

Original

Clerk's Stamp

COURT FILE NO. 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

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

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

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

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

DOCUMENT **DECEMBER 11, 2020 WRITTEN REPLY BRIEF OF SHELBY TWINN, 1985 TRUST BENEFICIARY,**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
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1. I have read the Briefs of Catherine Twinn and the Office of the Public Trustee. I agree and adopt their Briefs.
2. I have read the Brief of the Sawridge First Nation (SFN). I disagree with their Brief. The SFN argues that the evidence of Catherine Twinn is inadmissible due to hearsay (Ron Ewoniak) and the transcript is inadmissible because Catherine Twinn is not adverse in interest to the OPGT. They also argue that Catherine Twinn gave this evidence in conflict due to her prior retainer with the SFN. I reject and dispute these unconvincing arguments in a Brief some 300 pages in length. The SFN highlights its job which is to suppress relevant and critical evidence that should have been forthcoming from the SFN and the Trustees. I am disappointed by their failure to observe what I understood to be part of an Alberta Lawyer's Oath: ... "conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property. I will not promote suits upon frivolous pretenses. I will not pervert the law to favour or prejudice anyone, but in all things will conduct myself truly and with integrity."
3. I have read the Brief of the Trustees filed November 27, 2020. I dispute many of the statements contained in that Brief unsupported by the extensive record in this Action. Their Brief purports to address how many Bill C 31 individuals are in play and the number of beneficiaries who are not band members. In sum, their submissions glorify the discrimination problems and largely reargue the need for a new definition. They also argue that utilizing the existing definition will make it difficult to determine who are the beneficiaries. Their submissions are incompatible with the record and the daily work of the Registrar at Indigenous Services Canada.
4. In paragraph 2 the Trustees say they want to provide you with some high-level information with respect to individual beneficiaries pursuant to the definition in the 1985 Trust to help you understand the potential consequences of a decision in the current application. They also say, "*the exact constitution of the 1985 Trust beneficiaries is a matter of debate and potentially further protracted litigation.*" I dispute this statement. Identifying 1985 Trust beneficiaries simply requires applying well-established legal categories to individual facts to

determine entitlement. The Registrar of Indigenous Services Canada has done this for decades. Every day, that office applies the same legal categories in the 1985 Trust to fact situations rendering determinations about entitlement. The Registrar can and has identified 1985 Trust beneficiaries and this remains a viable option to identify beneficiaries.

5. Specifically, before and after the enactment of the 1985 amendments to the *Indian Act* under Bill C-31, the Registrar determines who is entitled to status under s. 6, specifically, those who were on the list or entitled to be on the list before April 17, 1985 (s. 11(1)(a)). Also, under s. 11, the Registrar maintains membership lists for bands and membership in those bands depends on an individuals' eligibility for registration as status Indians. Once an individual is registered, if their entitlement to be included was based on descent from a member of a band whose list was maintained by the Registrar, the individual would automatically become a member of his or her ancestor's band.
6. The post Bill C-31 discrimination crack that appears between s. 11 Registrar maintained Band lists and s.10 Band Council controlled Band Lists is the result of a combination of ss. 10(4), 11(1) and 11(2) which allows for the same distinction in defining band membership that the courts ruled was discriminatory with respect to Indian status. Bands that had adopted their own rules prior to the 2010 and 2017 amendments, have thus far been left unaffected by the courts' conclusions on equality. By virtue of ss. 10(4) and 11(3.1), only those bands that take control of membership after the recent expansion of entitlement to Indian status must include individuals who acquired the right to be registered under the C-3 and S-3 amendments, in particular, victims of the siblings rule¹ and of the cousins rule,² as well as their descendants.³ Bands that took control earlier effectively have an acquired right to discriminate in their membership rules against the victims of the discrimination identified in *McIvor* and *Descheneaux*.

¹ The daughters born out of wedlock to Indian men and non-Indian women had no status whereas the sons of equivalent unions did, as described in *Descheneaux*, are now entitled to status under s.6(a.2) and entitled to membership under s.11(3.1)(a).

² The children, grandchildren and even great-grandchildren of an Indian man who married a non-Indian woman before 1985 had a better right to status than the descendants of an Indian woman who married a non-Indian man: *McIvor*, 2009 BCCA 153, and *Descheneaux*, 2015 QCSC 3555.

³ Now entitled to be registered under ss.6(1)(a.3) and entitled to membership under s.11(3.1)(b).

7. Without the right to live on reserve, status Indians on the general list derive few to no benefits from most programs and services funded by the federal government. There is no political life in which to participate and no reserve where those excluded have a right to live with others of the same background. Programs such as housing and community health are funded according to the number of status members residing on reserve.⁴ Even when programs are provided without relation to residence, they may be administered through bands, such as the post-secondary student support program, though alternative means have been set up for a student with status but no band membership.⁵ Under treaty benefits, to the extent that the Crown's financial obligations in relation to the reserves are owed to members, those excluded obviously do not share in them. A unity has developed between Canada and membership restrictive First Nations. This is illustrated in the Cows & Ploughs claim. By relying on a restricted membership system, Canada reduces the per capita settlement calculation relying on a s.10 restrictive membership list.
8. In this reality, the 1985 Trust is therefore an equalizer to persons like me denied SFN membership.
9. The creation of this new category of status Indians with few rights is largely an Alberta phenomenon. In 1982, only 80 Indians out of approximately 300,000 on the Register were not members of any band.⁶ By 1990, however, INAC's central Alberta region had 520 Indians on the general list, a population larger than six of the 20 bands in the region, which included several such as Sawridge or Ermineskin that had adopted membership rules before June 28, 1987.⁷ According to figures from 2016, out of 970,562 registered Indians, only

⁴ See Fiscal Realities Economists, "Evolving First Nations Service Populations: Challenges, Impacts & Implications," January 2018, p.5, Table 1, online: < <https://www.afn.ca/wp-content/uploads/2018/11/Service-Population-eng.pdf>>.

⁵ Indigenous Services Canada, "Post-Secondary Student Support Program and University and College Entrance Preparation Program: National Program Guidelines 2017-2018", 2017, online: < <https://www.sac-isc.gc.ca/eng/1488222703795/1531936637873>>; Indian and Northern Affairs Canada, BC Region, "Frequently Asked Question on the Post-Secondary Education Program", December 2008, online: <http://www.fnesc.ca/Attachments/Education%20Coordinator/Workshops%20&%20Info.%20Sheets/PLAIN_LANGUAGE_SUMMARY_PSE_GUIDELINES.pdf>

⁶ *McIvor* BCSC, para. 65.

⁷ Department of Indian Affairs and Northern Development, *Indian Register, Population by Sex and Residence 1990*, March 1991, p. 45; Jamie McDonnell, "Alberta leads way on C-31 membership codes," (1987) 5:10 *Windspeaker*. <http://ammsa.com/publications/windspeaker/alberta-leads-way-c-31-membership-codes>

around 2,000 were on the general list, but almost half of those (925) were in INAC's central Alberta region .⁸

10. The leader in this post Bill C-31 discrimination is the SFN, who is unwilling to reclaim members excluded by discrimination yet asks this Court to sanction its discriminatory s.10 membership regime to replace the certainty of the 1985 Trust beneficiary definition.
11. I cannot understand how the Trustees can insist they do not know who was/is or how to determine the 1985 Trust Beneficiaries. They can know and have the means to know. In 2010 they approved and implemented an arms-length application process to identify beneficiaries. Advertising occurred, some 200+ applications were received, disputed genealogies were created by Paul Bujold in consultation with elected Band officials, relevant rules and case law was enunciated, and an independent lawyer competent in the Rules was to review and apply the law to each application. The lawyer would render an opinion whether the applicant qualified. But the Trustees aborted this bona fide identification process. This Action became the excuse not to fulfill their most basic fiduciary duty – to identify beneficiaries of the Trust. These are uncontested facts in this Action. I find it unconscionable for the Trustees continue the narrative about the difficulties of beneficiary identification, going so far to suggest it may require potentially protracted litigation.
12. To amplify the identification issue, Catherine Twinn gave evidence of a Trust whose Trustees enabled a bona fide identification process of some 300+ plus applicants in less than 6 months for less than \$300,000. But these Trustees spent millions of 1985 Trust money on this and related Actions to force a corruption of the definition of the 1985 Trust Beneficiary class to strip me of my irrevocable beneficiary status. In doing so, they have utterly failed to make a *full, frank, righteous and selfless disclosure*, required by their fiduciary duty.
13. In paragraph 5 of their Brief, the Trustees say “*ascertaining the current constitution of the 1985 Trust is therefore difficult.*” Not so. It was always open to the Trustees to approach the

⁸ See “Registered Indian Population by Sex and Residence, 2016”, online: <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-AI/STAGING/texte-text/registered_indian__2016_main_1526060531549_eng.pdf>.

Registrar of Indian Affairs, clearly competent and independent, to apply the categories found in the 1985 Trust to individual facts and determine the entitlement of individuals to be registered under such provisions. This approach fulfills the individual duty of each Trustee to be diligent, act with utmost good faith, and to be selfless and even-handed. It is wrong to suggest beneficiaries cannot be identified knowing that identification is done every day by the Registrar. It is a breach of duty to refuse to implement a competent and independent process to identify beneficiaries of the 1985 Trust.

14. These Trustees subverted their own 2009/2010 identification decisions and process without rescinding their decisions to do so. They used this Action to avoid an independent identification of the 1985 Trust beneficiaries. They have asked the Court to attempt to force the corruption of the definition of the 1985 Trust beneficiary class, arguing discrimination. They now demur to the SFN to argue this application to strip the Trust of its property.

15. At the time this Action began in 2011 without a constating application, the Trustees had hatched their scheme to internally corrupt the 1986 Trust beneficiary definition. They downloaded their duty to identify 1986 Trust beneficiaries to the SFN. They ignored the weak and unfulfilled assurance by Trustee Roland Twinn that as Chief he would lead the “reform” of the SFN membership system. That reform never happened. They relied heavily on Mike McKinney’s advice, SFN in house legal counsel. In the end, the clear and plain 1986 Trust language was spun into a new interpretative meaning to accord with a claim to power under s.10. The 1986 Trust beneficiary definition says:

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

“Beneficiaries” at any 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 or customary laws are incorporated into or recognized by the laws of Canada.

These clear words were spun to **mean a political result they have asked this Court to impose to replace the 1985 Trust beneficiary definition:**

“Beneficiaries at any particular time shall mean all persons who at that time are on the Sawridge Indian Band under the membership rules as determined by Chief and Council.”

16. Corrupting the 1985 Trust beneficiary definition to achieve the political “end goal” of revocation by Chief and Council of otherwise irrevocable Trust beneficiary status was much harder than corrupting the 1986 Trust beneficiary definition. The language of the 1985 Trust definition was less vulnerable to chicanery and manipulation. At a critical period in this Action all but one of the Trustees were elected Band officials; the influence of the Chief is a loud voice at the Trustee table, loyally cheered on by Trustee #2, a former Band Councillor. Typically, non-indigenous Trustees tend to defer to the Chief’s influence. The agenda of the Trustees and elected officials are the same – through control by Chief and Council with power to revoke status, reduce the pool of Beneficiaries to expand the value of individual benefits received (the “goodies”), keeping constituents happy.
17. Changing the 1985 Trust beneficiary definition requires Court approval. This Action became the excuse for withering the 1985 Trust that includes: depleting its wealth; burdening it with all the heavy legal fees to enrich 1986 Trust beneficiaries; refusing to implement a bona fide beneficiary identification process; refusing to extend the same benefits under Trust programs to 1985 Trust beneficiaries that 1986 Trust beneficiaries receive; denying the 1985 Trust made distributions; using the 1985 Trust to creditor proof assets; refusing to provide an accounting of the 1985 Trust; reliance on the SFN to argue what they cannot; and post April 25, 2019 and the realizations that came with the Jurisdiction application, a now limp defense of the 2016 Consent Order approved by Canada and others.
18. In the adjourned April 25, 2019 application, and in their November 27, 2020 Brief, the Trustees invoke “discrimination” to persuade the Court to benefit the SFN regime. I feel effectively silenced through a tactic of death by process. This Application for Advice is entering its 10th year. The Trust and the Trust funded SFN have squelched concerns about the

SFN Membership regime. That regime entrenches and perpetrates the very discrimination the Trustees complain about to the Court. Before 1985, Indian status and band membership were practically equivalent, in that all band members were status Indians and almost all status Indians were members of a band. After 1985, at the Band level, discrimination blooms, watered by an inchoate and amorphous claim to an inherent right to self-government, unsupported by a principled legal foundation based on Nature's laws.

19. Justice Denny Thomas remarked that challenging “the internal decision-making, self-determination, and self-government of an aboriginal community is a serious matter” to support awarding solicitor-client costs against Priscilla Kennedy, who pro bono represented Maurice Stoney. Maurice felt wrongly excluded by the secretive and discriminatory SFN membership system. Maurice Stoney’s claim was rendered toxic, even though he was in the same situation as Hele *ibid* 12. The Courts comments and decision sent a strong chill to all.⁹
20. On August 24, 2016 my then counsel Nancy Golding, appeared before Justice Thomas requesting he sign a minor Consent Order agreed to by all parties giving her procedural notice during an interim period. She was questioned if she had spoken with Mr. Molstad. She had but Mr Molstad did not want to look at the Consent Order and had indicated he was not a party. When asked by Justice Thomas to look at it, Mr. Molstad did and indicated it seemed reasonable. Notwithstanding, Justice Thomas refused to sign it.¹⁰
21. I note Justice Thomas' Written Decision from July 5, 2017, in response to my counsel, Nancy Golding, asking for Party Status for Patrick Twinn and myself. Urged by the Trustees, Justice Thomas Ordered Solicitor/Client Costs against us. We successfully appealed the costs award.¹¹ But the Appeal depleted our funds ultimately resulting in our inability to afford legal counsel.

⁹ Justice Denny Thomas, 1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 530, at para 149

¹⁰ August 24, 2016 Transcript, pages 13-15.

¹¹ 1985 Sawridge Trust v Alberta Public Trustee, 2017 , ABQB, 377

22. In paragraphs 6, 7, 13, 15(c) and 19 of the Trustees Brief filed November 27, 2020, they discuss who they've "interpreted" to be a 1985 Trust beneficiary. They cite Winona Twin's marriage in paragraph 13 as an example of a marriage out victim. Winona Twin is on the SFN Band List. As I stated in my November 27, 2020 Brief, being a beneficiary of both Trusts does not double your benefits.
23. Paragraph 19 of the Trustees Brief refers to the notice given to "affiliates". Our then counsel, Nancy Golding, was denied participation by Doris Bonora in the Trustees identification ("settlement") process. That process should have been collaborative, inclusive, open, independent and outside Dentons control. For example, had the Registrar's help been enlisted resolution may have been possible. Adversarial positions do not enable resolution.
24. In this Action the Trustees and the SDFN have suppressed mention of the SFN membership system, citing Decision #3 of Justice Thomas to overturn Decision #1. The Trustees appealed Decision #1 only on the issue of costs and lost. The fulsome review and report of the SFN membership system remains outstanding.
25. The SDFN's Membership Rules on their face are discriminatory and the Trustees have been advised of this. Despite knowledge, legal advice, and Roland Twinn's undertaking to reform the SDFN membership system, it remains unreformed. Yet the Trustees continue to defer and advance that system to determine 1986 Trust beneficiaries and extend that system to determine 1985 Trust beneficiaries notwithstanding it will exclude me and many others.
26. In 2012, Catherine Twinn appropriately sought collaboration with the Public Trustee and the retention of independent counsel to advise the Trust against a backdrop of derision and discord amongst the Trustees. The Trustees denied her suggestions without a *bona fide* rationale, rendering the situation unresolved and insoluble, which itself is a transgression of their fiduciary duty.
27. Adding salt to the injustice of hypocrisy is the exclusion by the SFN of certain individuals they know are "absolutely entitled" to SFN membership such as William McDonald, Frank Joseph Ward (and his family members) and Michelle Ward. These persons have been

excluded by the SFN from the SFN Band List. As this Action demonstrates, seeking legal redress against the SFN and the Trustees is expensive and intimidating. These individuals lack the means to hire lawyers. Their remaining hope hangs on their legal entitlement under the 1985 Trust beneficiary definition, ostensibly protected by trust law principles and professional duties

28. While each individual situation cries injustice, the circumstances of Michelle Ward are especially egregious. Her discriminatory and dishonest treatment by the SFN, enabled by the Trustees, stands in stark contrast to the preferential treatment afforded Trustee Justin Twin-McCoy, half brother to Winona Twin, both of whom are SFN members since birth. This Brief will address these few examples, but I remind this Court there are others.
29. William McDonald is the older brother of Darcy Twin. Their father is Chester Twin, brother to my grandfather. Today, Darcy Twin is a SFN Band Councillor who gave evidence on this application despite knowing nothing about what he was giving evidence about. He was a shield for Chief/Trustee Roland Twinn. Darcy Twin is on the SFN Band List, William McDonald is not. William has an absolute right to be on the SFN Band List just as his younger brother Darcy. William, and his family, are beneficiaries of the 1985 Trust. Under the 1985 Trust, their status is not up for political determination by SFN in a secret process outside legal principles.
30. Frank Joseph Ward is brother to Cecile Ward (Loyer), Margaret Agnes “Clara” Ward and Peter Cardinal¹². The Federal Court ordered Cecile and Clara onto the SFN Band List in 2003 notwithstanding the SFN Membership rules and secret process.¹³ For whatever reason, Frank was overlooked. All three siblings are the illegitimate children of Mary Irene Ward, a SFN band member. Frank and Cecile are full siblings. The SFN knows Frank Ward and his family and is aware of their entitlement. Again, the SFN and the Trustees ignore the entitlement of

¹² (Peter, also “illegitimate”, was born shortly after his mother ‘enfranchised’ and Peter is affected by the *Hele v Canada (AG)*, 2020 QCCS 2406 decision). Peter lives in Slave Lake and works at the Sawridge Trust Stop, a Trust asset. For commentary on the Hele decisions see <https://words.usask.ca/nativelaw/2020/08/12/hele-c-canada-ag-2020-qccs-2406/>

¹³ *Bertha L’Hirondelle v Her Majesty the Queen*, 2003 FCT, 347, upheld on appeal

these persons. Frank, his wife (married before 1985) and children (all born before 1985) are entitled to SFN band member. But they are not on the SFN Band List maintained by Chief and Council. If the Trustees and the SFN succeed in persuading this Court to corrupt the 1985 Trust beneficiary definition to SFN membership, or strips the 1985 Trust of its assets in favor of the SFN, can the SFN leadership, on its record, be trusted to respect any individual's entitlement to benefit from such assets?

31. Michelle Ward, daughter of SFN Band member Georgia Ward, was born in the early 1980's, the same period as Justin Twin-McCoy, whose mother is Vera Twin. Both Justin and Michelle were born illegitimate, were on the SFN Band List, yet after Bill C-31 and after the SFN gains control of its Band List, Michelle's name disappears. Michelle's facts are:

- i. Michelle was born to Georgina Ward, a SFN member.
- ii. Georgina Ward was unmarried.
- iii. The SFN unsuccessfully protested the Registrar's decision to add Michelle Ward to its Band List alleging her father was a non-Indian (Justin Twin McCoy's father is a non-Indian).
- iv. In May 1985, Justice Cavanaugh upheld the Registrar's decision to add Michelle Ward to the SFN Band List, rejecting as unproven the allegation that her father was a non-Indian.¹⁴
- v. In July 1985, the Registrar provided the SFN with a copy of its Band list as it stood June 27, 1985, the day before Bill C-31 was enacted.¹⁵
- vi. Michelle Ward's name is on the List.
- vii. The Registrar transferred administrative control to the SFN in about October 1985.
- viii. Thereafter, Michelle vanishes from the SFN List.
- ix. The SFN has not restored Michelle's name to its Band List despite the SFN, the Trustees and their lawyers being fully aware through this Action of the disappearance of Michelle's name from the SFN Band List. *ibid* 15

¹⁴ May 21, 1985, Sawridge Indian Band v Michelle Ward, Action #8503-12228

¹⁵ Questioning of Catherine Twinn Transcript from November 9, 2016, and Exhibit Z from this Questioning

32. SFN membership rules are delegated authority under the Indian Act. No Court has declared that the SFN has a constitutionally protected right to discriminate under their membership Rules, particularly when such forms of discrimination in the Indian Act have been struck down by Courts. If the Indian Act cannot discriminate, then logic suggests that a subordinate delegated exercise of Indian Act power, like Membership Rules, cannot discriminate.
33. Bill C-31 (June 28, 1985) was followed by Bill C-3 (January 2011) and Bill S-3 (December 22, 2017). Bills C-3 and S-3 were adopted in response to *McIvor* and *Ducheneaux* respectively, adding what is now s. 11(3.1) to preserve the equivalency between status and membership. *Descheneaux* condemned sibling and gender discrimination found in Canada's Indian Act. *Descheneaux* found that persons like Deborah Serafinchon, my aunt and sister to Roland Twinn, has, under s.15, the equivalent status as her brother Roland Twinn. Deborah's mother and father (my grandfather) were SFN members. Deborah's mother was the daughter of a SFN s.12(1)(b) woman. Deborah's SFN lineage is impeccable on her maternal and paternal side, dating back to Treaty 8 signing. Yet she is denied SFN membership; her application languishes in the SFN office, year after year, like most applications except the applications of Roland's sons. It is audacious for the SFN and the Trustees to argue "discrimination" to influence this Court to deliver their "end goal", while taking the position that the SFN's Membership Rules are not only unaffected by the courts' conclusions on equality but their inherent right to self government enables brazen violations of such conclusions.
34. The Trustees deferred their responsibility to identify Trust beneficiaries to the SFN Membership Rules, knowing these are uncertain, discriminatory and utilize subjective, unknowable criteria. Like Canada, a Band Council is a government subject to s.15. It should follow that Band Membership Rules are subject to the same equality principles as Canadian legislation.
35. The 1985 Trust is not a government. It is a private arrangement of property governed by Trust principles requiring 3 certainties, one of which is the certainty of objects. This refers to the fact that you must be certain who the beneficiaries of the Trust are. For a trust to be valid,

the trustee must know who they are to direct the benefits of the trust property towards, and who can hold the trustees to account in the even of anything going wrong. As such, a group so large or so vague that the trustee would be unable to identify who the beneficiaries are would not be valid. The Objects must be ascertainable and identified in order to be a valid Trust. Of the 2 Trusts, the 1985 Trust has certainty of objects. The same cannot be said of the 1986 Trust. Despite this, the 1985 Trust is the target for attack by the SFN and the Trustees.

36. If the Court is to intervene, it should intervene on the 1986 Trust to uphold the legal meaning of its definition, subject to equality principles pronounced by the Courts. Decision #1 called for scrutiny of the SFN membership system. This should occur.
37. The Court should protect the 1985 Trust property and its beneficiaries. In particular, the Court should compel an independent identification process to determine all persons who qualify as beneficiaries of the 1985 Trust and if the definition were to change, grandfathering past, present and future persons who qualify under the existing rules.
38. This Court should reject the submissions of the SFN and the Trustees and uphold the 2016 Consent Order.
39. A strong decision should issue that ensures respect for the property arrangements settled in the 1985 Trust by my Grandfather, the Settlor of the 1985 Trust. He achieved a careful balancing of competing and conflicting interests in a complex factual and legal situation that was and continues to evolve. His foresight, courage and stamina in settling this Trust to create equity, inclusiveness and expand the beneficiary pool should be upheld, not destroyed.
40. Trust law and other legal principles should end the political interests unleashed in this unfair and power imbalanced Action.

All of which is respectfully submitted at the City of Edmonton, in the Province of Alberta this
11th day of December 2020.

A handwritten signature in dark ink, appearing to read 'Shelby Twinn', written over a horizontal line.

-
Shelby Twinn
Self-Represented Litigant

Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 377

Date: 20170705
Docket: 1103 14112
Registry: 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" or "Trust")**

Between:

**Patrick Twinn, on his behalf, and on behalf of his infant daughter,
Aspen Saya Twinn, and his wife Melissa Megley; and Shelby Twinn;
and Deborah A. Serafinchon**

Applicants

**Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle
and Clara Midbo, As Trustees for the 1985 Sawridge Trust
(the "1985 Sawridge Trustees" or "Trustees")**

Respondents (Original Applicants)

- and -

Public Trustee of Alberta ("OPTG")

Respondent

- and -

Catherine Twinn

Respondent

**Case Management Decision (Sawridge #5)
of the
Honourable Mr. Justice D.R.G. Thomas**

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I Introduction

[1] This is a case management decision on an application filed on August 17, 2016 (the “Application”) by Patrick Twinn, Shelby Twinn and Deborah A. Serafinchon (“Applicants”) to be added as full parties in Action No. 1103 14112 (the “Action”), for payment of all present and future legal costs and an accounting to existing Beneficiaries. The application by Patrick Twinn, on behalf of his infant daughter, Aspen Saya Twinn and his wife, Melissa Megley, appears to have been abandoned and, in order to keep the record clear, is dismissed. The balance of the Application by the Applicants is also dismissed, although the claims for an accounting from the Trustees by Patrick and Shelby Twinn are dismissed on a without prejudice basis.

II Background

[2] This Action was commenced by Originating Notice, filed on June 12, 2011 by the 1985 Sawridge Trustees and is sometimes referred to as the “Advice and Direction Application”.

[3] The history of the Advice and Direction Application is set out in previous decisions (including the Orders taken out in relation thereto) reported as *1985 Sawridge Trust v Alberta (Public Trustee)*, 2012 ABQB 365, 543 AR 90 (“*Sawridge #1*”), aff’d 2013 ABCA 226, 543 AR 90 (“*Sawridge #2*”), *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 (“*Sawridge #3*”), time extension denied 2016 ABCA 51, 616 AR 176, *1985 Sawridge Trust (Trustee for) v Sawridge First Nation*, 2017 ABQB 299 (“*Sawridge #4*”) (collectively the “*Sawridge Decisions*”). Some of the terms used in this decision (“*Sawridge #5*”) are also defined in the previous *Sawridge Decisions*.

[4] I had directed that this Application be dealt with through the filing of written briefs, subject to requests for clarification through correspondence between the Court and counsel. These letters have been added to the court file in this Action in a packet described as “*Sawridge #5 Correspondence*” and are listed in Schedule ‘A’ Part II to this decision.

III The Applicants

[5] Some factual background in relation to the three remaining Applicants is set out below and has been derived from the Affidavits forming part of the materials filed by the participants as described in Schedule ‘A’ Part I to this decision.

A Patrick Twinn

[6] Patrick Twinn was born on October 22, 1985. His father, Walter Patrick Twinn was the Chief of the Sawridge First Nation (“SFN”) from 1966 to his death on October 30, 1997 (“Chief Walter Twinn”).

[7] His mother is Sawridge Trustee, Catherine Twinn, who is also a member of the SFN.

[8] Patrick is also a member of the SFN and acknowledges that he is currently and will remain a Beneficiary of the 1985 Sawridge Trust even if the Trustees are successful in their application to vary the definition of ‘beneficiary’.

[9] Patrick Twinn also acknowledges that his beneficial interest in the 1985 Sawridge Trust may either be diluted or enhanced if the Trustees vary the definition of ‘beneficiary’ under the Trust.

B Shelby Twinn

[10] Shelby Twinn was born on January 3, 1992 and resided on the SFN Reserve for the first 5 years of her life. She is a granddaughter of Chief Walter Twinn and the daughter of Paul Twinn, a son of Chief Walter Twinn. Paul Twinn is recognized as an Indian by the Government of Canada under the *Indian Act* and is a member of the SFN. The mother of Shelby Twinn was married to Paul Twinn at the time of Shelby's birth.

