAS:

1. Each of the Old Trustees individually or together with one or more or the other Old Trustees holds one or more of those certain properties listed in Appendix A attached hereto in trust for the present and future members of the Sawridge Indian Band;

2. The Sawridge Band Trust has been established to provide a more formal vehicle to hold property for the benefit of present and future members of the Sawridge Indian Band; and

.../2

3. It is desirable to consolidate all of the properties under the Sawridge Band Trust, by having the Old Trustees transfer the said properties listed in Appendix A to the New Trustees.

NOW THEREFORE, THIS AGREEMENT WITNESS AS FOLLOWS:

1. Each of the Old Trustees hereby transfers all of his legal interest in each of the properties listed in Appendix A attached hereto to the New Trustees as joint tenants, to be held by the New Trustees on the terms and conditions set out in the Sawridge Band Trust, and as part of the said Trust.

2. The Old Trustees agree to convey their said legal interests in the properties referred to above in the New Trustees, or to their order, forthwith upon being directed to do so by the New Trustees, and in the meantime hold their interests in the said properties as agents of the New Trustees and subject to the direction of the New Trustees.

3. The New Trustees hereby undertake to indemnify and save harmless each and every one of the Old Trustees with respect to any claim or action arising after the date of this Agreement with respect to the said properties herein transferred to the New Trustees.

IN WITNESS WHEREOF each of the parties hereto has signed on the respective dates indicated below:

G M Cunningham
Witness

Walter Patrick Twinn

Dec. 19/83
Date

G M Cunningham
Witness

Walter F Twinn
Walter Felix Twinn

Dec 19/83
Date

Witness

Sam Twinn

Dec 19/83

Date

Witness

David A. Fennell

Dec 19/83

Date

Witness

Walter Patrick Twinn

Dec 19/83

Date

Witness

Sam Twinn

Dec 19/83

Date

Witness

George Twinn

Dec 19/83

Date

SCHEDULE "A"

Description	Adjusted Cost Base	Consideration
A. The Zeidler Property All that portion of the Northeast quarter of Section 36, Township 72, Range 6. West of the 5th Meridian which lies between the North limit of the Road as shown on Road Plan 946 E.O. and the Southwest limit of the right-of-way of the Edmonton Dunevegan and British Columbia Railway on shown on Railway Plan 4961 B. O. containing 28.1 Hectare (69.40 acres) more or less excepting thereout: (a) 22.6 Hectares (55.73 acres) more or less described in Certificate of Title No. 227-V-136; (b) 0.158 Hectares (1.28 acres) more or less as shown on Road Plan 469 L.Z.	$100,000.00	Primissory Note in the amount of $100,000.00 1 Common share in Sawridge Holdings Ltd.
B. The Planer Mill Plan 2580 T.R., Lot Four (4), containing 7.60 Hectares (18.79 acres) more or less (P.T. SECS. 29 and 30-72-4-W5TH, Mitsue Lake Industrial Park) excepting thereout all mines and minerals.	Land $ 64,633.00 Equipment $135,687.00	Promissory Note in the amount of $200,320.00 1 Common Share in Sawridge Holdings L

Description	Adjusted Cost Base	Consideration
C. Mitsue Property		
Plan 2580 T.R. Lot Eight (8) containing 6.54 Hectares more or less (part of Sections 29 and 30-72-4-W5TH, Mitsue Lake Industrial Park) excepting thereout all mines and minerals and the right to work the same.	Land $ 55,616.00 Building $364,325.00	Promissory Note in the amount of $419,941.00 1 Common Share in Sawridge Holdings Lt.
D. The Residences		
Lot 3, Block 7, Plan 1915 H.W. (305-1st St. N.E.)	Land $ 24,602.00 House $ 30,463.00	Promissory Note in the amount of $40,000.00 1 Common Share in Sawridge Holdings Lt.
Lot 18, Block 35, Plan 5928 R.S. (301-7th St. S.E.)	$ 20,184.00	Promissory Note in the amount of $4,620.00 Mortgage assumed $15,564 1 Common Share in Sawridge Holdings Lt.
Lot 17, Block 35, Plan 5928 R.S. (303-7th St. S.E.)	$ 20,181.00	Promissory Note in the amount of $4,564.00 Mortgage assumed $15,617.00 1 Common Share in Sawridge Holdings Lt

Description	Consideration
E. Shares in Companies	
1. Sawridge Holdings Ltd.	
Walter Patrick Twinn - 20 Class "A" common	
George Twinn - 2 Class "A" common	
Walter Felix Twinn - 10 Class "A" common	
2. Sawridge Enterprises Ltd.	
Walter P. Twinn - 1 share	1 commmon share in Sawridge Holdings Ltd.
G. Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
George Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
3. Sawridge Development Co. (1977) Ltd.	
Walter P. Twinn - 8 common	1 common share in Sawridge Holdings Ltd.
Sam Twinn - 1 common	1 common share in Sawridge Holdings Ltd.
Walter Felix Twinn - 1 common	1 common share in Sawridge Holdings Ltd.

Description	Adjusted Cost Base	Consideration
Sawridge Hotels Ltd.		
Walter P. Twinn, 1059	$8,138.00	Promissory Note from Sawridge Holdings Ltd. $8,138.00 1 Common Share in Sawridge Holdings Ltd.
David A. Fennell, 1	$ 1.00	1 Common Share in Sawridge Holdings Ltd.
5. Slave Lake Developments Ltd.		
Band holds 22,000 shares	$ 44,000	Promissory Note from Sawridge Holdings Ltd. in the amount of $44,000 1 common share in Sawridge Holdings Ltd.
Walter Twinn holds 250 shares	$ 250.	1 common shares in Sawridge Holdings Ltd.

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT ($293,178.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter P Twinn

Per: G F Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of SIXTY THOUSAND ($60,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY FOUR THOUSAND, SIX HUNDRED AND TWO ($24,602.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY FOUR ($20,184.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th. day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter P. Twinn

Per: G. G. Twinn

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY ONE ($20,181.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of EIGHT THOUSAND, ONE HUNDRED AND THIRTY EIGHT ($8,138.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Twinn

Per: [illegible]

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of FORTY FOUR THOUSAND, ($44,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED FIFTY ONE THOUSAND THREE HUNDRED ($251,300.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

THIS AGREEMENT made with effect from the 19 day of December A.D. 1983.

This is Exhibit "E" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 2011
A. Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 25, 2012

TRANSFER AGREEMENT

BETWEEN:

WALTER PATRICK TWINN, SAM TWINN, and GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, herein referred to as the "New Trustees")

OF THE FIRST PART

and:

SAWRIDGE HOLDINGS LTD. (a federally incorporated Company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, Province of Alberta, hereinafter referred to as the "Purchaser")

OF THE SECOND PART

WHEREAS:

1. The New Trustees are the legal owners of certain assets (herein referred to as the "property") described in Schedule "A" annexed to this Agreement, and hold the property in trust for the members of the Sawridge Indian Band.

2. The New Trustees have agreed to transfer to the Purchaser all of their right, title and interest in and to the property and the Purchaser has agreed to purchase the property upon and subject to the terms set forth herein;

.../2

3. The New Trustees and the Purchaser have agreed to file jointly an Election under subsection 85(1) of the Federal Income Tax Act in respect of the property and the amount to be elected in respect of the property as set forth in Schedule "A" to this Agreement, the said Election and amounts having been made and agreed to only for tax purposes of the parties hereto;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

1. For good and valuable consideration as more particularly set forth in Schedule "A" hereto, now paid by the Purchaser to the New Trustees (the receipt and sufficiency of which is hereby acknowledged) and being fair market value of the property described and referred to in the said Schedule "A", the New Trustees hereby grant, bargain, sell, assign, transfer, convey and set over unto the Purchaser, its successors and assigns, the property owned by the New Trustees as described and referred to in Schedule "A" hereto annexed.

2. The purchase price for the property shall be paid as follows:

(a) by promissory note or notes drawn by the Purchaser in favour of the New Trustees equal in value to the aggregate of the adjusted cost bases to the New Trustees of all items of the said property;

(b) by the issuing by the Purchaser to the New Trustees of one or more Common Shares of the Purchaser.

.../3

3. The new Trustees hereby covenant, promise and agree with the purchaser that the New Trustees are or are entitled to be now rightfully possessed of and entitled to the property hereby sold, assigned and transferred to the purchaser, and that the New Trustees have covenant good right, title and authority to sell, assign and transfer the same unto the Purchaser, its successors and assigns, according to the true intent and meaning of these presents; and the Purchaser shall immediately after the execution and delivery hereof have possession and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the same and every part thereof to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by the New Trustees or any person whomsoever; and the Purchaser shall have good and marketable title thereto, free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and encumbrances of any nature or kind whatever (except as specifically agreed to between the parties).

4. For the purposes hereof:

(i) "fair market value" of the property:

(a) shall mean the fair market value thereof on the effective date of this Agreement,

(b) subject to (c) below, the fair market value of the property which is being mutually agreed upon by the New Trustees and the Purchaser is listed and as described in Schedule A attached hereto;

(b) in the event that the Minister of National Revenue or any other competent authority at any time finally determines that the fair market value of the property referred to in (a) above differs from the mutually agreed upon value in (b) above, the fair market value of the property shall for all purposes of this Agreement be deemed always to have been equal to the value finally determined by the said Minister or other competent authority.

.../4

(ii) "tax cost" of the property shall mean the cost amount of the property for income tax purposes, as of the effective date of this Agreement.

(iii) The "purchase price" for the property shall be the fair market value thereof as determined under (i) above.

5. The New Trustees and the Purchaser shall jointly complete and file Form T2057 (Election on Disposition of Property to a Canadian Corporatin, herein referred to as "Election") required under subsection 85(1) of The Federal Income Tax Act in respect of the property with the Edmonton district offices of Revenue Canada - Taxation on or before such dates as may be required by the said Income Tax Act.

6. The Purchaser shall, upon execution of this Agreement, cause to be issued and allotted to the New Trustees the shares set out in Schedule A hereto.

7. The New Trustees covenant and agree with the Purchaser, its successor and assigns, that they will from time to time and at all times hereafter, upon every reasonable request of the Purchaser, its successors and assigns, make, do and execute or cause and procure to be made, done and executed all such further acts, deeds or assurances as may be reasonably required by the Purchaser, its successors and assigns, for more effectually and completely vesting in the Purchaser, its successors and assigns, the property hereby sold, assigned and transfered in accordance with the terms hereof, and the Purchaser makes the same undertaking in favour of the New Trustees.

.../5

IN WITNESS WHEREOF this Agreement has been executed on the dates indicated by the New Trustees and the Purchaser effective as of the date first above written.

Dec 19/83
Date

Walter Patrick Twinn

Witness

Dec 19/83
Date

Sam Twinn

Witness

Dec 19/83
Date

George Twinn

Witness

Dec 19/83
Date

Sawridge Holdings Ltd.

Witness (c/s)

APPENDIX "A"

THIS is Appendix "A" to an Agreement made with effect from the 19 day of December , A.D. 1983.

BETWEEN:

WALTER PATRICK TWINN, WALTER FELIX TWINN, SAM TWINN, and DAVID A. FENNELL (the "Old Trustees")

and:

WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (the "New Trustees")

The properties referred to in that Agreement are:

Description	Old Trustee(s)
A. The Zeidler Property	
All that portion of the Northeast quarter of Section 36, Township 72, Range 6, West of the 5th Meridian which lies between the North limit of the Road as shown on Road Plan 946 E.O. and the Southwest limit of the right-of-way of the Edmonton Dunevegan and British Columbia Railway as shown on Railway Plan 4961 B.O. containing 28.1 Hectares (69.40 acres) more or less excepting thereout: (a) 22.6 Hectares (55.73 acres) more or less described in Certificate of Title No. 227-V-136; (b) 0.158 Hectares (1.28 acres) more or less as shown on Road Plan 469 L.Z.	Walter P. Twinn

.../7

	Description	Old Trustee(s)
B.	The Planer Mill Plan 2580 T.R., Lot Four (4), containing 7.60 Hectares (18.79 acres) more or less, (P.T. SECS. 29 and 30-72-4-W5TH, Mitsu Lake Industrial Park) excepting thereout all mines and minerals.	Walter P. Twinn
C.	Mitsue Property Plan 2580 T.R. Lot Eight (8) containing 6.54 Hectares more or less (part of Sections 29 and 30-72-4-W5TH, Mitsu Lake Industrial Park) excepting thereout all mines and minerals and the right to work the same.	
D.	The Residences Lot 3, Block 7, Plan 1915 H.W. (305-1st St. N.E.) Lot 18, Block 35, Plan 5928 R.S. (301-7th St. S.E.) Lot 17, Block 35, Plan 5928 R.S. (303-7th St. S.E.)	Walter P. Twinn

D. Shares in Companies

1. Sawridge Holdings Ltd.

Walter Patrick Twinn -
20 Class "A" common

George Twinn -
2 Class "A" common

Walter Felix Twinn -
10 Class "A" common

Description	Trustee(s)

2. Sawridge Enterprises Ltd.

Walter P. Twinn -
1 share

Samuel G. Twinn -
1 share

George Twinn -
1 share

3. Sawridge Development Co. (1977) Ltd.

Walter P. Twinn -
8 common

Sam Twinn -
1 common

Walter Felix Twinn -
1 common

4. Sawridge Hotels Ltd.

Walter P. Twinn, 1059

David A. Fennell, 1

5. Slave Lake Developments Ltd.

Band holds 22,000 shares

Walter Twinn holds 250 shares

This is Exhibit " F " referred to in the Affidavit of Paul Bujold

Sworn before me this 12 day of September A.D., 20 11

A. Magnan

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

Catherine A. Magnan
My Commission Expires
January 29, 20 12

C53[illegible]
C-3

Acts of the Parliament of Canada

Passed in the year
1985

During the thirty-third
and thirty-fourth years
of the Reign of Her Majesty
QUEEN ELIZABETH II

These Acts were passed during
that portion of the First
Session of the Thirty-Third
Parliament that included
the 1985 calendar year

Her Excellency the Right Honourable
JEANNE SAUVÉ
Governor General

Lois du Parlement du Canada

adoptées en
1985

pendant les trente-troisième et
trente-quatrième années
du règne de Sa Majesté
LA REINE ELIZABETH II

au cours de la période 1985 de la
première session de la
trente-troisième législature

Son Excellence la très honorable
JEANNE SAUVÉ
Gouverneur général

TABLE OF CONTENTS—*Continued*

CHAPTER 27

An Act to amend the Indian Act

[*Assented to 28th June, 1985*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

R.S., c. I-6; c. 10 (2nd Supp.); 1974-75-76, c. 48; 1978-79, c. 11; 1980-81-82-83, cc. 47, 110; 1984, c. 4

1. (1) The definitions "child", "elector" and "Registrar" in subsection 2(1) of the *Indian Act* are repealed and the following substituted therefor in alphabetical order within the subsection:

"child" «*enfant*»

" "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;

"elector" «*électeur*»

"elector" means a person who

(*a*) is registered on a Band List,

(*b*) is of the full age of eighteen years, and

(*c*) is not disqualified from voting at band elections;

"Registrar" «*registraire*»

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department;"

(2) Subsection 2(1) of the said Act is further amended by adding thereto, in alphabetical order within the subsection, the following definitions:

"Band List" «*liste...*»

" "Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

CHAPITRE 27

Loi modifiant la Loi sur les Indiens

[*Sanctionnée le 28 juin 1985*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, décrète :

S.R., c. I-6; ch. 10 (2e suppl.); 1974-75-76, ch. 48; 1978-79, ch. 11; 1980-81-82-83, ch. 47, 110; 1984, ch. 4

1. (1) Les définitions de «électeur», «enfant» et «registraire», au paragraphe 2(1) de la *Loi sur les Indiens*, sont abrogées et respectivement remplacées par ce qui suit :

«électeur» "elector"

«électeur» signifie une personne qui

a) est inscrite sur une liste de bande,

b) a dix-huit ans révolus, et

c) n'a pas perdu son droit de vote aux élections de la bande;

«enfant» "child"

«enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté, ainsi qu'un enfant adopté selon la coutume indienne;

«registraire» "Registrar"

«registraire» désigne le fonctionnaire du ministère responsable du registre des Indiens et des listes de bande tenus au ministère;

(2) Le paragraphe 2(1) de la même loi est modifié par insertion, suivant l'ordre alphabétique, de ce qui suit :

«liste de bande» "Band List"

«liste de bande» signifie une liste de personnes tenue en vertu de l'article 8 par une bande ou au ministère;»

«registre des Indiens» "Indian Register"

«registre des Indiens» signifie le registre de personnes tenu en vertu de l'article 5;»

"Indian Register" *«registre...»*

"Indian Register" means the register of persons that is maintained under section 5;"

2. Section 4 of the said Act is amended by striking out subsection (2) and substituting the following therefor:

Act may be declared inapplicable

"(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 5 to 14.3 or sections 37 to 41, shall not apply to

(*a*) any Indians or any group or band of Indians, or

(*b*) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration.

Authority confirmed for certain cases

(2.1) For greater certainty, and without restricting the generality of subsection (2), the Governor in Council shall be deemed to have had the authority to make any declaration under subsection (2) that he has made in respect of section 11, 12 or 14, or any provision thereof, as each section or provision read immediately prior to April 17, 1985."

3. The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section:

Application of certain provisions to all band members

"**4.1** A reference to an Indian in the definitions "band", "Indian moneys" and "mentally incompetent Indian" in section 2 or a reference to an Indian in subsection 4(2) or (3), subsection 18(2), section 20, sections 22 to 25, subsection 31(1) or (3), subsection 35(4), section 51, section 52, subsection 58(3), subsection 61(1), section 63, section 65, subsection 66(2), subsection 70(1) or (4), section 71, paragraph 73(*g*) or (*h*), subsection 74(4), section 84, paragraph 87(*a*), section 88, subsection 89(1) or paragraph 107(*b*) shall be deemed to include a reference to any person who is entitled to have his name entered in a Band List and whose name has been entered therein."

2. L'article 4 de la même loi est modifié par retranchement du paragraphe (2) et son remplacement par ce qui suit :

Pouvoir de déclarer la loi inapplicable

«(2) Le gouverneur en conseil peut, par proclamation, déclarer que la présente loi, ou toute partie de celle-ci, sauf les articles 5 à 14.3 et 37 à 41, ne s'applique pas

a) à des Indiens ou à un groupe ou une bande d'Indiens, ou

b) à une réserve ou à des terres cédées, ou à une partie y afférente,

et peut par proclamation révoquer toute semblable déclaration.

Confirmation de la validité de certaines déclarations

(2.1) Sans qu'en soit limitée la portée générale du paragraphe (2), il demeure entendu que le gouverneur en conseil est réputé avoir eu le pouvoir de faire en vertu du paragraphe (2) toute déclaration qu'il a faite à l'égard des articles 11, 12 ou 14 ou d'une de leurs dispositions, dans leur version précédant immédiatement le 17 avril 1985.»

3. La même loi est modifiée par insertion, après l'article 4, de ce qui suit :

Application de certaines dispositions à tous les membres d'une bande

«**4.1** La mention d'un Indien dans les définitions de «bande», «deniers des Indiens» ou «Indien mentalement incapable» à l'article 2 et cette mention aux paragraphes 4(2) ou (3), au paragraphe 18(2), à l'article 20, aux articles 22 à 25, aux paragraphes 31(1) ou (3), au paragraphe 35(4), à l'article 51, à l'article 52, au paragraphe 58(3), au paragraphe 61(1), à l'article 63, à l'article 65, au paragraphe 66(2), aux paragraphes 70(1) ou (4), à l'article 71, aux alinéas 73*g*) ou *h*), au paragraphe 74(4), à l'article 84, à l'alinéa 87*a*), à l'article 88, au paragraphe 89(1) ou à l'alinéa 107*b*) sont réputées comprendre la mention de toute personne qui a droit à ce que son nom soit consigné dans une liste de bande et dont le nom y a effectivement été consigné.»

1974-75-76, c. 48, s. 25; 1978-79, c. 11, s. 10

4. Sections 5 to 14 of the said Act are repealed and the following substituted therefor:

4. Les articles 5 à 14 de la même loi sont abrogés et remplacés par ce qui suit :

1974-75-76, ch. 48, art. 25; 1978-79, ch. 11, art. 10

"*Indian Register*

«*Registre des Indiens*

Indian Register

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.

5. (1) Est tenu au ministère un registre des Indiens où est consigné le nom de chaque personne ayant droit d'être inscrite comme Indien en vertu de la présente loi.

Tenue du registre

Existing Indian Register

(2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985.

(2) Les noms figurant au registre des Indiens immédiatement avant le 17 avril 1985 constituent le registre des Indiens au 17 avril 1985.

Registre des Indiens existant

Deletions and additions

(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.

(3) Le registraire peut ajouter au registre des Indiens, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans ce registre.

Additions et retranchements

Date of change

(4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom.

(4) Le registre des Indiens indique la date où chaque nom y a été ajouté ou en a été retranché.

Date du changement

Application for registration

(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.

(5) Il n'est pas requis que le nom d'une personne qui a droit d'être inscrite soit consigné dans le registre des Indiens, à moins qu'une demande à cette effet soit présentée au registraire.

Demande

Persons entitled to be registered

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

(*a*) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(*b*) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(*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

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

a) elle était inscrite ou avait droit de l'être immédiatement avant le 17 avril 1985;

b) elle est membre d'un groupe de personnes déclaré par le gouverneur en conseil après le 16 avril 1985 être une bande pour l'application de la présente loi;

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 précédant immédiatement

Personnes ayant droit à l'inscription

relating to the same subject-matter as any of those provisions;

(*d*) 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*)(iii) pursuant to an order made under subsection 109(1), 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;

(*e*) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(*f*) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section.

le 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;

d) 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*)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(1), dans leur version précédant immédiatement le 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;

e) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande :

(i) soit en vertu de l'article 13, dans sa version précédant immédiatement le 4 septembre 1951, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

(ii) soit en vertu de l'article 111, dans sa version précédant immédiatement le 1er juillet 1920, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article;

f) ses parents ont tous deux droit d'être inscrits en vertu du présent article ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1).

Idem

(2) Sous réserve de l'article 7, une personne a droit d'être inscrite si l'un de ses parents a droit d'être inscrit en vertu du paragraphe (1) ou, s'il est décédé, avait ce droit à la date de son décès.

Deeming provision

(3) For the purposes of paragraph (1)(*f*) and subsection (2),

(*a*) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(*a*); and

Présomption

(3) Pour l'application de l'alinéa (1)*f*) et du paragraphe (2) :

a) la personne qui est décédée avant le 17 avril 1985 mais qui avait droit d'être inscrite à la date de son décès est réputée avoir droit d'être inscrite en vertu de l'alinéa (1)*a*);

b) la personne visée aux alinéas (1)*c*), *d*) ou *e*) qui est décédée avant le 17 avril

(*b*) a person described in paragraph (1)(*c*), (*d*) or (*e*) who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that paragraph.

1985 est réputée avoir droit d'être inscrite en vertu de ces alinéas.

Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered:

(*a*) a person who was registered under paragraph 11(1)(*f*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act; or

(*b*) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(*f*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered.

Personnes n'ayant pas droit à l'inscription

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

a) celles qui étaient inscrites en vertu de l'alinéa 11(1)*f*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et dont le nom a ultérieurement été omis ou retranché du registre des Indiens en vertu de la présente loi;

b) celles qui sont les enfants d'une personne qui était inscrite ou avait droit de l'être en vertu de l'alinéa 11(1)*f*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et qui sont également les enfants d'une personne qui n'a pas droit d'être inscrite.

Exception

(2) Paragraph (1)(*a*) does not apply in respect of a female person who was, at any time prior to being registered under paragraph 11(1)(*f*), entitled to be registered under any other provision of this Act.

Exception

(2) L'alinéa (1)*a*) ne s'applique pas à une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)*f*), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi.

Idem

(3) Paragraph (1)(*b*) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1)(*f*), entitled to be registered under any other provision of this Act.

Idem

(3) L'alinéa (1)*b*) ne s'applique pas à l'enfant d'une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)*f*), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi.

Band Lists

Listes de bande

Band Lists

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.

Tenue de la liste

8. Est tenue conformément à la présente loi la liste de chaque bande où est consigné le nom de chaque personne qui en est membre.

Band Lists maintained in Department

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.

Liste de bande tenue au ministère

9. (1) Jusqu'à ce que la bande assume la responsabilité de sa liste, celle-ci est tenue au ministère par le registraire.

Existing Band Lists

(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.

Listes de bande existantes

(2) Les noms figurant à une liste d'une bande immédiatement avant le 17 avril 1985 constituent la liste de cette bande au 17 avril 1985.

Deletions and additions

(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.

Additions et retranchements

(3) Le registraire peut ajouter à une liste de bande tenue au ministère, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.

Date of change

(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom

Date du changement

(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché.

Application for entry

(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.

Demande

(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné à moins qu'une demande à cet effet soit présentée au registraire.

Band control of membership

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.

Pouvoir de décision

10. (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.

Membership rules

(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.

Règles d'appartenance

(2) La bande peut, avec l'autorisation de la majorité de ses électeurs :

a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs;

b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs.

Exception relating to consent

(3) Where the council of a band makes a by-law under paragraph 81(1)(*p*.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

Statut administratif sur l'autorisation requise

(3) Lorsque le conseil d'une bande établit un statut administratif en vertu de l'alinéa 81(1)*p*.4) mettant en vigueur le présent paragraphe à l'égard d'une bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande qui ont dix-huit ans révolus.

Acquired rights

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his

Droits acquis

(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce

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.

que son nom soit consigné dans la liste de bande immédiatement avant la fixation des règles 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

Idem

(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.

Idem

(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*) immédiatement 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.

Notice to the Minister

(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.

Avis au Ministre

(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre du fait que celle-ci décide désormais de l'appartenance à ses effectifs et lui transmet le texte des règles d'appartenance

Notice to band and copy of Band List

(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.

Transmission de la liste

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le Ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies :

a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs;

b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

Effective date of band's membership rules

(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.

Date d'entrée en vigueur des règles d'appartenance

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au Ministre a été donné en vertu du paragraphe (6); les additions ou retranchements de la liste de la bande effectués par le registraire après cette date ne sont valides que s'ils ont été effectués conformément aux règles d'appartenance fixées par la bande.

Band to maintain Band List

(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

Transfert de responsabilité

(9) À compter de la réception de l'avis prévu à l'alinéa (7)*b*), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le ministère, à compter de

13.2, the Department shall have no further responsibility with respect to that Band List from that date.

cette date, est dégagé de toute responsabilité à l'égard de cette liste.

Deletions and additions

(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.

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste.

Additions retranchem

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché.

Date du changemen

Membership rules for Departmental Band List

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

(*a*) the name of that person was entered in the Band List for that band, or that person was entitled to have his name entered in the Band List for that band, immediately prior to April 17, 1985;

(*b*) that person is entitled to be registered under paragraph 6(1)(*b*) as a member of that band;

(*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, or

(*d*) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(*f*) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

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 :

a) son nom a été consigné dans cette liste, ou elle avait droit à ce qu'il le soit immédiatement avant le 17 avril 1985;

b) elle a droit d'être inscrite en vertu de l'alinéa 6(1)*b*) comme membre de cette bande;

c) elle a 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;

d) elle est née après le 16 avril 1985 et a droit d'être inscrite en vertu de l'alinéa 6(1)*f*) et ses parents ont tous deux droit à ce que leur nom soit consigné dans la liste de bande ou, s'ils sont décédés, avaient ce droit à la date de leur décès.

Règles d'appartena pour une li tenue au ministère

Additional membership rules for Departmental Band List

(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

(2) À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, lorsque la bande n'a pas la responsabilité de la tenue de sa liste prévue à la présente loi, une personne a droit à ce que son nom soit consigné dans la liste de bande tenue au ministère pour cette dernière :

Règles d'appartena supplément pour les list tenues au ministère

(*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.

a) soit si elle a droit d'être inscrite en vertu des alinéas 6(1)*d*) ou *e*) et qu'elle a cessé d'être un membre de la bande en raison des circonstances prévues à l'un de ces alinéas;

b) soit si elle a droit d'être inscrite en vertu de l'alinéa 6(1)*f*) ou du paragraphe 6(2) et qu'un de ses parents visés à l'une de ces dispositions a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès.

Deeming provision

(3) For the purposes of paragraph (1)(*d*) and subsection (2), a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) who was no longer living on the first day on which he would otherwise be entitled to have his name entered in the Band List of the band of which he ceased to be a member shall be deemed to be entitled to have his name so entered.

Présomption

(3) Pour l'application de l'alinéa (1)*d*) et du paragraphe (2), la personne dont le nom a été omis ou retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné.

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be.

Fusion ou division de bandes

(4) Lorsqu'une bande fusionne avec une autre ou qu'elle est divisée pour former de nouvelles bandes, toute personne qui aurait par ailleurs eu droit à ce que son nom soit consigné dans la liste de la bande en vertu du présent article a droit à ce que son nom soit consigné dans la liste de la bande issue de la fusion ou de celle de la nouvelle bande à l'égard de laquelle ses liens familiaux sont les plus étroits.

Entitlement with consent of band

12. 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, any person who

(*a*) is entitled to be registered under section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or

(*b*) is a member of another band,

is entitled to have his name entered in the Band List maintained in the Department

Inscription sujette au consentement du conseil

12. À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, la personne qui,

a) soit a droit d'être inscrite en vertu de l'article 6 sans avoir droit à ce que son nom soit consigné dans une liste de bande tenue au ministère en vertu de l'article 11,

b) soit est membre d'une autre bande,

a droit à ce que son nom soit consigné dans la liste d'une bande tenue au ministère

for a band if the council of the admitting band consents.

pour cette dernière si le conseil de la bande qui l'admet en son sein y consent.

Limitation to one Band List

13. Notwithstanding sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department.

Nom consigné dans une seule liste

13. Par dérogation aux articles 11 et 12, nul n'a droit à ce que son nom soit consigné en même temps dans plus d'une liste de bande tenue au ministère.

Decision to leave Band List control with Department

13.1 (1) A band may, at any time prior to 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, decide to leave the control of its Band List with the Department if a majority of the electors of the band gives its consent to that decision.

Première décision

13.1 (1) Une bande peut, avant le jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, décider de laisser la responsabilité de la tenue de sa liste au ministère à condition d'y être autorisée par la majorité de ses électeurs.

Notice to the Minister

(2) Where a band decides to leave the control of its Band List with the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect.

Avis au Ministre

(2) Si la bande décide de laisser la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision.

Subsequent band control of membership

(3) Notwithstanding a decision under subsection (1), a band may, at any time after that decision is taken, assume control of its Band List under section 10.

Seconde décision

(3) Malgré la décision visée au paragraphe (1), la bande peut, en tout temps après cette décision, assumer la responsabilité de la tenue de sa liste en vertu de l'article 10.

Return of control to Department

13.2 (1) A band may, at any time after assuming control of its Band List under section 10, decide to return control of the Band List to the Department if a majority of the electors of the band gives its consent to that decision.

Transfert de responsabilités au ministère

13.2 (1) La bande peut, en tout temps après avoir assumé la responsabilité de la tenue de sa liste en vertu de l'article 10, décider d'en remettre la responsabilité au ministère à condition d'y être autorisée par la majorité de ses électeurs.

Notice to the Minister and copy of membership rules

(2) Where a band decides to return control of its Band List to the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect and shall provide the Minister with a copy of the Band List and a copy of all the membership rules that were established by the band under subsection 10(2) while the band maintained its own Band List.

Avis au Ministre et texte des règles

(2) Lorsque la bande décide de remettre la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision et lui transmet une copie de la liste et le texte des règles d'appartenance fixées par la bande conformément au paragraphe 10(2) pendant qu'elle assumait la responsabilité de la tenue de sa liste.

Transfer of responsibility to Department

(3) Where a notice is given under subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11.

Transfert de responsabilités au ministère

(3) Lorsqu'est donné l'avis prévu au paragraphe (2) à l'égard d'une liste de bande, la tenue de cette dernière devient la responsabilité du ministère à compter de la date de réception de l'avis. Elle est tenue, à compter de cette date, conformément aux règles d'appartenance prévues à l'article 11.

Entitlement retained

13.3 A person is entitled to have his name entered in a Band List maintained in the Department pursuant to section 13.2 if that person was entitled to have his name entered, and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under subsection 13.2(2), whether or not that person is also entitled to have his name entered in the Band List under section 11.

Maintien du droit d'être consigné dans la liste

13.3 Une personne a droit à ce que son nom soit consigné dans une liste de bande tenue par le ministère en vertu de l'article 13.2 si elle avait droit à ce que son nom soit consigné dans cette liste, et qu'il y a effectivement été consigné, immédiatement avant qu'une copie en soit transmise au Ministre en vertu du paragraphe 13.2(2), que cette personne ait ou non droit à ce que son nom soit consigné dans cette liste en vertu de l'article 11.

Notice of Band Lists

Affichage des listes de bande

Copy of Band List provided to band council

14. (1) Within one month after the day an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, the Registrar shall provide the council of each band with a copy of the Band List for the band as it stood immediately prior to that day.

Copie de la liste de bande transmise au conseil de bande

14. (1) Au plus tard un mois après la date où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, le registraire transmet au conseil de chaque bande une copie de la liste de la bande dans son état précédant immédiatement cette date.

List of additions and deletions

(2) Where a Band List is maintained by the Department, the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under subsection (1), provide the council of the band with a list of the additions to or deletions from the Band List not included in a list previously provided under this subsection.

Listes des additions et des retranchements

(2) Si la liste de bande est tenue au ministère, le registraire, au moins une fois tous les deux mois après la transmission prévue au paragraphe (1) d'une copie de la liste au conseil de la bande, transmet à ce dernier une liste des additions à la liste et des retranchements de celle-ci non compris dans une liste antérieure transmise en vertu du présent paragraphe.

Lists to be posted

(3) The council of each band shall, forthwith on receiving a copy of the Band List under subsection (1), or a list of additions to and deletions from its Band List under subsection (2), post the copy or the list, as the case may be, in a conspicuous place on the reserve of the band.

Affichage de la liste

(3) Le conseil de chaque bande, dès qu'il reçoit copie de la liste de bande prévue au paragraphe (1) ou la liste des additions et des retranchements prévue au paragraphe (2), affiche la copie ou la liste, selon le cas, en un lieu bien en évidence dans la réserve de la bande.

Inquiries

Demandes

Inquiries relating to Indian Register or Band Lists

14.1 The Registrar shall, on inquiry from any person who believes that he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein.

Demandes relatives au registre des Indiens ou aux listes de bande

14.1 Le registraire, à la demande de toute personne qui croit qu'elle-même ou que la personne qu'elle représente a droit à l'inclusion de son nom dans le registre des Indiens ou une liste de bande tenue au ministère, indique sans délai à l'auteur de la demande si ce nom y est inclus ou non.

Protests *Protestations*

Protests

14.2 (1) A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar, containing a brief statement of the grounds therefor.

Protestations

14.2 (1) Une protestation peut être formulée, par avis écrit au registraire renfermant un bref exposé des motifs invoqués, contre l'inclusion ou l'addition du nom d'une personne dans le registre des Indiens ou une liste de bande tenue au ministère ou contre l'omission ou le retranchement de son nom de ce registre ou d'une telle liste dans les trois ans suivant soit l'inclusion ou l'addition, soit l'omission ou le retranchement.

Protest in respect of Band List

(2) A protest may be made under this section in respect of the Band List of a band by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative.

Protestation relative à la liste de bande

(2) Une protestation peut être formulée en vertu du présent article à l'égard d'une liste de bande par le conseil de cette bande, un membre de celle-ci ou la personne dont le nom fait l'objet de la protestation ou son représentant.

Protest in respect of Indian Register

(3) A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative.

Protestation relative au registre des Indiens

(3) Une protestation peut être formulée en vertu du présent article à l'égard du registre des Indiens par la personne dont le nom fait l'objet de la protestation ou son représentant.

Onus of proof

(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest.

Charge de la preuve

(4) La personne qui formule la protestation prévue au présent article a la charge d'en prouver le bien-fondé.

Registrar to cause investigation

(5) Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision.

Le registraire fait tenir une enquête

(5) Lorsqu'une protestation lui est adressée en vertu du présent article, le registraire fait tenir une enquête sur la question et rend une décision.

Evidence

(6) For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just.

Preuve

(6) Pour l'application du présent article, le registraire peut recevoir toute preuve présentée sous serment, sous déclaration sous serment ou autrement, si celui-ci, à son appréciation, l'estime indiquée ou équitable, que cette preuve soit ou non admissible devant les tribunaux.

Decision final

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive.

Décision finale

(7) Sous réserve de l'article 14.3 la décision du registraire visée au paragraphe (5) est finale et péremptoire.

Appeal

14.3 (1) Within six months after the Registrar renders a decision on a protest under section 14.2,

(*a*) in the case of a protest in respect of the Band List of a band, the council of the band, the person by whom the protest was made, or the person in respect

Appel

14.3 (1) Dans les six mois suivant la date de la décision du registraire sur une protestation prévue à l'article 14.2 :

a) soit, s'il s'agit d'une protestation formulée à l'égard d'une liste de bande, le conseil de la bande, la personne qui a formulé la protestation ou la personne

of whose name the protest was made or his representative, or

(*b*) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may, by notice in writing, appeal the decision to a court referred to in subsection (5).

dont le nom fait l'objet de la protestation ou son représentant,

b) soit, s'il s'agit d'une protestation formulée à l'égard du registre des Indiens, la personne dont le nom a fait l'objet de la protestation ou son représentant,

peuvent, par avis écrit, interjeter appel de la décision à la cour visée au paragraphe (5).

Copy of notice of appeal to the Registrar

(2) Where an appeal is taken under this section, the person who takes the appeal shall forthwith provide the Registrar with a copy of the notice of appeal.

(2) Lorsqu'il est interjeté appel en vertu du présent article, l'appelant transmet sans délai au registraire une copie de l'avis d'appel.

Copie de l'avis d'appel au registraire

Material to be filed with the court by Registrar

(3) On receipt of a copy of a notice of appeal under subsection (2), the Registrar shall forthwith file with the court a copy of the decision being appealed together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings related thereto that were held before the Registrar.

(3) Sur réception de la copie de l'avis d'appel prévu au paragraphe (2), le registraire dépose sans délai à la cour une copie de la décision en appel, toute la preuve documentaire prise en compte pour la décision, ainsi que l'enregistrement ou la transcription des débats devant le registraire.

Documents à déposer à la cour par le registraire

Decision

(4) The court may, after hearing an appeal under this section,

(*a*) affirm, vary or reverse the decision of the Registrar; or

(*b*) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation.

(4) La cour peut, à l'issue de l'audition de l'appel prévu au présent article :

a) soit confirmer, modifier ou renverser la décision du registraire;

b) soit renvoyer la question en appel au registraire pour réexamen ou nouvelle enquête.

Décision

Court

(5) An appeal may be heard under this section

(*a*) in the Province of Prince Edward Island, the Yukon Territory or the Northwest Territories, before the Supreme Court;

(*b*) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the Court of Queen's Bench;

(*c*) in the Province of Quebec, before the Superior Court for the district in which the band is situated or in which the person who made the protest resides, or for such other district as the Minister may designate; or

(*d*) in any other province, before the county or district court of the county or district in which the band is situated or in which the person who made the pro-

(5) L'appel prévu au présent article peut être entendu :

a) dans la province de l'Île-du-Prince-Édouard, le territoire du Yukon et les territoires du Nord-Ouest, par la Cour suprême;

b) dans la province du Nouveau-Brunswick, du Manitoba, de la Saskatchewan ou d'Alberta, par la Cour du Banc de la Reine;

c) dans la province de Québec, par la Cour supérieure du district où la bande est située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre district désigné par le Ministre;

d) dans les autres provinces, par un juge de la cour de comté ou de district du comté ou du district où la bande est

Cour

test resides, or of such other county or district as the Minister may designate."

située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre comté ou district désigné par le Ministre.»

5. Subsections 15(1) to (4) of the said Act are repealed and the following substituted therefor:

5. Les paragraphes 15(1) à (4) de la même loi sont abrogés et remplacés par ce qui suit :

"*Payments in Respect of Persons Ceasing to be Band Members*"

«*Paiements aux personnes qui cessent d'être membres d'une bande*»

6. (1) Subsection 16(1) of the said Act is repealed.

6. (1) Le paragraphe 16(1) de la même loi est abrogé.

(2) Subsection 16(3) of the said Act is repealed.

(2) Le paragraphe 16(3) de la même loi est abrogé.

7. (1) Subsection 17(1) of the said Act is repealed and the following substituted therefor:

7. (1) Le paragraphe 17(1) de la même loi est abrogé et remplacé par ce qui suit :

"*New Bands*

«*Nouvelles bandes*

Minister may constitute new bands

17. (1) The Minister may, whenever he considers it desirable,

(*a*) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated; and

(*b*) constitute new bands and establish Band Lists with respect thereto from existing Band Lists, or from the Indian Register, if requested to do so by persons proposing to form the new bands."

Constitution de nouvelles bandes par le Ministre

17. (1) Le Ministre peut, lorsqu'il l'estime à propos :

a) fusionner les bandes qui, par un vote majoritaire de leurs électeurs, demandent la fusion;

b) constituer de nouvelles bandes et établir à leur égard des listes de bande à partir des listes de bande existantes, ou du registre des Indiens, s'il lui en est fait la demande par des personnes proposant la constitution de nouvelles bandes.»

(2) Subsection 17(3) of the said Act is repealed and the following substituted therefor:

(2) Le paragraphe 17(3) de la même loi est abrogé et remplacé par ce qui suit :

No protest

"(3) No protest may be made under section 14.2 in respect of the deletion from or the addition to a Band List consequent on the exercise by the Minister of any of his powers under subsection (1)."

Aucune protestation

«(3) Aucune protestation ne peut être formulée en vertu de l'article 14.2 à l'égard d'un retranchement d'une liste de bande ou d'une addition à celle-ci qui découle de l'exercice par le Ministre de l'un de ses pouvoirs prévus au paragraphe (1).»

8. The said Act is further amended by adding thereto, immediately after section 18 thereof, the following section:

8. La même loi est modifiée par insertion, après l'article 18, de ce qui suit :

Children of band members

"**18.1** A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom he has custody."

Enfants des membres d'une bande

«**18.1** Le membre d'une bande qui réside sur la réserve de cette dernière peut y résider avec ses enfants à charge ou tout enfant dont il a la garde.»

9. (1) Subsections 48(13) and (14) of the said Act are repealed.

(2) Subsection 48(16) of the said Act is repealed and the following substituted therefor:

Definition of "child"

"(16) In this section, "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom."

10. (1) Section 64 of the said Act is renumbered as subsection 64(1).

(2) Section 64 of the said Act is further amended by adding thereto the following subsection:

Expenditure of capital moneys in accordance with by-laws

"(2) The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(*p*.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys."

11. The said Act is further amended by adding thereto, immediately after section 64 thereof, the following section:

Limitation in respect of paragraphs 6(1)(*c*), (*d*) and (*e*)

"**64.1** (1) A person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(*a*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of a band in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) is not entitled to receive an amount under paragraph 64(1)(*a*) until such time as the aggregate of all amounts that he would, but for this subsection, have received under paragraph 64(1)(*a*) is equal to the amount by which the amount that he received under paragraph 15(1)(*a*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that

9. (1) Les paragraphes 48(13) et (14) de la même loi sont abrogés.

(2) Le paragraphe 48(16) de la même loi est abrogé et remplacé par ce qui suit :

Définition d'«enfant»

«(16) Au présent article, «enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté et un enfant adopté conformément aux coutumes indiennes.»

10. (1) Le numéro d'article 64 de la même loi est remplacé par le numéro de paragraphe 64(1).

(2) L'article 64 de la même loi est modifié par adjonction de ce qui suit :

Dépenses sur les deniers au compte de capital

«(2) Le Ministre peut effectuer des dépenses sur les deniers au compte de capital d'une bande conformément aux statuts administratifs établis en vertu de l'alinéa 81(1)*p*.3) en vue de faire des paiements à toute personne dont le nom a été retranché de la liste de la bande pour un montant n'excédant pas une part per capita des deniers au compte de capital.»

11. La même loi est modifiée par insertion, après l'article 64, de ce qui suit :

Réserve relative aux alinéas 6(1)*c*), *d*) ou *e*)

«**64.1** (1) Une personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)*a*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, du fait qu'elle a cessé d'être membre d'une bande dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) n'a pas droit de recevoir de montant en vertu de l'alinéa 64(1)*a*) jusqu'à ce que le total de tous les montants qu'elle aurait reçus en vertu de l'alinéa 64(1)*a*), n'eût été le présent paragraphe, égale la part du montant qu'elle a reçu en vertu de l'alinéa 15(1)*a*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que

paragraph, exceeds one thousand dollars, together with any interest thereon.

Additional limitation

(2) Where the council of a band makes a by-law under paragraph 81(1)(*p*.4) bringing this subsection into effect, a person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(*a*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(*b*) to (*k*), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band.

Regulations

(3) The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of subsections (1) and (2)."

12. Section 66 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

Idem

"(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(*p*.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys."

13. Section 68 of the said Act is repealed and the following substituted therefor:

Maintenance of dependants

"**68.** Where the Minister is satisfied that an Indian

(*a*) has deserted his spouse or family without sufficient cause,

(*b*) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or

celui de ce paragraphe, en excédant de mille dollars, y compris les intérêts.

Réserve additionnelle

(2) Lorsque le conseil d'une bande établit des statuts administratifs en vertu de l'alinéa 81(1)*p*.4) mettant en vigueur le présent paragraphe, la personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)*a*) dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute autre disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, parce qu'elle a cessé d'être membre de la bande dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) n'a droit de recevoir aucun des avantages offerts aux membres de la bande à titre individuel résultant de la dépense de deniers des Indiens au titre des alinéas 64(1)*b*) à *k*), du paragraphe 66(1) ou du paragraphe 69(1) jusqu'à ce que l'excédent du montant ainsi reçu sur mille dollars, y compris l'intérêt sur celui-ci, ait été remboursé à la bande.

Règlements

(3) Le gouverneur en conseil peut prendre des règlements prévoyant la façon de déterminer les intérêts pour l'application des paragraphes (1) et (2).»

12. L'article 66 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Idem

«(2.1) Le Ministre peut effectuer des dépenses sur les derniers de revenu de la bande conformément aux statuts administratifs visés à l'alinéa 81(1)*p*.3) en vue d'effectuer des paiements à une personne dont le nom a été retranché de la liste de bande jusqu'à concurrence d'un montant n'excédant pas une part *per capita* des fonds de revenu.»

13. L'article 68 de la même loi est abrogé et remplacé par ce qui suit :

Entretien des personnes à charge

«**68.** Lorsque le Ministre est convaincu qu'un Indien :

a) a abandonné son conjoint ou sa famille sans raison suffisante,

b) s'est conduit de façon à justifier le refus de son conjoint ou de sa famille de vivre avec lui, ou

(*c*) has been separated by imprisonment from his spouse and family,

the Minister may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the spouse or family or both the spouse and family of that Indian."

14. Subsections 77(1) and (2) of the said Act are repealed and the following substituted therefor:

Eligibility of voters for chief

"**77.** (1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors.

Councillor

(2) A member of a band who is of the full age of eighteen years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section."

15. Section 81 of the said Act is amended by adding thereto, immediately after paragraph (*p*) thereof, the following paragraphs:

"(*p*.1) the residence of band members and other persons on the reserve;

(*p*.2) to provide for the rights of spouses and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;

(*p*.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;

(*p*.4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band;"

15.1 (1) Paragraph 81(*r*) of the said Act is repealed and the following substituted therefor:

c) a été séparé de son conjoint et de sa famille par emprisonnement,

il peut ordonner que les paiements de rentes ou d'intérêts auxquels cet Indien a droit soient appliqués au soutien du conjoint ou de la famille ou du conjoint et de la famille de ce dernier.»

14. Les paragraphes 77(1) et (2) de la même loi sont abrogés et remplacés par ce qui suit :

Qualités exigées des électeurs au poste de chef

«**77.** (1) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans la réserve, a qualité pour voter en faveur d'une personne présentée comme candidat au poste de chef de la bande et, lorsque la réserve, aux fins d'élection, ne comprend qu'une section, pour voter en faveur de personnes présentées aux postes de conseillers.

Conseiller

(2) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans une section établie aux fins de votation, a qualité pour voter en faveur d'une personne présentée au poste de conseiller pour représenter cette section.»

15. L'article 81 de la même loi est modifié par insertion, après l'alinéa *p*), de ce qui suit :

«*p*.1) la résidence des membres de la bande ou des autres personnes sur la réserve;

p.2) l'adoption de mesures relatives aux droits des conjoints ou des enfants qui résident avec des membres de la bande dans une réserve pour toute matière au sujet de laquelle le conseil peut établir des statuts administratifs à l'égard des membres de la bande;

p.3) l'autorisation du Ministre à effectuer des paiements sur des deniers au compte de capital ou des deniers de revenu aux personnes dont les noms ont été retranchés de la liste de la bande;

p.4) la mise en vigueur des paragraphes 10(3) ou 64.1(2) à l'égard de la bande;»

15.1 (1) L'alinéa 81*r*) de la même loi est abrogé et remplacé par ce qui suit :

"(*r*) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section."

«*r*) l'imposition, sur déclaration sommaire de culpabilité, d'une amende n'excédant pas mille dollars ou d'un emprisonnement d'au plus trente jours, ou de l'amende et de l'emprisonnement à la fois, pour violation d'un statut administratif établi aux termes du présent article.»

(2) Section 81 of the said Act is renumbered as subsection 81(1).

(2) L'article 81 de la même loi devient le paragraphe 81(1).

(3) Section 81 of the said Act is further amended by adding thereto the following subsections:

(3) L'article 81 de la même loi est modifié par adjonction de ce qui suit :

Power to restrain by order where conviction entered

"(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Pouvoir de prendre une ordonnance

«(2) Lorsqu'un statut administratif d'une bande est violé et qu'une déclaration de culpabilité est prononcée, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, le tribunal dans lequel a été prononcée la déclaration de culpabilité, et tout tribunal compétent par la suite, peut rendre une ordonnance interdisant la continuation ou la répétition de l'infraction par la personne déclarée coupable.

Power to restrain by court action

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council."

Pouvoir d'intenter une action en justice

(3) Lorsqu'un statut administratif d'une bande est violé, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, cette violation peut être refrénée par une action en justice à la demande du conseil de bande.»

16. The said Act is further amended by adding thereto, immediately after section 85 thereof, the following section:

16. La même loi est modifiée par insertion, après l'article 85, de ce qui suit :

By-laws relating to intoxicants

"**85.1** (1) Subject to subsection (2), the council of a band may make by-laws

(*a*) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band;

(*b*) prohibiting any person from being intoxicated on the reserve;

(*c*) prohibiting any person from having intoxicants in his possession on the reserve; and

(*d*) providing for exceptions to any of the prohibitions established pursuant to paragraph (*b*) or (*c*).

Statuts administratifs sur les spiritueux

«**85.1** (1) Sous réserve du paragraphe (2), le conseil d'une bande peut établir des statuts administratifs :

a) interdisant de vendre, de faire le troc, de fournir ou de fabriquer des spiritueux sur la réserve de la bande;

b) interdisant à toute personne d'être en état d'ivresse sur la réserve;

c) interdisant à toute personne d'avoir en sa possession des spiritueux sur la réserve;

d) prévoyant des exceptions aux interdictions établies en vertu des alinéas *b*) ou *c*).

Consent of electors

(2) A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law.

Consentement des élections

(2) Les statuts administratifs prévus au présent article ne peuvent être établis qu'avec le consentement préalable de la majorité des électeurs de la bande ayant voté à l'assemblée spéciale de la bande convoquée par le conseil de cette dernière pour l'étude de ces statuts.

Copies of by-laws to be sent to Minister

(3) A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made.

Copie des statuts administratifs au Ministre

(3) Le chef ou un membre du conseil de la bande doit envoyer par courrier au Ministre une copie de chaque statut administratif prévu au présent article dans les quatre jours suivant son établissement.

Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction

(*a*) in the case of a by-law made under paragraph (1)(*a*), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both; and

(*b*) in the case of a by-law made under paragraph (1)(*b*) or (*c*), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both."

Infraction

(4) Toute personne qui enfreint un statut administratif établi en vertu du présent article commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :

a) dans le cas d'un statut administratif établi en vertu de l'alinéa (1)*a*), une amende maximale de mille dollars et un emprisonnement maximal de six mois, ou une de ces peines;

b) dans le cas d'un statut administratif établi en vertu des alinéas (1)*b*) ou *c*), une amende maximale de cent dollars et un emprisonnement maximal de trois mois, ou l'une de ces peines.»

17. Sections 94 to 100 of the said Act are repealed and the following substituted therefor:

17. Les articles 94 à 100 de la même loi sont abrogés et remplacés par ce qui suit :

"OFFENCES"

«PEINES»

18. Subsection 103(1) of the said Act is repealed and the following substituted therefor:

18. Le paragraphe 103(1) de la même loi est abrogé et remplacé par ce qui suit :

Seizure of goods

"**103.** (1) Whenever a peace officer, a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 85.1, 90 or 93 has been committed, he may seize all goods and chattels by means of or in relation to which he believes on reasonable grounds the offence was committed."

Saisie des marchandises

«**103.** (1) Chaque fois qu'un agent de la paix, un surintendant ou une autre personne autorisée par le Ministre a des motifs raisonnables de croire qu'une infraction aux articles 33, 85.1, 90 ou 93 a été commise, il peut saisir toutes les marchandises et tous les biens meubles au moyen ou à l'égard desquels il a des motifs raisonnables de croire que l'infraction a été commise.»

19. Sections 109 to 113 of the said Act are repealed.

19. Les articles 109 à 113 de la même loi sont abrogés.

20. (1) All that portion of subsection 119(2) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor:

Powers

"(2) Without restricting the generality of subsection (1), a truant officer may, subject to subsection (2.1),"

(2) Section 119 of the said Act is further amended by adding thereto, immediately after subsection (2) thereof, the following subsections:

Warrant required to enter dwelling-house

"(2.1) Where any place referred to in paragraph (2)(*a*) is a dwelling-house, a truant officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (2.2).

Authority to issue warrant

(2.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

(*a*) that the conditions for entry described in paragraph (2)(*a*) exist in relation to a dwelling-house,

(*b*) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(*c*) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

he may issue a warrant under his hand authorizing the truant officer named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

Use of force

(2.3) In executing a warrant issued under subsection (2.2), the truant officer named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant."

Saving from liability

21. For greater certainty, no claim lies against Her Majesty in right of Canada, the Minister, any band, council of a band or member of a band or any other person or body in relation to the omission or deletion of

20. (1) Le passage du paragraphe 119(2) de la même loi qui précède l'alinéa *a*) est abrogé et remplacé par ce qui suit :

Pouvoirs

«(2) Sans qu'en soit restreinte la portée générale du paragraphe (1), un agent de surveillance peut, sous réserve du paragraphe (2.1) :»

(2) L'article 119 de la même loi est modifié par insertion, après le paragraphe (2), de ce qui suit :

Mandat maison d'habitation

«(2.1) Lorsque l'endroit visé à l'alinéa (2)*a*) est une maison d'habitation, l'agent de surveillance ne peut y pénétrer sans l'autorisation de l'occupant qu'en vertu du mandat prévu au paragraphe (2.2).

Pouvoir de délivrer un mandat

(2.2) Sur demande *ex parte*, le juge de paix peut délivrer sous son seing un mandat autorisant l'agent de surveillance qui y est nommé, sous réserve des conditions éventuellement fixées dans le mandat, à pénétrer dans une maison d'habitation s'il est convaincu, d'après une dénonciation sous serment, de ce qui suit :

a) les circonstances prévues à l'alinéa (2)*a*) dans lesquelles un agent peut y pénétrer existent;

b) il est nécessaire d'y pénétrer pour l'application de la présente loi;

c) un refus d'y pénétrer a été opposé ou il y a des motifs raisonnables de croire qu'un tel refus sera opposé.

Usage de la force

(2.3) L'agent de surveillance nommé dans le mandat prévu au paragraphe (2.2) ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix.»

Aucune réclamation

21. Il demeure entendu qu'il ne peut être présenté aucune réclamation contre Sa Majesté du chef du Canada, le Ministre, une bande, un conseil de bande, un membre d'une bande ou autre personne ou organisme

the name of a person from the Indian Register in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) of the *Indian Act*.

relativement à l'omission ou au retranchement du nom d'une personne du registre des Indiens dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) de la *Loi sur les Indiens*.

Report of Minister to Parliament

22. (1) The Minister shall cause to be laid before each House of Parliament, not later than two years after this Act is assented to, a report on the implementation of the amendments to the *Indian Act*, as enacted by this Act, which report shall include detailed information on

(*a*) the number of people who have been registered under section 6 of the *Indian Act*, and the number entered on each Band List under subsection 11(1) of that Act, since April 17, 1985;

(*b*) the names and number of bands that have assumed control of their own membership under section 10 of the *Indian Act*; and

(*c*) the impact of the amendments on the lands and resources of Indian bands.

Rapport du Ministre au Parlement

22. (1) Au plus tard deux ans après la sanction royale de la présente loi, le Ministre fait déposer devant chaque chambre du Parlement un rapport sur l'application des modifications de la *Loi sur les Indiens* prévues dans la présente loi. Le rapport contient des renseignements détaillés sur :

a) le nombre de personnes inscrites en vertu de l'article 6 de la *Loi sur les Indiens* et le nombre de personnes dont le nom a été consigné dans une liste de bande en vertu du paragraphe 11(1) de cette loi, depuis le 17 avril 1985;

b) les noms et le nombre des bandes qui décident de l'appartenance à leurs effectifs en vertu de l'article 10 de la *Loi sur les Indiens*;

c) l'effet des modifications sur les terres et les ressources des bandes d'Indiens.

Review by Parliamentary committee

(2) Such committee of Parliament as may be designated or established for the purposes of this subsection shall, forthwith after the report of the Minister is tabled under subsection (1), review that report and may, in the course of that review, undertake a review of any provision of the *Indian Act* enacted by this Act.

Examen par un comité parlementaire

(2) Le Comité du Parlement que ce dernier peut désigner ou établir pour l'application du présent paragraphe doit examiner sans délai après son dépôt par le Ministre le rapport visé au paragraphe (1). Le comité peut, dans le cadre de cet examen, procéder à la révision de toute disposition de la *Loi sur les Indiens* prévue à la présente loi.

Commencement

23. (1) Subject to subsection (2), this Act shall come into force or be deemed to have come into force on April 17, 1985.

Entrée en vigueur

23. (1) Sous réserve du paragraphe (2), la présente loi entre en vigueur ou est réputée être entrée en vigueur le 17 avril 1985.

Idem

(2) Sections 17 and 18 shall come into force six months after this Act is assented to.

Idem

(2) Les articles 17 et 18 entrent en vigueur six mois après que la présente loi a reçu la sanction royale.