[11] Shelby Twinn is registered as an Indian under the *Indian Act*. She is not listed as a member of the SFN and claims that she may lose her entitlement as a Beneficiary if the application of the Trustees to vary the definition of 'beneficiary' under the 1985 Sawridge Trust succeeds. Shelby Twinn acknowledges that she is currently a Beneficiary under the 1985 Sawridge Trust.

C Deborah Serafinchon

[12] Deborah Serafinchon claims to be the daughter of Chief Walter Twinn and Lillian McDermott, the latter being recognized as an Indian under the *Indian Act*.

[13] Deborah Serafinchon states that she was born an illegitimate child, was placed in foster care at birth and was raised in that system. Deborah Serafinchon asserts that Patrick Twinn is her brother and co-applicant.

[14] Deborah Serafinchon notes that if the current definition of 'beneficiary' under the 1985 Sawridge Trust is varied to exclude discriminatory language, such as "illegitimate", "male" and "female", she will then be included as a 'beneficiary' under the 1985 Sawridge Trust. She expresses concern about any proposed definition which would have the effect of excluding her as a 'beneficiary' being accepted by the Court.

IV Positions of the Parties

[15] The materials filed on this Application and reviewed by me are extensive. They are described in Schedule 'A'. The written briefs forming part of this array of materials contain the arguments of the various participants.

[16] The initial position of the Public Trustee of Alberta ("OPTG") on the Application is set out in a short letter, dated October 31, 2016, as supplemented by clarification letters of June 23 and 30, 2017 and are all included in the "Sawridge #5 Correspondence" packet.

[17] The Application is also supported by Sawridge Trustee Catherine Twinn, who is the mother of the Applicant, Patrick Twinn. She disassociates herself from the opposition to the Application by the other Trustees.

[18] The Sawridge Trustees (except Catherine Twinn) oppose the Application in its entirety.

V Issues

[19] The issues to be decided on this Application are:

- a Whether some or all of the Applicants should be made a Party to this Action?
- b Whether the Applicants should be awarded advance costs and indemnification for future legal fees from the 1985 Sawridge Trust?

[20] While claims for an accounting by the Trustees have been made by some of the Applicants, no submissions were made on this remedy.

VI Disposition of the Application

[21] I confirm that the claims by Patrick Twinn on behalf of his infant daughter, Aspen Saya Twinn, and his wife, Melisa Megley, have been abandoned and, for clarity of record purposes, are dismissed.

[22] I also dismiss the claims of the remaining Applicants for the reasons which follow.

A Applicability of Rules 3.74 and 3.75 of the *Alberta Rules of Court*, Alta Reg 124/2010

[23] *Alberta Rules of Court*, Alta Reg 124/2010 (the “Rules” or individually a “Rule”) Rules 3.74 and 3.75 provide for the procedure for the addition of parties to an action commenced by a statement of claim or originating notice, respectively.

[24] The Trustees characterize the Applicants as “third parties” and argue that they cannot be added as parties, because they are not persons named in the original litigation. They rely on the decision of Poelman, J in *Manson Insulation Products Ltd v Crossroads C & I Distributors*, 2011 ABQB 51 at para 48, 2011 CarswellAlta 108 (“*Manson Insulation*”).

[25] *Manson Insulation* involves an action commenced by statement of claim. This Action was commenced by an originating notice, a procedure under which all participants are not known at the outset and it is also less clear as to when the ‘pleadings’ close. I do not accept that the Applicants are barred by application of Rule 3.74(2)(b) because they may be “third parties”.

[26] However, Rules 1.2 and 3.75(3) do have application to the circumstances here. I must be satisfied that an order should be made to add the Applicants as parties and I must also be satisfied that the addition of these Applicants as parties will not cause prejudice to the primary Respondents, the Trustees.

[27] The Advice and Direction Application has been underway for almost six years. There have been a number of complex applications resulting in a variety of decisions (See the *Sawridge Decisions*). The Trustees assert that some of the Applicants have chosen not to abide by deadlines imposed by this Court. In turn the Applicants take issue with the effectiveness of the early notifications in respect to the Advice and Direction Application. All of that said it is clear that this proceeding has gone on for a long time. I agree with the Trustees that the addition of more participants will make an already complex piece of litigation more complicated, not only in terms of potential new issues, but also in terms of more difficult logistics in coordinating additional counsel and individual parties and prolonging the procedural steps in this litigation, for example, even more questioning. All of that will in turn result in increased costs likely to be borne one way or another by the 1985 Sawridge Trust and the assets held by the Trust for its beneficiaries whom, I have already noted, include at a minimum two of the Applicants, namely Patrick and Shelby Twinn.

[28] In my decisions to date I have attempted to narrow and define the issues in this litigation. To allow additional parties at this stage will expand the lawsuit rather than create a more focussed set of issues for determination by a trial judge who will ultimately be tasked with determining this litigation.

[29] Further, I am not satisfied that the Applicants can pay the costs if they are unsuccessful and are not awarded an indemnity against paying the Trustees and, therefore, the costs of the

Trust. In other words, if this attempted entry into this Action is unsuccessful, then the Trust and its beneficiaries are left again to pay the bill.

[30] In conclusion, the Applicants have not satisfied me that their addition to this proceeding as full parties will not cause prejudice to the Trustees and the 1985 Sawridge Trust. Delay in bringing this litigation to a conclusion and expanding its scope are not, in my view, capable of being remedied by costs awards.

B Is it necessary to add Patrick and Shelby Twinn as Parties?

[31] The Trustees take the position that the interests of Patrick and Shelby Twinn are already represented in the Advice and Direction Application and that their addition would be redundant.

[32] In respect to Patrick Twinn, I agree that it is unnecessary to add him as a party. Patrick Twinn takes the position that he is currently, and will remain a Beneficiary of the 1985 Sawridge Trust. The Trustees confirm this and I accept that is correct and declare him to be a current Beneficiary of the Trust.

[33] Patrick Twinn understands and accepts that his beneficial interest under the 1985 Sawridge Trust may either be diluted or enhanced if the Trustees vary the definition of ‘beneficiary’ under the 1985 Sawridge Trust. There is no circumstance that I can foresee where his status as a Beneficiary will be eliminated and there is no need to add him as a party to this Action. In fact, adding him to the litigation will only result in the Trust’s resources being further reduced, to the detriment of all current and future beneficiaries.

[34] Further, counsel for the OPTG in her letters of June 23 and June 30, 2017 has confirmed that the Public Trustee continues to represent minors who have become adults during the course of this litigation. As a result, both Patrick and Shelby Twinn will have their interests looked after by the OPTG in any event.

[35] Shelby Twinn is in a similar situation. She acknowledges that she is currently a Beneficiary under the 1985 Sawridge Trust. The Trustee states at para 24 of its Brief, filed October 31, 2016, that:

Shelby and her sister, Kaitlyn Twinn, are both **current beneficiaries** of the 1985 Trust. (Emphasis added.)

[36] I accept the Trustees’ confirmation and declare Shelby Twinn to be a current Beneficiary of the Trust.

[37] As with Patrick Twinn, I cannot foresee a circumstance where the status of Shelby Twinn as a Beneficiary under the 1985 Sawridge Trust will be eliminated. Her participation through her own lawyer offers no benefit other than to dissipate the Trust’s property through the payout of another set of legal fees.

[38] For these reasons, there is no need to add Shelby Twinn as a party to this Action.

[39] A further reason of more general application for not adding Patrick and Shelby Twinn as parties to this Action is that to do so would have the effect of making this lawsuit a more adversarial process. Since both of these Applicants are already recognized as Beneficiaries by the Trustees and now by the Court, I observe that their ongoing involvement in the litigation would be better served by transparent and civil communications with the Trustees and their legal

counsel and through a positive dialogue with the Trustees to ensure that their status as Beneficiaries is respected.

C Should Deborah Sarafinchon be added as a Party?

[40] On the evidence presented to me, Debora Sarafinchon is not currently a Beneficiary under the 1985 Sawridge Trust. She accepts that she is not an Indian under the *Indian Act* and is not a member of the SFN. She has not applied for membership in the SFN and apparently has no intention of making such an application.

[41] As I have said in my earlier decisions in *Sawridge #3*, it is not appropriate for this Court to get involved in disputes over membership in the SFN. Apart from the jurisdictional issues which might arise if I was tempted to address membership issues, it would be contrary to my position that this litigation should be narrowed rather than unnecessarily expanded.

[42] I will give Ms. Sarafinchon the benefit of the doubt and will not characterize her application to be added as a party as being a collateral attack on SFN membership issues. However, I am concerned about the Court being drawn into that sort of contest in this long-running litigation.

[43] There is nothing stopping Ms. Sarafinchon from monitoring the progress of this litigation and reviewing the proposals which the Trustees may make in respect to the definition of ‘beneficiary’ under the 1985 Sawridge Trust and providing comments to the Trustees and the Court. I also repeat my concern about increasing the adversarial nature of this Advice and Direction Application.

[44] For all these reasons, I decline the request by Ms. Sarafinchon to be added as a party to this Action.

VII Is the consent of beneficiaries required to vary the 1985 Sawridge Trust such that they ought to be entitled to party status?

[45] It is not necessary for me to address this issue in deciding this Application and I decline to do so.

VIII Should the Applicants be entitled to advance costs?

[46] In light of my decision to refuse to add all of these Applicants as parties to this Action, it is not necessary for me to decide the issue of awarding them advance costs.

IX Costs

[47] As is apparent from my analysis, I have concluded that Patrick and Shelby Twinn, who are attempting to participate in this process, offer nothing and instead propose to fritter away the Trust’s resources to no benefit. In coming to this conclusion I observe that Patrick and Shelby Twinn were not interested in paying for their own litigation costs. They instead sought to offload that on the Trust, which would then have to pay for their representation in this litigation. I would not have permitted that, even if I had concluded these were appropriate litigation participants, which they are not.

[48] There is a parallel here with estate disputes where an unsuccessful litigation participant seeks to have an estate pay his or her legal costs. In that type of litigation a cost award of that kind means someone inside the group of intended beneficiaries loses, usually the residual beneficiary. Moen J in *Babchuk v Kutz*, 2007 ABQB 88, 411 AR 181, affirmed *en toto* 2009

ABCA 144, 457 AR 44, conducted a detailed review of the principles that guide when an estate should indemnify an unsuccessful litigant. That investigation investigates the role and need for the unsuccessful litigant's participation, for example by asking who caused the litigation, whether the unsuccessful litigant's participation was reasonable, and how the parties as a whole conducted themselves.

[49] Here I have concluded that Patrick and Shelby Twinn had no basis to participate, and, worse, that their proposed participation would only end up harming the pool of beneficiaries as a whole. Their appearance is late in the proceeding, and they have not promised to take steps to ameliorate the cost impact of their proposed participation, other than to shift it to the Trust.

[50] *Rule 1.2* stresses this Court should encourage cost-efficient litigation and alternative non-court remedies. The Supreme Court of Canada in *Hryniak v Mauldin*, 2014 SCC 7 at para 2, [2014] 1 SCR 87 has instructed it is time for trial courts to undergo a "culture shift" that recognizes that litigation procedure must reflect economic realities. In the subsequent *R v Jordan*, 2016 SCC 27, [2016] 1 SCR 631 and *R v Cody*, 2017 SCC 31 decisions Canada's high court has stressed it is time for trial courts to develop and deploy efficient and timely processes, "to improve efficiency in the conduct of legitimate applications and motions" (*R v Cody*, at para 39). I further note that in *R v Cody* the Supreme Court at para 38 instructs that trial judges test criminal law applications on whether they have "a *reasonable* prospect of success" [emphasis added], and if not, they should be dismissed summarily. That is in the context of *criminal* litigation, with its elevated protection of an accused's rights to make full answer and defence. This Action is a civil proceeding where I have found the Addition of the Applicants as parties is unnecessary.

[51] This is the new reality of litigation in Canada. The purpose of cost awards is notorious; they serve to help shape improved litigation practices by creating consequences for bad litigation practices, and to offset the litigation expenses of successful parties. By default successful litigation parties are due costs for that reason: *Rule 10.29(1)*. The Court nevertheless retains a broad jurisdiction to vary costs depending on the circumstances (*Rule 10.33*), and naturally should make cost awards to encourage the *Rules* overall objectives and purposes (*Rule 1.2*).

[52] Elevated cost awards are appropriate in a wide variety of circumstances so as to achieve those objectives, as is reviewed in *Brown v Silvera*, 2010 ABQB 224 at paras 29-35, 488 AR 22, affirmed 2011 ABCA 109, 505 AR 196.

[53] I conclude one aspect of Canada's litigation "culture shift" is that cost awards should be used to deter dissipation of trust property by meritless litigation activities by trust beneficiaries. I therefore order that Patrick and Shelby Twinn shall pay solicitor and own client indemnity costs of the Trustees in responding to this Application.

[54] In respect to Deborah Serafinchon, she was outside the Trust relationship and though I have rejected her application she has not litigated as an 'insider' who has done nothing but attempt to diminish resources of the Trust. I therefore award costs against Deborah Serafinchon in favour of the Trustees on a party/party basis. If there is any dispute over the resolution of the amount of costs in both cases, I retain jurisdiction to resolve that problem should it arise.

[55] In closing, I confirm the OPTG representation of minors who have become adults will be subject to the existing indemnity and costs exemption orders. This direction shall be included in the formal order documenting this judgment.

Heard and decided on the basis of the written materials described in Schedule 'A'.
Dated at the City of Edmonton, Alberta this 5th day of July, 2017.

D.R.G. Thomas
J.C.Q.B.A.

Submissions in writing from:

N.L. Golding Q.C.
Borden Ladner Gervais LLP
for the Applicants Patrick Twinn et al.

D.C. Bonora and
A. Loparco, Q.C.
Dentons LLP
for The 1985 Sawridge Trustees

J.L. Hutchison
Hutchison Law LLP
for the OPTG

C.K.A. Platten, Q.C. and
C. Osualdini
McLennan Ross LLP
for Catherine Twinn

Schedule 'A'**Part I - Materials filed by the participants in the Application by Patrick Twinn et al.**

FILING DATE	DESCRIPTION
August 17, 2016	Application by Patrick Twinn et al. to be added as parties to Action 1103 14112 – Borden Ladner Gervais (“BLG”).
August 17, 2016	Affidavit of Patrick Twinn, sworn July 26, 2016.
August 17, 2016	Affidavit of Shelby Twinn, sworn July 26, 2016.
August 17, 2016	Affidavit of Deborah Serafinchon, sworn July 26, 2016.
September 30, 2016	Brief of Patrick Twinn, Shelby Twinn and Deborah Serafinchon – BLG.
September 30, 2016	Extracts of Evidence of Patrick Twinn, Shelby Twinn and Deborah Serafinchon – BLG.
September 30, 2016	Book of Authorities of Patrick Twinn, Shelby Twinn and Deborah Serafinchon – BLG.
October 21, 2016	Transcript of Questioning on Affidavit of Patrick Twinn.
October 21, 2016	Transcript of Questioning on Affidavit of Shelby Twinn.
October 21, 2016	Transcript of Questioning on Affidavit of Deborah Serafinchon.
October 31, 2016	Response Brief of the Trustees for the 1985 Sawridge Trust in Response to the Brief of the Applicants Patrick Twinn, Shelby Twinn, and Deborah Serafinchon – Dentons.
October 31, 2016	Letter from Hutchison Law to Denise Sutton re Application by Patrick Twinn et al. – Hutchison Law.
November 1, 2016	Brief of Catherine.
November 1, 2016	Affidavit of Paul Bujold sworn October 31, 2016 – Dentons.
November 10, 2016	Letter from Dentons to counsel (cc'd to Thomas J) re Undertaking Responses of Patrick Twinn, Shelby Twinn and Deborah Serafinchon – Dentons.
November 10, 2016	Undertakings of Patrick Twinn.
November 10, 2016	Undertakings of Shelby Twinn.

November 10, 2016	Undertakings of Deborah Serafinchon.
November 14, 2016	Letter from Dentons to Thomas J re typo in response to the Brief of Patrick Twinn.
December 2, 2016	Affidavit of Deborah Serafinchon sworn November 24, 2016.
December 2, 2016	Letter from Dentons to Thomas J re response to unfiled Affidavit of Deborah Serafinchon.
December 5, 2016	Reply Brief of Patrick Twinn, Shelby Twinn and Deborah Serafinchon – BLG.
December 5, 2016	Extract of Evidence related to Reply Brief of Patrick Twinn, Shelby Twinn and Deborah Serafinchon – BLG.
December 9, 2016	Letter from Dentons to Thomas J re filed Undertakings of Paul Bujold from the Questioning on Affidavit on November 29, 2016.
December 9, 2016	Undertakings of Paul Bujold – Dentons.
December 12, 2016	Transcript on Questioning of Paul Bujold of November 29, 2016 – Dentons.

Part II - List of Correspondence

DATE	FROM	TO
June 09, 2017	Justice D.R.G. Thomas	Ms. Nancy L. Golding
June 16, 2017	Ms. Nancy L. Golding, QC	Justice D.R.G. Thomas
June 19, 2017	Ms. Nancy L. Golding, QC	Justice D.R.G. Thomas
June 20, 2017	Ms. Janet L. Hutchison	Justice D.R.G. Thomas
June 22, 2017	Justice D.R.G. Thomas	Ms. Nancy L. Golding, QC and Ms. Janet Hutchison
June 22, 2017	Justice D.R.G. Thomas	Ms. Janet Hutchison
June 23, 2017	Ms. Janet L. Hutchison	Justice D.R.G. Thomas
June 27, 2017	Ms. Doris C.E. Bonora	Justice D.R.G. Thomas
June 28, 2017	Ms. Karen A. Platten, QC	Justice D.R.G. Thomas
June 29, 2017	Justice D.R.G. Thomas	Ms. Janet Hutchison
June 30, 2017	Ms. Janet L. Hutchison	Justice D.R.G. Thomas

Included in a filed packet described as “Sawridge #5 Correspondence”.

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

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

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

Applicants

P R O C E E D I N G S

Edmonton, Alberta
August 24, 2016

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

2

3 August 24, 2016

Morning Session

4

5 The Honourable

Court of Queen's Bench of Alberta

6 Mr. Justice Thomas

7

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

For Catherine Twinn

9 C. Osuladini

For Catherine Twinn

10 L. Maj

For the Minister of Aboriginal Affairs and

11

Northern Development

12 J.L. Hutchison

For the Public Trustee of Alberta

13 D.C. Bonora

For Sawridge Trustees

14 A. Loparco

For Sawridge Trustees

15 N.L. Golding, Q.C.

For Patrick Twinn, et al

16 E.H. Molstad, Q.C.

For Sawridge First Nation

17 G. Joshee-Arnal

For Sawridge First Nation

18 S.A. Wanke

For Morris Stoney, et al

19 C. Wilde

Court Clerk

20

21

22 **Discussions**

23

24 THE COURT:

Good morning.

25

26 Are you going to do the introductions?

27

28 MR. MOLSTAD:

I have been assigned that task, Sir.

29

30 THE COURT:

All right.

31

32 MR. MOLSTAD:

We have, representing the Sawridge Trustees,

33 Ms. Bonora and Ms. Loparco.

34

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

37

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

39

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

41

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

2
3 And we have representing Patrick Twinn, et al, Ms. Golding.

4
5 We also have in attendance from the Minister of Aboriginal Affairs and Northern
6 Development, Ms. Maj from the Department of Justice.

7
8 We -- as you can see from the agenda that was sent to you yesterday, the first item on the
9 agenda is the Rule 5.13 application --

10
11 THE COURT: Yes.

12
13 MR. MOLSTAD: -- on membership and costs. And I'd like to
14 guess that the matters after that are not going to take too long, but that is a guess in terms
15 of the other matters (INDISCERNIBLE).

16
17 THE COURT: Yeah, I saw that revised agenda this morning.
18 Thanks for sending it in. But I think what I'm going to do is I'm going to reorder it,
19 because it looks to me from the revised agenda, the only matter that may take some time
20 is actually your application.

21
22 MR. MOLSTAD: That may be the case.

23
24 THE COURT: So let's see if we can move some of the
25 counsel along here.

26
27 MR. MOLSTAD: Well, I'm -- we're all in your hands, Sir, so. . .

28
29 THE COURT: All right.

30
31 MR. MOLSTAD: What order are you proposing in.

32
33 THE COURT: Oh, I'm proposing just normal chambers
34 process; that is the consent order first, get it resolved and dealt with. That would be --

35
36 MR. MOLSTAD: Number 4?

37
38 THE COURT: Number 4, the consent order. And then we'll
39 deal with these adjournment requests and --

40
41 MR. MOLSTAD: All right. Before I sit down, before we start the

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

3

4 THE COURT: All right.

5

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

7

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

10

11 MR. MOLSTAD: Thank you.

12

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

14

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

16

17 MR. MOLSTAD: Sorry.

18

19 **Submissions by Ms. Bonora**

20

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

26

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

28

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

31

32 MS. BONORA: Yeah. So --

33

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

36

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

41

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

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

7
8 THE COURT: Thanks, Ms. Bonora.

9
10 **Submissions by Ms. Hutchison**

11
12 MS. HUTCHISON: Good morning, My Lord. Janet Hutchison for
13 the Public Trustee of Alberta.

14
15 Very brief comments, My Lord, simply to give the Court some idea of why the OPTT,
16 and I believe Ms. Platten will speak to trustee Twinn, why we weren't able to arrive at a
17 joint brief, as well as a consent order. And it was simply a matter, My Lord, of some of
18 the wording around the facts and the evidence and what evidence was actually available,
19 as well as the final paragraph of the brief. Counsel just really weren't able to quite agree
20 how to characterize some of the issues around accounting.

21
22 The -- the Public Trustee would just like it noted on record that its position on the
23 consent order is that when it -- there is this reference to accounting in the preamble in
24 paragraph 2, that includes an individual accounting, as well as a passing of accounts.
25 And, of course, My Lord, for future reference, the passing of accounts for the five trusts
26 would occur logically within this proceeding, after beneficiary identification is dealt with.

27
28 But that's all we have to say, My Lord.

29
30 THE COURT: All right. Thank you. Ms. Platten?

31
32 **Submissions by Ms. Platten**

33
34 MS. PLATTEN: Sir, I think those are also our submissions, and
35 so we don't really anything further to say.

36
37 THE COURT CLERK: Sorry, your name, for the record?

38
39 MS. PLATTEN: Sorry, Karen Platten for Catherine Twinn.

40
41 **Submissions by Ms. Golding**

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

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

Thank you, Sir.

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

MS. BONORA: Just one --

THE COURT: Look, I --

MS. BONORA: -- comment, Sir.

MS. MAJ: Sorry, sorry.

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

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

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

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

Submissions by Ms. Maj

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

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

Ms. Bonora?

1 **Submissions by Ms. Bonora**

2

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

9

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

12

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

15

16 **Order (Consent Order)**

17

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

22

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

24

25 MS. BONORA: Thank you, Sir.

26

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

29

30 **Submissions by Ms. Bonora (Distribution Proposal Adjournment)**

31

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

34

35 THE COURT: All right. Sure.

36

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

1 Twinn.

2

3 Subsequent to the filing of those briefs, we received applications by Morris Stoney and
4 his brothers and sisters, and from Patrick Twinn, and his family Shelby Twinn and Debra
5 Sarafinchin.

6

7 In respect of the standing of those parties and whether they are beneficiaries, we believe
8 that until those applications are heard, that, as beneficiaries, they probably have a right to
9 speak. If they, in fact, are beneficiaries and are going to be treated as parties, that they
10 have a right to speak to distribution, and so we think it appropriate to postpone that issue.
11 It's ready to go once we've determined the standing of the various other parties and -- and
12 it would be our submission that especially with respect to the clients Ms. Golding
13 represents.

14

15 So those are my submissions in respect of the adjournment, and I think all counsel are on
16 board with that adjournment request.

17

18 THE COURT: So both the distribution plan, I'll call it, plus
19 the issue of -- the outstanding issue of who the beneficiaries are?

20

21 MS. BONORA: Yes. So the beneficiary definition is also
22 postponed. Counsel have advised that they believe it would be perhaps a two-day
23 application to deal with that particular issue, and so we still have to determine exactly
24 how we're going to come to bring that issue before the Court. We're still in discussions
25 among counsel on that issue.

26

27 THE COURT: Well, thank you for that, but I'll give you my
28 thinking on that issue. I'm inclined to send that issue to trial, and it won't be me hearing
29 it. It will be some other judge. I'm finding that the estimates of counsel in this matter
30 aren't too accurate, and given the nature of this litigation, I'm thinking -- my thinking is,
31 I'm not making an order, but I'm thinking this is not going to be determined on the basis
32 of affidavit evidence. It's going to go to a trial and get this thing resolved once and for
33 all. So --

34

35 MS. BONORA: Thank you, Sir.

36

37 THE COURT: -- just so you know my thinking on it.

38

39 MS. BONORA: And it --

40

41 THE COURT: And that you might want to start preparing a

1 contingency plan around that approach.

2

3 MS. BONORA: M-hm. That's very helpful to all counsel,
4 because there was some discussion about whether you would, in fact, hear that
5 application, and there was a discussion about whether we needed to make an application
6 about whether you would hear that application. So if, in fact, you are saying perhaps you
7 won't and that it should move to a trial, that gives us some direction in our next
8 discussions about scheduling and moving towards that.

9

10 THE COURT: Okay.

11

12 MS. BONORA: So thank you for those comments.

13

14 THE COURT: Yeah. No, I -- the reason I'm saying it is I
15 really came on to this before we had all sorts of rules around case management in --
16 generally, and specifically in commercial matters. I mean, case managers are meant to
17 deal with process issues, and not substantive disputes. I mean, we deal with a lot of
18 disputes over the appropriate process, but this one is going off in the direction of a more
19 general dispute. So that's why I'm thinking about it, and I -- and clearly if it went to a
20 trial, I would not be the case manager in this case.

21

22 MS. BONORA: Yes, Sir.

23

24 THE COURT: All right?

25

26 MS. BONORA: So perhaps if you could leave the issue of the
27 actual process and whether it would be a trial or whether counsel may be able to agree
28 that it could proceed by affidavit evidence, and whether we could maybe discuss that
29 before you made a decision about that and we could make some -- even if we just did it
30 by way of written submissions to you, that would be helpful to all of us, I think, to have
31 us consider that and consult with our clients.

32

33 THE COURT: That would be satisfactory to me.

34

35 MS. BONORA: Thank you. Mr. Molstad just asked me if you
36 were talking about trials of other issues on the agenda, but I think you're just talking
37 about --

38

39 THE COURT: No, I'm --

40

41 MS. BONORA: -- the definition of beneficiary, which was the

1 original issue in our action.

2

3 **Order (Distribution Proposal Adjournment)**

4

5 THE COURT: That's -- well, I think it -- my goal here has
6 been to try and get this litigation focussed, or refocussed in some cases, and it does seem
7 that the issues are narrowing, which is sort of the function of a case manager. We're
8 down to the -- well, the distribution plan, I'll call it, appears to be generally acceptable,
9 subject to some latecomers having a look at it. Whether they'll have anything to say is
10 yet to be decided, but my thinking is that the distribution plan looks like it's -- I mean,
11 I've read it. It seems quite reasonable. It looks like that issue is going to get swept off
12 the table. The -- so the one outstanding issue is the -- the scope of the beneficiary group.

13

14 MS. BONORA: Thank you, Sir.

15

16 THE COURT: So your request for an adjournment on the
17 distribution proposal application and -- is adjourned *sine die*.