This is Exhibit "G" referred to in the Affidavit of Paul Bujold

Sworn before me this 12 day of September A.D., 20 11

A. Magnan

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

Catherine A. Magnan
My Commission Expires January 29, 2012

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15th day of April, 1985

B E T W E E N :

CHIEF WALTER PATRICK TWINN,
of the Sawridge Indian Band,
No. 19, Slave Lake, Alberta,
(hereinafter called the "Settlor"),

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN,
GEORGE V. TWIN and SAMUEL G. TWIN,
of the Sawridge Indian Band,
No. 19, Slave Lake, Alberta,
(hereinafter collectively called
the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day

of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Settlement, the following terms shall be interpreted in accordance with the following rules:

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time

would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band

No 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement; and

(b) "Trust Fund" shall mean:

(A) the property described in the Schedule hereto and any accumulated income thereon;

(B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;

(C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and

(D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

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

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

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

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

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

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

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

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

A. Settlor [redacted]

B. Trustees:

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

1. [redacted]

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

2. [redacted]

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

3. [redacted]

Schedule

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit " H " referred to in the Affidavit of Paul Bujold

Sworn before me this 12 day of September A.D., 20 11

A. Magnan

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

Catherine A. Magnan
My Commission Expires January 29, 20 12

SAWRIDGE BAND TRUST

RESOLUTION OF TRUSTEES

WHEREAS the undersigned are the Trustees of an inter vivos settlement (the "Sawridge Band Trust") made the 15th day of April, 1982 between Chief Walter Patrick Twinn, as Settlor, and Chief Walter Patrick G. Twinn, Walter Felix Twin and George V. Twin, as Trustees;

AND WHEREAS the beneficiaries of the Sawridge Band Trust are the members, present and future, of the Sawridge Indian Band (the "Band"), a band for the purposes of the Indian Act R.S.C., Chapter 149;

AND WHEREAS amendments introduced into the House of Commons on the 28th day of February, 1985 may, if enacted, extend membership in the Band to certain classes of persons who did not qualify for such membership on the 15th day of April, 1982;

AND WHEREAS pursuant to paragraph 6 of the instrument (the "Trust Instrument") establishing the Trust the undersigned have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries of the Trust;

AND WHEREAS for the purpose of precluding future uncertainty as to the identity of the beneficiaries of the Trust the Trustees desire to exercise the said power by resettling the assets of the Trust for the benefit of only those persons (the "Beneficiaries") who qualify, or would in the future qualify, for membership in the Band under the provisions of the Act in force on the 15th day of April, 1982;

AND WHEREAS by deed executed the 15th day of ~~March~~ APRIL, 1985 between Chief Walter Patrick Twinn, as Settlor, and the undersigned as Trustees, an inter vivos settlement (the "Sawridge Band Inter Vivos Settlement") has been constituted for the benefit of the Beneficiaries;

NOW THEREFORE BE IT RESOLVED THAT

1. the power conferred upon the undersigned in their capacities as Trustees of the Trust pursuant to paragraph 6 of the Trust Instrument be and the same is hereby exercised by transferring all of the assets of the Trust to the

undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement; and

2. Chief Walter Patrick Twinn is hereby authorized to execute all share transfer forms and other instruments in writing and to do all other acts and things necessary or expedient for the purpose of completing the transfer of the said assets of the Trust to the Sawridge Band Inter Vivos Settlement in accordance with all applicable legal formalities and other legal requirements.

DATED the 15th day of ~~March~~ April, 1985.

Chief Walter Patrick Twinn

Samuel G. Twin

George V. Twin

ACCEPTANCE BY TRUSTEES

The undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement hereby declare that they accept the transfer of all of the assets of the Trust and that they will hold the said assets and deal with the same hereafter for the benefit of the Beneficiaries in all respects in accordance with the terms and provisions of the Sawridge Band Inter Vivos Settlement.

DATED the 15th day of ~~March~~ April, 1985.

Chief Walter Patrick Twinn

Samuel G. Twin

George V. Twin

21902 Trust Docs Does

SAWRIDGE BAND RESOLUTION

WHEREAS the Trustees of a certain trust dated the 15th day of April, 1982, have authorized the transfer of the trust assets to the Trustees of the attached trust dated the 15th day of April, A.D., 1985.

AND WHEREAS the assets have actually been transferred this 15th day of April, A.D. 1985.

THEREFORE BE IT RESOLVED at this duly convened and constituted meeting of the Sawridge Indian Band at the Band Office in Slave Lake, Alberta, this 15th day of April, A.D. 1985, that the said transfer be and the same is hereby approved and ratified.

WITNESS
As to all signatures
Bruce E Thom

This is Exhibit "I" referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day
of September A.D., 20 11
A. Magnan
A ~~Notary Public~~, A Commissioner for Oaths
in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 20 12

Walter F Twin
Walter F. Twin
Chief Twin
Catherine Twin

DECLARATION OF TRUST MADE THIS 16TH DAY OF APRIL, 1985.

This is Exhibit "J" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 2011
A. Magnan
Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 2012

BETWEEN:

WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWIN
(hereinafter referred to collectively as the "Old Trustees")

OF THE FIRST PART

AND:

WALTER PATRICK TWINN, SAM TWIN AND GEORGE TWIN
(hereinafter referred to collectively as the "New Trustees")
OF THE SAWRIDGE INTER VIVOS SETTLEMENT

OF THE SECOND PART

WHEREAS the "Old Trustees" of the Sawridge Band Trust (hereinafter referred to as the "trust") hold legal title to the assets described in Schedule "A" and settlor Walter P. Twinn by Deed in writing dated the 15th day of April, 1985 created the Sawridge Inter Vivos Settlement (hereinafter referred to as the "settlement").

AND WHEREAS the settlement was ratified and approved at a general meeting of the Sawridge Indian Band held in the Band Office at Slave Lake, Alberta on April 15th, A.D. 1985.

NOW THEREFORE this Deed witnesseth as follows:

The undersigned hereby declare that as new trustees they now hold and will continue to hold legal title to the assets described in Schedule "A" for the benefit of the settlement, in accordance with the terms thereof.

Further, each old trustee does hereby assign and release to the new trustees any and all interest in one or more of the promissory notes attached hereto as Schedule "B".

WITNESS:

OLD TRUSTEES

NEW TRUSTEES

SCHEDULE "A"

SAWRIDGE HOLDINGS LTD. --- SHARES	
WALTER PATRICK TWINN	30 CLASS "A" COMMON
GEORGE TWIN	4 CLASS "A" COMMON
SAM TWIN	12 CLASS "A" COMMON

SAWRIDGE ENERGY LTD. --- SHARES	
WALTER PATRICK TWINN	100 CLASS "A" COMMON

SCHEDULE 'B'

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT ($293,178.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

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Per: _____

Per: _____

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DATED at the City of Edmonton, in the Province of Alberta, this 11 day of [illegible], A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

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

Sworn before me this 12 day of September A.D., 20 17

A. Magnan

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

Catherine A. Magnan
My Commission Expires January 29, 20 12

THE SAWRIDGE TRUST

DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

BETWEEN:

CHIEF WALTER P. TWINN,
of the Sawridge Indian Band, No. 19, Slave Lake, Alberta
(hereinafter called the "Settlor")

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Deed, the following terms shall be interpreted in accordance with the following rules:

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

(b) "Trust Fund" shall mean:

(A) the property described in the Schedule attached hereto and any accumulated income thereon;

(B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed;

(C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Deed;

(D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted; and

(E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell, lease or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed.

4. The name of the Trust Fund shall be "The Sawridge Trust" and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, the Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner or to any extent detracted from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

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

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

11. The provision of this Deed may be amended from time to time by a resolution of the Trustees that received the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

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

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

NAME

#6, 12729 Stony Plain Road, Edm.
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor
CHIEF WALTER P. TWINN

B. Trustees:

1.
CHIEF WALTER P. TWINN

2. Catherine M Twinn
CATHERINE TWINN

3.
GEORGE TWIN

860647-1/6

SCHEDULE

One Hundred Dollars ($100.00) in Canadian Currency.

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

Paul Bujold

Sworn before me this 12 day

of September A.D., 20 11

A. Magnan

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

Catherine A. Magnan
My Commission Expires
January 29, 20 12

SAWRIDGE BENEFICIARIES PROPOSED PROGRAM SUMMARY

START-UP RECOMMENDATIONS

	Program Description	Estimated Cost
1. ***Establish a Trust Program Office***	▪ Develop a job description for this position (which will combine two functions: overseeing the implementation of beneficiary programmes and providing administrative support to the Trustees) ▪ Hire and orient preferred candidate ▪ Establish primary office in Edmonton and an extension office in Slave Lake	$120,000 annually for salary, benefits, transportation allowance, and office costs (provided that affordable office space can be secured through collaboration with other Sawridge entities
2. ***Establish and Make Public a Clear Process for Determining Beneficiary Eligibility***	▪ Retain legal counsel with the requisite expertise ▪ Make public beneficiary criteria and the application process ▪ Gather pertinent information to support the process of accessing applications ▪ Strike an eligibility committee (with representation from each of the community's extended families) to screen applications ▪ Provide the community with regular updates on progress toward this goal	An reliable estimate can be projected once legal counsel has been retained
3. ***A One-Time "Good Faith" Cash Disbursement***	▪ A one-time cash disbursement in recognition of the challenges the beneficiary program has had in getting off the ground	$2,500/beneficiary over the age of 18 (or who are younger but have an independent household) for a total of approximately $105,000
4. ***Transparent & Accountable Communication Channels***	▪ Quarterly newsletter ▪ Beneficiary Manual ▪ Website	$10,000 one-time for website $10,000 one-time for manual $3,000 annually for newsletter & keeping manual up to date
5. ***Adopt a Phased Approach***	▪ Begin with programme offerings about which there is already strong consensus and which can be implemented within the next year or so (see suggestions for phase I programming on the next page) ▪ In year 2, phase in the remainder of the programs as more viable implementation options have been created (primarily by the Trust Administrator/Program Manager) and in consultation with beneficiary working groups as appropriate	No specific costs associated with this recommendation. Rather, this approach will help manage costs.
Total Estimated Costs for the Start-up Recommendations *Note: The figures presented here represent the cost of instigating and maintaining the Beneficiary Program. They do not include the costs of establishing beneficiary eligibility under the two Trusts. Depending on the legal costs, this figure could be substantial.*		**$248,000 for first year** **$123,000 annually for subsequent yrs**

PHASE I PROGRAMMING		
Category of Benefit	**Program Description**	**Estimated Cost**
6. Insurance ▪ Health ▪ Dental ▪ Long-term disability ▪ Basic life ▪ AD&D	▪ JT Moland will offer a package that provides health and dental insurance benefits that top up those provided under the uninsured benefits program ($30/single, $60/family monthly) ▪ As well, a quote for life, disability and AD&D insurance has been received (between $150 and $590 monthly, depending on age, gender and smoking habits). The Program Administrator will investigate options for a life insurance package with a higher payout value.	▪ Rough estimate is $20,000 annually for health & dental, $200,000 for life, disability and AD & D insurance (@ $25,000 coverage)
7. Death of Immediate Family Members and Compassionate Care Support	▪ Funeral and other costs, on a receipted basis, not to exceed $12,000 per event (limited to immediate family members (spouse, dependent child, parent, sibling) ▪ Compassionate care support support provided to beneficiaries to assist them to care for a ill family member or for a family member to care for a beneficiary who is ill (e.g. to support living costs while a family member is hospitalized out of their home community)	▪ If two such deaths occur within the families of Sawridge beneficiaries, the annual cost would be $24,000 annually ▪ Compassionate care fund will be administered by the Trustees on a case-by-case basis (estimated costs could be up to $20,000/year)
8. Seniors Support	▪ "No-strings" monthly assured income pension ▪ "Special needs" support for home care, transportation ▪ Care taken to ensure that these benefits do not negatively impact the senior's other pension benefits or tax situation	▪ On the basis of 8 seniors, monthly pension $144,000 annually ▪ Special needs fund up to $60,000 annually
9. Child & Youth Development	▪ Monthly or quarterly benefit to support recreational/artistic/ cultural pursuits ▪ Professional services and/or equipment for children and youth with special needs	▪ $2,500 annually for each dependent for an estimated total of $120,000 annually ▪ Fund of up to $20,000 for special needs annually
10. Educational Support	▪ Post-secondary (top-ups plus students not covered under Regional Council) ▪ Special employment-related courses	▪ $50,000 for top-up and additional post secondary ▪ $10,000 for employment-related training costs annually
11. Phase I Community Strengthening	▪ Two community gatherings in the first year to celebrate achievements, honour those who have worked so hard to create prosperity and wellbeing for the community, play, consult about current community realities and needs and create opportunities for reconciliation. ▪ Set up community working group	▪ Community events could cost up to $75,000/ea for an annual total of $150,000
Total Estimated Costs for the Phase I Recommendations		**$818,000.00**

PHASE II PROGRAMMING		
Category of Benefit	**Program Description**	**Estimated Cost**
12. Quality of Life Support Program	▪ Universal annual cash disbursement of $1,000 for beneficiaries over the age of 18 annually ▪ Matching savings program (either 3:1 or 5:1 depending on the positive life goal chosen to a maximum of $9,000 annually per beneficiary)	▪ $450,000 for each year after the first year
13. Financial Planning & Management	▪ Designated contact person within one or more financial institutions that have branches in both Edmonton and Slave Lake to provide estate planning, personal taxation advice, investment education & advice, budgeting & money management ▪ Resource list of programs offering financial management programs locally (e.g. as part of life skills programs)	▪ No financial cost at this time
14. Employment, entrepreneurship & Worthwhile Pursuits	▪ Life and career counseling through the Alberta Government Service Centres ▪ Job search & preparation services through existing not-for-profit programming ▪ Volunteer mentors (from Sawridge businesses) vet business plans and provide ongoing mentoring ▪ Matching funds at 5:1 up to a total of $9,000 for business start-up (see Recommendation #12 above) ▪ Support to prepare competitive resumes and service contract bids for job openings and contract opportunities with Sawridge companies ▪ Matching funds at 5:1 up to a one-time total of $9,000 for artistic and humanitarian projects (see Recommendation #12 above)	▪ Covered under Recommendation #12 above
15. Vacations in Sawridge Properties	▪ One week annually per family for a maximum of two rooms plus meals	Estimated at $112,000 annually
16. Housing	▪ Matching funds at 10:1 up to a one-time total of $20,000 for first-time home buyers (for the purpose of the down payment) ▪ Support beneficiaries to take full advantage of all government programs to support home ownership and renovation. ▪ Matching 5:1 funds to support existing home owners and those living on reserve to complete renovations/repairs up to a total of $20,000 within a ten-year period	The suggestions listed here would project an annual cost of about $600,000
17. Personal Development	▪ Expanded services will be available under the health insurance program (see #6 above) ▪ Counseling and other therapies recommended by an independent health practitioner could be covered under a special fund of up to $20,000 annually ▪ Personal development activities eligible for 3:1 matching funds under recommendation #12 above	$100,000 fund for counseling/therapies recommended by independent practitioner

	▪ Encourage partnerships with the Band to access services available under targeted government programs (e.g. the common-experience counseling funds)	
18. Phase II Community Strengthening	▪ The creation of a Community Wellness Committee to help plan community gatherings and to work with consultant to develop and community wellness plan ▪ The sponsoring of bi-annual community gatherings ▪ Contract services focused on healing community relationships & developing community strengths ▪ Contract technical support for the development of a community wellness plan ▪ Arbitration and mediation training for Sawridge beneficiaries & the establishment of a administrative tribunal	▪ Cost of developing a wellness plan $60,000 ▪ Gatherings estimated at $150,000 annually ▪ Contracted services related to healing and reconciliation could be capped at $50,000 annually ▪ The Alberta Arbitration Society charges $350 for each two-day workshop. If two beneficiaries were interested in this program and committed to 3 courses annually, the cost would be about $5,000 for course fees as well as related costs such as accommodation, materials (courses are held in Calgary and Red Deer)

Total Estimated Costs for the Phase II Recommendations	**1,527,000.00**
Estimated Cost of Year One	Start-up 248,000.00 Phase I 818,000.00 **Total 1,066,000.00**
Estimated Cost of Year Two	Start-up 123,000.00 Phase I 643,000.00 Phase II .1,527,000.00 **Total 2,293,000.00**
Estimated Cost of Subsequent Years	Start up 123,000.00 Phase I 643,000.00 Phase II 1,467,000.00 **Total 2,233,000.00**

TAB D

Action No.: 1103 14112
E-File No.: EVQ12SAWRIDGEI
Appeal No.: _____

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

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

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
April 5, 2012

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

Second, Mr. Molstad said there was no decision on the merits. That's a characterization. I disagree. We went through a trial. There was evidence. A lot of it was struck, but we can argue about that; but there is another case, *Potskin* where Justice Hugessen wouldn't let this issue go. He said, It's moot. It's been decided in Sawridge. That went recently to the Federal Court of Appeal which dismissed the appeal of the Sawridge Band. This is the *Potskin* case, and I can supply Your Lordship or counsel with it if you need. So from the Crown's point of view, Sawridge was a decision on the merits; and the right to control membership as some sort of residual sovereignty argument is not the Crown's position.

And lastly, I think he mentioned that the onerous conditions referred to in Hugessen's order, I would just confirm that there was a copy of the application form for membership before Justice Hugessen, and I -- as I recall, and again, My Lord, I wasn't prepared for this, none of this appears in his material, that was what Justice Hugessen was referring to once he read it. And Ms. Hutchison probably has a copy.

MS. HUTCHISON: It's -- My Lord, it's attached to -- or the current version is attached to the affidavit of Elizabeth Poitras.

THE COURT: Poitras.

MR. KINDRAKE: And that's what Justice Hugessen was looking at, and Your -

THE COURT: Mm-hm.

MR. KINDRAKE: -- Lordship can look at it as well and come to your conclusion of whether it's onerous or not. That's -- those are the only things I wanted to correct.

As for the application itself, we don't take any sides in it. I just wanted to clarify the record.

MR. MOLSTAD: Can I respond to that, My Lord?

THE COURT CLERK: First, sorry, could I have your name, sir?

MR. KINDRAKE: Oh, it's Jim Kindrake, K-I-N-D-R-A-K-E.

THE COURT CLERK: Thank you.

THE COURT: Just so you are -- unlike Mr. Molstad, you do not see yourself as a party of any -- the Government of Canada, the Crown Right of Canada, is it not --

MR. KINDRAKE: No, I do not.

THE COURT: Yes. Yes.

MR. KINDRAKE: Our view is these are not Indian monies. These are the band's monies. The trust is out there in --

THE COURT: Mm-hm.

MR. KINDRAKE: -- the public domain, and it's dealt with according to those principles.

THE COURT: Yes. Okay. Now, you seem to have stepped on one of Mr. --

MR. MOLSTAD: Yes.

THE COURT: -- Molstad's toes, I think.

Further Submissions by Mr. Molstad

MR. MOLSTAD: Just a couple. I just wanted to make it clear that we can agree to disagree in terms of whether there was a decision on the merits.

MR. KINDRAKE: Okay.

MR. MOLSTAD: Our position is that all the evidence was struck. There was no decision on the merits, so that is an issue that we will not agree on.

Secondly, we've never suggested that the application was not part of the record. What we suggested was that the Court ought to have not been making comments about that application without any evidence in relation to the culture, the history, and the natural laws in relation to this First Nation and that those comments were clearly obiter and they should be given the weight they deserve, which is none. That's our submission.

THE COURT: Okay.

TAB E

COURT FILE NO: 1103 14112

COURT: 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

QUESTIONING ON AFFIDAVIT

OF

PAUL BUJOLD

Ms. D.C.E. Bonora — For the Applicants

Ms. J.L. Hutchison — For the Public Trustee

Susan Stelter — Court Reporter

Edmonton, Alberta

27 & 28 May, 2014

were held by the '82 Trust, and that includes those that weren't part of the holding company and those that were part of the holding company, moved into the '85 Trust.

Q Okay.

A As far as we can determine from the records that we have.

Q Okay. So in paragraph 22 of your September 12th, 2011 Affidavit when you say that there was additional property transferred into the 1985 Trust by Sawridge First Nation or individuals holding property in trust for the nation and its members?

A Right.

Q When you are talking about individuals holding property in trust for the nation and its members, if I am understanding you you are not referring to individuals that had been set up to hold assets in trust pre 1982?

A No.

Q Okay.

A So these are -- this is the holding company -- or this is the differential --

Q The non-holding company assets?

A The non-holding company assets. So the non-holding company assets were held by the Trust, and then in order to move them from the Trust, '82 Trust to the '85 Trust, they were transferred to individual trustees, and then the individual trustees moved or settled them

into the '85 Trust.
Q Okay. Thank you. I was finding that a bit confusing.
A It is very confusing for us as well, so.
Q Okay, thank you. And just so that I am clear on this, going back to paragraph 7, 8, and 9?
MS. BONORA: Can we just go off the record for a second, just so that there is a clear picture.
(Discussion off the Record.)
Q MS. HUTCHISON: We had a useful discussion off the record. Thank you, Ms. Bonora.
So my understanding is that the transfer from the '82 Trust to the '85 Trust, we can probably talk about it as being three components. The holdco transfer?
A Yes.
Q The non-holdco asset transfer?
A Yes.
Q And then there was a third element that we hadn't discussed until we went off the record, where there was a transfer of a debenture?
A Yes.
Q From the '82 Trust to the '85 Trust?
A There was a debenture held by the First Nation separately, and it was a debenture for the construction of the Slave Lake Hotel and the development of that property. And so that debenture was held by the First Nation itself, and it decided to transfer that debenture to the '85 -- it wasn't part of the '82

Trust, but it was added to the 1985 Trust.
Q I see. So the '85 Trust ultimately ended up holding more assets actually than the '82 Trust?
A Yes, that is right.
Q Okay.
MS. BONORA: Sorry, if we just go off the record.
(Discussion off the Record.)
Q MS. HUTCHISON: Mr. Bujold, we are showing you a copy of what we have called the debenture?
A Yes.
Q Are you familiar with that document?
A I am, yes.
MS. HUTCHISON: So I wonder if we could mark that as Exhibit 1.
EXHIBIT NO. 1:
DEMAND DEBENTURE OF SAWRIDGE ENTERPRISES LTD.
Q MS. HUTCHISON: Mr. Bujold, I am just showing you a band council resolution dated April 15th, 1985. Is that document familiar to you?
A Yes.
Q And so if we could mark that as Exhibit 2.
EXHIBIT NO. 2:
BAND COUNCIL RESOLUTION DATED APRIL 15, 1985.
Q MS. HUTCHISON: And just by way of clarification,

taking a look at this document on its face, it appears that the debenture was being held in trust by Walter Patrick Twinn as an individual as opposed to by the First Nation?

A Yes.

Q And then that debenture was transferred into the 1985 Trust?

A Right. So the assets that were -- because of this ownership issue, the assets, even those held by the First Nation and not by the Trust, were still held by a trustee. And in this case it was the Chief.

Q Understood. So Walter Patrick Twinn was holding the debenture in trust for the band?

A That is right.

Q And that is what you were referring to?

A That is what I was referring to with the First Nations. So it is the First Nation that was doing the transfer because the BCR shows all of the Chief and Council agreed to it.

Q Just going back to this time period when there were individuals holding assets in trust, and then up to and including the creation of the 1982 Trust, I just want to be sure that I am understanding. It sounds as though at least at this point in time Sawridge Trust doesn't know or hasn't really -- does not know if there were other assets that individuals were holding in trust in that time period that didn't ultimately roll

into the 1982 Trust? You just know that --
A We are not aware of any assets that aren't part of the Trust.
Q Okay.
A So -- and we haven't made any attempts to determine if there were other assets because they are not relevant to us. So we have traced the assets that ended up in the 1985 Trust back to the '82 Trust.
Q Right.
A And from the '82 Trust to the First Nation, or to the trustees appointed by the First Nation to hold those assets in trust, or by the Trust -- the 1982 Trust to hold those assets in trust for various reasons. So that is the only part that we have traced. So we haven't traced anything outside of the creation of the Trust or the settlement of the Trust.
Q So I guess what I am trying to get a sense of, Mr. Bujold, and it may just be that I haven't tracked it down in the documents, but if we take a look at -- let's first look at Exhibit B of your September 12th, 2011 Affidavit?
A M-hm.
Q And Exhibit A, of course, is the 1982 Declaration of Trust.
A Yes.
Q So both of those documents refer to certain assets being put in to the Trust?

A Practically none.
Q It is a small community?
A It is a very small one or two family, and that is, you know, very hard not to marry your cousin and then you end up with --
Q Okay, got you.
A So the only way that you can qualify is to apply for membership. And so the 8 children who don't qualify under the '85 Trust would also continue not to qualify even if the definition changed because they don't qualify under the '86 Trust either, neither do the other 31 children qualify because their parents have to apply.

Now of these 31 dependents one of the parents has actually applied on behalf of two of those children and they have been admitted, and they are continuing to be minors, but they are also members of the First Nation and, therefore, full beneficiaries of the Trust -- of the '86 Trust, but not of the '85 Trust.

Q But if the '85 Trust definition changes --
A Changes.
Q -- they would become beneficiaries?
A They will continue to be, because they already are beneficiaries under the '85 Trust. They are part of the 31 who already are. So there is two who are already beneficiaries, but under the '86 Trust they don't qualify because -- okay, we have to sort of back

up a little bit.

So under the '85 Trust the definition is if you could be a member --

Q Pre Bill C-31?

A -- using the rules as they existed on that day, and you could be a member as a minor under those rules. Under the new Sawridge membership rule you can't be -- you are not automatically considered a member just because you are born to a member. You have to apply.

Q Right.

A So the children of members of the Sawridge First Nation all have to apply. And if they don't apply, they don't become members. Therefore, they won't be beneficiaries.

Q Okay. So I just want to be clear because I know we have all gotten a little confused on this issue at times. So in paragraph 4 when you say 23 of the minor dependents qualify as beneficiaries of the 1985 Trust, and I understand that the 23 may have changed over time?

A Right, right, right.

Q But were you saying that they qualify as beneficiaries of the '85 Trust with the current definition?

A Yes.

Q Okay. And would any of those 23 cease to be beneficiaries of the 1985 Trust under the proposed new definition?

A Yes. 21 of them.
Q 21 of them?
A Because two of them have applied for membership and have been accepted.
Q Okay.
A So because they applied and were accepted their beneficiary status continues because then they are still members of the First Nation.
Q The remaining 21 would have to apply for membership?
A Would have to apply for membership in the First Nation.
Q And if they didn't receive it they would not be beneficiaries of the 1985 Trust?
A That is right.
Q Or the 1986 Trust?
A That is right.
Q Okay. Just going back to numbers for a moment, Mr. Bujold. The numbers of dependent children of Sawridge members has changed, I think, since 2011, right?
A Yes.
Q Do you know what the current figure is? How many dependent children there are, or would you like to undertake to --
A I can give you an undertaking, because even though the numbers have changed, I think that the numbers are constant. So I think that it is still 31 but, you know, we have two who became adults and two who were

born, and I think that that is what has happened. I think we still have 31, but I can do an undertaking.

Q Let's do it this way because we need to establish names and identities here, so.

A Yes.

Q So why don't you undertake to give us a list of who the 31 dependent children were at the time that this Affidavit was sworn, and then also identify of those 31 dependent children which were the 23 that qualified as beneficiaries of the '85 Trust at the time that you swore the Affidavit and which were the 8 that did not qualify as beneficiaries of the '85 Trust at the time that you swore the Affidavit, and then update that list for me through until today's date?

A All right.

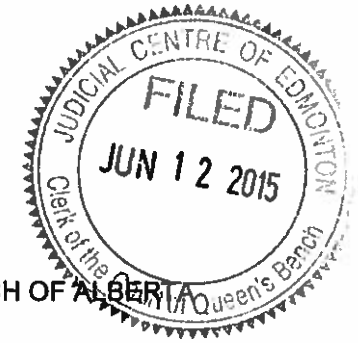
Q Okay.

UNDERTAKING NO. 31:
RE PROVIDE LIST OF WHO THE 31 DEPENDENT CHILDREN WERE AT THE TIME THE AFFIDAVIT WAS SWORN AND IDENTIFY OF THOSE 31 WHICH WERE THE 23 THAT QUALIFIED AS BENEFICIARIES OF THE '85 TRUST AT THE TIME THAT THE AFFIDAVIT WAS SWORN AND WHICH WERE THE EIGHT THAT DID NOT QUALIFY. ALSO UPDATE THE LIST UNTIL TODAY'S DATE.

Q MS. HUTCHISON: Mr. Bujold, are you able to tell

TAB F

Clerk's stamp:



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

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

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (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	Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5 Attention: Doris C.E. Bonora Telephone: (780) 423-7100 Fax: (780) 423-7276 File No: 551860-001-DCEB Reynolds Mirth Richards & Farmer LLP 3200, 10180 101 Street Edmonton AB T5J 3W8 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

Per:_____
Doris Bonora
Solicitors for the Applicants

Reynolds Mirth Richards & Farmer LLP

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

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Salans FMC SNR Denton
dentons.com

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

DENTONS

Doris C.E. Bonora

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D +1 780 423 7186

Salans FMC SNR Denton
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Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB, Canada T6J 3V6

T +1 780 423 7100
F +1 780 423 7276

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, Jadyn (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	➢ 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	➢ Child of Male band member ➢ **Born after the litigation began**
20. Twinn, Kaitlin (Paul Twinn)	23/02/1995	20	➢ 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

DENTONS

Doris C.E. Bonora

doris.bonora@dentons.com
D +1 780 423 7186

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

T +1 780 423 7100
F +1 780 423 7276

Salans FMC SNR Denton
dentons.com

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	➢ 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	➢ 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	➢ 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	➢ 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@jlhlaw.ca
Website: www.jlhlaw.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

Attention: Marco Poretti

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

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.

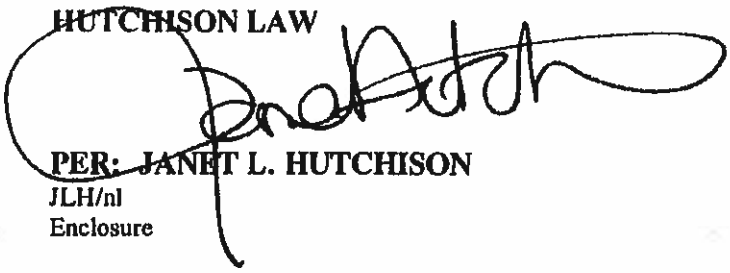
We look forward to receiving payment of this account in the amount of $19,369.69 within 30 days of the issuance of this account.

If the Sawridge Trustees ate 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



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:

DATE	DESCRIPTION	HOURS	AMOUNT
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]; 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] Review file [redacted]; Review file re: questioning on P. Bujold's undertakings; Draft correspondence [redacted]		
Apr-15	Receipt and review of correspondence; Review file [redacted]; Meeting with [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]; 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]; Update [redacted]. (full day)

May-15 Review and [redacted]; Telephone consultation [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]

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

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

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

May-15 Review file; Telephone consultation [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		
Accusript 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

GST # 87325 1573

Per: _____
Janet L. Hutchison

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 Monics 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 Reimbusement of Conduct money advance to witness	50.00	
	Total Trust	$338.76	$338.76
	Trust Balance		**$0.00**

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

ADVOCACY LP

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 debrief	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 G

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, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
APPLICANT in this Application:	OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA
RESPONDENT in this Application:	THE SAWRIDGE FIRST NATION

QUESTIONING ON AFFIDAVIT

OF

PAUL BUJOLD

E. H. Molstad, Q.C.	For Sawridge First Nation
D. C. E. Bonora, Ms.	For Sawridge Trustees
J. L. Hutchison, Ms.	For Office of the Public Trustee of Alberta
Allison Hawkins, CSR(A)	Court Reporter

Edmonton, Alberta
July 27, 2016

INDEX

INDEX OF UNDERTAKINGS

(Undertakings are provided for your assistance. Counsel's records may differ. Please check to ensure that all undertakings have been listed according to your records.)

****

INDEX OF EXHIBITS

PAUL BUJOLD, SWORN AT 9:37 A.M.,
QUESTIONED BY MR E. H. MOLSTAD:

Q MR. MOLSTAD: So I -- first of all, I thought I'd just explain why we're here. The -- Mr. Bujold, the questioning today is in relation to your affidavits and the evidence that the Public Trustee has tendered and purports to rely upon in their applications, pursuant to rule 5.13, compelling the Sawridge First Nation to produce documents, and Sawridge First Nation is named as a respondent in these two applications, and I, of course, represent Sawridge First Nation.

MR. MOLSTAD: And I understand, Ms. Hutchison, that you want to make a statement for the record?

MS. HUTCHISON: Yes. Thank you very much, Mr. Molstad. Just wanted to make note of the fact that as of this morning, there has been an agreement on the trustees' clarification on assets consent order, and in light of that consent order being finalized, and -- and assuming, I should say, that it is finalized, the Public Trustee's instructions are to withdraw their rule 5.13 application on assets, so that will change the scope of the 5.13 applications before the Court.

And, Mr. Molstad, the other -- the other point we just wanted to put on the

record, we're not entirely clear about what the proposed scope of the questioning is today. Rather than waste anyone's time and resources on multiple objections or interruptions, we're -- we're going to attend and listen, and we'll review the transcript after the fact. Please don't take our silence as an acceptance that the evidence is relevant or even admissible, but we'll address those issues to the Court, as opposed to raising individual objections to the questions.

MR. MOLSTAD: That's fine. Likewise, the evidence that you have tendered is, in our respectful submission, in many respects, inadmissible, but unfortunately, from our perspective, much of it is incorrect, and so we will have to put questions to this witness to correct that evidence, but I understand your position.

In terms of the comments you made about the consent order, as I understand it, and I want to be clear, I understood you to say that assuming the consent order is agreed to and ultimately filed, which Sawridge First Nation has no control over, you will then withdraw your application; is that correct?

MS. HUTCHISON: Mr. Molstad, to be clear, my understanding is that we haven't secured consent

from Trustee Twinn at this point in time. So if it were a situation where the consent order could not go forward because of Trustee Twinn's lack of consent, it could affect what the OPGT does with the 5.13 assets application. Although, frankly, I would hope that the other parties would proceed to present that order to the Court and ask it for endorsement, in which case the OPGT would still be withdrawing its 5.13 application. I'm hopeful that with or without Trustee Twinn's consent, that order that everyone's worked quite hard to prepare, would be presented to the Court. So as long as there's no issue that the consent order on asset clarification is presented to the Court on August 21st -- or 24th for approval, the assets application -- the 5.13 assets application will be withdrawn.

I -- and perhaps we can ask -- I realize we're all dealing with this sort of on short notice this morning. Ms. Bonora, would you agree that we would present that order to the Court regardless of Trustee Twinn's consent?

MS. BONORA: Yes. I -- we're very happy to have your consent, and -- on that order, and we would be prepared to go ahead and join forces to say that should go ahead, even if Catherine Twinn objected, we'd leave her to make her objections, if

she decided to do that.

MS. HUTCHISON: Okay. So, Mr. Molstad, on that basis, we are withdrawing our 5.13 assets application. Everyone in this room is agreed on the assets clarification.

MR. MOLSTAD: So --

MS. HUTCHISON: And I will -- I will confirm that in a letter to counsel and the Court once I'm not sitting at this boardroom table.

MR. MOLSTAD: Yeah. And -- and when you say you're withdrawing the 5.13 application, in relation to the asset transfer?

MS. HUTCHISON: To the asset transfer.

MR. MOLSTAD: Yeah.

MS. HUTCHISON: And as you're aware, the 5.13 application on membership is going forward on the basis outlined in our correspondence to you, essentially, a reporting to the Court.

MR. MOLSTAD: Yeah, we'll deal with that.

MS. HUTCHISON: And I will now be quiet, Mr. Molstad.

MR. MOLSTAD: Okay.

MS. HUTCHISON: This is your transcript, so...

MR. MOLSTAD: All right.

Q MR. MOLSTAD: All right. Mr. Bujold, my questioning of you today, I will refer to the 1982 Sawridge First Nation Trust as the 1982 Trust, and

you'll understand what I'm referring to?
A Yes, I will.
Q And I'll refer to the 1985 Sawridge First Nation Trust as the 1985 Trust, and you'll understand what I'm referring to?
A Yes, I will.
Q And I will refer to the 1986 Sawridge First Nation Trust as the 1986 Trust --
A Okay.
Q -- and you'll understand what I'm referring to?
A I will.
Q And in terms of the trustees of the 1985 Trust and the 1986 Trust, I will refer to them as the Sawridge trustees, and that -- you'll understand what I'm referring to?
A I will.
Q And today we're going to ask you questions in relation to two affidavits and also evidence that's been tendered by the Public Trustee. The affidavits that we're going to be asking questions in relation to are your affidavit that was sworn on August 30th, 2011, and filed September 6th, 2011. Do you have that in front of you?
A Yes, I do.
MR. MOLSTAD: Excuse me just for one moment, please.
MS. BONORA: Yeah.

MR. MOLSTAD: Okay.
Q MR. MOLSTAD: And this affidavit that was sworn on August 30th, 2011, was sworn by you, sir; is that correct?
A That's -- that's right, sir.
COURT REPORTER: Sorry?
A That's right, yes.
Q MR. MOLSTAD: And the other affidavit that I will question on is the affidavit sworn on September 12th, 2011, filed September 13th, 2011, and this affidavit you have before you, and it was sworn by you?
A I do, yes.
Q Yeah. Now, your counsel has provided you with copies of the correspondence in relation to these proceedings, as I understand it --
A Yes.
Q -- that have been exchanged between counsel?
A Yes.
Q And -- now, I'm showing you -- I'm showing you a letter dated June 17th, 2016, from Hutchison Law addressed to four counsel in relation to these proceedings. You received a copy of this?
A I did.
MR. MOLSTAD: We would ask that this be marked as an exhibit, please.

EXHIBIT 1:
Letter dated June 17th, 2016, from Hutchison Law

Q MR. MOLSTAD: So if you could just take a look at Exhibit 1. Do you have Exhibit 1 in front of you, sir?

A I do.

Q On page 2 of this letter, you'll see at the top of the page, Ms. Hutchison indicates that in relation to the 5.13 application regarding the membership, the -- the OPGT, which refers to the Public Trustee, will be filing a brief written submission on that application and then goes on to say that the OPGT, which is the Public Trustee, will not be seeking to file affidavit evidence in relation to that application and anticipates its submissions will be relatively brief, similar in length to the Sawridge First Nation's submissions.

That's the position that was communicated both to yourself and the Sawridge First Nation at that time; is that correct?

A That's correct.

Q And if you look at the bottom of the second page of Exhibit 1, they -- you'll see in the third-last paragraph, they summarize what they intend to do in relation to the 5.13 assets application, and in the last paragraph, they indicate that the Public

Trustee will not be filing affidavit evidence in support of this submission. And, also, they indicate that they will not be seeking to conclude Paul Bujold's questioning prior to the August 24th, 2016, hearing, and go on to explain why they take that position.

This also was a position that was put to both the Sawridge trustees and Sawridge First Nation; correct?

A That's correct, yes.

Q Now, the next document I want to take -- take you to is -- is an email to your counsel, which I'm showing you now, sir. It's this one. Sorry. And it's a -- it attaches a letter from Parlee McLaws addressed to Ms. Hutchison setting out the schedule agreed to between the Office of the Public Trustee and Sawridge First Nation. You received a copy of this, sir, did you?

A I did.

MR. MOLSTAD: I'd like to mark that as the next exhibit.

EXHIBIT 2:

Letter from Parlee McLaws addressed to Ms. Hutchison setting out the schedule agreed to between the Office of the Public Trustee and Sawridge First Nation

Q MR. MOLSTAD: The next document is an email,

sorry, which I'm showing you, which is from Ms. Hutchison's office dated July 7th, 2016, and a letter attached to it. You received a copy of this through your counsel; is that correct?

A I did.

MR. MOLSTAD: Can we mark that as the next exhibit, please?

EXHIBIT 3:

Email from Hutchison Law dated July 7th, 2016, with a letter attached to it

Q MR. MOLSTAD: Now, Exhibit 3, which is the email and the letter, includes a description of the evidence that the Public Trustee will rely upon in relation to the 5.13 membership application and the 5.13 assets application; is that correct?

A Yes, it does.

Q And part of this evidence is in relation to both applications, answers to undertakings of yourself, and, specifically, some are certain undertakings. Do you see that?

A Yes.

Q And as I understand it, the Public Trustee has not questioned you at this point in time in relation to any of these undertakings that you've provided; is that correct?

A That's correct.

Q Now, the next document is a letter without the

enclosures, it should be now, from our offices to Hutchison Law, Ms. Hutchison, on behalf of the Public Trustee. It does not have the enclosures in it. This letter was received -- a copy of it received by you through your counsel; is that correct?

A That's correct.

MR. MOLSTAD: Can we mark that as the next exhibit, please? Thank you.

EXHIBIT 4:

Letter without enclosures from Parlee McLaws to Hutchison Law, Ms. Hutchison, on behalf of the Public Trustee

Q MR. MOLSTAD: The -- the next document is a -- an email, but it unfortunately attaches what I consider to be confidential information, and I'm just going to ask you some questions about it, rather than mark it, because of that, Mr. Bujold. It's an email from Ms. Bonora to Janet Hutchison, counsel for the Public Trustee, and -- and it encloses the list -- an updated list of the minors, and what it provided the Public Trustee with at that time was a list of the minors with the changes since 2011, and that would have been as at April 5th, 2016; correct?

A That's correct.

Q And it is also noted that eight of the minors

listed had become adults, and -- and of the eight that are listed, two would become adults that year; correct?

A That's correct.

Q It also indicated there were five new minors; correct?

A That's correct.

Q And you indicate in this email that you are only providing this list to you and Mr. Molstad, as the minors' personal information is provided, and thus it's not appropriate to share with all the parties; correct?

A That's correct, yes.

Q You state in this email as well that it -- it's your experience with the Public Trustee that the Public Trustee will not continue to act for a minor once they become an adult, and you state that you assume that that is true in your case, especially given the December 17th, 2016, directions. And you ask that the Public Trustee confirm that it will only be representing the minors on the list in accordance with that decision and not representing the adults. That's what you've asked her to advise; correct?

A That's right.

Q Did you receive a response to that?

A Not that I know of.

Q Okay. I'll just get that back, then, from you. I'm not going to -- or you can keep that. It's your document.

So I want to take you now to the affidavit that was sworn by yourself August 30th, 2011, and filed September 6, 2011. Do you have that in front of you?

A I do.

Q I'd like to direct your attention to paragraphs 10, 11, and 12 of this affidavit, where you describe a considerable amount of information in relation to beneficiaries and potential beneficiaries. Do you see that?

A I do.

Q Now, did you -- I understand you requested the assistance from the Sawridge First Nation in compiling these lists?

A I did.

Q And can you also confirm that the Sawridge First Nation cooperated with you fully and provided you with the information --

A It did.

Q -- you'd requested?

A It did, yes.

Q Other than with respect to legislation regarding protection and privacy, did the Sawridge First Nation ever refuse to provide you with any

information requested?
A No, they didn't.
Q Okay. I'll just now turn you to the next affidavit, the affidavit of yourself sworn September 12th, 2011, and filed September 13th, 2011. Do you have that in front of you?
A I do.
Q In paragraph 1, you state that you're the chief executive officer of the Sawridge Trust. You're speaking of the 1985 Trust and the 1986 Trust; is that correct?
A That's correct.
Q And when did you first become chief executive officer?
A In September 2009.
Q Okay. And in paragraph 3, it -- it states who the trustees were of the '85 Trust at that time. Who -- who are the trustees of the '85 -- 1985 Trust today?
A Bertha L'Hirondelle, Catherine Twinn, Roland Twinn, Justin Twin, and Margaret Ward.
Q Okay. And is Margaret Ward sometimes referred to as Peggy Ward?
A She is.
Q And in paragraph 4 and 5 of your affidavit, it's indicated that the trustees would like to make distributions in relation -- or from the 1985 Trust

for the benefit of beneficiaries, and concerns have been raised on these two matters: One, regarding the definition of beneficiaries contained in the 1985 Trust; and, secondly, the transfer of assets into the 1985 Trust.

And as I understand it, the Sawridge trustees are seeking to expand the definition of beneficiaries of the 1985 Trust to include all members of the Sawridge First Nation?

A That's correct.

Q And -- and the purpose of that objective on the part of the Sawridge trustees is to eliminate discrimination?

A That's correct.

Q And, in fact, based upon the definition of the beneficiaries of the 1985 Trust, persons who were declared by the Court to be members pursuant to formally Bill C-31, have been excluded as beneficiaries of the 1985 Trust?

A That's correct because they're women who were enfranchised --

Q Right.

A -- through marriage.

Q And in terms of the investigation that you've done in reviewing the records and gathering the documents that you've gathered, I understand that you have satisfied yourself that you have seen all

of the documents and all of the information with respect to the transfer of the assets from the 1982 Trust to the 1985 Trust, and that -- in other words, you've exhausted your efforts in that respect?

A That's correct.

Q And all of the documents that you've gathered demonstrate that all of the assets of the 1982 Trust were transferred to the 1985 Trust, and that's why you seek the Court's order approving that transfer?

A That's correct.

Q In paragraph 9 of your affidavit, you make reference to Ronald Ewaniuk, CA. Do you know when Mr. Ewaniuk first became involved with the 1985 Trust and the 1986 Trust?

A I am not sure exactly of the date. I -- I could research the documents that I've got to see if I can find that.

Q Yeah. Was it -- you know, he was involved for quite some time, though, wasn't he?

A Yes, he was. He was involved in different capacities, so in the early days, he was involved as a partner -- as a senior partner of Deloitte --

Q Okay.

A -- Touche.

Q Yeah.

A And later, he was involved as a -- as a consultant.
Q And when you contacted him and made an effort to get what information he had, would it be correct to state that it was his information that all of the assets of the -- in the 1982 Trust were transferred to the 1985 Trust?
A Yes.
Q And that was the information of the Sawridge First Nation that was provided to you?
A That's right.
Q Paragraph 10 of your affidavit sworn September 12th, 2011, refers to Exhibit B, and if you just go to Exhibit B in the affidavit.
MS. HUTCHISON: Sorry, Mr. Molstad. Exhibit B or D?
MR. MOLSTAD: B. B as in Bob. Yeah.
MS. HUTCHISON: Thank you.
Q MR. MOLSTAD: And you found Exhibit B there?
A Yes, I did.
Q The -- you'll see that in -- that this is a -- a record of the meeting of the trustees and settlers of the Sawridge Band Trust, and that -- in paragraph 3, it -- it's -- they include a -- a resolution that the Sawridge trustees then instructed the solicitors to prepare the necessary documentation to transfer all property presently held by themselves to the Trust and to present the

documentation for review and approval. I just want to point out that it does describe all property, and from your investigation, is it your information that that happened?

A Yes, it is.

Q Do you have any information to suggest it did not happen?

A None at all.

Q Yeah. Paragraph 11 and 12 of your affidavit refers to Exhibit D, and I'd like to take you to Exhibit D of your affidavit. Are you there?

A I am.

Q Yeah. The second page of Exhibit D -- and this is a -- an agreement between the trustees of the old -- or I assume this is the '82 Trust. Is that your information, in the 1985 Trust?

A It is, yes.

Q Yeah. And on page 2, it -- it describes that each of the old trustees hereby transfers all of his legal interest in each of the properties listed in Appendix A attached hereto to the new trustees as joint tenants to be held by the new trustees on the terms and conditions set out in the Sawridge Band Trust and is part of the said Trust.

Is it your information that that, in fact, happened?

A Yes, it is.

Q Now, in paragraph 13 to 15 of your affidavit, this refers to the legislation that we know previously referred to as Bill C-31, and you're, I assume, familiar with the fact that the Sawridge First Nation challenged the constitutionality of the legislation in litigation where they asserted a right that they, as a First Nation, had the right to determine their membership?

A Yes, I am aware of that.

Q And it was during that challenge that the women that include, for example, Ms. Poytras were ordered to be added as members of the Sawridge First Nation, and as a result of the way in which the 1985 Trust was structured, she did not become a beneficiary when the Court declared her to be a member of the Sawridge First Nation?

A No.

Q Is that correct?

A That's correct.

Q Yeah. So if I go to paragraph 19, it refers to Exhibit H. Can I just get you to look at that? Now, this is a -- a -- Exhibit H is the resolution of the trustees, again, transferring all of the assets of the 1982 Trust to the 1985 Trust. Do you agree with that?

A Yes, I do.

Q And -- and that -- that, as you've already

testified, happened? That event took place?
A Yes, it did.
Q And what we know, at this time, was that the purpose of the 1985 Trust, when it was structured, was to protect the assets of that Trust from those persons who might be forced upon the Sawridge First Nation as members under what was then Bill C-31?
A That's correct.
Q And -- and having reviewed all of the records that you've been able to gather, do you have any information that the resolution, Exhibit H, was not carried out?
A None.
Q Okay.
A None whatsoever.
Q Would you agree with me that based upon the purpose of the transfer of the assets from the 1982 Trust to the 1985 Trust, there would be no reason for the Sawridge trustees, the Sawridge First Nation, or chief and council to withhold the transfer of any assets?
A Not that I could think of.
Q They were trying to protect these assets, so their objective was to transfer the assets?
A We had a telephone conversation with Morris Cullity, who was the -- the solicitor working with them at the time on the transfer and on the

structure of the '85 Trust.

Q M-hm.

A His -- in -- in his view, the intent of the 1985 Trust was simply to protect the assets, pending the completion of the constitutional challenge. Once that was complete, the intent was to merge the two Trusts back to -- using the 1986 Trust definition, to go back to that and merge the two Trusts.

Q But -- but in terms of the 1985 Trust, in -- in -- in those circumstances, both the Sawridge First Nation and the trustees would be motivated to ensure that all assets were transferred?

A That's right. Absolutely.

Q The reason is to fulfill the purpose at that time?

A That's right. And to protect those assets.

Q Yeah.

A Yes.

Q If you look at -- at paragraphs 9 to 28 of this affidavit -- and I don't want you to rush through it. Just take a look at them because a lot of this information was information that you obtained from the Sawridge First Nation; is that correct?

A That's correct, yes.

Q And I think you've confirmed that Sawridge First Nation was cooperative, and they were cooperative in providing this information as well?

A They were, yes.

Q In paragraph 20 of the affidavit sworn September 12th, 2011, it refers to Exhibit I, and can I just take you to that exhibit?

A Okay.

Q This is a document entitled "Sawridge Band Resolution" and has a number of signatures which appear to be, obviously, signatures of persons in addition to the chief and council of the Sawridge First Nation. Would you agree with that?

A Yes, I would.

Q And this recites, in the first paragraph, that the trustees of the 1982 Trust have authorized a transfer of the Trust assets to the trustees of what is, essentially, the 1985 Trust; is that correct?

A That's correct.

Q And the second paragraph recites that these assets have actually been transferred, and that's a reference to the assets of the 1982 Trust having been already transferred to the 1985 Trust; is that correct?

A That's correct.

Q And it would appear that the Sawridge First Nation, in the last paragraph of this document, is, for whatever reason, approving and ratifying this transfer?

A That's correct.

Q Okay. Paragraph 23 and 24 of your affidavit. You indicate that the transfer was carried out under the guidance of accountants and lawyers, and based upon your review and a review of all of the information that you gathered, would you agree that it supports the proposition that all property in the 1982 Trust was transferred to the 1985 Trust?

A Yes, I do.

Q I -- I want to confirm what the Sawridge trustees are not seeking in relation to their efforts to normalize the 1985 Trust and be in a position to provide benefits to beneficiaries, and can you just confirm that the Sawridge trustees do not seek any declaration or remedy in relation to the assets before 1985?

A That's correct.

Q And the Sawridge trustees do not seek any declaration or remedy in relation to the assets held in the 1982 Trust?

A That's correct.

Q And the Sawridge trustees do not seek any declaration or remedy in relation to an accounting of the assets in the 1982 Trust?

A That's correct.

Q And the Sawridge trustees do not seek any declaration or remedy in relation to an accounting of the assets in the 1985 Trust?

A That's correct.
Q And the Sawridge trustees do not seek any declaration or remedy in relation to assets prior to the 1982 Trust?
A That's correct.
Q And this order being sought by the Sawridge trustees does not prevent a beneficiary from seeking an accounting of the 1985 Trust?
A That's correct.
Q Do you have any information that there are any other relevant documents that relate to the transfer of assets from the '82 Trust to the 1985 Trust that have not been produced?
A I -- no. I think the search was exhaustive.
Q Yeah. In paragraph 28 of your affidavit, you state that: (As read)

> To unravel the assets of the 1985 Trust after 26 years would create enormous costs and will likely destroy the Trust.

Could you just give a brief explanation of what you mean there?
A Well, if -- if the 1985 Trust were to fail, all the assets -- because the 1982 Trust no longer exists, all the -- all the assets would either have to be sold and -- and they're -- the results then distributed among the beneficiaries, but we'd first

have to identify the beneficiaries. Or the Court could order a return of those assets to the 1982 Trust, and so it would essentially destroy the 1985 Trust.

Q And the cost of that happening, would it be to the detriment of the beneficiaries?

A Oh, it would be enormous detriment to the beneficiaries because of all of the costs for assessment, for sale, for transfer would all be taken out of the Trust, and it would, in essence, destroy the -- not only the assets of the 1985 Trust, but the assets of the 1986 Trust, since the two are intertwined.

Q Yeah. I have another document I want to put to you. It's a -- an email from your counsel, Ms. Bonora, to other counsel, which attaches a draft of the clarification on the transfer issued for review and comments and proposes that if this clarification is acceptable, a consent order could be drafted. You received a copy of this, did you?

A I did.

MR. MOLSTAD: I wonder if that could be marked as an exhibit, please.

EXHIBIT 5:

Email from Ms. Bonora attaching a draft of the clarification on the transfer issued for review and comments

Q MR. MOLSTAD: And there's another document I want to put to you. It's a letter from Ms. Hutchison to counsel -- I'm sorry. It's from Mr. Poretti to Ms. Hutchison and McLennan Ross dated July 26, 2016, enclosing a proposed consent order. You received a copy of this?

A I did.

MR. MOLSTAD: I'd like to mark this as an exhibit, please.

EXHIBIT 6:

Letter from Mr. Poretti to Ms. Hutchison and McLennan Ross dated July 26, 2016, enclosing a proposed consent order

Q MR. MOLSTAD: Now, I want to turn now to you -- the questioning on affidavit of yourself. Do you have a copy of that transcript with you?

A I do.

Q This is a transcript of the questioning on your affidavits that was conducted on the 27th and 28th of May 2014, which we're advised will be relied upon by the Public Trustee in relation to these applications, and I have a few questions about your evidence in this transcript.

If you go to page 9 of the transcript -- and I think that we talked already about who the trustees are. How many of the five trustees are members of chief and council of the

Sawridge First Nation?

A One.

Q And who is that?

A Roland Twinn.

Q And Ms. Catherine Twinn is also a trustee of the Sawridge Trust; is that correct?

A That's correct.

Q And in terms of Ms. Catherine Twinn's roles with the First Nation, she was part of the Sawridge First Nation membership committee for many years?

A That's right.

Q Ms. Catherine Twinn was also one of the legal counsel who acted for the Sawridge First Nation in the lawsuit where the Sawridge First Nation was challenging the constitutionality of Bill C-31?

A That's correct.

Q And -- and do you know if Ms. Catherine Twinn also participated in preparing the Sawridge First Nation membership code?

A As far as I know, she did, yes.

Q Yeah. And Ms. Catherine Twinn is an elector of the Sawridge First Nation?

A That's right.

Q And Ms. Catherine Twinn is also a beneficiary of both the 1985 Trust and the 1986 Trust?

A Yes, so far as we're able to determine on the 1985 Trust.

Q Okay. And since these trusts were first established, both the 1985 Trust and the 1986 Trust, the trustees have included members from the same family and also members from chief and council; correct?
A That's correct.
Q And do you know who the members of chief and council are today?
A Yes.
Q And who are they?
A Chief Roland Twin, Councillor Tracey Poitras-Collins, and councillor -- who's the third one?
Q Is it Darcy Twin?
A Yes, Darcy. Sorry. My mind was blanking.
Q Yeah. And when you say Councillor Tracey, it's Councillor Tracey Poitras-Collins, is it?
A Poitras-Collins, yes.
Q Yeah. And in relation to your efforts to have these trusts normalized, the Sawridge First Nation provided you with much of their records, including their code of conduct, their constitution, their Governance Act, and other documentation, whenever requested?
A That's correct.
Q And we've asked you about the documents, but do you believe that after all of your efforts to gather

documents and to speak to people who have involvement in -- historically and to make written inquiries of those persons, that you have all of the information that still exists in relation to the transfer of the assets from the 1982 Trust to the 1985 Trust?

A Yes, I think I do.

Q If I can -- I'll get you to go to page 45 of the transcript. I'm just going to read to you part of this transcript, beginning at line 19: (As read)

> Q Do you have any information to indicate that the assets that individuals were holding between the early 1970s and 1982, that some of those assets were not ultimately transferred into the 1982 Trust?
>
> A From the records that we have got, my understanding is that all of the assets that were held by individuals for the 1982 Trust eventually ended up in the 1982 Trust, and those assets were then transferred in full to the 1985 Trust.

That is your information today; correct?

A It is.

Q And at page 63 of the transcript of your evidence -- and this is when you were being questioned by Ms. Hutchison in relation to your affidavits, page 63, lines 15 to 22: (As read)

> Q So going back, Mr. Bujold, to paragraph 7, 8, 9, and 10 of your September 12th, 2011, affidavit, what I am sort of focusing on there is that if I understand what you are saying, your belief is that -- and I apologize. I am actually looking at paragraph 22. So you indicate that your belief is that all of the assets from the 1982 Trust were actually transferred over to the 1985 Trust?
>
> A Yes.

That is and continues to be your belief today?

A It is.

Q At page 103 and 104 -- actually, I take that back. Let me just ask you: As I understand it, that in relation to the 1985 Trust definition of beneficiaries, if it is not changed, if it continues to be in accordance with that trustee, it will create certain problems for the trustees, as I understand it; is that correct?

A That's correct.
Q And some of those problems include the fact that it -- it discriminates against women who married non-First Nation men and discriminates against their children?
A Yes, it does.
Q And do you recall some of the other problems that will be created by that?
A Well, it discriminates, also, against anyone who's enfranchised, although that clause no longer exists in the *Indian Act*.
Q Yeah.
A It -- it discriminates against anyone who's illegitimate, and that's all I can think of at the moment.
Q Okay. The -- if you go to page 127 of your transcript of questioning by Ms. Hutchison, at line 6 to 27, if you just take a quick look at that, as I understand it, that Sawridge First Nation provided the Sawridge trustees with information about the number of applications for membership and this was passed on to the Public Trustee; correct?
A That's correct, yes.
Q And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge trustees their membership application form, a flow

chart for the membership application process, Sawridge First Nation membership rules, and all of this information was passed on by the Sawridge trustees to the Public Trustee?

A That's correct.

Q At page 150 of the transcript, as I understand it, the -- Sawridge First Nation provided the Sawridge trustees with letters of acceptance and rejection in relation to membership applications, and these were provided by the Sawridge trustees to the Public Trustee?

A That's correct.

Q And if you go to page 180 of the transcript, you'll see there there's an undertaking listed as undertaking number 49, at the bottom of the page?

A Yes.

Q It says: (As read)

> Inquire of Catherine Twinn her recollection of what was discussed at the April 15th, 1985, meeting that the Sawridge Band resolution presented at Exhibit I of Mr. Bujold's September 12, 2011, affidavit dealt with. Specifically, does she recall if there was any discussion or documentation presented in relation to the

TAB H

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 given 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 I

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** **CATHERINE TWINN** **WALTER FELIX TWIN** **BERTHA L'HIRONDELLE, and** **CLARA MIDBO, as Trustees for the 1985 Sawridge Trust**
DOCUMENT	**APPLICATION for Advice and Direction in Respect of the transfer of assets**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	DENTONS CANADA LLP 2900, 10180 - 101 Street Edmonton, Alberta T5J 3V5 T 780 423 7100 F 780 423 7276 **Attention : Doris Bonora** REYNOLDS, MIRTH, RICHARDS & FARMER LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 **Attention: Marco S. Poretti** Telephone: (780) 497-3325 Fax: (780) 429-3044 File No: 108511-001-MSP

NOTICE TO RESPONDENT(S)

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

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

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

Date	Thursday, August 24, 2016
Time	10:00 AM
Where	Law Courts Building 1 Sir Winston Churchill Square Edmonton, AB T5J 3Y2
Before Whom	Justice D.R.G. Thomas

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

1. **Applicants**

(a) The Trustees of the 1985 Sawridge Trust

2. **Issues to be determined or nature of claims**

(a) Approval of the transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.

(b) Providing Direction that without limiting the generality of the foregoing, the Trustees' application cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 trust.

3. **Grounds for request and relief sought**

(a) Assets were transferred from the 1982 trust to the 1985 trust in 1985;

(b) There are representations from counsel for the Sawridge Trustees that the Sawridge Trustees have exhausted all reasonable options to obtain a complete documentary record regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

(c) The parties to this action have been given access to all documents regarding the transfer of assets from the 1982 Trust to the 1985 Trust that the Trustees have obtained;

(d) The Trustees are not seeking an accounting of the assets transferred into the 1982 Trust;

(e) The Trustees are not seeking an accounting of the assets transferred into the 1985 Trust;

(f) The Trustees are not seeking an accounting of the assets transferred from the 1982 Trust into the 1985 Trust;

(g) Little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust.

4. **Documents filed in this application**

(a) Affidavits of Paul Bujold filed in this action;

(b) Questioning on the affidavits of Paul Bujold filed in this action;

(c) Undertakings of Paul Bujold filed in this action;

(d) Form of Order in respect of this matter attached as Schedule "A" hereto.

5. **Applicable Statutes**

(a) Trustee Act R.S.A. 2000, c.T-8, s.43, as amended

6. **Any irregularity complained of or objection relied on:**

7. **How the application is proposed to be heard or considered:**

In chambers before Justice D.R.G. Thomas, the case management justice assigned to this file.

WARNING

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

SCHEDULE "A"

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, RSA 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 "Sawridge Trustees")
DOCUMENT	**ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT		
	Doris C.E. Bonora Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, AB T5J 3V5 Ph. (780) 423-7188 Fx. (780) 423-7276 File No.: 551860-1	Marco Poretti Reynolds Mirth Richards & Farmer LLP 3200, 10180 – 101 Street Edmonton, AB T5J 3W8 Ph. (780) 425-9510 Fx: (780) 429-3044 File No. 108511-MSP

DATE ON WHICH ORDER WAS PRONOUNCED: _____, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, AB

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

ORDER

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

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

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.

2. Without limiting the generality of the foregoing, the Trustees' application and this Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 trust.

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

TAB J

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

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

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
August 24, 2016

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

Submissions by Ms. Bonora

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

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

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

Order (Consent Order)

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

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

MS. BONORA: Thank you, Sir.

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

Submissions by Ms. Bonora (Distribution Proposal Adjournment)

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

THE COURT: All right. Sure.

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

original issue in our action.

Order (Distribution Proposal Adjournment)

THE COURT: That's -- well, I think it -- my goal here has been to try and get this litigation focussed, or refocussed in some cases, and it does seem that the issues are narrowing, which is sort of the function of a case manager. We're down to the -- well, the distribution plan, I'll call it, appears to be generally acceptable, subject to some latecomers having a look at it. Whether they'll have anything to say is yet to be decided, but my thinking is that the distribution plan looks like it's -- I mean, I've read it. It seems quite reasonable. It looks like that issue is going to get swept off the table. The -- so the one outstanding issue is the -- the scope of the beneficiary group.

MS. BONORA: Thank you, Sir.

THE COURT: So your request for an adjournment on the distribution proposal application and -- is adjourned *sine die*.

Submissions by Ms. Bonora (Standing)

MS. BONORA: Thank you, Sir.

Perhaps, Sir, we could deal with number 3 on the list, because I don't believe Ms. Wanke has any other matters that she would be attending to. I don't know that for sure, but the -- so the application with respect to Mr. Stoney is an application for standing, an application to be determined as a beneficiary. We're asking that matter to be adjourned. We just got served with it. Obviously, there needs to be some discussion around exactly what's going to happen with that, and questioning. And I don't think there's any opposition to that request to adjourn, but I will leave it for Ms. Wanke to speak, and Mr. Molstad would like to address it, as well.

THE COURT: All right. Well, Ms. Wanke, you're the applicant -- representing the applicant, so if you'd like to speak first?

Submissions by Ms. Wanke (Standing)

MS. WANKE: I am, My Lord. We have no issue with Ms. Bonora's request to adjourn the matter. She had proposed that counsel have a conference and come to you with a proposal in terms of timelines and how the matter will be heard, and we think that's reasonable. And we think counsel can certainly do that by consent.

dealing with costs, that they could then file a reply in relation to our submission on costs. But it did provide that the Public Trustee would be required to give us particulars of the evidence to be relied upon in both applications by July 7, 2016, as well as copies of the evidence. And on July 7th, the Public Trustee served us with notice of the records it intended to rely upon in relation to its application. And that's found at tab 9 of Sawridge First Nation's written brief.

And I want to take you to that, because this is July 7th in terms of timing, and these are two applications that relate to both the assets and the beneficiaries that are still fairly broad in terms of what they were seeking. But the evidence on page 2 of their letter, which is the fourth page in, lists the evidence that they will be relying upon in relation to both the membership application and the assets application. And there's transcripts, affidavits, supplementary -- supplemental affidavits, undertakings, and a fairly lengthy list on both, but one of them is the same in both. It's six in one and five in the other. It says:

> Catherine Twinn's affidavit dated September 23rd, 2015, filed in this action on September 30th, 2015, our references will be limited mainly to paragraph 29, period. 29(h) will be referenced in relation to any costs applications made by the respondents.

The word mainly didn't give us comfort, because the position is that this is evidence before the Court, and if we take issue with it, we have to address it.

We arranged for questioning of Mr. Bujold, and this occurred on July 27th. When we attended at the questioning of Mr. Bujold, the Public Trustee advised us that they would no longer be proceeding with the settlement application. And as you know, as you've signed the consent order, and we've got a copy of it at tab 10 of our brief, the preamble of this consent order is, in our submission, relevant and indicative of the information that the Public Trustee was in possession of, because what it says is that:

> The Sawridge Trustees have exhausted all reasonable options to obtain a complete documentary record regarding the transfer of the assets from the '82 Trust to the '85 Trust, that the parties have been given access to all document regarding the transfer of the assets, and the Trustees are not seeking an accounting in relation to the transfer of these assets, and noting that the assets from the '82 Trust were transferred to -- into the 1985 Trust.

And they talk about the little information available.

I think that my friend, Ms. Bonora, made mention of this in her brief. The purpose of the transfer in '82, '85, in terms of transfer from trust, was to avoid any claim that others might make in relation to these assets after the enactment of Bill C-31. So Sawridge First Nation would be highly motivated to ensure that those that were acting as trustees made the transfer of all assets from the '82 Trust to the '85 Trust. That was the reason. The reason clearly was one where it was in everyone's best interests to make sure the transfer took place.

I would point out that the resolution of this matter, in accordance with this order, is similar to the resolution that was proposed by the Sawridge Trustees to the Public Trustee on May 13th, 2016. And a copy of that is Exhibit 5 to the questioning of Mr. Bujold.

When Mr. Bujold was questioned on July 27th --

THE COURT: I take it that's in the file.

MR. MOLSTAD: It's been filed.

THE COURT: Okay. Right.

MR. MOLSTAD: Yes. The questioning and the exhibits --

THE COURT: Well, just so --

MR. MOLSTAD: -- to the questioning.

THE COURT: Just so you know, of course, I mean, the systems internally have totally broken down. So it never made it to my desk, but. . .

MR. MOLSTAD: Yeah, yeah. Well, if you have trouble finding it, Sir, we can send you --

THE COURT: Yeah. No, I just --

MR. MOLSTAD: -- another copy.

THE COURT: -- want to get it on the record so. . .

MR. MOLSTAD: Yeah.

THE COURT: I'll find it eventually.

TAB K

SAWRIDGE INDIAN BAND

RESOLUTION ADOPTING MEMBERSHIP RULES

WHEREAS subsection 10(1) of the Indian Act, R.S.C. 1970, Chapter I-6, as amended, (the "Act") recognizes that a band may assume control of its own membership if it establishes membership rules for itself in writing in accordance with section 10 of the Act;

AND WHEREAS the Sawridge Indian Band (the "Band") wishes to assume control of its own membership pursuant to section 10 of the Act;

AND WHEREAS the electors of the Band wish to consent to the Band's assumption of control of its own membership and the establishment of the membership rules (the "Rules") annexed as Schedule A hereto;

AND WHEREAS the objective of the Band in approving the establishment of the Rules is to protect the culture and social identity of the Band, to maintain and strengthen the existing sense of community, and to ensure continued peace and good order, among the members of the Band;

NOW THEREFORE BE IT RESOLVED THAT

1. the Band hereby consents to, and approves, the assumption by the Band of control of its own membership; and

2. the Rules be and they are hereby approved, adopted and established.

I certify that the above resolution was passed at a duly convened meeting of the electors of the Sawridge Indian Band held the 4th day of July, 1985 after appropriate notice of such meeting had been given and that such resolution is of full force and effect unamended as of the date hereof.

Dated the 4th day of July, 1985.

Walter P. Twinn

CHIEF WALTER PATRICK TWINN

Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada
Indian and Inuit Affairs / Affaires indiennes et inuit

Chronological No. – Numéro consécutif: 454-117-85/86

File Reference – N° de dossier du dossier:

BAND COUNCIL RESOLUTION
RÉSOLUTION DE CONSEIL DE BANDE

NOTE: The words "From our Band Funds" "Capital" or "Revenue", which ever is the case, must appear in all resolutions requesting expenditures from Band Funds
NOTA: Les mots "des fonds de notre bande "Capital" ou revenu" selon le cas doivent paraître dans toutes les résolutions portant sur des dépenses à même les fonds des bandes

THE COUNCIL OF THE / LE CONSEIL DE LA BANDE INDIENNE: SAWRIDGE BAND
AGENCY
DISTRICT: LESSER SLAVE LAKE
PROVINCE: ALBERTA
PLACE / NOM DE L'ENDROIT: SLAVE LAKE
DATE: 15 (DAY – JOUR) 04 (MONTH – MOIS) AD 19 85 (YEAR – ANNÉE)

Current Capital Balance / Solde de capital $
Committed – Engagé $
Current Revenue balance / Solde de revenu $
Committed – Engagé $

DO HEREBY RESOLVE:
DÉCIDE, PAR LES PRÉSENTES:

WHEREAS Chief Walter P. Twinn holds as trustee for the Sawridge Indian Band a certain debenture dated the 21st day of January, 1985;

AND WHEREAS the aforesaid trust was created to protect the interests of the members of the Sawridge Indian Band;

AND WHEREAS it is deemed expedient and in the interest of the said members to pass this Résolution:

AND UPON IT BEING MOVED by George Twin and seconded by Walter Felix
THEREFORE BE IT UANIMOUSLY RESOLVED at this duly convened and constituted meeting of the Sawridge Band Council at the Band Office in Slave Lake, Alberta, this 15th day of April, A.D. 1985, that Chief Walter P. Twinn is hereby directed and authorized to transfer the aforesaid debenture to the Trustees of the trust dated the 15th day of April, A.D. 1985, to be held by the said Trustees as an accretion to the assets of the trust and subject in all respects to the terms and provisions thereof.

A quorum for this Bande / Pour cette bande le quorum est
consists of / fixé à 2
Council Members / Membres du Conseil

(Chief – Chef)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)
(Councillor – conseiller)

FOR DEPARTMENTAL USE ONLY – RÉSERVÉ AU MINISTÈRE

1. Band Fund Code / Code du compte de bande	2. COMPUTER BALANCES – SOLDES D'ORDINATEUR A. Capital $	B. Revenue – Revenu $	3. Expenditure / Dépense $	4. Authority – Autorité Indian Act Sec / Art. de la Loi sur les Indiens	5. Source of Funds / Source des fonds ☐ Capital ☐ Revenue / Revenu

6. Recommended – Recommandable
Approved – Approuvable
Date
Recommending Officer – Recommandé par
Date
Approving Officer – Approuvé par

7-2

29/1-97182/S-121284sjm

SAWRIDGE ENTERPRISES LTD.

(Incorporated under the laws of the Province of Alberta)

DEMAND DEBENTURE - $12,000,000.00

WHEREAS:

A. WALTER P. TWINN (herein called the "Holder") as Trustee for the SAWRIDGE INDIAN BAND a band of Indians maintaining a reserve at or near the Town of Slave Lake in the Province of Alberta, has advanced to SAWRIDGE ENTERPRISES LTD. formerly known as Sawridge Native Enterprises Ltd; (herein called the "Company") the sum (herein called the "Present Indebtedness") of TEN MILLION EIGHT HUNDRED SEVENTY THOUSAND ($10,870,000.00) DOLLARS as evidenced by a series of demand promissory notes, which demand promissory notes were to be further collaterally secured by way of a debenture.

B. The Company has requested an additional sum of money (herein called the "Additional Indebtedness") in the amount of ONE MILLION ONE HUNDRED THIRTY THOUSAND ($1,130,000.00) DOLLARS.

C. WHEREAS the Holder has agreed to advance the Additional Indebtedness only if the Company grants a debenture to the Holder in the principal amount of TWELVE MILLION ($12,000,000.00) DOLLARS (herein called the "Principal Sum"), such debenture to secure the Present Indebtedness and to secure the Additional Indebtedness of the Company to the Holder.

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the Company hereby covenants and agrees with the Holder as follows:

1. (a) The Company acknowledges itself indebted to and promises to pay to the Holder on demand, or on such earlier date as the indebtedness hereby secured becomes payable in accordance with

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the terms of this debenture or by operation of law, at his office located at the Sawridge Indian Reserve, Slave Lake, Alberta or at such other address as the Company may receive written notice of from the Holder from time to time, the Principal Sum together with interest thereon or on so much thereafter as shall from time to time remain unpaid at the rate specified in clause 1(b), such interest being payable before and after demand, default and judgment. Interest at the rate specified shall accrue from and after June 1, 1984, being the interest adjustment date, and shall be calculated half-yearly not in advance on the 1st day of June and on the 1st day of December, in each and every year during which this debenture remains undischarged by the Holder (the first of which calculations and compounding shall be made on the first of such dates next following the interest adjustment date); and

(b) Interest shall accrue at the rate per annum equal to Three (3%) per cent in excess of the "Prime Rate" as herein defined. The "Prime Rate" means the prime commercial lending rate published and charged by the Bank of Nova Scotia (a chartered bank of Canada with corporate head offices in the City of Halifax, in the Province of Nova Scotia) on substantial Canadian Dollar loans to its prime risk commercial customers. It is understood and agreed that the Prime Rate is a variable rate published and charged by the Bank of Nova Scotia from time to time and that if and whenever the Prime Rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the Prime Rate then in effect plus Three (3%) per annum. The Company by these presents, hereby waives dispute of and contest with the Prime Rate, and of the effective date of any change thereto, whether or not the Company shall have received notice in respect of any change. It being provided and agreed that interest at the Prime Rate in effect from time to time on the Principal Sum, or on such part thereof as has been

from time to time advanced and is then outstanding is computed from (and including) the date the Principal Sum or any part thereof is advanced.

2. The amount of the Principal Sum already advanced under and secured by this debenture is the Present Indebtedness and the rate of interest chargeable thereon is the Prime Rate plus Three (3%) per centum per annum calculated half yearly and not in advance. The amount of Principal Sum which remains to be advanced under and secured by this debenture is the Additional Indebtedness and the rate of interest chargeable thereon is the Prime Rate plus Three (3%) per centum per annum calculated half-yearly and not in advance.

3. As security for the due payment of the Principal Sum and interest and all other debts, liabilities and indebtedness of the Company to the Holder, whether such indebtedness arises under this debenture or not, from time to time owing on the security of these presents and for the due performance of the obligations of the Company herein contained:

(a) The Company hereby mortgages by way of a fixed and specific mortgage and charge to and in favour of the Holder all its estate and interest in fee simple in possession of those parcels of land (herein called the "Lands") situate in the Town of Slave Lake, in the Province of Alberta, more particularly described in the First Schedule hereto and including all buildings, improvements, plant, erections, fixtures and fixed equipment of the Company now or at any time hereafter placed thereon and any and all rights, interests, licenses, franchises and privileges appertaining thereto or connected therewith, and any replacement property subject however to such encumbrances, liens and interests as are described in the first schedule hereto as "Permitted Encumbrances";

(b) The Company hereby mortgages by way of a fixed and specific mortgage and charge to and in favour of the Holder its leasehold estate in possession and interest in that parcel of land (herein called the "Leased Lands") situate in the Town of Jasper, in the Province of Alberta, more particularly described in the Second Schedule hereto, and including all buildings, improvements, plant, erections, fixtures and fixed equipment of the Company now or at any time hereafter placed thereon and any and all rights, interests licenses, franchises and privileges appertaining thereto or connected therewith, and any replacement property subject however to such encumbrances, liens and interests as are described in the second schedule hereto as "Permitted Encumbrances"; and

(c) The Corporation hereby grants, assigns, transfers sets over, mortgages, pledges, charges, confirms and encumbers, as and by way of a floating charge, to and in favour of the Holder, all its undertaking and all its property and assets, real and personal, movable and immovable, of whatsoever nature and wheresoever situate, both present and future, including, without in any way limiting the generality of the foregoing, its present and future goodwill, trademarks, inventions, processes, patents and patent rights, franchises, benefits, immunities, materials, supplies, inventories, furniture, equipment, revenues, incomes, contracts, leases, licences, credits, book debts, accounts receivable, negotiable and non-negotiable instruments, judgments, choses in actions, stocks, shares, securities, including without limiting the generality of the foregoing its uncalled capital and all other property and things of value tangible or intangible, legal or equitable, including without limitation all interests of the Company under any conditional sales, mortgage or lease agreements subject however to such encumbrances, liens and interests as are described in the third

schedule hereto as "Permitted Encumbrances"; Provided that the floating charge created in this clause 3(c) shall not in any way hinder or prevent the Company (until the security hereby constituted shall have become enforceable) from leasing, mortgaging, pledging, selling, alienating, assigning, giving security to its bankers under The Bank Act or otherwise charging, disposing of or dealing with that portion of the Mortgaged Property that is subject to the floating charge in the ordinary course of its business and for the purpose of carrying on the same and without limitation shall not hinder or prevent the Company from borrowing from bankers or others upon the security of the Company's accounts or bills receivable or mercantile documents or any other property, such sums of money as the Company may from time to time deem necessary in the ordinary course of the Company's business and for the purpose of carrying on the same.

(d) It is acknowledged that the property charged by clauses 3(a), 3(b), and 3(c) is herein collectively called the "Mortgaged Property".

4. Neither the execution nor registration nor acceptance of this debenture, nor the advance of part of the monies secured hereby shall bind the Holder to advance the entire sum or any unadvanced portion thereof, but nevertheless this debenture and the mortgage and charge hereby created shall take effect forthwith upon the execution hereof, whether the monies hereby secured shall be advanced before, after or upon the date of execution of these presents, and if the Principal Sum or any part thereof shall not be advanced at the date hereof, the Holder may advance the same in one or more sums to the Company or to its order at any future date or dates, and the amounts of such advances when so made shall be secured hereby and be repayable with interest as herein provided.

5. This Debenture is issued subject to and with the benefit of the conditions and schedules hereto annexed which are deemed to be part of it.

In witness whereof the Company has executed this debenture by the hands of its duly authorized officers in that behalf and under its corporate seal this 21 day of January, 1985.

SAWRIDGE ENTERPRISES LTD.

Per: _____
President

(corporate seal)

Per: _____
Secretary

CONDITIONS OF DEBENTURE

THE FOLLOWING ARE THE CONDITIONS REFERRED TO IN THE DEBENTURE DATED JANUARY 21, 1985 AND TO WHICH THESE CONDITIONS ARE ATTACHED.

THE COMPANY HEREBY COVENANTS AND AGREES WITH THE HOLDER THAT:

1. This debenture is a single debenture securing the Principal Sum of TWELVE MILLION ($12,000,000.00) DOLLARS, interest and all other sums made payable by this debenture and is a charge upon the Mortgaged Property and the Company is not at liberty to create any mortgage or charge in priority to or pari passu with this debenture, save as specifically provided herein.

2. The Company lawfully owns and is lawfully in possession of the Mortgaged Property; that it has a good right and lawful authority to grant, convey, assign, transfer, hypothecate, mortgage, pledge and/or charge the Mortgaged Property as herein provided; that the Mortgaged Property is free and clear of any deed of trust, mortgage, lien or similar charge or encumbrance except such as are known to and permitted by the Holder and as set out in Schedules 1, 2 and 3 and called the "Permitted Encumbrances"; that on default the Holder shall have quiet possession of the Mortgaged Property, free from all encumbrances save as herein provided; and that it will warrant and defend the title of the Mortgaged Property and every part thereof, whether now owned or hereafter acquired by the Company, against the claims and demands of all persons whomsoever.

3. This debenture is given as additional and collateral security to and not in substitution for a series of 13 promissory notes (the "Notes") given by the Company payable to Holder and dated July 31, 1973, July 31, 1974, July 31, 1975, July 31, 1976, July 31, 1977, November 30, 1977, July 31, 1978, December 31, 1978, December 31, 1979, December 31, 1980, December 31, 1981, December 31, 1982, December 31, 1983 and any renewals, replacements or substitutions thereof. Payments made under the Notes shall be credited against payments due hereunder, and vice versa, and notwithstanding anything contained in the Notes or in any renewals,

hereby secured shall forthwith be due and payable upon any default or breach by the Company of any covenant, agreement or provision of this debenture, the whole of the Principal Sum and interest owing under the Notes or any renewals, replacements or substitutions thereof shall likewise and forthwith shall be due and payable.

4. The Company acknowledges that any monies advanced prior to the execution of this debenture were advanced on the condition that this debenture be granted to the Holder as security for such advance.

5. The Company will duly and punctually pay or cause to be paid to the Holder the Principal Sum together with interest accrued thereon, and in the case of default, compound interest, and any other monies due or payable under the debenture at the date and places and in the manner mentioned herein.

6. The Company will maintain its corporate existence, diligently preserve all its rights, powers, privileges, franchises and good will; carry on and conduct its business in a proper and efficient manner so as to preserve and protect the Mortgaged Property and the earnings, income, rents, issues and profits thereof; duly observe, and perform all valid requirements of any governmental or municipal authority relative to the Mortgaged Property or any part thereof and all covenants, terms and conditions upon or under which the Mortgaged Property is held; and exercise any rights of renewal or extensions of any lease, license, concession, franchise or other right, whenever, in the opinion of the Company, it is advantageous to the Company to do so.

7. The Company will punctually pay and discharge every obligation lawfully incurred by it or imposed upon it or the Mortgaged Property or any part thereof, by virtue of any law, regulation, order, direction or requirement of any competent authority or any contract, agreement, lease, license, concession, franchise or otherwise, the failure to pay or discharge which might result in any lien or charge against the Mortgaged

Property or any part thereof and will exhibit to the Holder when required a certificate of the Company's auditor or other evidence establishing such payment; provided that the Company may, upon furnishing such security, if any, as the Holder may require, refrain from paying and discharging any such obligation so long as it shall in good faith contest its liability therefor.

8. The Company does hereby indemnify and save harmless the Holder from all liability and damages of whatsoever nature which may be incurred or caused in connection with the use and operation of the Mortgaged Property or any part thereof.

9. The Company will fully and effectually maintain and keep maintained the security herein created as a valid and effective security at all times and it will not, save as herein permitted, permit or suffer the registration of any lien, privilege or charge of workmen, builders, contractors, architects or suppliers of materials upon or in respect of the Mortgaged Property or any part thereof which would rank prior to or pari passu with this debenture; provided that the registration of such lien, privilege or charge shall not be deemed to be a breach of this covenant if the Company shall desire to contest the same and shall give security to the satisfaction of the Holder for the due payment or discharge of the amount claimed in respect thereof in case it shall be held to be a valid lien, privilege or charge.

10. The Company will not, without prior written consent of the Holder permit any of its lessees to pay to the Company or to any party whomsoever other than the Holder, in advance of the time specified in any lease (or renewal thereof) of space or premises in the building situate on the Lands or Leased Lands the rentals payable thereunder or permit any such lessee to surrender any lease of such space or premises, or otherwise terminate the term granted by such lease or other renewal thereof, or materially alter or amend or agree to alter or amend any of the provisions of such lease or any renewal thereof.

11. The last day of any term of years or any extended term as the case may be reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Company is excepted out of the Mortgaged Property but the Company shall stand possessed of any such reversion upon trust to assign and dispose thereof as the Holder may direct.

12. (a) The Company will keep proper books of account and make therein true and faithful entries of all dealings and transactions in relation to its business, permit the Holder by its agents, auditors and accountants to examine the books of account, records, reports and other papers of the Company or to conduct an audit of its books and accounts by a qualified accountant selected by the Holder and for such purposes the Company shall make available to such persons all books of record and all vouchers, books, papers and documents which may relate to the Company's business, who may make copies thereof and take extracts therefrom.

(b) The Company will during the continuance of this Debenture and until the same has been discharged by the Holder furnish to the Holder annually within ninety (90) days of the end of each of the Company's fiscal years, balance sheets and statements covering the operations of the Company upon the Lands and the Leased Lands for the preceding year, and in each case with supporting schedules, detailed profit and loss accounts and explanations of all items of an unusual nature, all audited by a chartered accountant or firm of chartered accountants satisfactory to the Holder; and as well copies of every audited financial statement or statements which may be prepared from time to time of the Company's affairs;

(c) The officers or authorized agents of the Holder shall have the right to visit and inspect the Mortgaged Property or any part thereof and discuss the affairs, finances and accounts of the

Company with the officers of the Company, all upon reasonable notice, at reasonable times and as often as the Holder may reasonably require.

13. The Company will pay when and as the same fall due all taxes, rates, assessments, liens, charges, encumbrances or claims which are or may be or become charges or claims against the Mortgaged Property, or which may be validly levied, assessed or imposed upon it or upon the Mortgaged Property; provided that in respect of municipal taxes against the Mortgaged Property or any part thereof upon default of payment by the Company of taxes as aforesaid, then the Holder may pay such taxes and also any liens, charges and encumbrances which may be charged against the Mortgaged Property, but shall not be obligated so to do, and all monies expended by the Holder for any such purposes shall be added to the Principal Sum hereby secured and be repaid by the Company to the Holder forthwith and interest on the unpaid amount shall be at the Prime Rate plus Three (3%) per centum per annum until such sum together with interest is paid calculated from the date of payment by the Holder.

14. All erections, buildings, fences, machinery, plant and improvements, fixed or otherwise, now or hereafter put upon the Lands and Leased Lands including, but without limiting the generality of the foregoing, all furnaces, boilers, plumbing, heating and airconditioning equipment, elevators, light fixtures, storm windows, storm doors and screens and all apparatus and equipment appurtenant thereto, are and will, in addition to any other fixtures thereon, become fixtures and form part of the realty and of the security of this debenture, and the Company will not permit any act of waste thereon.

15. The Company will repair and keep in good order and condition all buildings, erections, machinery and other plant and equipment and appurtenances thereto, the use of which is necessary or advantageous in connection with its business, up to a modern standard of usage and maintain the same consistent with the best practice of other companies working similar undertakings; renew and replace all and any of the same

which may be worn, dilapidated, unserviceable, obsolete, inconvenient or destroyed, or may otherwise require renewal or replacement and at all reasonable times allow the Holder or its representatives access to its premises in order to view the state and condition the same are in, and in the event of any loss or damage thereto or destruction thereof the Holder may give notice to the Company to repair, rebuild, replace or reinstate within a time to be determined by the Holder to be stated in such notice and upon the Company failing to so repair, rebuild, replace or reinstate within such time such failure shall constitute a breach of covenant hereunder.

16. The Company will not remove or destroy the buildings or any machinery, fixtures or improvements thereon now or hereafter in, upon or under the buildings or the Lands and Leased Lands, unless the same be worn out or rendered unfit for use or unless such removal is with a view to immediately replace the same by other property of greater or of at least equal value, unless it shall appear by a certificate of the Company delivered to the Holder and the Holder concurs, that such property is no longer useful in the conduct of the Company's business, and need not be replaced.

17. If the Company shall fail to perform any covenant on its part herein contained the Holder may in its discretion, but shall not be obligated to perform any of the said covenants capable of being performed by it, and if any such covenant requires the payment or expenditure of money it may make such payments or expenditures and all sums so expended or advanced shall be at once repayable by the Company and shall bear interest calculated from the date such sums are expended by the Holder at the Prime Rate plus Three (3%) per annum until paid and shall be secured hereby as is the Principal Sum, but no performance or payment shall be deemed to relieve the Company from any default hereunder.

18. All proper inspectors', lawyers, valuators' and surveyors' fees and expenses for examining the Mortgaged Property and the title thereto and for making or maintaining this debenture and charge upon the Mortgaged Property, together with all sums which the Holder may and does from time

to time advance, expend or incur hereunder for principal, insurance premiums, taxes, rates or in or towards payment of prior liens, charges, encumbrances or claims charged or to be charged against the Lands, Leased Lands or other Mortgaged Property, or in repairing, replacing or reinstating the Mortgaged Property as hereinbefore provided, or in inspecting, leasing, managing or improving the Mortgaged Property or in exercising or enforcing or attempting to enforce or in pursuance of any right, power, remedy or purpose hereunder including legal costs as between solicitor and his own client relative thereto are to be secured hereby and shall be a charge upon the Mortgaged Property together with interest at the Prime Rate plus three (3%) per annum, and all such monies shall be repayable to the Holder on demand.

19. (a) The Company shall at its sole expense forthwith insure and during the continuance of this security keep insured against loss or damage by fire, lightning, explosion, smoke, tornado, cyclone, boiler or such other risks or perils as the Holder may deem expedient or require, with extended coverage and replacement cost endorsements, each and every building now or hereafter erected or placed on the Lands and Leased Lands (and if the property of the Company, the said contents) to their full insurable value, excluding in the case of buildings the cost of excavations and foundations, and in any event to the extent of at least the full insurable value thereof with an insurance company or companies to be approved by the Holder and subject thereto the Company shall duly maintain the amount of insurance thereon that may be required by any co-insurance clause in any such policy.

(b) The Company shall at its sole expense forthwith insure and during the continuance of this security shall maintain public liability insurance policies in an amount which shall be satisfactory to the Holder and shall name the Holder as an insured under those policies.

20. In the event of loss, the Holder at its option and as it in its sole discretion may deem appropriate, may apply the insurance proceeds regressively against the balance outstanding against the Company or release said proceeds to the Company to repair, replace or rebuild, or apply the said proceeds or any part thereof to repair, replace or rebuild or partly one and partly the others, and that nothing done under this paragraph shall operate as payment or novation or in any way affect the security hereof or any other security for the amount hereby secured.

21. The Company shall also insure and keep insured against loss or damage by the same perils in like manner in like companies or by other approved insurers and to their full insurable value all of its property which is of a character usually insured by same or similar locations and carrying on a business similar to that of the Company.

22. The Company shall promptly pay as they become due all premiums and all other sums payable for maintaining all such insurance and will not do or suffer anything whereby such insurance may be vitiated. The loss under such policy or policies of insurance shall, where appropriate, be made payable to the Holder as its interest may appear and subject to a standard mortgage clause. The Company will forthwith deliver to the Holder such policy or policies of insurance or certified copies thereof and the receipts proving payment of the premiums thereto appertaining. Each policy may be kept by the Holder during the currency of this debenture and until the debenture is discharged by the Holder and should an insurer at any time cease to have the approval of the Holder the Company will forthwith effect such new insurance as the Holder may desire. Notwithstanding anything to the contrary herein contained, if the Company does not keep the Mortgaged Property insured as aforesaid, or pay the said premiums, or deliver such receipts and produce to the Holder at least thirty (30) days before the termination of the insurance then existing proof of renewal thereof, then the Holder will be entitled, but not obligated, to insure the Mortgaged Property or any part of them, and all monies expended by it shall be repaid by the Company on demand, and in the meantime the amount of such payments shall be added to the Principal Sum

hereby secured and shall bear interest at the Prime Rate plus three (3%) per cent per annum from the time of such payment and all such payments shall become a part of the Principal Sum secured by this Debenture and shall be a charge upon the Mortgaged Property. All monies received by virtue of any such policy or policies may at the option of the Holder either be forthwith applied in or towards the payment of the Principal Sum. And in case of surplus then it may be paid over in whole or in part to the Company. On the happening of any loss or damage to Mortgaged Property the Company shall forthwith notify the insurer and the Holder and and the Company at its expense shall complete all the necessary proofs of loss and do all necessary acts to enable the Holder to obtain payment of the insurance monies.

23. The Holder may release any part or parts of the Mortgaged Property at its discretion, either with or without any consideration therefor, without being accountable for the value thereof, or any monies except those actually received by it, and without releasing thereby any other part of the Mortgaged Property or any other securities and without releasing the Company from any other covenants herein expressed or implied.

24. That the Company shall when so directed by the Holder execute, acknowledge, issue and deliver unto the Holder by the proper officers of the Company, deeds or indentures supplemental hereto which thereafter shall form part hereof for any one or more of the following purposes:

(a) correcting or amplifying the description of any property specifically mortgaged, pledged or charged or intended so to be;

(b) making any corrections or changes as Counsel advises are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provisions or clerical omission or mistake or manifest error contained herein or in any deed or indenture supplemental or ancillary hereto; and

(c) executing any other documents or performing any other acts which are reasonably required to better secure the Holder under the debenture.

C. IT IS AGREED BETWEEN THE PARTIES HERETO THAT:

25. The whole of the Principal Sum and interest and other monies owing under the debenture hereby secured, shall at the option of the Holder, immediately become due and payable without demand and the security hereby constituted shall become enforceable:

(a) if the Company makes default in the payment of the Principal Sum, interest or other monies hereby secured, or in the observance or performance of any covenant, condition or proviso binding upon the Company by virtue of these presents or makes default under any of the covenants contained in any security collateral, supplemental or separate to this debenture, whether or not the Company is in default hereunder;

(b) if an order is made or an effective resolution passed for the winding up of the Company;

(c) if the Company becomes insolvent or makes an authorized assignment or commits an act of bankruptcy or is subject to the provisions of the Bankruptcy Act or any successor or replacement legislation or any other bankruptcy or insolvency legislation;

(d) if any process of execution is enforced or levied upon the Mortgaged Property or any part thereof and remains unsatisfied for a period of five (5) days as to personal property and three (3) weeks as to real property, provided that such process of execution is not in good faith disputed by the Company and in that event provided further that nonpayment shall not, in the sole discretion of the Holder, jeopardize or impair its interests, and that further the Company shall in that event also

give additional security which in the discretion of the Holder shall or may be sufficient to pay in full the amount claimed under any such execution in the event that it shall be held to be valid;

(e) if a receiver of the Company's undertaking or any part thereof shall be appointed or if the security constituted by any mortgage, bond, trust deed or other debenture or debentures of the Company heretofore or hereafter issued shall become enforceable pursuant to the terms and conditions therein contained;

(f) if the Company shall except as may be specifically allowed herein sell or dispose of or in any way part with possession of the Mortgaged Property, or any substantial portion thereof or make a bulk sale of its assets, or remove or suffer the removal of the furnishings, chattels and equipment forming a part of the Mortgaged Property or any part thereof from the Lands or Leased Lands;

(g) if a charge, or encumbrance created or issued by the Company having the nature of a floating or fixed charge upon the Mortgaged Property shall become enforceable;

(h) if the Company ceases or threatens to cease to carry on its business;

(i) if the Company shall without the consent of the Holder make or attempt to make any alterations in the provisions of its By-Laws or Articles of Incorporation which might in the sole discretion of the Holder detrimentally affect its security;

(j) if the Company shall, without the permission of the Holder, create or propose or attempt to create, any charge or mortgage

ranking or which may be made to rank pari passu with or in priority to the security hereby constituted;

(k) if the Company is in default in respect of any indebtedness to any creditor of the Company; and

(l) in any circumstance in which the Holder, in his sole discretion, deems it necessary to protect his security.

26. All payments made by the Company to the Holder shall be applied to interest then outstanding, and the remainder, if any, against the principal.

27. This debenture shall be assignable by the Holder without notice to the Company. Further the Holder may negotiate the debenture without notice to the Company at any time during the currency of the debenture and until the same has been discharged by the Holder.

28. The Company shall immediately, upon request by the Holder, pledge the debenture to the Holder.

29. Upon the happening of any event upon which the security hereby constituted becomes enforceable as in clause 25 hereof, and in addition to all other rights and remedies to which the Holder is entitled either at law or equity the Holder may, without notice to the Company, enter upon and take possession of the Mortgaged Property or any part thereof, either by itself or its agents and may, in its discretion, whether in or out of possession, and either before or after making any such entry, lease or sell, call in, collect or convert into money the same or any part thereof for such terms, periods and at such rents as the Holder shall think proper. Any such sale or conveyance of all or any part of the Mortgaged Property may be either a sale en bloc or in such parcels and either by public auction or by private contract and with or without any special conditions as to upset price, reserve bid, title or evidence of title or other matter as from time to time the Holder in its discretion thinks fit,

with power to vary or rescind any such contract of sale or buy in at any such auction and resell with or without being answerable for any loss. The Holder may at any sale of the Mortgaged Property or any part thereof, sell for a purchase consideration payable by installments either with or without taking security for the second and subsequent installments and may make and deliver to the purchaser good and sufficient transfers, assurances, and conveyances of such Mortgaged Property and give receipts for the purchase money, and any such sale shall be a perpetual bar both at law and in equity against the Company and all others claiming the Mortgaged Property or any part thereof by, from or under the Company. The Holder may become purchaser at any sale of the Mortgaged Property made pursuant to judicial proceedings. Nothing herein contained shall curtail or limit the remedies of the Holder as permitted by any law or statute to a mortgagee or creditor.

30. After the security hereby constituted shall have become enforceable and the Holder shall have determined to enforce the same, the Holder may without notice to the Company, by writing appoint a receiver or receivers of the Mortgaged Property or any part thereof and may remove any receiver so appointed and appoint another in his stead and the following provisions shall take effect:

(a) such appointment may be made at any time either before or after the Holder shall have entered into or taken possession of the Mortgaged Premises or any part thereof;

(b) any such receiver may be vested with any of the powers and discretions of the Holder;

(c) such receiver may carry on the business of the Company or any part thereof;

(d) such receiver shall have, possess and may exercise all powers vested or herein conferred upon the Holder including its power of sale of the security or part or parts thereof;

(e) such receiver may, with the consent of the Holder borrow money for the purpose of carrying on the business of the Company, or the maintenance of the Mortgaged Premises or any part of parts thereof, or for other purposes approved by the Holder and any amount so borrowed together with interest thereon shall form a charge upon the Mortgaged Property in priority to the security of this debenture;

(f) the Holder may from time to time fix the remuneration of every such receiver and direct the payment thereof out of the Mortgaged Property or the proceeds thereof; and

(g) every such receiver shall, so far as concerns responsibility for his acts, be deemed to be the agent of the Company.

The term "receiver" as used in this debenture includes a receiver and manager.

31. In case the amount realized under any sale of the Mortgaged Property shall be insufficient to pay the whole of the principal, interest, costs, charges and expenses then due, the Company shall and will forthwith pay or cause to be paid unto the Holder any such deficiency.

32. For better securing the punctual payment of the Principal Sum and interest, and other amounts hereby secured the Company hereby attorns and becomes tenant to the Holder in regard to the Lands at a rental equivalent to the amounts hereby secured, and if the whole of the balance of the monies hereby secured shall become immediately due and payable and the security hereby constituted shall become enforceable as hereinbefore provided then such rental shall, if not already payable, be payable immediately thereafter. The legal relationship of landlord and tenant is hereby constituted between the Holder and the Company. The Holder may at any time after default hereunder enter upon the Lands and determine the tenancy hereby created without giving the Company any notice to quit. Neither this clause or anything by virtue thereof or any acts of the

receiver shall render the Holder a mortgagee in possession or accountable for any monies except those actually received.

33. The taking of a judgment or judgments under any of the covenants hereunder or pursuant to any collateral, additional or separate security will not operate as a merger of the said covenants or affect the Holder's right to interest at the rate and upon the terms aforesaid, and compound interest in the manner aforesaid, and the exercise or attempted exercise of one or more of the Holder's rights or remedies will not operate as a waiver of the remainder thereof and any and all of the said rights or remedies may be exercised successively or concurrently.

34. The Company hereby covenants and agrees with the Holder that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, mortgages, transfers and assurances in law as the Holder hereof shall reasonably require for the better assuring, mortgaging, assigning, and confirming unto the Holder the Mortgaged Property hereby mortgaged and charged or intended so to be or which the Company may hereafter become bound to mortgage and charge in favour of the Holder and for the better accomplishing of the intentions of this debenture.

35. In the event of default the Company hereby irrevocably appoints the Holder to be the attorney of the Company in the name and on behalf of the Company to execute and do any and all deeds, transfers, conveyances, assignments, assurances and things which the Company ought to execute and do under the covenants and provisions herein contained, and generally to use the name of the Company in the exercise of any or all of the powers hereby conferred on the Holder.

36. No remedy herein or in any collateral, additional or separate security conferred upon or reserved to the Holder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under any security collateral hereto or now existing or hereafter to

exist by law or by statute, and the Holder may proceed to realize upon such security howsoever created and to enforce the rights of the Holder thereunder by any one or more of such remedies or any combination of them and in such order as it may deem expedient and shall not release or effect any other security held by the Holder for the payment of the Principal Sum, interest and other sums to be paid hereunder.

37. Except as otherwise herein provided, the monies arising from any sale or other realization of the whole or any part of the Mortgaged Property after default, whether under any sale by the Holder or by judicial process or otherwise shall be applied:

(a) firstly, in payment of all sums extended or advanced by the Holder and interest thereon as in this debenture provided including the remuneration, costs and expenses of any receiver, the costs and expenses of the sale and the proceedings incidental thereto and all encumbrances, taxes, dues, rates, assessments and other charges on the Mortgaged Property (except those subject to which such sale shall have been made), ranking in priority to this debenture and the interest thereon;

(b) secondly, in payment of the accrued and unpaid interest and interest on overdue interest;

(c) thirdly, in payment of the Principal Sum pursuant to this debenture; and

(d) fourthly, as to the surplus (if any) of such monies in payment to the Company or its assigns.

38. No person dealing with the Holder or the receiver or their agents, shall be under any obligation to inquire whether the security hereby constituted has become enforceable or whether the powers which the Holder or receiver is purporting to exercise have become exercisable, or whether any money remains due upon the security of this debenture, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made or otherwise as to the propriety or

regularity of any sale or of any other dealing by the Company or receiver with the Mortgaged Property.

39. Every request, notice, account, bill or other communication provided for in this debenture or arising in connection therewith shall be in writing and shall be mailed or delivered to such parties addressed as follows:

The Company: Sawridge Enterprises Ltd.
P.O. Box 326
Slave Lake, Alberta

The Holder: Sawridge Indian Band
Sawridge Indian Reserve
Slave Lake, Alberta

Any party may change its mailing and/or delivery address or addresses by giving to the other party written notice to that effect. Every notice, request, account or other communication mailed at any Post Office in Canada in prepaid registered post in an envelope addressed to the party or parties to whom the same is directed, shall be deemed to have been given to and received by the addressee on the second business day following mailing as aforesaid.

40. No action or inaction on the part of the Holder shall constitute a waiver of any default under the debenture by the Company unless the holder notifies the Company in writing that the Holder is waiving that particular default.

41. Time shall be of the essence.

42. If any obligation, covenant or agreement in this debenture or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this debenture or the application of such covenant, obligation and agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation

and agreement shall be separately valid and enforceable to the fullest extent permitted by law.

43. This debenture shall be construed in accordance with and shall be governed by the laws of the Province of Alberta.

44. Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and words importing persons shall include companies and trusts as the context may require.

45. This debenture shall enure to the benefit of the Holder and its successors and assigns and shall be binding upon the Company, and its successors and assigns.

IN WITNESS WHEREOF the Company has executed these Conditions under its corporate seal duly attested by the hands of its proper officers in that behalf, this 21 day of January, A.D. 1985.

SAWRIDGE ENTERPRISES LTD.

Per: _____

(corporate seal)

Per: _____

FIRST SCHEDULE

FIRSTLY: LOT ONE (1)
CONTAINING ONE AND TWELVE HUNDREDTHS (1.12) ACRES
MORE OR LESS
IN BLOCK FIVE-A (5-A)
ON PLAN 3225 T.R.
EXCEPTING THEREOUT:

ACRES	PLAN	NUMBER
0.01	SUBDIVISION	752 0877

(SLAVE LAKE - SE 36-72-6-5)

EXCEPTING THEREOUT ALL MINES AND MINERALS.

Permitted Encumbrances:

1. Mortgage in favour of Her Majesty the Queen in Right of Canada registered as instrument #3673 SS

2. Caveat registered in favour of the Societe Generale (Canada) and registered as instrument #832202427.

SECONDLY: LOT TWO (2)
CONTAINING FOUR AND NINETY SIX HUNDREDTHS (4.96) ACRES
MORE OR LESS
IN BLOCK FIVE-A (5-A)
ON PLAN 3225 T.R.
(SLAVE LAKE - SE 36-72-6-5)

EXCEPTING THEREOUT ALL MINES AND MINERALS.

Permitted Encumbrances:

1. Mortgage in favour of Her Majesty the Queen in Right of Canada registered as instrument #3673 SS

2. Mortgage in favour of Alberta Opportunity Co. registered as instrument #5399 U.8.

3. Postponement registered as instrument #1545 UK and

4. Caveat in favour of Societe Generale (Canada) registered as instrument #832202427.

29/1-97182/5.25-031084spm

SECOND SCHEDULE - LEASEHOLD

PLAN 4458 R.S.
THE WHOLE OF PARCEL CG
CONTAINING 1.17 HECTARES, MORE OR LESS
JASPER

Permitted Encumbrances:

1. Mortgage registered as instrument No. 832187939 to Societe Generale (Canada)

2. Caveat in favour of Societe Generale (Canada) registered as instrument No. 832202425

THIRD SCHEDULE-

Permitted Encumbrances:

1. a debenture in the principal amount of FIVE HUNDRED THOUSAND ($500,000.00) DOLLARS in favour of the Alberta Opportunity Company and registered on the mortgage register at the Corporations Branch on September 19, 1973.

2. a chattel mortgage in favour of the Societe Generale (Canada) and registered at the Central Registry as instrument No. 432294 and in the mortgage register at the Corporations Branch on August 4, 1983 in the principal amount of Eleven Million, Five Hundred Thousand ($11,500,000.00) Dollars; and

3. an assignment of book debts in favour of the Societe Generale (Canada) and registered at the Central Registry as instrument No. 432573.

STATUTORY DECLARATION

I, CHIEF WALTER PATRICK TWINN, hereby declare that:

1. On the 8th day of July, A.D. 1985, pursuant to subsection 10(6) of the Indian Act, R.S.C. 1970, Chapter I-6, as amended, the Council of the Sawridge Indian Band (the "Band") gave notice in writing to the Honourable David Crombie, Minister of Indian Affairs and Northern Development, that the Band was on that day assuming control of its own membership and provided the said Minister of Indian Affairs and Northern Development with a copy of the within Membership Rules of the Band.

2. Accordingly, pursuant to subsection 10(8) of the Indian Act, R.S.C. 1970, Chapter I-6, as amended, and section 1 of the within Membership Rules, the said Membership Rules effect, on and from the 8th day of July, A.D. 1985.

Declared before me at the
Town of Slave Lake,
in the Province of Alberta,
this 18 day of July A.D., 1985.

WALTER PATRICK TWINN

TAB L

Department of Justice Canada / Ministère de la Justice Canada

Legal Services
Indian Affairs and Northern Development
Room 1018, Les Terrasses de la Chaudière
10 Wellington Street
Hull, Québec
K1A 0H4

Nov 9 3 29 PM '94

November 9, 1994

VIA FAX NUMBER (416) 863-0871

Mr. Maurice C. Cullity, Q.C.
Davies, Ward & Beck
P.O. Box 63, Suite 1400
1 First Canadian Place
Toronto, Ontario
M5X 1B1

Sawridge Indian Band Expenditures pursuant to Sections 64 and 66 of the *Indian Act*

Dear Mr. Cullity:

We are in receipt of your letter of October 24th, 1994.

Although we note the concern expressed in your letter regarding the inclusion on the list of amounts for recurring and other expenditures which would not involve the acquisition of specific assets, we should remember that the suggestion for the production of such a statement originated from your letter of April 19, 1994.

We and our client, the Department of Indian Affairs and Northern Development, are concerned regarding the delay in resolving this matter.

In an attempt to accelerate the resolution of the current situation, we are prepared to limit the scope of the statement to be provided by your client's auditors. Accordingly, we hereby request confirmation by way of statement from Sawridge's accountants that all funds that were released for the acquisition of capital assets were in fact used for that specific purpose, and further confirmation that those assets are held in trust, or have been converted into other assets which are held in trust, for the members of the Band. In other words, at this time we do not seek confirmation regarding amounts released for purposes other than the acquisition of capital assets.

.../2

Canada

We would appreciate receiving confirmation of this proposal at your earliest convenience.

Yours very truly,

M. C. McIntosh

Margaret McIntosh
Counsel

DAVIES, WARD & BECK

BARRISTERS & SOLICITORS

MAURICE C. CULLITY, Q.C.
DIRECT LINE (416) 863-5522

File No. 21902

VIA TELECOPIER

October 20, 1994

Ms. Margaret McIntosh
Counsel, Legal Services
Indian Affairs and Northern Development
Room 1018
Les Terrasses de la Chaudière
10 Wellington Street
Hull, Quebec
K1A 0H4

Dear Ms. McIntosh:

Sawridge

Further to our recent discussions, I am writing to confirm that I do not believe that the list of expenditures provided with your letter of October 5, 1994 is helpful for the purposes we have discussed. Many of the amounts referred to on the list relate to recurring expenditures, such as legal and other professional fees, and some are as small as $500. They extend back over a period of 20 years and to ask for a statement from the auditors that all were properly expended on the particular purposes referred to in the BCRs would be prohibitively expensive even if, after such a period, it were possible to deal with them.

In my discussion with Mr. Gregor MacIntosh on April 7, 1994, I was told that the Department's concern was to ensure that all funds distributed to the Band pursuant to section 64 or section 69 were either held in trust, or could be traced into assets held in trust, for members of the Band. I suggested that the auditors might be asked to certify that all funds distributed to the band by the Minister pursuant to section 64 or section 69 of the *Indian Act* for the acquisition of specific assets, or property or investments into which those funds have been converted, are now held in trusts for members of the band. In my letter of April 19 to Mr. Van Iterson, I referred too generally to funds distributed to the band for specific purposes pursuant to those sections of the *Indian Act*. A large number of the amounts on the list you have provided refer to section 66 of the Act but, more importantly, many of them were amounts for recurring and other expenditures that would not involve the acquisition of assets and could not be expected to end up in trusts or otherwise in property of the Band.

DAVIES, WARD & BECK

In order to try to resolve this matter without further delay and expense, I wonder whether it would be an acceptable solution to ask the auditors to confine their attention to amounts on your list of $500,000 or more that were advanced for the purpose of acquiring specific assets. If this is not satisfactory from the viewpoint of the Department, perhaps you would suggest another alternative.

As I have indicated to you on a number of occasions, we do not agree that the Department is entitled to demand details of expenditures made by the band in the past or with respect to the assets that it now holds. At the same time, in the interests of avoiding the litigation that will be inevitable if your client intends to make unreasonable demands, I have attempted to find a solution that will satisfy the Department without involving the Band in unnecessary expense. I still wish to do this if it is possible.

Yours very truly,

Maurice C. Cullity

MCC/dp

cc: M. McKinney, Esq.

Department of Justice Canada
Ministère de la Justice Canada

Ottawa, Canada
K1A 0H8

Legal Services
Indian Affairs and Northern Development
Room 1018, Les Terrasses de la Chaudiere
10 Wellington Street
Hull, Quebec
K1A 0H4

August 29, 1994

Mr. Maurice C. Cullity, Q.C.
Davies, Ward Beck
P.O. Box 63, Suite 4400
1 First Canadian Place
Toronto, Ontario
M5X 1B1

Subject: Sawridge Trusts

Dear Mr. Cullity:

Further to our telephone conversation of August 9, 1994, we continue to anticipate a statement from the auditors of the Sawridge Indian Band to the effect that funds released to the Band pursuant to sections 64 and 69 of the *Indian Act* are being held in trust for the members of the Band, and that any funds were used for the purposes for which they were authorized by the Minister of Indian Affairs and Northern Development.

My client is anxious to have this matter settled as expeditiously as possible. Accordingly, I respectfully request some written indication of when this information will be available.

Thank you for your consideration of this matter.

Margaret McIntosh
Counsel

Canada

Sawridge

March 21, 1994

Davies Ward & Beck
Barristers & Solicitors
Box 63, 44th Floor
1 Canadian Place
Toronto, Ontario
M5X 1B1

ATTENTION: M. Cullity

Dear Sir:

RE: Sawridge Trusts

Further to our recent telephone conversation, we wish to confirm that the Department was aware of the existence of Trusts for the benefit of Sawridge Band Members for quite some time. This knowledge can be attributed to the Department from several sources including:

1. Annual Audits
2. Capital Project Funds Requests
3. Self-Government Negotiations
4. Early Trust discussions

1. Annual Audits

The annual audit reports show an amount each year as "*Distributions to Band Members*". In the March 31, 1984 statement Note #16 reads:

> *16. Distributions to Band Members*
>
> *On December 17, 1983 the Members of the Band transferred certain assets with a carrying value of $17,951,590 to "The Sawridge Band Trust", a trust formed for the benefit of the members of the Sawridge Indian Band".*

HEAD OFFICE: BOX 326, SLAVE LAKE, ALBERTA, T0G 2A0 • TEL: (403) 849-4311 • FAX: (403) 849-3446
BRANCH OFFICE: #766, 10201 JASPER AVENUE, EDMONTON, ALBERTA, T5J 3N7 • TEL: (403) 421-4845 • FAX: (403) 428-7022

Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Assistant Deputy Minister
Sous-ministre adjoint

Ottawa, Canada
K1A 0H4

FILE TRUST

MAR 30 1994

Mr. Maurice C. Cullity
Davies, Ward & Beck
Barristers & Solicitors
P.O. Box 63, Suite 4400
1 First Canadian Place
TORONTO ON M5X 1B1

Dear Mr. Cullity:

Thank you for your letter of March 16, 1994 concerning the existence of trusts that were apparently established on behalf of members of the Sawridge Band. I appreciate your willingness to meet to discuss this matter.

A meeting is desirable because of the Minister's statutory responsibilities for ensuring that moneys released to the band, pursuant to sections 61 to 69 of the *Indian Act*, are used for the benefit of the band and its members.

It may be that a relatively small amount of infomation on the above trusts, the existence of which was unknown to the Minister, will provide sufficient assurances that the above concerns have been met. We may also be assured that the assets are being held in those trusts for the benefit of all band members, including those who may be entitled to membership, as will be determined by the current related litigation.

To make the necessary arrangements for the meeting, would you please contact my office at (819) 953-5577.

Yours sincerely,

Original by/par
W. VAN ITERSON

W. (Bill) Van Iterson
A/Assistant Deputy Minister
Lands and Trust Services

c.c.: Chief Walter Twinn
Gregor MacIntosh
Ken Kirby
Chris McNaught

Canada

ORIGINAL in file
CAPITAL/Rec
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COPY

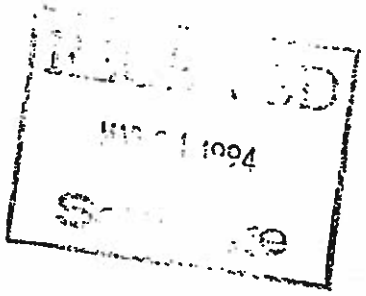
DAVIES, WARD & BECK
BARRISTERS & SOLICITORS

MAURICE C. CULLITY, Q.C.
DIRECT LINE (416) 863-5522

File No. 21902

March 16, 1994

W. Van Iterson, Esq.
A/Assistant Deputy Minister
Lands and Trust Services
Indian and Northern Affairs Canada
Ottawa, Ontario
K1A 0H4



Dear Sir:

Sawridge Indian Band

I refer to the letters of May 7, 1994 and December 23, 1993 addressed to Chief Walter Twinn. 8th March

For some years we have been retained to advise the Band with respect to, among other matters, any trusts established for its members. Accordingly, I have been instructed to respond to any questions you may have in connection with such trusts to the extent that you are entitled to receive answers.

You will understand that the Band, like any other community, organization or entity engaged in business and other activities for the benefit of its members is reluctant to release financial information relating to such activities to anyone other than such members unless it determines that this is in its best interests or is required by law. For this reason, although I have no objection to meeting with individuals from your department, it would be helpful if you would indicate in advance why you believe such a meeting to be desirable and the grounds, if any, on which you believe you are entitled to receive information about the trusts referred to in the letter from Ms. Porteous.

It would be appreciated if you would address your reply and any further correspondence or questions on this matter to this office.

Yours very truly,

Maurice C. Cullity

MCC/dp

cc: Chief Walter Twinn

bcc: M. Henderson

TAB M

SAWRIDGE TRUSTS

TRUSTEE MEETING MINUTES

Sawridge Inn, Edmonton South, Edmonton
21 December 2010

Attendees: **Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland Twinn, Walter Felix Twin**

Guests: **Brian Heidecker, Chair, Donovan Waters, Trusts Counsel, Paul Bujold, Trusts Administrator**

Recorder: **Paul Bujold**

1. OPENING AND PRAYER

Brian called the meeting to order at 10:10 AM and opened the meeting with a prayer led by Walter Felix.

2. REVIEW OF AGENDA

Trustees reviewed the agenda for the meeting and added 6.1 Evaluation of Chair's Performance.

2010-073 **Moved by Roland, seconded by Clara that the agenda be accepted as amended.**

Carried unanimously.

3. REVIEW OF MINUTES 17 NOVEMBER 2010

Minutes from the meeting held 18 October were reviewed.

Under 4. Business Arising, after "Roland indicated that the LSLIRC is having discussions about" add: "problems about" before "continuing with the Federal Services Master Agreement." After this statement add: "This may result in a potential impact on demand for Trust programs by beneficiaries."

Under 5.2 add: "Ardell had indicated that" instead of "Brian indicated that".

Under 5.4 change "...the Trust does not have any way to provide health services..." to :the Trust does not have a program to provide health services...".

Under 6.1.2 insert "impact" in front of "analysis".

Under 6.2.1 add the phrase "...based on the advice of David Ward and Tim Youdan." at the end of the introduction.

2010-074 **Moved by Catherine, seconded by Clara that the Minutes of 17 November 2010 be accepted as presented.**

Carried unanimously.

4. BENEFICIARIES

4.1 Donovan Waters, Merger of Trusts and Certainty of Beneficiaries

Donovan Waters, Legal Counsel to the Trusts, presented options (attached as part of the Minutes) for review by the Trustees on merging the Trusts and on certainty in determining the beneficiaries. These options were developed by Donovan, in consultation with input from Catherine Twinn, Doris Bonora and Mike McKinney at a meeting held in the Trusts Office 10 November 2010 and were further refined in a conference call meeting on 17 November 2010 between the parties including Roland Twinn as Chief of Sawridge First Nation.

Trustees first reviewed the options presented under ***Merger of Trusts*** Trustees felt that it was not time yet to consider Option 1 merging the two Trusts as other matters had to be dealt with first. Option 3 presented the problem of placing one Trust in a minority shareholder position compared to the other Trust and therefore was not a favourable option to consider.

Option 2 seemed to present the best possible solution at this time although it would require that an application be made to the Court for advice and direction on the beneficiary determination clause in the 1985 Trust.

Under the ***Certainty of Beneficiaries*** options, Option 1 and Option 3 presented significant challenges in that the membership and Band Council of the Sawridge First Nation had the ultimate legal responsibility for determining membership.

Option 2 seemed to present the best solution at this time. Trustees discussed the present difficulties with the Band process of determining membership and the long delays involved in making decisions. After Brian made some observations and suggestions including offers to help on both a technical and process basis, Chief Twinn agreed to encourage the Band, Council and Assembly to work with the Trusts to refine the Band process that would expedite resolving membership applications and questions. This would permit the Trusts to move forward on the question of beneficiary determination. Donovan also offered to assist with advice as a courtesy back to Mike KcKinney for his previous involvement.