18

19 **Submissions by Ms. Bonora (Standing)**

20

21 MS. BONORA: Thank you, Sir.

22

23 Perhaps, Sir, we could deal with number 3 on the list, because I don't believe Ms. Wanke
24 has any other matters that she would be attending to. I don't know that for sure, but
25 the -- so the application with respect to Mr. Stoney is an application for standing, an
26 application to be determined as a beneficiary. We're asking that matter to be adjourned.
27 We just got served with it. Obviously, there needs to be some discussion around exactly
28 what's going to happen with that, and questioning. And I don't think there's any
29 opposition to that request to adjourn, but I will leave it for Ms. Wanke to speak, and
30 Mr. Molstad would like to address it, as well.

31

32 THE COURT: All right. Well, Ms. Wanke, you're the
33 applicant -- representing the applicant, so if you'd like to speak first?

34

35 **Submissions by Ms. Wanke (Standing)**

36

37 MS. WANKE: I am, My Lord. We have no issue with
38 Ms. Bonora's request to adjourn the matter. She had proposed that counsel have a
39 conference and come to you with a proposal in terms of timelines and how the matter will
40 be heard, and we think that's reasonable. And we think counsel can certainly do that by
41 consent.

1
2 We have some concerns that matters will be decided in this proceeding before the issue of
3 our application is determined if our application doesn't move forward in a timely manner,
4 and we're wondering if it would be appropriate to suggest that our application would be
5 determined first, before any more matters of -- that effect Mr. Stoney and his brothers and
6 sisters are heard and determined, or, in the alternative, at the very least if we could be
7 added to the service list while their application is pending so we receive notice of what's
8 going on in this proceeding.

9
10 Sir, I'd --

11
12 THE COURT: Okay.

13
14 MS. WANKE: I'd also like to speak briefly to Mr. Molstad
15 speaking. I understand that Mr. Molstad wants to speak today. I appreciate that there's
16 likely hardly anything of substance that's going to be said or determined on the
17 adjournment application, since nothing of -- no merit decision is being made, but as a
18 matter of precedent we think it's important to note that the Sawridge First Nation was, in
19 your decision in 2015, expressly noted not to be a party to these proceedings, and rights
20 and benefit flow and obligations flow from being a party. Since they're not a party or a
21 respondent to our application, our position is they would first need to seek standing to
22 make any submissions. And, again, nothing of merit or substance is being determined
23 today, but for precedent, I think it's important that prior to Sawridge First Nation having a
24 say on anything to do with our application, they first satisfy the Court they have standing
25 to speak.

26
27 THE COURT: Mr. Molstad, as an active participant?

28
29 **Submissions by Mr. Molstad (Standing)**

30
31 MR. MOLSTAD: Well, we haven't been named as a respondent.
32 However, my friend's application sets out as one of the grounds that Mr. Stoney and his
33 siblings are members of the Sawridge First Nation. So it is a matter that directly affects
34 the Sawridge First Nation.

35
36 We can tell you that we will be making an application to intervene in this matter and
37 participate because of this allegation. And also you may or may not be aware that this
38 issue has been litigated before a number of courts previously, including the Federal of
39 Court of Appeal, the Federal Court and the Canadian Human Rights Commission.

40
41 THE COURT: Thank you.

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MS. WANKE:
issue.

But the issue that's been litigated is a different

THE COURT:

Well --

MS. WANKE:

The issue of being a beneficiary of the Trust --

THE COURT:

Okay. Well, look --

MS. WANKE:

-- versus being a present day member.

THE COURT:

-- I'm not going to get into it.

MS. WANKE:

isn't a matter for --

And it -- it simply -- you're right. It simply

THE COURT:

Well, let me --

MS. WANKE:

-- to be determined.

Order (Standing)

THE COURT:

now.

Let me -- I'll give you some direction right

You can make your application in writing, with a written brief, serve it on all of the participants who are here today. They can respond, or not, and you can include in that the Sawridge First Nation application for intervenor status. This matter will be dealt with in writing. It will not be the subject of court appearance. You can stand in line for a decision, because it may take some time to get dealt with, but that's the way it will proceed. Okay?

MR. MOLSTAD:

a reasonable period of time to prepare and file.

In terms of timing, Sir. We would just ask for

THE COURT:

pick end dates.

Well, certainly. Well, let's just pick dates. So

MR. MOLSTAD:

Pardon me?

1 THE COURT: The -- the applicant Stoney will have a -- well,
2 they've got an application, or -- all I've got is a Notice of Motion or --
3

4 MR. MOLSTAD: Right.
5

6 THE COURT: So, but the -- no affidavit ever made it to me,
7 my desk. So all materials, including a written brief in respect of this application to be
8 joined as a party by Maurice Stoney shall be completed, filed and served by September
9 30th, 2016, and the respondents, including a proposed intervenor, the Sawridge First
10 Nation, by October 31st.
11

12 MR. MOLSTAD: But we'll be making an application to
13 intervene. Should -- is that October 31st for us?
14

15 THE COURT: Well, you can put it in right -- yeah, just be --
16 you're a without-prejudice respondent, all right? Sawridge First Nation, you're to be
17 served with this application.
18

19 MR. MOLSTAD: Okay.
20

21 THE COURT: So double up on the response to the application,
22 and put in your intervenor response.
23

24 MR. MOLSTAD: So --
25

26 THE COURT: Or position.
27

28 MR. MOLSTAD: -- I just want to make sure I understand, Sir.
29 When do we file our application to intervene? September 30th --
30

31 THE COURT: You can do it --
32

33 MR. MOLSTAD: -- or October --
34

35 THE COURT: Well, do it by September 30th.
36

37 MR. MOLSTAD: All right. Thank you.
38

39 THE COURT: Okay?
40

41 MR. MOLSTAD: Yeah.

1

2 THE COURT: And then we'll give you until mid-November,
3 November 15th, for the Maurice Stoney applicant to respond in turn in writing to those,
4 and in particular the intervention application.

5

6 MS. WANKE: My Lord, my only concern with the proposed
7 schedule is that Ms. Bonora had requested to question on the affidavit last week, and we
8 provided her -- admittedly, it was right before this application -- we provided her with
9 three dates before today, and those weren't acceptable. So if questioning is to take place,
10 I wonder if we could have a commitment? I know that Mr. Stoney will make himself
11 available. Can we have a commitment from Ms. Bonora that any questioning that will
12 take place will take place before September 10th?

13

14 THE COURT: Well, why don't you work that out with
15 counsel?

16

17 MS. WANKE: Well, my fear is that it will happen after.

18

19 THE COURT: Well, I'm not going to get into it. Work it out
20 with counsel. We're not going to stand this litigation still while, you know, the
21 latecomers get their act together. You can deal with her.

22

23 MS. WANKE: Thank you, My Lord.

24

25 THE COURT: I'm not going to intervene in it.

26

27 Now, we've got another matter, another similar latecomer.

28

29 **Submissions by Ms. Golding (Scheduling)**

30

31 MS. GOLDING: That is correct, Sir. And, Sir, I had actually
32 prepared an order that I had provided to counsel and have comments on, and it is
33 (INDISCERNIBLE) in accordance with those comments.

34

35 Sir, my application and my order in terms of the scheduling just indicated that our
36 application would be adjourned to allow counsel to schedule a hearing of the matter.
37 And, in fact, Ms. Bonora and I may be able to come to an agreement in terms of the
38 standing part of that, although perhaps not the costs part. And then we had put into this
39 order that until the hearing date, and without prejudice to the actual decision that gets
40 made, that we would be considered to be parties and would have standing to make
41 submission, and that any documents that are to be served on our clients could be served

1 on our office, Sir. And as I've indicated, counsel have all approved the order.

2

3 THE COURT CLERK: Sorry, can you state your name for the record?

4

5 MS. GOLDING: Sorry, I apologize. Nancy Golding.

6

7 THE COURT: I take it when you say all counsel, it includes
8 the Sawridge First Nation and Mr. Molstad?

9

10 MS. GOLDING: I did talk with Mr. Molstad about it --

11

12 MR. MOLSTAD: We're not --

13

14 MS. GOLDING: But he'd indicated --

15

16 MR. MOLSTAD: -- a party to this.

17

18 MS. GOLDING: -- he's not a party to this.

19

20 THE COURT: Yeah, I know you're not party, but have you
21 seen this?

22

23 MR. MOLSTAD: Well, I haven't seen it, no. Sorry.

24

25 MS. GOLDING: I -- I tried to show it to him, but he didn't want
26 to look at it.

27

28 MR. MOLSTAD: It appears that this is simply an adjournment
29 and deems them to be parties until it's decided, and that seems reasonable, Sir.

30

31 THE COURT: I'm just wondering about -- again, I keep
32 clogging this litigation up with additional parties who really don't -- I mean, on the face
33 of it I'm not seeing what Mr. Patrick Twinn and -- who is already a beneficiary. . .

34

35 MS. GOLDING: That's correct, Sir.

36

37 **Order (Standing)**

38

39 THE COURT: I'm just concerned about clogging this litigation
40 up with unnecessary parties. I'm not saying Mr. Twinn and his relations are unnecessary
41 parties, but the more lawyers and the more people that get added into this litigation

1 simply make it more difficult to bring to a conclusion, and I'm not sure at this stage that
2 there aren't enough people involved in this to raise all the issues that should be raised.

3
4 I'm not prepared to grant this order. I'm prepared to -- you -- I'm not prepared to grant
5 it, and I'm just going to -- Patrick Twinn and company, I'm going to -- you can proceed
6 in the same way as Mr. Stoney.

7
8 MS. GOLDING: Thank you, Sir.

9
10 THE COURT: In terms of we'll deal with their application in
11 writing. All right? Same timelines?

12
13 MS. GOLDING: That -- that's fine, Sir. Thank you, Sir.

14
15 THE COURT: In include Sawridge First Nation in terms of the
16 receipt of the materials, and you can decide whether or not you want the band -- pardon
17 me, the Sawridge First Nation can decide whether they want to take a position on
18 intervention.

19
20 MS. GOLDING: Thank you, Sir.

21
22 THE COURT: All right? So otherwise that is -- you're
23 adjourned *sine die*. Your matter's adjourned *sine die* as of --

24
25 MS. GOLDING: Thank you, Sir.

26
27 THE COURT: Madam Clerk, I'm just going to pass that
28 proposed consent order back.

29
30 Okay. Madam Clerk, I've moved along fairly quickly. Would you like to -- are you okay
31 with -- everything's adjourned? You've got notes?

32
33 All right. We're -- you're the only application outstanding.

34
35 **Submissions by Mr. Molstad (Application)**

36
37 MR. MOLSTAD: Just I have a couple of preliminary comments
38 before my friend makes her submissions in relation to this matter, and we're really in
39 your hands in terms of the procedure, but the comments are very brief.

40
41 When we referred in our brief to the decision of *Francis Kutee (phonetic)* as a decision of

1 the Supreme Court of British Columbia, we did not indicate that it was reversed by -- on
2 the merits by the BC Court of Appeal, and this was an unintentional oversight on our
3 part. We do say, Sir, that the comment of the trial judge is consistent with the law in
4 Alberta, and will make submissions in that regard when we make our submissions.

5
6 We also spoke to our friend and there was an unintentional error in their brief, which is
7 the written submissions of the Public Trustee of Alberta in response to Sawridge First
8 Nation's costs submissions at page 6.

9
10 THE COURT: Sorry, which one of the briefs?

11
12 MR. MOLSTAD: It's the written submissions of the Public
13 Trustee of Alberta in response to the Sawridge First Nations costs submissions.

14
15 THE COURT: Okay. The August 19th -- filed August 19th?

16
17 MR. MOLSTAD: August 19th, that's correct.

18
19 THE COURT: Okay.

20
21 MR. MOLSTAD: And in paragraph 20, my friend has written that
22 at the September 2nd and 3rd hearing, Thomas, J ordered the SFN would prepare and
23 serve an Affidavit of Records. That's a typographical error.

24
25 THE COURT: Sorry, I'm still getting the paragraph.

26
27 MR. MOLSTAD: Sorry.

28
29 THE COURT: Twenty?

30
31 MR. MOLSTAD: Paragraph 20.

32
33 THE COURT: On page 6?

34
35 MR. MOLSTAD: Page 6. It says that the Sawridge First Nation,
36 SFN, would prepare and serve an Affidavit of Records according to the rules. That was
37 the Sawridge Trustee, not the Sawridge First Nation.

38
39 THE COURT: Okay.

40
41 MR. MOLSTAD: And that was also an unintentional error on the

1 part of my friend.

2

3 MS. GOLDING: Thank you, Mr. Molstad.

4

5 THE COURT: All right. Just a request of counsel. I mean, I
6 certainly appreciate the written briefs. I tend to still move on paper, as opposed to
7 electronic, but if you -- you obviously have these briefs in electronic form. I'm not
8 talking the appended authorities, but could you please email the body of your briefs? And
9 I've got two briefs from the Public Trustee and one brief from you. Mr. Molstad, if you
10 wouldn't mind just emailing them to my assistant, Denise Sutton. I think all of you have
11 her email address.

12

13 MR. MOLSTAD: Is that without the attachments. Sir?

14

15 THE COURT: If you've got the -- if you --

16

17 MR. MOLSTAD: We -- we can send it all.

18

19 THE COURT: You -- you can send it at all. That's fine. I
20 just -- I don't want to run the costs up for you. If they are -- if they're already scanned
21 in and ready to go, that would be helpful.

22

23 All right. I'll just tell you I -- so I have the three briefs. I did note --

24

25 MS. HUTCHISON: My Lord, just so that the Court has it in front
26 of -- in front of your -- of My Lord, Sawridge First Nation filed a brief first March 15th.

27

28 THE COURT: Right.

29

30 MS. HUTCHISON: And then -- and so there are actually four
31 briefs.

32

33 THE COURT: And I don't have that brief. I don't know --

34

35 MS. HUTCHISON: My Lord, I can certainly hand up my copy
36 for --

37

38 THE COURT: Well, it might -- it may have come down here,
39 but it didn't --

40

41 Great. Well, thanks. That was the other question I had. So that's the March 15th one.

1
2 MR. MOLSTAD: The body of that brief is attached to our brief
3 of August 16th --
4

5 THE COURT: Yeah. No, I was --

6
7 MR. MOLSTAD: -- as Appendix 1.
8

9 THE COURT: Yeah, I saw that, but I didn't -- it was more the
10 attachments to it that was all about.
11

12 MS. HUTCHISON: Whenever you're ready, My Lord.

13
14 THE COURT: Okay.
15

16 **Submissions by Ms. Hutchison (Application)**
17

18 MS. HUTCHISON: My Lord, I just thought I'd start out with some
19 very brief comments on the 513 assets, or settlement application as we referred to, as
20 both. And that is, of course, the application that was withdrawn, and we simply wanted
21 to confirm that before the Court. Our comments are really directed more at some of the
22 submissions the Sawridge First Nation has on costs. And we'll speak to that more fully,
23 but just in the context of that application, as we've set out for the Court in our briefs, it's
24 important for the Court to realize that the OPGT had started some efforts to try to have
25 cooperative discussions in this matter as early as February. The reality was,
26 unfortunately, on this topic, things did not bear fruit until late in the day. There was a
27 clarification offered by the Trustees on May 14th. Counsel, both for the Public Trustee of
28 Alberta and for Trustee Twinn, I think were quite diligently talking to Ms. Bonora about
29 how to modify that clarification, and ultimately we came to an agreement on the terms of
30 it on July 27th. It's unfortunate that that was also the morning that Paul Bujold was
31 being questioned, My Lord, but Sawridge First Nation was made aware of that withdrawal
32 as the questioning began.
33

34 And so, you know, certainly, My Lord, one might -- one might hope that everything had
35 been resolved at an earlier date, but this was a very important part of this proceeding. It's
36 final relief, it's a critical issue, and we would submit that the Public Trustee of Alberta
37 was simply exercising due diligence, and the timing of the withdrawal should not be held
38 against the Public Trustee in relation to costs.
39

40 In terms of whether the Rule 5.13 assets application was necessary, of course it was filed
41 at the time that there was a broader scope of relevance at play. Once the scope of

1 relevance was narrowed by the consent order, the assets application was withdrawn. And
2 as we will comment later on our -- our submissions on costs, My Lord, the Public Trustee
3 of Alberta would take the position there's no basis to grant costs in relation to the assets
4 application.

5
6 We understand that the Trustees are not seeking costs of that application. It is solely an
7 application by the Sawridge First Nation. Is that correct, Ms. Bonora?

8
9 MS. BONORA: That's correct, Sir. Yes.

10
11 THE COURT: Thank you.

12
13 MS. HUTCHISON: So on to the beneficiary application, My Lord,
14 or the membership 513 application, whichever way the Court wishes to refer to it.

15
16 As indicated in our August 5th brief at paragraph 4, the Public Trustee of Alberta has
17 brought that application to insure the parties have appropriately applied Sawridge 3 to
18 confirm the Court is satisfied that all the evidence it needs to identify potential minor
19 beneficiaries is before the Court, and also to confirm that the Court is satisfied with the
20 form in which the information is being put before the Court. At this point, we have lists.
21 We don't have an affidavit. There is obviously a bit of a question about whether any of
22 that information could be questioned on, or examined on, and who would -- who would
23 be questioned.

24
25 As the Court is aware, and I'm referring the Court here to our August 5th brief at
26 paragraph 7, the Public Trustee of Alberta was appointed, in part, to assist the Court in
27 identifying the beneficiary class of affected minors. As of Sawridge 3, that does include
28 identifying potential but not yet identified minors who are children of Sawridge First
29 Nation members, or membership candidates.

30
31 When the Court explained what was meant by membership candidates, and I'm referring
32 to Sawridge 3, paragraph 37 and paragraph 56 -- and Sawridge 3, My Lord, is available, I
33 think, in almost every brief that's been filed, so I hope the Court can reference it easily --
34 that there were three categories of minors to be represented by the Public Trustee, minors
35 who are children of -- children of members, children of adults with unresolved
36 application, children of adults with rejected applications, so long as there is an intention to
37 challenge the rejection.

38
39 The OPGT has brought this matter forward to the Court because it is obviously the
40 Court's ultimate decision to decide whether or not there's adequate evidence to deal with
41 that beneficiary identification, and there were aspects of both Sawridge First Nation's

1 information which, while very helpful, left some lack of clarity and aspects of Sawridge 3
2 that the OPGT both wanted to ensure was interpreted correctly by the Public Trustee of
3 Alberta and the Sawridge First Nation, but also to ensure that there was not anything
4 requested that the Court did not want requested.

5
6 All of that was done, My Lord, in good faith and very much with the -- with the Public
7 Trustee's intention to carry out the mandate that it's been given. And I realize my friend
8 Mr. Molstad has a different characterization of that. I would firmly say to the Court that
9 the Public Trustee of Alberta has brought this application forward in good faith and with
10 the full intention to meet its mandate appropriately.

11
12 My Lord, then going on, and I'll refer you to our brief at paragraph 26 of the August 5th
13 brief, and Sawridge 3 paragraph 48 to 55. Again --

14
15 THE COURT: Yeah, just I actually want to get -- this is the
16 part that's outstanding.

17
18 MS. HUTCHISON: Yes. Yes.

19
20 THE COURT: So just give me those -- you want to -- I'm
21 starting at paragraph 24 of your brief, sort of what I had my eye on, because it sets out
22 the three categories that I guess you're seeking some direction on.

23
24 MS. HUTCHISON: The start of that discussion is at paragraph 24
25 of our August 5th --

26
27 THE COURT: Yeah.

28
29 MS. HUTCHISON: -- brief, My Lord. It then does go on through
30 to paragraph --

31
32 THE COURT: Well, until we shift to costs.

33
34 MS. HUTCHISON: Until paragraph 30, actually.

35
36 THE COURT: Thirty?

37
38 MS. HUTCHISON: Of that brief. But --

39
40 THE COURT: Yes.

41

1 MS. HUTCHISON: -- the focus of the discussion would be
2 paragraph 24 through to 28 of that paragraph.

3
4 THE COURT: Well, it sounded very useful. Now, that -- I
5 must say when I read it, it didn't read it in relation to that March 5th -- the March 15
6 submission, Sawridge First Nation. But in terms of getting more definition around these
7 categories, or potential categories, the Sawridge First Nation has now in its brief starting
8 at paragraph 39, provided some perspective on at least what Sawridge First Nation
9 believes these terms mean, such as unresolved application.

10
11 Can you focus your -- did you -- have you -- I'm sure you've read them. What's your
12 position in respect to the definition as provided by Sawridge First Nation in their brief --
13 in their brief?

14
15 MS. HUTCHISON: My Lord, and with the greatest of respect, I
16 read quite a bit of Sawridge First Nation's submission around paragraph 39 as simply
17 quoting Sawridge 3 to some degree. I'm not completely certain, My Lord, that it's given
18 us complete insight into how Sawridge First Nation determined what qualified as a
19 pending application. And that said, My Lord, part of our written submissions have been
20 quite clear that if the Court is satisfied that the information now before you does meet all
21 of the questions that you set out in Sawridge 3, and the criteria set out in paragraph 48 to
22 55 of Sawridge 3, the Public Trustee of Alberta accepts that.

23
24 My Lord, the one other -- the one other element of this that I don't believe -- I don't
25 believe there is reference to, Sawridge 3 provides a mandate to only deal with rejected
26 applications, if there is an intention. The Court's word referred to an intention to
27 challenge.

28
29 THE COURT: Okay. Let work through this --

30
31 MS. HUTCHISON: Oh.

32
33 THE COURT: -- in a logical --

34
35 MS. HUTCHISON: Certainly, My Lord.

36
37 THE COURT: -- fashion, if you don't mind. I'm looking at
38 paragraph 24 subparagraph 1 of -- on page 8 of your brief, and you've developed those
39 categories based on Sawridge number 3.

40
41 The first one, minors who are children of the members of the Sawridge First Nation. And

1 then you say, paragraph 25 of your brief in relation to category 1:

2

3 Upon confirmation that the Court does not require anything more
4 formal than the April 5, 2016 list, such as an affidavit, and does
5 not require it to be prepared by Sawridge First Nation, the Public
6 Trustee confirms the Court now has a list of minors who are
7 children of band members up to April 5, 2015, as prepared by the
8 Sawridge trustees.

9

10 MS. HUTCHISON:

And, My Lord, that's another typo. That should

11 be April 5, 2016.

12

13 THE COURT:

Okay.

14

15 MS. HUTCHISON:

The reference was correct at the start of the

16 paragraph, and then --

17

18 THE COURT:

Yeah, okay.

19

20 MS. HUTCHISON:

-- not carried through. My apologies.

21

22 THE COURT:

No problem. Well, I have looked at that

23 material, and I am satisfied with it, so that that category's off the table. Okay?

24

25 MS. HUTCHISON:

Thank you, My Lord. That's very useful

26 direction.

27

28 THE COURT:

All right.

29

30 MS. HUTCHISON:

Thank you. So then, My Lord --

31

32 THE COURT:

Now, let's go on to unresolved applications.

33 That's the one that -- that's the term that's dealt with by Mr. Molstad in the Sawridge

34 First Nation brief at paragraph 39. So I'd just ask you to have a look at that.

35

36 MS. HUTCHISON:

And so, My Lord, the -- the statement that

37 Sawridge First Nation makes is that:

38

39 This confirms that in order to be considered an unresolved
40 application, an applicant must have at least submitted a completed
41 application for membership.

1
2 And, My Lord, as we've indicated in our brief, that is, of course, one of the other terms
3 that I think all the parties would benefit from clarification for. And it may be, My Lord,
4 that you've already answered that question in Sawridge 3. And having told you it's in
5 every brief, I now have to find a copy of it. I just --

6
7 There we go. Yeah.

8
9 So, My Lord, paragraph 51 --

10
11 THE COURT: Yeah. Which tab of which brief are you --

12
13 MS. HUTCHISON: Tab -- tab 7 of the Sawridge August 16th brief.

14
15 THE COURT: Okay. And page?

16
17 MS. HUTCHISON: It's page 12 of Sawridge 3, which is tab 7, at
18 tab 7 of that brief.

19
20 THE COURT: Yeah.

21
22 MS. HUTCHISON: And paragraph 52.

23
24 THE COURT: Got it.

25
26 MS. HUTCHISON: There is a comment, there's an obiter comment,
27 My Lord, about incomplete applications or other potential SFN candidates. And so it may
28 be, My Lord, that the intention is that if Sawridge First Nation has deemed an application
29 complete, that is where the Court -- it's a complete application, deemed complete by the
30 Sawridge First Nation, but not yet -- it has not yet proceeded to the point of a decision.

31
32 THE COURT: M-hm.

33
34 MS. HUTCHISON: That may be all the Court intended to capture
35 by unresolved applications. It was simply the interplay of the various different terms that,
36 frankly, My Lord, was causing the Public Trustee of Alberta to feel it was necessary to be
37 certain that it had captured the full scope of the potential minor beneficiaries.

38
39 THE COURT: Okay. So at least on the category 2 then on the
40 unresolved applications, you simply seek my direction of amplification or clarification of
41 whatever I said in Sawridge number 3 on that subject.

1

2 MS. HUTCHISON: Correct, My Lord. If we understand
 3 Mr. Molstad's January 19th letter correctly, and we, of course, don't have a full -- full
 4 information about how the lists were developed or who was consulted, but if we
 5 understand them correctly, the pending applications would be applications where Sawridge
 6 First Nation deems the application complete in that it has the information Sawridge First
 7 Nation decides it needs for the -- for the application, but there's been no actual
 8 membership decision. If I understand Sawridge First Nation correctly, that's what they're
 9 saying about pending applications.

10

11 Of course the Court's aware of this question of what is a complete application or not. We
 12 simply wanted to be certain that that was not included in unresolved applications. If
 13 there's an individual who is waiting for decisions about what else they have to provide, if
 14 there's an individual waiting for decisions about whether what they provided is adequate,
 15 are they within -- and they have minor children obviously, My Lord, are they within the
 16 contemplation of the Public Trustee of Alberta, or is the crystallizing moment when the
 17 Sawridge First Nation says your application is now considered complete? Because there is
 18 this potential time period where something's been submitted and the person is waiting for
 19 a determination on whether they are going forward or not in the membership process.

20

21 THE COURT: I haven't had time to go back and look at the
 22 membership rules of the Sawridge First Nation, but is there a deeming provision in that
 23 set of rules about if an application's not dealt with within a certain period of time, it's
 24 deemed to be rejected or --

25

26 MS. HUTCHISON: I don't believe so, My Lord. I didn't bring
 27 those.

28

29 MR. MOLSTAD: May I help a bit?

30

31 THE COURT: Yes.

32

33 MS. HUTCHISON: Absolutely.

34

35 THE COURT: Certainly.

36

37 **Submissions by Mr. Molstad (Application)**

38

39 MR. MOLSTAD: Ms. -- there is not, Sir, but when we sent the
 40 list of the applications to Your Lordship and to my friend, it included one of the names
 41 where the application -- the applicant did not include hi address or contact information, so

1 clearly it was incomplete. An inquiry of our in-house counsel, he advises me that that list
2 is every application they've received.

3
4 THE COURT: All right. Thanks.

5
6 MR. MOLSTAD: But notwithstanding that --

7
8 THE COURT: But there's no -- but there's no drop dead date.

9
10 MR. MOLSTAD: Yeah. No, no. And --

11
12 THE COURT: It's not -- not like planning legislation.

13
14 MR. MOLSTAD: And our submissions were based on your
15 decision where you said it should be completed. Sawridge went beyond that.

16
17 THE COURT: Okay.

18
19 **Submissions by Ms. Hutchison (Application)**

20
21 MS. HUTCHISON: And, My Lord, that's very useful clarification, I
22 think, for -- for everyone today.

23
24 THE COURT: Okay. That's great. Thank you.

25
26 So now I think probably we've discussed unresolved enough. What about the third
27 category of rejected?

28
29 MS. HUTCHISON: I think the only -- or the central issue on -- on
30 rejected, My Lord, as long as there is no distinction between rejected and unsuccessful,
31 and the reason that we highlight the different terminology, My Lord, it ties in again to
32 this gray area we were talking about where the potential is somebody submits what they
33 consider to be an application, but then it's not treated as an application for a period of
34 time. Is that unsuccessful, or does there have to be an actual written determination by
35 Sawridge First Nation that there's been a denial of membership status?

36
37 I realize it's a fine point, My Lord, but the Public Trustee of Alberta wanted to --

38
39 THE COURT: Okay.

40
41 MS. HUTCHISON: -- ensure it was on point on that.

1
2 The other element of the rejection category, My Lord, ties into the Court's reference --
3 and I apologize, I just have to find the paragraph I'm looking for in Sawridge 3.

4
5 I apologize, My Lord, for taking this long.

6
7 Paragraph 53 of Sawridge 3, which is at tab 7 of the Sawridge First Nation August 16th
8 submissions.

9
10 THE COURT: I have that.

11
12 MS. HUTCHISON: Page 13:

13
14 The Public Trustee is entitled to inquire whether the rejected
15 candidate intends to appeal the membership rejection, or challenge
16 the rejection through judicial review.

17
18 Mr. Molstad's January 19th letter is very clear. He advised that there are no pending
19 appeals or judicial reviews, but the letter doesn't go on to provide a list of everyone that's
20 been rejected. And that may be perfectly appropriate, My Lord. The Court may want
21 that inquiry to end there. It's -- it really turns on this question of does the Public Trustee
22 have an obligation to reach out and find out the intention of every adult applicant who's
23 been rejected who has minor children, or is it only relevant to look at whether or not
24 there's an appeal on the books? And if it's the second one, My Lord, I believe
25 Mr. Molstad has provided us with the information we need. If there is an element of
26 assessing intention, there is a question of whether the Court wants the Public Trustee to
27 go farther than that and contact rejected individuals.

28
29 As the Court is aware, obviously there can be arguments around limitations and the appeal
30 periods. We don't know if that's part of our scope at this time. And that's the sum of
31 our comments on category number 3.

32
33 THE COURT: Okay.

34
35 MS. HUTCHISON: As we've referred to it in our sub -- in our
36 paragraph 24, My Lord.

37
38 And, My Lord, that really -- that really sums up the clarification element of this matter on
39 the question of the form in which the information has been provided to the Court. The
40 Public Trustee of Alberta is essentially just asking is the Court satisfied with a list
41 attached to a letter from counsel, or do we need something more formal that can be

1 questioned upon?

2
3 And in terms of why that would be necessary, My Lord, it's really a question of whether
4 the Public Trustee has any obligation to try at some point to coalesce all the general
5 information that we have on applicants, and now the named specific information and try
6 to understand that and pull it together. It may prove more difficult to do if there's no
7 ability to question. It may not be impossible, but it may be quite, quite challenging. If
8 the Court has no desire to have that occur, it may be that these lists, in their current form,
9 are all that the Court requires for beneficiary identification.

10
11 THE COURT:

Well, I think the way we'll have to deal with
12 that is I don't have the time or the resources to start plowing through all of this material
13 to see whether or not certain criteria are met. What I can do for you is give you
14 clarification on the scope of these categories, and then -- but I would then remit it back to
15 the Public Trustee to, you know, look at the material you've got, and you're either
16 satisfied or you're not. If you're not, if there is some additional information you think
17 you need to meet the clarified definitions, then I guess the first place to go is Mr. Molstad
18 and Sawridge First Nation, see if you can resolve it on a voluntary out-of-court basis. If
19 there's still some issue outstanding, then you can come back. Okay? But I'm -- I don't
20 want anybody to be under the misapprehension that I'm going to plow through all this
21 material and decide whether or not the definitions or the clarified categories are satisfied.
22 It's going to go back to the parties to -- or participants to resolve. Okay?

23
24 MS. HUTCHISON:

That's very helpful, My Lord. Thank you.

25
26 I think the final comment on -- sorry, just a few very brief comments to respond to a few
27 items my friend has raised.

28
29 Mr. Molstad has raised a concern about lack of specificity or that the Public Trustee has
30 not told Sawridge First Nation exactly what is wanted. The Public Trustee is more than
31 willing to have Sawridge First Nation provide something in a list format to deal with their
32 confidentiality concerns. Frankly, the generality of the application was intended, to some
33 degree, to deal with the confidentiality concerns that were -- that were laid out for us in
34 September which we were not aware of at the time that we filed the amended application
35 my friend has referred to in his materials. It's not the intention of the Public Trustee of
36 Alberta to interfere with the Sawridge First Nation's concerns on that if -- frankly,
37 Sawridge 3 made it clear that that was not appropriate, and the Public Trustee is
38 respecting that.

39
40 In terms of some of the comments about whether -- or the submissions about whether the
41 Public Trustee of Alberta has essentially gone on a fishing expedition, My Lord, and

1 we're certainly extremely sorry if it's come across in that way to anybody, but that's not
2 the case, My Lord. *Kadoura*, although not a 5.13 application, is relevant.

3
4 We know in this proceeding, My Lord, that Sawridge First Nation is the repository and
5 the best source of evidence on all membership matters. They've become involved in the
6 matter by voluntarily helping the Trustees with that information. They really are the
7 source, as it were, for membership information that's required for beneficiary
8 identification, and that is the only motivation for the Office of the Public Trustee's
9 request. It's not at all intended to be a fishing expedition, My Lord.

10
11 Those are my submissions on the substance of the application, My Lord.

12
13 Now, as the Court will be aware, there is a costs application by Sawridge First Nation. I
14 can address that now or I can turn over to Mr. Molstad on substance, and then respond --
15 and then let him deal with his costs application, and I can respond. Completely in the
16 Court's hands.

17
18 THE COURT: Well, I think let's go that way. It's Sawridge --
19 a Sawridge application.

20
21 MS. HUTCHISON: Thank you, My Lord.

22
23 THE COURT: Thank you very much. But maybe in -- you
24 know, before you go right into the costs thing, my mind is now focussed on the categories
25 of beneficiaries.

26
27 **Submissions by Mr. Molstad (Application)**

28
29 MR. MOLSTAD: Yeah, I was --

30
31 THE COURT: If you wouldn't mind.

32
33 MR. MOLSTAD: I was going to deal with the -- leave this here.
34 I'll give it back.

35
36 THE COURT: Could we jack it up a little higher for him.

37
38 MR. MOLSTAD: That would be helpful, too, Sir.

39
40 THE COURT: We could just pile --

41

1 MR. MOLSTAD:

My name is Mr. Molstad, Madam Clerk.

2

3 We -- I believe you have everything in front of you in terms of what intend to refer to,
4 but the four briefs for -- and I would like to deal with some of the facts in terms of what
5 brings us here today. And I want to go back a bit, because some of this is interrelated in
6 terms of the substance of the application, as well as what we deal with in terms of costs.

7

8 Back on June 15th, 2015, I received on my desk a large box of written material and, in
9 fairness, we were advised later that it was served Friday afternoon, July 12th, 2015.

10

11 This box of material included a motion returnable June 30th, 2015, and we have that
12 attached as tab 2 of our written submissions, August 16th.

13

14 The motion did not name Sawridge First Nation as a respondent. However, as you read
15 that motion, you can see that it sought an order against the Sawridge First Nation. And
16 the relief that it was seeking against the Sawridge First Nation included an order requiring
17 Sawridge First Nation to file an Affidavit of Records, an order requiring the Nation to
18 produce numerous records, including records related to issues referenced in an unfiled
19 affidavit of Catherine Twinn, records related to another Court of Queen's Bench action,
20 documents produced in Federal Court action T6686, which was a Constitutional challenge
21 that Sawridge First Nation advanced with respect to Bill C-31 that went through two trials
22 in the Federal Court, and appeals, and documents produced in Federal Court action
23 T265589, another Federal Court action. And -- and we would encourage you to reread
24 this motion at tab 2 of our authorities, because it is our submission, Sir, that this
25 application was devoid of merit, and procedurally and substantively incorrect. It, in our
26 submission, is demonstrative of an application of a party who has a blank cheque and who
27 takes the position that there will be never any consequences for them in relation to costs.

28

29 The application, tab 2, was filed after the questioning of Mr. Bujold on May 27th and
30 28th, 2014, and after the Sawridge Trustees provided answers to undertakings December
31 1, of 2014. And I would point out that the questioning of Mr. Bujold, as a representative
32 of the Sawridge Trust, and his Answers to Undertakings provided what we would submit
33 was a significant amount of information, not all of the information, but a significant
34 amount regarding both the transfer of the assets to the 1985 Trust, and the identification
35 of the Trust beneficiaries. It's important to keep in mind that that information was
36 provided to the Public Trustee in 2014.

37

38 We would refer you also, Sir, to tab 6 of the Sawridge First Nation written submissions,
39 and this is the brief that was filed in August of 2015 by the Sawridge First Nation. And
40 in paragraph 7 of that brief, on page 2, it sets out that since the matter was commenced,
41 the trial -- that the Trustees of the Sawridge Trust, and with assistance from Sawridge

1 First Nation, had provided the Public Trustee with extensive disclosure. And I encourage
2 you to read all of paragraph 7, over to page 3, in terms of just what that disclosure was.
3 We submit that it was extensive and it was provided in 2014, or earlier.

4
5 Now, we know that the Public Trustee has not questioned Mr. Bujold in relation to his
6 undertakings that were provided on December 1, of 2014.

7
8 In the Public Trustee's response in relation to costs, or it's the -- excuse me, it's the
9 written missions of the Public Trustee in response to Sawridge First Nation's costs
10 submissions.

11
12 In paragraph 14 -- are you with me there, Sir?

13
14 THE COURT: Yeah, I'm just getting there. Thanks.

15
16 MR. MOLSTAD: Yeah. In paragraph 14, they state that on June
17 17th, 2015, Sawridge First Nation requested an adjournment of all matters scheduled for
18 June 30th, 2015. That is not correct. That is not true, Sir. On June 17th, 2015, we wrote
19 to this Court advising that we were requesting an adjournment of all matters that purport
20 to name Sawridge First Nation as respondent. And our letter that was sent to the Court is
21 found at tab 3 of the Sawridge First Nation written submissions.

22
23 THE COURT: And I'm taking it now you're just -- you're
24 always talking about your most recent brief that is filed --

25
26 MR. MOLSTAD: That's right.

27
28 THE COURT: -- August 16th?

29
30 MR. MOLSTAD: Yes, it is.

31
32 THE COURT: Thanks.

33
34 MR. MOLSTAD: It's the most recent August 16th, '16 brief, and
35 tab 3.

36
37 THE COURT: Okay. I've got the June 17 --

38
39 MR. MOLSTAD: Yeah. And that June --

40
41 THE COURT: -- 2015 letter?

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MR. MOLSTAD: -- 17 letter, if you read the second paragraph, and this was sent to the Court and to other counsel:

We have requested an adjournment of all matters that purport to name Sawridge First Nation as a respondent. All of the parties, with the exception of the Public Trustee, Ms. Kennedy has advised that she will not be appearing at this application, have agreed to consent to the adjournment of all matters that purport to name Sawridge First Nation as a respondent.

We also refer you to your order which is found at tab 4, and we won't read that to you, but in paragraph 1 of that order at tab 4, you make it very clear, Sir, that that's exactly what we were asking for, an adjournment of all matters that were directed at the Sawridge First Nation. And, of course, the transcript of that date is part of the Public Trustee's submissions at tab 4. And at page 5 and 6 of that transcript, that confirms the very same thing.

Now, on June 24th, of 2015, we appeared before you, and our application for an adjournment was granted and the Public Trustee was ordered to provide the Sawridge First Nation with full particulars of the relief claim as against the Sawridge First Nation, and the grounds. We argued that the Public Trustee's refusal to consent to the adjournment was patently unreasonable and that they should pay for the costs of that adjournment, without indemnification from the Sawridge Trust. And you reserved your decision until the final disposition of the matter.

Now, on July 17th, 2015, Sawridge First Nation was served with this amended application. It's found at tab 5 of the Sawridge First Nation most recent written submissions. And, again, this motion sought an order requiring Sawridge First Nation to file an Affidavit of Records or, in the alternative, to produce numerous records. H-mm.

Paragraph 15 of our written submissions, if I could just take you to that briefly.

THE COURT: Sorry, what paragraph number?

MR. MOLSTAD: Paragraph 15 of our written submissions.

THE COURT: Okay.

MR. MOLSTAD: Filed August 16th. We summarize there some of the records that the Public Trustee sought an order in relation to. And I won't read

1 that to you, Sir, but I encourage you to read it so that you can see the scope of what was
2 being sought again in this application, including records from other actions and from
3 unfiled affidavits.

4
5 Now, on August 14th, of 2015, the Sawridge First Nation filed written submissions in
6 response to the Public Trustee's amended application. And that is found at tab 6 of our
7 written submissions. And it's made clear in this response that the Sawridge First Nation
8 would seek costs from the Public Trustee, without indemnification from the Sawridge
9 Trust.

10
11 The hearing then proceeded on September 2nd and 3rd, 2015, and of course your Reasons
12 for Judgment are found at tab 7 of our written submissions filed most recently.

13
14 This Court in its reasons denied the application, found that the Sawridge First Nation was
15 not a party and stated that any application for production of specific documents would
16 have to be made pursuant to Rule 5.13. And you also directed that the Public Trustee
17 was to refocus in relation to its participation. And if you go to tab 7 of our written brief,
18 in particular paragraph 35, what you said was:

19
20 The same is true for this Court attempting to regulate the
21 operations of First Nations, which are bands within the meaning of
22 the *Indian Act*. The Federal Court is a better forum, and now that
23 the Federal Court has commented on SFN membership process in
24 *Stoney vs. Sawridge First Nation*, there is no need, nor is it
25 appropriate for this Court to address this subject. If there are
26 outstanding disputes on whether or not a particular person should
27 be admitted or excluded from band membership, then that should
28 be reviewed in the Federal Court, and not in this 1985 Sawridge
29 Trust modification and distribution process.

30
31 It follows that it will be useful to refocus the purpose of the Public
32 Trustee's participation in this matter. That will determine what is
33 and what is not relevant. The Public Trustee's role is not to
34 conduct an open-ended inquiry into the membership of the
35 Sawridge Band and historic disputes that relate to that subject.
36 Similarly, the Public Trustee's function is not to conduct a general
37 inquiry into potential conflicts of interest between the SFN, its
38 administration, and the 1985 Sawridge Trustees. The overlap
39 between some of these parties is established and obvious.

40
41 Instead, the future role of the Public Trustee shall be limited to

1 four tasks. One, representing the interest of minor beneficiaries
2 and potential minor beneficiaries so that they receive fair
3 treatment, either direct or incorrect, in the distribution of the assets
4 of the 1985 Trust, two, examining on behalf of the minor
5 beneficiaries, the manner in which the property was placed, settled
6 in the Trust, and, three, identifying potential but not yet identified
7 minors, where children of SFN members are membership
8 candidates. These are potentially minor beneficiaries of the 1985
9 Trust. And, four, supervising the distribution process itself.

10
11 With respect to the future production, what you said in paragraph 45 and 46, again in tab
12 7:

13
14 There have been questions raised as to what assets were settled in
15 the 1985 Trust. At this point, it is not necessary for me to
16 examine those potential issues. Rather, the first task is for the
17 Public Trustee to complete its document requests from the SFN,
18 which may relate to that issue. The Public Trustee shall, by
19 January 29th, 2016, prepare and serve a Rule 5.13(1) application
20 on the Sawridge Band that identifies specific types of documents
21 which it believes are relevant and material to the issue of the
22 assets settle in the 1985 Trust.

23
24 We submit, Sir, that based upon the affidavits of Mr. Bujold, the questioning of
25 Mr. Bujold, the Answers to Undertakings, that the Public Trustee either knew or ought to
26 have known that it had all of the records in the possession of the Sawridge First Nation
27 and the Sawridge Trustees, related to the transfer of assets, that is the settlement of the
28 assets for the 1985 Trust.

29
30 This Court made it very clear that the Public Trustee was representing minors who fell
31 into any one of three categories. And this is found in paragraph 56 of your decision, at tab
32 7. Category 2 was minors who are children of members of Sawridge First Nation,
33 category 4 was children of adults who have unresolved applications to join Sawridge First
34 Nation, and category 6, children of adults who have applied for membership in Sawridge
35 First Nation but have had that application rejected and are challenging that rejection by
36 appeal or judicial review.

37
38 And I emphasize those words, because you used them, Sir, appeal or judicial review.

39
40 The -- you then stated, Sir, and you directed that if the information was not already
41 disclosed:

1
2 Sawridge First Nation shall provide to the Public Trustee by the
3 29th of January, one, the names of individual who have (a) made
4 applications to join the Sawridge First Nation which are pending,
5 category 3, and (b) had applications to join the Sawridge First
6 Nation rejected and are subject to challenge, category 5 and 6, and
7 (2) the contact information for those individuals, where available.
8 This information was provided to the Public Trustee and the Court
9 without any information redacted. It was, of course, included on
10 January 18th, 2016, and a copy of the letter is attached as
11 Appendix D to the Public Trustee written brief.
12

13 You also stated in paragraph 61 of your decision, again found at tab 7:
14

15 My understanding from the affidavit evidence and submissions of
16 the SFN and the 1985 Sawridge Trustees, is that the Public
17 Trustee has already received much information about persons on
18 the SFN's membership roll, and prospective and rejected
19 candidates. I believe that this will provide all the data that the
20 Public Trustee requires to complete task 3. Nevertheless, the
21 Public Trustee is instructed that if it requires any additional
22 documents from the SFN to assist in identifying the current and
23 possible members of category 2, then it is to file a Rule 5.13
24 application by January 29th, 2016. The Sawridge Band and
25 Trustees will then have until March 15th, 2016, to make written
26 submissions in response to that application. I will hear any
27 disputed Rule 5.13 disclosure application at a case management
28 hearing to be set before April 30th, 2016.
29

30 Category 2 is the minors who are children of members of Sawridge First Nation.
31

32 With respect to the issue of costs at that application, you reserved your decision until you
33 were able to evaluate the Rule 5.13 applications. And in paragraph 71 of your decision,
34 again at tab 7, you stated that as the Court of Appeal observed in Sawridge number 2 at
35 paragraph 29:
36

37 The Public Trustee's activities are subject to scrutiny by this
38 Court. In light of the four task scheme set out above, I will not
39 respond to the SFN's cost argument at this point, but instead
40 reserve on that request until I evaluate the Rule 5.13 applications
41 which may arise from completion of tasks one to three.

1
2 You did make it clear, as it's stated, that the Public Trustee's activities are subject to your
3 scrutiny.
4

5 Now, on January 29th, 2016, we were served with two documents that were entitled the
6 Application by the Office of the Public Trustee of Alberta for Production Under Rule 5.3,
7 and one related to the assets settled in the 1985 trust, and the other related to the
8 beneficiaries.
9

10 I think it's important to note in terms of resolution of this issue, that on March 10th,
11 2016, before we were required to file our written submissions, as you'd indicated that we
12 would file them March 15, we sent a letter to the Public Trustee, and based upon the
13 position that we set out in that letter, we asked whether they would withdraw the 5.13
14 applications in order to avoid having to file written submissions. And that letter is found
15 at tab C-4 of the Sawridge First Nation's brief filed March 15th, of 2016. And I would
16 encourage you, Sir, to read that letter.
17

18 The Public Trustee responded on March 14th, 2016.
19

20 THE COURT: Sorry, just give that to me again. I just want to
21 mark it.
22

23 MR. MOLSTAD: Yeah. It's found at tab C-4 of our March 15th,
24 2016, brief.
25

26 THE COURT: Okay. I'm just trying to find the C. A, B --
27

28 MR. MOLSTAD: I just hope it's -- I've got the right -- at the
29 back of the --
30

31 THE COURT: Yeah. No, I -- I've got --
32

33 MR. MOLSTAD: It's a letter from Parlee McClaws dated March
34 10th, 2016.
35

36 THE COURT: Yeah, I'm just trying -- I'm having trouble
37 finding -- ah, there's C. Okay. C-4?
38

39 MR. MOLSTAD: Right.
40

41 THE COURT: All right. I've got it.

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MR. MOLSTAD: In any event, I encourage you to read it.

The Public Trustee responded on March 15th, 2016, and I encourage you to read this letter, too. It's found at tab 8 of the Sawridge First Nation written submissions.

THE COURT: The more recent one, correct?

MR. MOLSTAD: The most recent one.

THE COURT: Okay.

MR. MOLSTAD: That's correct, Sir. And I won't take you through them now, but basically the Public Trustee advised that if -- if Sawridge First Nation provided an updated list of the Nation's children and a written response to advise whether any of the individuals noted in Schedule 3 of our January 18th, 2016 letter, with pending membership applications have minor children, then that would satisfy the Public Trustee in relation to the beneficiary application.

So following that -- I mean, we filed a brief, but following that on April 5th, 2016, the Sawridge Trustees provided the Public Trustee with an updated list of the Sawridge First Nation minors. And that's found at tab F of the written brief of the Public Trustee.

THE COURT: M-hm.

MR. MOLSTAD: And with respect to the Public Trustee's other request, we were very confused, because -- and we responded on March 16th, pointing out that the Schedule 3 of our January 18, 2016, letter, which is at tab D of the written brief of the Public Trustee --

THE COURT: Sorry, there must be a -- is there a second book of attachments to that March 15 brief? Mine -- you said tab F. Mine runs out at tab C.

MR. MOLSTAD: Sorry, tab D of the brief of the Public Trustee?

THE COURT: Oh, I'm sorry, you're talking about their brief.

MR. MOLSTAD: Yeah.

THE COURT: All right. Got it.

1 MR. MOLSTAD: And it's tab D of the brief enclosed, but this is
2 our letter of January 18th.

3
4 THE COURT: Yeah. Got that. Thanks. I'm just --

5
6 MR. MOLSTAD: Now, it -- you know, we were confused by the
7 inquiry because this contains a list of the adult parents, that is Schedule 3 is a list of the
8 adult parents who have made application for their children for membership, and the
9 contact information and the number of children applying. It was not something that we
10 were directed to provide, but we did in order that they had full and sufficient information.

11
12 We asked, in our letter, for an application from the Public Trustee based on this, because
13 we didn't understand their request, and --

14
15 THE COURT: This is your -- you're talking about your April
16 one now.

17
18 MR. MOLSTAD: Yeah.

19
20 THE COURT: Yeah.

21
22 MR. MOLSTAD: Yeah. So -- and we never did get a response to
23 that. But as you have in front of you, when we filed our written submissions on March
24 15th, of 2016, that was based upon your directive that we do so. And we assumed that
25 the Public Trustee ought to have filed written submissions by January 29th, because it
26 seemed to us that if we're filing written submissions as a respondent, we should have
27 something to respond to. However, as you know, the Public Trustee had not done that. It
28 filed simply a Notice of Application setting out the grounds.

29
30 And in April, of 2016, we told the Public Trustee that we took the position that they
31 hadn't complied with your order of December, 2015, as they did not file any written
32 submissions, but what we did say is let's get this on. We made, as I stated earlier, a
33 reasonable assumption that if we have to file written submissions as a respondent, that we
34 have to file it in response to something.

35
36 We any -- in any event, we told the Public Trustee as long as we could agree to a
37 schedule and the Public Trustee would provide particulars of the evidence to be relied
38 upon, with copies, we would be prepared to proceed on the basis that they would make
39 written submissions, we would make a reply. And that procedure was agreed to. It's set
40 out in Exhibit 2 to the questioning that we conducted of Mr. Bujold, and it sets out that
41 they file written submissions, we file a reply, and later on we agreed, because we were

1 dealing with costs, that they could then file a reply in relation to our submission on costs.
2 But it did provide that the Public Trustee would be required to give us particulars of the
3 evidence to be relied upon in both applications by July 7, 2016, as well as copies of the
4 evidence. And on July 7th, the Public Trustee served us with notice of the records it
5 intended to rely upon in relation to its application. And that's found at tab 9 of Sawridge
6 First Nation's written brief.

7
8 And I want to take you to that, because this is July 7th in terms of timing, and these are
9 two applications that relate to both the assets and the beneficiaries that are still fairly
10 broad in terms of what they were seeking. But the evidence on page 2 of their letter,
11 which is the fourth page in, lists the evidence that they will be relying upon in relation to
12 both the membership application and the assets application. And there's transcripts,
13 affidavits, supplementary -- supplemental affidavits, undertakings, and a fairly lengthy list
14 on both, but one of them is the same in both. It's six in one and five in the other. It
15 says:

16
17 Catherine Twinn's affidavit dated September 23rd, 2015, filed in
18 this action on September 30th, 2015, our references will be limited
19 mainly to paragraph 29, period. 29(h) will be referenced in
20 relation to any costs applications made by the respondents.

21
22 The word mainly didn't give us comfort, because the position is that this is evidence
23 before the Court, and if we take issue with it, we have to address it.

24
25 We arranged for questioning of Mr. Bujold, and this occurred on July 27th. When we
26 attended at the questioning of Mr. Bujold, the Public Trustee advised us that they would
27 no longer be proceeding with the settlement application. And as you know, as you've
28 signed the consent order, and we've got a copy of it at tab 10 of our brief, the preamble
29 of this consent order is, in our submission, relevant and indicative of the information that
30 the Public Trustee was in possession of, because what it says is that:

31
32 The Sawridge Trustees have exhausted all reasonable options to
33 obtain a complete documentary record regarding the transfer of the
34 assets from the '82 Trust to the '85 Trust, that the parties have
35 been given access to all document regarding the transfer of the
36 assets, and the Trustees are not seeking an accounting in relation
37 to the transfer of these assets, and noting that the assets from the
38 '82 Trust were transferred to -- into the 1985 Trust.

39
40 And they talk about the little information available.
41

1 I think that my friend, Ms. Bonora, made mention of this in her brief. The purpose of the
2 transfer in '82, '85, in terms of transfer from trust, was to avoid any claim that others
3 might make in relation to these assets after the enactment of Bill C-31. So Sawridge First
4 Nation would be highly motivated to ensure that those that were acting as trustees made
5 the transfer of all assets from the '82 Trust to the '85 Trust. That was the reason. The
6 reason clearly was one where it was in everyone's best interests to make sure the transfer
7 took place.

8
9 I would point out that the resolution of this matter, in accordance with this order, is
10 similar to the resolution that was proposed by the Sawridge Trustees to the Public Trustee
11 on May 13th, 2016. And a copy of that is Exhibit 5 to the questioning of Mr. Bujold.

12
13 When Mr. Bujold was questioned on July 27th --

14
15 THE COURT: I take it that's in the file.

16
17 MR. MOLSTAD: It's been filed.

18
19 THE COURT: Okay. Right.

20
21 MR. MOLSTAD: Yes. The questioning and the exhibits --

22
23 THE COURT: Well, just so --

24
25 MR. MOLSTAD: -- to the questioning.

26
27 THE COURT: Just so you know, of course, I mean, the
28 systems internally have totally broken down. So it never made it to my desk, but. . .

29
30 MR. MOLSTAD: Yeah, yeah. Well, if you have trouble finding
31 it, Sir, we can send you --

32
33 THE COURT: Yeah. No, I just --

34
35 MR. MOLSTAD: -- another copy.