2010-075 Moved by Catherine, seconded by Roland that the Trustees resolve:

1. **To adopt Option 2 under the Certainty of Beneficiaries in the Sawridge Trustee Options—Trustee Meeting 21 December 2010 document dated 17 December 2010 prepared by Donovan Waters and attached,**
2. **To proactively work with the Sawridge Membership Committee and the Chief and Council to expedite recommendations to the Legislative Assembly so that applications can be determined within 6 months from the date received,**
3. **To work with Chief and Council to develop proposed amendments to the Sawridge Citizenship Code including outlining legal standards that the decision-making process must meet, and**
4. **To adopt Option 2 under the Merger of Trusts and to apply to the Court for advice and direction as to whether the definition of 'beneficiary' in the 1985 Inter Vivos Settlement is valid.**

Carried, 4 in favour, Walter Felix abstaining.

5. Trust Matters

5.1 Reports

6.1.1 Trust Administrator's Report

Paul reported that most of his time in the last month has been working on determining the beneficiaries and on working out the costs of proposed benefits and savings plans. He has also working on the accounting system to bring matters up to date for the audit and tax preparation.

6.1.2 Trustee Reports

Catherine reported that the third community dialogue of the Economic Development through Reconciliation will take place in Hobbema in January 10 - 11, 2011.

Roland reported that the Regional Council has been given limited options on extending the Master Services Agreement by the Federal Government. The First Nations are not willing to be forced into an agreement that they cannot support. If a new agreement or extension is not signed by 20 January 2011, it is unclear how services will be delivered by the Federal Government.

5.2 Legal

Paul presented information on the three tax lawyers under consideration: Cheryl Gibson, Howard Morry and Chris Anderson. Catherine pointed out that it was important not to sever our long-term relationship with Davies Ward Phillips and Vineberg.

2010-076 Moved by Roland, seconded by Walter that Cheryl Gibson be retained to handle the Trusts' tax matters.

Carried, 4 in favour, Catherine Twinn abstaining.

5.3 Financial

6.5.1 Financial Reports November 2010

Trustees reviewed financial reports for November 2010.

2010-077 Moved by Bertha, seconded by Clara that the November 2010 financial reports be accepted as presented.

Carried unanimously.

5.4 Budget 2011

Trustees reviewed the 2011 Budget Projections, including separate projections for the Phase II benefits. The Phase II benefits will not be implemented until there is more certainty on the identification of beneficiaries.

2010-078 Moved by Clara, seconded by Roland that the 2011 Budget Projections be approved as presented.

Carried unanimously.

6. Company Issues

Brian reported that he and Paul had met with Ralph Peterson and John MacNutt on 24 November 2010 to discuss a number of issues of mutual concern.

A new severance package offer has been presented to Sunil Lall's lawyer and a response is being awaited from Sunil.

John stressed that neither he nor anyone from management had worked with Ardell Twinn on his business proposal to the Trusts. In fact, the Companies were awaiting information from Ardell on his proposal to lease space in the Travel Centre but had received nothing yet.

Justin Twin and the Companies are in discussion on a new arrangement since the arrangement for Justin with Fountain Tire did not work out. Indications are that a win-win situation is achievable for all concerned.

The Companies budget is on track to meet or slightly exceed targets. The airport development is going well.

Brian arranged for John MacNutt to meet with the RCMP K Division officials and officials from Alberta Solicitor General about plans to move the RCMP hangar.

Brian is awaiting a proposal from Ron Gilbertson on the Walter Twinn Memorial Foundation. At present, the Companies do not have anything in their budgets for this project.

Also discussed merging the trusts, developing a tax strategy, diversifying investments, the policy on employee/beneficiary access to hotel and restaurant services, featuring the ownership of the Companies by the Trusts, and plans to replace the CFO position with an Analyst and a Controller position.

A joint meeting between the Directors and the Trustees is planned for sometime in late February 2011.

6.1 Review of Chair Performance

Trustees met in camera with Brian Heidecker on the issue of his performance evaluation.

7. Next Meeting and Adjournment

Action 1012-01 Trustees decided to hold the next meeting of the Trustees on 15 February 2011 in Slave Lake at the Sawridge Inn.

_____

Brian Heidecker, Chair

SAWRIDGE – TRUSTEE OPTIONS – TRUSTEE MEETING 21 DEC. 2010

Revised following lawyers' meeting on Friday, December 17

October meeting (proposals then made)

"Beneficiaries" clause is contrary to 1985 (Bill C-31) Charter philosophy. Contrary to public policy? Recommended merge 1985 Trust with 1986 Trust.

Membership code. S. 3(a) of Band Code cannot be enforced against s. 11(1) 1985 *Indian Act* persons. S. 3 of Band code may discriminate (contrary to Charter) against natural children with only one registered parent, and also adopted children.

December meeting (options before the Trustees)

1. ***Merger of Trusts***

Option 1 Apply to court to terminate the 1985 Trust and transfer the trust fund to the 1986 Trust trustees.

[NB. Merger requires in law that all beneficiaries under the 1985 Trust become beneficiaries of the new (or 1986) Trust. Capacitated and sui juris beneficiaries of the 1985 Trust must approve of the merger themselves. Question: can who are beneficiaries of the 1985 Trust be ascertained for this purpose? The court will only consider the minors' legal position under the proposed merger, and the fact that the minors of the 1985 Trust will become members of a larger beneficiary class under the new (or 1986) Trust.]

Option 2 Leave each of the 1985 and 1986 Trusts in being, and apply to court to determine whether the "beneficiaries" clause of the 1985 Trust is invalidated by the 1985 *Indian Act* or the Charter.

[NB. The argument can be made for the Trustees that the definitional trust clause, though referring to the "Band", should be construed as merely descriptive of the settlor intended class, and that the Charter does not therefore apply. If the court rejects this argument, and decides the clause is invalid, however, possibly on grounds of public policy, the Trustees then decide on a new beneficiary clause for the 1985 Trust to put before the court.]

Option 3 Leave the two Trusts in being. Value the assets of each Trust as of a determined date, and then the Trustees of each trust transfer the assets of that trust to a corporation, which then administers the assets as a whole. Shares would be issued to each Trust in the proportion that the valuation figures bear to each other, e.g., $600,000 as the valuation figure of one trust, and $400,000 of the other, resulting in a shareholding of 6 shares to one and 4 shares to the other out of 10 issued shares.

[NB. This is a useful way in which to secure the common administration of both Trusts assets. However, trust law requires that the assets of distinct trusts be kept separate, unless there is a statutorily-approved pooling arrangement in place. Moreover, as each of the 1985 Trust and the 1986 Trust is in favour of Sawridge Band members at a different time, the beneficiaries of the two Trusts

will be different persons. It cannot therefore be argued that there is a common beneficiary class. If this option is chosen, we shall have to work further on it.]

2. ***Certainty of beneficiaries***

Both Trust instruments say the beneficiaries are those who "qualify as Band members".

Option 1 Apply to court to replace "beneficiaries" clause of 1985 Trust and the 1986 Trust, if there is to be no merger. There will then be no reference to the Band or Band membership. The new description will be the "Sawridge First Nation", or the customary law description of the Sawridge community. A Trustee appointed tribunal will determine which persons meet this description.

Option 2 **The 1985 Trust**–adopt the Band's view as to which persons are Band members under the 1982 Band membership class description.

The 1986 Trust–follow the Band Code and Band decisions as to who are registered members (s. 2 and s. 3(b), (c), (d), and (e) of the Code), and also 'entitled' persons (s. 11(1) of the Act) as yet unregistered, as and when these persons are registered by the Band.

The Trusts and the Band would then be operating with the one Band membership list.

Option 3 **The 1985 Trust**–the Trustees decide by way of a tribunal who are the persons who satisfy the 1982 Band membership class description.

The 1986 Trust–the Trustees follow the Band Code but decide for themselves for Trust purposes by way of a tribunal as to who qualifies under that Code as Trust "beneficiaries".

[NB. It is likely that the Band's ultimate list will largely be the same as the Trustees' list, but the Trustees will require administrative law standards to apply in determining who are "beneficiaries"].

Aboriginal Affairs & Northern Development Canada
Alberta Region
630 Canada Place
9700 Jasper Avenue
Edmonton, AB T5J 4G2

Affaires autochtones et Développement du Nord Canada

Fax: (780) 495-2201
Internet: aandc-aadnc.gc.ca

November 8, 2011

Your file *Votre reference*
Our file *Notre reference*

Dear :

Our records indicate that when you became registered as an "Indian" pursuant to the provisions of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended, your registration was "affiliated" with the Sawridge Band. In 1985, the Sawridge Band had taken control of determining its own membership, therefore, such affiliation, by itself, did not bestow any rights of membership in the Sawridge Band upon you.

Between 1982 and 1986, the Sawridge Band created several trusts to hold and administer certain assets which the Sawridge Band had acquired and transferred into the trusts (the "Sawridge Trusts"). The Sawridge Trusts are separate legal entities from the Sawridge Band.

The Chief Executive Officer of the Sawridge Trusts recently filed an application in order to seek "advice and directions" from the Court of Queen's Bench of Alberta (the "Application") in regards to certain matters dealing with the Sawridge Trusts. Full details of the Trusts and the proposed Application can be found on their website at www.sawridgetrusts.ca.

It is suggested that you periodically check the Sawridge Trusts website to ascertain where and when the Application will be heard.

The Sawridge Trusts do not have access to the names and addresses of the person's affiliated with the Sawridge Band, and have asked the Government of Canada to use its best efforts to try and contact these persons so that they are aware of the pending Application and can, if they choose to do so, get independent legal advice in respect thereof.

In providing this notification on behalf of the Sawridge Trusts, the Government of Canada:

a) Is doing so on a strictly gratuitous and voluntary basis to accommodate a request to do so from the Sawridge Trusts and, as Canada relies on the affiliated persons to update their addresses, Canada is not warranting or undertaking to anyone that any person to whom this notice is addressed will in fact receive it, and assumes no liability for the failure of such notice to reach any such individual;

b) Makes no representations:

   i. about the accuracy of any information found on the Sawridge Trusts website and is not in a position to disclose any other information on regards to the Application to third parties other than what is found on the website, and

.../2

ii. that any or all of the affiliated persons have any standing or interest in the Application; and

c) Will not be in a position to offer any legal advice to persons outside the Government of Canada in respect thereof.

Additionally, be advised that:

1. Neither your name nor any other personal information will be provided to Sawridge Trusts or any other third party. The only information we will provide to Sawridge Trusts is the total number of people we notified by means of this letter.

2. If you are a minor, or the guardian of a minor who may have an interest in the Application, the Public Trustee for the Province of Alberta can be contacted, at the number noted below, for information pertaining to the Public Trustee's authority over the administration of minor's property.

Office of the Public Trustee
400, South, Brownlee Building
10365 – 97 Street
EDMONTON, AB T5J 3Z8

Phone: (780) 427-2744
Fax: (780) 422-9136

Yours sincerely,

Susan Weston
Manager, Registration, Revenues
And Band Governance
Lands, Negotiations and
Indian Government
Aboriginal Affairs and Northern
Development Canada
Suite 630, Canada Place
9700 Jasper Avenue
EDMONTON, AB T5J 4G2

TAB N

IN THE FEDERAL COURT OF CANADA TRIAL DIVISION

Court File No. T-66-86

BETWEEN:

WALTER PATRICK TWINN, suing on his own behalf and on behalf of all other members of the Sawridge Band,
WAYNE ROAN, suing on his own behalf and on behalf of all other members of the Ermineskin Band,
BRUCE STARLIGHT, suing on his own behalf and on behalf of all other members of the Sarcee Band

Plaintiffs,

-and-

HER MAJESTY THE QUEEN

Defendant

-and-

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

Interveners

PROCEEDINGS

October 26, 1993

Volume 22

Held at the Federal Court of Canada

Edmonton, Alberta

Pages 3324 to 3551

Taken before: The Honourable Mr. Justice F. Muldoon

APPEARANCES

M. Henderson, Esq. — For the Plaintiffs
C. M. Twinn, Ms.
P. Healey, Esq.
D. D. Akman, Esq. — For the Defendant
E. Meehan, Esq. — Intervener for the Native Council of Canada

P. J. Faulds, Esq. — Intervener for the Native
T. K. O'Reilly, Esq. — Council of Canada (Alberta)

T. P. Glancy, Esq. — Intervener for the Non-Status Indian Association of Alberta

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June Rossetto — Court Registrar

This is Exhibit " B " referred to in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day of SEPTEMBER, 20 19
A Commissioner for Oaths in and for Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

Sandra German, CSR(A), RPR Court Reporter

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THE REGISTRAR: This Court is now resumed.

MR. HENDERSON: My Lord, sorry, counsel had asked for a bit more time and that's why we're late this morning. I think Mr. Meehan and/or Mr. Glancy may want to address the Court about the comments yesterday.

THE COURT: Yes. Thank you.

MR. MEEHAN: Good morning, Your Lordship. Mr. Henderson and other counsel had a brief discussion prior to court this morning, and there was a few matters that we would wish to bring to the Court's attention for your consideration.

THE COURT: Yes.

MR. MEEHAN: Yes, until yesterday, Your

have been entered into the band lists. They all will be entered into the band lists.
Q These are children born to members who were members before 1985?
A That's right.
Q And those children will all ultimately be entered on the band lists as members?
A That's automatic.
Q And in some cases that hasn't happened yet?
A It hasn't happened yet. For no real reason. Difficulty the membership codes probably, whatever. We've got a legal opinion. You can't just do that. You have to do it in order that everyone has to apply which is not automatic.
Q So the parents of the children would ask you to enter the child and you would simply do that?
A They shouldn't have to ask, but that's when it comes. It's not -- it hadn't been relevant unless they're infants. Not that they would lose anything.
Q Now when you became chief in 1966, did Sawridge have any businesses?
A No.
Q Now, you were a member of the Sawridge band in 1967. In fact you were chief in 1967 and had been for one year at that time. Now if you had voluntarily enfranchised in 1967, how much money would you have received as your per capita share in 1967?
A No more than $1200 I believe.
Q And how do you know that?
A I believe we had about -- if I recall when I was chief we had $40,000 in the capital fund I believe. That's the figure I can remember. And others later on had voluntary -- or enfranchised either by marriage, whatever. That was about the figure I believe. It's never -- the figure was never -- it's difficult. Sometimes it would take us six months to get an accounting of what was in the capital revenue funds.
Q But the overall account in 1967 was --
A Was about 40,000.
Q $40,000?
A I'm not saying it's exact. It's about $40,000.
Q So if there were 30 members, say, they would each get 1/30th of $40,000.
A Yes, there was 38 members at '85.
Q I'm just asking a hypothetical question.
A Yes, right. About 1200 I said. No more.

back.

I'm looking at page 2 there on the left-hand side paragraph 5. And just directing your attention to the first paragraph, I gather that treaty 8 and Sawridge welcomed the removal of discrimination on the grounds of sex and welcomed the increase in Indian control of band membership which Bill C-31 provided?

A Yes, to some extent.

Q Yes. Okay. And I gather that the reservation or the concern that you had related to the fact that in return for getting those things, Bill C-31 said that there was a group of people whom you would have to accept back into membership, and that was what you were concerned about?

A Automatic reinstatement of a large group is what we were --

Q Exactly. Okay.

A Yeah.

Q There's been a lot of discussion about who is automatically reinstated under Bill C-31. I would like you to turn to page 11, paragraph number 22.

At the time this brief was made, the treaty 8 bands and the Sawridge band understood that Bill C-31 did not reinstate first generation descendents of people who had lost their status under the act. You understood that the bill did not reinstate children? Is that correct?

A I don't want to be on a document committed to a document that -- on a proposal.

Q No, I'm just saying that at the time that this document was prepared based on whatever form the bill was -- whatever stage the bill was at then, you and your professional advisors understood that bill did not reinstate the first generation descendents or the children of the people who had lost their status? That was understood at that time?

A At that time, that was the negotiating that took place.

Q Sure. Okay. And that was -- how you understood the bill was at that time?

A The bill kept changing from time to time. One day we would come home and they had -- there was another category. There was all sorts of pressures.

Q Well, Chief Twinn, in any event, we'll just deal with what you understood at the time of this particular brief.

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

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

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

Q Of course.
A I don't know what . . .
Q Of course. And what I'm saying is that when you talk about the Sawridge Band and your concern for its future, what you're really concerned about is the future of the business activities of the Sawridge Band.
A If we were told initially by the oil companies an estimate that the oil reserves would only be 20 years, we've went that 20 years -- there is someone speculating -- speculating -- it's going to be 30 years. But it is our job that they don't diminish -- 15 million hasn't -- it's been growing.

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

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

Like I said earlier, the band council before me would not allow all the timber to be cut all at once, as some people like to see. So . . .

Q Yes?
A So, in that respect, we try to save as much as possible, all the capital funds, the revenue funds that are there, and hopefully some day we can be totally self-supporting. That is the goal.

But, as you know, if you're an Albertan, Alberta Heritage Trust Fund had about $12 billion, and it wasn't very long ago it went down.

Whether the membership is large or it's small, it's just as dangerous when it's political.

So, you know, I guess that is my explanation for how we do things. No one is suffering, I don't believe. If any of these individual members or anyone -- I guess they could be middle income with very slight effort.

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

A That's not what I said. I guess I'm not getting clear.

I'm saying to you that we're trying to be self-supporting. And to keep using money -- I think I have tried to say to you -- Alberta Heritage Trust Fund had a lot of money. They're broke today. It's dangerous, that competitive world. If Alberta has some more problems or if Canada has problems, what do these figures mean? What could they mean? Canadian dollar drops, anything could happen.

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

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

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

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

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

Exhibit 26, Document Number 913.
THE COURT: 913, Mr. Faulds?
MR. FAULDS: 913, My Lord.
Q MR. FAULDS: It's a letter dated November the 2nd of 1987, directed to the Right Honourable Brian Mulroney, then-Prime Minister of Canada. And that was signed by yourself, Chief Twinn?
A Mm-hmm.
Q And what I'd ask you to do is look at that letter and in particular look at the second last paragraph.
MR. HENDERSON: I'm sorry. The Senator is talking to me, but I don't think he remembers he has to talk out loud, just to remind him of that.
THE COURT: Thank you for that disclosure, Mr. Henderson.
A Okay, I read it.
Q MR. FAULDS: If you look at the second last paragraph of that letter, Chief Twinn, in that letter,

03888:01 you say,

> "The Sawridge Indian Band is in business and cannot afford to be jeopardizing its position in the business world, nor the security of its four hundred (400), plus employees by expending huge sums of money and time stick-handling through the Justice Department's delay tactics."

So I take it that the principal activity of the Sawridge Band as a band is business.
A In order to survive, probably so. But that only confirms what I have said, I think, earlier.
Q And that's really what this case is about. It's not about native rights or culture or tradition or anything like that; it's about the Sawridge Indian Band's business?
A Well, I'd beg to differ.
MR. FAULDS: My Lord?
THE COURT: Yes?
MR. FAULDS: Mr. Henderson has passed me a note to indicate that he has available some of the documents that he had said that he would look for and that seem to be relevant to this particular area of the cross-examination. And I wonder if maybe we could have a break at this point so that we could look at them. It's a little bit early, but . . .

03889:01 THE COURT: All right. I have some questions of Chief Twinn, and I want to pose them while you all

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

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

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

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

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

MR. HENDERSON: My Lord, I'm going to ask for your consent to excuse my friends. I've got them chugging through the documents again today.

THE COURT: That's reasonable, Mr. Henderson. Yes. Thank you.

MR. FAULDS: And with respect to Mr. Glancy, My Lord, I believe Mr. Meehan is going to . . .

MR. MEEHAN: With your permission, My Lord, may

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

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

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

trust.
A I think generally it comes in directly to the company. If it's a new company, something, say, like the food store, something is coming in, if there is equity put in, it goes into that. And generally, after awhile, when that's been set up, on an appropriate time, accounting procedures, whatever, then it's usually placed in a trust.
Q Okay. So that in the end result -- and I think you've said this was the intention of the trust -- the trust holds the band's assets, and that means the shares of the Sawridge companies?
A Let me put it -- I'll try and put it in simple terms again, I guess.

The trust -- the companies go into the Sawridge trust after -- after some time the company is formed, it generally goes into the Sawridge trust.
Q Sure. When you say "the companies go into the Sawridge trust," that means that the shares are held by the trust?
A Right.
Q And the trustees of the Sawridge trust --
THE COURT: Could I interrupt, Mr. Faulds?
MR. FAULDS: I'm sorry.
THE COURT: The shares are held by the Sawridge trust ultimately, sooner or later.
THE WITNESS: That's right.
THE COURT: Net revenues of the business operations, what becomes of them?
THE WITNESS: The companies run -- the revenues are in there. And when there is an overflow, which isn't often, but, you know, if there is sometimes equities needed for a new business, that plus some more funds could go in. Like, if it's a food fare business or something that's purchased to . . .
THE COURT: Do they touch base -- are they placed in the trust and then spent for equities in the new businesses, or do they go directly from the operation of the corporation as net revenues to the equity fund for new businesses?
THE WITNESS: Generally, I think what's done -- the companies are -- itself have the funds separately. The trust -- all the trust is doing, replacing -- in essence, I guess, the band is not a legal entity, and there is from time to time -- I guess it could be difference of legal opinion or accounting opinion. So, to be assured, our advice, that's what we've done. The

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

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

A Right.
Q -- it goes into your companies --
A Some of it.
Q -- for economic development?
A Right.
Q And, from the companies, you, as director and shareholder of these companies, put the company assets -- have placed the company assets or intended to place all the company assets in these trusts. Is that right?
A Right.
Q So that the undivided interests of the band members is all to be found in these trusts?
A I think they'll all be traceable.
Q And we've already agreed that you have no consent or permission to deal with this property from any band member living off reserve? You have no authority or permission from any of these people to be director or shareholder or settlor or trustee; we've agreed on that, too?
A What sets out from -- I guess consent is voting for chief and council.
Q Good.

Now, then, I want you to turn to Document 92(G), paragraph 6.

THE COURT: I think you said 92(G), did you?
MR. AKMAN: G, yes, My Lord.
Q MR. AKMAN: 92(G), second paragraph of 6, Clause 6, of page 4.

Now, this second paragraph of 6 says,

> "During the existence of this trust, the trustees shall have complete and unfettered discretion to pay or to apply all or so much of the net income of the trust fund, if any, or to accumulate the same, or any proportion thereof, and all or so much of the capital trust fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the beneficiaries. The trustees may make such payments at such time from time to time in such manner and such proportions as the trustees in their uncontrolled discretion deem appropriate."

Do you see that?
A I see that.
Q So, according to this trust fund created to promote the

TAB O

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

E. Molstad, Q.C.
E. Sopko
Parlee McLaws LLP
1700, 10175 - 101 Street NW
Edmonton, Alberta T5J 0H3
780.423.8500

For the Applicant

A That the '82 trust was transferred into the '85 Trust before the Bill C-31 took place, is my understanding.
Q Mr. Twin, I am showing you --
MS. HUTCHISON: I forgot to ask to mark that as an exhibit for identification. I apologize. Two documents --
MR. MOLSTAD: Let's just go one at a time.
EXHIBIT A: (FOR IDENTIFICATION)
TRUST DEED DATED JULY 5, 1983
MR. MOLSTAD: Why don't we find out if the witness has seen these documents before --
MS. HUTCHISON: Yes, that was where I was going to start.
MR. MOLSTAD: Before he reads through them.
MS. HUTCHISON: Yes.
Q MS. HUTCHISON: Mr. Twin, have you seen either of these documents before?
A No, I haven't.
Q Was the existence of these documents discussed with you before you swore your Affidavit?
MR. MOLSTAD: Objection. It's not a proper question.
Q MS. HUTCHISON: Mr. Twin, throughout your Affidavit, you refer to the information you received from your counsel Edward Molstad. Did Edward Molstad discuss these documents with you in the course of your preparing the Affidavit?

MR. MOLSTAD: Objection. That's not a proper question. The information that he received from me is specifically described in his Affidavit, and you may ask him questions about that.

MS. HUTCHISON: Let's mark these as Exhibit B and C for Identification, please.

EXHIBIT B: (FOR IDENTIFICATION)
TRUST DEED DATED APRIL 16, 1985

EXHIBIT C: (FOR IDENTIFICATION)
RESOLUTION OF TRUSTEES DATED APRIL 15, 1985

Q MS. HUTCHISON: Mr. Twin, can I just ask you to flip to the signature pages. So first we will look at Exhibit B, and the signature page is page 2.

MR. MOLSTAD: She is talking about Exhibit B for Identification; I believe. Is that correct?

Q MS. HUTCHISON: Exhibit B for Identification, correct.

A Okay.

Q If you just flip to the second page. And am I correct in my understanding, Mr. Twin, that at the time that this document was executed in 1985 Walter Twinn was chief of Sawridge?

A Yes.

Q And if you go back to the first page of that document where it refers to the old trustees and the new trustees as Walter Patrick Twinn, Sam Twin and George Twin, am I correct in understanding that those three

individuals were the only members of Sawridge chief and council at that time?

A I believe so, yes.

Q Okay. I f you have any information or learn of any information to the contrary, Mr. Twin, will you advise me?

MR. MOLSTAD: No. That's his information.

MS. HUTCHISON: You won't grant that undertaking, Mr. Molstad?

MR. MOLSTAD: No.

MS. HUTCHISON: Okay.

UNDERTAKING NO. 2 (REFUSED)

ADVISE IF DARCY TWIN HAS ANY INFORMATION OR LEARNS OF ANY INFORMATION TO THE CONTRARY THAT WALTER PATRICK TWINN, SAM TWIN AND GEORGE TWIN WERE THE ONLY MEMBERS OF SAWRIDGE CHIEF AND COUNCIL AT THE TIME EXHIBIT B FOR IDENTIFICATION WAS EXECUTED IN APRIL OF 1985

Q MS. HUTCHISON: And, Mr. Twin, have you seen or are you aware of any documents other than Exhibit B and Exhibit C for Identification, and other than anything attached to your Affidavit, that sets out the decision of the 1982 and 1985 trustees to conduct the asset transfer in 1985? Have you ever seen anything else?

A No.

Q And so, Mr. Twin, you haven't seen a band council resolution that authorized Walter Twinn to establish

the 1985 Trust?

A If it's not in here, then no.

Q Did you attempt to look for any documents of that nature in preparation for your Affidavit, to prepare that evidence?

A No.

Q No? So you don't know if that exists or not?

A No.

Q Do you know if Sawridge retains its band council resolutions back to 1985?

A I don't know.

Q Do you have any understanding of what Sawridge's filing system is for band council resolutions?

A No, I don't know. That's office stuff.

Q Mr. Twin, can I just get you to take a look at that document that is a Sawridge Band Resolution dated April 15th, 1985. Just let me know when you have had a chance to look at it.

A Okay.

Q Were you made aware of -- sorry, have you seen that document before?

A No.

Q And so prior to swearing your Affidavit, you weren't aware that that document existed?

A No.

Q Okay.

MS. HUTCHISON: Can we mark that as Exhibit D

A Yes.
Q Did he also tell you anything about the transcript?
A No, I just read through it and -.
Q So in paragraph 7, when you say I am informed by our counsel Edward H. Molstad, QC, the only information you are referring to is Mr. Molstad handing you a copy of the transcript at Exhibit "B" of your Affidavit?
A Yeah, he handed it to me, yeah. I read through it.
Q And he didn't give you any other information about it; is that correct?
A No.
Q Turn to your paragraph 8 and your Exhibit "C", Mr. Twin. Do you need a second to take a look at Exhibit "C"? Just let me know when you have had a chance to read Exhibit "C", Mr. Twin.
A Okay, give me a minute. Okay.
Q Mr. Twin, had you seen that letter before you swore this Affidavit?
A No.
Q Would you agree with me that that letter is indicating that INAC would like to meet with Sawridge about the trusts? And I am looking at the second-last paragraph of the letter.
A Yeah.
Q Do you know if those meetings occurred?
A I don't know.
Q Do you have any information about how INAC's concerns

were resolved or how Sawridge addressed them?
A I don't know.
Q You have no knowledge?
A No.
Q And you didn't take any steps to independently look into that question before you swore your Affidavit?
A No.
Q Am I correct at least in understanding, Mr. Twin, that INAC has not taken any steps to try and stop the operation of Sawridge trusts?
A Yeah, I don't think so. I don't know, though. I don't think so.
Q You are not aware of anything?
A Yeah, not aware.
Q I would like you to turn to paragraph 9 and 10 of your Affidavit, Mr. Twin. I don't think you will need to go to your Exhibit "D", but you can certainly take a minute to take a look at it if that's useful.
A Yeah.
Q Is there any part of your evidence in paragraph 9 and 10 that is based on your own personal knowledge as opposed to information given to you by your counsel?
A No. It's what I've read.
Q Is there anything that Mr. Molstad informed you about in relation to the August 26th, 2014 consent order that you have not included in these two paragraphs?
A No.

Q Were you made aware prior to executing this Affidavit, Mr. Twin, that Sawridge First Nation, through its counsel Parlee McLaws, was involved in the discussions leading up to the August 24th, 2016 consent order?
A Can you repeat the question? Sorry.
MS. HUTCHISON: Can you read it back for him. Thanks.
COURT REPORTER: (By Reading)
Q Were you made aware prior to executing this Affidavit, Mr. Twin, that Sawridge First Nation, through its counsel Parlee McLaws, was involved in the discussions leading up to the August 24th, 2016 consent order?
A Yeah, I don't think they were that I'm aware of.
Q MS. HUTCHISON: Okay. I am going to show you three pieces of correspondence, Mr. Twin.
MR. MOLSTAD: Just bear with us for a moment here.
Q MS. HUTCHISON: Just let me know when you have had a chance to look at those three items, Mr. Twin.
MR. MOLSTAD: And I'll let you know when I have too.
MS. HUTCHISON: Great. Thank you, Ed.
MR. MOLSTAD: Why don't we shorten this and just ask the witness if he has ever seen these documents before.
MS. HUTCHISON: Yes, we'll get there, Ed, but

TAB P

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

This Declaration of Trust made the 5th day of July 1983.

BETWEEN:

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

(hereinafter called the "Settlor")

Of the First Part

AND:

CHIEF WALTER PATRICK TWINN
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band, No. 150, C & H
respectively

(hereinafter collectively called the "Trustees")

Of the Second Part

AND WITNESSES THAT:

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

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

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

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

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.

2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean:

(a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefore, and

(b) all income received and capital gains made thereon, less,

(c) all expenses incurred and capital losses sustained thereon and less,

(d) distributions properly made therefrom by the Trustees.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.

4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band on the effective date of this Agreement (as duly elected pursuant to Sections 74 through 80 inclusive of the Indian Act, R.S.C. 1970, c. 1-6 as amended from time to time). The Chief shall serve a term of Six (6) years as Trustees.

One Councillor (to be determined by a majority of the Three Trustees) shall serve Four (4) years as Trustee. The other Councillor shall serve a term of Two (2) years as Trustee. Upon completion of their respective terms as Trustees, the Trustees shall resign as Trustee. If the Trustee whose term has ended was Chief when appointed Trustee, he shall automatically be replaced as Trustee by the new Chief for a term of Six (6) years. If the Trustee whose term has ended was a Councillor, he shall be replaced as Trustee by one of the new Councillors (to be determined by a majority of the Chief and Councillors at that time). In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

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

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

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

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

8. The Trustees are authorized and empowered to do all acts necessary or desirable to give effect to the trust purposes set out above, and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

(c) to employ professional advisors and agents and to retain and act upon the advised given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

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

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

11. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

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

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

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

SIGNED, SEALED AND DELIVERED
in the presence of:

M Capuchinot
NAME
#910, 10310 JASPER AVE. EDMONTON, ALTA.
ADDRESS

A. Settlor

B. Trustees:

M Capuchinot
NAME
ADDRESS
1.

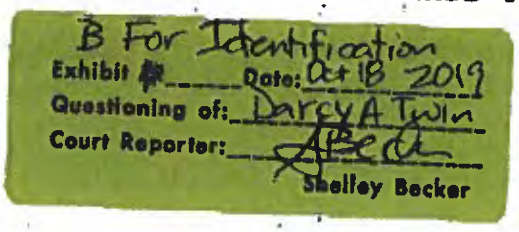
M Capuchinot
NAME
ADDRESS
2.

M Capuchinot
NAME
ADDRESS
3.

SAW000028

B

DECLARATION OF TRUST MADE THIS 16TH DAY OF APRIL, 1985.



This is Exhibit "J" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 2011
A. Magnan
Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 2012

BETWEEN:

WALTER PATRICK TWINN, SAM TWINN and GEORGE TWIN
(hereinafter referred to collectively as the "Old Trustees")

OF THE FIRST PART

AND:

WALTER PATRICK TWINN, SAM TWIN AND GEORGE TWIN
(hereinafter referred to collectively as the "New Trustees")
OF THE SAWRIDGE INTER VIVOS SETTLEMENT

OF THE SECOND PART

WHEREAS the "Old Trustees" of the Sawridge Band Trust (hereinafter referred to as the "trust") hold legal title to the assets described in Schedule "A" and settlor Walter P. Twinn by Deed in writing dated the 15th day of April, 1985 created the Sawridge Inter Vivos Settlement (hereinafter referred to as the "settlement").

AND WHEREAS the settlement was ratified and approved at a general meeting of the Sawridge Indian Band held in the Band Office at Slave Lake, Alberta on April 15th, A.D. 1985.

NOW THEREFORE this Deed witnesseth as follows:

The undersigned hereby declare that as new trustees they now hold and will continue to hold legal title to the assets described in Schedule "A" for the benefit of the settlement, in accordance with the terms thereof.

Further, each old trustee does hereby assign and release to the new trustees any and all interest in one or more of the promissory notes attached hereto as Schedule "B".

WITNESS:

OLD TRUSTEES

NEW TRUSTEES

SCHEDULE "A"

SAWRIDGE HOLDINGS LTD. --- SHARES

WALTER PATRICK TWINN	30 CLASS "A" COMMON
GEORGE TWIN	4 CLASS "A" COMMON
SAM TWIN	12 CLASS "A" COMMON

SAWRIDGE ENERGY LTD. --- SHARES

WALTER PATRICK TWINN	100 CLASS "A" COMMON

SCHEDULE 'B'

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT ($293,178.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of SIXTY THOUSAND ($60,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December , A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY FOUR THOUSAND, SIX HUNDRED AND TWO ($24,602.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY FOUR ($20,184.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY ONE ($20,181.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of EIGHT THOUSAND, ONE HUNDRED AND THIRTY EIGHT ($8,138.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of FORTY FOUR THOUSAND, ($44,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED FIFTY ONE THOUSAND THREE HUNDRED ($251,300.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 1st day of [illegible], A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: [signature]

Per: [signature]

C for Identification
Exhibit # _____ Date: Oct 18 2019
Questioning of: Darcy A Twin
Court Reporter: Shelley Becker

This is Exhibit " H " referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day
of September A.D., 20 11
A. Magnan
~~A Notary Public~~, A Commissioner for Oaths
in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 20 12

SAWRIDGE BAND TRUST

RESOLUTION OF TRUSTEES

WHEREAS the undersigned are the Trustees of an inter vivos settlement (the "Sawridge Band Trust") made the 15th day of April, 1982 between Chief Walter Patrick Twinn, as Settlor, and Chief Walter Patrick T. Twinn, Walter Felix Twin and George V. Twin, as Trustees;

AND WHEREAS the beneficiaries of the Sawridge Band Trust are the members, present and future, of the Sawridge Indian Band (the "Band"), a band for the purposes of the Indian Act R.S.C., Chapter 149;

AND WHEREAS amendments introduced into the House of Commons on the 28th day of February, 1985 may, if enacted, extend membership in the Band to certain classes of persons who did not qualify for such membership on the 15th day of April, 1982;

AND WHEREAS pursuant to paragraph 6 of the instrument (the "Trust Instrument") establishing the Trust the undersigned have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries of the Trust;

AND WHEREAS for the purpose of precluding future uncertainty as to the identity of the beneficiaries of the Trust the Trustees desire to exercise the said power by resettling the assets of the Trust for the benefit of only those persons (the "Beneficiaries") who qualify, or would in the future qualify, for membership in the Band under the provisions of the Act in force on the 15th day of April, 1982;

AND WHEREAS by deed executed the 15th day of ~~March~~ April, 1985 between Chief Walter Patrick Twinn, as Settlor, and the undersigned as Trustees, an inter vivos settlement (the "Sawridge Band Inter Vivos Settlement") has been constituted for the benefit of the Beneficiaries;

NOW THEREFORE BE IT RESOLVED THAT

1. the power conferred upon the undersigned in their capacities as Trustees of the Trust pursuant to paragraph 6 of the Trust Instrument be and the same is hereby exercised by transferring all of the assets of the Trust to the

undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement; and

2. Chief Walter Patrick Twinn is hereby authorized to execute all share transfer forms and other instruments in writing and to do all other acts and things necessary or expedient for the purpose of completing the transfer of the said assets of the Trust to the Sawridge Band Inter Vivos Settlement in accordance with all applicable legal formalities and other legal requirements.

DATED the 15th day of ~~March~~ April, 1985.

Chief Walter Patrick Twinn

Samuel G. Twin

George V. Twin

ACCEPTANCE BY TRUSTEES

The undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement hereby declare that they accept the transfer of all of the assets of the Trust and that they will hold the said assets and deal with the same hereafter for the benefit of the Beneficiaries in all respects in accordance with the terms and provisions of the Sawridge Band Inter Vivos Settlement.

DATED the 15th day of ~~March~~ April, 1985.

Chief Walter Patrick Twinn

Samuel G. Twin

George V. Twin

D For Identification
Exhibit #____ Date: Oct 18 2019
Questioning of: Daryl A Twin
Court Reporter: Shelley Becker

2002 Trust Docs

SAWRIDGE BAND RESOLUTION

WHEREAS the Trustees of a certain trust dated the 15th day of April, 1982, have authorized the transfer of the trust assets to the Trustees of the attached trust dated the 15th day of April, A.D., 1985.

AND WHEREAS the assets have actually been transferred this 15th day of April, A.D. 1985.

THEREFORE BE IT RESOLVED at this duly convened and constituted meeting of the Sawridge Indian Band at the Band Office in Slave Lake, Alberta, this 15th day of April, A.D. 1985, that the said transfer be and the same is hereby approved and ratified.

WITNESS

As to all signatures
Bruce G Thom

Yvonne Twin
Sam Twin
Walter F Twin
Gerald Twin
Walter Twin
Debbie L. Twin
Chester Twin
Jean Patterson
Catherine Twin

This is Exhibit "I" referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day
of September A.D., 2011
A. Magnan
A Notary Public, A Commissioner for Oaths
In and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 2012

E for Identification
Exhibit #: _____ Date: Oct 13 2019
Questioning of: Darcy Twinn
Court Reporter: Shelley Becker

EXHIBIT: 5
QUESTIONING OF: Paul Bujold
Date: Oct 7, 2016
Allison Hawkins, CSR(A)

Doris M. McKenna

From: Bonora, Doris <doris.bonora@dentons.com>
Sent: Friday, May 13, 2016 4:57 PM
To: 'Janet Hutchison' (jhutchison@jlhlaw.ca); Karen Platten; Crista Osualdini; Edward H. Molstad; Marco S. Poretti; Gabriel Joshee-Arnal
Cc: Brian Heidecker; 'Paul@sawridgetrusts.ca'
Subject: Clarification of the transfer issue
Attachments: 21595350_1.docx

We are attaching a draft of the clarification of the transfer issue for your review and comments. This is intended to try and resolve this issue. If the clarification is acceptable we could draft a consent order to deal with this issue. We understood that Catherine Twinn and the OPGT had concerns that the transfer issue involved an accounting and we have attempted to make this clear. We would be pleased to hear your comments so that we can perhaps move ahead to resolve this single matter.

Doris

Doris C.E. Bonora
Partner

D +1 780 423 7188
doris.bonora@dentons.com
Bio | Website

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

大成 Salans FMC SNR Denton McKenna Long

Clarification of the transfer issue

The Sawridge Trustees seek to have the Court approve the transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") nunc pro tunc.

The approval of the transfer by the Court shall not be deemed to be an accounting of the assets of the 1982 trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 trust that existed upon settlement of the trust in 1985 The sole issue before the Court is to approve the transfer of assets from the 1982 trust to the 1985 trust such that there shall not be a challenge to the transfer from one trust to the other which occurred in 1985

大成 DENTONS

Doris Bonora

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

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

大成 Salans FMC SNR Denton McKenna Long
dentons.com

June 22, 2016

File No.: 551860-1

F For Identification
Exhibit #____ Date: Oct 18 2019
Questioning of: Darcy A Twin
Court Reporter: [signature]
Shelley Becker

SENT VIA E-MAIL: jhutchison@jlhlaw.ca

Hutchison Law
#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park AB T8H 2A3

Attention: Janet L. Hutchison

Dear Madam:

RE: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)
QB Action No. 1103 14112
Offer of settlement on the Transfer issue
With Prejudice

We are writing to make a formal offer of settlement to the OPGT in respect of the issue of the transfer of assets from the 1982 trust to the 1985 trust. We believe that this issue is simple. This issue involves simply normalizing the transfer of assets from one trust to the other trust. It does not involve an accounting of the assets in either trust or an accounting of the assets that transferred. The accounting is not an issue that the trustees have raised in this application. The trustees understand that the beneficiaries are free to bring an application for an accounting in respect of the transfer of assets and an accounting of the assets in the 1985 trust. The trustees are stating on a with prejudice basis that an order of the court to approve the transfer of assets from one trust to the other trust will not be raised be raised to argue that any subsequent accounting application brought by any beneficiary is *res judicata*. Of course, the transfer issue itself that is addressed in the Consent Order will be *res judicata*.

Thus, we offer to settle the transfer issue by entering into the attached consent order. We believe the order sets out exactly what we have stated above and believe it protects the ability of any beneficiary to bring an accounting application.

The offer to settle by entering into the consent order is open for acceptance until July 15, 2016. In the event that the offer is not accepted, then the offer will be made known to the court from the perspective of an answer to the request for documents in the OPGT Rule 5.13 application on the transfer issue. The offer will also be made known to the court in support of an application for costs in the event that the OPGT is not successful in its Rule 5.13 application given that the clarification in the attached consent order should assist the OPGT to determine that it need not proceed with its extensive Rule 5.13 application on the transfer issue.

We note that the Sawridge Trustees are the applicants in this application. To that end, it is up to the applicants to define the issue they wish to have addressed and the relief that they seek. No accounting relief is being sought, no relief is being sought to prevent a beneficiary from seeking an accounting. We have provided that clarification orally, in writing and now in the form of a consent order and formal with prejudice offer.

We are seeking to keep the costs in control. We make this offer in the hopes that the OPGT will respond positively to say that the transfer of assets from one trust to the other does not prejudice or in any way harm the minor beneficiaries provided their rights are protected to seek a future accounting.

The 1985 trust has been operating since 1985 with assets transferred to it from the 1982 trust. The problem for the trustees is really a dearth of information and documentation in respect of the trust to trust transfer. We simply wish to have the court agree that the transfer is approved and the 1985 trust is the entity with which to deal.

We do not see this as complex. We hope the OPGT can see that dealing with this issue poses no risk to the minor beneficiaries.

We believe this offer is in keeping with the direction of the Court to the parties to focus and to proceed expeditiously with the litigation.

<u>This offer is open for acceptance until July 15, 2016.</u>

Yours truly,
Dentons Canada LLP

Doris Bonora

DCEB/clg
Enclosure

cc K. Platten, Q.C., Crista Osualdini McLennan Ross (Catherine Twinn) (via email)

cc Marco Poretti, Reynolds, Mirth, Richards & Farmer LLP (via email)

cc E. Molstad, Q.C., Parlee McLaws LLP (via email)

cc Paul Bujold (via email)

cc Brian Heidecker (via email)

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, RSA 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 "Sawridge Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Doris C.E. Bonora Dentons Canada LLP 2900 Manulife Place 10180 – 101 Street Edmonton, Alberta T5J 3V5 Ph. (780) 423-7188 Fx. (780) 423-7276 File No.: 551860-1

DATE ON WHICH ORDER WAS PRONOUNCED: _____, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, AB

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

ORDER

UPON HEARING representations from counsel for the Sawridge Trustees, Catherine Twinn as a Trustee of the 1985 Sawridge Trust, and the Office of Public Guardian and Trustee of Alberta;:

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved nunc pro tunc. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.

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

APPROVED AS TO FORM AND CONTENT BY:

Dentons Canada LLP

Doris Bonora
Counsel for Sawridge Trustees

Reynolds Mirth Richards & Farmer LLP

Marco S. Poretti
Counsel for Sawridge Trustees

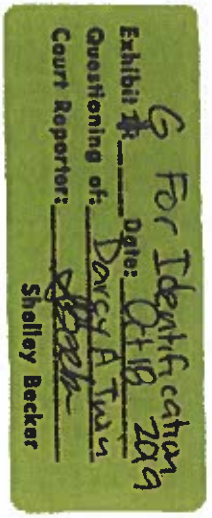
McLennan Ross LLP

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

Hutchison Law

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

PARLEE McLAWS LLP
BARRISTERS & SOLICITORS | PATENT & TRADEMARK AGENTS



July 6, 2016

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

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

Via email only

Attention: Ms. Janet Hutchison

Dear Madam:

Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)
QB Action No. 1103 14112
With Prejudice Offer of Settlement of Transfer Issue

We confirm that we received a copy of the with prejudice offers to settle made by the Sawridge Trustees to the Public Trustee and to Catherine Twinn in the letter from Dentons Canada LLP, dated June 22nd, 2016.

It is the position of the Sawridge First Nation that this settlement offer is reasonable and resolves any possible concerns with respect to the approval of the transfer of the assets from the 1982 Trust to the 1985 Trust.

As previously noted, the Sawridge First Nation will be claiming costs payable by the Public Trustee on the basis that these costs not be paid from the Sawridge Trust. In the event that the Sawridge Trustee's offer regarding the transfer of assets is not accepted by the Public Trustee, the Sawridge First Nation will be submitting to the Court as part of its response to the Public Trustee's Rule 5.13 application regarding the transfer of assets that the Court take the Public Trustee's response to the offer into consideration in relation to Sawridge First Nation's application for costs.

Yours truly,

PARLEE McLAWS LLP

EDWARD H. MOLSTAD, Q.C.
EHM/tlk

Cc: Reynolds Mirth Richards & Farmer LLP – Attn: Mr. Marco Poretti
Cc: Dentons LLP – Attn: Ms Doris Bonora
Cc: Bryan & Company – Attn: Ms Nancy Cumming, Q.C.
Cc: McLennan Ross LLP – Attn: Ms Karen Platten, Q.C.
Cc: McLennan Ross LLP – Attn: Ms Crista Osualdini
Cc: Supreme Advocacy LLP - Mr. Eugene Meehan, Q.C.
(ALL VIA EMAIL ONLY)

Exhibit #: H for Identification Date: Oct 18 2019
Questioning of: Darryl A Twin
Court Reporter: Shelley Becker

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, MARGARET WARD, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the 1985 Sawridge Trust;
DOCUMENT	**LITIGATION PLAN**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5 Attention: Doris C.E. Bonora Telephone: (780) 423-7100 Fax: (780) 423-7276 File No: 551860-001-DCEB

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

NO.	ACTION	DEADLINE
1.	Case Management Meeting	December 18, 2018
2.	Jurisdiction Application - Deadline for the Trustees to file their Affidavit in relation to the Jurisdiction Question	January 11, 2019
3	Application to be brought by any non-party to the litigation who wishes to participate in the Jurisdiction Application, other than beneficiaries or potential beneficiaries, the participation rights of whom are addressed in the Consent Order consented to by the parties and by counsel for Shelby Twinn and Patrick Twinn. Application by any beneficiary or potential beneficiary to participate in the Jurisdiction Application in a more significant way than is provided in the said Consent Order.	January 31, 2019
4.	Participation Application in person on February 11, 2019 alternatively, filing of written argument in response to participation application if application proceeds in writing (if required)	February 11, 2019
5.	Jurisdiction Application – Questioning by the OPGT and Catherine Twinn on the Trustees' Affidavit to take place no later than (May be done by written interrogatories)	February 8, 2019
6.	Jurisdiction Application – Answers to Undertakings arising from the questioning on the Trustees' Affidavit are due	February 13, 2019
7.	Jurisdiction Application – Any rebuttal Affidavits to be filed by the OPGT and Catherine Twinn are due	February 27, 2019
8.	Jurisdiction Application – Questioning by the Trustees on the Rebuttal Affidavits filed by the OPGT and Catherine Twinn will take place no later than (May be done by written interrogatories)	March 8, 2019
9.	Jurisdiction Application – Answers to Undertakings, if any, from the OPGT and Catherine Twinn are due	March 22, 2019
10	Jurisdiction Application – Brief of the Trustees is due	March 29, 2019
11	Jurisdiction Application – Brief of the OPGT and Catherine Twinn are due	April 12, 2019

NO.	ACTION	DEADLINE
12.	Jurisdiction Application: Brief by any non-party beneficiary or potential beneficiary (limited to 5 pages) ** this item is subject to outcome of any additional Participation Application –Shelby Twinn and Patrick Twinn shall abide by this deadline	April 12, 2019
13.	Jurisdiction Application – Reply Brief of the Trustees is due	April 18, 2019
14.	Jurisdiction Application Hearing	April 25, 2019
15.	Questioning on Affidavit of Records to be completed in the time period	30 days following both the issuance of the decision for the Jurisdiction Application and the expiration of any relevant appeal period
16.	Answers to Undertakings from questioning on Affidavit of Records by	45 days following the completion of Questioning on Affidavit of Records
17.	All other steps to be determined in a case management hearing	TBD

The Honourable Justice J. T. Henderson

CONSENTED TO BY:
MCLENNAN ROSS LLP

Crista Osualdini
Counsel for Catherine Twinn

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

HUTCHISON LAW

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

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The Honourable Justice J. T. Henderson

CONSENTED TO BY:
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Crista Osualdini
Counsel for Catherine Twinn

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

HUTCHISON LAW

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

TAB Q

Action No.: 1103-14112
E-File No.: EVQ19SAWRIDGE
Appeal No.: _____

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

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

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
October 30, 2019

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

MR. FAULDS: That's -- that's correct.

THE COURT: -- timelines have been met.

MR. FAULDS: That -- that's -- that's correct, and --

THE COURT: Well, hopefully gearing up to -- I mean, we set those timelines that we would be ready for November 27th. We didn't --

MR. FAULDS: That was the --

THE COURT: -- contemplate that there would be this application today. Originally it was going to be a situation where we would determine if it was going to go by consent, and, if not, whether I could just do it by way of --

MR. FAULDS: Right.

THE COURT: -- paper.

MR. FAULDS: Right. Right. Right. And I -- and --

THE COURT: But here we are today.

MR. FAULDS: We are. And -- and -- and, My Lord, I -- I'm -- I'm compelled to say that -- that this question about document production was raised when we set the -- when we set the schedule. And I -- and -- and I did --

THE COURT: You did raise it --

MR. FAULDS: -- advise the Court --

THE COURT: -- I -- I -- I do remember that, yes.

MR. FAULDS: -- that -- that -- that it was something that we anticipated --

THE COURT: Yes.

MR. FAULDS: -- would likely be required.

THE COURT: Okay. Good. Thanks.

Submissions by Ms. Osualdini

MS. OSUALDINI: Thank you, My Lord. For the record, Osualdini, first initial 'C.' We're counsel to Catherine Twinn. Sir, my submissions in terms of the SFN's application for intervention are going to be brief. Simply put, we are supportive of the OPGT's position. We agree that in terms of the test, the SFN does not have a direct interest in the outcome of this application, they are not a beneficiary of the Trust, and they do not bring any special expertise or perspective to this matter, and they've certainly demonstrated that their information is unreliable in terms of these issues.

Now, turning to the issue that's re -- that we've been discussing in terms of the order -- the transfer order, the Court's directed us in November to ask what is the effect of that order? And I would submit to you, My Lord, that is a legal question. What the parties are speaking to now is Step 2, that if the Court says that the effect of that order is not to confirm that the '85 Trust is the Trust with which to deal, now that becomes a factual question.

THE COURT: Well, that's a very good point. And --

MS. OSUALDINI: And --

THE COURT: -- and so to go back to Mr. Faulds' position, maybe we ought to be considering these applications separately, deal with the legal -- lee -- deal with whether or not intervention should be given for the legal issue, depending on the outcome of that, entertain another application if necessary. That might involve something that might require documents like --

MS. OSUALDINI: Right. Because -- and that was going to be my point about Mr. Cullity's files --

THE COURT: Yes.

MS. OSUALDINI: -- frankly at this point Mr. Cullity, as far as I'm aware from my client, he's still alive. He's with us. He's a person who could really speak to these issues. And we're speaking about privilege over Mr. Cullity's files because he's both counsel to the Trustees and to the First Nation at the relevant time. And we have never been given an opportunity to challenge whether there is privilege over that file, because we want to have the best information before the Court in the event that we do get to Step 2 in this process.

THE COURT: Well, was -- he was acting as counsel for Sawridge First Nation.

MS. OSUALDINI: And the Trustees.

THE COURT: And the Trustees?

MS. OSUALDINI: Yeah, sorry, the -- the letter from Ms. Bonora that was referred to by my --

THE COURT: If he's --

MS. OSUALDINI: -- friend --

THE COURT: -- acting for two clients, both clients are going to have to waive privilege in order for --

MS. OSUALDINI: Right.

THE COURT: -- permission to be waived.

MS. OSUALDINI: Because in Shelby's affidavit we have the letter from the Trustee's counsel taking position on this issue.

THE COURT: Affidavit of Shelby Twinn?

MS. OSUALDINI: Yeah, it's the -- oh, sorry, it's the responding brief of the Office of the Public Guardian and Trustee, and it's tab N.

THE COURT: Okay.

MS. OSUALDINI: Because at tab N you can see the correspondence that was provided to our office --

THE COURT: Yes.

MS. OSUALDINI: -- where the Trustees are saying that, No, they're asserting solicitor-client privilege over Mr. Cullity. Because initially, as I had raised at the prior case management meeting, we were considering calling viva voce evidence, you can hear from the man himself on what happened. The Trustees are objecting to that. And then they also alerted us to the fact that --

TAB R

SAWRIDGE
TRUSTS

1 September 2011

SENT BY EMAIL

NOTICE TO BENEFICIARIES AND POTENTIAL BENEFICIARIES
OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT

The Trustees (the "Trustees") of the Sawridge Band Inter Vivos Settlement created on April 15, 1985 (the "1985 Trust") will be bringing an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust (the "Advice and Direction Application"). The Advice and Direction Application shall be brought:

a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Trust, and if necessary to vary the 1985 Trust to clarify the definition of "Beneficiaries".
b. To seek direction with respect to the transfer of assets to the 1985 Trust.

A website (the "Website") has been created which will contain information in respect of the Advice and Direction Application. The Website is located at http://www.sawridgetrusts.ca/courtdoc. You will have access to this Website and the documents contained thereon, including all documents filed with the Court in relation to the Advice and Direction Application, which documents are located under the "Court Documents" tab of the home page of the Website.

On 1 September 2011 an Order was issued by the Court of Queen's Bench of Alberta in relation to the Advise and Direction Application. The Order directs that the Trustees provide notice of the Advice and Direction Application to the Beneficiaries and Potential Beneficiaries of the 1985 Trust by way of this letter. The Order also includes deadlines for filing affidavits and written legal argument with the Court in respect of the Advice and Direction Application. This Order can be accessed on the Website, under the "Court Documents" tab.

Cordially,

Paul Bujold,
Trusts' Administrator

801, 4445 Calgary Trail N.W.
Edmonton, AB T6H 5R7
Office: 780-988-7723
Fax: 780-988-7724
Toll Free: 888-988-7723
Email: general@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

SAWRIDGE
TRUSTS

1 September 2011

Slave Lake Lakeside Leader
Classifieds
P.O. Box 849
Slave Lake, AB T0G 2A0

SENT BY COURIER **103-3 Avenue NE, Slave Lake, AB T0G 1E0**
(780) 849-4380

Dear Madam or Sir:

Please place the attached Legal Notice in the Classified section of your newspaper once before 15 September 2011 and bill the Sawridge Trusts at 801, 4445 Calgary Trail NW, Edmonton, AB T6H 5R7 or by emailing me at paul@sawridgetrusts.ca.

Thank you.

Cordially,

Paul Bujold,
Trusts' Administrator

Attachment

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Edmonton, AB T6H 5R7
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SAWRIDGE
TRUSTS

1 September 2011

South Peace News
Classifieds
P.O. Box 1000
Slave Lake, AB T0G 1E0

SENT BY COURIER **4901-51 Avenue, High Prairie, AB T0G 1E0**
(780) 523-4484

Dear Madam or Sir:

Please place the attached Legal Notice in the Classified section of your newspaper once before 15 September 2011 and bill the Sawridge Trusts at 801, 4445 Calgary Trail NW, Edmonton, AB T6H 5R7 or by emailing me at paul@sawridgetrusts.ca.

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TRUSTS

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SAWRIDGE
TRUSTS

1 September 2011

<First> <Last>
<Address>
<Town>, <Pr> <Code>

SENT BY REGISTERED MAIL

Dear <First>,

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TAB 1

ALBERTA RULES OF COURT, Alta. Reg. 124/2010

Alberta Rules of Court

Enabling Act: Judicature Act

Alta. Reg. 124/2010

Part 2

The Parties to Litigation

Division 1

Facilitating Legal Actions

RULE 2.1

Actions by or against personal representatives and trustees

2.1 An action may be brought by or against a personal representative or trustee without naming any of the persons beneficially interested in the estate or trust.

End of Document

TAB 2

Campbell v. Campbell, [2016] S.J. No. 149

Saskatchewan Judgments

Saskatchewan Court of Appeal

R.K. Ottenbreit, M.J. Herauf and P.A. Whitmore JJ.A.

Heard: September 24, 2015.

Judgment: March 22, 2016.

Docket: CACV2663

[2016] S.J. No. 149 | 2016 SKCA 39 | 264 A.C.W.S. (3d) 694 | 476 Sask.R. 185 | [2016] 8 W.W.R. 631 | 399 D.L.R. (4th) 265 | 78 R.F.L. (7th) 64 | 2016 CarswellSask 180

Between Shaun Norman Campbell, Appellant (Petitioner), and Kristin Ann Campbell, Respondent (Respondent)

(39 paras.)

Case Summary

Family law — Custody and access — Practice and procedure — Orders — Variation or amendment of orders — Consent order — Appeals and judicial review — Of final orders — Appeal by father from dismissal of application to vary parenting arrangements allowed — Consent order provided that primary residence of twin daughter was with mother and father had specified parenting time and order cold be reviewed on material change of circumstances affecting children or if parenting arrangement no longer met children's needs — Father, who had remarried and had new home, sought to increase parenting time — Chambers judge failed to approach review clause as if there was test for variation which was different than material change test and his interpretation of needs of children was too narrow.

Appeal by the father from the dismissal of his application to vary parenting arrangements. The parties separated in 2009 and divorced in 2011. They had twin daughters, aged 12. The parties entered into an interspousal agreement in relation to custody, parenting, child support and other issues in 2011. The terms of the agreement with respect to parenting were incorporated into a consent order. Pursuant to the order, the primary residence of the children was with the mother and the father had specified parenting time. The order also provided that the parenting arrangements could be reviewed in the event of a material change in circumstances or that the arrangements were no longer meeting the children's needs. In 2013, the father applied to vary the terms of the order. He wished to increase his parenting time within a four-week rotation from nine days to 12 and one-half days including two full weekends. He also wanted equal sharing of summer holidays. Since the order was made, the father had remarried and had a new home. The chambers judge dismissed the father's application to vary, finding that there was no material change that would adversely affect the children's needs.

HELD: Appeal allowed.

The review clause of the order contained two possibilities for review of the parenting arrangement: (a) a material change in circumstances affecting the children or (b) the current parenting arrangement no longer met the children's needs. Despite the

chamber judge's statement that he would proceed as if the review clause created a different test apart from material change, he did not actually proceed on that basis. He treated the application as if material change was necessary. Furthermore, his interpretation of the needs of the children was too narrow. Those errors caused the chambers judge to fail to determine whether the evidence was as a whole allowed for a better fulfillment of the children's needs.

Statutes, Regulations and Rules Cited:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 9(2), s. 17(5)

Court Summary:

Disposition: Appeal Allowed.

Appeal From:

On appeal from DIV 540 of 2011, Saskatoon.

Counsel

Sherry L. Fitzsimmons for the Appellant.

Tiffany M. Paulsen, Q.C., for the Respondent.

The judgment of the Court was delivered by

R.K. OTTENBREIT J.A.

I. Introduction

1 Shaun Norman Campbell (the father) appeals a Court of Queen's Bench Chambers decision dated December 17, 2014, dismissing an application to vary parenting arrangements set forth in a consent divorce judgment dated January 5, 2012. For the reasons hereinafter set forth, the appeal is allowed.

applications: a material change must be to the child's circumstances, not merely to the circumstances of the party, and passage of time is itself not a material change.

7 After analyzing the review clause, the Chambers judge determined initially that its wording did not provide an additional basis to vary the parenting arrangement apart from the material change criteria required under s. 17(5) of the *Act* and *Gordon*. He questioned if it could be interpreted to provide an additional basis to vary the parenting arrangement and whether it could be given effect given what he perceived to be the mandatory direction of s. 17(5). He did not elaborate or provide any analysis on that last point.

8 Nevertheless, he stated he would proceed as if the review clause did create a second distinct and permissible test to vary the parenting arrangement. He concluded as follows:

> [12] If it creates a different test, as I interpret the words used, the conflicting evidence does not satisfy me that the current parenting arrangement is no longer meeting the children's needs. Their needs are being met. This language does not specify that their needs must be met to the highest potential level or some other standard. It simply requires their needs to be met.
>
> [13] Based upon the conflicting evidence before me I am not able to find a material, pivotal or fundamental change that will adversely affect the needs of the children. Their needs now are essentially the same needs they had when the judgment issued. What has changed is the petitioner's circumstances, not the needs of the children. The fact of the petitioner remarrying and obtaining housing that is better able to accommodate more parenting of the children was entirely predictable at the time of the agreement between the parties and at the time of the consent judgment, as was the certainty that the children would grow older. The petitioner has not discharged the onus on him to demonstrate a material change that adversely affects the needs of the children. I do not get beyond the first stage of the two-stage inquiry.

He dismissed the father's application to vary.

IV. Issues

9 The father raises issues which can conveniently be restated as follows:

A. Did the Chambers Judge err by determining that the review clause did not contain a second and permissible test for review and variation of the parenting arrangements absent a material change in circumstances?

B. Did the Chambers Judge err in his application of the review clause to the evidence before him?

C. Did the Chambers Judge err by deciding the matter in Chambers rather than directing the matter to a Pre-Trial Conference?

D. Did the Chambers Judge err by accepting a Brief of Law on behalf of the Respondent but refusing leave to counsel for the Appellant to file materials in response?

E. Did the Chambers Judge err by awarding costs in favour of the Respondent?

V. Analysis

A. Did the Chambers Judge err by determining that the review clause did not contain a second and permissible test for review and variation of the parenting arrangements absent a material change in circumstances?

10 The father contends the Chambers judge erred by ultimately not construing the review clause as containing a provision for variation independent of the material change criteria. He submits that the parties to the interspousal agreement and order agreed to two distinct bases for changing the parenting arrangements which were reflected in the review clause and that the second part of the review clause is independent of whether there is a material change of circumstances. He submits he need only show "the current parenting arrangement is no longer meeting the children's needs" to justify a variation. The father argues that the review clause is like a contract and that meaning must be given to it as a bargain to review parenting without the constraints of the material change test under s. 17(5) of the *Act*.

11 The mother argues that the Chambers judge correctly interpreted the review clause and his decision must, on the basis of a stringent standard of review, be accorded the highest deference. The mother makes little argument on what the words of the clause mean, but instead refers to the judge's reliance on s. 17(5) of the *Act* and its application to the clause and the high threshold which someone applying for a variation must meet.

12 This high threshold was set forth in *Gray* at paras 13 and 14, where this Court, following *Gordon*, held that a variation under s. 17(5) of the *Act* requires a two-stage inquiry:

(i) the reviewing judge must first determine if there has been a material change in the condition, means, needs or other circumstances of the children adversely affecting them, and

(ii) if the applicant has demonstrated such material change, the court must decide whether such change is in the best interests of the children.

In other words, if the threshold of a material change has been crossed only then should the judge consider the best interests of the children with reference to that change.

13 With this in mind, I turn to the analysis of the review clause.

14 As a preliminary matter, let me deal with the father's argument that the review clause must be construed similar to a clause in a contract. The review clause is not a contract and resort to contractual interpretation and principles is misplaced. Once the review clause was incorporated into the judgment it became part of a court order and principles regarding interpretation of court orders apply.

15 These principles have been set forth in a number of cases. In *Sutherland v Reeves*, 2014 BCCA 222, 61 BCLR (5th) 308, Bauman C.J.B.C. stated:

> [31] First, court orders are not interpreted in a vacuum. This Court has recently described the correct approach to the interpretation of court orders (*Yu v. Jordan*, 2012 BCCA 367 at para. 53, Smith J.A.):
>
> > [53] In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.
> >
> > [Emphasis added.]
>
> As a result, in addition to examining the language of the Order, it is necessary to review the pleadings and surrounding circumstances. It would be an error to have regard to those factors but to then interpret a generic Model Order instead of the specific order Mr. Justice Willcock made in response to the pleadings and the surrounding circumstances before him.

16 In *Sans Souci Limited v VRL Services Limited*, [2012] UKPC 6, Lord Sumption reached the same conclusion:

> [13] ... The Board is unable to accept these propositions, because the construction of a judicial order, like that of any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the Court made it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an overt and authoritative statement of the circumstances which it regarded as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve.

17 In *Re: Sharpe*, [1992] FCA 616 (Aust), the Court stated:

> [20] ... even if a judgment is not ambiguous, it is nevertheless proper (if not essential) in construing it to have regard to the factual context in which the judgment was given and that this context includes the pleadings, the reasons for the judgment and the course of evidence at the trial.

18 With this jurisprudence in mind, I will examine the language of the order, the pleadings and the circumstances in which the order was made. I turn, first, to the language of the review clause. A plain reading of the review clause and the presence of the word "or" in the second line of the clause shows that the clause is disjunctive and, on its face, contains two possibilities for review of the parenting arrangement: (a) a material change in circumstances affecting the children, or (b) the current parenting arrangement is no longer meeting the children's needs. The second part of the review clause would be unnecessary if the clause as a whole only purported to address variation where there is a material change in circumstances. I say this because the words "material change in circumstances" found in the first part of the clause are well known and usually connote the two-stage test for variation set forth in *Gordon* and the principles surrounding its application. The additional language of the second part of the review clause

would be unnecessary or redundant if the clause as a whole only purported to refer to the test in *Gordon*. The structure and language of the review clause therefore suggests that it allows a second avenue of review apart from a variation application based on material change.

19 The second analytical factor, the pleadings leading up to the issuance of the judgment, provides no assistance to the interpretation of the review clause. The review clause was part of a consent order and there were no pleadings touching on the issue of interpretation of the clause. There are no reasons for judgment which might inform the interpretation of the review clause. There was no evidence tendered in court prior to the issuance of the order which might help inform an interpretation of it.

20 In this Court, the parties argue that they filed affidavit material before the Chambers judge which spoke to each of their intentions with respect to the review clause prior to the order being issued and to the issue of how the review clause might be interpreted. The affidavits show the father did not want to be in a position where, when making an application to change parenting, he would be required to show that the threshold for variation had been crossed. He resisted incorporation of the parenting provisions including the review clause. The mother wanted finality to the parenting arrangements. A long process of negotiations ensued. It would appear that the parties never did agree on the interpretation of the review clause. Nevertheless, the father eventually agreed to the incorporation of the parenting provisions, including the review clause, into the judgment. Evidence of the parties' intention is therefore of no assistance. However, on the basis of the jurisprudence mentioned earlier, the interpretation of the order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made.

21 In this case, the meaning of the review clause must be found within the wording and structure of the clause itself. On that basis, it is my view the review clause purports to create a second avenue of variation apart from one based on material change and the test in *Gordon*.

22 The Chambers judge doubted whether s. 17(5) of the *Act* permitted the review clause to set up an independent avenue for review despite its wording. The father argues that s. 17(5) of the *Act* does not preclude a second avenue for review and cites the cases of *Kemery v Kemery*, 2012 SKCA 130, 405 Sask R 231, and *Balzer v Balzer*, 2003 CarswellOnt 6398 (WL) (Sup Ct). However, a review of these cases shows that neither of them stand for that proposition.

23 Although there is no case directly on point, there is some jurisprudence which indirectly suggests that the *Act* is not an impediment to such a clause. In *Sather v McCallum*, 2006 ABCA 290, 32 RFL (6th) 233, the parties had by agreement inserted a clause into a custody order to review the issue of parenting after mediation. There was no reference in the clause to a necessary change in circumstances. There was no dispute on appeal that the clause did not require the parties to show a material change. The Court agreed with the parties' positions and stated:

> [7] We agree with the parties that para. 3 of the divorce judgment allowed for court review of the residential issue, and we are satisfied that para. 3 contemplated a review and not a variation requiring a change of circumstance. It follows that the chambers judge erred in deciding the issue solely on the basis of no change of circumstance. The effect of our decision, however, is to leave open the question of the children's residence.

TAB 3

Ermineskin Indian Band and Nation v. Canada, [2009] S.C.J. No. 9

Supreme Court of Canada Judgments

Supreme Court of Canada

Present: McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

Heard: May 22, 2008;

Judgment: February 13, 2009.

File Nos.: 31875, 31869.

[2009] S.C.J. No. 9 | [2009] A.C.S. no 9 | [2009] 1 S.C.R. 222 | [2009] 1 R.C.S. 222 | 2009 SCC 9 | 384 N.R. 203 | J.E. 2009-348 | EYB 2009-154400 | 302 D.L.R. (4th) 577 | [2009] 2 C.N.L.R. 102

Chief John Ermineskin, Lawrence Wildcat, Gordon Lee, Art Littlechild, Maurice Wolfe, Curtis Ermineskin, Gerry Ermineskin, Earl Ermineskin, Rick Wolfe, Ken Cutarm, Brian Less and Lester Fraynn, the elected Chief and Councillors of the Ermineskin Indian Band and Nation, suing on their own behalf and on behalf of all the other members of the Ermineskin Indian Band and Nation, Appellants; v. Her Majesty The Queen in Right of Canada, Minister of Indian Affairs and Northern Development and Minister of Finance, Respondents, and Attorney General of Ontario, Attorney General of Quebec, Attorney General of Alberta, Assembly of First Nations and Lac Seul First Nation, Interveners. And between Chief Victor Buffalo, acting on his own behalf and on behalf of all the other members of the Samson Indian Band and Nation, and Samson Indian Band and Nation, Appellants; v. Her Majesty The Queen in Right of Canada, Minister of Indian, Affairs and Northern Development and Minister of Finance, Respondents, and Attorney General of Ontario, Attorney General of Quebec, Attorney General of Alberta, Assembly of First Nations, Saddle Lake Indian Band, Stoney Indian Band and Lac Seul First Nation, Interveners.

(203 paras.)

Appeal From:

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Case Summary

Aboriginal Law — Aboriginal lands — Duties of the Crown — Sui generis fiduciary duty — Mineral, oil and gas rights — Royalties — Constitutional issues — Recognition of existing aboriginal and treaty rights — Canadian Charter of Rights and Freedoms — Racial discrimination — Appeals dismissed — The Crown held money in trust for the bands, comprised mainly of royalties derived from the oil and gas reserves found beneath the surface of the Reserve — Whether the fiduciary relationship arose out of Treaty No. 6 or from the instruments of surrender, when read together with the Indian Oil and Gas Act, the Financial Administration Act, and the Indian

Act, the Crown did not have the obligation or the authority to invest the bands' royalties — The provisions of the Indian Act that prohibited investment of the royalties by the Crown did not draw a distinction that perpetuated disadvantage through prejudice or stereotyping — Indian Act, ss. 61-69 — Financial Administration Act, ss. 2 "public money", 17(1), 21(1), 90(1)(b) — Indian Oil and Gas Act, s. 4(1) — Canadian Charter of Rights and Freedoms, s. 15(1).

Aboriginal law — Treaties and agreements — Agreements — Mineral, oil and gas agreements — Appeals dismissed — The Crown held money in trust for the bands, comprised mainly of royalties derived from the oil and gas reserves found beneath the surface of the Reserve — Whether the fiduciary relationship arose out of Treaty No. 6 or from the instruments of surrender, when read together with the Indian Oil and Gas Act, the Financial Administration Act, and the Indian Act, the Crown did not have the obligation or the authority to invest the bands' royalties — The provisions of the Indian Act that prohibited investment of the royalties by the Crown did not draw a distinction that perpetuatesddisadvantage through prejudice or stereotyping.

Contracts — Remedies — Equitable remedies — Unjust enrichment — Appeals dismissed — The Crown held money in trust for the bands, comprised mainly of royalties derived from the oil and gas reserves found beneath the surface of the Reserve — The Crown was not unjustly enriched by making use of the bands' royalties and paying the rate of interest that it did — The trial judge found that the Crown could have obtained replacement funds at a lower cost than the interest it actually provided on the royalties.

Constitutional Law — Canadian Charter of Rights and freedoms — Equality rights — Appeals dismissed — The Crown held the money in trust for the bands, comprised mainly of royalties derived from the oil and gas reserves found beneath the surface of the Reserve — The money management provisions found in ss. 61 to 68 of the Indian Act did not infringe s. 15(1) of the Canadian Charter of Rights and Freedoms — The provisions of the Indian Act that prohibited investment of the royalties by the Crown did not draw a distinction that perpetuated disadvantage through prejudice or stereotyping — Canadian Charter of Rights and Freedoms, s. 15(1) — Indian Act, ss. 61-68.

Appeals by Ermineskin Nation and Samson Nation bands dismissal of their claims that Crown had fiduciary obligations to invest oil and gas royalties and Crown neglected or failed to invest their royalties in a diversified portfolio. The appellants were bands entitled to the benefit of Treaty No. 6, which was entered into in 1876. The Crown held money in trust for the bands, comprised mainly of royalties derived from the oil and gas reserves found beneath the surface of the Samson Reserve and Pigeon Lake Reserve. Under the terms of Treaty No. 6 and the Indian Act, it was necessary that the bands' interests in the oil and gas under the reserves be surrendered to the Crown so that the Crown could enter into arrangements with third parties in order to exploit the resources. The bands executed the necessary instruments of surrender. The rate of interest provided was tied into the market yield of government bonds as of 1969. In 1981, an Order in Council provided that interest would be calculated on the quarterly average of the market yields of the Government of Canada bond issues. The appellants submitted that the Crown's fiduciary obligations required it to invest oil and gas royalties received on behalf of the appellants as a prudent investor would, that is, to invest the royalties in a diversified portfolio. They submitted that the refusal or neglect of the Crown to invest their royalties had deprived them of hundreds of millions of dollars since 1972. The Federal Court dismissed their claims and that decision was upheld by a majority of the Federal Court of Appeal.

HELD: Appeals dismissed.

The Crown did not have an obligation or the authority to invest the appellants' royalties. The language of Treaty No. 6 did not support an intention to impose on the Crown the duties of a common law trustee. The Crown had the obligation to guarantee that the funds would be preserved and would increase, but did not obligate investment. Because there was no treaty right to investment by the Crown, s. 35(1) of the Constitution Act, 1982, was not engaged. The Indian Oil and Gas Act did not preclude investment of the royalties by the Crown and the Financial Administration Act prohibited the Crown from using the money to acquire securities unless authorized by an Act of Parliament. The applicable legislation in this case was the Indian Act, which provided no authority for any expenditure or payment of Indian moneys other than for the purposes provided for in the Indian Act, and the Indian Act did not provide for investment. The Crown was not unjustly enriched by making use of the bands' royalties and paying the rate of interest that it did. The trial judge found that the Crown could have obtained replacement funds at a lower cost than the interest it actually provided on the royalties. In addition, the court found that the provisions of the Indian Act that prohibited investment of the royalties by the Crown did not draw a distinction that perpetuated disadvantage through prejudice or stereotyping. As a result, there was no violation of s. 15(1) of the Charter of Rights and Freedoms.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, R.S.C. 1985, App. II, No. 44, Schedule B, s. 15, s. 15(1)

Constitution Act, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 35(1), s. 52

Financial Administration Act, R.S.C. 1985, c. F-11, s. 2, s. 2, s. 2, s. 17(1), s. 18, s. 21(1), s. 90(1)(b)

Indian Act, R.S.C. 1927, c. 98, s. 92, s. 93

Indian Act, R.S.C. 1985, c. I-5, s. 2, s. 4, s. 6(1), s. 61-69

Indian Act, S.C. 1951, c. 29, s. 123

Indian Oil and Gas Act, R.S.C. 1985, c. I-7, s. 4(1)

Indian Oil and Gas Regulations, 1995, SOR/94-753, s. 33(5)

Treaty No. 6 (1876),

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Court Catchwords:

Aboriginal law -- Crown -- Fiduciary duty -- Management of oil and gas royalties -- Indian bands surrendering mineral rights on reserves to Crown -- Crown holding bands' oil and gas royalties in Consolidated Revenue Fund and paying

interest at rate tied to the yield on long-term government bonds but adjusted periodically -- Whether Crown was obligated as fiduciary to invest oil and gas royalties -- Whether Crown breached its fiduciary obligations in way in which it calculated and paid interest on royalties -- Indian Act, R.S.C. 1985, c. I-5, ss. 61 to 69 -- Financial Administration Act, R.S.C. 1985, c. F-11, ss. 2 "public money", 17(1), 21(1), 90(1)(b) -- Indian Oil and Gas Act, R.S.C. 1985, c. I-7, s. 4(1).

Unjust enrichment -- Crown -- Management of Indian bands' oil and gas royalties -- Statutory scheme requiring Crown to hold bands' oil and gas royalties in Consolidated Revenue Fund and to pay interest -- Whether Crown was unjustly enriched by making use of bands' royalties and setting interest rate paid to bands.

Constitutional law -- Charter of Rights -- Right to equality -- Money management provisions of Indian Act precluding investment of Indian moneys by Crown -- Provisions creating distinction between Indians and non-Indians -- Whether distinction creating disadvantage by perpetuating prejudice and stereotyping -- Canadian Charter of Rights and Freedoms, s. 15(1) -- Indian Act, R.S.C. 1985, c. I-5, ss. 61 to 68.

Court Summary:

The Ermineskin Nation and the Samson Nation are "bands" within the meaning of the *Indian Act* and are entitled to the benefit of Treaty No. 6, which was entered into in 1876. The Crown held money in trust for the bands, comprised mainly of royalties derived from the oil and gas reserves found beneath the surface of the Samson Reserve and Pigeon Lake Reserve in Alberta. Under the terms of Treaty No. 6 and the *Indian Act*, it was necessary that the bands' interests in the oil and gas under the reserves be surrendered to the Crown so that the Crown could enter into arrangements with third parties in order to exploit the resources. Two identical instruments of surrender were executed in 1946 and were accepted by the Crown. The statutory scheme governing the handling of Indian moneys, including the oil and gas royalties, involves the *Indian Act*, the *Financial Administration Act* ("FAA") and the *Indian Oil and Gas Act* ("IOGA"). Under the *Indian Act*, Indian moneys is characterized as "capital moneys" or "revenue moneys". There are separate revenue and capital accounts kept by the Crown for each of the bands. The royalties are characterized as "capital moneys" and have been deposited in the Consolidated Revenue Fund ("CRF") to the credit of the Receiver General of Canada pursuant to the FAA. Interest has been paid on that money by the Crown pursuant to Orders in Council made under the *Indian Act*. Between 1859 and 1969 the interest rate on Indian moneys changed from time to time, ranging from 3 percent to 6 percent. In 1969, the Crown decided to tie the rate of interest to the market yield of government bonds having terms to maturity of ten years or over (the "Indian moneys formula"). Discussions took place in the late 1970s and early 1980s between the Crown and leaders of various bands. A new Order in Council was enacted in 1981, which provided that interest would be calculated on the quarterly average of the market yields of the Government of Canada bond issues, which have terms to maturity of ten years or over. The discussions between the Crown and the bands also led to a Crown policy of crediting interest semi-annually, rather than annually.

Samson and Ermineskin filed statements of claim respectively in 1989 and in 1992, alleging that the Crown's fiduciary obligations required it to invest oil and gas royalties received on behalf of the bands as a prudent investor would, that is, to invest the royalties in a diversified portfolio. They submit that the refusal or neglect of the Crown to invest their royalties has deprived them of hundreds of millions of dollars since 1972. The Federal Court dismissed their claims and a majority of the Federal Court of Appeal upheld the decision.

Held: The appeals should be dismissed.

The Crown has fiduciary obligations with respect to the bands' royalties. However, whether the fiduciary relationship arose out of Treaty No. 6 or from the instruments of surrender, when read together with the IOGA, the FAA and the *Indian Act*, the Crown did not have the obligation or the authority to invest the bands' royalties. [para. 44] [para. 46] [para. 48] [para. 67] [para. 80]

The language of Treaty No. 6 does not support an intention to impose on the Crown the duties of a common law trustee. All rights were relinquished to the Crown, and the Crown then agreed to set aside certain lands for use by the Indian signatories. The language and circumstances point to a conditional transfer of the land, rather than the establishment of a common law trust. Neither did the oral terms of Treaty No. 6, create a trust in the common law sense. There is no duty of a trustee at common law to guarantee against risk of loss to the trust corpus or that the corpus would increase. Therefore, even if Treaty No. 6, including the representation by the Crown that the proceeds of the sale of any part of the reserve would be "put away

to increase", constituted the basis of the Crown's fiduciary obligation to the bands, it did not obligate investment by the Crown; rather, the Crown had the obligation to guarantee that the funds would be preserved and would increase. Because there is no treaty right to investment by the Crown, s. 35(1) of the *Constitution Act, 1982*, is not engaged. [para. 50] [para. 53] [paras. 56-57] [para. 67]

The relationship between the Crown and the bands under the 1946 instruments of surrender is a fiduciary relationship that is trust-like in nature. Pursuant to these instruments, the Crown may only grant rights over the minerals upon terms that are most conducive to the welfare of the bands, and will hold the proceeds of the granting of those rights on behalf of the bands. Where the Crown is in the position of a fiduciary, although not strictly speaking a trustee at common law, and holds funds on behalf of a band, it is not improper to ascribe to the Crown a duty to invest those funds in the manner of a common law trustee, subject to any legislation limiting its ability to do so. The statutory framework within which the Crown must carry out its fiduciary obligations in this case limits its ability to invest the bands' royalties. [paras. 73-74] [para. 80]

The *Indian Act*, the FAA, and the IOGA do not permit investment by the Crown of the royalties. The IOGA only confirms that the royalties in relation to oil and gas on reserves are to be paid to the Crown in trust for the bands. The IOGA does not set out any terms of trust or duties of the Crown and therefore does not limit the Crown's fiduciary duties to the bands. Although the IOGA does not preclude investment by the Crown of the royalties, it does not purport to restrict or override application of provisions in other statutes. Because the royalties are money collected by Canada on behalf of the bands pursuant to the IOGA, they are "public money" as defined by the FAA and as such must be dealt with in accordance with the provisions of the FAA. This Act provides that the royalties must be held in the CRF and only paid out in accordance with any applicable statute (s. 21(1)). Furthermore, the acquisition of securities by the Crown is prohibited unless authorized by an Act of Parliament (s. 90(1)(*b*)). In this case, the relevant applicable statute is the *Indian Act* because it is the statutory scheme governing the control and management of Indian moneys. It provides no authority for any expenditure or payment of Indian moneys other than for the purposes provided for in the Act. The wording of the *Indian Act* and the legislative changes made in 1951 indicate that no power existed after that time for the Crown to make, hold and manage investments made with Indian moneys held in the CRF. From 1859 to 1951, the Crown had not engaged in investing Indian moneys but rather paid interest at rates from 3 to 6 percent. It is reasonable to infer that in repealing the investment power in the *Indian Act*, the Crown was bringing the legislation into conformity with actual practice. [para. 80] [para. 83] [para. 85] [para. 91] [para. 94] [paras. 98-99] [para. 117] [paras. 122-123]

The Crown's actions under the authority of the FAA and the *Indian Act* were consistent with its fiduciary obligations to the bands. The Crown, which is in a unique position as a fiduciary with respect to the royalties and the payment of interest, is not in a position of conflict of interest when it borrows the bands' money held in the CRF without their consent. The borrowing is required by the legislation and a fiduciary that acts in accordance with legislation cannot be said to be breaching its fiduciary duty. The situation which the bands characterize as a conflict of interest is an inherent and inevitable consequence of the statutory scheme. The Crown's position in the setting of the interest rate paid to the bands is also unique: the Crown must consider not only the interest of the bands but also the interests of other Canadians when it sets the interest rate paid to the bands. Within the Crown's discretion as a fiduciary it had a number of options for setting the interest rate. Of the alternatives considered, it is apparent that short-term rates would not have been in the best interests of the bands when it was possible for the Crown to pay interest at a higher rate in view of the Crown's diversified borrowing patterns. A fixed rate of interest would not have been sufficiently flexible to account for changes in prevailing interest rates and inflation. Payment of interest equivalent to what might have been earned in a diversified portfolio would have required subsidization from the public treasury. A fiduciary is not required to supplement the return it is legislatively restricted to providing from its own resources, in this case, the public treasury. The two alternatives that could have been selected by a prudent person managing his or her own affairs but modified by the constraints applicable to the Crown were the fluctuating rate approach adopted by the Crown and the laddered bond approach. When the Indian moneys formula was adopted in 1969, interest rates were tending upwards. In hindsight, because interest rates have tended downwards since the 1980s, investment in a laddered bond portfolio would have produced higher returns for the bands since that time than the long-term floating rate approach that was adopted. However, compliance by the Crown with its fiduciary obligations to the bands must be viewed prospectively. Without knowing the direction of interest rates and anticipated inflation, it cannot be said that the adoption of a floating long-term rate was an imprudent choice by the Crown. It was a way of contending with interest rates and inflation risk. Therefore, in selecting the floating rate methodology of the Indian moneys formula, there was no breach of the fiduciary duty owed by the Crown to the bands. [para. 124] [paras. 126-129] [para. 132] [paras. 147-149]

As an alternative to the payment of interest by the Crown, s. 64(1)(*k*) of the *Indian Act* provided authority for the transfer of

capital moneys from the Crown to either the bands themselves or to an independent trust for the bands. However, in accordance with its fiduciary obligations and s. 64(1)(*k*), the Crown had to be satisfied that any transfer was in the best interests of the bands. With respect to Samson, the evidence indicates that the Crown was supportive of the band's proposals to transfer money for the establishment of trust funds by the bands. However, due to difficulties uncovering information as to the disposition of a previous transfer of money, the failure of Samson to provide adequate financial plans and assurances of band support, and conflict within the Samson band council, the Crown was unable to assure itself that transferring further funds would be in the best interests of Samson. Having regard to the evidence, for the Crown to have agreed to further transfers prior to 2005 would have been imprudent. As for Ermineskin, in the event of a transfer, the Crown's fiduciary obligations with regard to the funds had to come to an end. The Crown could not be expected to remain responsible for funds over which it no longer had control. In the absence of a release from the band to the Crown, the Crown could not be expected to transfer funds from the CRF to Ermineskin. [paras. 150-152] [paras. 169-170] [para. 181]

The Crown was not unjustly enriched by making use of the bands' royalties and paying the rate of interest that it did. This was an inevitable result of the statutory scheme, which requires that the Crown hold the bands' royalties in the CRF and pay interest to the bands. The basis for determining whether the Crown was enriched is a comparison with what would have been the case had the Crown not had access to the royalties in the CRF. The trial judge found that the Crown could have obtained replacement funds at a lower cost than the interest it actually provided on the royalties. [para. 182] [para. 184]

Finally, the money management provisions found in ss. 61 to 68 of the *Indian Act* do not infringe s. 15(1) of the *Canadian Charter of Rights and Freedoms*. There is a distinction between Indians and non-Indians, but that distinction is not discriminatory. The provisions of the *Indian Act* that prohibit investment of the royalties by the Crown do not draw a distinction that perpetuates disadvantage through prejudice or stereotyping. The provisions do not preclude investment, provided the investments are made by the bands or trustees on their behalf after expenditure of funds from the CRF to the bands and the release of the Crown from further responsibility with respect to the royalties. Such an approach involves greater control and decision making by the bands themselves. Any expenditure of the funds for investment is required to be in the best interests of the bands. Until the funds are expended by the Crown for the purposes of investment by the bands or trustees on their behalf, they are held by the Crown in the CRF and the bands are provided with liquidity and a return on the royalties. [para. 190] [paras. 201-202]

Cases Cited

Referred to: *R. v. Marshall*, [1999] 3 S.C.R. 456; *R. v. Sioui*, [1990] 1 S.C.R. 1025; *Fales v. Canada Permanent Trust Co.*, [1977] 2 S.C.R. 302; *R. v. Badger*, [1996] 1 S.C.R. 771; *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 S.C.R. 344; *Guerin v. The Queen*, [1984] 2 S.C.R. 335; *McInerney v. MacDonald*, [1992] 2 S.C.R. 138; *Authorson v. Canada (Attorney General)*, 2003 SCC 39, [2003] 2 S.C.R. 40; *Authorson (Litigation Administrator of) v. Canada (Attorney General)*, 2007 ONCA 501, 86 O.R. (3d) 321, leave to appeal refused, [2008] 1 S.C.R. v; *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476; *McDiarmid Lumber Ltd. v. God's Lake First Nation*, 2006 SCC 58, [2006] 2 S.C.R. 846; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574; *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245; *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143; *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483; *R. v. Turpin*, [1989] 1 S.C.R. 1296; *Samson Indian Nation and Band v. Canada*, 2005 FC 136, [2005] 2 C.N.L.R. 358.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, s. 15.

Constitution Act, 1982, ss. 35(1), 52.

Financial Administration Act, R.S.C. 1985, c. F-11, ss. 2 "public money", "Consolidated Revenue Fund", "securities", 17(1), 18 [rep. 1999, c. 26, s. 20], 21, 90(1).

Indian Act, R.S.C. 1927, c. 98, ss. 92, 93.

Indian Act, R.S.C. 1985, c. I-5, ss. 2, 4, 6(1), 61 to 69.

Indian Act, S.C. 1951, c. 29, s. 123.

Indian Oil and Gas Act, R.S.C. 1985, c. I-7, s. 4(1).

Indian Oil and Gas Regulations, 1995, SOR/94-753, s. 33(5).

Treaty

Treaty No. 6 (1876).

Authors Cited

Canada. House of Commons. *House of Commons Debates*, vol. II, 4th Sess., 21st Parl., March 16, 1951, p. 1352.

Canada. House of Commons. *House of Commons Debates*, vol. I, 1st Sess., 30th Parl., October 21, 1974, p. 558.

Waters, Donovan W. M., Mark R. Gillen and Lionel D. Smith, eds. *Waters' Law of Trusts in Canada*, 3rd ed. Toronto: Thomson Carswell, 2005.

History and Disposition:

APPEALS from a judgment of the Federal Court of Appeal (Richard C.J. and Sexton and Sharlow JJ.A.), 2006 FCA 415, [2007] 3 F.C.R. 245, 357 N.R. 1, [2007] 2 C.N.L.R. 51, [2006] F.C.J. No. 1961 (QL), 2006 CarswellNat 4511, affirming decisions of Teitelbaum J., 2005 FC 1623, 269 F.T.R. 188, [2005] F.C.J. No. 1992 (QL), 2005 CarswellNat 3953, 2005 FC 1622, 269 F.T.R. 1, [2006] 1 C.N.L.R. 100, [2005] F.C.J. No. 1991 (QL), 2005 CarswellNat 3959. Appeals dismissed.

Counsel

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[Editor's note. A corrigendum was published by the Court February 24, 2009. The corrections have been incorporated in this document and the text of the corrigendum is appended to the end of the judgment.]

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> money" to be held in the Consolidated Revenue Fund pursuant to the powers and limitations imposed by the *FA Act*, and accordingly could not be invested in external markets.

98 The same legislation applied in this case. The former s. 18(2) of the FAA did not authorize external investment by the Crown. Section 90(1)(*b*) of the FAA prohibits the acquisition of securities by the Crown unless authorized by an Act of Parliament. For this reason, it is necessary to find the power to invest and hold securities by or on behalf of or in trust for the Government of Canada in the *Indian Act*. As a result, I am unable to agree with Samson's submission that former s. 18(2) of the FAA authorized the Crown to invest in the public securities market. It is therefore necessary to turn to the *Indian Act* to determine if the Crown had the authority to invest.

(3) The *Indian Act*

99 The *Indian Act* contains a number of sections under the heading "Management of Indian Moneys", namely ss. 61 to 69. Section 61(1) provides:

> Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band.

The question is whether the term "expended" permits the investment by the Crown of Indian moneys held in the CRF.

100 It was argued by the bands that the latter half of s. 61(1), "the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band", permits the investment of the royalties because such investment would be for the use and benefit of the band. However, the section must be read as a whole (see *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476, at para. 27). The section, when read as a whole, mandates that Indian moneys are only to be "expended" for the "use and benefit" of the bands.

101 It is the context in which terms are used that is to be considered when attempting to determine their meaning and application. It is necessary to determine the meaning of "expended", having regard to the provisions in which they appear, namely the sections of the *Indian Act* under the heading "Management of Indian Moneys", ss. 61 to 69. Within those sections, the terms "expended" or "expenditure" appear in ss. 61, 64, 66 and 67.

102 Section 62 draws a distinction between capital moneys and revenue moneys. Section 64 deals with the expenditure of capital moneys, while s. 66 deals with the expenditure of revenue moneys. What is contemplated by the term "expenditure" in connection with capital moneys will be taken from the context in which the term is used in the provisions dealing with capital moneys.

103 Section 64(1) of the *Indian Act* provides that "[w]ith the consent of the council of a band, the Minister may authorize and direct the expenditure of capital moneys of the band" for a number of listed permitted uses. The permitted expenditures in s. 64(1)(*a*) to (*j*) include per capita distributions, the

construction of roads, bridges and outer boundary fences on reserves, the purchase of land for use as a reserve, the purchase of the interest of a band member in reserve lands, the purchase of livestock and farm equipment, the construction and maintenance of permanent improvements or works, loans to members of the band, expenses for the management of reserve lands, and the construction of houses on reserves. Section 64(1)(*k*) allows for expenditure of capital moneys "for any other purpose that in the opinion of the Minister is for the benefit of the band".

104 It is apparent that the kinds of expenditures contemplated in s. 64(1)(*a*) to (*j*) are for expenses (e.g. for the management of the reserve) or assets (e.g. land, houses) that are physically related or connected to the reserve and the activities that take place on it. Under s. 64(1), once the funds are expended with the consent of the band, the Crown no longer has control over the funds. Nor does it hold or manage the assets that may have been acquired.

(a) *Section 64(1)(k)*

105 The only part of s. 64(1) that could permit investment of the royalties is s. 64(1)(*k*). The question is whether investment by the Crown could be an "other purpose" recognized by s. 64(1)(*k*). In the Federal Court and the Federal Court of Appeal, the bands' argument had been that s. 64(1)(*k*) did not permit investment and that investment was instead authorized by s. 61(1). It appears that the bands were concerned that because s. 64(1) required their consent before an expenditure could be made from the CRF, this would dilute the responsibility of the Crown to invest the royalty funds. In this Court, Ermineskin now takes the position, in the alternative, that s. 64(1)(*k*) authorizes investment of royalty funds by the Crown.

106 As I have indicated, s. 64(1) says that the Minister may direct and authorize the "expenditure" of capital moneys for a number of purposes. Under the rule of *ejusdem generis*, the type of expenditures permitted under s. 64(1)(*k*) take on meaning from the prior enumerated expenditures in s. 64(1). One marker of those expenditures is that the expenses incurred or assets acquired are such that the Crown no longer has control over them and for which it has no responsibility to manage. Absence of control or management responsibility would therefore also apply to expenditures for expenses or assets under s. 64(1)(*k*).

107 In oral argument, the intervener Assembly of First Nations argued that s. 64(1) contains three provisions that contemplate investment and, therefore, the context of s. 64(1) should not preclude investment under s. 64(1)(*k*). The Assembly referred to s. 64(1)(*g*), the construction and maintenance of permanent improvements or works, s. 64(1)(*h*), loans to members of the band for which interest may be charged and security taken, and s. 64(1)(*j*), loans to members for building purposes. However, the expenditures listed in those three paragraphs are for assets on the reserve. They are not investments held, controlled and managed by the Crown.

108 The provisions that may be regarded as most like investments made and controlled by the Crown are s. 64(1)(*h*) and (*j*), under which loans may be made to band members, and, in the case of para. (*h*), under which interest may be charged and security taken. The record does not indicate whether the loan and security arrangements are between the Crown and the member or between the band and the member. In any event, it is apparent that these interest and security arrangements are merely incidental to the main

purpose of the expenditures, which is to provide tangible benefits and assistance to the band and its members. Indeed, the charging of interest and the taking of security are discretionary, hardly an indication of prudent investment. Sections 64(1)(*h*) and (*j*) provide for physical improvements to the reserve, housing and loans to members. They do not provide for investments made and controlled by the Crown to earn income.

109 A provision such as 64(1)(*k*) is worded very broadly and, in the abstract, might be thought to include anything for which funds could be expended. However, as I have stated, the nature of the expenditures contemplated by s. 64(1)(*k*) must take on meaning from the prior enumerated expenditures, according to the rule of *ejusdem generis*. Expenditures for investments in securities held and managed by the Crown are foreign to the context of s. 64(1) and, in my opinion, are not contemplated by s. 64(1)(*k*).

(b) *Other Moneys Management Provisions*

110 Other sections under the heading "Management of Indian Moneys" provide for payments to individuals out of capital moneys. Section 63 allows for payments to Indians under leases or agreements made under the *Indian Act*. Section 64(2) refers to expenditures of capital moneys to make payments to individual persons whose names have been deleted from the band list of a band. Section 66(3) states that the Minister may authorize expenditure of revenue moneys for a number of listed purposes, including for the destruction of weeds, insects and pests, to control diseases on reserves, to inspect premises on reserves, to prevent overcrowding of premises, to provide for sanitary conditions on reserves, and for the construction and maintenance of boundary fences. Section 68 permits payments of an "annuity or interest money" to which an Indian is entitled to be applied in specified circumstances to the support of that Indian's spouse, common-law partner or family. The reference to "interest money" in s. 68 is a further indication that Parliament expected that the moneys in the CRF for "payment" or "expenditure" under the *Indian Act* would be subject to the accrual of interest, not investment.

111 Nowhere in ss. 61 to 69 of the *Indian Act* are investments of Indian moneys made, held and managed by the Crown contemplated.

(c) *The 1951 Amendments*

112 Prior to the amendments to the *Indian Act* enacted in 1951, there was express permission granted under the Act to the Governor in Council to invest Indian moneys. The former s. 92 of the *Indian Act*, R.S.C. 1927, c. 98, read:

> With the exception of such sum not exceeding fifty per centum of the proceeds of any land, timber or other property, as is agreed at the time of the surrender to be paid to the members of the band interested therein, the Governor in Council may, subject to the provisions of this Part, direct how and in what manner, and by whom, the moneys arising from the disposal of Indian lands, or of property held or to be held in trust for Indians, or timber on Indian lands or reserves, or from any other source for the benefit of Indians, shall be invested from time to time, and how the payments or assistance to which the Indians are entitled shall be made or given.

113 This provision was repealed in 1951 (*The Indian Act*, S.C. 1951, c. 29, s. 123), and no provision

might, at the outset, have equal amounts allocated to bonds maturing in years one, two, three, *et cetera*, up to the maximum thought appropriate by the trustee.

143 Each year, the funds from the bonds maturing in that year would be allocated to bonds maturing at the end of the ladder. If the ladder was to be over 20 years, each year the funds from maturing bonds would be allocated to bonds maturing in 20 years from that year.

144 In addition to the interest available each year, the proceeds of the bonds maturing in each year would be available if liquidity requirements demanded that the funds not be reinvested but used for other purposes. If necessary, bonds could be disposed of prior to maturity but subject to market prices at the time of disposition. Of course, if this occurred, the balance in the ladder would be affected, but with new royalties coming into the CRF, the ladder could be re-balanced with those funds.

145 Samson says that a laddered bond approach would have produced higher returns than the adjusted rate approach adopted by the Crown because the higher yields available in periods of higher inflation such as was experienced in the 1970s and the 1980s would have been locked in for the duration of the life of the bonds. Samson is correct on this point. However, that is only something that is now known in hindsight. The period beginning in the later 1980s was characterized by declining inflation and interest rates. During the latter part of the 1990s and particularly in the first decade of the 21st century, interest rates remained low and relatively stable. But the direction of inflation and interest rates cannot be predicted in advance. Had inflation and interest rates increased over some part of the period, locking into a laddered bond portfolio would have been detrimental in that period. So there is risk in a laddered bond approach.

146 As said, it is true that a laddered bond approach would have yielded better returns than the approach selected. However, just because in hindsight it is apparent that the returns may have been greater does not mean that the Crown breached its fiduciary duties to the bands by adopting an equally prudent floating long-term rate approach.

(6) Conclusion Respecting the Methodology Selected By the Crown

147 Of the alternatives considered, it is apparent that short-term rates would not have been in the best interests of the bands when it was possible for the Crown to pay interest at a higher rate in view of the Crown's diversified borrowing patterns. A fixed rate of interest would not have been sufficiently flexible to account for changes in prevailing interest rates and inflation. Payment of interest equivalent to what might have been earned in a diversified portfolio would have required subsidization from the public treasury. A fiduciary is not required to supplement the return it is legislatively restricted to providing from its own resources, in this case, the public treasury.

148 The two alternatives that could have been selected by a prudent person managing his or her own affairs but modified by the constraints applicable to the Crown were the fluctuating rate approach adopted by the Crown and the laddered bond approach. When the Indian moneys formula was adopted in 1969, interest rates were tending upwards. In hindsight, because interest rates have tended downwards since the 1980s, investment in a laddered bond portfolio would have produced higher returns for the bands since

that time than the long-term floating rate approach that was adopted. However, compliance by the Crown with its fiduciary obligations to the bands must be viewed prospectively.

149 Without knowing the direction of interest rates and anticipated inflation, it cannot be said that the adoption of a floating long-term rate was an imprudent choice by the Crown. It was a way of contending with interest rates and inflation risk. I am of the opinion that in selecting the floating rate methodology of the Indian moneys formula, there was no breach of the fiduciary duty owed by the Crown to the bands.

G. *Transfer of Funds to the Bands*

150 An alternative to the payment of interest by the Crown would have been the transfer of funds to the bands or to independent trustees for the benefit of the bands. The funds could then be invested by the bands or their trustees without control or management by the Crown. The bands assert that they had repeatedly demanded that their moneys be released to them by the Crown or to independent trustees but that the Crown had refused to do so. This position was not specifically argued as a breach of trust or fiduciary duty by the Crown. The bands simply argued that the Crown not only refused to invest the royalties, but also refused to allow the bands to invest them.

151 Before this Court, the parties have argued that s. 64(1)(*k*) of the *Indian Act* provides authority for the transfer of capital moneys from the Crown to either the bands themselves or to an independent trust for the bands. When funds are transferred, the transfer constitutes an "expenditure" because the funds are no longer held by the Crown in trust. I accept this position.

152 However, the Crown cannot simply transfer funds. In accordance with its fiduciary obligations and s. 64(1)(*k*) of the *Indian Act*, it must be satisfied that any transfer is in the best interests of the bands. Once a transfer is effected, the Crown's fiduciary obligations with regard to the funds in question must cease, as it no longer has control over the funds and is not responsible for their management. It is therefore necessary to consider history of dealings between the bands and the Crown to determine whether the Crown should have transferred some or all of the funds to the bands.

(1) Samson

153 In February and April 1980, Samson requested transfer of $35 million from its capital funds in the CRF to establish Peace Hills Trust. This money was transferred by the Crown. It appears that when the $35 million was transferred to Samson to establish Peace Hills Trust, DIAND officials believed that the transfer was in the best interests of Samson. However, a report prepared for Samson by management consultants P. S. Ross & Partners in December 1979 had found that "[a] lack of long-range planning, including financial planning, prevails across the organization". The report stated:

> Furthermore, major financial decisions are not made as part of an overall plan to achieve specific results, but on an emotional basis, with consideration only being given to the possible short-term benefits. No serious consideration is given to the long term effects which these investments may have.
>
> (R.R., at p. 2514)

154 Samson requested a further transfer of all its remaining royalties in the CRF to Peace Hills Trust in December 1980. During discussions between members of Samson and DIAND officials in early 1981, DIAND expressed the view that additional information regarding the requested transfer would be necessary. Some of this additional information was provided to DIAND, but not all the information that was requested.

155 In particular, in April 1981, the then-Assistant Deputy Minister of Indian and Inuit Affairs, Donald K. Goodwin, sent a letter to Samson's Chief regarding the Band Council Resolutions providing for the transfer of the royalties. In that letter, Goodwin requested further information concerning the disposition of the $35 million already transferred to the band in relation to the establishment of Peace Hills Trust. The letter stated "[t]here is no indication that the funds have been expended for the purpose approved, nor is there any indication that the funds are even under the management of the Trust Company" (R.R., at p. 2541). The letter requested information regarding the disposition of those funds, including the amount and nature of funds deposited, invested or placed with Peace Hills Trust, and the rate of return in respect of those deposits or investments.

156 Goodwin also requested evidence of support of Samson's members. DIAND had previously requested copies of band meeting minutes demonstrating evidence of broad support for the transfer of the balance of Samson's funds in the CRF. However, DIAND had not received those minutes. Additionally, as Peace Hills Trust had only been licensed in January 1981 and there were therefore only a few months from which to show a performance record, Goodwin requested copies of interim financial statements and management agreements between Samson and Peace Hills Trust . Finally, Goodwin noted that it had previously been indicated to Samson that the wording of the relevant Band Council Resolutions was ambiguous, and requested more precise information about the intended use of the funds.

157 The letter indicates that DIAND had the Crown's fiduciary responsibilities to Samson in mind. The letter stated:

> It is in the interest of everyone, but of Band members in particular, that all necessary information be available in order to best determine whether the proposals are first, within the limits imposed on the Minister's authority by section 64 of the Indian Act; secondly, are in the best interests of the Band members; and thirdly, meet the trust responsibilities of the Minister.
>
> (R.R., at p. 2543)

158 A May 29, 1981 DIAND memo indicated that the response of Samson to the request for further information had been inadequate (R.R., at pp. 2556-59). Significantly, DIAND still had concerns about the disposition of the $35 million already transferred, and questioned why approximately $18 million was in the name of one Robert F. Roddick (an officer of Peace Hills Trust) "in trust" for Samson.

159 In October 1981, John C. Munro, then-Minister of Indian and Northern Affairs Canada, wrote a letter to Samson expressing concern regarding the $18 million in Guaranteed Investment Certificates in the name of R. F. Roddick for the Samson Band. As Roddick was an officer of Peace Hills Trust, this was viewed as "highly irregular" by the Auditor General and the Department of Insurance. The letter stated (at

receiving equal treatment before and under the law or that the law has a differential impact on him or her in the protection or benefit accorded by law but, in addition, must show that the legislative impact of the law is discriminatory" (emphasis added). The analysis, as established in *Andrews*, consists of two questions: first, does the law create a distinction based on an enumerated or analogous ground; and second, does the distinction create a disadvantage by perpetuating prejudice or stereotyping.

189 In the circumstances of this case, it is evident that the first requirement is satisfied: the impugned legislation creates a distinction between Indians and non-Indians because the legislation only applies to Indians.

190 The question that must therefore be asked is whether the money management provisions, which preclude investment of Indian moneys by the Crown, perpetuate prejudice or stereotyping. In my opinion, they do not.

191 It was argued that the inability of the Crown to invest resulted in lower returns than those available to non-Indians, and that this amounted to a disadvantage to the bands. In purely financial terms, it is not readily apparent that precluding investment by the Crown necessarily amounts to a disadvantage. It is true that interest calculated on the basis of the yield on long-term government bonds, adjusted quarterly, will, in most cases and over the long term, lead to lower returns than might accrue through a diversified investment plan.

192 That said, holding the funds in the CRF and paying a return in accordance with s. 61(2) ensured the liquidity of the funds such that all funds in the bands' accounts were available for expenditure at any time. In addition, there was no risk of loss of the bands' royalties. It is misleading to gauge disadvantage solely on the basis of comparative returns. Risk and liquidity are also relevant considerations. However, even if the preclusion of investment by the Crown is a disadvantage, the legislation will violate s. 15(1) only if that disadvantage is one that is discriminatory, that is, if it perpetuates prejudice or stereotyping.

193 The question of whether discrimination exists is to be determined with regard to context, looking beyond simply the legislation in question. In *R. v. Turpin*, [1989] 1 S.C.R. 1296, this Court stated:

> In determining whether there is discrimination on grounds relating to the personal characteristics of the individual or group, it is important to look not only at the impugned legislation which has created a distinction that violates the right to equality but also to the larger social, political and legal context. [p. 1331]

194 This Court's statement in *Turpin* signals the importance of addressing the broader context of a distinction in a substantive equality analysis.

195 The question of management of Indian moneys necessarily involves many considerations including Aboriginal self-determination and autonomy and the level of appropriate involvement and control on the part of the Crown. This is in contrast to other trust relationships where risk and financial returns are generally the only considerations, and where there is little concern with the trustee having complete control and discretion, within the limits of acceptable risk, as to where and how the trust corpus is managed and invested.

196 The Indian moneys formula involves less Crown control over the use of the royalties and the spending of the bands than if the Crown had invested them in a diversified portfolio. Investment by the Crown would have required the Crown, in the role of a trustee, to make decisions regarding the level of risk and the specific investment instruments purchased, and might have even required the Crown to exercise greater control over the spending patterns of the bands because investment in a diversified portfolio would not have permitted complete liquidity of the royalties without the risk of incurring substantial losses.

197 The record shows that the bands resisted what they viewed as efforts on the part of the Crown to exercise increased control over Indian moneys and spending. In 1981, DIAND proposed to limit the share of a minor's Per Capita Distribution (PCD) to $3,000 annually. The Directive issued by DIAND stated the purpose for such a limitation as follows:

> ... to outline departmental procedures with respect to control of, and the basic requirements necessary to effect Per Capita Distribution of Band Capital Funds, in order to fulfill and protect the Minister's trust responsibility.
>
> (R.R., at p. 2027)

198 In reply to this proposal, the Four Bands, of which the appellants were members, wrote that "the Four Bands of Hobbema; namely the Ermineskin, Louis Bull, Montana, and Samson, through their respective Chiefs and Councils, hereby unequivocally oppose the policy and its implementation" (R.R., at p. 2035). According to the Four Bands, it appeared that "the purpose of the Departmental Directive as a policy interpreting Section 64(a) of the Indian Act is to in fact gain control of Band Capital funds", which was not conducive to the autonomy of the bands (R.R., at p. 2035). The Four Bands concluded with the following:

> However, where "INDIAN MONEY" is involved, it is the Chief and Council through its members and as the governing body that have the responsibility to determine how, when, and where their funds will be allocated and expended or invested.
>
> (R.R., at pp. 2037-38)

199 It was believed that increased control by the Crown would not accord with greater self-determination on the part of the bands.

200 Indeed, the impugned provisions do not prohibit investment of Indian moneys by the bands themselves or by trustees on their behalf. I have found that s. 64(1)(*k*) of the *Indian Act* permits the expenditure of capital moneys by the Crown to a band or a third party trustee for the band in order for those funds to be invested. In 1980 the Crown did transfer $35 million to Samson for purposes of establishing the Peace Hills Trust Company. The record discloses that, provided the bands could satisfy the Crown that a transfer of funds for investment was in their best interests and that the Crown was relieved from liability for funds over which it no longer had control, transfers would be made. Indeed, by order of Teitelbaum J. of December 22, 2005, the Samson funds were authorized to be transferred. Requiring the bands to satisfy the Crown that a transfer was in their best interests was consistent not only

with the provisions of the *Indian Act*, but with the Crown's obligations as a fiduciary with respect to the royalties.

201 Given these considerations, I am unable to agree that the impugned provisions of the *Indian Act* infringe s. 15(1) of the *Charter* under the test established in *Andrews* and reaffirmed in *Kapp*: "(1) Does the law create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?" (*Kapp*, at para. 17). There is a distinction between Indians and non-Indians, but that distinction is not discriminatory. The provisions do not preclude investment, provided the investments are made by the bands or trustees on their behalf after expenditure of funds from the CRF to the bands and the release of the Crown from further responsibility with respect to the royalties. Such an approach involves greater control and decision making by the bands themselves. Any expenditure of the funds for investment is required to be in the best interests of the bands. Until the funds are expended by the Crown for the purposes of investment by the bands or trustees on their behalf, they are held by the Crown in the CRF and the bands are provided with liquidity and a return on the royalties.

202 I am therefore of the opinion that the provisions of the *Indian Act* that prohibit investment of the royalties by the Crown do not draw a distinction that perpetuates disadvantage through prejudice or stereotyping. There is no violation of s. 15(1) of the *Charter*.

VI. Conclusion

203 I would dismiss the appeals with costs.

* * * * *

APPENDIX

Canadian Charter of Rights and Freedoms

> **15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
>
> ...

Constitution Act, 1982

> **35.** (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Financial Administration Act, R.S.C. 1985, c. F-11

> **2.** In this Act,

TAB 4

2007

The Search for Consensus: A Legislative History of Bill C-31, 1969–19851

Gerard Hartley

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The Search for Consensus: A Legislative History of Bill C-31, 1969–1985[1]

Gerard Hartley

Introduction

Canada's 1985 *Indian Act* amendment, known as Bill C-31, was intended to eliminate discrimination against Indian women by creating a non-discriminatory legal criteria for "Indian" under the Act. Before 1985, Indian status under the *Indian Act* was based on a patrilineal system in which a woman's status was dependent on her father or husband's status. Therefore Indian women who married Indian men retained their legal status, whereas Indian women who married non-Indian men lost their legal status and their ability to transmit status to their children. Indian men who married non-Indian women, however, not only retained their status, but also transmitted it to their wives and children. The pre-1985 *Indian Act* provision that removed status from Indian women who "married out" is known as section 12(1)(b).

Many Aboriginal women viewed section 12(1)(b) as a blatant form of discrimination. However, when Aboriginal women's groups began their long campaign in the early 1970s to pressure the government to amend the *Indian Act*, Canadians were generally unaware of and uninterested in their plight. But by the early 1980s, the problem of discrimination against Indian women was widely condemned in Canada and no longer considered acceptable in a society that valued equal rights and equal treatment for everyone.

This paper examines the legislative history of Bill C-31 and describes the social and political context in which federal *Indian Act* policy developed during the period from 1969 to 1985. It begins by examining the origins of the debate over Aboriginal women's rights in Canada in the early 1970s. It then traces the emergence of competing viewpoints within the Aboriginal community on "membership issues",[2] the evolution of government thinking on *Indian Act* policy, and the of Aboriginal viewpoints on federal policy considerations. It also examines the rationale for Bill C-31 and Aboriginal people's views of the bill.

The primary impetus for Bill C-31 was the creation of an equality provision in the Canadian Charter of Rights and Freedoms and a United Nation ruling in 1981 in favour of Sandra Lovelace, an Aboriginal woman who had lost her status under

section 12(1)(b). However, after years of consulting with Aboriginal leaders on how to amend the *Indian Act*, the federal government failed to achieve a consensus in the Aboriginal community and passed Bill C-31 in 1985 without the consent of these leaders. This paper will examine why Aboriginal groups opposed Bill C-31.

Lavell-Bedard Case: the Origins of the 12(1)(b) Debate, 1969-1973

In 1971, an Ojibway woman from Manitoulin Island named Jeannette Corbière Lavell launched a legal challenge against section 12(1)(b) of the *Indian Act*. When it first began, Indian leaders paid very little attention to the case. But once it reached the Supreme Court of Canada in 1973, Lavell's case had become a *cause célèbre* within the Indian community, leading to bitter divisions between Aboriginal women's groups and many of Canada's largely male-dominated Aboriginal associations. The case also set the stage for the long and contentious 12(1)(b) debate that culminated in Canada's 1985 *Indian Act* amendment, known as Bill C-31.