36
37 THE COURT: -- want to get it on the record so. . .

38
39 MR. MOLSTAD: Yeah.

40
41 THE COURT: I'll find it eventually.

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MR. MOLSTAD:

Yeah.

THE COURT:

Thanks.

MR. MOLSTAD:

In any event, Mr. Bujold confirmed that, first of all, the Public Trustee has not questioned him in relation to his undertakings. Secondly, that Sawridge Sawridge First Nation have fully cooperated with the Sawridge Trustee Request for Information regarding the beneficiaries and potential beneficiaries of the Trust, that paragraph 9 to 28 of his affidavit sworn in September, of 2011, contained a lot of information related to the settlement of the assets. And this information was obtained from the Sawridge First Nation, and that the Sawridge First Nation was cooperative in providing this information, that the Sawridge First Nation provided the Sawridge Trustees with a number of records related to membership, including a membership application form, a flow chart for the membership application process, the membership rules, letters of acceptance or rejection for membership, and all of these were forwarded to the Public Trustee.

So that's sort of an overview of some of the facts.

The application that my friend has in relation to the beneficiaries is the only one that's before you now and, first of all, we adopt our submissions of March 15th, 2016, in response to this and, in particular, in relation to the law as it's recited, dealing with a 5.13 application. And, frankly, it would appear that the Public Trustee does not take issue with the general principles cited in that they -- in our brief. And I refer you to paragraph 20 of the Public Trustee's written brief. And based upon that admission, we respectfully don't know why we're here.

We say, Sir, that the Public Trustee has not clearly specified any records it seeks production of, and as I read its written brief, it does not indicate it's seeking further production. They would appear to be asking for directions, and we submit that we're here to deal with the 5.13 application, and our submission is that it should be dismissed.

Now, touching briefly, and you've taken the Public Trustee through this, the Public Trustee's submissions about words used, unresolved and pending, with the greatest of respect, are devoid of merit. And if you look at tab 7 and read paragraph 52 of your decision, what you say in the last sentence:

Therefore, I will only allow investigation and representation by the Public Trustee of children of persons who have, at a minimum, completed a Sawridge Band Membership Application.

1
2 And as we've stated earlier in our letter of January 18, 2016, found at tab B of the written
3 brief of the Public Trustee, we provided a list which I'm advised was all the persons who
4 had submitted an application, period. And there were 26 names, addresses and
5 telephones, but there was one name without an address or a telephone number, because
6 none had been provided by the applicant. So it was obvious from just looking at the list
7 that there was one that clearly was incomplete.

8
9 With respect to the terms rejected and unsuccessful, we also submit, with the greatest of
10 respect, the Public Trustee's submissions are devoid of merit. And, again, if you look at
11 your decision at tab 7 in paragraph 56 and 57, and I won't read them all, but in the first
12 sentence, you say:

13
14 In summary, what is pertinent at this point is to identify the
15 potential recipients of a distribution of the 1985 Sawridge Trust,
16 which include the following categories.

17
18 And then you list the categories. Those two categories at the bottom:

19
20 5. Adults who applied for membership in the SFN, but have had
21 that application rejected and are challenging that rejection by
22 appeal or judicial review, and children of persons in category 5
23 above.

24
25 The words appeal and judicial review are used.

26
27 Our letter of January 18th, 2016, again -- and I just want to take you to that briefly, tab D
28 of the written brief of the Public Trustee.

29
30 THE COURT: Okay. Got it.

31
32 MR. MOLSTAD: It's tab D of the written brief.

33
34 THE COURT: I've got --

35
36 MR. MOLSTAD: On the first page at the bottom, what we say is:

37
38 In relation to individuals who have had application to join
39 Sawridge First Nation rejected, Sawridge First Nation advises that
40 the last application for membership in Sawridge First Nation that
41 was denied occurred on December 9th, 2013, and there was no

1 appeal in relation to that decision. Sawridge First Nation
2 Membership Rules provide that when a membership application
3 has been denied, an appeal of such decision to the electors of the
4 band must be initiated by delivering notice in writing to the band
5 counsel at the office of the band within 15 days after
6 communication to him or her of the decision of band counsel.
7 Sawridge First Nation advises that there are no appeals with
8 respect to denial of membership outstanding at this time. Sawridge
9 First Nation also advises that there are no outstanding applications
10 for judicial review of denial of any application for membership
11 decided by the electors of the Sawridge First Nation at this time.
12

13 So paragraph 27 of the Public Trustee's brief, it again raises membership issues. They
14 also tender the affidavit of Ms. Catherine Twinn, and the Public Trustee relies upon that
15 in this motion. They raise both conflict of interest and membership issues in terms of the
16 evidence and their brief.
17

18 THE COURT: Sorry, which one of their briefs are you
19 referring to?
20

21 MR. MOLSTAD: The -- the affidavit of Catherine Twinn --
22

23 THE COURT: Yeah. Good.
24

25 MR. MOLSTAD: -- that the Public Trustee relies upon in this
26 motion, which is found at tab 9 of the Sawridge First Nation. Or, actually --
27

28 THE COURT: Oh, of your -- of your brief. Okay.
29

30 MR. MOLSTAD: No, it's not. I --
31

32 THE COURT: No?
33

34 MR. MOLSTAD: It's tab C of the -- of the Public Trustee's
35 brief. The written brief of the Public Trustee.
36

37 THE COURT: Okay.
38

39 MR. MOLSTAD: Tab C.
40

41 THE COURT: Yeah. The --

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MR. MOLSTAD:

And --

THE COURT:

That's the August 5th one.

MR. MOLSTAD:

Yeah, the affidavit of Ms. Catherine Twinn is the affidavit that they served us with notice on July 7th, 2016, that they would be relying on this evidence, and mainly on certain parts of it, but we say that this evidence raises both conflict of interest and membership issues. And rather than take you through the affidavit, we'll give you the paragraph numbers in the affidavit that address conflict of interest; paragraphs 29, 33, 34 and 35. And the paragraphs in the affidavit that raise membership issues are 29(a), 29(b), 29(c), 29(g), (for George), 29(i) and (j).

And what we say, Sir, is that this Court in its decision made some very specific directions. And again back to tab 7 of your -- which is your decision, we refer you to paragraph 35. We read this earlier. The last sentence:

If there are outstanding disputes on whether or not a particular person should be admitted or excluded from band membership, then that should be reviewed in a federal court and not in this 1985 Sawridge Trust modification and distribution process.

Paragraph 36, second line there:

The Public Trustee's role is not to conduct an open-ended inquiry into the membership of the Sawridge Band, and historic disputes that relate to the subject. Similarly, the Public Trustee's function is not to conduct a general inquiry into potential conflicts of interest between SFN, this administration and the 1985 Sawridge Trustees.

Paragraph 54:

The Court's function is not to duplicate or review the manner in which the Sawridge band receives and evaluates applications for band membership. I mean by this that if the Public Trustee's inquiries determine that there are one or more outstanding applications for band membership by a parent of a minor child, then that is not a basis for the Public Trustee to intervene in or conduct a collateral attack on the manner in which the application is evaluated, or the result of that process.

Paragraph 69 of your same decision, the second sentence:

I have already stated that the Public Trustee has no right to engage and shall not engage in collateral attacks on membership processes of the Sawridge First Nation.

And, lastly, paragraph 70 from your decision, the bottom half on page 15:

While in Sawridge 1, or Sawridge number 1, I had directed that the Public Trustee may inquire into SFN membership processes at paragraph 54 of that judgment, the need for that investigation is now declared to be over, because of the decision in *Stoney v. Sawridge First Nation*. I repeat that inquiries into the history and processes of the SFN membership are no longer necessary or relevant.

We submit, Sir, that based upon the Court's decision and its very specific directions to the Public Trustee, the fact that the Public Trustee is making reference to and alleging deficiencies in the Sawridge First Nation membership process and also introducing evidence which alleges deficiencies in the membership process and alleges conflict of interest is inappropriate and we submit should be taken into consideration in relation to costs.

My friend refers in their written brief to the *RBC v. Canada* decision, and particularly to paragraph 17. Our submission is very brief. This case deals with record production of a party, and an Affidavit of Records. And the Court said that with respect to parties and disclosure, if there are fish, the respondents do not have to go fishing for them. And that's a correct statement of law, but it has no application with respect to an application pursuant to 5.13 as against a non-party.

We submit, Sir, that in relation to the beneficiary application, the Public Trustee has all of the information that it requires in order to identify the minors that it represents, and we also submit that the Public Trustee has failed to identify any further records or information it requires and, as a result, the beneficiary application should be dismissed.

I would now turn to my submission on costs.

THE COURT: Now, when you use the term beneficiary application, you're talking about the section 5.13.

1 MR. MOLSTAD:

Right.

2

3 THE COURT:

Correct.

4

5 MR. MOLSTAD:

I do have submissions I would intend to make
on costs. Perhaps this might be a good time to take a break, Sir?

7

8 THE COURT:

All right. Well, we'll break.

9

10 MR. MOLSTAD:

I'm in your hands. If you want to --

11

12 THE COURT:

long do you think you might be in your submission on this one? There's just some things
I have to do over the noon hour. I'm -- I can't get back here until 2 o'clock, so. . .

15

16 MR. MOLSTAD:

Well, I'm prepared to carry on, then.

17

18 THE COURT:

Okay. Let's go for another --

19

20 MR. MOLSTAD:

Yeah. Okay. Sure. Yeah.

21

22 THE COURT:

-- ten minutes or so and. . .

23

24 MR. MOLSTAD:

The -- at tab 11 of our written brief you will
find your order, and in paragraph 2 and 3 of that order on the second page --

26

27 THE COURT:

You're talking about the original order way
back.

29

30 MR. MOLSTAD:

Yeah.

31

32 THE COURT:

Okay.

33

34 MR. MOLSTAD:

Your order way back. That's correct, Sir. It's
at tab 11 of our written submissions. In paragraph 2, you state that:

36

The Public Trustee shall receive full in advance indemnification
for its costs for participation in the within proceedings, to be paid
by the Sawridge Trust.

40

41 And also, you say:

1
2 The Public Trustee will be exempted from my responsibility to
3 pay the costs of the other parties in the within proceeding.
4

5 We submit, Sir, that it is clear that the exemption from responsibility to pay costs is very
6 specifically the costs of the other parties in the within proceedings, and as you know, our
7 position has always been, and continues to be, that the Sawridge First Nation is not a
8 party in the within proceedings. So our submission is that the costs exemption does not
9 apply to the Sawridge First Nation.
10

11 I would point out that when the Public Trustee made their application originally, and I
12 only have one copy of this, but somewhere buried in the court file, to be appointed as a
13 litigation representative. They specifically asked for the terms and conditions of their
14 appointment to include ordering that the Public Trustee shall be exempted from liability
15 for costs to any other party in this proceeding. That was what they asked for, and we
16 submit that's what they got.
17

18 We also submit, Sir, that if the cost exemption does not apply to the Sawridge First
19 Nation, this Court has the jurisdiction to exercise its discretion in relation to awarding
20 costs. We submit that this Court must always be in a position to encourage the
21 reasonable and efficient conduct of litigation.
22

23 At tab 13 page 7, the Court of Appeal affirmed that the advanced costs order would be
24 subject to your oversight and further directions.
25

26 We did refer you to a decision from the Ontario Court of Justice found at tab 5, and it's
27 the *Children's Aid Society* decision. The issue in this case was whether the Ontario office
28 of the children's lawyer, which is referred to, abbreviated the OCL, would be liable for
29 costs in relation to a -- to a necessary multi-day trial. The rule applied to the OCL is
30 described in paragraph 34, and we draw this to your attention because I think my friend in
31 their submissions says that in this case, there was no exemption. We submit that there
32 was a form of an exemption in this case. In paragraph 34, the Court states:
33

34 The relevant provision of Rule 24 are reproduced here.
35

36 And number 24 is:
37

38 There is a presumption that a successful party is entitled to the
39 costs of a motion enforcement case, or appeal.
40

41 And then sub 2:

1
2 The presumption does not apply in a child protection case, or to a
3 party that is a government agency.
4

5 So there is a, although not as extreme, there is a form of an exemption in this case, and
6 Mr. Justice Schnall of the Ontario courts at page -- at, sorry, paragraph 53 and 54 of the
7 same decision, made some what we submit are very relevant comments to this case.
8 Paragraph 53:
9

10 A sense of immunity from costs may blind or desensitize a party
11 or non-party litigant to the fact that other litigants are incurring
12 costs and expenses to be involved in the court process. Immunity
13 from costs could result in a lack of accountability to the court
14 process. No participant in litigation should have carte blanche to
15 pursue litigation that has no focus and no evidentiary basis,
16 without running the risk of being held accountable for wasting
17 time and money and an order to pay compensatory costs to
18 indemnify the other litigants.
19

20 In this case, costs were awarded against the OCL on a full recovery basis.
21

22 We also submit, Sir, that the foundational rule provisions of our Rules found at tab 16 of
23 our written submissions, specifically prohibit, in mandatory language, a party from filing
24 an application or taking proceedings that do not further the purpose and intention of the
25 Rules.
26

27 You, Sir, we submit have the discretion to award costs to the Sawridge First Nation as
28 against the Public Trustee, without indemnification from the Trust.
29

30 Rule 5.13(2) provides that if the applicant is successful, the person requesting the record
31 must pay the person producing the record an amount determined by the Court. So in
32 other words, if my friend is successful with her application and the Sawridge First Nation
33 is compelled to produce a record, they have to pay them.
34

35 We submit, Sir, that in this case, should you decide that they should not be successful, it
36 seems to me to be inequitable not to order that they pay costs. They've proceeded with
37 an application under 5.13 that has a clear obligation on their part to pay costs, if they
38 succeed. If they don't succeed, we submit it is only fair that they be responsible to pay
39 costs. If, of course, you decide that the exemption applies to them, as we stated earlier,
40 we submit that you still have the discretion to award costs on the basis that they not be
41 paid by the Sawridge Trust.

1
2 The conduct that we submit should be considered as unreasonable and unnecessary
3 includes the following.
4

5 1. The refusal to consent to Sawridge First Nation's application for an adjournment,
6 requiring us to appear and apply for the adjournments. With the greatest of respect, Sir,
7 no lawyer would take that position without talking to his client and telling his client that
8 we might be subjected to a costs award because we're going to oppose this adjournment,
9 or not consent to it, and it's pretty obvious to us that the adjournment's going to be
10 granted. We submit, Sir, that lawyers have a responsibility to reduce the time required to
11 be spent in court by justices, not increase it.
12

13 2. The Public Trustee, in our submission, failed to exhaust obtaining production in
14 accordance with the Rules, before taking this exceptional step of seeking records from a
15 non-party, the Sawridge First Nation. They could have questioned Mr. Bujold on
16 undertakings or just requested the documents. Mr. Bujold testified that Sawridge First
17 Nation had been cooperating completely with any request for the records.
18

19 3. They proceeded with an application for relief, contrary to the Rules, when they either
20 knew or should have known that they were only entitled to make an application against a
21 non-party pursuant to Rule 5.13. You, Sir, agreed with this position and denied the
22 application in December, of 2015.
23

24 4. With respect to the beneficiary application before you now, we submit that it's
25 contrary to Rule 5.13, and the jurisprudence which supports that Rule, and is devoid of
26 merit.
27

28 5. With respect to the settlement application, the Public Trustee's decision to withdraw
29 this application is not based on the production of any documents from us. The Public
30 Trustee has not received any new documents and, as a result, this could have been
31 withdrawn before it was filed in January, of 2016.
32

33 6. The Public Trustee's conduct regarding disclosure of evidence intended to be relied
34 upon was, in our submission, unreasonable and caused unnecessary effort to find out what
35 is required under Rule 6.3. We submit, Sir, that it is a fundamental principle of our
36 system of justice that when you make an application, you're required to file and serve on
37 the respondents the evidence and the material that you intend to rely upon.
38

39 This is codified in Rule 6.13. Trial by ambush is not stepped, and as a non-party,
40 Sawridge First Nation was served with two Notices of Application on January 19th, 2016.
41 Those applications, one of which has been withdrawn, the other of which is before you,

1 that stated under the material or evidence to be relied upon, all relevant materials filed to
2 date in Court of Queen's Bench action 110314112, including all transcripts, affidavits,
3 excerpts of evidence and Answers to Undertakings, and such further and other materials
4 as counsel may advise and this Honourable Court may allow. What a ridiculous
5 proposition, that we, as a non-party, should be required to go to the courthouse and
6 review everything filed, or in this case go to the web site and looking at everything that's
7 been put on that web site, which is really no different than going to the courthouse, except
8 that we perhaps don't have to pay the photocopying costs that the courthouse might
9 charge us.

10
11 We finally received particulars of the evidence to be relied upon on July 7th, of 2016.
12 And even that, we submit, was equivocal in relation to the affidavit of Ms. Catherine
13 Twinn.

14
15 In summary, Sir, Sawridge First Nation's involvement in this proceeding came as a result
16 of the Public Trustee applying for orders, including requiring Sawridge First Nation to
17 prepare an Affidavit of Records and produce documents. We've been required to attend at
18 a number of hearings in person, and essentially respond to these three applications.

19
20 Now, notwithstanding the Public Trustee's extensive requests for records at the outset, it's
21 now decided on its own that it no longer requires any records from Sawridge First Nation.
22 We submit, Sir, that this demonstrates that these applications were both devoid of merit
23 and unnecessary litigation.

24
25 I think it's trite to say, Sir, that the Rules clearly provide that a successful party is entitled
26 to costs, and that you have a broad discretion in relation to those costs. We refer you to
27 Rule 10.33 which sets out a number of factors, and also paragraph 66 of our written brief
28 which highlights some of those factors.

29
30 And with respect to enhanced costs, we refer you to the decision of Madam Justice
31 Moreau found at tab 19 where she awarded enhanced costs in relation to a late application
32 for an adjournment of trial.

33
34 In paragraph 63 and 64 of the Public Trustee's submission on costs, and I want to take
35 you to that, Sir, because my friend has suggested that we've mischaracterized the case.

36
37 THE COURT: So this is in the response brief?

38
39 MR. MOLSTAD: Yes, this is in their brief, written submissions of
40 the Public Trustee in response to Sawridge First Nation's motion on costs.

1 THE COURT:

Got it.

3 MR. MOLSTAD:

In paragraph 63 and 64, the Public Trustee states that SFN has mischaracterized the decision of *Manning vs. Epp*, which is found at tab 17. And then they quote parts of one paragraph that, with the great respect, we submit is a mischaracterization of this decision, and we encourage you read paragraph 64. We'll read to you the full content of what this Court said. And it's found at tab 17 of our written brief, and paragraph 18 of Mr. (Sic) Justice Lax, stated at follows:

The broad language of section 131 does not limit the award of costs to the parties to a proceeding. The cases involving nonparties mainly addresses the question of whether costs can be awarded against them: see, *Gulf Canada Resources*). There does not appear to be a case where costs have been awarded in favor of a non-party, although this was implicitly recognized and in *Friction Division, et al.*

The City of Waterloo sought the right to appear on the motion and to bring its own motion in response to the position taken by the plaintiffs in a Statement of Claim and factum that they delivered in response to the motion to strike the pleading. They asserted that the Epp defendants could not raise the issue of privilege, as any privilege could only be claimed by Waterloo. Having taken this position, it is fair to say that the plaintiff invited Waterloo's motion in order to avoid the risk of being later said to have waived privilege. When Waterloo appeared, the plaintiffs disputed its right to do so.

The plaintiffs take no position on Waterloo's entitlement to costs, and in their written submission, address only the issue of quantum. The motion was necessary to protect Waterloo's claim for privilege, and ensured that the privilege issue, which was important, was before the Court. It was successful in obtaining an order to expunge the pleading. It is appropriate to award Waterloo its costs, but on a partial indemnity scale.

So a no-party was awarded costs in that decision.

In *Kent vs. the Law Society of Alberta*, Mr. Justice Sanderman at tab 20, and in tab 20 of our brief at paragraphs 18 and 19.

1 THE COURT: I've got it, yeah.

2
3 MR. MOLSTAD: I won't read you those two paragraphs. I
4 encourage you to read them both, Sir. I'd just read you the last sentence in paragraph 19:

5
6 Unfortunately, in this matter he lacked restraint, another important
7 attribute of a successful litigator. Successful litigators know when
8 there is no case to advance and do not tilt at windmills for tactical
9 reasons when it causes pain to innocent parties.

10
11 In the decision of --

12
13 THE COURT: Of course that was aimed at Arthur Kent, a
14 non-lawyer, right?

15
16 MR. MOLSTAD: Right. I understand that Mr. Kent has had
17 much litigation before this Court.

18
19 THE COURT: Yeah, he actually got successful later on, so. . .

20
21 MR. MOLSTAD: What's that?

22
23 THE COURT: He actually succeed in his defamation.

24
25 MR. MOLSTAD: Oh, did he? Okay.

26
27 The -- in the *Hill v. Hill* decision, the Alberta Court of Appeal, and that's found at tab 21
28 of our written brief, Sir, this decision noted in paragraph 12 that payment by a third party
29 is not a bar to recovery of costs. And I am instructed today, Sir, to tell you on behalf of
30 the Sawridge First Nation that there shall be no double recovery by the Sawridge First
31 Nation. Any award of costs against the Public Trustee on the basis that there be no
32 indemnification from the Sawridge Trust, will either be paid to that Sawridge Trust, or
33 reduce any fee that comes from that Trust.

34
35 In conclusion, Sir, in relation to the issue of costs, we submit that taking into
36 consideration the conduct of the Public Trustee, enhanced costs should be awarded against
37 the Public Trustee on the basis that these costs not be paid by the Sawridge Trust. We
38 submit that the costs be either a multiple of column 5, or a lump sum, and that they
39 should be in relation to; 1, the application for adjournment that was not consented to; 2,
40 the application before this Court on September 2nd and 3rd, including preparing
41 submissions, which application was dismissed; and, 3, this application, including the

1 cross-examination of Mr. Bujold, and the written submissions that were required to be
2 made. And those, Sir, are our submissions in relation to costs.

3

4 THE COURT: Thank you, Mr. Molstad. I don't have any
5 questions. I think we're just going to keep on going, unless --

6

7 MS. HUTCHISON: Sure. That's absolutely --

8

9 THE COURT: There's nothing to deal with after this matter is
10 dealt with, so. . .

11

12 MR. MOLSTAD: Sorry.

13

14 **Submissions by Ms. Hutchison (Application)**

15

16 MS. HUTCHISON: It's much later than it looks.

17

18 My Lord, I'll try to respond to Mr. Molstad's comments, which I think some deal with
19 the substantive, some deal with the costs and so there may be a bit of a mix in my
20 comments, but I will just begin, My Lord, with our primary responses on the costs
21 application.

22

23 As the Court will be aware from reviewing our brief of August 19th, 2016, the Office of
24 the Public Trustee is, of course, of the position that it is not liable to pay costs to the
25 Sawridge First Nation in this matter on an enhanced basis, or otherwise.

26

27 First and foremost, My Lord, it's very clear that the costs terms set by Sawridge 1 and
28 Sawridge 2 apply to the Sawridge First Nation.

29

30 I don't have my brief from 2012 with me today, My Lord, but I reviewed it before we did
31 our August 19th brief, and I'm fairly sure my friend mischaracterized our submissions. I
32 believe that they referred to a request for costs for all -- from all -- exemption for costs
33 from all participants. And, in fact, that's referenced in the text of the Sawridge 1
34 judgment.

35

36 And most importantly, My Lord, whatever the order that was signed by this Court says,
37 the costs exemption went up to the Court of Appeal. That was party of what was
38 appealed to the Court of Appeal. And if the Court turns to our brief of August 5th, we
39 have Sawridge 2, as we've termed it, the Court of Appeal's decision, at tab 3 of our
40 authorities. And the question under appeal before the Court of Appeal, in its view was
41 did the chambers judge err in granting exemption from the costs of other participants?

1 And I'm looking at paragraph 30, My Lord.

2

3 THE COURT: Okay.

4

5 MS. HUTCHISON: Regardless of what anyone said or meant or
6 didn't say or didn't mean at this level, My Lord, the Court of Appeal was dealing with an
7 exemption for costs against all participants. And when one reads paragraph 30, and I
8 certainly encourage the Court to do so, it is completely in line with the rationale being
9 offered by the Court there that an independent litigation representative may be dissuaded
10 from accepting an appointment if subject to liability for a costs award, while the -- and it
11 goes on. And so we also note the exemption for costs, while unusual, is not unknown.

12

13 There's nothing, My Lord --

14

15 While the possibility of award of costs against a party can be a
16 deterrent to misconduct, we are satisfied the Court has ample other
17 means to control the conduct of parties and counsel before it.

18

19 That's reference to a costs award against the OPGT, not a costs award against -- limiting
20 it to other parties.

21

22 So our submission, My Lord, the costs exemption that was granted to the OPGT was very
23 much to deal with all participants. And, indeed, if we look at -- and I'm just going to
24 take you, My Lord, to -- jumping ahead in our submissions. At paragraph 24 and 25 of
25 our written brief dated August 19th, My Lord.

26

27 THE COURT: Sorry, just say that again. Sorry.

28

29 MS. HUTCHISON: Paragraph 24 --

30

31 THE COURT: Of which brief?

32

33 MS. HUTCHISON: -- 25, and actually 26, My Lord. It's -- it's our
34 August 19th brief.

35

36 THE COURT: Okay. Got that.

37

38 MS. HUTCHISON: Essentially, what we're putting before the
39 Court, My Lord, is the fact that the very narrow interpretation that Sawridge First Nation
40 is claiming simply can't be supported when the Court looks at the full context of the
41 indemnity and the exemption. The Court, both in Sawridge 1 and Sawridge 2, explicitly

1 set out the position that was put before it by the OPG, Office of the Public Trustee, My
2 Lord, and I've got two subparagraphs there in paragraph 25 that give you quotes from
3 those two decisions. Sawridge 1 is from paragraph 14, and then the quote from Sawridge
4 2 is at paragraph 30?

5
6 The Public Trustee is firm in stating that it will only represent
7 some or all of the potentially affected minors if the costs of its
8 representation are paid from the 1985 Trust, and it must be
9 shielded from liability for any costs arising from this proceeding.
10 And the OPGT's --

11
12 This is from Sawridge 2, the Court of Appeal:

13
14 The OPGT's willingness to act was conditional on, *inter alia*, the
15 Public Trustee is exempted from liability of the costs of other
16 litigation participants in this proceeding, by an order of the Court.

17
18
19 And as this Court likely remembers, My Lord, by Sawridge 1, Sawridge First Nation was
20 already very actively involved in this matter. They came to the table, with the greatest of
21 respect to my friend, by their own volition. They were not actually obligated to come to
22 the table in Sawridge 1 and make submissions about the OPGT's first application. They
23 did so. Everyone had in contemplation the fact that there were other litigation participants
24 in play, and that is the context in which the costs exemption order was granted, My Lord.
25 In terms -- and I would certainly ask the Court to review our submissions then in
26 paragraph 26 through to 31.

27
28 It is the position of the Office of the Public Trustee that when Sawridge First Nation and,
29 indeed, the Trustees, failed to seek leave to appeal from Sawridge 2, the exemption for
30 costs became immutable. It cannot be overturned, My Lord, and that is -- that is our
31 consistent position.

32
33 It's also been consistent, as you're aware, My Lord, that the Public Trustee has made that
34 a term and a condition of its representation of the minors in this matter.

35
36 In terms of the importance of both the indemnity and the exemption, which I would
37 suggest, My Lord, in some ways Mr. Molstad's application deals with those two items
38 together, and so we'll largely deal with them together. It has to be considered as well that
39 in Sawridge 1 and Sawridge 2, it was recognized that the protection or -- both the
40 exemption and the indemnity were there to ensure that the Public Trustee of Alberta could
41 provide independent representation. And, My Lord, if you look at paragraph 29 of our

1 submission, August 19th, that will take you to paragraph 40 and 42 of Sawridge 1, and
2 paragraph 27, 28 and 30 of Sawridge 2, that refer to the fact that this order for an
3 exemption for costs and indemnity of costs were integrally linked to ensuring that there
4 would be independent representation of the minors.

5
6 Our position, My Lord, is that that exemption and indemnity cannot be interfered with
7 without taking away that independence, or at least undermining the very goals that were
8 being served by those orders in -- when they were initially made, My Lord.

9
10 My Lord, I'm at paragraph 12 of our written submissions of August 19th, and that's
11 dealing with the costs of the adjournment applications. Obviously, My Lord, the Public
12 Trustee is making some submissions in response to the merits of Mr. Molstad's
13 application. It's not a concession that the merits should even be reached. With respect,
14 My Lord, the costs application should be dismissed simply on the basis of Sawridge 1 and
15 Sawridge 2's orders on exemption of costs and indemnity, but we -- we will address a
16 few points so that the Court has our position on this.

17
18 As we explain from paragraphs 12 through to paragraphs 18 of those submissions, My
19 Lord, the OPGT's inability, and we would characterize it as that, not a refusal, but an
20 inability to consent to Sawridge First Nation's request for an adjournment of the
21 production application, and Mr. Molstad is correct about my paragraph 14. It should -- to
22 have been completely clear, should have said SFN requested an adjournments of all
23 matters scheduled regarding SFN. And that was in no way intended to mislead this Court
24 or misstate the facts, My Lord. It was just a lack of clarity.

25
26 In any event, when that request was received, there was much more on the table, as this
27 Court may remember, to be dealt with at the appearance than just the -- the matter of the
28 production application. There was a litigation plan. Most importantly, there was the Offer
29 of Settlement from the Trustees.

30
31 The Public Trustee came to the parties, and then ultimately the Court, to indicate that
32 from its point of view, it was premature to deal with a settlement application until
33 production had been dealt with, and that the Public Trustee viewed staging of those
34 applications as integral to the best interests of the minors in this matter. That was
35 expressed fully to the Sawridge First Nation, not that there was a lack of regard for their
36 request or a lack of desire to accommodate it. The OPGT simply could not, because the
37 Trustees refused to adjourn their settlement application.

38
39 Interestingly, as matters progressed in June, of 2015, and I note, My Lord, in those
40 paragraphs the Public Trustee did try to propose a compromise solution, there was no
41 attempt to be punitive with Sawridge First Nation or ignore their request. Ultimately, by

1 the time we got to the June 30th, 2015 case management meeting, and I'm now, My Lord,
2 at about paragraph 20 of our submissions --

3
4 THE COURT: M-hm?

5
6 MS. HUTCHISON: -- the Trustees actually withdrew their
7 settlement application. And so -- and, sorry, that was in September. So the barrier to the
8 Public Trustee's ability to consent to the first adjournment was gone. By the time we
9 were at the September 2nd, 2015, hearing, we'd actually largely achieved the compromise
10 solution the Public Trustee had initially suggested.

11
12 It's not a basis for costs to be awarded, My Lord. The Public Trustee acted in good faith.
13 It has a mandate to represent and protect the interests of the minor beneficiaries. Its
14 position on Sawridge First Nation's request for an adjournment was based entirely on that,
15 and there was ultimately no prejudice to Sawridge First Nation, My Lord. They had three
16 months notice to prepare for the production application, ultimately.

17
18 In terms of my friend's submissions on the application for production, a few comments,
19 and they will be few, My Lord, because I don't wish to reargue those matters, obviously.
20 We would suggest that many of my friend's submissions are asking this Court to view
21 pre-Sawridge 3 events through a Sawridge 3 lens, and that simply cannot be done, My
22 Lord. Sawridge 1 set a broad mandate. We've taken the Court through that in our
23 written submissions. The Public Trustee of Alberta followed that broad mandate in good
24 faith and with the intention solely of ensuring that this Court had the information before it
25 that it required to deal with beneficiary identification for minors in a fulsome manner.

26
27 This Court chose to narrow the scope of relevance from Sawridge 1 and Sawridge 3, and,
28 My Lord, that's the role of the case manager, but to suggest that the Public Trustee should
29 have anticipated that before filing its 215 applications, frankly, My Lord, is simply not
30 reality.

31
32 The Public Trustee has, since Sawridge 3, implemented that narrower focus, it has acted
33 according to that mandate, but it cannot be judged for its 2015 applications on the basis of
34 a decision that was received after those applications were filed and argued.

35
36 My Lord, starting at paragraph 32 of the Public Trustee's written response on costs, which
37 is the August 19th brief, we have our submissions as to why the Public Trustee would
38 take the position that there is no basis to revisit the indemnity order or, indeed, the
39 exemptions order, and indeed, My Lord, no longer the jurisdiction to review that.

40
41 The Public Trustee does not in any way, shape or form, and I'm referring to paragraph 34

1 of the brief, My Lord, suggest that there is not ongoing oversight on the matter of costs.
2 And the Court of Appeal spoke to this in Sawridge 2, but I would ask the Court to read
3 that paragraph very carefully. It's at paragraph 29 of Sawridge 2. It speaks to ongoing
4 oversight about quantum, My Lord. It speaks to ongoing oversight about reasonableness
5 of things like hourly rates, amounts to be paid in advance which, in fact, the Public
6 Trustee has never sought, and other mechanisms for ensuring that the quantum of costs
7 payable by the Trust is fair and reasonable.

8
9 My Lord, that's a very different level of oversight than saying that a statutory body with a
10 right to refuse a litigation representative role, coming to the Court and asking for certain
11 conditions of appointment, and receiving them, and then having those conditions of
12 appointment confirmed fully by a Court of Appeal, can face a situation where those terms
13 can be changed midstream. And our submission, My Lord, is that's not what we're
14 dealing with here. As we say in paragraph 35, the cost -- aside from quantum of costs,
15 the costs indemnity and the exemption themselves became immutable once the limitation
16 to appeal passed.

17
18 And I'm jumping a bit forward in some of my general comments, My Lord.

19
20 I believe I have heard my friend say, or suggest, or perhaps imply, that somehow the
21 Public Trustee of Alberta has acted as if it has a blank cheque, or has acted as if it is not
22 subject to the oversight of this Court. And with the greatest of respect that, My Lord, is a
23 submission that is devoid of merit. The Public Trustee has adjusted its mandate. The
24 Public Trustee, as you can see from the progress made on matters such as a consent order
25 today, has worked to try to achieve some resolution and narrowing of issues, but without
26 ever compromising the best interests of the minors, and that is a difficult balance at times.
27 It's understandable that the Trustees may have different points of view on those issues, or
28 that Sawridge First Nation may have different points of view on those issues. The Public
29 Trustee has no role other than to fulfil the mandate of protecting the interests of the
30 minors, and assisting this Court in doing so, if we understand the scope of our role, My
31 Lord.

32
33 The Courts refined how we're to carry that out, but the overarching theme is that we're
34 here for the children, and I would suggest to you, My Lord, that any submission by
35 Sawridge First Nation to suggest that the Public Trustee has stepped outside of that role is
36 not supported by any evidence and is not supported by the events in this proceeding.

37
38 And I think that's a good point, My Lord, to repeat and remind the Court and my friend
39 what the Public Trustee has said about why we're here on 513 today. And I'm looking at
40 paragraph 4 of our August 5th brief. We're back in front of the Court to make sure that
41 the parties have appropriately applied Sawridge 3. We are back in front of the Court to

1 confirm that the Court is satisfied that all of the evidence needed to identify potential
2 minor beneficiaries is now before the Court, and we're back in front of the Court to
3 ensure that the form of the information, which is an informal form, My Lord, it's a letter
4 in both cases, is satisfactory.

5
6 Those are not unreasonable positions to take, My Lord. Those are not positions taken in
7 bad faith or with an intention to cause an innocent party difficulty, My Lord. Those are
8 positions taken to ensure that when this matter gets before a trial judge, the trial judge has
9 the information that he or she needs to make a final determination in this matter. That
10 is -- that is the only reason, My Lord.

11
12 I think for some of my friend's submissions, My Lord, I'll just refer you to -- there -- my
13 friend has made a number of comments about filing of written submissions and whether
14 the Public Trustee acted appropriately or not in that matter. Our position on that is set
15 out in paragraph 37 through 39 of the brief. We certainly take the position that the Public
16 Trustee has not breached Sawridge 3, nor has it breached any agreed deadlines and, in
17 fact, they've all been honored and followed.

18
19 In terms of my friend's submissions about the OPGT's questioning of Paul Bujold, and
20 we deal with that at paragraph 40 through to paragraph 46, I would simply ask the Court
21 to consider all of those matters in their full context, as opposed to a narrow context, My
22 Lord.

23
24 There was a questioning of Mr. Bujold in 2014. Mr. Bujold did provided Answers to
25 Undertakings, and the Court has those undertakings. They've been filed a number of
26 times. I believe they are in our -- the list of answers, I should say, as opposed to all the
27 documents, are at tab B of our August 5th submission.

28
29 THE COURT:

Yeah. I've got it.

30
31 MS. HUTCHISON:

And if the Court looks through some of the
32 later undertakings, it actually speaks to why the production application ways was -- was
33 originally brought. Many of the questions are answered to say for the Trustees to provide
34 information that they got from Sawridge First Nation. Mr. Bujold is passing on
35 information he got from another party. And then there are the undertakings where the
36 Trustees are unable to provide an answer, because Sawridge First Nation won't provide
37 the information.

38
39 So for the Sawridge -- for the Public Trustee to question Mr. Bujold further on matters
40 where, A, he was simply passing on information from another entity and, B, where it was
41 clear he couldn't compel more information from the other entity, My Lord, we would

1 suggest would have been rather inefficient. It was recognized that the Sawridge First
2 Nation was the repository of all membership ident -- membership information that might
3 be relevant to beneficiary identification. That was the reason for approaching Sawridge
4 First Nation for production in the first place, My Lord.

5
6 And in terms, My Lord, of the -- why the Public Trustee had not gone forward with a
7 questioning on the assets issues, I don't know if that -- that's part of what Sawridge First
8 Nation is taking issue with. As we explain in our brief from paragraph 40 onwards, My
9 Lord, there were ongoing debates about the scope of relevance, and those matters were at
10 one point thought would be resolved before this Court. They were ultimately resolved by
11 agreement, but to proceed with the questioning of Mr. Bujold while there was another
12 procedural fight brewing over relevance, we would suggest, My Lord, would have been
13 inefficient and a waste of resources. The Public Trustee was waiting until the relevance
14 issues were dealt with. We -- we thought originally that would be by application via the
15 513 assets matter. It turned out it was dealt with by way of a consent order. Once the
16 scope of relevance became narrowed, as it has been in the consent order, it wasn't
17 necessary for the Public Trustee to press on about issues relating to settlement of assets in
18 1982.

19
20 My Lord, there were -- if I understood my friend's submissions, there are some
21 suggestions or allegations that -- I'm not entirely clear if the allegation is that the O -- the
22 Public Trustee continues to engage in a collateral attack on membership, or if it was that
23 the production applications were so, but we've responded starting at paragraph 52 through
24 to paragraph 57 of our written submissions, My Lord.

25
26 The Public Trustee would certainly suggest that the mere mention of membership in its
27 materials can't be treated as a collateral attack. Beneficiary identification, whether we
28 like it or not, will be integrally tied to membership, because that is the beneficiary
29 definition that's being proposed. There is nothing in the Public Trustee's materials, My
30 Lord, that asks this Court to go behind the Sawridge Band membership process, and deal
31 with it in the way a Federal Court would deal with it on judicial review. So I -- we're a
32 bit confused about some of those submissions, My Lord, but we can assure the Court we
33 are not engaging in a collateral attack.

34
35 I believe my friend referred quite a bit to the fact that the Public Trustee was relying on
36 Catherine Twinn's affidavit as evidence that the Public Trustee has not honored Sawridge
37 3, or is attempting to go back into issues of conflict of interest. Again, My Lord, we're
38 somewhat confused by that. There is nothing in our materials that refers to the paragraph
39 numbers of Catherine Twinn's affidavit that Mr. -- that Mr. Molstad has taken you to.
40 The paragraph that we refer to, and it's the paragraph we originally referred to in our July
41 7th letter disclosing particulars of the evidence that would be relied on, is Catherine

1 Twinn's -- and I'm looking at our August 5th brief, tab C, page 6, and it's 29(k).

2

3 THE COURT: It's the one you've highlighted in the brief?

4

5 MS. HUTCHISON: That's correct, My Lord. And it just -- it just
6 sets out the fact that Sawridge First Nation's legal fees are being paid by the Trust.

7

8 The Public Trustee has raised that in response to the application for costs, My Lord, and
9 in relation to the double recovery submissions we've made. I'm unaware of anything in
10 the Public Trustee's briefs that would suggest it is seeking some sort of a finding from
11 this Court, directly or indirectly, about conflicts of interests of the Trustees. So that's
12 certainly not our position, My Lord.

13

14 THE COURT: Yeah, just -- I just want to make a note. I
15 don't think I -- I'm looking at your footnote 57, page 16 of your brief.

16

17 MS. HUTCHISON: This is the August 19th?

18

19 THE COURT: The August 19th brief.

20

21 MS. HUTCHISON: Page 16, 57. Yes?

22

23 THE COURT: So I've got the reference to the Catherine
24 Twinn --

25

26 MS. HUTCHISON: Referring --

27

28 THE COURT: -- paragraph 29(k).

29

30 MS. HUTCHISON: Pinpoint cite to that paragraph, My Lord.

31

32 THE COURT: I -- what I don't see, and it's pages 62 to 63 of
33 the questioning of Paul Bujold.

34

35 MS. HUTCHISON: My Lord, I don't believe that we included those
36 as a tab, because we were under the impression that this entire transcript had been filed
37 by Sawridge First Nation.

38

39 THE COURT: Okay.

40

41 MS. HUTCHISON: We can certainly provide those to the Court --

1
2 THE COURT: Okay.
3
4 MS. HUTCHISON: -- with the electronic version of our brief.
5
6 THE COURT: Would you -- would you mind doing that?
7
8 MS. HUTCHISON: Not at all, My Lord.
9
10 THE COURT: Because I went looking, you know, in the
11 material. Again, the filed materials --
12
13 MS. HUTCHISON: My apologies.
14
15 THE COURT: -- never made it to me, just the materials
16 you've sent to me directly.
17
18 MS. HUTCHISON: I apologize, My Lord. I --
19
20 THE COURT: No problem.
21
22 MS. HUTCHISON: We debated it, and did not include it.
23
24 My Lord, I'm just taking a quick look at my -- a few notes responding to Mr. Molstad.
25
26 I -- and, again, it's been a long morning, so if I'm paraphrasing Mr. Molstad at all
27 inaccurately, I apologize, but I believe my friend made some submissions on the costs of
28 the 5.13 assets order, suggesting that some of the wording in the consent order in some
29 way established that the 5.13 application was not necessary. I would simply ask the Court
30 to read that preamble very carefully. That preamble is not drafted as an acknowledgement
31 of fact. The preamble is drafted to set out the representations of the Trustee's counsel
32 upon which the Court and all the parties may rely. So it's not a matter of the preamble
33 referring to affidavit evidence, transcript evidence, undertaking answers. It is a reliance
34 on the representations of Trustee's counsel, and that's a very different animal, I would
35 submit, My Lord, than suggesting that the preamble refers to the evidence before the
36 Court.
37
38 Secondly, My Lord, I believe I heard my friend suggest that the final order entered into is
39 very similar to the May 13th, 2016, clarification that was both -- initially proposed by
40 Dentons.
41

1 The Public Trustee would certainly disagree with that characterization. There was a great
2 deal of time and effort put into admittedly what ended up being short additions, but
3 critical additions, My Lord. They preserve rights for beneficiaries around accounting.
4 They eliminate an entire issue around settlement into the Trust that was a live issue. And
5 I won't take the Court through Mr. Bujold's entire 214 questioning, but Mr. Bujold was
6 questioned in a very preliminary way on some of those topics. So it's been a live issue in
7 this matter since at least 2014. The ultimate order was critically different than the
8 original clarification that was offered, My Lord.

9
10 And if I understood the implication of some of the other submissions, My Lord, it was
11 that Sawridge First Nation perhaps was not expecting the July 27th settlement of the
12 assets consent order the day of Mr. Bujold's questioning. With the greatest of respect, all
13 counsel were involved in the discussions leading up to that order. I think -- I think we
14 were all rather hopeful on the eve of questioning, that that order was about to be finalized.
15 I would -- I would be surprised to hear it was a surprise that that consent order was
16 finalized on that date, but -- and certainly, My Lord, Sawridge First Nation was on notice
17 that the asset issue was completely off the table at the outset of Mr. Bujold's questioning,
18 and if the Court goes through that transcript, I would suggest you'll find that there is
19 almost no time spent on membership issues. There's an extensive amount of time
20 questioning Mr. Bujold on an affidavit he didn't swear, and then there's very little -- or --
21 and then there's the focus on the assets matter. So I believe we've commented on that in
22 our submissions in terms of whether costs would ever be properly awarded for that
23 questioning.

24
25 THE COURT:
26 full transcript of that?

Well, if you wouldn't mind providing me the

27
28 MS. HUTCHISON:

Paul Bujold's questioning?

29
30 THE COURT:
31 this year.

Of Paul Bujold's questions at the end of July of

32
33 MS. HUTCHISON:

By -- would email -- by email, My Lord?

34
35 THE COURT:

Just electronically.

36
37 MS. HUTCHISON:

Yeah.

38
39 THE COURT:
40 get from the --
41

Is it in a searchable form, to -- the format you

1 MS. HUTCHISON: I will have to check, My Lord, but if it's not,
2 I'm -- the reporters can usually provide it.

3
4 THE COURT: Okay.

5
6 MS. HUTCHISON: So we'll certainly get you that.

7
8 MS. BONORA: Sir, it is at tab 4 of our -- the transcript brief
9 that we had filed, if you want it that way.

10
11 THE COURT: Okay. Sorry, of the -- of which brief?

12
13 MS. BONORA: The brief in support of the transfer issue. The
14 whole brief. The whole transcript is attached.

15
16 THE COURT: Oh. Okay. Well, thanks. I don't know where
17 I -- where that ended up. Anyway, send --

18
19 MS. HUTCHISON: I can't -- I can't help.

20
21 THE COURT: -- it to me electronically.

22
23 MS. HUTCHISON: Absolutely.

24
25 THE COURT: And then I've got it.

26
27 MS. HUTCHISON: We will, My Lord. If we can get it in a
28 searchable format, we'll get it to you that way.

29
30 In terms of Mr. -- or my friend's comments about some of the correspondence that was
31 exchanged between the parties in March and April of 2016, My Lord, I believe I heard
32 my friend suggest that the Public Trustee did not respond in any way to the Sawridge
33 First Nation's April 2016 letter. We don't agree with that, My Lord, although the Public
34 Trustee was certainly in the process of an ongoing review of Sawridge 3, and certainly in
35 the process of an ongoing assessment of its mandate under Sawridge 3. Its June 17th,
36 2016 letter, which is tab 10 of our August 16th submission, fully responds to all of the
37 parties and participants about what the Public Trustee intends to do with the two 5.13
38 applications. The explanation on the 5.13 application regarding membership is at page 2
39 of that letter. We would suggest, My Lord, that what is set out there is exactly what the
40 Public Trustee has done. So with the greatest of respect, we would suggest that there was
41 correspondence in response.

1
2 And, My Lord, I -- this is in -- I think this is clear in the materials, but I think we'd best
3 respond. There was some suggestion of trial by ambush by the Public Trustee. Clearly,
4 we would regard that submission as devoid of merit, My Lord. Both parties to this
5 application have had the opportunity to file two written briefs. The Sawridge First
6 Nation, if it had any doubt about the evidence it was going to potentially be confronted
7 with, it was served with it on July 7th, and you've been taken to that letter by
8 Mr. Molstad. All of the evidence is available to all the world on the Trust's web site.
9 And, My Lord, I realize I've given you my March brief.

10
11 There is a reference in Sawridge First Nation's March 15th brief that refers to excerpts of
12 evidence that were filed in June. That was a -- actually a bit of an esoteric little volume
13 that only the parties had. It certainly would strike us, My Lord, that Sawridge First
14 Nation has had high level of access. And we're not asking the Court to bend the rules.
15 The evidence was served.

16
17 There was an element of our friend's position in correspondence almost suggesting that
18 the evidence had to be refiled. We've been unable to file -- find any, any rule that would
19 suggest we can't rely on evidence that's already filed in this proceeding. We do have to
20 notify Mr. Molstad on that -- of that, and serve him with copies. And we would suggest
21 our July correspondence did that, My Lord.

22
23 And as I say, I don't -- I don't think any part or participant in this action can suggest they
24 haven't had ample opportunity to speak to the issues. There has been no trial by ambush.

25
26 My Lord, going back to our brief, you will find our submissions on essentially all the
27 merits of Sawridge First Nation's costs application, outside of the initial exemption and
28 costs indemnity issue from paragraph 58 all the way through to -- well, it's paragraph 58,
29 with subparagraphs.

30
31 Then our closing point, My Lord, has been this issue that Sawridge First Nation is
32 claiming, claiming costs recovery in a situation where the Sawridge Trust has already
33 agreed to pay the legal fees of the Sawridge First Nation. Particularly given the existence
34 of the indemnity, My Lord, we would submit that that makes a costs award in this case
35 highly inappropriate, and impractical. It's -- the funds will be coming from the Trust one
36 way or the other. Sawridge First Nation has already been paid.

37
38 I didn't hear my friend denying that today. We have evidence from both Mr. Bujold and
39 Catherine Twinn and, My Lord, we would suggest that the fact that Sawridge First Nation
40 has already been paid in full does raise real issues as to why we've spent all of this time
41 and money fighting over costs in the first place in light of a very clear order by the Court

1 of Appeal on that point.

2

3 Simply in closing, My Lord, the Public Trustee of Alberta takes the position that granting
4 the Sawridge First Nation's application for costs would be directly contrary to the terms
5 of appointment that the Public Trustee advised, and both level of courts accepted, were
6 preconditions to its acceptance of a role as a litigation representative. They would also be
7 directly contrary to the Court of Appeal's decision which upheld the costs exemption in
8 relation to all participants, not this narrower interpretation of parties.

9

10 An order of that nature would also contradict the Court of Appeal's order for full in
11 advance indemnity, bearing in mind, My Lord, that we're not disputing the Court's
12 ongoing discretion and oversight of matters such as quantum, hourly rates, hours spent, et
13 cetera. Those items are detailed by the Court of Appeal, but they don't extend to the
14 indemnity.

15

16 And finally, My Lord, the costs award sought by the Sawridge First Nation would
17 undermine the costs terms that were put in place to ensure the independence of the Public
18 Trustee of Alberta in this proceeding.

19

20 And finally as well, My Lord, they would essentially punish the Public Trustee of Alberta
21 for efforts that were made in good faith to carry out a mandate to protect the interests of
22 the minors in this matter.

23

24 Subject to the Court's questions, those are our submissions.

25

26 THE COURT:

Well, just one -- actually two questions, while

27 I'm thinking of them.

28

29 One, it had taken me some time to sign off on that, the order implementing Sawridge
30 number 3. Do you happen to have a filed copy of that with you, or --

31

32 MS. HUTCHISON:

My Lord, I did not bring a copy to court with

33 me. I apologize.

34

35 THE COURT:

Okay. Include it in that emailed package,

36 okay?

37

38 MS. HUTCHISON:

Absolutely.

39

40 THE COURT:

And the other question is I take it that if I were

41 to dismiss the costs application of the Sawridge First Nation, so with the result they're

1 not -- they were unsuccessful, I take it the Public Trustee is not seeking costs against
2 Sawridge First Nation.

3

4 MS. HUTCHISON: No, My Lord. The Public Trustee of Alberta
5 has enough costs issues to address with the Trustees. We don't need to address them with
6 anyone else.

7

8 THE COURT: All right.

9

10 MS. HUTCHISON: We will not seek costs against Sawridge First
11 Nation, My Lord.

12

13 THE COURT: All right. Thank you.

14

15 MS. HUTCHISON: Thank you very much.

16

17 THE COURT: Mr. Molstad?

18

19 **Discussion**

20

21 MR. MOLSTAD: I just had one brief comment, Sir. My friend
22 has made a submission that I have mischaracterized her written submissions. That's not
23 true. Here they are. You can read them yourself, Sir, and they're at page 31, paragraph
24 5.

25

26 THE COURT: All right. Which set of submissions is this?

27

28 MR. MOLSTAD: Those were the original submissions she
29 made --

30

31 THE COURT: Oh, back in 2012.

32

33 MR. MOLSTAD: Yeah, back when -- and I believe Ms. Bonora
34 wishes to make a brief comment.

35

36 MS. BONORA: And I apologize. My Lord, I would just -- I'm
37 sure that that's the last paragraph in the brief, and I can't take a look at it right now. I
38 would ask the Court to look earlier in the brief, because my recollection is that it's in the
39 substantive argument that we refer to complete protection and a complete exemption that's
40 not --

41

1 THE COURT:

Well --

2

3 MS. BONORA:

-- limited to parties.

4

5 THE COURT:

Well, actually, that's sort of my recollection.

6

7 MS. BONORA:

Thank you, My Lord.

8

9 THE COURT:

But, here, I'm going to give this back to you. I

10 no doubt probably have that somewhere in the court record or in my -- while I don't think

11 it's in my parallel set of materials. Would you scan that in and just send it in?

12

13 MR. MOLSTAD:

I will.

14

15 THE COURT:

All right.

16

17 MS. BONORA:

Sir, one brief submission. My friend,

18 Ms. Hutchison, started by saying that she thought all counsel would benefit from the

19 clarification of the definitions. We would submit that we are not in that category. We

20 don't think there was any misinterpretation that could be made of those definitions, and

21 that we want to be very clear that our silence in respect of the costs is not meant to be

22 taken as suggesting we're neutral. We wholly support Sawridge First Nation's application

23 for costs, because we believe this application, in terms of being against a third party, was

24 completely unnecessary.

25

26 If a clarification was required, and I don't begrudge Ms. Hutchison for bringing that

27 application to seek a clarification if she needs it, but we didn't need Sawridge First Nation

28 at that table.

29

30 So the 5.13 application is a request for documents. Her application was a request for

31 clarification, and so we think that was an unnecessary application, and so support the

32 application for costs.

33

34 THE COURT:

All right. Well, I'll let you respond to that.

35

36 MS. HUTCHISON:

My Lord, to be -- and to be clear, we are

37 making a request for documents. We have left it in the discretion of Sawridge First

38 Nation as to the form in which they provide the information.

39

40 We've heard a great deal about confidentiality concerns. If the Court determines

41 additional information is required and a list is the only thing that works for Sawridge First

1 Nation, that is all the Public Trustee is seeking.

2

3 The first question to the Court was a clarification of the categories to determine if
4 additional information is needed. We don't have a list of all of the individuals rejected, so
5 we -- as I mentioned, My Lord, we couldn't go and determine their intent, if that's part of
6 our mandate, and we don't have a list of individuals potentially -- when we get into the
7 discussion of what is complete versus incomplete versus pending, do we need a list of
8 individuals who have submitted application, but have not yet been told what's happening
9 with their application, or if it meets Sawridge First Nation requirements? I -- and I'm
10 taking you back to our first discussion --

11

12 THE COURT: Okay.

13

14 MS. HUTCHISON: -- which I don't really -- and I'm not doing it
15 quite as -- in quite the organized manner we did, My Lord. There's a request for
16 documents. We are content to deal with the documents in the form the Sawridge First
17 Nation presents. Thank you.