Lavell's case began in a York County court in June 1971 after her name was struck from the Indian register as a result of her marriage to a "white photographer." She argued that section 12(1)(b) of the *Indian Act* contravened the equality clause of the 1960 Canadian Bill of Rights because it discriminated on the basis of gender. Indian men who married non-Indians retained their legal status; moreover, these men transmitted status to their non-Indian wives and children through section 11 of the *Indian Act*. Section 12(1)(b), however, fully disinherited Indian women of their Indian rights and including their rights to band membership, to inherit on-reserve property, and even to live on-reserve.[3]

The lower court judge dismissed Lavell's arguments, stating that the matter should be dealt with by Parliament, not by the courts. Undaunted, Lavell appealed her case to the Federal Court of Appeal in October 1971, and won. The Federal Court of Appeal ruled that the *Indian Act* contravened the Bill of Rights because it denied Indian women equality before the law and ordered that 12(1)(b) be repealed.[4]

Following Lavell's victory, a second legal challenge was launched against the *Indian Act* by Yvonne Bedard, a Six Nations woman who had also lost her status under section 12(1)(b). Bedard sought the repeal of the entire *Indian Act*, claiming that it discriminated on the basis of gender and race. The Supreme Court of Ontario ruled in Bedard's favour by declaring section 12(1)(b) inoperative, but declined to rule on the question of whether the entire *Indian Act* should be repealed.[5]

While many Aboriginal women celebrated the Lavell and Bedard rulings, Indian leaders grew fearful that Indian reserves would be opened up to hundreds of native women and their families. As well, some Status Indians felt that "Non-Status" women should have to live with their decision to "marry-out," and therefore resented Lavell and Bedard's efforts to bring about changes to the *Act*. One Indian woman told Bedard: "You have made your bed—now lie in it."[6]

Generally, however, Indian attitudes were rooted in much broader legal concerns over the special status of Indian people in Canadian society and the preservation of Indian culture and land. Indian groups feared that the Lavell and Bedard cases could lead to the abolition of the entire *Indian Act*, which would in turn lead to the disappearance of the Indian reserve system and the destruction of the Indian way of life. In many ways, this reaction stemmed from the psychological impact of a 1969 federal policy proposal that had sought to end the federal government's special relationship with the Indian people.[7]

In June 1969, the Trudeau government shocked Indians by releasing a White Paper on Indian Policy that recommended terminating all special rights for Indians, ending legal status and the Indian reserve system, and repealing the *Indian Act*. The proposed policy was a of Prime Minister Trudeau's promise of a Just Society, with its emphasis on equality and the protection of individual rights, and his general mistrust of collective rights. Indian leaders, however, rejected the White Paper, denouncing it as an attempt by the government to abrogate its legal and moral responsibility to the Indian people. The government's proposed policy created wide-spread fear among Indians, who perceived it as a fundamental threat to the survival of the Indian people.[8]

This fear galvanized the Indian movement in Canada and led to a resurgence of Indian organizations. Indian leaders across Canada joined together to create a powerful new lobby association called the National Indian Brotherhood (NIB) to "negotiate from strength with the federal government." The unity achieved among Indian leaders in the aftermath of the White Paper was unprecedented in the history of Indian-White relations in Canada.[9]

Through the NIB, the Indian people vehemently opposed the White Paper. But the most effective response to the government came from the Indian Association of Alberta (IAA) whose 24-year-old president, Harold Cardinal, published a widely-read condemnation of the White Paper entitled *The Unjust Society*—a mocking reference to Trudeau's Just Society promise. Cardinal warned that the White Paper was just another federal policy amounting to "total assimilation of the Indian people, plans that spell cultural genocide."[10]

In June 1970, the Alberta Chiefs presented the Trudeau government with their own policy proposal, called the "Red Paper," which rejected outright the White Paper, asserting that: "Retaining the legal status of Indians is necessary if Indians are to be treated justly. Justice requires that the special history, rights and circumstances of Indian people be recognized." As a result of these pressures, the Trudeau government jettisoned its proposed policy and publicly promised not to make changes to the *Indian Act* without the consent of the Indian people.[11]

The 1972 Lavell-Bedard rulings brought back many fears for Indian leaders. While the White Paper had failed to end special status for Indians or repeal the *Indian Act*, many in the Indian community believed that the Lavell-Bedard cases might succeed where the White Paper had not. With the objective of

preventing abolition of the entire *Indian Act*, the Alberta Chiefs convinced the NIB to intervene against Lavell and Bedard. The federal government appealed the Lavell-Bedard cases to the Supreme Court of Canada, hoping to avoid being forced to revise the *Indian Act*.[12]

Lavell and Bedard, then, were up against both the Government of Canada and a multitude of powerful, well-funded, and politically-organized Indian associations. The two women did receive strong support from a women's group known as Indian Rights for Indian Women (IRIW); however, this organization was less and less than the NIB, the IAA, or any of the other Indian associations. The group did not formally incorporate until 1974, and was therefore unable to intervene on behalf of Lavell and Bedard. Instead, Lavell and Bedard were defended before the Supreme Court by the Native Council of Canada (NCC), a national organization for Métis and Non-Status Indians, on behalf of IRIW.[13]

The Lavell-Bedard cases were heard jointly before the Supreme Court of Canada in February of 1973. Lawyers for Lavell and Bedard argued that the *Indian Act* discriminated against Indian women and that the discriminatory provisions should be struck down by the Bill of Rights. The federal government argued that the Bill of Rights could not overrule an Act of Parliament and that the *Indian Act* protected the special status of Indian people. Lawyers for Indian groups argued that the legal banishing of Indian women who married non-Indians was simply following Indian custom in that women traditionally go to live with the men they marry. The *Act*'s inequalities, they maintained, were necessary to protect Indian land and culture. Indian leaders acknowledged the need for *Indian Act* revisions, but asserted that such changes should be made by Parliament, not by the judiciary.[14]

In the end, the court ruled to four against Lavell and Bedard, dismissing the argument that the Bill of Rights could be used to override the *Indian Act*. In sum, "the *Bill of Rights* is not effective to render inoperative legislation, such as 12(1)(b) of the *Indian Act*, passed by the Parliament of Canada in discharge of its constitutional function under s. 91(24) of the *B.N.A. Act*, to specify how and by whom Crown lands reserved for Indians are to be used."[15]

The ruling against Lavell and Bedard dismayed Aboriginal women. The challenges facing them following their defeat in the Supreme Court were daunting, and yet, there was also a silver-lining: For the time, Canadians learned about the problem of discrimination against Indian women. The case was highly publicized in the national media, focusing attention on the treatment of Indian women in Canada. Realizing that the 12(1)(b) problem was now a publicly articulated issue, Aboriginal women's organizations refocused their efforts to bring about changes to the *Act* through political pressure.[16]

Initial Attempts to Find an "*Indian Act* Consensus," 1974–77

Although Indian leaders opposed Lavell and Bedards's efforts to bring about an end to section 12(1)(b), they nevertheless believed that work on modernizing the *Indian Act* should be started. While the leaders did not agree on how to change the *Act*, they made it clear to federal that any proposals to do so should emanate from the Indian people. In October 1974, the federal government agreed to a unique policy-making experiment called the Joint NIB–Cabinet Committee. The joint committee created two working groups to deal separately with the areas of Aboriginal and treaty rights and *Indian Act* revisions. But Aboriginal women were left out of the entire process. The NIB steadfastly opposed participation on the Committee by Aboriginal women's groups, claiming that the issue of discrimination against Indian women was local and should be dealt with by individual band councils.[17]

By 1977, the Joint Committee had made little progress on any of the issues, including *Indian Act* revisions. Meanwhile, the government was coming under increasingly strong public and political pressure to solve the problem of discrimination against Indian women. Pressure to deal with the status of Indian women was not new—section 12(1)(b) had captured national media attention during the Lavell-Bedard case—but several other events occurred in 1977 that caused the federal government a great deal of embarrassment.[18]

After the government exempted the *Indian Act* from the effects of a human rights bill tabled in the spring of 1977, IRIW denounced the government's actions before the parliamentary committee that reviewed the bill and won the sympathies of many federal politicians. One MP exclaimed that the *Indian Act* is "extremely discriminatory legislation" embodying "blatant cruelty to women." The government, however, retained the provision exempting the *Indian Act* when it passed the *Human Rights Act* in 1977, thereby standing by its 1970 commitment to Indian leaders that changes to the Act would only be made with their consent.[19]

Aboriginal women's groups perceived the removal of the *Indian Act* from the reach of the new human rights legislation as a deliberate attempt to deny Indian women the basic human rights enjoyed by other Canadians, just as the government had failed to protect their rights under the Canadian Bill of Rights three years earlier. With seemingly no where else to turn, a Non-Status Indian woman named Sandra Lovelace from the Tobique Reserve in New Brunswick brought her case to the United Nations Human Rights Committee in December 1977. While it took the government a couple of years to send the UN a response to Lovelace's complaint, were still very concerned that discrimination against Indian women in the *Indian Act* was undermining Canada's international reputation for human rights. Indeed, the Lovelace case soon brought international attention to the problem.[20]

IRIW, meanwhile, was gaining prominence as a national organization for Aboriginal women. IRIW's opposition to the exclusion of the *Indian Act* from the effects of the Human Rights Act and its involvement in making representations to the parliamentary committee reviewing the *Indian Act,* increased its awareness of lobbying techniques and the political process. Since its formation during the Lavell case, IRIW had struggled to gain political clout; unlike many Indian associations, Non-Status Indian women's groups were not funded by the federal government. However, after the sympathetic attention brought to IRIW over the exclusion of the *Indian Act* from the Human Rights Act, the voices of [21]

The Aboriginal women's movement gained further momentum when Canada's Human Rights Commissioner, Gordon Fairweather, began publicly supporting their cause. Fairweather warned that if the *Indian Act* was not amended to eliminate discrimination against Indian women, his commission would demand that the government make the changes.[22]

Realizing that the problem of discrimination against Indian women could no longer be ignored, Cabinet announced in the fall of 1977 its commitment "to end discrimination on the basis of sex in the *Indian Act*, with particular reference to section 12(1)(b)." Subsequently, federal warned Indian leaders that revising the *Indian Act* to remove "discriminations as regards Indian women" was now the government's "top priority issue." However, in April 1978, frustrated with the lack of progress on the agenda items, the NIB withdrew from the process and the Joint Committee collapsed.[23]

Meanwhile, IRIW held a conference in Edmonton in early April 1978 to "discuss the issue of changing the membership sections of the *Indian Act*." Attended by Indian women from status and non-status organizations across Canada, IRIW's conference developed a detailed policy paper that proposed Indian status through a "1/4 blood rule" and restoring "full rights" of both status and membership to Aboriginal women who lost it through past discrimination, and to their descendants "who meet the criteria of 1/4 blood." The quarter-blood of "Indianness" would be non-discriminatory because it would allow the Indian "bloodline" to be established through "either the mother or father or both," which meant that the grandchildren of mixed unions would retain their Indian status. IRIW sent its proposals to federal and Indian leaders across the country.[24]

Department of Indian and Northern Development (DIAND) had serious reservations towards the broad scope of IRIW's proposals. During a meeting with IRIW in early June 1978, Indian Affairs Minister James Hugh Faulkner cautioned that IRIW's status criteria and retroactivity proposals were "broader questions" with far-reaching consequences. Initially, explained Faulkner, "the thing we wanted to deal with was 12(1)(b). And so the quarter blood is a concept that was not one that I expected to come out of this resolution." Faulkner also raised

concerns over IRIW's retroactivity proposals: "If we adopted the quarter-blood rule and applied it retroactively, I think you would have a fairly major of Indians, and I think that raises serious questions about the ability of existing bands to respond to that ... It raises some very fundamental questions about who's an Indian."[25]

Later that month DIAND released an *Indian Act* revision proposal that bluntly rejected the concept of retroactivity.

DIAND Brings Forward its own *Indian Act* Proposal, 1978

In late June 1978, Faulkner presented Aboriginal leaders with a package of *Indian Act* amendments which, he asserted, were derived from "over a hundred meetings" with Indian representatives since 1975. Faulkner viewed tribal government as the centrepiece of his amendment package. The system he proposed would allow a band council to "opt-in" to its own charter and negotiate a "constitution for the purposes of local self-government"; however, its authority—consisting mainly of powers to pass by-laws in areas such as education, housing, and social services—remained subject to federal legislation. Faulkner also emphasized that "whatever else happens in relation to the *Indian Act* revision, the provisions discriminating against Indian women, and in particular section 12(1)(b), must be revised."[26]

Establishing a of Indian status that did not discriminate against Indian men, women, or children would be the underlying principle of the government's new membership policy. Options included either taking away status from all Indians (men and women) who marry non-Indians or allowing all Indians who marry non-Indians to keep their status; giving or denying status to non-Indian spouses; giving or denying status to all children of mixed marriages (Indian and non-Indian); allowing the children themselves or the band to decide status; and establishing a status cut-off rule whereby "all children of mixed marriages have registered status as long as they are considered to be ¼ Indian."[27]

Faulkner also considered the possibility of making the membership revisions retroactive, because realized that retroactivity would continue to be a priority for Aboriginal women. DIAND however, argued that there were "practical and other dif culties" with the concept, such as "increased demands on Indian lands and cost increases which would result from a larger Indian population." Moreover, "It would be a if not impossible, task to right all the wrongs of past discrimination."[28]

IRIW denounced Faulkner's proposals, asserting that, "We cannot accept the Government's suggestion that the 'practical with 'retroactivity' are too great to overcome."[29]

Indian leaders also bristled at Faulkner's proposal, in particular the concept of local Indian government through band charters. The NIB charged that the proposal

"is a far cry from what Indian people are saying in terms of Indian Government." As DIAND focussed its policy efforts on increasing band authority through a legislative framework, the Indian people began to embrace the notion of entrenching Aboriginal rights in a renewed Canadian constitution. Prime Minister Trudeau's conferences on constitutional patriation, which began in 1978, had captured the attention of Indian leaders; soon after, constitutional entrenchment of Aboriginal rights became their top priority.[30]

Ultimately, Faulkner's *Indian Act* proposals were never brought before Parliament. The Liberal government fell in the spring of 1979 before he could even present them to Cabinet, and Canada's policy initiative to end discrimination against Indian women fell by the wayside.[31]

The 12(1)(b) Problem Becomes a National Debate, 1979–1980

In July 1979, the Women of Tobique Reserve in New Brunswick rekindled national and international awareness of their cause by organizing a "Native Women's March" from Oka, near Montreal, to Parliament Hill "to protest housing conditions on reserves and the treatment of native women in Canada." With enthusiastic support coming from IRIW, the United Church, and Non-Status women's groups across Canada, the Women's March garnered a great deal of favourable media attention, especially after receiving a warm reception from the new Conservative Prime Minister Joe Clark who strongly supported their cause. He promised that the government would act quickly to remove the discriminatory clauses from the *Indian Act* and warned Indian groups that "if there is no action on the part of the NIB in the next four or months to bring amendments [forward], we will have to do it ourselves."[32]

Prime Minister Clark, however, was prevented from acting on his promise of quick action on the *Indian Act* when the Conservative government fell in December 1979.[33]

Canadian then faced international embarrassment in August 1979 when the United Nations Committee on Human Rights found admissible Sandra Lovelace's 1977 complaint that section 12(1)(b) of the *Indian Act* was in violation of certain family, minority, and sexual equality rights protected under the International Covenant on Civil and Political Rights. Subsequently, the UN Committee asked the Canadian government to respond to Lovelace's complaint. The eyes of the international community were now cast upon Canada's treatment of Indian women.[34]

In September 1979, Canada responded that while there were with section 12(1)(b), removing it would change the of legal Indian status in Canada, which was essential for the protection of Indian culture, language, and lands. Therefore, it argued, the government's policy was to consult with

the "various segments" of the Aboriginal community before making any decisions on how to amend the *Act*.[35]

This stance provoked harsh criticisms from federal parliamentarians. In July 1980, Flora MacDonald, a Conservative opposition member and outspoken critic of section 12(1)(b), rose in the House of Commons to demand that Prime Minister Trudeau take immediate steps to remove section 12(1)(b), pointing out that the Lovelace case "is the time that Canada's record of human rights has ever been questioned in the United Nations." Trudeau responded that he would not impose a solution on the Indian people; instead, the government would continue its efforts to amend the *Indian Act* with the consent of Indian leaders. He also reminded MPs of his government's White Paper experience, explaining that "it was not wise even to go in a progressive direction over the heads of the Indian leaders themselves."[36]

The prime minister had harkened back to the government's 1970 promise in the wake of the White Paper that only through the consent of Indian leaders would the *Indian Act* be changed. A consensus within the Indian community on amending the *Indian Act*, however, could not be found and by 1980, the government was still unwilling to make *Indian Act* amendments "over the heads" of Indian leaders. Federal *Indian Act* policy was in a deadlock. However, ending discrimination against Indian women soon became an urgent priority for federal policy makers because of two key events: the 1981 United Nation's ruling in favour of Sandra Lovelace; and second, the creation of an equality provision in the 1982 Charter of Rights and Freedoms.

Solving the 12(1)(b) Problem Becomes DIAND's Top Priority, 1981–1983

After returning to power in 1980 and defeating Quebec seccessionists in a referendum on sovereignty, Prime Minister Trudeau immediately began to negotiate with the provinces for patriation and amendment of the Canadian constitution. While federal and provincial politicians clashed over how to amend the constitution, Aboriginal leaders fought furiously for the entrenchment of Aboriginal rights. And in the end, they succeeded. When the Canadian Constitution Act came into force in April 1982, recognition of treaty and Aboriginal rights was secured in section 35. Section 35 was perceived as a great victory by Aboriginal men and women. But more for Non-Status Indian women was the enshrinement of a new Charter of Rights and Freedoms. Section 15 of the Charter guaranteed that

> every individual is equal before and under the law and has the right to the equal protection and equal of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Because it would not come into effect until April 17, 1985, section 15 provided the federal government with a three-year period in which to remove all discriminatory

legislation. Thus, the Charter served notice that the *Indian Act*'s discriminatory membership provision must be changed.[37]

A ruling against Canada in the Lovelace case only heightened the government's sense of urgency to rid the *Indian Act* of its discriminatory provisions. The United Nations Committee on Human Rights' ruling on the Lovelace complaint, released in July 1981, found that Canada was in violation of Article 27 of the Covenant on Civil and Political Rights—a provision that protects minority rights. The ruling stated that Lovelace was being denied the enjoyment of her cultural community because, as a result of her loss of status under section 12(1)(b), she was prohibited from having band membership. Because Lovelace had lost her status before Canada's rati cation of the Convention in 1976, the Committee did not rule on whether section 12(1)(b) violated Lovelace's equality rights.[38]

The Lovelace ruling's greatest was its impact on government policy thinking on the retroactivity issue. Canadian now believed that the policy to eliminate discrimination against Indian women would have to include, at a minimum, reinstatement of women affected by section 12(1)(b).[39]

The government formalized its consultation process by referring the matter of how to amend the *Indian Act* to a parliamentary committee. On August 4, 1982, the Standing Committee on Indian Affairs and Northern Development (SCIAND) was mandated to study and recommend how the *Indian Act* might be amended to remove its discriminatory provisions. SCIAND was also asked to review the legal and institutional factors related to the issue of self-government.[40]

Shortly after the August 4 all-party agreement, Indian Affairs Minister John Munro released a discussion paper presenting some of the membership policy options being considered by the government. The primary objective of the new *Indian Act* policy would be to create a new system of status that did not discriminate "on the basis of sex or marital status." The new policy would also consider the rights of the children born of marriages between Indians and non-Indians and the reinstatement of individuals affected by past discrimination.[41]

Munro's paper provided options for dealing with questions concerning whether the government or individual bands should determine status and/or membership, rights of the children of mixed unions, rights of non-Indian spouses, and reinstatement; but it made no recommendations.[42]

SCIAND began its deliberations on September 1, 1982. As a of DIAND's priorities, the terms of reference instructed the Standing Committee to deal with discrimination against Indian women before dealing band government issues and report its to Parliament before October 27, 1982. Consequently, SCIAND created the Subcommittee on Indian Women and the *Indian Act* to review the discrimination issue separately from self-government. The Assembly of First Nations (AFN)—the newly established Indian association formed out of the NIB—the Native Women's Association of Canada (NWAC), and NCC were all appointed as ex members. The AFN convinced the Subcommittee to

deal with its report by September 20 so that it could begin to examine the "broader implication" of Indian self-government.[43]

When Munro appeared before the Subcommittee on September 8, he warned that "time is running out ... we now have to take into account the requirements of the Charter of Rights and Freedoms." He admonished the Subcommittee for cutting short its review of the discrimination issue: "It is surprising, to say the least, that the committee has decided, without consultation, to throw this burning issue in with all others related to band government." The government did not oppose the principle of band control of membership, but its immediate priority was to end discrimination against Indian women, he argued.[44]

In his testimony, AFN's National Chief David Ahenakew argued that the *Indian Act* should not be amended before the constitutional entrenchment of the right to self-government: "First, we have to secure our right place in Canada, the rights of our First Nations. Then we would deal with the discrimination against women, by having each First Nation assume its just responsibility by determining its own citizenship."[45]

The next day, NWAC's president Jane Gottsriedson argued that Aboriginal women's rights must not be kept in abeyance while Indian leaders and federal and provincial governments sort out the meaning of Aboriginal constitutional rights. "We are willing to consider band control of membership, but whatever you decide in this area we want reinstatement The NWAC supported Aboriginal self-government, Gottfriedson asserted, but explained: "If band control of membership means Indian women must suffer under federal discriminatory legislation for another ve or twenty years while you hash out the meaning of Indian government, we will not accept this."[46]

Like the NWAC, the NCC demanded immediate reinstatement of all individuals who lost status through discrimination; the issue of band membership and Aboriginal self-determination, the group argued, should be dealt with later. IRIW recommended full reinstatement of all Indian women affected by the *Indian Act*'s discriminatory provisions and their descendants "up to one-fourth Indian blood"; after this, "local band government should determine membership."[47]

On September 22, 1982, the Subcommittee on Indian Women and the *Indian Act* tabled its report which recommended repeal of section 12(1)(b), reinstatement of women who lost status and their children's right to status and membership, and allowing bands to decide on the residency and political rights of non-Indian spouses. The NWAC and the AFN both publicly supported the Subcommittee's report. The AFN felt that the Subcommittee had supported the right of the Indian people to determine their membership while the NWAC praised it for adopting the group's "bottom line position" on reinstatement.[48]

With the Subcommittee's hearings complete, the Special Committee on Indian Self-Government began its hearings in December 1982, and until fall of 1983 travelled to every region of the country, hearing from 567 witnesses

during 215 presentations. On the membership question, witnesses unanimously supported First Nations control of band membership, but disagreed on whether this should occur before or after Aboriginal women and their children were reinstated. The NWAC, for example, stated: "[Our basic position is that] ... Indian governments determine their own membership, but only after all of those so entitled have been listed or relisted on their band lists." Meanwhile, Indian bands rejected the notion of automatic reinstatement to band membership. The AFN maintained that: "It is up to the Indian governments across the country to resolve that and to put into place some just means of making sure that there is reinstatement or whatever it is they want to do." Several Aboriginal groups recommended a "two-tier" membership system that would allow reinstatement to a general band list, while still allowing bands to decide whether to admit these individuals as band members. Status would remain under the control of the federal government.[49]

The Special Committee's nal report (named after the Committee's chairperson Keith Penner) was tabled on November 3, 1983. As its overarching themes, the Penner Report endorsed the establishment of a "new relationship" with Indian First Nations and the entrenchment of Aboriginal self-government in the Constitution. On the question of membership, the Penner Report recommended the use of a General List "as a means of providing special status to people who are Indian for purposes of Indian programs, but who are not included in the membership of an Indian First Nation." The report did not provide recommendations on how to resolve the views on whether reinstatement to membership should be automatic or controlled by the band. The Penner Report's 58 recommendations were endorsed by all three parties in the House of Commons and were fully supported by the AFN.[50]

While the Special Committee consulted Aboriginal groups between December 1982 and November 1983, the federal government waited for its recommendations before bringing forward new proposals to amend the *Indian Act*. After the Penner Report was tabled, however, had little hope that a consensus could be found within the Indian community on how to end discrimination against Indian women. Moreover, the report's recommendations suggested that federal *Indian Act* amendments should not interfere with Indian government. fully expected opposition to amendments from Indian groups, especially from the AFN, but with the Charter deadline looming, the Canadian government was ready to act.[51]

Bill C-47: Canada's First Attempt to Implement a Non-discriminatory Membership Policy, 1984

In March 1984, federal unveiled plans to bring forward two legislative packages—one to deal with ending discrimination against Indian women, the other with Indian band government.

First, on March 5, Munro tabled the government's of cial response to the Penner Report in the House of Commons. Cabinet rejected the notion of enshrining self-government in the Constitution. Instead, the government would introduce framework legislation to establish Indian government. Indian band government legislation, Munro argued, would be a step in changing the government's relationship with Aboriginal peoples.[52]

Second, on March 8, Prime Minister Trudeau announced that *Indian Act* amendments to end discrimination against Indian women would, in the near future, be brought forward because the current membership provisions with the Charter and UN covenants The main components of the proposed amendments included: providing status and membership rights to future children and grandchildren of mixed unions; and allowing "those who lost status and membership as a result of the discriminatory provisions of the Act" and their children "to be reinstated." In other words, the second-generation descendants (grandchildren) of mixed marriages born *after* the amendments would be eligible for legal status and band membership, whereas those born *before* the amendments, namely the grandchildren of women affected by 12(1)(b), would not be eligible.[53]

Indian leaders were greatly alarmed by the reinstatement proposal, angrily rejecting it in any form. "They're intruding on First Nations government's jurisdiction again. We've made the position very clear. Correct your injustices and stay the hell away from our affairs," exclaimed David Ahenakew of the AFN. NWAC asserted that DIAND's reinstatement proposal didn't go far enough to include all the victims of past *Indian Act* discrimination.[54]

In response to the reaction of Indian leaders, Trudeau withdrew the government's proposed amendments in May, saying that he wanted to "avoid any suspicion of paternalism" and "grant Indians more time to heal an internal split over the protection of women's rights." While legislators waited and hoped that Aboriginal groups would sort out their differences over how to address the discrimination problem, the AFN and the NWAC met in Edmonton from May 16 to 18 to listen to each other's concerns and attempt to formulate a common position, especially on the dicey issue of reinstatement. Both groups realized that to meet its Charter requirements the federal government would, sooner rather than later, act on its own to amend the *Indian Act* if Aboriginal leaders could not come to an agreement. The NWAC and the AFN succeeded in establishing a consensus, but it was one that cost the AFN much of its support from western Indian leaders.[55]

The main components of what became known as the Edmonton Consensus were a demand that the government reinstate Indian women who lost status and all their descendants (e.g. grandchildren) and that the "newcomers" would be reinstated to a "general" band list from where they could apply for "active" membership in bands. Borrowed from the Penner Report, the general band list would allow

bands to determine the criteria for active membership. As explained by AFN representative Gary Potts: "A general list is the list that is primarily kept by Ottawa of people of Indian status," but who may not be "allowed active participation within the community structure."[56]

The IAA, however, was furious that the AFN had accepted any form of reinstatement and left the conference in protest. Most of the chiefs from Manitoba and Saskatchewan also opposed the deal, which they demonstrated by abstaining from voting on the AFN resolution endorsing the Consensus.[57]

Although the AFN would have preferred to "settle the whole business" in the context of self-government, Potts admitted "pressure is being created by the fact that the federal government is bringing in legislation to remove the 12(1)(b) discrimination clauses." The NWAC's Marilyn Kane also acknowledged that government pressure to some consensus was an important factor in reaching a compromise. She referred to the Consensus as an "interim measure" and was pleased that the AFN "at least agreed to reinstate women to a general list," emphasizing that the NWAC had always supported the right of First Nations to determine their membership. IRIW, who were not invited to the meeting, totally rejected the concept of the general list.[58]

On June 18, 1984, a little more than a week before Parliament adjourned for summer recess, the Liberals introduced Bill C-47, *An Act to Amend the Indian Act*. The main components of the bill were:

- Status and membership would not be determined on the basis of gender;
- Indian status would not be lost or acquired through marriage;
- In the *future*, status and membership would be provided to individuals with at least "one-quarter" descent (e.g. grandchildren) from individuals registered as Indians;
- Indian women who, in the *past*, lost status through the Act's

  children, would be automatically eligible for regaining both status and membership.

DIAND estimated that approximately 30,000 "Non-Status" women and 40,000 children would be eligible for status and membership under Bill C-47. However, the quarter-blood descendants of "12(1)(b) women," would be eligible for neither status nor membership. Also, bands would not be able to control membership; both reinstated women and their children would be automatically transferred to band lists after a two-year waiting period.[59]

When asked why bands were not provided with control over membership, Munro explained: "it was decided that if we're going to conform with the United Nations stipulations that we agreed to, as well as our own charter, we would have to ensure not only that those re-instated women got on the general list, we would have to ensure they got on the band list as well."[60]

On June 26, 1984, three days before summer recess, SCIAND began its review of Bill C-47. During his brief appearance, Munro asserted that, in view of the Lovelace ruling, denying reinstatement to band membership would make a "mere mockery" of the government's objective of doing away with this discrimination" against Indian women. He defended the government's position on restricting reinstatement to rst-generation children by arguing that the second-generation individuals were too "remote from the culture of the Indian community." As well, if "you do include grandchildren, and do it on the same basis that we are recommending to the people who lost their status plus their children ... then you are running into a horrendous cost." Furthermore, stated one of Munro'

> The question of reinstatement, the question of dealing with unfairness that may have existed in the past, has been seen not as a matter that the government must deal with because of the Charter but as a matter for policy which the government should deal with as a matter of fairness.[61]

As a re ection of their Edmonton Consensus, AFN and NWAC made a joint presentation that demanded the reinstatement of "all generations who lost status as a result of discrimination" and denounced the bill's encroachment "on the fundamental Aboriginal right of each First Nation to its own citizenship." Both groups recommended that people of Indian ancestry affected by past discrimination must be entered unto "general band lists" to be administered by DIAND and that bands must control the "active band lists."[62]

When asked by a SCIAND committee member to explain the difference between "general band lists" and "active band lists," AFN National Chief David Abenakew summarized it as follows:

> [The Penner Report] recommended First Nations control over reinstatement to a general list. The AFN proposes to go further than that—and the Native Women agreed with us, on May 17, 1984. They propose the removal of all discrimination, including Section 12(1)(b), the reinstatement in the general list of all generations who lost status or were never registered, the recognition of First Nations' control of and jurisdiction over citizenship. Bands will then determine who gets on active band lists. Bands only will determine the residency of non-Indians and non-members.[63]

On June 27, 1984, Munro tabled Bill C-52, the government's Indian self-government legislation. Yet, Bill C-52 never made it past the rst reading in the House of Commons.[64]

After some minor amendments, Bill C-47 received third reading in the House of Commons on June 29, 1984, the last sitting day of the thirty-second Parliament. MPs expressed reservations towards Bill C-47, due in part to the short three-day period allotted to SCIAND to review the bill. They were also loath to block it, however, feeling that to do so would amount to denying Indian women an "historic occasion" to achieve equality.[65]

After its third reading, the bill required unanimous consent for it to be passed in the Senate. However, two senators denied unanimous consent and Parliament

adjourned for the summer and Bill C-47 died on the Senate Order Paper when an election was held that September.[66]

After the years of controversy over Aboriginal women's rights and with the imminent deadline of the Charter's equality provision, it may seem surprising that the government waited until the last few days of the parliamentary session to introduce Bill C-47. But it appears that the government was still reluctant to amend the *Indian Act* "over the heads" of Indian leaders. Although Canadian no longer expected to achieve a consensus within the Aboriginal community, the angry reaction towards the Liberal amendment proposals was to make Trudeau temporarily retract them in May 1984.

The Edmonton Consensus of May 1984 was an historic occasion in that it was the time Aboriginal women and Indian leaders had formally agreed on the highly contentious issue of reinstating women affected by past discrimination. The government, however, rejected the two main tenants of the Consensus: reinstatement of all generations affected by past discrimination; and adding these individuals to a general band list. Government believed that the primary objective of Indian policy was to Canada's obligations under the Charter and the UN covenants. They viewed reinstatement beyond the children unnecessary to these obligations; moreover, Munro argued that it was too costly. The general band list was rejected because believed that denying reinstated women full membership rights would with UN covenants.

Full reinstatement to status and membership rights of 12(1)(b) women and their descendants was an unyielding cornerstone of the 1984 policy that led to Bill C-47. Nevertheless, the Liberals failed to pass Bill C-47 into law. The bill neither Aboriginal women's groups nor Indian associations. As the clock ticked towards the April 1985 deadline for bringing its legislation into line with the Charter's equality provision, took note of Aboriginal criticisms of Bill C-47 and began re-evaluating their policy options. The federal election in the fall of 1984 brought to a new government that was willing to make one more effort to achieve a consensus within the Aboriginal community.

Bill C-31: Canada Adopts a New *Indian Act* Policy, 1985

During the 1984 election campaign, Conservative Leader Brian Mulroney promised that the Tories would deal with the problem of discrimination against Indian women on "an emergency basis." When the Conservatives took in September 1984, they had only six months to act on this issue. Once the Charter's equality provisions came into effect in April 1985, believed that the *Indian Act*'s membership provisions would likely be struck down by the courts. Finding a consensus among Aboriginal groups, especially towards the reinstatement issue, was still the greatest obstacle to amending the *Indian Act*. Nevertheless, David Crombie, the new Minister of Indian Affairs, soon gained popularity within the

Indian community and was optimistic that by consulting widely with Aboriginal groups, a workable solution could be found.[67]

Crombie rejected Bill C-47 as a solution to the "12(1)(b) issue." Bill C-47, he argued, in the face of the Penner Report and the principles of self-government, which Crombie fully endorsed, because it did not respect the "integrity of Indian communities to determine their own membership." Crombie set out to develop an amendment package that struck a balance between the rights of Aboriginal women to equality and of Indian bands to self-government, a dichotomy often characterized as individual versus collective rights. In a CBC interview broadcast in October 1984, Crombie outlined the three principles that would form the basis of his government's new amendment proposals:

> One, clearly, that the discrimination must be gotten rid of immediately. Secondly, that the concept and the idea of reinstatement is something that we must consider and accept. Thirdly, that in doing so we must recognize and af rm the integrity of Indian communities to be able to determine their own membership.[68]

Over the next few months, Crombie later contended, he consulted with over 300 "chiefs and councils, [and] many other groups—Indian, Status Indian, Non-Status Indian communities" across the country for suggestions on how to amend the *Indian Act* to end discrimination against Aboriginal women.[69]

On February 28, 1985, Crombie tabled Bill C-31, DIAND's new legislation to amend the *Indian Act*. The main points of Bill C-31 were:

- Removing all discriminatory provisions.
- Preventing anyone from gaining or losing status through marriage.
- Restoring status and membership rights to people who had lost them through past discrimination.
-
  those who had lost them through past discrimination.
- Providing band control over membership for the future.
- Respecting rights acquired under the current *Indian Act*. In other words, neither non-Indian women who acquired legal status through marriage nor their children would lose any of their rights.[70]

- Section 6(1) assigned status to all those who were currently Registered Indians and those who had lost status under the discriminatory sections of the *Indian Act* (e.g. 12(1)(b)). Individuals registered under section 6(1) could transmit status to their children regardless of whether they had married an Indian or non-Indian.
- Section 6(2) assigned status to all those with only one Indian parent registered under section 6(1) (e.g. children of 12(1)(b) women). Individuals registered under section 6(2) could only transmit status to their children if they married an Indian registered under either section 6(1)

Table 1.1: Registration Scheme Under Bill C-31

Parent 1		Parent 2		Child
6 (1)	+	6(1) or 6(2)	=	6(1)
6 (1)	+	non-Indian	=	6(2)
6 (2)	+	6(1) or 6(2)	=	6(1)
6 (2)	+	non-Indian	=	non-Indian

or 6(2). In other words, children with one parent registered under section 6(2) and one non-Indian parent would *not* be entitled to legal status.

Section 6(2), then, established a "second-generation cut-off" rule for acquiring Indian status. Therefore, the grandchildren of 12(1)(b) women would not be entitled to Indian status.[71] **Table 1.1** further illustrates the transmission of Indian status under Bill C-31.

Bill C-31 formally separated legal status and band membership for the time. The federal government would continue to control legal status; however, bands would have the right to determine their own membership for the future, in accordance to their own rules, if they chose to do so. Band control of membership was subject to two principles: 1) band rules must be approved by a majority of band electors, and 2) band rules must protect acquired rights of existing band members and those eligible to have their membership restored—namely Indian women who lost status under section 12(1)(b). Unlike Bill C-47, Bill C-31 did *not* provide automatic band-membership rights to the children of reinstated women. However, these individuals would be automatically provided with band membership if, following a two-year transitional period which began once Bill C-31 came into force, a band opted not to assume control of its membership.[72]

DIAND estimated that the amendments would apply to approximately 22,000 individuals affected by past discrimination and approximately 46,000 descendants of these people. They also estimated that the Bill C-31 amendments would cost between $295 million and $420 million over a year period.[73]

During a press conference on the day Bill C-31 was tabled, Crombie maintained that the basic principles of his bill were the elimination of discrimination, restoration, and band control of membership. Overall, Crombie was with the new bill. "I think it draws a balance, an acceptable balance between individual and collective rights and I think it passes the test of fairness."[74]

After Bill C-31 was read for a second time in the House of Commons, it was referred to SCIAND for detailed review. Unlike with Bill C-47, Crombie ensured that the Standing Committee was given ample time to hear from all women's groups and Indian associations and bands who wanted to present their views on Bill C-31. When Crombie appeared before the Committee, he cautioned that

legislation rarely redresses "past wrongs" and that attempting to remove all of these could create "new injustices and new problems." Crombie also expected that some parliamentarians and Aboriginal groups would raise concerns that the children of reinstated women were not being given automatic membership rights, but he argued that to do so would make a "mockery out of band control of membership."[75]

Over the next several months, Bill C-31 received close scrutiny in both SCIAND and the Standing Senate Committee on Legal and Constitutional Affairs (SSLCA), where Aboriginal bands and organizations from across Canada presented their views on the bill. It soon became apparent that Bill C-31 was in for a rough ride—very few of these groups supported Crombie's amendments.

Generally, Aboriginal women's groups were disappointed with Bill C-31 because it did not, in their view, put them on an equal footing with Indian men. IRIW, for example, feared that band control of membership will "shift the discrimination down to the reserve level" and demanded that children of 12(1)(b) women be registered under section 6(1) and that the children and grandchildren of these women be given automatic membership rights. The Women of Tobique Reserve contended that Crombie's proposed amendments, at best, "merely transpose the effects of discrimination to another generation" because they do not allow the children of reinstated women born before the bill was passed to enjoy the same rights as the children of Indian men and non-Indian women born during the same period.[76]

Marilyn Kane of the NWAC rejected Bill C-31's legal distinction between status and membership arguing that it created more divisions within the Indian community. Committee members were reminded that the NWAC, "in concert" with AFN, had proposed the previous year that all people of Aboriginal ancestry be added to a general band list "with a connection to the appropriate band." When asked by Keith Penner to explain the meaning of the general band list, Kane replied that a person on a general band list "would also have the right to reside in the community, would have the right to own property, to request loans to build a house, to die there."[77]

Kane was also asked about her views on self-government. Ultimately, she stated, recognition of First Nations government in the Constitution is "what Aboriginal groups are after." But because of the problems created by the *Indian Act*, the federal government's responsibility was to restore status and membership rights to those affected by past discrimination under the Act. "Once that happens, we will be able to re-establish ourselves as our government. We are not talking about the perpetuation of the *Indian Act* system." Other Aboriginal women's groups were even more apprehensive towards self-government. While they supported it in the long term, they believed that the government's primary goal should be full restoration of status and membership rights to victims of past discrimination, and their descendants.[78]

Indian associations were also critical of Bill C-31; in fact, some of these groups completely rejected it. The most common criticism was that the Bill did not provide bands with total control over membership. Nevertheless, the AFN took a moderate view of the Bill. Regional Vice Chief Wally McKay, for example, stated that Crombie's "legislation is acceptable to the First Nations as a transitional step, but not as any substitute for constitutional recognition of an inherent right of the First Nations." Like the NWAC, the AFN felt that the Bill did not conform to the principles of the Edmonton Consensus because it neither fully reinstated "all citizens" of all generations affected by past discrimination nor provided them with "a connection with the appropriate band." But "at the same time, bands must have absolute control over the exercise of active membership lists."[79]

However, many Indian associations were harsh in their criticisms of Bill C-31, not only objecting to the principle of providing reinstated women with an automatic right to membership, but also fearful of the impact that new band members could have on reserve land and resources.[80]

Some of the most negative reaction—and the most concern over the potential for large numbers of returning members—came from Alberta bands. A representative of the Sarcee Nation of Alberta, dismissing the government's premise of employing a legislative solution to the discrimination problem, angrily asserted: "I do not think we are prepared to talk about any changes in Bill C-31. We totally reject it ... So we are not prepared to compromise on any section." The Treaty Six Chief Alliance from northern Alberta warned that if the government imposed the reinstatement policy on to its communities, "we expect that violence will occur." The Indian Women of Treaties 6, 7, and 8 also warned: "it is going to be hell bursting open at the seams ... Band membership is a matter for the band to decide, and one in which only the band should rule."[81]

The priority for these groups was the constitutional recognition of First Nations government, not amending the *Indian Act*. Instead of Bill C-31, recommended the Four Nations of Hobbema, the government should introduce a constitutional amendment to recognize Indian government.[82]

SCIAND's review of Bill C-31, then, demonstrated that Crombie's bill
neither Aboriginal women's groups nor Indian associations. Yet, there was very little common ground among these organizations, especially in relation to their perspectives on reinstatement and self-government. Indian women demanded full restoration of their status as well as membership rights for themselves and their descendants, whereas most Indian associations rejected the entire reinstatement principle, denouncing it as a violation of their right to self-determination. Nonetheless, the AFN and the NWAC attempted to present a common position by arguing that those affected by past discrimination should be reinstated to a general band list with a "connection to the appropriate band." While NWAC believed that reinstated individuals should have automatic rights to live, own a house, and die on-reserve, the AFN asserted that "bands must have absolute control over the

exercise of active membership list." The NWAC and the AFN's viewpoints on the membership issue, therefore, appeared to differ on whether or not those affected by past discrimination should have automatic band membership rights.

Crombie had failed to achieve a consensus on amending the *Indian Act*. Bill C-31 was widely denounced by Aboriginal groups, but the reasons for their criticisms were varied and However, the time for consultations on how to amend the *Indian Act* was over. On April 17, 1985, section 15 of the Charter came into effect and the government pushed ahead with its legislative proposals, for the most part without the consent of Aboriginal leaders.

When Bill C-31 was read for a third time in the House of Commons on June 12, 1985, its fundamental principles remained intact; the government had accepted some minor amendments recommended by SCIAND, but no major changes were made to the bill's registration and membership provisions. Crombie again expressed his unwavering conviction that Bill C-31 was an appropriate solution to the 12(1)(b) problem. He believed that it was: "a careful balance between two just causes, that of women's rights and that of Indian self-government. ... No one gets 100 percent of what they sought, but each group gets something that is vitally important to them. There was no other fair path to take."[83]

He acknowledged, however, that Bill C-31 did not address the long-standing desire by the Indian people for self-determination. But that would be for another day. Bill C-31 passed in both the House of Commons and the Senate and was enacted into law on June 28, 1985.[84]

Conclusion

The passage of Bill C-31 in 1985 ended a policy deadlock that had existed since 1970 when Prime Minister Trudeau had promised not to change the *Indian Act* without the consent of Indian leaders. Yet when Canada passed Bill C-31, Aboriginal groups were still divided over the question of membership rights. Aboriginal women's groups felt that the government's priority should be restoring full Indian rights to 12(1)(b) women and their descendants, while Status Indian associations strongly opposed any government interference in deciding band membership. The main priority of most Indian groups was the constitutional enshrinement of Aboriginal self-government. Although Aboriginal women's groups also supported the principles of Aboriginal self-government, most Indian women believed that the process for achieving self-government should occur only after the full restoration of their status and membership rights.

After years of consultations with Aboriginal leaders, a consensus on how to amend the *Indian Act* to end discrimination against Indian women eluded federal Instead of an *Indian Act* amendment achieved through consensus among Aboriginal leaders, the main catalysts to Bill C-31 were the creation of an equality provision in the Charter of Rights and Freedoms and the 1981 United Nations ruling in favour of Sandra Lovelace. The Charter and the Lovelace case had an

enormous impact on the rationale underlying Canada's *Indian Act* policy. The main pillars of that policy were that the discriminatory provisions of the *Indian Act* must be removed, and that women affected by past discrimination must be reinstated to both Indian status and band membership. These principles can be found in both Bill C-47 and Bill C-31.

Bill C-31 passed with the support of very few Aboriginal groups. Federal felt that they had to proceed with amending the *Indian Act* for fear that the discriminatory registration provisions would be struck down by a challenge under the Charter of Rights and Freedoms. Thus, the federal government abandoned its policy of not amending the *Indian Act* without a consensus in the Aboriginal community and provided its own solution to the problem of ending discrimination against Indian women by enacting Bill C-31 "over the heads" of Aboriginal leaders. In the end, Canada's 1985 *Indian Act* amendment pleased neither Aboriginal women's groups nor Indian associations and continued much of the controversy and divisiveness that began with the Lavell-Bedard case in the early 1970s.

Endnotes

1 This article is based on a longer paper prepared for Erik Anderson of the Research and Analysis Directorate of the Department of Indian Affairs and Northern Development. The author wishes to thank Erik Anderson for his insightful comments on early drafts of the paper and for the opportunity to develop it into an article. Special thanks are also due to Aileen Baird, my diligent colleague at Public History, for her invaluable editorial suggestions on both the paper and the article.

2 Prior to the 1985 *Indian Act* amendment, the term "membership provisions" meant registration under the Indian Act as well as membership in an Indian band. Most Registered Indians were also members of an Indian band prior to Bill C-31, therefore, "membership provisions" was a generic term that referred to all the pre-1985 *Indian Act* provisions that deal with Indian status and band membership.

3 Leone Kirkwood, "20 lawyers heard as Lavell case opens before crowd: Reasonable that Indian family's status should be decided by male spouse, Supreme Court told," in *Globe and Mail*, February 23, 1973, p. 13; Sally Weaver, "First Nations Women and Government Policy, 1970–92: Discrimination and in Sandra Burt, Lorraine Code, and Lindsay Dorney, eds., *Changing Patterns* (Toronto: McClelland & Stewart Inc., 1993) pp. 97–98; Katherine Dunkley, "Indian Women and the *Indian Act*: a background for parliamentarian," (Ottawa: Library of Parliament, March 1981) pp. 2–5; Kathleen Jamieson, *Indian Women and the Law in Canada: Citizens Minus* (Ottawa: Ministry of Supplies and Services, 1978) p. 1.

4 Weaver, "Indian Women, Marriage and Legal Status," p. 14; Jamieson, *Indian Women and the Law in Canada*, p. 80; Kirkwood, "20 lawyers heard as Lavell case opens before crowd: Reasonable that Indian family's status should be decided by male spouse, Supreme Court told," in *Globe and Mail*, February 23, 1973, p. 13; "Indian rights for Indian women: Debates moves into court," in *Ottawa Citizen*, February 23, 1973, p. 35; Rudy Platiel, "In one corner, the Bill of Rights, in the other, the *Indian Act*," in *Globe and Mail*, February 22, 1973, p. W6; Lilianne Ernestrine Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right: The Native Women's Association of Canada and the Constitutional Process on Aboriginal Matters, 1982–1987* (Germany: Verlag Breitenbach Publishers, 1991), p. 80.

5 Bédard v. Isaac et al. [1972] 2 O.R. 391–397 (OSC); "Two women lose appeal: *Indian Act* biased but valid, court says," in *Globe and Mail*, August 20, 1973, p. 11; Weaver, "First Nations Women and Government Policy, 1970–92, pp. 97–98; Weaver, "Indian Women, Marriage and Legal Status," revised paper for Professor K. Ishwaran, ed., *Marriage and Divorce in Canada* (Toronto: McGraw-Hill Ryerson, 1978) p. 16; Weaver, "Proposed Changes in the Legal Status of Canadian Indian Women: The Collision of Two Social Movements" (Department of Anthropology, University of Waterloo, 1973) pp. 13–14; Jamieson, *Indian Women and the Law in Canada*, p. 82.

6 Weaver, "Indian Women, Marriage and Legal Status," p. 19; "'Our reserves belong to us', Cardinal says: Indian leader predicts violence if women push too far," in *Globe and Mail*, February 22, 1973, p. W7; Guy Demarine, "'Male chauvinism': Treaty Indians don't want whites on reserves," in *Ottawa Citizen*, February 22, 1973, p. 41; Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, pp. 80–82.

7 Harold Cardinal, *Rebirth of Canada's Indians* (Edmonton: Hurtig, 1977) pp. 109–110.

8 "Ottawa plans to abolish treaties, move out of Indian affairs in 5 years," in *Globe and Mail*, June 26, 1969, pp. 1–2; "Indian leaders surprised by move," in *Globe and Mail*, June 26, 1969, p. 3; Canadian Press, "Indian press Ottawa for policy change," in *Globe and Mail*, June 27, 1969, p. 45; J.R. Miller, *Skyscrapers Hide in the Heavens: a History of Indian-White Relations in Canada* (Toronto: University of Ontario Press, 1991) p. 224; Weaver, "Proposed Changes in the Legal Status of Canadian Indian Women," p. 9; Cardinal, *Unjust Society* (Vancouver: Douglas & McIntyre, 1999) pp. 90–99, 111–119; Weaver, "Indian Women, Marriage and Legal Status," p. 11.

9 Miller, *Skyscrapers Hide in the Heavens*, p. 224; Weaver, "Proposed Changes in the Legal Status of Canadian Indian Women," p. 9; Cardinal, *Unjust Society*, pp. 90–99, 111–119; Weaver, "Indian Women, Marriage and Legal Status," p. 11; Presentation by the NWAC on Bill C-31, Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 28, 1985, no. 28, pp. 69–70.

10 Cardinal, *Unjust Society*, pp. 107–119.

11 Rudy Platiel, "'Won't force solution,' Trudeau tells Indians," in *Globe and Mail*, June 5, 1970, p. 1; Cardinal, *Rebirth of Canada's Indian*, p. 108; Miller, *Skyscrapers Hide in the Heavens*, pp. 230–232; Roger Gibbons, "Historical Overview and Background," in J. Rick Ponting, ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland and Stewart, 1986) pp. 32–34; Jamieson, *Indian Women and the Law in Canada*, p. 81.

12 Cardinal, *Rebirth of Canada's Indians*, pp. 108–113; Jamieson, *Indian Women and the Law in Canada*, p. 84; Weaver, "Proposed Changes in the Legal Status of Canadian Indian Women," p. 14; Cardinal, *Unjust Society*, pp. 90–99; Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, pp. 82–83; "'Our reserves belong to us', Cardinal says: Indian leader predicts violence if women push too far," in *Globe and Mail*, February 22, 1973, p. W7; Guy Demarine, "'Male chauvinism': Treaty Indians don't want whites on reserves," in *Ottawa Citizen*, February 22, 1973, p. 41.

13 Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right,* pp. 85–88; Weaver, "Indian Women, Marriage and Legal Status," p. 19; Weaver, "First Nations Women and Government Policy, 1970–92," p. 97–100.

14 Cardinal, *Rebirth of Canada's Indians*, pp. 108–113; Kirkwood, "20 lawyers heard as Lavell case opens before crowd: Reasonable that Indian family's status should be decided by male spouse, Supreme Court told," in *Globe and Mail*, February 23, 1973, p. 13; Jamieson, *Indian Women and the Law in Canada*, pp. 79–88; "Indian rights for Indian women: Debates moves into court," *Ottawa Citizen*, February 23, 1973, p. 35; Weaver, "Proposed Changes in the Legal Status of Canadian Indian Women," pp. 13–14.

15 Dunkley, "Indian Women and the *Indian Act*" pp. 2–5; "Two women lose appeal: Indian Act biased but valid, court says," in *Globe and Mail*, August 20, 1973, p. 11; Jamieson, Indian Women and the Law in Canada, p. 85.

16 Kathleen Rex, "Women plan day of mourning for Canada's Bill of Rights," in *Globe and Mail*, September 10, 1973, p. 10; Joe Rosenthal, "Indian Rights," Globe and Mail, September 12, 1973, p. 7; "A Sterile view of rights," editorial in *Globe and Mail*, September 6, 1973, p. 6; Weaver, "First Nations Women and Government Policy, 1970–92," p. 100.

17 DIAND, Main Records File 1/1-8-3, vol. 31, DIAND brief dated 1975 entitled "*Indian Act* Revisions"; Cardinal, *Rebirth of Canada's Indians*, pp. 114–115; Weaver, "First Nations Women and Government Policy, 1970–92," p. 101; Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, p. 91; Jamieson, *Indian Women and the Law in Canada*, pp. 2–3, 89–92; Kathleen Jamieson, "Sex Discrimination in the Indian Act," in J. Rick Ponting, ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland and Stewart Limited, 1986) p. 127.

18 LAC, RG 10, Acc. 1995-96/309, Box 12, File E1165-C6, vol. 1, DIAND brief prepared ca. 1977 entitled "Status of Indian Women"; LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 2, DIAND paper prepared in November 1977; DIAND, Main Records File E4200-8, vol. 1, encl., report prepared ca. November 1979 by NIBentitled "Indian Government, the Land, the People, and the Resources, Report of the Indian Government Program"; Jamieson, "Sex Discrimination in the *Indian Act*," p. 127; *Jamieson, Indian Women and the Law in Canada*, pp. 89–92.

19 LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 2, DIAND paper prepared in November 1977; Canada, House of Commons, Minutes of the Sub-Committee on Indian Women and the *Indian Act*, September 9, 1982, no. 2, pp. 5–6; Canada, Debates of the House of Commons, June 2, 1977, pp. 6200–6201, 6221; Jamieson, "Sex Discrimination in the *Indian Act*," p. 127; Jamieson, *Indian Women and the Law in Canada*, pp. 89–92; Cardinal, *Rebirth of Canada's Indians*, pp. 114–115; Weaver, "First Nations Women and Government Policy, 1970–92," pp. 101–103. When the Human Rights Act was enacted into law in 1977, the provision exempting the *Indian Act* from the effects of the Act was clause 63(2), which later became section 67. See Canadian Human Rights Commission, *A Matter of Rights: A Special Report of the Canadian Human Rights Commission on the Repeal of Section 67 of the Canadian Human Rights Act* (Ottawa: Minister of Public Works and Government Services, 2005) pp. 5–7.

20 DIAND, Main Records File D1021-J1-1-2MBSHP, vol. 12, NWAC paper

dated September 6, 1980 entitled "Native Women and the Constitution"; LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 4, government paper entitled "The Federal Government and the Revision of the *Indian Act* as it Relates to Human Rights" prepared ca. 1978; LAC, RG 10, Acc. 1995-96/309, Box 12, File E1165-C6, vol. 1, DIAND brief prepared ca. 1977 entitled "Status of Indian Women"; Weaver, "First Nations Women and Government Policy, 1970–92," pp. 103–104; Jamieson, *Indian Women and the Law in Canada*, pp. 89–92; Canadian Human Rights Commission, *A Matter of Rights*, pp. 5–7.

21 LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 1, research proposal by National Committee on Indian Rights for Indian Women dated May 1977; LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 3, policy paper by IRIW dated April 6, 1978 entitled "Some Proposed Changes to the *Indian Act*"; LAC, RG 22, Acc. 1998-01695-1, Box 6,

22 Jeffrey Simpson, "Fairweather political touch is hand in Human Rights posting," in *Globe and Mail*, December 29, 1977, p. 9; Canadian Press, "Fairweather brings respect for convictions to new post as human rights commissioner," in *Globe and Mail*, September 12, 1977, p. 2; LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 2, DIAND paper prepared in November 1977.

23 LAC, RG 10, Acc. 1997-98/374, Box 3, File E1021-J1-1, vol. 3, DIAND speaking notes prepared in ca. 1978; LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 2, Draft discussion paper dated February 20, 1978; LAC, RG 22, Acc. 1998-01695-1, Box 10, File D1021-J1-1-2-Membership, vol. 4, DIAND memorandum dated September 22, 1978 from Susan Annis, Policy Branch, Policy, Research and Evaluation Group, to Caroll Hurd; DIAND, Main Records File D1021-J1-1-2, vol. 2, draft DIAND discussion paper prepared in ca. April 1978; DIAND, Main Records File D1021-J1-1-2, vol. 8, DIAND brief dated October 3, 1979; LAC, RG 10, Acc. 1995-96/309, Box 12, File E1165-C6, vol. 1, DIAND brief prepared ca. 1977 entitled "Status of Indian Women"; DIAND, "NIB/Committee Separates" in *Indian News*, ca. April 1978; Jamieson, *Indian Women and the Law in Canada*, pp. 89–92; Weaver, "First Nations Women and Government Policy, 1970–92," pp. 101–103.

24 LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 3, policy paper by IRIW dated April 6, 1978 entitled "Some Proposed Changes to the *Indian Act*."

25 LAC, RG 22, Acc. 1998-01695-1, Box 10, File D1021-J1-1-2-Membership, vol. 2, transcript of June 1978 entitled "Minister's [Indian Affairs] Press Conference—Indian Rights for Indian Women"; LAC, RG 22, Acc. 1998-01695-1, Box 10, File D1021, DIAND letter dated June 29, 1978 from Theresa Nahanee, Chief, Communications, Public Communications and Parliamentary Relations, Indian and Inuit Affairs, to Phil Gibson, Huguette Labelle [Director General, Policy, Research and Evaluation].

26 LAC, RG 22, Acc. 1995-96/308, Box 15, File D1165-C1-12, vol. 2, DIAND paper dated June 13, 1978 entitled "Draft Discussion Paper on the Revision of the *Indian Act*"; DIAND, "Discussion paper for the *Indian Act* Revision" in *Indian News*, November 1978, p. 1; LAC, RG 22, Acc. 1995-96/308, Box 15, File D1165-C1-12, vol. 2, DIAND paper dated June 13, 1978 entitled "Draft Discussion Paper on the Revision of the *Indian Act*"; LAC, RG 10, Acc. 1997-98/374, Box 3, File E1021-J1-1, vol. 3, DIAND speaking notes prepared in ca. 1978; Weaver, "Self-Government for Indians," pp. 4–5.

27 LAC, RG 22, Acc. 1995-96/308, Box 15, File D1165-C1-12, vol. 2, DIAND paper dated June 13, 1978 entitled "Draft Discussion Paper on the Revision of the *Indian Act*"; DIAND, Main Records File D1021-J1-1, vol. 1, DIAND background Paper on discrimination in the *Indian Act* prepared in August 1978; LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 2, draft DIAND discussion paper dated February 20, 1978.

28 LAC, RG 22, Acc. 1995-96/308, Box 15, File D1165-C1-12, vol. 2, DIAND paper dated June 13, 1978 entitled "Draft Discussion Paper on the Revision of the *Indian Act*"; DIAND, "Discussion paper for the *Indian Act* Revision," in *Indian News*, November 1978, pp. 7–9.

29 LAC, RG 22, Acc. 1998-01695-1, Box 6, File D1021-J1-1-2, vol. 5, paper by IRIW dated January 18, 1979 entitled "*Indian Act* Revision, In Response to the Minister's Discussion Paper: Membership".

30 DIAND, Main Records Of ce, File E4200-8, vol. 1, encl., NIB report prepared ca. November 1979 entitled "Indian Government, the Land, the People, and the Resources, Report of the Indian Government Program"; DIAND, Main Records File A1025-5/F2, vol. 1, presentation

dated April 28, 1980 by Noel Starblanket, President, NIB, to the First Nations Constitutional Conference; DIAND, Main Records File D4117-2-C3, vol. 4, NIB report prepared in ca. 1980 entitled "Position of the National Indian Brotherhood concerning the Revision of the Canadian Constitution"; Weaver, "Self-Government for Indians, 1980–1990," pp. 5–8.

31 DIAND, Main Records File E4200-8, vol. 1, encl., NIB report prepared ca. November 1979 entitled "Indian Government, the Land, the People, and the Resources, Report of the Indian Government Program."

32 Newspaper article entitled "Indians given deadline for act-change proposals," in *Victoria Times*, July 20, 1979; newspaper article dated July 20, 1979 entitled "Clark will hear protest, Epp tells Indian women," in *Globe and Mail*; newspaper article entitled "Treaty Women's status reviewed," in *Indian Record*, Fall 1980, p. 20; newspaper article entitled "*Indian Act* 'sexism' cut promised" in *Victoria Times*, July 18, 1979, p. 32; newspaper article entitled "Indians meet PM about 'sexist' law; Government 'sympathetic' to their cause," in *The Province*, July 20, 1979; Weaver, "First Nations Women and Government Policy, 1970–92," p. 103.

33 DIAND, Main Records File E4200-8, vol. 1, encl., NIB report prepared ca. November 1979 entitled "Indian Government, the Land, the People, and the Resources, Report of the Indian Government Program."

34 Newspaper article entitled "Indian women's status after marrying whites becomes issue at UN," in *Globe and Mail*, June 14, 1980, p. 13; Weaver, "First Nations Women and Government Policy," pp. 103–104.

35 LAC, RG 22, Acc. 1998-01695-1, Box 10, File D1021-J1-1-2-Lovelace, vol. 2, submission prepared by Canada in ca. April 1980 entitled "Response of the Government of Canada to the Decision of the Human Rights Committee Contained in Document CCPR/C/DR(VII)R.6/24 Dated 19 September 1979 in the Matter Concerning Sandra Lovelace"; and M.J.B. Jones, "Sexual Equality, the Constitution and Indian Status: a comment on S. 12(1)(b) of the *Indian Act*," [S. l. : s. n., 1983?] pp. 56–57.

36 DIAND, Main Records File E6000-1, vol. 1, excerpt from the Debates of the House of Commons dated July 7, 1980.

37 Miller, *Skyscrapers Hide in the Heavens*, pp. 239–242; Weaver, "First Nations Women and Government Policy," p. 107; Report of the Royal Commission on Aboriginal Peoples, vol. 4: Perspective and Realities (Ottawa: Minister of Supply and Services Canada, 1996) p. 33; Kroswenbrink-Gelissen, *Sexual Equality as an Aboriginal Right*, p. 111.

38 LAC, RG 22, Acc. 1998-01695-1, Box 7, File D1021-J1-1-2, vol. 9, draft DIAND discussion paper dated September 15, 1981; DIAND, Main Records File D1021-J1-1-2, vol. 17, draft DIAND discussion paper prepared in ca. January 1982; LAC, RG 22, Acc. 1995-96/308, Box 37, File D1

39 LAC, RG 22, Acc. 1995-96/308, Box 31, File D1165-S1-4, vol. 22, DIAND paper dated August 26, 1983 entitled "Membership/Discrimination Against Indian Women." See also DIAND, Main Records File D1021-J1-1-2, vol. 17, draft DIAND discussion paper prepared in ca. January 1982 and LAC, RG 22, Acc. 1998-01695-1, Box 7, File D1021-J1-1-2,

40 LAC, RG 22, Acc. 1995-96/308, Box 23, File D1165-E1, vol. 5, Terms of Reference to Standing Committee on Indian Affairs and Northern Development prepared in ca. August 1982; DIAND Main Records Of ce, File E1021-J1-2, vol. 1, DIAND communiqué dated August 4, 1982 entitled "Committee to Review Issues facing Indians"; Canada, House of Commons, Minutes of the Subcommittee on Indian Women and the *Indian Act*, September 1 and September 8, 1982, no. 1, pp. 19–25; and LAC, RG 22, Acc. 1998-01695-1, Box 8, File D1021-J1-1-2, vol. 20, DIAND brief dated December 8, 1983 entitled "Removal of Sex Discrimination from the *Indian Act*."

41 DIAND, Main Records Office, File D1021-J1-1-2MBSHP, vol. 14, DIAND discussion paper published in August 1982 entitled "The Elimination of Sex Discrimination from The *Indian Act*."

42 DIAND, Main Records File D1021-J1-1-2MBSHP, vol. 14, DIAND discussion paper published in August 1982 entitled "The Elimination of Sex Discrimination from The *Indian Act*."

43 LAC, RG 22, Acc. 1995-96/308, Box 23, File D1165-E1, vol. 5, Terms of Reference to Standing

Committee on Indian Affairs and Northern Development prepared in ca. August 1982; LAC, RG 14, Box 166, File 6050-321-I3, Wallet 1, Report of the Subcommittee on Indian Women and the *Indian Act*, prepared September 1982; LAC, RG 22, Acc. 1995-96/308, Box 31, File D1165-S1-3, vol. 2, memorandum to dated September 1, 1982 by Ann Beauregard, [Corporate Policy], LAC, RG 22, Acc. 1995-96/308, Box 31, File D1165-S1-3, vol. 2, DIAND memo dated September 1, 1982; DIAND memorandum to entitled "Standing Committee Meeting August 31, 1982"; LAC, RG 22, Acc. 1998-01695-1, Box 7, File D1021-J1-1-2, vol. 19, paper prepared by the Indian Consulting Group in January 1983 entitled "The Elimination of Sex Discrimination From the *Indian Act* and Related Issues"; Weaver, "First Nations Women and Government Policy," pp. 106–107.

44 Canada, House of Commons, Minutes of the Subcommittee on Indian Women and the *Indian Act*, September 1 and September 8, 1982, no. 1, pp. 19–32.

45 LAC, RG 14, Box 166, File 6050-321-I3, Wallet 1, Report of the Subcommittee on Indian Women and the *Indian Act*, prepared September 1982.

46 Canada, House of Commons, Minutes of the Subcommittee on Indian Women and the *Indian Act*, September 9, 1982, no. 2, pp. 39–76.

47 Canada, House of Commons, Minutes of the Subcommittee on Indian Women and the *Indian Act*, September 10, 1982, no. 3, pp. 6–59; Canada, House of Commons, Minutes of the Subcommittee on Indian Women and the *Indian Act*, September 13, 1982, no. 4, pp. 47–78.

48 LAC, RG 10, Acc. 1995-96/309, Box 7, File E1021-J1-8-2101, vol. 1, Indian Legislation Revision and Formulation Activities Report—January 1–September 30, 1982 prepared by the Assembly of First Nations in ca. October 1982; LAC, RG 22, Acc. 1995-96/308, Box 31, File D1165-S1-3, vol. 6, NWAC press statement dated September 1982; LAC, RG 14, Box 166, File 6050-321-I3, Wallet 1, Report of the Subcommittee on Indian Women and the *Indian Act*, prepared September 1982.

49 Canada, House of Commons, "Report of the Special Committee on Indian Self-Government," in Minutes of Proceedings of the Special Committee on Indian Self-Government, October 12 and 20, 1983, no. 40, pp. 54–56.

50 Canada, House of Commons, "Report of the Special Committee on Indian Self-Government" in Minutes of Proceedings of the Special Committee on Indian Self-Government, October 12 and 20, 1983, no. 40, pp. 54–56; PCO, File N-2-5(a), letter dated November 25, 1983 from Peter [Mark] for David Ahenakew, National Chief, AFN to Prime Minister Trudeau; PCO, File N-2-5 (a), letter dated November 17, 1983 from David Ahenakew, National Chief, AFN to Members of Parliament; newspaper article entitled "MP fears disaster if rights rejected," in *Winnipeg Free Press*, November 5, 1983, p. 10; DIAND, Main Records File A1025-1-1, vol. 4, John Munro, Minister, DIAND, Response of the Government to the Report of the Special Committee on Indian Self-Government, March 5, 1984; Weaver, "Self-Government for Indians, 1980–1990," pp. 12–13.

51 LAC, RG 22, Acc. 1998-01695-1, Box 8, File D1021-J1-1-2, vol. 20, DIAND brief dated December 8, 1983 entitled "Removal of Sex Discrimination from the *Indian Act*"; Weaver, "First Nations Women and Government Policy 1970–1992," p. 111.

52 DIAND, Main Records File A1025-1-1, vol. 4, John Munro, Minister of Indian Affairs and Northern Development, Response of the Government to the Report of the Special Committee on Indian Self-Government, March 5, 1984; LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-8, vol. 1, media transcript of CBC program "Our Native Land" dated March 17, 1984.

53 DIAND, Main Records File E1021-J1-2-1, vol. 14, DIAND press release dated March 8, 1984, entitled "Government Announced Plans to Eliminate Discrimination Against Indian Women."

54 LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-8, vol. 1, media transcript of CBC program "Our Native Land" dated March 17, 1984; newspaper article entitled "Women follow men in traditional Indian society say chiefs," in *AMMSA*, May 25, 1984, p. 2; newspaper article entitled "Alberta chiefs walk out: Partial reinstatement accepted," in *AMMSA*, May 25, 1984, p. 3.

55 Newspaper article entitled "Judy riles the reserves,", *Alberta Report*, May 28, 1984, pp. 8–10; newspaper article entitled "Indian women's bill could be introduced early: Erola," in *The Ottawa*

Citizen, May 25, 1984, p. 5; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 7, 1985, no. 12, p. 13; newspaper article entitled "Munro offers compromise over *Indian Act* changes," in *Globe and Mail*, May 19, 1984, p. 3.

56 LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-8, vol. 1, media transcript, CBC, May 17, 1984; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, no. 12, March 7, 1985; newspaper article entitled "Munro offers compromise over *Indian Act* changes," in *Globe and Mail*, May 19, 1984, p. 3; newspaper article entitled "Alberta chiefs walk out: Partial reinstatement accepted," in *AMMSA*, May 25, 1984, p. 3.

57 Newspaper article entitled "Munro offers compromise over *Indian Act* changes," in *Globe and Mail*, May 19, 1984, p. 3; newspaper article entitled "Alberta chiefs walk out: Partial reinstatement accepted," in *AMMSA*, May 25, 1984, p. 3.

58 LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-8, vol. 1, media transcript, CBC, May 17, 1984; newspaper article entitled "Alberta chiefs walk out: Partial reinstatement accepted," in *AMMSA*, May 25, 1984, p. 3; newspaper article by Margaret Mironowicz entitled "The Indian women' *Globe and Mail*, June 5, 1984, p. 7.

59 DIAND, Main Records File E1021-J1-1, vol. 24, DIAND brief dated ca. June 1984; LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-9, vol. 1, DIAND brief sheet prepared in June 1984 entitled "Bill C-47"; Canada, Bill C-47, An Act to Amend the *Indian Act*, First Reading, June 18, 1984; DIAND, Main Records File E1021-J1-1, vol. 24, "Speaking Notes for ... John C. Munro ... on Amendments to Remove Sex Discrimination from the *Indian Act*," dated June 18, 1984; DIAND, Main Records File D1021-J1-1-8, vol. 1, transcript of press conference with John Munro, Minister of DIAND, dated June 18, 1984.

60 LAC, RG 10, Acc. 1997-98/374, Box 11, File E1021-J1-2-2, vol. 22, media transcript of CBC interview, dated June 23, 1984.

61 Newspaper article entitled "Parting thought," in *The Vancouver Sun*, June 26, 1984, p. A4; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, June 26, 1984, no. 17, pp. 15–16.

62 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, June 26, 1984, no.17, pp. 69, 70–71.

63 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, June 27, 1984, no. 18, pp. 5–7.

64 DIAND, Main Records File E1021-J1-8, vol. 5, DIAND communiqué dated June 27, 1984, entitled "Minister introduces Indian Self-Government Legislation"; LAC, RG 10, Acc. 1999-01284-4, Box 4, File N1021-J2, vol. 2, draft letter prepared ca. July 1984 from Douglas C. Frith, Minister, DIAND to Sheila Keet, Director, Women's Bureau, Department of Justice and Public Services, Government of the Northwest Territories.

65 Canada, Debates of the House of Commons, June 29, 1984, 5333-5334, 5336-5337; Canada, Debates of the Senate, June 29, 1984, p. 903; Canada, Debates of the House of Commons, June 29, 1984, pp. 5327–5341; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, June 28, 1984, no. 19, pp. 87–88; Bill C-47, *An Act to amend the Indian Act*, June 18, 1984; Bill C-47, *An Act to amend the Indian Act*, June 29, 1984.

66 Newspaper article "Anti-discrimination law discriminates—Indians," in *Whitehorse Star*, September 17, 1984; newspaper article entitled "Coffee shop showdown: How the Indians halted the feminist cavalry," in *The Alberta Report*, July 23, 1984, p. 7; Canada, Debates of the Senate, June 29, 1984, p. 903; Canada, Debates of the House of Commons, June 29, 1984, pp. 5327–5341; newspaper article entitled "PC optimistic he can improve *Indian Act,*" in *Winnipeg Free Press*, November 8, 1984, p. 58.

67 LAC, RG 22, Acc. 1998-01695-1, Box 13, File D1021-J1-1-8, vol. 1, DIAND media transcript dated December 16, 1984; newspaper article in the *Winnipeg Free Press* on March 13, 1985 entitled "Indian bands denounce bill"; PCO, File 1230-J1-3, vol. 3, letter dated January 21, 1985 from Chaviva Hosek, President of Action Committee on the Status of Women, to David Crombie, Minister of DIAND; LAC, RG 22, Acc. 1998-01695-1, Box 9, File D1021-J1-1-2, vol. 27, letter dated January 1, 1985 from Jenny Margetts, President, IRIW to Brian Mulroney, Prime Minster

of Canada; newspaper article by Susan Riley entitled "Indian woman split on how government should rule on discriminatory clause," in *The Ottawa Citizen*, December 4, 1984, p. A12; Article entitled "PC optimistic he can improve *Indian Act,*" in *Winnipeg Free Press*, November 8, 1984, p. 58; DIAND, Main Records File D1021-1-8, vol. 1, transcript of an interview with David Crombie, Minister of DIAND, on the CBC program *Morningside*, dated October 30, 1984; Weaver, "First Nations Women and Government Policy, 1970–92," p. 115.

68 DIAND, Main Records File D1021-1-8, vol. 1, transcript of an interview with David Crombie, Minister of DIAND, on the CBC program *Morningside*, dated October 30, 1984; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, no. 3, December 4, 1984, pp. 4–13.

69 DIAND, Main Records File D1021-J1-1, vol. 7, transcript of remarks by David Crombie, Minister of DIAND, during a Press Conference on *Indian Act* Amendments, dated February 28, 1985.

70 DIAND, Main Records File D1021-J1-1, vol. 7, transcript of remarks by David Crombie, Minister of DIAND, during a Press Conference on *Indian Act* Amendments, dated February 28, 1985.

71 LAC, RG 22, Acc. 1995-96/308, Box 7, File D1021-33-1-C-31, vol. 1, DIAND presentation prepared ca. February 1985; LAC, RG 10, Acc. 1999-01284-4, Box 4, File N1021-J2, vol. 2, DIAND paper prepared in ca. July 1985 entitled "Key Amendments to the *Indian Act*—A Summary"; DIAND, Main Records File D1021-J1-1-11, vol. 1 DIAND paper prepared in ca. February 1985 and entitled "Background Notes: Removal of Discrimination from the *Indian Act*."

72 LAC, RG 10, Acc. 1999-01284-4, Box 4, File N1021-J2, vol. 2, DIAND paper prepared in ca. July 1985 entitled "Key Amendments to the *Indian Act*—A Summary"; DIAND, Main Records File D1021-J1-1-11, vol. 1, DIAND paper prepared in ca. February 1985 entitled "Background Notes: Removal of Discrimination from the *Indian Act*."

73 DIAND, Main Records File D1021-J1-1, vol. 7, transcript of remarks by David Crombie, Minister of DIAND, during a Press Conference on *Indian Act* Amendments, dated February 28, 1985; DIAND, Main Records File D1021-J1-1-11, vol. 1, DIAND paper prepared in ca. February 1985 entitled "Background Notes: Removal of Discrimination from the *Indian Act*"; LAC, RG 22, Acc. 1995-96/308, Box 7, File D1021-33-1-C-31, vol. 1, DIAND presentation prepared in ca. February 1985.

74 DIAND, Main Records File D1021-J1-1, vol. 7, transcript of remarks by David Crombie, Minister of DIAND, during a Press Conference on *Indian Act* Amendments, dated February 28, 1985.

75 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 7, 1985, no. 12, pp. 6–11; newspaper article entitled "Parting thought," in *The Sun*, June 26, 1984, p. A4.

76 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 26, 1985, no. 24, pp. 11–13, 32–34, 42–43; LAC, RG 14, Accession 1996-97/193, Box 80, File 5900-331-I1, P 33, Wallet 3, submission on Bill C-31 dated March 14, 1985 prepared by the Women of the Tobique Reserve for the Standing Committee on Indian Affairs and Northern Development; Affairs and Northern Development, March 27, 1985, no. 25, pp. 7–11.

77 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, 1985, March 28, no. 28, pp. 56–70, 94–96.

78 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 28, 1985, no. 28, pp. 96–100. For example, for views of Quebec Native Women's Association and Native Okanagan Women's League, see Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, no. 24, March 26, 1985, p. 14; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 27, 1985, no. 26, p. 7.

79 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 14, 1985, no. 16, pp. 5–10.

80 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 12, 1985, no. 13, p. 35; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 18, 1985, no. 17, p. 12.

81 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 21, 1985, no. 22, p. 17; Canada, House of Commons, Minutes of the

Standing Committee on Indian Affairs and Northern Development, March 20, 1985, no. 21, pp. 8–9; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 21, 1985, no. 22, p. 35.

82 Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 21, 1985, no. 22, p. 59. For the views of other Alberta bands see Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 21, 1985, no. 22, p. 42 and; Canada, House of Commons, Minutes of the Standing Committee on Indian Affairs and Northern Development, March 28, 1985, no. 28, p. 40.

83 Canada, Debates of the House of Commons, June 12, 1985, pp. 5686–5687; DIAND Library, Press Release Binder, 1985, DIAND communiqué dated June 28, 1985.

84 Canada, Debates of the House of Commons, June 12, 1985, pp. 5686–5687; DIAND Library, Press Release Binder, 1985, DIAND communiqué dated June 28, 1985.

TAB 5

Hansraj v. Ao, [2004] A.J. No. 734

Alberta Judgments

Alberta Court of Appeal

Edmonton, Alberta

Fraser C.J.A. and McClung and Côté JJ.A.

Heard: April 14, 2004.

Judgment: filed June 28, 2004.

Docket No.: 0203-0368-AC

[2004] A.J. No. 734 | 2004 ABCA 223 | [2005] 4 W.W.R. 669 | 34 Alta. L.R. (4th) 199 | 354 A.R. 91 | 132 A.C.W.S. (3d) 639 | 2004 CarswellAlta 849

Between Anthony Hansraj and Roger Hansraj, appellants (plaintiffs), and Zefeng Ao, respondent (defendant), and Richard Medeirus and John Doe I and John Doe II, defendants (Not Parties to Appeal)

(129 paras.)

Case Summary

Civil procedure — Applications and motions — Time requirements — Notice of — Service — Service — Substituted.

Appeal by the plaintiffs, Hansraj, from the order striking out service. Hansraj claimed that the defendants, Ao, were liable for damages arising from a motor vehicle accident. Hansraj contacted Ao's insurer indicating that they were going to serve Ao. Hansraj also sent Ao's adjuster a courtesy copy of the statement of claim. Hansraj served the claim substitutionally by a Markham, Ontario newspaper, while there was a short renewal of the statement of claim. Ao brought the motion to strike service long after the service.

HELD: Appeal allowed in part.

There was no reason to interfere with the trial judge's finding of fact regarding privilege. There was no direct evidence that Ao learned of the facts about service or the order permitting it. However, Ao's adjuster knew that the claim was out for service, Ao knew that Hansraj retained counsel and were making a claim, and Ao also retained a lawyer. The notice of motion to set aside the statement of claim was filed two years after the courtesy copy of the statement of claim was sent to the adjuster, and this was too late. The respondent failed to give sufficient evidence. On a motion to set aside service, Ao should have shown both that he did not receive service and that he had no knowledge of the document. The parties did not waive, remove, or extend any time limits. The court had no equitable or discretionary power to bypass Rule 11. The process server's affidavit was insufficient to get leave to serve originating documents ex juris. The motion for ex parte service was insufficient because Hansraj failed to disclose vital facts. Further, there was insufficient evidence to establish that the substitutional service was sufficient. There was no service on the adjuster. Hansraj was not permitted to shore up the original affidavits, but instead, was permitted to move afresh for leave to serve ex juris with new evidence. The parties were not entitled to bring motions on the issues addressed here; however, they were entitled to bring new evidence on new motions since there were still outstanding issues.

Statutes, Regulations and Rules Cited:

Alberta Rules of Court, Rules 4, 11(2), 11(3)(a), 11(5), 11(9), 11(10), 23, 23(2), 27, 30(h), 31, 387(2), 548, 558, 559.

Judicature Act, R.S.A. 2000, c. J-2, ss. 10, 15.

Motor Vehicle Accident Claims Act, R.S.A. 2000, c. M-22.

Appeal From:

On appeal from the Order by Slatter J., granted April 9, 2002 and August 9, 2002. Filed on October 9, 2002. Amended by Subsequent Order granted on March 28, 2003. Filed on May 8, 2003. (Docket: 9803-18965)

Counsel

S.L. Miller, Q.C. for the Appellants

M.D. Kondrat for the Respondent

[Editor's note: A Corrigendum was released by the Court August 11, 2004. The correction has been made to the text and the Corrigendum is appended to this document.]

REASONS FOR JUDGMENT

Reasons for judgment were delivered by Côté J.A. Concurred in by Fraser C.J.A. Concurred in by McClung.

CÔTÉ J.A.

A. Introduction

8. Can or should that order be set aside on other grounds, having been given ex parte? (discussed in Part K below)
9. If the order is later set aside, does the service under it automatically or necessarily become a nullity? (discussed in Part L below)
10. Were any deficiencies in the material which had been filed to get the order permitting service, curable? (discussed in Part M below)
11. Is it now possible to serve the statement of claim afresh, e.g. by renewing it? (discussed in Part N below)

12. (a) Was the statement of claim served on the respondent by giving a copy to his insurance adjuster? (discussed in part O.1 below)

(b) Was that in time? (discussed in part O.2 below)

13. Is it too late to raise some of these issues on appeal? (discussed in Part P below)
14. What is the appropriate remedy now? (discussed in Part Q below)

D. Without-Prejudice Privilege

8 The chambers judge discussed this topic at length (pp. 268-74, paras. 10-30). He concluded that none of the correspondence relied upon was closely enough connected to settlement negotiations to be privileged. I agree with his analysis of the law. It is possible that in one or two instances I might have found enough connection to negotiation for one or two pieces of correspondence, but the standard of review of fact decisions on appeal does not dictate any interference with his fact findings.

9 This privilege is the subject of the cross-appeal, and was touched on briefly both in the factums and the oral argument. As counsel noted, much of the correspondence is not of much importance, except maybe to show that there were negotiations during a certain period.

10 In the rest of my reasons I will only mention a few pieces of correspondence, and it is clear that they did not constitute an attempt to compromise, except in a very indirect or preliminary sense. Besides, R. 11(9), (10) dictates examination of one narrow aspect of such correspondence, even if it is otherwise privileged (as I show in Part H.2 below).

11 In sum, most of this disputed correspondence has little importance and whether it was privileged is academic. The few that matter plainly are not privileged.

E. Were this Respondent's Motions Too Late?

12 This is the appellants' first ground of appeal (on the main appeal). The chambers judge seems not to discuss this exact point, though he does speak about possible prejudice to the appellants. The point does seem to have been argued in Queen's Bench, so far as one can tell.

13 The appellants cite R. 559, which sets two time limits for a motion "to set aside any process or proceedings for irregularity". Such a motion must be brought

(a) within a reasonable time, and

(b) before "the party applying has taken a fresh step after knowledge of the irregularity".

14 When the party moving learned of the defect is critical to both (a) and (b). That party would delay unreasonably if he did not move when he first learned the facts. There is no direct evidence of when this respondent learned the facts about service or the order permitting it.

15 Even though what I call branch (b) of R. 559 does not speak expressly of what the party moving should have known, I would read that into the Rule. And if I am wrong there, to move long after one should have learned of the flaw with reasonable care, is to move outside a reasonable time.

16 There is no direct evidence on the subject of the defendant's knowledge here. However, the appellants point out that the respondent's duly-accredited agent, his adjuster, was promptly told that the statement of claim was "out for service". The respondent must have known that the last address he had left in several places (including Alberta's Motor Vehicle Registry) was in Markham, Ontario, which would require an order permitting service. He also had known for some time that the appellants had a lawyer and were making a claim, and were advancing that claim to his (the respondent's) liability insurer through its adjuster. The respondent had retained an Edmonton lawyer as well. Had he kept in touch with his lawyer or adjuster, he could easily have learned that a suit had been commenced within the limitation period, its nature (as the appellants' lawyer sent a courtesy copy to the respondent's adjuster), and that the appellants were seeking to serve him with it. Had those facts left him in any serious doubt as to what was going on, a simple inquiry with the Clerk's office or the appellants' lawyer, would have cleared that up.

17 I agree with counsel for the appellants that there is no general duty on litigants or potential litigants to check the Clerk's file to see if anything is happening in a suit. But where one is put on notice that something probably is happening, one should either play safe and act as though it were, or clear up the mystery by checking some reliable source, such as the Clerk's file.

18 The great majority of statements of claim are served, not allowed to die unserved. Service is the natural and necessary next step in a suit. To assume that the appellants here had done nothing would be unreasonable.

19 The appellants also rely heavily upon Shah v. Christiansen (1992) 135 A.R. 74 (C.A.). There the statement of claim served suffered from irregularities in its expiry date or renewal. In that case, the defendants moved to set aside the service, without giving any evidence about when they learned of the irregularities. It was over five months later that those defendants in that case filed a defence. The Court of Appeal there inferred that by then they had earlier learned of the irregularities in expiry or renewal.

20 The courtesy copy of the statement of claim was sent to the adjuster in early May 1999, but the notice of motion to "set aside the statement of claim" was not filed until mid-September 2001.

21 In all the circumstances, that seems to me too late, and a violation of R. 559.

22 But that is not an end of the litigation, for much the same legal rules urged by the appellants. Rule 559 sets time limits, and R. 548 lets the court extend most time limits in the Rules. And R. 558 says that ordinarily a breach of the Rules is curable. If the facts are fully explored, it may be unjust to let the appellants simultaneously hold the respondent to the letter of the law, yet get an indulgence from all their defaults. So I must go on to the other issues.

F. Did the Respondent Give Enough Evidence to Support His Motions?

23 The chambers judge does not discuss this topic, and it may not have been argued before him.

24 The respondent did not give the evidence which he should have, in two respects. First, he gave no evidence to show when he learned of the appellants' irregularities, as I have discussed above in Part E. Second, he gave no evidence about notice to him.

25 In form, the order under appeal sets aside the order for substitutional service ex juris., and sets aside the statement of claim. But in substance, its effect is to set aside the service (by advertisement) made under that order. The parties have so treated it. Therefore, this was in effect also a motion to set aside service.

26 What is more, it is important to note that the motion was brought by the respondent. We may suspect that the lawyers were actually following orders by his insurer, Saskatchewan Government Insurance. But it is a motion by the respondent. Saskatchewan Government Insurance is not a party (or third party) to this suit. So it is no answer that the insurer would not have known the facts. It was not the litigant, nor the party moving.

27 A defendant who knows of an originating document against him cannot avoid the effects of appearing in the action and thereby making service academic, by instructing counsel to appear in court as amicus curiae; such appearance by counsel whom he instructs cures service or its lack: Grice v. R. [1957] O.W.N. 527, 11 D.L.R. (2d) 699, 701 ff., 119 C.C.C. 18, 26 C.R. 318 (traffic offence summons); Raspier v. Robertson (1977) 4 C.P.C. 103 (Sask.); Re Raspa (1972) 33 D.L.R. (3d) 605, 10 C.C.C. (2d) 342, 19 R.F.L. 90 (N.S.) (even appearance just to get an adjournment); Tasse v. Hoveland (1992) 132 A.R. 117, 120-21 (M.) (paras. 21-2) (statement of defence without service of statement of claim); but cf. Paupst v. Henry [1984] I.L.R. I-1718, 43 O.R. (2d) 748, 2 D.L.R. (4th) 682, 38 C.P.C. 5 (Ont.) (counsel for insurer allowed to withdraw unconditional appearance for one of two defendants who was not served) (critical annotation on pp. 6-8).

28 Possibly R. 27 might be an answer here: see Part G below.

29 Whether the insurer could have got itself added to this suit in some capacity and then moved, I need not decide. I need not pursue that topic because of the matters which follow. It troubles me, as it properly troubled the chambers judge under appeal.

30 A party who moves to set aside service is always under an obligation to give evidence about whether he in fact got notice or was in effect served, whether or not in the precise manner intended by the party serving him. Why? In the first place, it would be pointless to set aside service by method A, if service by method B had occurred around the same time. In the second place, it would be unjust to set aside purported service, or to declare that service had never occurred, if in fact the physical statement of claim, or knowledge of its existence and contents, had come to the knowledge of the defendant in question.

31 The court will not set aside service of a document, or set aside a later step needing service, such as default judgment, if the intended recipient (defendant) later actually got the document, or notice of it: Vidito v. Veinot (1912) 10 E.L.R. 292, 3 D.L.R. 179 (N.S.) (writ of summons); Hoehn v. Marshall (1917) 12 O.W.N. 193; Morozuk v. Fedorek [1941] 1 W.W.R. 382, 389 (Alta. C.A.); Cdn.-Dom. Leasing Corp. v. Corpex [1963] 2 O.R. 497 (M.), affd. id. at p. 499n.; Pettigrew v. Robb A.U.D. (M.), [1983] A.J. No. 415, 1296, 1297-8, J.D.E. 8303-19103 (Oct. 26, 1983); A.-G. Can. v. Doucette (1992) 133 A.R. 68, 71-2, 11 C.P.C. (3d) 81 (paras. 14-16); Hnatyshyn Singer Thorstad v. Robson (1998) 33 C.P.C. (4th) 135 (Sask.).

32 To undo the consequences of not carrying out what an official document directs the recipient to do, it is not enough that he shows that the document was not served on him. He must also show that he did not know of the document: Kistler v. Tettmar [1905] 1 K.B. 39, 74 L.J.K.B. 1 (C.A.) (defendant knew of a judgment and evaded service and knew of an order for an examination in aid and did not come); Fontaine v. Serben [1974] 5 W.W.R. 428 (Alta. D.C.), affd. (1976) (C.A.): see Note (1977) 15 Alta. L. Rev. 194 (no service, but learned later); Eyre v. Eyre [1971] 2 O.R. 744, 746-7 (M.); cf. Admin. of M.V.A. C.A. v. Gray (1986) 71 A.R. 24, 45 Alta. L.R. (2d) 172, 19 C.C.L.I. 246 (C.A.); cf. Golden Ocean Assce. v. Martin (The Goldean Mariner) [1990] 2 Ll. R. 215 (C.A.). A defect in service is curable under R. 558, if the contents of the statement of claim came to the attention of the defendant, even imperfectly: Clarke v. Treadwell [1997] A.U.D. 857, [1997] A.J. No. 683, Calg. 16149 (C.A. June 11). (One may compare Sissons v. Whiteside, Calg. 0201-0248-AC, [2004] A.J. No. 224, 2004 ABCA 96 (Mar. 9).)

33 To set aside or nullify service of a statement of claim then would be even more unjust if the defendant were intending to argue that service now was impossible (e.g., because of expiry of the statement of claim), or if the plaintiff had in the meantime relied upon apparent service to his detriment.

34 So a defendant moving to set aside purported service is expected to swear that neither any copy of the statement of claim, nor knowledge of its contents, was known to him. For instance, he might swear that he never saw the advertisement in the newspaper, never heard of it, and was thousands of miles away at a mining camp in Bolivia at all material times. In practice, such contents are usual in a defendant's affidavit.

35 It is possible that this respondent is either blissfully unaware of this entire lawsuit, or only learned of it recently. Maybe he has been out of Canada for years. On the other hand, it is possible that he has been aware all along of what was going on, and read a copy of the statement of claim shortly after its issue. Or the truth may lie in between these two extremes. We simply do not know.

36 It appears that this respondent has never given any evidence to support the motion to strike out, or for any other purpose. All the affidavits in the appeal book are from the appellants' side.

37 In my view, the respondent should have presented some evidence about service or notice, and should not get an order which in effect upsets the order for service, or upsets the service, without such evidence.

G. Has the Respondent Attorned to Alberta's Jurisdiction?

38 No one raised this question on appeal, and the chambers judge does not mention it. Probably it was not raised there.

39 The order permitting service was an order for service ex juris., since the address known was in Markham, Ontario and the newspaper selected was a Markham newspaper. The key motion by the respondent (two years later) was to set aside that order.

40 If someone takes steps in an Alberta suit (other than objecting to Alberta's jurisdiction or its order for service ex juris.), then he attorns to Alberta's jurisdiction. He cannot later object to that jurisdiction or seek to upset the order for service out of the jurisdiction.

41 Here the appeal books reveal three notices of motion by the respondent:

(a) filed September 14, 2001: "to set aside the statement of claim";

(b) filed January 11, 2002: "to set aside the statement of claim" and appeal the contrary decision of a Master;

(c) filed April 3, 2002: "to expunge the affidavit of Kristy Kolodychuk" recounting correspondence between the parties, on grounds of privilege.

42 Rule 27 makes some exceptions to the rule about attornment. It says that it is not attornment to move to set aside

(a) service of the statement of claim, or

(b) the order authorizing such service, or

(c) the statement of claim.

43 On its face, the April motion does not fit within any of these three exceptions, though it might be argued that it was partly ancillary to such a motion.

44 On their face, the September and January motions do fit within the exceptions to attornment in R. 27. But again it might be argued that they really do more. The order being attacked had two aspects, and the respondent made separate attacks on both aspects. As the heading says, it was an order both for substitutional service, and for service ex juris. To attack service ex juris. is not attornment. But it is arguable that to attack substitutional service could be attornment in some circumstances.

45 I would not decide these issues of attornment without argument, and without any chance for anyone to

TAB 6

person described in paragraph (*a*) or (*b*);

(*d*) is the legitimate child of

(i) a male person described in paragraph (*a*) or (*b*), or

(ii) a person described in paragraph (*c*);

(*e*) is the illegitimate child of a female person described in paragraph (*a*), (*b*) or (*d*); or

(*f*) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (*a*), (*b*), (*c*), (*d*) or (*e*).

Exception

(2) Paragraph (1)(*e*) applies only to persons born after the 13th day of August 1956. R.S., c. 149, s. 11; 1956, c. 40, s. 3.

Persons not entitled to be registered

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

(*a*) a person who

(i) has received or has been allotted half-breed lands or money scrip,

(ii) is a descendant of a person described in subparagraph (i),

(iii) is enfranchised, or

(iv) is a person born of a marriage entered into after the 4th day of September 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.

Protest re illegitimate child

(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 upon 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.

Certificate

(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

Exception

(4) Subparagraphs (1)(*a*)(i) and (ii) do not apply to a person who

TAB 7

Indian Act, R.S.C. 1985, c. I-5, s. 6

Canada Statutes

R.S.C. 1985, c. I-5, s. 6 | L.R.C. 1985, ch. I-5, art. 6

Notice

Current Version: Effective 22-12-2017

SECTION 6.

Persons entitled to be registered

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

(a) that person was registered or entitled to be registered immediately before April 17, 1985;

(b) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act;

(c) the name of that person was omitted or deleted from the Indian Register, or from a band list before 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 before April 17, 1985, or under any former provision of this Act relating to the same subject matter as any of those provisions;

(c.01) that person meets the following conditions:

(i) the name of one of their parents was, as a result of that parent's mother's marriage, omitted or deleted from the Indian Register on or after September 4, 1951 under subparagraph 12(1)(a)(iii) pursuant to an order made under subsection 109(2), as each provision read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as either of those provisions,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.02) that person meets the following conditions:

(i) the name of one of their parents was omitted or deleted from the Indian Register on or after September 4, 1951 under subparagraph 12(1)(a)(iv) or subsection 12(2), as each provision read

immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as either of those provisions,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.1) that person

(i) is a person whose mother's name was, as a result of the mother's marriage, omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951, under paragraph 12(1)(b) 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,

(ii) is a person whose other parent is not entitled to be registered or, if no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred prior to September 4, 1951,

(iii) was born on or after the day on which the marriage referred to in subparagraph (i) occurred and, unless the person's parents married each other prior to April 17, 1985, was born prior to that date, and

(iv) had or adopted a child, on or after September 4, 1951, with a person who was not entitled to be registered on the day on which the child was born or adopted;

(c.2) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.1) or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which that paragraph came into force, had he or she not died, and

(ii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.3) that person meets the following conditions:

(i) they were born female during the period beginning on September 4, 1951 and ending on April 16, 1985 and their parents were not married to each other at the time of the birth,

(ii) their father was at the time of that person's birth entitled to be registered or, if he was no longer living at that time, was at the time of death entitled to be registered, and

(iii) their mother was not at the time of that person's birth entitled to be registered;

(c.4) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.2) or (c.3) or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which that paragraph came into force, had he or she not died,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.5) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.4) and one of that parent's parents is entitled to be registered under paragraph (c.3) or, if that parent or parent's parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph (c.4) or (c.3), as the case may be, came into force, had he or she not died,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(c.6) that person meets the following conditions:

(i) one of their parents is entitled to be registered under paragraph (c.02) - or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which that paragraph came into force, had he or she not died - and the name of one of that parent's parents was omitted or deleted from the Indian Register on or after September 4, 1951 under subsection 12(2), as that provision read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as that provision,

(ii) their other parent is not entitled to be registered or, if that other parent is no longer living, was not at the time of death entitled to be registered or was not an Indian at that time if the death occurred before September 4, 1951, and

(iii) they were born before April 17, 1985, whether or not their parents were married to each other at the time of the birth, or they were born after April 16, 1985 and their parents were married to each other at any time before April 17, 1985;

(d) 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)(iii) pursuant to an order made under subsection 109(1), 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;

(e) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section; or

(f) both parents of that person are entitled to be registered under this section or, if the parents are no longer living, were so entitled at the time of death.

Persons entitled to be registered

(2) Subject to section 7, a person is entitled to be registered if one of their parents is entitled to be registered under subsection (1) or, if that parent is no longer living, was so entitled at the time of death.

Clarification

(2.1) A person who is entitled to be registered under both paragraph (1)(f) and any other paragraph of subsection (1) is considered to be entitled to be registered under that other paragraph only, and a person who is entitled to be registered under both subsection (2) and any paragraph of subsection (1) is considered to be entitled to be registered under that paragraph only.

Deeming provision

(3) For the purposes of paragraph (1)(f) and subsection (2),

(a) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(a);

(b) a person described in paragraph (1)(c), (d), (e) or (f) or subsection (2) and who was no longer living on April 17, 1985 shall be deemed to be entitled to be registered under that provision;

(c) a person described in paragraph (1)(c.1) and who was no longer living on the day on which that paragraph comes into force is deemed to be entitled to be registered under that paragraph; and

(d) a person who is described in paragraph (1)(c.01) or (c.02) or any of paragraphs (1) (c.2) to (c.6) and who was no longer living on the day on which that paragraph came into force is deemed to be entitled to be registered under that paragraph.

End of Document

Indian Act, R.S.C. 1985, c. I-5, s. 10

Canada Statutes

R.S.C. 1985, c. I-5, s. 10 | L.R.C. 1985, ch. I-5, art. 10

Notice

Current Version: Effective 12-12-1988

SECTION 10.

Band control of membership

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.

Membership rules

(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.

Exception relating to consent

(3) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years.

Acquired rights

(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.

Idem

(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.

Notice to the Minister

(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.

Notice to band and copy of Band List

(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.

Effective date of band's membership rules

(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.

Band to maintain Band List

(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.

Deletions and additions

(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.

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

End of Document

Indian Act, R.S.C. 1985, c. I-5, s. 11

Canada Statutes

R.S.C. 1985, c. I-5, s. 11 | L.R.C. 1985, ch. I-5, art. 11

Notice

Current Version: Effective 22-12-2017

SECTION 11.

Membership rules for Departmental Band List

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

(a) the name of that person was entered in the Band List for that band, or that person was entitled to have it entered in the Band List for that band, immediately prior to April 17, 1985;

(b) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

(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; or

(d) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(f) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List.

Additional membership rules for Departmental Band List

(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.

Deeming provision

(3) For the purposes of paragraph (1)(d) and subsection (2),

(a) a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(c), (d) or (e) and who was no longer living on the first day on which the person would otherwise be entitled to have the person's name entered in the Band List of the band of which the person ceased to be a member shall be deemed to be entitled to have the person's name so entered;

(a.1) a person who would have been entitled to be registered under any of paragraphs 6(1)(c.01) to (c.6), had they been living on the day on which that paragraph came into force, and who would otherwise have been entitled, on that day, to have their name entered in a Band List, is deemed to be entitled to have their name so entered; and

(b) a person described in paragraph (2)(b) shall be deemed to be entitled to have the person's name entered in the Band List in which the parent referred to in that paragraph is or was, or is deemed by this section to be, entitled to have the parent's name entered.

Additional membership rules - paragraphs 6(1)(c.01) to (c.6)

(3.1) A person is entitled to have their name entered in a Band List that is maintained in the Department for a band if

(a) they are entitled to be registered under paragraph 6(1)(c.01) and one of their parents ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.01)(i);

(b) they are entitled to be registered under paragraph 6(1)(c.02) and one of their parents ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.02)(i);

(c) they are entitled to be registered under paragraph 6(1)(c.1) and their mother ceased to be a member of that band by reason of the circumstances set out in subparagraph 6(1)(c.1)(i);

(d) they are entitled to be registered under paragraph 6(1)(c.2) and one of their parents is entitled to be registered under paragraph 6(1)(c.1) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.1) came into force, had he or she not died;

(e) they are entitled to be registered under paragraph 6(1)(c.3) and their father is entitled to have his name entered in the Band List or, if their father is no longer living, was so entitled at the time of death;

(f) they are entitled to be registered under paragraph 6(1)(c.4) and one of their parents is entitled to be registered under paragraph 6(1)(c.2) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.2) came into force, had he or she not died;

(g) they are entitled to be registered under paragraph 6(1)(c.4) and their mother is entitled to be registered under paragraph 6(1)(c.3) and to have her name entered in the Band List or, if their mother is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.3) came into force, had she not died;

(h) they are entitled to be registered under paragraph 6(1)(c.5) and one of their parents is entitled to be registered under paragraph 6(1)(c.4) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.4) came into force, had he or she not died; or

(i) they are entitled to be registered under paragraph 6(1)(c.6) and one of their parents is entitled to be registered under paragraph 6(1)(c.02) and to have his or her name entered in the Band List or, if that parent is no longer living, was so entitled at the time of death or would have been so entitled on the day on which paragraph 6(1)(c.02) came into force, had he or she not died.

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which that person has the closest family ties, as the case may be.

End of Document

TAB 8

Manseau & Perron Inc. v. ThyssenKrupp Industrial Solutions (Canada) Inc., [2018] A.J. No. 1382

Alberta Judgments

Alberta Court of Queen's Bench

C.S. Brooker J.

November 21, 2018.

Docket: 1501 02878

Registry: Calgary

[2018] A.J. No. 1382 | 2018 ABQB 949 | 84 C.L.R. (4th) 229 | 79 Alta. L.R. (6th) 291 | 2018 CarswellAlta 2801

Between Manseau & Perron Inc., Appellant/Respondent, and ThyssenKrupp Industrial Solutions (Canada) Inc., formerly known as Krupp Canada Inc., Respondent/Applicant, and FTI Consulting Canada Inc., In Its Capacity As Court-Appointed Receiver of Pacer Promec Energy Corporation and Pacer Promec Energy Construction Corporation, Appellant/Respondent

(74 paras.)

Case Summary

Construction law — Liens — Unregistered or unperfected liens — Vacating, loss or discharge of lien — Expiry of lien — Failure to proceed with action — Appeal by Manseau & Perron from Master's order that declared its builder's lien ceased to exist and permitted respondent to reduce amount of its lien bond by $595,945, being face amount of appellant's lien, dismissed — Master found appellant's lien had ceased to exist as it failed to file statement of claim within 180 days of registration as required by 2015 order — Process put in place under 2015 order was separate from and independent of insolvency proceedings of contractor — 2015 order was valid order made pursuant to Builders' Lien Act — Master's decision was correct.

Appeal by Manseau & Perron from a Master's order that declared its builder's lien ceased to exist and permitted the respondent to reduce the amount of its lien bond by $595,945, being the face amount of the appellant's lien. The appellant subcontractor had contracted with PPEC to work on a construction project. PPEC had been placed into receivership and a claims procedure had been established with the standard stay provision. A 2015 order allowed the respondent to deposit security for the liens arising from the construction project, including the appellant's lien. The 2015 order required the appellant to file a statement of claim in relation to its lien within 180 days of registration, failing which the lien would cease to exist. The Master found the appellant's lien had ceased to exist as it had failed to file a statement of claim as required by the 2015 order.

HELD: Appeal dismissed.

The application by the respondent to discharge the liens upon payment of security was outside of any receivership proceedings. The receivership order did not prevent the appellant from complying with the 2015 order to perfect its lien. The

process put in place under the 2015 order was separate from and independent of the insolvency proceedings of PPEC. The 2015 order was a valid order made pursuant to the Builders' Lien Act. The appellant was making a collateral attack on the 2015 order. The Master's decision was correct.

Statutes, Regulations and Rules Cited:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,

Builders' Lien Act, R.S.A. 2000, c. B-7, s. 22, s. 43, s. 48, s. 49, s. 49(3)

Counsel

Scott Chimuk, for the Appellant.

Shaun W. Hohman, for the Respondent.

David LeGeyt and John Regush, for the Third Party.

Reasons for Judgment

C.S. BROOKER J.

Introduction

1 This is an appeal of an Order made by Master Robertson, Q.C. on October 6th, 2015 (the "Robertson Order") declaring that a builder's lien filed by Manseau & Perron Inc. (hereinafter referred to simply as the "Appellant" or "M&P") ceased to exist pursuant to the terms of an Order of Master Hanebury, Q.C. granted and filed March 17th, 2015 (the "Hanebury Order"). The Roberson Order also permitted the Respondent ThyssenKrupp (hereinafter "TKIS") to reduce the amount of its lien bond by $595,944.85 being the face amount of the appellant's lien.

Facts

2 Pacer Promec Energy Corporation ("PPEC") was a construction company. It engaged in two oil sands projects. One was for Canadian Natural Resources (the "CNRL project"), the other for Imperial Oil (the "Krupp project"). The general contractor for both projects was TKIS. The appellant was a subcontractor to

PPEC with respect to both the CNRL and the Krupp projects. RNS Scaffolding Inc. ("RNS") was a subcontractor of PPEC only with respect to the Krupp project.

3 M&P, RNS and PPEC all registered liens with respect to the Krupp project. The PPEC lien was registered for $41,184,135. The RNS lien was registered for $1,204,768.27. The M&P lien was registered on November 12, 2014 for $595,944.85.

4 On March 10, 2015 PPEC was placed into receivership pursuant to an order made by Hawco J. (the "Hawco Order") under the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the "*BIA*").

5 The Hawco Order had the standard stay provision which reads, in part:

> 8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, providing, however, that nothing in this Order shall (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8;...

6 RNS and M&P, as subcontractors of PPEC, were given notice of the receivership as was TKIS as PPEC had claimed it was owed $41,184,135 by TKIS for work performed on the Krupp project.

7 On March 17, 2015 TKIS applied for an order under s.48 of the *Builders' Lien Act* ("*BLA*"), R.S.A. 2000, c. B-7 permitting it to pay monies in court in order to discharge the liens of RNS, M&P and PPEC. The application was granted and the resulting order made whereby, *inter alia,* upon TKIS depositing with the court security for the liens registered and costs, in the total amount of $43,584,848.12 the PPEC lien, the RNS lien and the M&P lien would be discharged. Paragraph 10 of that order sets out the issues to be tried or determined, including the validity of each lien and the amount of money each claimant is entitled to receive. Paragraph11 of this Order provides:

> 11. The Respondents shall each file a Statement of Claim in relation to their respective Liens within 180 days of the registration of each of their respective Liens, failing which the Liens for which no Statement of Claim has been filed shall cease to exist without further Order of this Honourable Court.

8 M&P as well as the receiver for PPEC were represented by counsel at TKIS's application on March 17th. Counsel provided Master Hanebury with a copy of the Hawco Order and there was a brief reference in the oral argument before her as to the stay provisions in the Hawco Order. There was a discussion and submissions by counsel on the amount of security that TKIS should post for the liens themselves, the amount of security for costs that should be posted and the potential for TKIS to apply for the discharge of other liens that might be filed in the future. Those discussions resulted in the Master making a number of handwritten alterations to the form of the order that TKIS had apparently brought to the application.

9 There was no discussion about paragraph 11 of the Hanebury Order requiring the lien claimants to file statements of claim within 180 days of their lien's registration.

10 The Hanebury Order, in its recitations, notes the consent of the various parties to the order.

11 The Hanebury Order was not appealed.

12 M&P did not file a statement of claim with respect to its lien filed against the Krupp project.

13 M&P did file a statement of claim to perfect its lien filed against the CNRL project wherein M&P named as one of the defendants, PPEC. That statement of claim was filed March 31, 2015 after PPEC had been placed into receivership under the Hawco Order.

14 On May 7, 2015 Mr. Justice B. Nixon issued an order, filed May 11, 2015 ("the Nixon Order") in the PPEC receivership. That order, inter alia, provided a procedure for lien management and was made under the *BIA*.

15 On August 21, 2015 TKIS filed an application against M&P seeking a declaration that M&P's lien against the Krupp project has ceased to exist pursuant to the Hanebury order and requesting that TKIS be permitted to reduce the amount of its lien bond by the face amount of the M&P lien.

16 The matter came before Master Robertson in morning chambers. He requested written briefs and set the matter over to an afternoon hearing. As there was no transcript of the March 17th application, he listened to the audio recording of the March 17th application. On October 6th, 2015 he gave his decision allowing TKIS's application. The resulting order was filed on October 7th, 2015 and M&P filed its appeal of the Robertson Order on October 16, 2015.

Issue

17 The issue on this appeal is whether Master Robertson erred in declaring that M&P's lien had ceased to exist by virtue of the fact that M&P had failed to file a statement of claim as required under the Hanebury Order.

Positions of the Parties

Appellant's Position

18 The Appellant takes the position that there are really three issues in this appeal. The first is the proper test to apply when interpreting court orders. In that regard, its position is, citing para 31 of ***Sutherland v Reeves***, 2014 BCCA 222 ("Sutherland") that "...the correct approach to interpreting the provisions of a Court Order is to examine the pleadings, the language of the Order itself, and the circumstances in which the Order was granted".

19 The second issue which the Appellant raises is: Has the M&P lien ceased to exist by operation of para

11 of the Hanebury Order or has the requirement to file a statement of claim been vitiated by the claims procedure established by the Nixon Order? In discussing that question, the Appellant considers the impact of s.22 of the *BLA* on that analysis as well as the impact of s.49 (3) of the *BLA*. It also questions whether there is any equitable or statutory reason why M&P should be required to file a statement of claim in respect of the M&P lien.

20 The Appellant argues that the Nixon Order establishes a process to determine the quantum of RNS and M&P's claims against PPEC, that by virtue of the decision in ***Iona Contractors Ltd. v Guarantee Company of North America***, 2015 ABCA 240 any money which PPEC ultimately receives from TKIS as a result of the TKIS litigation will be the subject of a statutory trust under s.22 of the *BLA* in favour of M&P and RNS and consequently there is no need to resort to litigation to prove quantum and indeed to do so would be a collateral attack on, and violation of, the Nixon Order.

21 The Appellant also argues that s.49 (3) of the *BLA* would require it to name PPEC, the contractor, as a defendant in its statement of claim under the *BLA* and that to do so would place M&P in direct conflict with the provisions of the Nixon Order and that requiring M&P to file a statement of claim against PPEC would be a collateral attack on the Receivership process. Further, the Appellant argues that s.8 of the Hawco Order prohibits the commencement of any proceeding against PPEC or the "Property", that none of the exceptions to the staying provision of the Hawco Order apply to an action in respect of the M&P lien, that Master Hanebury did not have the jurisdiction to make her Order, and that the Nixon Order specifically stayed all requirements for lienholders to file statements of claim.

22 As a further argument against being required to file a statement of claim the Appellant contends that given the claims procedure established by the Nixon Order, "there is no equitable or statutory reason why M&P or RNS should be required to file a statements of claim in respect to its their liens against the Krupp project. Doing so would create a sub-class of creditors who would have to engage in duplicative proceedings".

23 The third issue raised by the Appellant, in the alternative, is that if this court finds that M&P was required to have filed its statement of claim in respect of its lien within 180 days, then it should be permitted to now file it and re-instate its lien. It relies on ***TRG Development Corp. v Kee Installations Ltd.***, 2015 ABCA 187. It argues that no party has suffered any prejudice as a consequence of M&P not having filed a statement of claim. The only party who would be prejudiced would be M&P in that it would be required to engage in "duplicative and unnecessary proceedings" by filing a statement of claim in these circumstances.

TKIS's Position

24 TKIS's position is that the Hanebury Order is a correct and valid order. The Appellant was present in court when the order was made. Its counsel had input into that order and could have objected to it if it had concerns. It did not and cannot now claim that that order is invalid. Further, despite the stay created by the receivership proceedings, paragraph 8 of the Hawco Order contemplated and permitted the bringing of a claim that might become barred by statute or otherwise. TKIS points to the fact that M&P filed a statement of claim for its lien arising out of the CNRL project, naming PPEC as a defendant and that that statement of claim was filed March 31, 2015 three weeks after the Hawco Order was made. TKIS points

out that if M&P or indeed any other party to the Hanebury Order, "wanted to avail itself to the security posted by TKIS pursuant to the Discharge Order [the "Hanebury Order"], perfecting its respective builders' lien within the time period clearly stipulated in the Discharge Order was a prerequisite".

25 TKIS argues that the Nixon Order has no application in this case because M&P's lien did not come within the definitions of liens as set out in that order. The M&P lien was never referred to in the "Receiver's Letter" as therein defined. The M&P lien had already been discharged by the Hanebury Order by the time the Nixon Order was made. Consequently, the M&P lien does not fall under the dispensing of actions provisions of paragraph 22 of the Nixon Order.

26 TKIS rejects the Appellant's argument that requiring M&P to file its statement of claim to perfect its lien is a collateral attack on the receivership process. Rather, TKIS says, its application for the Hanebury Order was "outside of the parameters of the receivership process, it was a parallel process".

27 Finally, TKIS submits that it has done nothing to waive M&P's requirement to file a statement of claim under the terms of the Hanebury Order. It points out that it is TKIS who was obliged to pay the lien bond into court to stand as security for M&P's lien. It asserts that it would suffer prejudice if the Appellant was permitted to file its statement of claim now.

Receiver for PPEC's Position

28 The Receiver submits that the issue on appeal is narrow: whether M&P lost its builder's lien as a result of its failure to file a statement of claim as required under the Hanebury Order. It says that many of the submissions made by the Appellant touch on issues that are irrelevant to the narrow issue on this appeal.

29 The Receiver argues that, contrary to the Appellant's various assertions in its brief, PPEC is not a "contractor" as that term is defined under the *BLA*. Consequently, PPEC is not required to be named as a defendant under s. 49 of the *BLA*. Furthermore, the issue of entitlement to funds that might be obtained by PPEC from the Krupp claim, including any possible claim under s. 22 of the *BLA* was not an issue before Master Robertson and therefore is not a proper subject of this appeal. Moreover, there is no evidence before the court as to whether a certificate of substantial performance was issued and therefore it is not possible to determine if s.22 is even applicable. To quote from the Receiver's brief: "Ultimately, the determination of M&P's rights as against PPEC is not before this Honourable Court and will be resolved in the Claims Procedure Order [the "Nixon Order"] granted in the receivership proceedings of PPEC. In that regard, the Receiver notes that the Robertson Order states that M&P can advance its claim under s.22 of the *BLA*, if it has one, and that it can continue to advance its claim within the receivership proceedings.

30 In summary "...it is the Receiver's position that the issue before the Court in the September 3 Application, and this Appeal, is narrow and concerns only whether M&P's builder's lien expired. Any issues relating to M&P's other claims against PPEC are irrelevant."

Analysis

31 I agree that the correct approach in interpreting the provisions of a court order are as set out in the ***Sutherland*** case which in turn quoted and relied upon that court's decision in ***Yu v Jordan,*** 2012 BCCA

367 where Smith J.A. said:

> [53] In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

32 However, the facts and circumstances in ***Sutherland*** are quite different than those here. In ***Sutherland*** the court was interpreting the meaning of a phrase in the court order to determine if an action brought personally against a partner in a limited partnership was one "in respect of" the limited partnership and thus subject to the stay provision which had been granted in a receivership order.

33 The Hanebury Order is not one which has a phrase or word that requires interpretation. On the contrary, it is quite clear. Paragraph 11 of it is clear and unambiguous. In essence, what the Appellant is saying is that it should not have been made --- that the Master had no jurisdiction to make it in face of the Hawco Order.

34 Of course, as noted previously, the Appellant did not object at the time the Hanebury Order was made even though it was aware of the Hawco Order. And, as noted earlier, not only did M&P not appeal the Hanebury Order or its paragraph 11, it actually filed a statement of claim against PPEC in relation to its lien in the CNRL project, despite the Hawco Order stay provision.

35 The Hanebury Order was made in an application arising out of the *BLA*. That application was brought by TKIS, the contractor, under the provisions of the *BLA*, to permit it to put up security in the form of a bond, to replace the security represented by the property against which the liens had been filed. Under the *BLA*, a lienholder is obliged to perfect its lien by filing a statement of claim within 180 days of registering its lien. That is what para 11 of the Hanebury Order requires.

36 The Appellant contends that the requirement for it to file a statement of claim was vitiated by the claims procedure established by the Nixon Order and refers to s.22 and s.49 (3) of the *BLA* to support its position. As well, it argues that the stay put into place by the Hawco Order in relation to proceedings involving PPEC's receivership, prevented it from filing a statement of claim as required by para 11 of the Hanebury Order.

37 There are a number of problems with the Appellant's position.

38 First, with respect to the stay contained in the Hawco Order, it must be remembered that the Hanebury Order was issued in an application brought by TKIS under the provisions of s.48 of the *BLA* to permit it to discharge the liens registered against the lands involved in the Krupp project upon it paying into court sufficient security. The application was outside of any receivership proceedings relating to M&P. The Hanebury Order permitted TKIS to discharge the PPEC, RNS and M&P liens then registered against the Krupp property upon depositing security with the court in the amount of $43,584,848.12. Paragraph 10 of that order set out the issues to be tried or determined including the validity of each lien and the amount of

money each of the Respondents (lienholders) is entitled to receive. Paragraph 11 directs each Respondent to file a statement of claim within 180 days of the registration of their lien.

39 I do not accept the Appellant's argument that the Hawco Order prevented it from complying with para 11 of the Hanebury Order and issuing its statement of claim as required by it.

40 Para 8 of the Hawco Order reads, in part:

> No proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court...provided, however, that nothing in this Oder shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8;...

41 This language is broad enough to permit M&P to file a statement of claim to protect its lien which would otherwise become barred under para 11 of the Hanebury Order which itself was made pursuant to the *BLA* and which Order was arrived at by agreement and consent of the parties to it, including M&P. Moreover, if there is any doubt about that, M&P could have either sought leave of the court to file its statement of claim or it could have sought the Receivers consent to do so, all as is provided for under the terms of para 8 of the Hawco Order. It did neither.

42 Furthermore, it would appear from M&P's own actions that it did not regard the Hawco Order as preventing it from filing a statement of claim against PPEC as it filed one in the CNRL matter on March 31, 2015. As noted by TKIS in para 27 of its argument: "The CNRL Statement of Claim was filed in the face of the provision of the First Receivership Order [the Hawco Order] that Manseau is now attempting to rely upon."

43 Finally, as the Court of Appeal noted in ***Iona Contractors Ltd. v Guarantee Company of North America***, 2015 ABCA 240, provisions of the *BLA* can apply in certain circumstances even in the face of insolvency proceedings under the *BIA*. At para 23 the Court noted:

> It is obvious that the Builders Lien Act could have an effect on the entitlement to payments on bankruptcy. A subcontractor which has a valid lien, or another valid claim under the Builders' Lien Act, might become entitled to payments to which it would not be entitled as a mere unsecured creditor. No one has suggested that these provision, relating as they do to property and civil rights in the province, necessarily offend the bankruptcy distribution regime.

44 Accordingly, I find that the Hawco Order did not prevent the Appellant from filing its statement of claim to perfect its lien as required under para 11 of the Hanebury Order.

45 As to the Appellant's argument relating to the trust provisions under s.22 of the *BLA* and the duplicative nature of proceeding with a statement of claim under the Hanebury Order, it appears to be based on M&P's and RNS' lien claims falling under the claims procedures established by the Nixon Order. At para 43 of its written argument the Appellant states:

43. Because of the operation of s.22 of the *BLA,* the resolution of the PPEC/ Krupp litigation is required in order for RNS and M&P to know whether they even need to advance a *BLA* claim against Imperial Oil. The Court could not have intended to compel RNS and M&P to participate in duplicative and overlapping proceedings -- especially given that it is highly likely that such proceedings are completely unnecessary given the s.22 trust provision of the *BLA*.

46 There are number of problems with the Appellant's position.

47 First, the Nixon Order deals specifically with lien management commencing at para 13 of the Order. Para 17 states:

17. Upon being presented with evidence of deposit of the Aggregate Security with the Clerk of the Court and the Receiver's Letter, the Registrar of the Land Titles Office is hereby directed to forthwith discharge the Liens registered by the Lienholders as listed in the Receiver's Letter, together with any related Certificates of Lis Pendens, from the Real Property Interests listed in the Receiver's Letter notwithstanding the requirements of s.191 of the *Land Titles Act* (Alberta).

48 Paragraph 13 of the Nixon Order defines the "Receiver's Letter" to mean "...a letter issued by the Receiver pursuant to this Order listing the Liens to be discharged and the Real Property Interests from which the liens are to be discharged".