18

19 THE COURT: All right. But just again so it's clear, I am not
20 plowing through -- I don't even have all the material. I'm not doing that function. All
21 I'll do for you is clarify, if I decide it's necessary to clarify, some of the those terms in
22 Sawridge number 3, and then it will be back to the Public Trustee and you to take those
23 clarification, if there are any, and --

24

25 MS. HUTCHISON: And determine if additional documents are
26 required.

27

28 THE COURT: Okay.

29

30 MS. HUTCHISON: Okay.

31

32 THE COURT: All right.

33

34 MS. HUTCHISON: Thank you, My Lord.

35

36 THE COURT: All right.

37

38 MS. HUTCHISON: That's very helpful.

39

40 THE COURT: All right. That's it for today. So on that
41 particular I'll say set of applications, I am reserving on it, and you'll be receiving a

1 decision in due course. It may be that it's quite short and to the point. I might just call
2 counsel back and do it orally, rather than go through all the rigamarole of a published
3 decision. All right?

4
5 MS. HUTCHISON:

My Lord, I should just mention I'm actually
6 taking a holiday, which never happens, August 27th to September 11th, if you were to --

7
8 THE COURT:

Oh, all right. Don't worry -- don't worry about
9 it. This thing's -- it might be 2017 before you get this.

10
11 Anyways, thanks, counsel, for all your help.

12
13 _____
14 PROCEEDINGS CONCLUDED
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1 Certificate of Record

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. . .Christina Wilde, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench held in courtroom 611 at Edmonton, Alberta, on the 24th day of August, 2016, and that I, Christina, was the court official in charge of sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2

3 I, Deborah Jane Brower, certify that

4

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

8

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

11

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Debbie Brower, CSR(A)

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Order No. 64442-16-1

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35 Pages: 73

36 Lines: 3099

37 Characters: 117360

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39 File Locator: 78f520426e1f11e6b5c10017a4770810

40 Digital Fingerprint: 8398ebd3f13b24e7445c1494856f8f4077093eba43ee81019c7e3210049c04b6

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Detailed Transcript Statistics	
Order No. 64442-16-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	71
Total Pages:	73
Line Statistics	
Title Page Lines:	51
ToC Lines:	26
Transcript Lines:	3022
Total Lines:	3099
Visible Character Count Statistics	
Title Page Characters:	622
ToC Characters:	736
Transcript Characters:	116002
Total Billable Characters:	117360
Multi-Take Adjustment: (-) Duplicated Title Page Characters	116738



Date: 20030327

Docket: T-66-86A

Neutral citation: 2003 FCT 347

BETWEEN:

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

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

- and -

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

Interveners

REASONS FOR ORDER AND ORDER

HUGESSEN, J.:

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

Received Time Mar.27. 10:51AM

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

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

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

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

a. An interlocutory declaration that, pending a final determination of the Plaintiffs' action, in accordance with the provisions of the *Indian Act*, R.S.C. 1985 c. 1-5, as amended, (the "*Indian Act, 1985*") the individuals who acquired the right to be members of the Sawridge Band before it took control of its own Band List, shall be deemed to be registered on the Band List as members of the Sawridge Band, with the full rights and privileges enjoyed by all band members;

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

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

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

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

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

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

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

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

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

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

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

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

-What
evidence?
They weren't
even all
women

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

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

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

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

...

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

...

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

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

...

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

...

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is lawfully resident on the reserve; or

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

...

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[*Debates, supra* at 2645]

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

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

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

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

[*Debates, supra* at 2646]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

"James K. Hugessen"

Judge

Edmonton, Alberta
March 27, 2003

FEDERAL COURT OF CANADA
Names of Counsel and Solicitors of Record

DOCKET: T-66-86

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

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 19 AND 20, 2003

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

DATED: March 27, 2003

APPEARANCES BY:

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

Received Time Mar.27. 10:51AM

SOLICITORS OF RECORD:

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FOR THE INTERVENER, NATIVE
COUNCIL OF CANADA

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Edmonton, Alberta

FOR THE INTERVENER, NATIVE
COUNCIL OF CANADA (ALBERTA)

Burnet Duckworth & Palmer LLP

FOR THE INTERVENER, NON-
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ALBERTA

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FOR THE INTERVENER, NATIVE
WOMEN'S ASSOCIATION OF
CANADA

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

NO. 8503-12228

IN THE MATTER OF MICHELLE WARD AND
IN THE MATTER OF THE INDIAN ACT

BETWEEN:

SAWRIDGE INDIAN BAND

Applicant

- and -

MICHELLE WARD

Respondent

REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE J. C. CAVANAGH

In this matter on April 23rd last, I rendered a judgment on a preliminary objection raised by the Respondent. I rejected the objection to my jurisdiction and counsel for both parties have now filed their written argument.

This is a reference to me pursuant to the provisions of s. 9(3) of the Indian Act. The Respondent was born on May 8, 1981 to Georgina Rose Ward, a member of the Sawridge Indian Band. Georgina Rose Ward was not married and she registered

the birth of her daughter and gave no information as to the father of the child. A copy of that live birth registration was given to the Registrar. On May 11, 1982, the Registrar added the Respondent's name to the Sawridge Indian Band List. On July 26, 1982, the Band Council protested this addition pursuant to provisions of s. 12(2) of the Act. The last sentence of their protest reads:

"Further that as the father is non-treaty, that Michelle Danielle Ward be struck from the Sawridge Band Membership List."

On August 22, 1984, the Registrar wrote to the Lesser Slave Lake Regional Council with a copy to the lawyer for the Sawridge Indian Band giving his decision. The text of that letter is as follows:

"Re: Protest of Michelle Danielle Ward
No. 98 Sawridge Band"

I refer to the protest by the Sawridge Band Council to the addition of Michelle Danielle Ward to their Band List.

In this regard, I have the Registration of Live Birth of Michelle Danielle Ward indicating she was born on May 8, 1981 to Georgina Rose Ward. I also have the letter dated June 2, 1983 from Mrs. Marie Hodam, your Band Membership Clerk, confirming that Georgina Rose Ward No. 98 Sawridge Band has refused to make any statement with regard to the father of her child Michelle Danielle Ward.

In addition, I have the letter dated July 19, 1983 from Mr. David A. Fennell, the lawyer for the Sawridge Band Council, enclosing an Affidavit completed on July 19, 1983 by Bruce McCaffery, a private investigator retained by the Council. According to his Affidavit, Mr. McCaffery, acting on information received, visited the Drumheller Institute where he interviewed an inmate who identified himself as Ron Maglis; that Mr. Maglis replied, "It should be" when asked if he was the natural father of a child named Michelle Danielle Ward born to Ms. Georgina Ward; that Mr. Maglis stated emphatically that he was not prepared to make any sworn Affidavit until he had had the opportunity to discuss this matter with Georgina Ward; that when asked if he himself was an Indian, Mr. Maglis replied, "I might be a bit I guess"; and when asked if he knew the name of the child he replied that he only knew the infant as "The Baby". Furthermore, I have the letter dated January 3, 1984 from Mr. David A. Fennell indicating that he has been advised by the Band Council that it is their information that at the time of the birth of Michelle Danielle Ward, Georgina Ward was a prostitute living in a common-law relationship with Mr. Maglis and had done so for approximately the previous year and also that the child, Michelle Danielle Ward has been given up as a ward to the Alberta Government.

In response to my request for Statutory Declarations completed by individuals having a personal knowledge of the common-law relationship which the Band Council has advised existed between Georgina Ward and Ron Maglis, by his letter dated February 5, 1984, Mr. Fennell confirmed that his clients are unable to provide any further information.

Finally, Mr. John Mould, A/Assistant Director of Child Welfare Delivery, Alberta Social Services and Community Health, has advised in his letter of February 28, 1984 that he has reviewed their child welfare file and can find no information concerning the paternity of Michelle Danielle Ward.

As there is insufficient evidence of non-Indian paternity, the protest by the Sawridge Band Council is not upheld and I hereby declare Michelle Danielle Ward entitled to be registered in membership in the Sawridge Band of Indians.

Would you please notify the mother, Georgina Rose Ward, of this decision.

A copy of this decision is being forwarded to Mr. David A. Fennell, the lawyer for the Sawridge Band Council."

On September 5, 1984, the Sawridge Band Council agreed that:

"The Sawridge Indian Band requested the Registrar of the Department of Indian and Northern Affairs refer his decision of August 22, 1984 disallowing the Band protest of the inclusion of Michelle Danielle Ward as a Sawridge Band member to a Judge of the Court of Queen's Bench of Alberta."

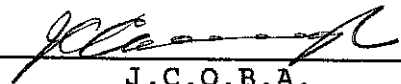
The Registrar then referred the file to me.

I have examined the file and the allegations of the Applicant are outlined in the Registrar's decision quoted above. There is no new evidence since the Registrar dealt with the matter.

The Applicant argues that because the mother refuses to co-operate and state who the father of the child is, that

that should give rise to an adverse inference against her. That argument then is that an adverse inference against the mother should be used against the child. I do not agree with that argument.

The affidavit of the investigator, Bruce McCaffery, is at best hearsay evidence. Furthermore, the hearsay evidence is not clear and unequivocal. There is the further question whether the circumstances are established that this man could swear to paternity of the child. He may be able to swear to the possible paternity of the child, but I think that is all. There is the further situation that the Applicant has in its material alleged that the mother was working as a prostitute. If that is so, that could well cast doubt on her ability to identify the father of the child. In my view, the Registrar was right. There is no sufficient evidence of non-Indian paternity to justify setting aside the Registrar's decision. I, therefore, dismiss the application by the Applicant Indian Band.


J.C.Q.B.A.

DATED AT EDMONTON, ALBERTA
THIS *31st* DAY OF MAY,
A.D. 1985

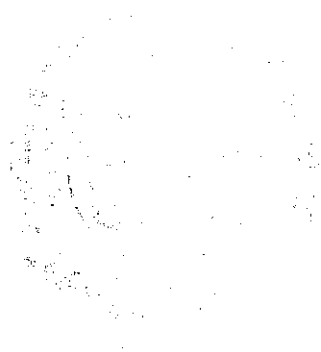
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For the Respondent



COURT FILE NUMBER: 1103 14112 and 1403 04885

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 Trust")

AND

IN THE MATTER OF THE SAWRIDGE TRUST
CREATED BY CHIEF WALTER PATRICK TWINN,
OF THE SAWRIDGE INDIAN BAND NO. 19,
AUGUST 15, 1986 (the "1986 Trust")

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

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

CONTINUATION OF QUESTIONING ON AFFIDAVIT OF

CATHERINE MAY TWINN

Held at the offices of Bryan & Company LLP
Edmonton, Alberta

November 9 & 10, 2016

Dolores Williams, Court Reporter
(780) 238-1157

Appearances:

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For the Respondents

Ms. D.A. Williams,

Court Reporter

1 CATHERINE MAY TWINN, SWORN AT 10:10 A.M., NOVEMBER 9, 2016,

2 QUESTIONED BY MS. CUMMING:

3 Q MS. CUMMING: Ms. Twinn, I'd like to go back to
4 the trustee meeting that took place on January 21,
5 2014. And to refresh your memory, that was the meeting
6 involving the appointment of a replacement trustee for
7 Walter Felix Twin, just to set the context for you.
8 Yes?

9 A Yes.

10 Q Now, you had indicated at the last Questioning that you
11 could not recall what, if any, material you received in
12 advance of that meeting from the administrator. I'm
13 providing you with an e-mail from Paul Bujold to you
14 dated January 8, 2014 which e-mail attaches Walter
15 Felix Twin's resignation as well as two memorandums,
16 one authored by Paul Bujold and one authored by Donovan
17 Waters. Do you have any reason to suggest that you did
18 not receive that e-mail?

19 A Just give me a moment. I just want to review the
20 document. Okay, I've reviewed the document. I'm
21 sorry, back to your question.

22 Q And my question was, do you have any reason to suggest
23 that you did not receive that document on January 8,
24 2014?

25 A The e-mail, yes, and the resignation, yes. And what I
26 would like to do is check the e-mail for the memorandum
27 both from Paul Bujold because I do recall the

1 suggestion that Brian Heidecker be made a trustee and
2 the Donovan Waters January 4th.

3 Q All right. Well, if we look to the e-mail, the face of
4 the e-mail, it indicates that the resignation and the
5 memos were attached to the e-mail.

6 A Memo Paul Bujold and Walter Twin resignation. I'm
7 sorry. I don't see where it refers to all of the
8 attachments. I see it refers Memo Paul Bujold to
9 trustees and the resignation. But it's cut off, 131216
10 and then C-A-T-H-E dot dot dot PDF.

11 Q Well, what are you prepared to agree that you received
12 on January 8, 2014?

13 A At this moment, I recall receiving this e-mail.

14 Q Yes?

15 A And I recall the letter signed by Walter, and I do
16 recall the memo from Paul Bujold.

17 Q What you're not sure of is whether or not the
18 memorandum from Donovan Waters was attached to the
19 e-mail?

20 A Yeah, I would want to confirm that just to be a hundred
21 percent sure.

22 Q If you would do that, please, and advise us as to
23 whether the e-mail that you received had as an
24 attachment Donovan Waters memo dated January 4, 2014.

25 MS. OSUALDINI: We'll take that undertaking.

26 **UNDERTAKING NO. 17: ADVISE WHETHER OR NOT EXHIBIT**
27 **N FOR IDENTIFICATION HAD THE DONOVAN WATERS MEMO**

1 **DATED JANUARY 4, 2014 ATTACHED TO IT WHEN**
 2 **CATHERINE TWINN RECEIVED IT.**

3 MS. CUMMING: And if we can mark the e-mail and
 4 attachments as the next exhibit, please.

5 MS. OSUALDINI: Should we mark it for
 6 identification right now just given that the Donovan
 7 Waters memo --

8 MS. CUMMING: That's fine.

9 **EXHIBIT NO. N FOR IDENTIFICATION: E-MAIL AND**
 10 **ATTACHMENTS DATED JANUARY 8, 2014 FROM PAUL BUJOLD**
 11 **TO CATHERINE TWINN.**

12 Q MS. CUMMING: Ms. Twinn, you received an e-mail
 13 on January 8, 2014 indicating that Walter Twin planned
 14 to resign and that the resignation and appointment
 15 would be dealt with at the January 21, 2014 trustee
 16 meeting, correct?

17 A Correct.

18 Q Can you tell me, from January 8 to January 21, 2014,
 19 did you provide any e-mails or any other communications
 20 to the administrator or to the other trustees with
 21 respect to Walter Twin's resignation?

22 A I don't recall. I'd have to check.

23 Q I'd like you to review your records and determine
 24 whether you had any such communications and, if so, to
 25 produce them.

26 MS. OSUALDINI: That's fine.

27 **UNDERTAKING NO. 18: REVIEW RECORDS AND PRODUCE**

1 **ANY COMMUNICATIONS BETWEEN JANUARY 8 TO JANUARY**
2 **21, 2014 TO THE ADMINISTRATOR OR THE OTHER**
3 **TRUSTEES WITH RESPECT TO WALTER FELIX TWIN'S**
4 **RESIGNATION.**

5 Q MS. CUMMING: So it appears from the e-mail and
6 the dates in the e-mail that you had approximately --
7 or all the trustees had approximately two weeks to
8 think about and consider Walter Twin's resignation and
9 the need to appoint a replacement trustee, correct?

10 A Well, the e-mail came January 8th and the trustee
11 meeting was the 21st, so there would have been the 9th
12 to the 20th.

13 Q Approximately or just under two weeks, correct, give or
14 take a couple days?

15 A Whatever that is.

16 Q All right. And am I correct that you didn't provide
17 any names of potential replacements prior to the
18 January 21st meeting?

19 A I don't believe I did. Again, that would be something
20 I would have to check. And I was walking into that
21 meeting with the understanding that had been voiced to
22 me by Brian Heidecker. I believe it was September
23 16th, the day before the September, 2013 trustee
24 meeting that we required unanimity in the process which
25 was why a succession plan was not possible and that the
26 opinions were all over the place. So that had been our
27 practice and I expected that there would be a full

1 conversation about this resignation.

2 Q And you would agree with me, Ms. Twinn, and I believe
3 you had agreed with me in the last Questioning that the
4 trustees were governed by the terms of the two trust
5 deeds, correct?

6 A Yes.

7 Q And those two trust deeds indicated that decisions
8 could be made by a majority of the trustees, correct?

9 A Correct.

10 Q So you attended the January 21 meeting, and I
11 understand that you did not make any motions at that
12 meeting. Is that correct?

13 A I don't recall.

14 Q You didn't put forth any motions in terms of any
15 alternate trustees?

16 A I wasn't expecting that there would be a decision made
17 that day. What I was expecting was, and I indicated
18 this, I wanted to have a conversation with Walter about
19 why he was resigning. I was met with a predetermined
20 decision from three of the trustees, Clara Midbo,
21 Bertha L'Hirondelle, and Roland Twinn, that they were
22 appointing Justin Twin, and I was quite taken aback by
23 how this issue was handled.

24 Q Were you advised by either the administrator or any of
25 the trustees prior to the April 21st meeting that they
26 planned on putting Justin Twin's name forward?

27 A Sorry, April 21st meeting?

1 Q Sorry, January 21st meeting.

2 A I was gobsmacked.

3 Q That's not what I asked you. I said, were you advised
4 prior to the January 21st meeting that these three
5 trustees wanted to appoint Justin as a replacement to
6 Walter?

7 A I walked into that meeting not knowing that this was
8 happening. It appeared that Paul Bujold and Brian
9 Heidecker were aware of what was coming down.

10 Q Well, did either of them tell you before the January
11 21st meeting that the trustees were going to recommend
12 Justin Twin to be a replacement for Walter Twin?

13 A No. In fact, the memo that had been prepared suggested
14 Brian Heidecker be a temporary trustee.

15 Q Correct. Now, the --

16 A If the resignation was not -- the effective date for
17 the resignation was not delayed which was another
18 option.

19 Q Well, you had previously been in favour of Walter Felix
20 Twin resigning as a trustee, were you not?

21 A There were issues that were discussed including with
22 Donovan Waters.

23 Q That wasn't my question for you.

24 A There were issues.

25 Q That wasn't my question.

26 MS. CUMMING: Madam Court Reporter, if you could
27 go back and repeat the question, please.

1 THE COURT REPORTER: (By Reading)

2 "Q Well, you had previously been in favour of
3 Walter Felix Twin resigning as a trustee,
4 were you not?"

5 A I had concerns. I think everyone had concerns. And if
6 you have something that you wish to direct my mind to
7 that would demonstrate to me that I was advocating for
8 his resignation, I'm happy to look at that.

9 Q MS. CUMMING: That's not what I'm asking you.

10 A I'm going by my memory --

11 Q I'm going to ask you again --

12 A And my memory is that all of us had concerns with
13 Walter Felix Twin given age and capacity. There were
14 concerns there.

15 Q Prior to the January 21, 2014 meeting, in fact prior to
16 receiving notice of Walter's letter of resignation, you
17 were advocating for him to resign as a trustee. Yes or
18 no? Yes or no?

19 A I'm not going to say yes or no to a question that is
20 framed inappropriately. I'll tell you the truth. This
21 is what this exercise this.

22 Q Well, of course it is. You're under oath to tell the
23 truth.

24 A And I am telling the truth. Walter Felix Twin had
25 demonstrated certain things that caused, I think,
26 everyone to have some concerns. I believe back in --
27 and I have to go by memory. There was -- it was

1 probably 2009. We had a Chair resign, Ron Ewoniak.
2 And in his view, he had come to a conclusion about the
3 ability of three of the trustees to act as trustees,
4 and he had concerns about the trustee group as a whole
5 being able to work together and he resigned. This is
6 not something new.

7 When you say the word advocating for Walter Felix
8 Twin to resign, I know there were conversations about
9 his capacity, his health, and so forth.

10 Q Now, in terms of the January 21, 2014 meeting, you had
11 previously indicated that you were provided with some
12 legal documents at the meeting, correct?

13 A Correct.

14 Q If I refer you to those meeting minutes which is
15 Exhibit K, if you turn to those attachments, there's a
16 deed of resignation and a deed to limit term of
17 appointment.

18 A I'm just turning to it.

19 Q You would agree with me that the name of the new
20 trustee is in blank?

21 A There is a blank.

22 Q Nowhere in those documents is there a name indicated in
23 terms of who the new trustee would be?

24 A Correct.

25 Q Now, you as a trustee understood that the assets of the
26 trusts were held by the trustees?

27 A Yes.

- 1 Q And they were held in trust for the beneficiaries?
- 2 A Yes.
- 3 Q And you were also advised at that January, 2014 meeting
- 4 by Mr. Heidecker that there was a business deal pending
- 5 with respect to what's called the Bradkin Building
- 6 deal?
- 7 A I don't specifically recall that at this moment.
- 8 Q But you do recall being advised that there was a
- 9 business deal pending?
- 10 A And I will say that this type of documentation we had
- 11 never utilized in the past ever. Now --
- 12 Q Well, that's not my question. I wanted you to tell
- 13 me --
- 14 A I'm telling you that this came to me as a complete
- 15 surprise. No one bothered to call me. No one bothered
- 16 to provide this to me in advance. Nobody bothered to
- 17 explain, and this was a new document from my
- 18 perspective.
- 19 Q So you as a trustee didn't understand that when a new
- 20 trustee was appointed it was necessary to transfer all
- 21 the assets from the old group of trustees to the new
- 22 group of trustees? Did you not understand that?
- 23 A The law binds us as trustees. The assets that were
- 24 being held were largely, if my memory is correct,
- 25 shares and the two holding companies in which we are
- 26 shareholders.
- 27 Q I understand that at the January 21, 2014 meeting you

1 were asked to sign those legal documents and you
2 refused to do so, correct?

3 A I said that I needed --

4 Q Correct?

5 A I said --

6 MS. OSUALDINI: Which legal documents are you
7 referring to?

8 MS. CUMMING: The ones attached to the exhibit.

9 MS. OSUALDINI: The deed of resignation and
10 appointment of trustees?

11 MS. CUMMING: Yes.

12 A I said that I needed time, and there were a number of
13 issues. One of them was the way this was constructed
14 was that by signing I was also agreeing to the
15 appointment of Justin Twin which was a problem, and I
16 had concerns about that. I also expressed that I
17 wanted to talk with Justin, and I also wanted to talk
18 with Walter. And you'll also need to know that in the
19 past I had asked for access to legal advice and been
20 denied.

21 Q MS. CUMMING: Well, I understand from your
22 affidavit sworn on December 15, 2015, according to you,
23 you retained McLennan Ross in the fall of 2013 to
24 assist you with respect to your concerns as a trustee
25 of the trusts and to counsel you.

26 A Sorry, which paragraph are you referring to?

27 Q Paragraph 13.

1 A May I have a moment, please. That's true.

2 Q So you, according to your affidavit, retained McLennan
3 Ross as your legal counsel in the fall of 2013, and you
4 indicate that was to counsel you on your fiduciary
5 obligations and also assist you in your concerns as
6 trustee of the trusts. Is that correct?

7 A That is true. And before that, I had asked the
8 trustees twice for access to legal advice. One was by
9 way of a motion that no one seconded and the other was
10 in a meeting. And I was completely hindered and, in
11 effect, obstructed in accessing legal advice unless I
12 went on my own and paid on my own.

13 Q But in any event, by the time of the January 21, 2014
14 trustee meeting, according to your own affidavit, you
15 had already retained legal counsel to assist you?

16 A I was speaking to legal counsel about my duties and
17 about my concerns and trying to sort it out.

18 Q Okay, thank you.

19 A This was a new issue that I did not see coming.

20 Q Now, I understand that there was a further trustee
21 meeting on February 25, 2014.

22 A February 25, 2014?

23 Q I'll provide you with a copy of the minutes.

24 A Okay. So I have read the document.

25 Q Thank you. In terms of the timeline, you were given
26 the deed of transfer of assets and the deed to limit
27 term of appointment on January 21, 2014, correct?

1 A Correct.

2 Q And by the time of the February 25, 2014 meeting, you
3 had still not signed those documents, correct?

4 A Correct.

5 Q And you told the Chair that you wanted some further
6 time because you had been away on vacation and you
7 wanted to meet with Justin. Is that correct?

8 A I had tried to meet with Justin. He cancelled. I had
9 a preplanned vacation. I did meet with Justin. I also
10 met with Walter Felix, why he resigned, and he told me
11 why he resigned. And he said that the trustees love
12 money more than family and he could not take the stress
13 anymore.

14 I did not understand why the documentation had
15 been drafted in a way that compelled me to agree to the
16 appointment of Justin before understanding whether or
17 not Justin was in fact qualified to replace Walter
18 Felix Twin. Justin's father is a non-Indian --

19 Q I'm sorry. I'm going to cut you off because you talked
20 about this at the last Questioning, and this has no
21 relevance to the question that was asked of you.

22 A Well, it does have relevance to my duty --

23 Q Ms. Twinn, let me just stop for a moment --

24 A My fiduciary duty and --

25 Q Let's just stop for a moment. We're going to be here
26 for days on end --

27 A So be it.

1 Q -- if you aren't prepared to be responsive to the
2 question that's asked of you.

3 A I have been responsive to the question that you asked.
4 You may not like the information I'm giving but it is
5 responsive.

6 Q Ms. Twinn, I just want to get through this Questioning
7 in less than two weeks. Now, during the meeting of
8 February 25, 2014, the Chair, Mr. Heidecker, advised
9 you that you would have until March 3rd to conclude
10 your meeting with Justin and inform the trustees
11 whether you were going to sign the deed of appointment,
12 correct?

13 A According to those minutes, what I recall was Brian
14 Heidecker at that meeting spent a lot of time trying to
15 get me to admit that I had breached the Code. And it
16 was a very threatening, intimidating meeting to
17 essentially stymie me in my questions and concerns and
18 hinder me in fulfilling my duties as a trustee. I was
19 to fall into line and be compliant. And he repeatedly,
20 repeatedly sought to compel me to make admissions and I
21 did not. I was trying to find solutions.

22 Now, I did meet with Justin and I did raise my
23 concerns with him, and we had a very long conversation
24 and it was in my home in Slave Lake. And at the end of
25 that long conversation, he seemed to understand what my
26 -- the nature of my concerns, that they were
27 reasonable, and he said to me, What is the next step?

1 And I said, I think the next step is to sit down with
2 the Chair. And that did not happen because the Chair
3 had other plans. He and legal counsel had other plans.

4 Q You did not sign the deed of transfer, correct?

5 A Ultimately, my legal counsel -- and I'd have to go back
6 and check, but the deeds were signed and the issue of
7 Justin's appointment was preserved, and on that basis I
8 could sign and did sign. Had that been presented to me
9 at the outset, we would have probably avoided a lot
10 of --

11 Q Ms. Twinn, as of March 3, 2014, you had not signed the
12 deed, correct?

13 A As of March?

14 Q 3, 2014, Mr. Heidecker's deadline.

15 A No, I had not.

16 Q In fact, on --

17 A I can't remember when I met with Justin.

18 Q That's not important right now.

19 A Well, it was to me.

20 Q On April 1, 2014, you were served with a court
21 application to transfer the assets from the former
22 trustees to the current trustees. Is that correct?