49 Para 22 of the Nixon Order further provides:

22. Pursuant to section 44 of the *BLA*, upon the posting of the Aggregate Security with the Clerk of the Court, the requirement of a Lienholder <u>whose Lien has been discharged by operation of this Order</u> to (i) register the certificate of lis penned, and (ii) commence action to realize on the Lienholder's Lien, are hereby dispensed with [emphasis added].

50 The letter from the Receiver's solicitors, Dentons, dated September 2, 2015 confirmed that the Receiver did not post any security in respect of the M&P builders lien and that there was no Receiver's Letter issued with respect to the M&P lien.

51 It is clear, therefore, that the M&P lien falls outside the provisions of the Nixon Order and was not discharged pursuant to it. Further, the provisions of para 22 of the Nixon Order do not dispense with the necessity of M&P filing a statement of claim to prove its lien since by its terms para 22 only applies to a lien that has been discharged by "operation of this Order". Thus lien claims falling under the provisions of the Nixon Order are separate and distinct from the lien claims dealt with and discharged by the Hanebury Order. The processes are not duplicative. They are separate and distinct processes.

52 I do not agree with the Appellant's argument that because of the trust created by sec.22 of the *BLA*, the PPEC/ Krupp litigation must be resolved in order to avoid likely unnecessary proceedings with the RNS and M&P litigation mandated by the Hanebury Order.

53 Section 22 of the *BLA* states:

> 22(1) Where
>
> (a) a certificate of substantial performance is issued, and
>
> (b) a payment is made by the owner after a certificate of substantial performance is issued
>
> the person who received the payment, to the extent that the person owes money to persons who provided work or furnished materials for the work or materials in respect of which the certificate was issued, holds that money in trust for the benefit or those persons
>
> (2) When a person other than a person who received the payment referred to in subsection (1)
>
> (a) is entitled to the money held in trust under this section, and
>
> (b) receives payment pursuant to that trust,
>
> the person, to the extent that the person owes money to other persons who provided work or furnished materials for the work or materials in respect of which the payment referred to in clause (b) was made, holds that money in trust for the benefit of those other persons.
>
> (3) A person is subject to the obligations of a trust established under this section is released from any obligations of the trust when that person pays the money to
>
> (a) the person for whom that person holds the money in trust, or
>
> (b) another person for the purposes of having it paid to the person for whom the money is held in trust.

54 As counsel for the Receiver correctly points out in his written argument "There is no evidence before this Court that a certificate of substantial performance was issued and, thus, this Court cannot determine if section 22 is engaged, let alone any impact it might have".

55 A further problem with the Appellant's position regarding the s.22 trust is illustrated in para 38 of its written argument. There it state:

> 38. As a result of s. 22 of the *BLA*...the first $1,800,713.12 recovered by PPEC from Krupp, or any lesser amount as determined by the claims officer, will be split rateably between M&P and RNS in satisfaction or their respective claims against the Krupp project.

56 According to that argument, a claims officer, not a court, decides and there is a potential for a rateable distribution. Further, M&P and RNS's claims become caught up in PPEC's insolvency proceedings, even considering the "carve-out" of the Krupp matters under the Nixon Order.

57 The process put in place under the Hanebury Order is separate from and independent of, the insolvency proceedings of PPEC. The Hanebury Order arose from TKIS's application to discharge certain liens, including M&P's, from Imperial Oil's property. RNS and M&P had filed liens in their own right. These liens were discharged by the Hanebury Order upon TKIS paying security into court. The lien holders were obliged to file their statement of claims and prove their liens pursuant to para 11 of that

Order. Those proceedings were outside and independent of the insolvency proceedings of PPEC under the Hawco and Nixon Orders. M&P and RNS are, under the Hanebury Order, to have their claims adjudicated by the court -- not a "claims officer". They were secured for the full amount of their claims and costs by the security posted by TKIS.

58 Furthermore, the Robertson Order did not purport to deal with or affect any rights that M&P might have under s.22 of the *BLA*. Para 4 of his order states: "Nothing in this Order affects any rights that Manseau may have pursuant to Section 22 of the Builders' Lien Act..."

59 The Appellant also raises s. 49(3) of the *BLA*. It argues, *inter alia*, that PPEC is the contractor for the Krupp project and that M&P is a subcontractor and therefore any statement of claim it issued pursuant to para 11 of the Hanebury Order would require it to name PPEC as a party defendant and that would be in direct conflict to the Nixon Order as well as the stay provisions of the Hawco Order. Thus, it argues, the Hanebury Order is a collateral attack on the Hawco and Nixon Orders and that the Master did not have the jurisdiction to make such an order.

60 I do not accept that argument.

61 Section 49(3) of the *BLA* provides:

> (3) When the party issuing the statement of claim is not the contractor, the statement of claim shall name as defendants.
>
> (a) the owner
>
> (b) the contractor, and
>
> (c) the holder of any proof registered encumbrance against whom relief is sought.

62 In the first place, I have dealt earlier in these reasons with the jurisdiction of the Master to make the Hanebury Order and specifically para 11 thereof. The Master had jurisdiction to make that order. Further, it was not a collateral attack on the Hawco Order. Nor was it a collateral attack on the Nixon Order. Indeed, I do not understand how the Hanebury Order, made about 7 weeks before the making of the Nixon Order, could ever be considered a collateral attack on it.

63 Secondly, the Receiver, in his written argument, notes that PPEC is not a "contractor" as defined in the *BLA* and therefore, there would be no need for M&P to name PPEC as a defendant in its statement of claim.

64 While that may be the case, it is not necessary to finally determine that since, as I have previously noted, it was always possible under the terms of para 8 of the Hawco Order, for M&P to sue to protect a claim that might otherwise become barred. In that regard, para 11 of the Hanebury Order was made pursuant to the provisions of the *BLA*. And, it was also possible under that same paragraph to seek leave of the court or permission of the Receiver to sue PPEC. The Appellant never sought such leave or permission.

65 The Appellant asks if there is any equitable or statutory reason why it should be required to file a

statement of claim in respect of its lien. It argues that there is not. However, its argument is based on its position that the Nixon Order established a claims procedure which applies to the RNS and M&P liens. I have held that it does not. The Hanebury Order was a valid order made pursuant to the *BLA*. The Appellant had input into it. It did not object to it. It did not appeal it. It did not comply with the provisions of para 11 of it. What it seeks to do by attempting to justify its failure to file a statement of claim is a collateral attack on the Hanebury Order.

66 Therefore, for all of the foregoing reasons, I find that the decision of Master Robertson declaring the M&P lien to have ceased to exist by virtue of its failure to file a statement of claim as required in para 11 of the Hanebury Order, was correct. I agree that M&P's lien has therefore ceased to exist.

67 The Appellant seeks, in the alternative, permission to now file a statement of claim and an order re-instating its lien. It relies on the decision of ***TRG Development Corp. v Kee Installations***, 2015 ABCA 187 ("TRG Development Corp."). In that case the court reinstated a lien which had been cancelled by the Registrar of Land Titles for as a consequence of the lienholder failing to file a Certificate of Lis Pendens as required by s. 43 of the *BLA*. The facts in ***TRG Developments Corp.*** are quite different from those at bar. Nevertheless, the Appellant contends at para 70 of its written argument that the logic behind the Court of Appeal's reasoning that: ..."where an owner has notice of a lien, and where no prejudice will result from a failure to comply with a timeline, and where parallel proceedings are in place, the Court will apply equitable principles of waiver and estoppel to preserve lien rights" applies to this application.

68 I do not agree.

69 Firstly, in the case at bar, we are dealing with the specific requirement of a valid court order, that a statement of claim be issued within a specific time frame. This is not, as in ***TRG Developments Corp.***, a matter of waiving a notice requirement when everyone concerned already had notice.

70 Secondly, unlike the situation in ***TRG Developments Corp.***TKIS has done nothing to suggest it has in any way waived the requirement that M&P file its statement of claim pursuant to para 11 of the Hanebury Order.

71 Thirdly, unlike the situation in ***TRG Developments Corp.,*** here there would be prejudice if the court were to permit the statement of claim to be filed now and the lien re-instated. It is TKIS who applied to place the security for the liens into court. When the Robertson Order was granted declaring M&P's lien had ceased to exist, TKIS was allowed to reduce the lien bond by the amount of the M&P lien. That would reduce the amount of the premium TKIS was obliged to pay. To re-instate the M&P lien and issuance of its statement of claim would result in increased premium costs as well as litigation costs with respect to the new statement of claim.

72 Fourthly, although there are parallel proceedings, they are not the same as indicated earlier in these Reasons. Under the Nixon Order, claims are to be determined by a claims officer as part of the claims assessment proceedings in the insolvency, albeit relating specifically to the Krupp project carve-out. Under a statement of claim, there would be an adjudication by the court.

73 Finally, the Appellant is asking the court to use its equitable jurisdiction to grant its request to file a

statement of claim and restore its lien. Assuming (without deciding) that I have the jurisdiction to do so, that requires the court to use its discretion judicially and to look at the conduct of the party seeking equity. I find it would not be equitable in the circumstances of this case to grant the relief sought. Quite aside from the issues of prejudice and lack of waiver, here the Appellant knew of the requirement to file its statement of claim within the time limit. It was involved in the proceeding which granted that Order. It at no time objected to para 11 of the Order. It did not appeal that Order. It did nothing to attempt to comply with para 11 of the Order. Rather, after TKIS applied for the declaration that M&P's lien ceased by operation of the Hanebury Order, it proceeded to essentially make a collateral attack on the Hanebury Order by challenging the Master's jurisdiction to make it. Given all of the circumstances, I do not think it equitable to grant the Appellant's request to be permitted to file a statement of claim now and reinstate its lien.

Conclusion

74 For all of the above reasons, I conclude that Master Robertson was correct and that the appeal of his Order should be dismissed with Costs.

Dated at the City of Calgary, Alberta this 21st day of November, 2018.

C.S. BROOKER J.

End of Document

TAB 9

Sawridge Band v. Canada, [1997] 3 FC 580, 1997 CanLII 5294 (FCA)

Date:	1997-06-03
File number:	A-779-95; A-807-95
Other citations:	3 Admin LR (3d) 69 — [1997] FCJ No 794 (QL)
Citation:	Sawridge Band v. Canada, [1997] 3 FC 580, 1997 CanLII 5294 (FCA), <http://canlii.ca/t/4n3p>, retrieved on 2019-11-14

A-779-95

A-807-95

Walter Patrick Twinn suing on his own behalf and on behalf of all other members of the Sawridge Band, Wayne Roan, suing on his own behalf and on behalf of all other members of the Ermineskin Band; and Bruce Starlight, suing on his own behalf and on behalf of all other members of the Sarcee Band, now known as the Tsuu T'ina First Nation (*Appellants*)

v.

Her Majesty the Queen (*Respondent*)

and

Native Council of Canada, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta, Horse Lake Indian Band and Native Women's Association of Canada (*Interveners*)

Indexed as: Sawridge Bandv. Canada (C.A.)

Court of Appeal, Isaac C.J., Strayer and Linden JJ.A."Edmonton, June 2 and 3, 1997.

Judges and Courts " F.C.T.D. decision appealed for reasonable apprehension of bias based on Judge's colourful remarks during 75-day trial, repeated in considered reasons for judgment " Appellate court to approach such allegations with great caution " Wide margin of discretion accorded Trial Judges in conduct of cases " Remarks not to be taken out of context " Case involving claim by Indians aboriginal, treaty, Charter rights infringed by 1985 Indian Act amendments " Judge expressing view s. 35 Constitution Act, 1982, Indian Act racist legislation " Reasonable observer would have formed opinion Judge biased against special status for Indians " Not for Judge to go against Constitution " New trial ordered.

Practice " Appeals and new trials " Appeal allowed, new trial ordered for reasonable apprehension of bias on part of F.C.T.D. Judge " Case involving claim by Indians amendments to Indian Act infringing aboriginal, treaty, Charter rights " Judge's colourful remarks at trial, repeated in considered reasons for judgment, giving rise to reasonable apprehension of bias against special status for Indians.

Native peoples " Registration " F.C.T.D. Judge denying declarations 1985 Indian Act amendments regarding control of band membership lists infringing Indians' aboriginal, treaty, Charter rights " Judge characterizing s. 35 Constitution Act, 1982, Indian Act as racist legislation similar to apartheid in South Africa " Opposed to special status for Indians " Reluctant to accept oral history of Indians as "historical stories . . . become mortally skewed propaganda" " Judgment set aside for reasonable apprehension of bias.

Constitutional law " Aboriginal and Treaty Rights " F.C.T.D. Judge dismissing action for declaration 1985 amendments to Indian Act concerning registration in band lists infringing rights recognized by s. 35, Constitution Act, 1982 " Judge revealing bias against special status for Indians " Characterizing s. 35 as racist " Not for Judge to oppose Constitution " New trial ordered as reasonable apprehension of bias.

Plaintiffs, suing on behalf of themselves and certain Indian bands, appealed the decision of Muldoon J., reported at 1995 CanLII 3521 (FC), [1996] 1 F.C. 3, denying declarations that provisions added to the *Indian Act* in 1985 concerning membership in band lists were invalid as abridging aboriginal or treaty rights guaranteed by *Constitution Act*, section 35 as well as their Charter section 2 paragraph (*d*) right to freedom of association. The impugned legislative amendment forced bands to include on their membership lists such people as: women who had become disentitled to Indian status by marriage to non-Indians and the children of such women and the illegitimate children of an Indian woman and a non-Indian man. The Indians' argument was that there was a reasonable apprehension of bias on the part of the Trial Division Judge. Counsel for the Crown, after hearing the Indians' submissions as to bias and upon taking instructions, put forward no argument.

Held, the appeal should be allowed and a new trial ordered.

First of all, it was important to note that there was no allegation of actual bias on the Judge's part. Rather, a reasonable apprehension of bias was asserted based upon certain remarks made by His Lordship during the 75-day trial and in his reasons for judgment. Such assertions by unsuccessful litigants were to be approached with great caution by an appellate court. Trial Judges are to be accorded a wide margin of discretion in conducting cases. In a lengthy trial, comments may be made in a variety of contexts which, taken in isolation, might appear to be tendentious.

While it was true that in the instant case it did not appear that counsel, during the trial, had objected to the Judge's interventions or conduct of the case, fairness required the observation that the bias complaint was, to a great extent, based upon what was said in the reasons for judgment.

The test for a reasonable apprehension of bias is the opinion that would be formed by a reasonably well informed person, viewing the matter realistically and practically. On that test, a reasonable observer would not have understood the Trial Judge to harbour negative views of the native peoples as such, given his many expressions of respect for Indian witnesses and culture. The reasonable observer would, however, have formed the impression that the Judge was strongly opposed to any special regime for native peoples differing from the rights and duties of other Canadians and that this attitude would have influenced his decision that the bands had no aboriginal right to control their own membership or, if they had, it was extinguished prior to the adoption of section 35 of the *Constitution Act, 1982*. The Judge's views on the matter were revealed by his use of such terms as "racism" and "apartheid" concerning the Indians' claims to distinctiveness. Unfortunately, His Lordship's colourful references such as to "Nazis", "Adolf Hitler" and "jackboots" were not limited to the trial but were repeated in his considered reasons for judgment. The Trial Division Judge explained his reluctance to accept oral history as evidence as follows: "historical stories, if ever accurate, soon became mortally skewed propaganda". He also characterized section 35 of the *Constitution Act, 1982* as racist legislation and suggested that the *Indian Act*, in giving special status to the native peoples, "sounds like that which South Africa is . . . trying to abolish; apartheid". The fact is that special status for aboriginal peoples is enshrined in our Constitution and it was not for the Judge to dispute that.

It was therefore necessary that the judgment below be set aside and a new trial ordered, the great cost and inconvenience notwithstanding.

statutes and regulations judicially considered

An Act to Amend the Indian Act, S.C. 1985, c. 27, s. 4.

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44].

Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5], s. 91(24).

Constitution Act, 1982, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 35 (as am. by SI/84-102 , s. 2).

cases judicially considered

applied:

Newfoundland Telephone Co. v. Newfoundland (Board of Public Utilities), 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623; (1992), 95 Nfld. & P.E.I.R. 271; 4 Admin. L.R. (2d) 121; 134 N.R. 241; *R. v. Curragh Inc.*, 1997 CanLII 381

(SCC), [1997] 1 S.C.R. 537; (1997), 144 D.L.R. (4th) 614; 113 C.C.C. (3d) 481; 5 C.R. (5th) 291; 209 N.R. 252; *Blanchette v. C.I.S. Ltd.*, 1973 CanLII 3 (SCC), [1973] S.C.R. 833; (1973), 36 D.L.R. (3d) 561; [1973] 5 W.W.R. 547; [1973] I.L.R. 1-532; *Committee for Justice and Liberty et al. v. National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369; (1976), 68 D.L.R. (3d) 716; 9 N.R. 115.

considered:

Canada (Human Rights Comm.) v. Canada (Dept. of Indian Affairs and Northern Development) (1994), 25 C.H.R.R. D/386; 25 C.R.R. (2d) 230; 89 F.T.R. 249 (F.C.T.D.).

APPEAL from the Trial Division decision reported at 1995 CanLII 3521 (FC), [1996] 1 F.C. 3 denying declarations that certain 1985 amendments to the *Indian Act* infringed the Indians' aboriginal, treaty and Charter rights. Appeal allowed and new trial ordered for a reasonable apprehension of bias on the part of the Judge at trial.

counsel:

Martin J. Henderson, Philip P. Healey, Catherine M. Twinn for Sawridge/Tsuu T'ina (Walter P. Twinn et al., Bruce Starlight et al.), appellants.

Marvin R. Storrow, Q.C., Josiah Wood, Q.C., Heather M. Caswell for Wayne Roan et al., appellants.

Terrence P. Glancy for Non-Status Indian Association of Alberta, intervenor.

P. Jonathan Faulds for Native Council of Canada (Alberta), intervenor.

H. Derek Lloyd, Heather L. Treacy for Horse Lake Indian Band, intervenor.

Lucy K. McSweeney, Mary Eberts for Native Women's Association of Canada, intervenor.

Patrick G. Hodgkinson, Mary King for Her Majesty the Queen, respondent.

solicitors:

Aird & Berlis, Toronto, *Twinn Law Office*, Slave Lake (Alberta), for Sawridge/Tsuu T'ina (Walter P. Twinn et al., Bruce Starlight et al.), appellants.

Blake, Cassels & Graydon, Vancouver, for Wayne Roan et al., appellants.

Milner Fenerty, Calgary, for Horse Lake Indian Band, intervenor.

Royal, McCrum, Duckett & Clancy, Edmonton, for Non-Status Indian Association of Alberta, intervenor.

Field Atkinson, Edmonton, for Native Council of Canada (Alberta), intervenor.

Eberts Symes Street & Corbett, Toronto, for Native Women's Association of Canada, intervenor.

Deputy Attorney General of Canada for Her Majesty the Queen, respondent.

The following are the reasons for judgment delivered orally in English by

The Court

Introduction

On June 3, 1997 this Court, having heard argument on the first ground of appeal that there was a reasonable apprehension of bias on the part of the Trial Judge, was obliged to dispose of that ground before hearing the remainder of the argument. As a result the Court allowed the appeal on that ground, for reasons to follow. These are those reasons. As will be apparent, they do not address the substance of the Judge's decision.

Facts

This appeal involves an action commenced in 1986 for declarations that certain sections of the *Indian Act*[1] are invalid. These sections were added by an amendment in 1985.[2] 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.

The plaintiffs, appellants in this appeal, are members of three Indian bands in Alberta. They sought the declarations of invalidity on two bases.

The first basis was that these provisions abridge existing Aboriginal or treaty rights of the plaintiffs, guaranteed by section 35 of the *Constitution Act, 1982*[3] as amended by the *Constitution Amendment Proclamation, 1983*[4] which provides as follows:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

The plaintiffs contended that among their Aboriginal rights, as confirmed by treaty, is the right of each band to control its own membership, and that the 1985 legislation infringes upon that right.

Further, they contended at trial that the action of Parliament in requiring them to accept, as members of their band, certain people previously disentitled, is a denial of their "freedom of association" as guaranteed by paragraph 2(*d*) of the *Canadian Charter of Rights and Freedoms*.[5] This ground was not pursued on appeal.

The trial of this action occupied some seventy-five days commencing September 20, 1993 and ending April 25, 1994. Reasons were issued on July 6, 1995 [1995 CanLII 3521 (FC), [1996] 1 F.C. 3]. The three trial interveners, namely the Native Council of Canada, the Native Council of Canada (Alberta), and the Non-Status Indian Association of Alberta, participated actively at trial in the examination and cross-examination of witnesses. The Trial Judge dismissed the action for the declarations and awarded costs to be paid by the plaintiffs to the defendant and to the interveners, on a lump sum basis fixed by him. He directed that the payments in respect of the interveners costs should be made to the Receiver General of Canada on the basis that these interventions were funded under the Test Case Funding Program of the Department of Indian and Northern Affairs.

The plaintiffs appealed this judgment. The two appeals A-779-95 and A-807-95 filed in respect of this matter (the former on behalf of the Ermineskin Band and the latter on behalf of the Sawridge Band and the Sarcee Band, now known as the Tsuu T'ina First Nation) were ordered joined for the hearing of the appeal. These reasons apply to both appeals.

As noted earlier, the first ground of appeal raised by the appellants Sawridge and Sarcee bands was that the record disclosed the basis for a reasonable apprehension of bias on the part of the Trial Judge against the appellants. This position was supported at the hearing by counsel for the Ermineskin Band. At the outset the Court drew to the attention of counsel for the Sawridge and Sarcee bands the decision of the Supreme Court of Canada in *Newfoundland Telephone Co. v. Newfoundland (Board of Public Utilities)*[6] in which it was stated by Cory J., writing for the Court, that if a reasonable apprehension of bias is found to exist on the part of a tribunal its decision must be treated as void. While counsel for the Sawridge and Sarcee bands submitted that this Court could nevertheless hear the appeal and substitute its own conclusions of fact and law for those of the Trial Judge, counsel

for the other appellant agreed with the Court's view that if a reasonable apprehension of bias were found the appeal must be allowed and a new trial ordered. Counsel for the respondent also agreed with this position.

Counsel for all of the appellants then proceeded to present to the Court, from the trial record, comments or conduct during the trial by the Trial Judge, and passages in his reasons, to support their assertion of a reasonable apprehension of bias. We will highlight some of these comments and passages later. Counsel on behalf of the respondent, after hearing the argument of the appellants and after taking instructions, made no submissions on this issue. Counsel for the Native Council of Canada (Alberta) made a number of submissions in opposition to those of the appellants. He submitted that the Trial Judge was motivated by several legitimate purposes: to allow "everyone to have a say on everything", not to conceal his reactions to evidence or submissions, to allow vigorous cross-examination on both sides, and to ensure by his questioning that a balanced version of the evidence was presented. In particular, he asserted that it would be unreasonable to interpret the Trial Judge's comments as critical of Aboriginal peoples in general: indeed the reality was, in counsel's view, that this was more a dispute between various elements of the Aboriginal community whose interests differ. He believed that the Judge was legitimately exercising a discretion in his conduct of the trial and in particular in reference to ordering an RCMP investigation of alleged wrongful communication with a witness. In general, he observed that the Trial Judge's "colourful language" should not be taken as an indication of bias.

The Court was obliged to dispose of this ground of appeal before proceeding. In allowing the appeal on this basis, with reasons to be delivered later, the Court indicated that it had concluded that there was material in the record upon which a reasonable apprehension of bias could be found.

Analysis

It is first important to underline that no actual bias has been alleged on the part of the Trial Judge, nor does this Court find such bias.

It should also be observed that, when faced with an appeal based in part on reasonable apprehension of bias in the Trial Judge, an appellate court must approach such assertions with great caution. It is not uncommon for unsuccessful litigants, in reflecting on their loss, to attribute it to bias or an appearance of bias on the part of the trial judge. An appeal court, without very good justification, must not use the route of apprehended bias to nullify decisions of a trial judge which it could not otherwise review. A wide margin of discretion must be left to a trial judge in his conduct of a case, and his procedural decisions should not be interfered with unless there is a clear error of principle. Findings of fact should not be set aside in the absence of "palpable and overriding" error. It must further be kept in mind that in a trial of this length, many comments will be made in a variety of contexts which, when isolated, may appear to be tendentious. Some judges will engage in Socratic dialogue which may seem to the uninitiated to reveal a predisposition.

It must also be observed in respect of this case that there were few if any instances brought to our attention where counsel made any objection during the trial, on the basis of apprehended bias, to the Judge's interventions or his conduct of the case. It is also fair to observe, however, that many of the complaints of apparent bias are based on the mode of expression of the Judge's reasons when considered against the background of the trial. The reasons were not, of course, available to counsel for comment prior to judgment.

According to the jurisprudence, a reasonable apprehension of bias may be said to exist where there is a reasonable apprehension "that the judge might not act in an entirely impartial manner".[7] What is required is not a "possible" apprehension but a "reasonable" apprehension; that is, the opinion that a reasonably well informed person, viewing the matter realistically and practically, might form of the situation.[8]

Using this test and reading many of the Judge's interventions in context we do not suppose that a reasonable observer would have understood the learned Trial Judge to harbour negative views about Aboriginal people as such. Indeed, as noted earlier, the dispute before him involved in reality conflicting claims among various segments of the Aboriginal community to control or to claim membership in Indian bands. Critical comments must also be read in association with his many expressions of respect for Indian witnesses and culture.

We do think, however, that a reasonable observer would have formed the impression that the Trial Judge was strongly opposed to a special regime for some or all Aboriginal peoples different from the system of rights and responsibilities applying to other Canadians. If this apprehension were formed, it could have led such an observer to think that the Trial Judge was thereby influenced in his conclusion that no Aboriginal right had existed for the

TAB 10

Sawridge Band v. Canada, [2003] F.C.J. No. 723

Federal Court Judgments

Federal Court of Canada - Trial Division

Toronto, Ontario

Hugessen J.

Heard: March 19 and 20, 2003.

Judgment: March 27, 2003.

Docket T-66-86A

[2003] F.C.J. No. 723 | [2003] A.C.F. no 723 | 2003 FCT 347 | 2003 CFPI 347 | [2003] 4 F.C. 748 | [2003] 4 C.F. 748 | 232 F.T.R. 54 | [2003] 3 C.N.L.R. 344 | 123 A.C.W.S. (3d) 2

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 and Native Women's Association of Canada, interveners

(40 paras.)

Case Summary

Injunctions — Interlocutory or interim injunctions — Arguable issues of law involved or serious question to be tried — Balance of convenience — Requirement of irreparable injury — Indians, Inuit and Metis — Nations, tribes and bands — Bands — Membership.

Motion by the defendant Crown for an interlocutory declaration, or in the alternative for an interlocutory mandatory injunction. The plaintiff Sawridge Band sued the Crown for a declaration that certain amendments to the Indian Act were unconstitutional. The amendments conferred on Indian bands the right to control their own band lists, but obliged bands to include in their membership certain persons who became entitled to Indian status by virtue of the amendments. The Crown alleged that the Sawridge Band refused to comply with the remedial provisions of the amending legislation, resulting in 11 former members of the Band being denied the benefits of the amendments. The 11 former members were women who lost both their Indian status and their Band membership for having married non-Indian men. The Crown sought an interlocutory declaration that, pending a final determination of the action, the individuals who acquired the right to be members of the Sawridge Band before it took control of its own band list be deemed to be registered on the band list with full rights and privileges. In the alternative, the Crown sought an interlocutory injunction requiring the Band to register the names of those individuals on the band list, with full rights and privileges.

HELD: Motion for an injunction allowed.

An interim declaration of right was a contradiction in terms, since a right either existed or did not exist. Therefore, the motion was treated as seeking only an interlocutory injunction. The Band had created pre-conditions to membership, but the statutory amendments provided for an automatic entitlement to Band membership for women who had lost it by marriage to non-Indians. Therefore, the Band's membership rules contravened the legislation, such that the Band had effectively given

itself an injunction to act as though the law did not exist. The Band was not entitled to such an injunction. Even though it had raised a serious issue, enforcement of a duly adopted law did not result in irreparable harm. The inconvenience to the Band in admitting the 11 individuals was outweighed by the damage to the public interest in having federal law flouted.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, s. 15.
Federal Court Rules, Rule 369.
Indian Act, R.S.C. 1985, c. I-5, ss. 2(1), 5(1), 5(3), 5(5), 6(1)(c), 8, 9(1), 9(2), 9(3), 9(5), 10(1), 10(2), 10(4), 10(5), 10(6), 10(7), 10(8), 10(9), 10(10), 11(1)(c), 11(2), 12(1)(b).

Counsel

Martin J. Henderson, Lori A. Mattis, Catherine Twinn and Kristina Midbo, for the plaintiffs. E. James Kindrake and Kathleen Kohlman, for the defendant. Kenneth S. Purchase, for the intervener, Native Council of Canada. P. Jon Faulds, for the intervener, Native Council of Canada (Alberta). Michael J. Donaldson, for the intervener, Non-Status Indian Association of Alberta. Mary Eberts, for the intervener, Native Women's Association of Canada.

REASONS FOR ORDER AND ORDER

HUGESSEN J.

1 In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the Indian Act, R.S.C. 1985, c. I-5, commonly known as Bill C-31, are unconstitutional. While I shall later deal in detail with the precise text of the relevant amendments, I cannot do better here than reproduce the Court of Appeal's brief description of the thrust of the legislation when it set aside the first judgment herein and ordered a new trial:

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

code can operate to deprive a person of her or his entitlement to registration "by reason only of" a situation that existed or an action that was taken before the rules came into force. For greater clarity, subsection 10(5) stipulates that subsection 10(4) applies to persons automatically entitled to membership pursuant to paragraph 11(1)(c), unless they subsequently cease to be entitled to membership.

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

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

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

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

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

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

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

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

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

> ... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.
>
> This is a difficult issue. It has been for many years. The challenge is striking. The fairest possible balance must be struck and I believe it has been struck in this Bill. I believe we have fulfilled the promise made by the Prime Minister in the Throne Speech that discrimination in the Indian Act would be ended.
>
> [Debates, supra at 2646]

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

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

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

Act, and stated as follows :

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

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

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

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

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

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

38 While not necessarily conclusive, it seems that the Band itself takes the same view. Although on the hearing of the present motion, it vigorously asserted that it was in compliance with the Act, its statement of claim herein asserts without reservation that C-31 has the effect of imposing on it members that it does not want. Paragraph 22 of the Fresh as Amended Statement of Claim reads as follows :

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

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

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

ORDER

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

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

HUGESSEN J.

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Sawridge Band v. Canada, [2004] F.C.J. No. 77

Federal Court Judgments

Federal Court of Appeal

Calgary, Alberta

Rothstein, Noël and Malone JJ.A.

Heard: December 15 and 16, 2003.

Judgment: January 19, 2004.

Docket A-170-03

[2004] F.C.J. No. 77 | [2004] A.C.F. no 77 | 2004 FCA 16 | 2004 CAF 16 | [2004] 3 F.C.R. 274 | [2004] 3 R.C.F. 274 | 316 N.R. 332 | [2004] 2 C.N.L.R. 316 | 128 A.C.W.S. (3d) 856

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)

(61 paras.)

Counsel

Martin J. Henderson and Catherine Twinn, for the appellant. E. James Kindrake and Kathleen Kohlman, for the respondent. Kenneth Purchase, for the intervener, Native Council of Canada. P. Jon Faulds, for the intervener, Native Council of Canada, Alberta. Mary Eberts, for the intervener, Native Women's Association of Canada. Michael J. Donaldson, for the intervener, Non-status Indian Association of Alberta.

The judgment of the Court was delivered by

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 qulequ'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 the 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.
>
> (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.
>
> * * *
>
> 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.
>
> (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.

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 Relais Nordik Inc. v. Secunda Marine Services Ltd. (1988), 24 F.T.R. 256 at paragraph 9, Pinard 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] F.C.J. No. 1186, 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

JJ.'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.

ROTHSTEIN J.A.
NOËL J.A.:— I agree.
MALONE J.A.:— I agree.

End of Document

TAB 11

No. 33219

December 10, 2009

Coram: Binnie, Fish and Charron JJ.

BETWEEN:

Sawridge Band

Applicant

- and -

Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada

Respondents

AND BETWEEN:

Tsuu T'ina First Nation (formerly the Sarcee Indian Band)

Applicant

- and -

Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada

Respondents

Le 10 décembre 2009

Coram : Les juges Binnie, Fish et Charron

ENTRE :

Sawridge Band

Demanderesse

- et -

Sa Majesté la Reine, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta et Native Women's Association of Canada

Intimés

ET ENTRE :

Tsuu T'ina First Nation (formerly the Sarcee Indian Band)

Demanderesse

- et -

Sa Majesté la Reine, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta et Native Women's Association of Canada

Intimés

No. 33219

JUDGMENT

The application for leave to appeal from the judgment of the Federal Court of Appeal, Numbers A-112-08 and A-154-08, 2009 FCA 123, dated April 21, 2009, is dismissed with costs to the respondents.

JUGEMENT

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéros A-112-08 et A-154-08, 2009 CAF 123, daté du 21 avril 2009, est rejetée avec dépens en faveur des intimés.

J.S.C.C.
J.C.S.C.

TAB 12

1985 Sawridge Trust (Trustee for) v. Sawridge First Nation, [2017] A.J. No. 441

Alberta Judgments

Alberta Court of Queen's Bench

D.R.G. Thomas J.

Heard: August 24, 2016.

Judgment: April 28, 2017.

Docket: 1103 14112

Registry: Edmonton

[2017] A.J. No. 441 | 2017 ABQB 299

IN THE MATTER OF the Sawridge Band Inter Vivos Settlement Created by Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known as the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust") Between Ronald Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle and Clara Midbo, as Trustees for the 1985 Sawridge Trust, Original Applicants, and Public Trustee of Alberta, Applicant/Respondent, and Sawridge First Nation, Respondent/Applicant

(30 paras.)

Case Summary

Aboriginal law — Aboriginal status and rights — Practice and procedure — Costs — Application by Public Trustee for directions allowed — Application by Band for costs dismissed — Public Trustee had been brought into proceeding to represent interests of potential minor beneficiaries in Sawridge Trust — Had refused to consent to adjournment of 2015 application and discontinued Rule 5.13 motion after Band, non-party, provided membership information — List of minor children of Band members satisfied evidentiary requirement for that category of minors — List of adults with pending applications met unresolved but completed Band applications category — No costs were awarded against Public Trustee, who was court-sanctioned participant conducting its statutory function — Alberta Rules of Court, Rule 5.13.

Civil litigation — Civil procedure — Applications and motions — Application for directions — Costs — When not awarded — Application by Public Trustee for directions allowed — Application by Band for costs dismissed — Public Trustee had been brought into proceeding to represent interests of potential minor beneficiaries in Sawridge Trust — Had refused to consent to adjournment of 2015 application and discontinued Rule 5.13 motion after Band, non-party, provided membership information — List of minor children of Band members satisfied evidentiary requirement for that category of minors — List of adults with pending applications met unresolved but completed Band applications category — No costs were awarded against Public Trustee, who was court-sanctioned participant conducting its statutory function — Alberta Rules of Court, Rule 5.13.

Wills, estates and trusts law — Proceedings — Practice and procedure — Application to court for directions — Costs — Application by Public Trustee for directions allowed — Application by Band for costs dismissed — Public Trustee had been brought into proceeding to represent interests of potential minor beneficiaries in Sawridge Trust — Had refused to consent to adjournment of 2015 application and discontinued Rule 5.13 motion after Band, non-party, provided membership information — List of minor children of Band members satisfied evidentiary requirement for that category of minors — List of adults with pending applications met unresolved but completed Band applications category — No costs were awarded against Public Trustee, who was court-sanctioned participant conducting its statutory function — Alberta Rules of Court, Rule 5.13.

Statutes, Regulations and Rules Cited

Alberta Rules of Court, Alta. Reg. 124/2010, Rule 1.1, Rule 1.2, Rule 5.13, Rule 5.13(2), Rule 10.29(1), Rule 10.31, Rule 10.33

Counsel

D.C. Bonora and, A. Loparco, Q.C., for 1985 Sawridge Trustees.

J.L. Hutchison, for Public Trustee of Alberta.

E.H. Molstad, Q.C. and, G. Joshee-Arnal, for Sawridge First Nation.

Attendances:

C.K.A. Platten, Q.C. and C. Osualdini, for Catherine Twinn.

L.A. Maj, for the Minister of Aboriginal Affairs and Northern Development.

N.L. Golding Q.C., for Patrick Twinn et al.

S.A. Wanke, for Maurice Stoney et al.

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Reasons for Judgment

D.R.G. THOMAS J.

I Introduction

1 This decision is the most recent step in a case management process which has the ultimate objective of distributing funds held in the 1985 Sawridge Trust [the "Trust"] to its beneficiaries. The initial step in this process is reported in ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2012 ABQB 365, 543 A.R. 90 ["***Sawridge #1***"] affirmed 2013 ABCA 226, 553 A.R. 324 ["***Sawridge #2***"]. The Trust was set up in 1985 by the Sawridge First Nation [the "SFN" or the "Band"] in an attempt to shelter Band property from persons who had been excluded from membership in the SFN because of their gender or the gender of their parent(s).

2 The proceeding began as an application to the Court by the Trustees for advice as to how to identify the beneficiaries of the Trust and create an equitable distribution scheme for the considerable assets of the Trust. That initial application has since metastasized into a number of areas of disagreement and has expanded as a succession of third parties have attempted to insert themselves into the process. At the outset, the Court invited the Public Trustee of Alberta [the "Public Trustee"] to participate in this proceeding and represent the interests of potential minor recipients of the proposed distribution of assets: ***Sawridge #1***.

3 On December 17, 2015 I issued a decision which defined a process to identify who may qualify for a part of the distribution and how the distribution would then proceed: ***1985 Sawridge Trust (Trustee for) v Alberta (Public Trustee),*** 2015 ABQB 799 ["***Sawridge #3***"]. ***Sawridge #3*** triggered at least three appeals (***Stoney v 1985 Sawridge Trust***, 2016 ABCA 51 at para 3). Those appeals were apparently either discontinued or denied for late filing. The participants then returned to me for another case management hearing on August 24, 2016.

4 At that hearing I concluded the case management process was bogged down and, to some extent, futile, and that the best alternative was to move the beneficiary identification issue to trial. However, that conclusion still left a number of issues to be resolved.

5 This decision responds to two outstanding issues between the Public Trustee and the Band. As noted, the Public Trustee was brought into this proceeding to represent the interests of potential minor beneficiaries. In ***Sawridge #1*** I instructed the Trust to pay for the Public Trustee's litigation costs.

6 The SFN is not a party to this litigation but has nevertheless observed and participated throughout since Band membership (or being a child of a Band member) is a criterion for being a beneficiary of the Trust.

7 ***Sawridge #3*** at paras 43, 46 and 61 authorized the Public Trustee to prepare and serve *Alberta Rules of Court*, Alta Reg 124/2010 [the "*Rules*", or individually a "*Rule*"] s 5.13 applications on the Band in relation to specific membership and Trust asset-related questions. The Public Trustee engaged that

procedure but, in the meantime, the Band has provided information that related to two of the three issues addressed in ***Sawridge #3***. The Public Trustee did not proceed with the *Rule* 5.13 application which related to the fairness of a proposed distribution scheme.

8 These developments have left two remaining issues now addressed by this decision:

1. Does information provided by the Band concerning "current and possible" minor beneficiaries satisfy the *Rule* 5.13 inquiry mandated by ***Sawridge #3***?
2. Should the Band receive costs as a consequence of an abandoned 2015 application and the discontinued *Rule* 5.13 motion?

II. "Current and Possible" Minor Beneficiaries

9 ***Sawridge #3*** at paras 48-61 authorizes the Public Trustee to investigate and identify minor children of persons who have:

1. completed an application for admission to Band membership, and
2. applied for admission to Band membership, had that application denied, but are engaged in a review or appeal process.

10 The Public Trustee expresses concern on the form and meaning of language in ***Sawridge #3*** that authorizes the Public Trustee's *Rule* 5.13 inquiries. This resolves to a number of questions on what kind of evidence is adequate to discharge the Public Trustee's obligation to identify and then represent potential minor child distribution recipients. At the hearing I suggested that while I could clarify my instructions in ***Sawridge #3***, the sufficiency of information provided by the Band was a point better discussed by the parties and the Band, with my advice as a subsequent recourse. However, counsel for the Public Trustee clarified it is satisfied to rely on the Band as the best source of evidence on membership questions.

11 On that basis I make the following findings and instructions.

12 First, the Public Trustee inquires whether a list of minor children of Band members obtained on April 5, 2016 satisfies the evidentiary requirement for that category of minors. I confirm this information is adequate for that purpose.

13 Second, the Public Trustee expresses concern that the meaning of a "completed" Band application and/or a "rejected or unsuccessful" Band application is unclear. The Band on January 18, 2016 provided a list of adults with "pending" applications. The Public Trustee inquires whether this category meets the "unresolved" but "completed" Band applications. I confirm that it does. I am satisfied that if the Band deems an application "complete" but has not resolved that application then that individual belongs in "category 3", as defined in ***Sawridge #3***, and their children, if any, fall into "category 4".

14 The third point on which the Public Trustee sought clarification is whether ***Sawridge #3*** used "rejected" and "unsuccessful" to indicate two different categories. To be clear, this language is

operationally synonymous. It captures:

1. persons who have made Band applications prior to this date, had that application rejected, but are challenging that outcome, and
2. persons who have filed completed and unresolved Band applications ("pending" Band applications), who are in the future rejected during the application process, and then challenge that outcome.

The Public Trustee's obligation is to identify these populations, and to also determine whether they have children. I note that both these subgroups will fall into category 5, though some at present may be in category 3.

15 The Public Trustee also inquires on whether the Band providing information that there are no outstanding appeals or judicial reviews of rejected Band applications is sufficient to define the current category 5 set. In light of the Public Trustee's concession on the Band's expertise and role I conclude that it is.

III. Costs

16 The Band seeks costs from the Public Trustee, and that these costs not be indemnified by the Trust. This relates to two steps.

17 First, on June 24, 2015 the Band sought and received an adjournment to applications in this proceeding that named the Band as a respondent. The Band took the position that the Public Trustee's refusal to consent to that adjournment was unreasonable, and should result in a costs award without indemnification.

18 Second, in the ***Sawridge #3*** decision I directed the Public Trustee to proceed with the *Rule* 5.13 applications, and reserved the question of costs to follow completion of those applications. The Band argues that it was forced to prepare written materials in response. However, the Public Trustee then abandoned a *Rule* 5.13 application. The Band also observes *Rule* 5.13(2) creates a mandatory obligation on the Public Trustee to pay for records produced via that procedure:

> 5.13(2) The person requesting the record must pay the person producing the record an amount determined by the Court.

19 The Band takes the position that my earlier order which directed that the Public Trustee not be responsible to pay the costs of other parties to the proceedings does not apply to the Band. That is because the Band is not a party to this litigation: ***Sawridge #3*** at para 27. The Band therefore argues that as a non-party it is not captured in my previous instruction.

20 Beyond that, the Band argues as a general principle of law that this Court retains the jurisdiction to award costs against any party. It cites ***Children's Aid Society of the City of St. Thomas and County of Elgin v LS*** (2004), 46 R.F.L. (5th) 330 at paras 53-54,128 A.C.W.S. (3d) 888 (Ont C J) for the proposition that a party should never be "immunized from costs", since litigant accountability is necessary

to avoid wasteful, ill-focused court processes. An award of costs is the lever to control that potential abuse.

21 The Band argues as the successful party the Band presumptively should receive a costs award (*Rule* 10.29(1)) and that the Court should apply the foundational *Rules* 1.1-1.2 to encourage efficient litigation through costs. An award against the Public Trustee is warranted given the 2015 adjournment was inevitable, premature as the Public Trustee had alternative sources for the information it sought, and the Public Trustee took meritless steps including the abandoned *Rule* 5.13 application. In this case the Band says that enhanced costs are warranted.

22 The Public Trustee responds that Alberta Court of Appeal in ***Sawridge #2*** at para 30 confirmed my conclusion that the Public Trustee should be immune from any liability for a costs award. The Band has been a *de facto* participant in this matter, no matter that its legal status is as a litigation third party. Ordering costs against the Public Trustee would subvert the basis for the Public Trustee's participation in this proceeding. The Public Trustee has always acted in good faith and adhered to the mandates set by the Court in ***Sawridge #1*** and then in ***Sawridge #3***.

23 First, I reject the Band's argument that the SFN falls outside the scope of the order I issued which prohibited the Public Trustee from paying costs of "the other parties in the within proceeding", or the Court of Appeal's subsequent confirmation of that direction. The Band, while not a party, is far from a non-participant in this litigation. Further, this strict interpretation of the order that I issued defeats the objective of the framework in which the Public Trustee was invited and agreed to participate in this matter.

24 That said, I agree with the Band that I retain jurisdiction to make a costs award against the Public Trustee, both on the basis of the principle in ***Children's Aid Society of the City of St. Thomas and County of Elgin v LS***, due to this Court having the ongoing jurisdiction to vary its orders, and also through the Court's inherent jurisdiction to control its own processes and potential abuse of that: I H Jacob, "The Inherent Jurisdiction of the Court", (1970) 23 Current Legal Problems 23, most recently endorsed by the Supreme Court of Canada in ***Endean v British Columbia***, 2016 SCC 42 at para 23, [2016] 2 S.C.R. 162

25 Although *Rule* 10.29(1) creates a presumption that the successful party will receive a payment of costs, courts have an exceptionally broad authority to make cost orders as they see fit: *Rules* 10.31, 10.33. Similarly, the very important role that costs awards serve to encourage efficient, timely, and responsive litigation, and create negative consequences for those who misuse the courts and abuse other court participants is well established.

26 I am going to approach the question of the Public Trustee's activities in a global sense, instead of parsing through individual applications and steps. That is consistent with the general purpose served by cost awards. As noted in ***Sawridge #3*** at paras 32-36, the Public Trustee's activities needed to be "re-focused". I now conclude that objective has been met. While I might otherwise have ordered costs of some kind, this litigation is ultimately intended to benefit the persons who will receive shares of the Trust. This is not so much an adversarial process than one where various organizations are moving to a common goal: to protect the rights of the Trust beneficiaries, and ensure an equitable result is obtained. This is not

an instance where a third-party interloper is interfering with a smooth running process, but instead involves a Court-sanctioned participant conducting its statutory function, though that process did require a degree of court management. I therefore decline to order costs against the Public Trustee.

27 As for whether the *Rule* 5.13(2)'s requirement that "[t]he person requesting the record must pay ... an amount determined by the Court" that is not a basis to order costs. This provision has not been the subject of judicial commentary. The *Rule* uses the words "an amount" to describe the payment that "must" be paid, rather than "costs". I conclude that the intention of *Rule* 5.13 is that where a third party (here the Band) is obliged by court order to produce documents or other materials, then that third party should experience minimal financial consequences from cooperating with the Court and litigants in the production of relevant evidence.

28 Normally, I would consider instructing payment of "an amount" under *Rule* 5.13 except for the fact that I have been informed that the Trust is indemnifying the Band for its activities in relation to this proceeding. This means one way or another the Trust will end up 'on the hook' for these litigation activities. Accordingly, I find there is no point in me ordering payment of "an amount" because of the Public Trustee's *Rule* 5.13 activities.

IV. Conclusion

29 The Public Trustee has now received direction from me in relation to this litigation. The Band's application for costs without indemnification from the Public Trustee is denied.

30 I pause to add one further observation. I have taken a 'costs neutral' approach to the Trust, the Band, and the Public Trustee in this litigation. That is because all three of these entities in one sense or another have key roles in the distribution process. However, this non-punitive and collaborative approach to costs has no application to third party interlopers in the distribution process as it advances to trial. The same is true for their lawyers. Attempts by persons to intrude into the process without a valid basis, for example, in an abusive attempt to conduct a collateral attack on a concluded court or tribunal process, can expect very strict and substantial costs awards against them (both applicants and lawyers), on a punitive or indemnity basis. True outsiders to the Trust's distribution process will not be permitted to fritter away the Trust assets so that they do not reach the people who own that property in equity, namely, the Trust beneficiaries.

Dated at the City of Edmonton, Alberta this 28th day of April, 2017.

D.R.G. THOMAS J.

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TAB 13

Yu v. Jordan, [2012] B.C.J. No. 1863

British Columbia and Yukon Judgments

British Columbia Court of Appeal

Vancouver, British Columbia

M.V. Newbury, J.E. Hall and D.M. Smith JJ.A.

Heard: August 13, 2012.

Judgment: September 11, 2012.

Docket: CA039713

[2012] B.C.J. No. 1863 | 2012 BCCA 367 | 24 R.F.L. (7th) 154 | [2013] 1 W.W.R. 103 | 327 B.C.A.C. 170 | 36 B.C.L.R. (5th) 248 | 354 D.L.R. (4th) 8 | 220 A.C.W.S. (3d) 369 | 2012 CarswellBC 2760

Between Yanhua Yu also known as Yan Hua Yu, Respondent (Claimant), and Terance Allen Jordan, Appellant (Respondent)

(68 paras.)

Case Summary

Family law — Custody and access — Practice and procedure — Orders — Variation or amendment of orders — Changed circumstances — Consent order — Appeals and judicial review — Appeal by father from variation order granting mother primary residence dismissed — 2004 consent order had not specified whether custody terms were governed by Divorce Act or Family Relations Act — Order predated parties' 2006 divorce — Parties' post-order intent was irrelevant — Based on objective indicia in pleadings, wording of order, and circumstances in 2004, order was governed by Divorce Act — Order was thus interim in nature and its variation did not require demonstration of material change — In any event, father failed to show error or misapprehension of evidence in trial judge's findings — Divorce Act, ss. 16(8), 17(5) — Family Relations Act, s. 24.

Appeal by the father from an order granting the mother primary residence of the child of the marriage. A 2004 consent order provided for joint custody and guardianship with equal parenting of the parties' child, born in 2002. The parties' divorce was granted in 2006. An application by the mother to vary custody in 2008 was dismissed for failure to establish a material change. The order under appeal varied a consent order and granted the mother primary residence with liberal and generous access to the father. The father sought to appeal on the basis that the trial judge misapprehended the evidence and erred in finding a material change in circumstances had occurred after 2008. The 2004 order did not specify whether the terms of the corollary order related to custody and support were covered by the Divorce Act or the Family Relations Act. The father now contended that the relevant provisions of the consent order were made under the Family Relations Act with the effect that it was a final order requiring the mother to demonstrate a material change of circumstances to support variation. The mother contended that the relevant provisions were made pursuant to the Divorce Act and were interim in nature, as the divorce had yet to be granted in 2004, and thus did not require a material change of circumstances in support of her variation application.

HELD: Appeal dismissed.

The meaning of the order was determined by objective indicia found in the pleadings, the wording of the order and the circumstances in which the order was made. The meaning was not to be determined by the parties' stated intention post-order. The relevant provisions in the 2004 consent order were made pursuant to the Divorce Act. In the absence of an order for divorce at the time of the consent order, the custody and support provisions were interim rather than final orders. Therefore, the provisions were not subject to the test of a material change in circumstances for variation. In any event, no error in principle was established in respect of the trial judge's finding a material change in circumstances post-2008 based on the father's increased travel for work. Nor was any error established with respect to the conclusion that the child's best interests supported primary residence with the mother.

Statutes, Regulations and Rules Cited:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 1(1), s. 2(1), s. 16(8), s. 17, s. 17(5), s. 21

Family Relations Act, RSBC 1996, CHAPTER 128, s. 24, s. 24(1)

Appeal From:

On appeal from: Supreme Court of British Columbia, January 23, 2012 (*Yu v. Jordan*, 2012 BCSC 92, Vancouver Docket No. E043907)

Counsel

Counsel for the Appellant: M.R. Ellis, Q.C.

Counsel for the Respondent: M. Perry, J. England.

Reasons for Judgment

The judgment of the Court was delivered by

D.M. SMITH J.A.

Overview

Act and the *FRA* cannot be a final order for corollary relief under the *Divorce Act* absent the granting of an order for divorce. Such an order will remain an interim order under the *Divorce Act* until the divorce order is granted. Final corollary relief under the *Divorce Act* can be granted only upon the granting of an order for divorce: *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231 at paras. 91-92.

48 Difficulties may arise in subsequent proceedings where an order is silent as to which legislation governs its provisions. For example, in *Boznik v. Boznik* (1993), 76 B.C.L.R. (2d) 202 (S.C.), Madam Justice Huddart held that an interim order for spousal and child support, which the parties intended to be a final support order, was not extinguished by a subsequent order for divorce that was silent in regard to final corollary relief under the *Divorce Act.* In that case, the payor father had sought to vary the interim order pursuant to s. 17 of the *Divorce Act.* Huddart J. held that there was no jurisdiction under s. 17 of the *Divorce Act* to vary the interim support order but the interim order would remain in effect until a final order for support under the *Divorce Act* was made. (At 207.)

49 This reasoning was followed in *Chicoine* and *Pfann v. Pfann,* 2008 BCSC 452, and applied by this Court in *Armstrong v. Armstrong,* 2012 BCCA 166 at para. 43.

50 It is also common ground that a material change of circumstances is a threshold requirement to the variation of a final order for custody or support made pursuant to the *Divorce Act* or the *FRA*: see *Javid v. Kurytnik,* 2006 BCCA 565 at para. 5, leave to appeal refused [2007] S.C.C.A. No. 80; and *Boychuck v. Singleton,* 2008 BCCA 355.

51 In this case, Minutes of Settlement in an action that pleaded both the *Divorce Act* and the *FRA* were merged into the Consent Order, which was silent as to the legislative provision under which the custody and support provisions of the order were made. The issue of which legislation governs in these circumstances was addressed in *Gomes v. Gomes (Keene)* (1985), 47 R.F.L. (2d) 83 (B.C.S.C.) where Mr. Justice Hutchison held (at p. 95) that in proceedings where both the *Divorce Act* and the *FRA* are pleaded, "[t]he court may award maintenance under either Act, but if there is no indication in an order as to which Act was invoked it may be assumed that the federal Act was because Parliament is the paramount legislature." He reiterated this interpretation in *Spiers v. Spiers* (1995), 15 B.C.L.R. (3d) 148 (S.C.), where he applied the doctrine of paramountcy to find that a custody provision in an order granted in a divorce action that pleaded both the *Divorce Act* and the *FRA*, but was silent on which Act governed, will be assumed to have been made pursuant to the *Divorce Act* (paras. 13-14). In my view this analysis is correct and is equally applicable to subsequent proceedings that follow an order for divorce that is either silent as to corollary relief or provides corollary relief but is silent as to which of the pleaded Acts governs its provisions.

52 The father submits this Court should infer that the parties must have intended the custody and support provisions of the Consent Order to be final orders under the *FRA* based on the parties' incorporation of Minutes of Settlement (which resolved all of the issues raised in the divorce action except for the divorce order) into the Consent Order, and their subsequent treatment of the mother's applications to change the Consent Order as variation applications of a final order. However, even if the parties' intentions governed the interpretation of an order (a proposition with which I do not agree), the parties in this case expressly treated the two applications following the Consent Order as variation applications under the *Divorce Act*

and the orders dismissing those applications therefore could only have been made pursuant to the *Divorce Act.*

53 In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

54 Here, both the *Divorce Act* and the *FRA* were pleaded. However, the language of the Consent Order refers to J.J. as "the child of the marriage". This language is taken from the *Divorce Act,* which refers to a child as a "child of the marriage" (for the purposes of corollary relief under the *Act*) and defines a "child of the marriage" as "a child of two spouses or former spouses who, at the material time, (a) is under the age of majority and who has not withdrawn from their charge, or (b) is age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life" (s. 2(1)). The definition of "child" in the *FRA* is different. It refers to a "child" only and defines a "child" (for the purposes of custody, guardianship, access and support orders under that Act) as "a person who is under the age of 19 years" (s. 1(1)) and says the term "includes a child not yet born on the death of the child's father or mother but subsequently born alive" (s. 21).

55 The circumstances in which the Consent Order was made pre-dated the granting of the order for divorce and the subsequent order for divorce *simpliciter* was silent as to any final orders for corollary relief. The objective indicia (the pleadings, the wording of the order, and the circumstances in which the order was made) in my view weigh in favour of the Consent Order having been made under the *Divorce Act* and therefore its custody and support provisions being interim orders. In the absence of the Consent Order specifying which legislative scheme governs its provisions, I would also apply the doctrine of paramountcy to find that the impugned provisions were made under the *Divorce Act.*

56 While one or both of the parties may have intended the custody and support provisions of the Consent Order to be final orders under the *Divorce Act,* the necessary steps to achieve that disposition were not taken. That omission cannot in my view be corrected in hindsight by changing the legislative scheme under which the order was made. For a court to permit a party bound by a court order to subsequently provide a revised interpretation of the order in order to rectify what may have inadvertently been omitted at the time the order was made, could result in uncertainty, confusion and potential unfairness to the other party(ies) to the order. It could also undermine the objective of finality in a court order.

57 In my view, the Consent Order cannot be interpreted in retrospect in a manner to reflect what the parties may have intended it to be, but failed to finalize at the time the Consent Order was made. The only objectively reasonable interpretation of the Consent Order is that its custody and support provisions were corollary relief provisions under the *Divorce Act*, albeit interim orders as the order for divorce had not yet been granted. In the result, the mother was not required to establish a material change of circumstances in applying for a variation of the Consent Order.

58 I propose, however, also to address the father's grounds of appeal that allege errors in the trial judge's

application of s. 17(5) of the *Divorce Act* in view of the manner in which the parties argued their respective positions before the trial judge. I shall further address the father's submission that the Order should be set aside based on a misapprehension of the evidence concerning the living arrangements of the child's grandmother.

Did the Trial Judge Err in Finding a Material Change of Circumstances?

59 The trial judge found a material change circumstances from the April 4, 2008 order based on: (i) the father's refusal to co-parent the child based on the week on/week off arrangement agreed to by the parties when they entered into the Consent Order; and (ii) the father's work commitments in Toronto which required him to delegate the care of the child to a nanny and driver for at least six months of the year, when the mother was available and had requested to care for the child. This change, he also found, had not been in the contemplation of the parties at the time of the Consent Order.

60 The father submits that the Consent Order did not expressly mandate a week on/week off parenting arrangement and contemplated changes to the parties' initial arrangement by permitting them to "agree on parenting schedules from time to time". He says that in accordance with that provision, the Consent Order was varied from time to time by agreement and therefore the trial judge erred in finding the changes in the parenting arrangement after the Consent Order was made, and in particular since the April 4, 2008 order, were material changes of circumstances. In support of his position, the father submits that the mother's factual summary of the changes to the Consent Order in her June 6, 2011 Notice of Application, amounted to admissions that she had consented to the changes and that the trial judge erred in failing to consider those admissions in determining the issue of whether she had established a material change of circumstances. I do not agree.

61 The central difference between the parties' positions on this issue is their respective characterization of the changes to the Consent Order, particularly between 2008 and 2012. The father says they were by agreement; the mother says they were imposed. The trial judge resolved that issue in favour of the mother by finding that adjusted arrangement (weekdays with the father and weekends with the mother) was "materially different from that envisioned by the earlier orders - in which it was envisioned that the parties would parent the child as equally as possible". (Para. 10.)

62 The earlier orders included the Consent Order and the April 4, 2008 order of Russell J. Before her, the father deposed that the week on/week off arrangement had "generally been followed". In fact, it had not been followed since February 2007. It would seem from her reasons that Russell J. understood that it was that initial week on/week off arrangement which the mother was attempting to change. While the mother acknowledged that between February and September 2007 she had been temporarily unable to care for the child because of the motor vehicle accident and therefore acceded to the adjusted arrangement, the trial judge found that after September 2007 her efforts to return to the week on/week off arrangement were consistently rejected by the father. There was no agreement to the adjusted arrangement after that date. It was the father's refusal to return to the week on/week off parenting of the child as contemplated by the parties at the time of the Consent Order that the trial judge found to be a material change of circumstances. I find no error in that determination.

63 The father does not dispute the trial judge's finding that his increased travel to Toronto during the