23 A Well, I see it's filed April 1st and, sorry, what date
24 did you say I was served?

25 Q I'm presuming you were served on April 1st as well.

26 A The lawyer who was acting for me, Doris Bonora, did
27 arrange to have me served, but I don't recall when that

1 was.

2 Q Well, you were eventually served with that court
3 document, correct?

4 A Correct.

5 Q And in fact, you appeared in court to deal with that
6 application on April 9, 2014?

7 A Yes, I did and there's a transcript.

8 Q Correct. Now, in that transcript on page 3 --

9 A Yes.

10 Q -- you appeared on your own behalf, correct?

11 A At that point, yes.

12 Q And you indicated to the Court that you were going to
13 be asking for an adjournment, correct?

14 A Correct.

15 Q And if you go to page 4, you advised the Court that you
16 hadn't filed material because you needed to access
17 legal counsel and you needed to receive advice from
18 legal counsel. Do you remember telling the Court that?

19 A I see what the transcript says. It says, Lawyers are
20 very costly. It takes a lot. It takes some time,
21 preparation time for them to come to speed and
22 understand the complexities of this. This is a very
23 complex matter.

24 Q I'm going to read to you lines 11 to 13. It says,
25 Ms. Twinn, "I haven't filed material because firstly I
26 need to access legal counsel. I need to inform legal
27 counsel. I need to receive advice from legal counsel,

1 and then I need to give instructions to legal counsel."

2 A Correct.

3 Q That's what you told the Court, correct?

4 A Yes.

5 Q The Court says, And when is that going to happen? And
6 your response was, Well, I don't know. And then if we
7 go down the Court line 30 --

8 A Yes.

9 Q -- the Court says, "But if you want a lawyer, then you
10 hire a lawyer and you give instructions to the lawyer,
11 and they will ask for information if they need it. And
12 presumably if it is a reasonable request, it will be
13 provided. What's the problem?" Your answer was,
14 "There's no problem. I mean, that is what I intend to
15 do but I need time to do that."

16 A Correct.

17 Q Ms. Twinn, at any point in time, did you tell the Court
18 that you had retained McLennan Ross to provide you with
19 legal assistance since September of 2013?

20 A McLennan Ross was providing me legal assistance on the
21 issues that had come out September, 2013; October,
22 2013; and December, 2013. And I am not a -- those
23 issues were not in relation to this deed. I had hoped
24 that -- Ms. Cumming, you're making faces, and I need to
25 be treated with respect in this room.

26 Q Well, Ms. Twinn, you're an officer of the court?

27 A Yes, and I'm under oath and I'm trying to give my

1 evidence, but this type of facial -- face-making is not
2 helpful. Now, if you want to hear the truth as I
3 understand the truth, as I know the truth, let me tell
4 it.

5 I had gone to McLennan Ross because Paul Bujold
6 had created lists of 1985 beneficiaries. And at the
7 September, 2013 meeting, the day after I met with Brian
8 Heidecker, I had told Brian Heidecker that I was -- I
9 had gone to the practice adviser to understand -- try
10 to get a better understanding of my duties.

11 And I told him about my concerns with, first of
12 all, the trustees' failure to properly ascertain the
13 beneficiaries of the 1985 Trust pursuant to the rules
14 that exist in the deed, to do so in a way that was
15 fair, proper, and transparent.

16 When I questioned Paul Bujold at the September,
17 2013 meeting, he and Brian Heidecker had brought into
18 the meeting without notice lists saying authorize these
19 lists. We'll use any of these lists to try and go cut
20 a deal with the public trustee in order to shut down
21 the investigation of the Band membership system.

22 I had been raising concerns about the Band
23 membership system for some time. And I had understood
24 from the Chair that these issues would be addressed,
25 that that system that has huge problems will be
26 corrected before it is brought to the Court to be
27 substituted for the existing '85 definition.

1 To this date, we still haven't gone to court on
2 the fundamental question. Are these rules
3 discriminatory? Are they invalid? It seems to be --
4 have been determined -- by whom, I don't know; I assume
5 the lawyers -- that the rules are invalid for the
6 purposes of that trust. But in any event, the
7 beneficiaries under those rules have not been properly
8 ascertained.

9 And at the September, 2013 meeting when I
10 questioned Mr. Bujold about how these various lists
11 were created, I was met with another wall. And that
12 went on at the October meeting. It went on at the
13 December meeting. And I was treated so abusively at
14 the December meeting that finally at about 2:30 I left.
15 I left the meeting.

16 Now, prior to my leaving, those lists had come
17 forward again. And I again asked my questions about
18 how these lists were produced; who produced them; what
19 rules were applied; what case law was applied, what
20 happened to all the people that have applied; how were
21 they dealt with? Paul Bujold refused to answer my
22 questions. He and Clara engaged in an attack. And he
23 told me, You wouldn't believe anything, even if it was
24 from God. Now, that's what I was struggling with.

25 I was also struggling with the June 12th, 2012
26 decision of Justice Thomas. That's what I was speaking
27 with McLennan Ross about.

1 Q Are you finished?

2 A I am finished.

3 MS. CUMMING: Let's go off the record.

4 (DISCUSSION OFF THE RECORD)

5 (BRIEF ADJOURNMENT)

6 Q MS. CUMMING: Ms. Twinn, I want to confirm on the
7 record that during the break I allowed your counsel to
8 speak to you concerning the length of your answers and
9 the responsiveness of your answers to the questions
10 asked. Is that correct?

11 MS. OSUALDINI: That is correct.

12 Q MS. CUMMING: That was something that I also
13 allowed for during your initial round of Questioning on
14 September 9, 2016.

15 MS. OSUALDINI: That's correct.

16 MS. CUMMING: Thank you. I'll just do a little
17 bit of housekeeping. Going back to the February 25,
18 2014 minutes, I'd like to mark those as the next
19 exhibit, please.

20 MS. OSUALDINI: O.

21 **EXHIBIT NO. O FOR IDENTIFICATION: TRUSTEE MEETING**
22 **MINUTES OF FEBRUARY 25, 2014.**

23 MS. CUMMING: I'd also like to mark as an exhibit
24 the originating application filed on April 1, 2014.

25 MS. OSUALDINI: That's fine.

26 **EXHIBIT NO. 5: ORIGINATING APPLICATION FILED ON**
27 **APRIL 1, 2014.**

1 MS. CUMMING: And finally, the proceedings of
2 April 9, 2014 as the next full exhibit.

3 MS. OSUALDINI: The transcript of proceedings?

4 MS. CUMMING: Yes, sorry, the transcript of
5 proceedings.

6 **EXHIBIT NO. 6: TRANSCRIPT OF PROCEEDINGS HELD**
7 **APRIL 9, 2014.**

8 Q MS. CUMMING: Ms. Twinn, you had indicated that
9 you retained McLennan Ross to provide you with legal
10 assistance back in September, 2013?

11 A I don't recall when exactly in the fall of 2013, but I
12 connect it to the events of 2013.

13 Q Well, in your December, 2015 affidavit, you indicated
14 that they were retained in September of 2013. Is that
15 correct? Or the fall of 2013, correct?

16 A That's what my affidavit says, fall of 2013.

17 Q No one prevented you from retaining them?

18 A Sorry?

19 Q No one prevented you from retaining counsel?

20 A No.

21 MS. OSUALDINI: Just in fairness to the witness,
22 she did indicate before that they wouldn't approve the
23 expense of legal counsel.

24 Q MS. CUMMING: Well, that's fine, but that didn't
25 prevent you from retaining counsel, correct?

26 A Well, it's --

27 Q You have counsel, correct?

1 A I have counsel and it's extremely burdensome, and that
2 is why we are here.

3 Q Now, let's move to the next trustee meeting which
4 occurred on April 15, 2014.

5 A I have reviewed these.

6 Q Thank you. Now, the minutes of the April 15, 2014
7 meeting indicate at paragraph 7 that the Chair advised
8 of a business proposal for the companies and that in
9 order to deal with that business proposal the asset
10 transfer needed to be completed. Do you remember the
11 Chair advising the trustees of that fact?

12 A I recall this issue. It's in these minutes and that's
13 all I can say.

14 Q I understand that the Chair asked you if you would be
15 willing to sign the deeds, and you had indicated you
16 were not prepared to sign the deeds at that time. Is
17 that correct?

18 A That's what those minutes say.

19 Q Well, did you indicate you were not prepared to sign
20 the deeds at that time?

21 A I don't recall at this moment what I said.

22 Q Did you keep any notes of this meeting?

23 A I would probably have kept notes.

24 Q If you would review your records and provide any notes
25 you have with respect to this meeting as well as the
26 February 25, 2014 meeting.

27 MS. OSUALDINI: Those are notes relating to minutes

1 of the meeting?

2 MS. CUMMING: Yes.

3 MS. OSUALDINI: That's fine.

4 **UNDERTAKING NO. 19: REVIEW RECORDS AND PROVIDE**
 5 **ANY NOTES TAKEN WITH RESPECT TO THE MEETINGS OF**
 6 **FEBRUARY 25, 2014 AND APRIL 15, 2014.**

7 MS. CUMMING: If we could mark the April 15, 2014
 8 minutes as the next exhibit.

9 MS. OSUALDINI: For identification.

10 **EXHIBIT NO. P FOR IDENTIFICATION: TRUSTEE MEETING**
 11 **MINUTES OF APRIL 15, 2014.**

12 Q MS. CUMMING: Now, it's my understanding that a
 13 further court application to obtain an Order for the
 14 transfer of the assets proceeded on May 16, 2014
 15 according to the transcript.

16 A Yes.

17 Q You had counsel, McLennan Ross, appear on your behalf,
 18 correct?

19 A Correct.

20 Q And as a result of that application, an Order was
 21 granted transferring the assets to the new trustees,
 22 correct?

23 A That is correct with reservation on the Justin Twin
 24 appointment.

25 MS. CUMMING: If we can mark those proceedings as
 26 the next exhibit.

27 MS. OSUALDINI: That's fine.

1 **EXHIBIT NO. 7: TRANSCRIPT OF PROCEEDINGS HELD MAY**
 2 **16, 2014.**

3 Q MS. CUMMING: I'm showing you an Order of Justice
 4 Nielsen filed May 20, 2014. Am I correct that that is
 5 the Order arising from that court application?

6 A Correct.

7 MS. CUMMING: If that would be the next exhibit.

8 **EXHIBIT NO. 8: ORDER OF JUSTICE NIELSEN FILED MAY**
 9 **20, 2014.**

10 Q MS. CUMMING: The next trustee meeting appears to
 11 have occurred on June 10, 2014. Is that correct to
 12 your knowledge?

13 A That's what these minutes say.

14 Q In that meeting, it's noted that Clara Midbo is in
 15 attendance.

16 A Correct.

17 Q During that June 10, 2014 meeting, did Clara Midbo
 18 advise you or any of the trustees at the meeting that
 19 she was terminally ill?

20 A I need a moment to review the document that you've just
 21 put in front of me.

22 Q Go ahead.

23 A Yes, I've now read the June 10th minutes.

24 Q During that June 10, 2014 meeting, did Clara Midbo
 25 advise you or any of the trustees that she had a
 26 terminal illness or that she was terminally ill?

27 A That's not reflected in those minutes.

1 Q Do you remember at the meeting whether she made any
2 such statement?

3 A No.

4 Q You were aware, though, that she was ill, that she had
5 cancer and was receiving treatment?

6 A No, no knowledge.

7 Q So it came as a complete surprise to you when you were
8 advised that Clara had died?

9 A Yes, I was very surprised.

10 Q Do you know whether she told any of the trustees that
11 she was terminally ill?

12 A I do not know.

13 Q Now, you had indicated in your affidavit that Clara
14 passed away on July 13, 2014.

15 A Can I see my affidavit?

16 MS. OSUALDINI: Which paragraph?

17 MS. CUMMING: 22.

18 MS. OSUALDINI: Of the December affidavit?

19 MS. CUMMING: No, sorry, September affidavit.

20 A Yes, I've read this paragraph 22.

21 Q MS. CUMMING: When were you told that she had
22 passed away? Was it the same day or shortly
23 thereafter?

24 A I don't recall at this moment. I would have to check.

25 Q You were at her funeral, though?

26 A Correct.

27 Q And I understand that was just a few days after she had

1 passed away. Is that correct?

2 A I believe it was fairly soon. I don't remember the
3 number of days.

4 Q Certainly, you were advised of Clara's passing by,
5 let's say, the middle of July, 2014?

6 A Yes, I was at her funeral whenever that was.

7 Q I take it that with your trustee hat on, you knew that
8 there was now another vacancy with respect to the
9 composition of the trustees for the two trusts?

10 A Yes.

11 MS. CUMMING: I don't think I marked the June
12 minutes as the next exhibit.

13 MS. OSUALDINI: Q.

14 **EXHIBIT NO. Q FOR IDENTIFICATION: TRUSTEE MEETING**
15 **MINUTES OF JUNE 10, 2014.**

16 Q MS. CUMMING: Now, in paragraph 20 of your
17 September, 2015 affidavit, you had referred to
18 obtaining the opinion of Larry Gilbert, and you had
19 indicated in your affidavit that the opinion was dated
20 July 2, 2014, correct?

21 A That's what my affidavit says, yes.

22 Q Did you make a motion at any trustee meeting that you
23 be given the authority to retain someone to give a
24 legal opinion concerning Justin Twin?

25 A I don't recall and I don't believe I did.

26 Q Do you recall receiving any prior approval of the
27 trustees to retain Mr. Gilbert or any other lawyer to

1 give an opinion concerning Justin Twin?

2 A The -- at this point, it was clear that I had to do my
3 own -- what's the word I'm looking for -- due
4 diligence.

5 Q So you didn't have prior approval of the trustees?

6 A No.

7 Q After you obtained Mr. Gilbert's opinion, did you bring
8 a motion at any trustee meeting to have Justin Twin
9 removed as a trustee?

10 A No. The -- I don't recall doing that and, in any
11 event, what would be the purpose?

12 Q All right. So you --

13 A It would not be approved.

14 Q So you did not bring a motion to have Justin Twin
15 removed as a trustee, correct?

16 A I don't believe so.

17 Q In terms of your Application for Advice and Directions
18 to have Justin Twin removed, have you taken any steps
19 in that action to have Justin Twin removed?

20 A You're talking about the 2014 action? Is that what
21 you're asking me about?

22 Q Yes.

23 A The -- I will have to check on when and what the last
24 action was. As you know, some of those issues have
25 been downloaded into the 2015 action. And I don't know
26 off the top of my head that particular action and also
27 in the context of my complaint letter in the 2015

1 action.

2 Q Well, I'm going to ask you for an undertaking that in
3 the context of your Application for Advice and
4 Directions in Action Number 1403 04885 what, if any,
5 steps you have taken in that action to have Justin Twin
6 removed as a trustee.

7 MS. OSUALDINI: Nancy, as Catherine indicated, I
8 don't think that question can be answered without
9 reference to the 2015 action.

10 MS. CUMMING: I think it can because I'm asking
11 in the context of that particular action what steps
12 have been taken. Do I have that undertaking?

13 MS. OSUALDINI: I'll take that under advisement.

14 MS. CUMMING: That's fine.

15 **UNDERTAKING NO. 20: IN THE CONTEXT OF THE**
16 **APPLICATION FOR ADVICE AND DIRECTIONS IN ACTION**
17 **NUMBER 1403 04885, ADVISE WHAT, IF ANY, STEPS HAVE**
18 **BEEN TAKEN TO HAVE JUSTIN TWIN REMOVED AS A**
19 **TRUSTEE - TAKEN UNDER ADVISEMENT.**

20 Q MS. CUMMING: It's my understanding that as a
21 result of the passing of Clara Midbo a special trustee
22 meeting was called for August 12th, 2014.

23 A That's what these minutes that you've handed me
24 indicate, August 12th, 2014.

25 Q Before you review them, were you given any
26 documentation prior to that meeting from the
27 administrator?

1 A I don't recall at this very moment. I would want to
2 check.

3 Q Well, you don't have to do that. I'm providing you
4 with an e-mail dated July 22, 2014. I'll give you a
5 moment to review that.

6 A So what would you like me to review first, the August
7 12th minutes or this document that you've just handed
8 me.

9 Q If you can review first the e-mail from Paul Bujold to
10 you and the other trustees and the Chair dated July 22,
11 2014. Ms. Twinn, you've had the opportunity to review
12 the e-mail dated July 22, 2014 and attachments?

13 A Correct.

14 Q Do you have any reason to suggest that you did not
15 receive these documents and this e-mail on July 22,
16 2014?

17 A I do not have any reason to suggest I did not, because
18 it says that I was one of the recipients.

19 Q And that document indicates that a special meeting had
20 been scheduled for August 12th, 2014, correct?

21 A Correct.

22 MS. CUMMING: If we can mark that as the next
23 full exhibit.

24 MS. OSUALDINI: Are you able to identify all this?

25 A I would want to check it.

26 Q MS. CUMMING: For what?

27 A Just to verify that all of these attachments were as is

1 stated.

2 Q MS. CUMMING: All right. Well, you do so and let
3 me know.

4 MS. OSUALDINI: Because we can undertake to verify
5 it if this is an accurate reproduction with all of the
6 attachments.

7 **EXHIBIT NO. R FOR IDENTIFICATION: E-MAIL FROM**
8 **PAUL BUJOLD TO THE TRUSTEES AND THE CHAIR DATED**
9 **JULY 22, 2014 WITH ATTACHMENTS.**

10 **UNDERTAKING NO. 21: ADVISE IF MS. TWINN CAN**
11 **VERIFY THAT EXHIBIT R FOR IDENTIFICATION IS AN**
12 **ACCURATE REPRODUCTION WITH ALL OF THE ATTACHMENTS.**

13 Q MS. CUMMING: Do you recall that when you
14 received the July 22, 2014 e-mail that the attachments
15 in terms of the deeds were in blank in terms of a name
16 of a replacement trustee?

17 A I don't recall.

18 Q Now, you had indicated in paragraph 24 of your
19 affidavit that you sent an e-mail to Mr. Bujold on
20 August 6th, 2014.

21 A That's correct.

22 Q If you would undertake to produce that e-mail, please.

23 MS. OSUALDINI: That's fine.

24 **UNDERTAKING NO. 22: PRODUCE THE E-MAIL MS. TWINN**
25 **SENT TO MR. BUJOLD ON AUGUST 6, 2014.**

26 Q MS. CUMMING: Now, isn't it correct that
27 Mr. Bujold called you and told you that no names had

1 been proposed to him with respect to an alternate
2 trustee and that that issue would be discussed at the
3 August 12th, 2014 meeting?

4 A I don't recall. I'd have to check.

5 Q Well, you check, please, and let me know.

6 A That was a phone call?

7 Q Yes.

8 MS. OSUALDINI: We can undertake to do that.

9 MS. CUMMING: Thank you.

10 **UNDERTAKING NO. 23: ADVISE IF MS. TWINN RECEIVED**
11 **A PHONE CALL FROM MR. BUJOLD INFORMING HER THAT NO**
12 **NAMES HAD BEEN PROPOSED TO HIM WITH RESPECT TO AN**
13 **ALTERNATE TRUSTEE AND THAT ISSUE WOULD BE**
14 **DISCUSSED AT THE AUGUST 12, 2014 MEETING.**

15 Q MS. CUMMING: As I understand it, then, the
16 special meeting took place on August 12th, 2014.

17 A Correct.

18 Q Between the time of Clara's passing and August 12th,
19 2014, did you provide any communications to the
20 trustees or the Chair or the administrator concerning
21 the issue of Clara Midbo's replacement?

22 A Sorry, could you repeat? Between the date of her death
23 and this August 12th, did I provide them with ...

24 Q Any communications from you with respect to the
25 replacement of Clara Midbo with another trustee.

26 A I would have to check.

27 Q Well, if you would do so, please; and if you did

1 provide any such communications, then produce them.

2 MS. OSUALDINI: We can undertake to do that.

3 **UNDERTAKING NO. 24: ADVISE IF BETWEEN THE TIME OF**
 4 **CLARA MIDBO'S PASSING AND AUGUST 12, 2014**

5 **MS. TWINN PROVIDED ANY COMMUNICATIONS TO THE**
 6 **TRUSTEES OR THE CHAIR OR THE ADMINISTRATOR**
 7 **CONCERNING THE ISSUE OF CLARA MIDBO'S REPLACEMENT**
 8 **AND, IF SO, PRODUCE SAME.**

9 Q MS. CUMMING: So now you can go ahead and review
 10 the August 12th, 2014 minutes.

11 A I've read the minutes that you've provided dated August
 12 12th, 2014.

13 Q Thank you. Now, during the commencement of that
 14 meeting, it appears that there was a discussion
 15 concerning a replacement for Clara Midbo, and there was
 16 a discussion that either Margaret Ward or Deana Morton
 17 be considered as potential candidates. Do you recall
 18 that being the case?

19 A I recall their names being brought up at the meeting.

20 Q And --

21 A And may I finish?

22 Q Go ahead.

23 A And that I had asked -- prior to this meeting, my
 24 memory is that I had asked if they had any persons that
 25 they wanted to bring forward, and there was no reply
 26 from anyone.

27 Q You say prior to the August 12, 2014 meeting. When was

1 that?

2 A I don't recall.

3 Q Who did you ask?

4 A Everyone, the trustees, Brian Heidecker, and Paul
5 Bujold is my recollection, but I'd have to check that.

6 Q Did you call them or speak to them in person or are you
7 talking about an e-mail or a letter?

8 A My recollection, which I want to confirm, is that it
9 was done by e-mail.

10 Q If you would undertake to provide us with any
11 communications that you have with respect to that
12 issue.

13 MS. OSUALDINI: That's fine.

14 **UNDERTAKING NO. 25: PROVIDE ANY COMMUNICATIONS**
15 **MS. TWINN HAS WITH RESPECT TO HER INQUIRING**
16 **WHETHER ANYONE HAD ANY PERSONS THEY WANTED TO**
17 **BRING FORWARD AS A POTENTIAL TRUSTEE.**

18 A And my recollection, it was met with silence. And I
19 would like a break now.

20 MS. OSUALDINI: I think it's noon so it makes some
21 sense.

22 (QUESTIONING ADJOURNED AT 12:00 A.M.)

23 (QUESTIONING RESUMED AT 1:15 P.M.)

24 Q MS. CUMMING: Ms. Twinn, you acknowledge you're
25 still under oath?

26 A Yes.

27 Q Now, before the break, we had been talking about the

- 1 August 12, 2014 trustee meeting, correct?
- 2 A Correct.
- 3 Q At that meeting, the name of Margaret Ward or Peggy
- 4 Ward was put forth to be considered to be one of the --
- 5 to be the trustee to replace Clara Midbo. Is that
- 6 correct?
- 7 A Correct.
- 8 Q And you knew Margaret Ward?
- 9 A Not really.
- 10 Q Well, you had actually met Margaret Ward a number of
- 11 years prior to August, 2014, correct?
- 12 A A number of years prior.
- 13 Q And in fact, she was part of a trustee-in-training
- 14 program for the trusts, correct?
- 15 A Yes. I had recommended a trustee training and a
- 16 director-in-training. A trustee-in-training had
- 17 something of a life. The director-in-training did not.
- 18 Q The trustee-in-training was put forth in 2003. Is that
- 19 correct?
- 20 A I don't recall.
- 21 Q Do you know when the trustee-in-training program
- 22 started?
- 23 A I don't recall off the top of my head. I'd have to
- 24 check.
- 25 Q Do you recall who was proposed to be trustees in
- 26 training back when the program was first initiated?
- 27 A I think there were a number of names, and I recall that

1 we were also dealing with ascertaining the
2 beneficiaries of the '85 Trust because, of course, that
3 impacts the pool.

4 Q Well, am I correct that four names were put forward or
5 short-listed to be trustees-in-training?

6 A Possibly. I would have to go back and check.

7 Q Do you remember that the names were Justin Twin, David
8 Midbo, Deana Morton, and Margaret Ward?

9 A They may have been on that list, and there may have
10 been others.

11 Q Am I correct that Margaret Ward was selected to be the
12 trustee for the trustee-in-training program as well as
13 Deana Morton?

14 A There were two women, yes, Deana and Peggy.

15 Q In fact, they attended numerous trustee meetings, did
16 they not?

17 A I don't know how many trustee meetings they attended.
18 I do know that they both quit, and it was because it
19 was clear that there would be no succession taking
20 place.

21 Q I'm showing you an e-mail from Paul Bujold to you dated
22 July 16, 2014.

23 A Yes, I see this.

24 Q In terms of the first page of that e-mail, that appears
25 to set out the meeting dates in which Deana Morton and
26 Margaret Ward attended as trustees-in-training?

27 A It appears to set that out.

1 Q So it appears that they both attended trustee meetings
2 from December, 2004 until October, 2007?

3 A That's what it shows.

4 Q And you were in attendance, I presume, at the majority
5 of those meetings?

6 A I would think.

7 MS. CUMMING: Can we mark that e-mail as the next
8 exhibit, please.

9 MS. OSUALDINI: That's fine.

10 **EXHIBIT NO. 9: E-MAIL FROM PAUL BUJOLD TO**
11 **CATHERINE TWINN DATED JULY 16, 2014.**

12 Q MS. CUMMING: Is it your recollection that
13 Margaret Ward attended a number of the trustee
14 meetings?

15 A That's my recollection.

16 Q So you would see her at these meetings, it appears,
17 several times a year throughout December, 2004 to
18 October, 2007?

19 A According to this record, those dates are when she was
20 paid. And I have no idea if this correlates with the
21 meeting dates.

22 Q I'm providing you with some meeting minutes dated
23 February 24, 2005.

24 A I've read the minutes that you've provided.

25 Q All right. It appears that you were the chairperson
26 for that meeting.

27 A That's what it says.

1 Q And it appears that both Peggy Ward and Deana Morton
2 were in attendance.

3 A Regrets, Deana Morton.

4 Q Okay. I'm just looking Present, Deana Morton, so it
5 looks like there's an error there, but certainly Peggy
6 Ward was present according to the minutes. Is that
7 correct?

8 A The document speaks for itself.

9 MS. CUMMING: Let's mark that as the next
10 exhibit, please.

11 MS. OSUALDINI: For identification.

12 **EXHIBIT NO. S FOR IDENTIFICATION: TRUSTEE MEETING**
13 **MINUTES OF FEBRUARY 24, 2005.**

14 Q MS. CUMMING: I'm providing you with some minutes
15 dated Thursday, August 25, 2005.

16 A Yes.

17 Q It appears from the minutes that you were in
18 attendance.

19 A It appears.

20 Q As was Peggy Ward as trustee-in-training?

21 A That's what the document says.

22 Q And that coincides with Mr. Bujold's chart as shown in
23 Exhibit 9?

24 A August 25th, '05, it shows a payment of 500.

25 Q On that exhibit, it lists -- I just counted them -- 28
26 meetings. If the document is accurate that Margaret
27 was present for all those meetings, would you agree

1 with me that you had ample opportunity to meet with
 2 Margaret Ward and observe her conduct at these
 3 meetings?
 4 A Ample opportunity to meet her and observe her conduct
 5 at these meetings.
 6 Q Well, let's even just break it down to you had ample
 7 opportunity to meet her.
 8 A Not really.
 9 Q So you never took it upon yourself as a trustee to get
 10 to know a trustee-in-training?
 11 A I honestly do not know Peggy Ward, and perhaps you and
 12 I have a different definition of know.
 13 Q Well, you certainly attended a number of trustee
 14 meetings in which Peggy Ward was a trustee-in-training,
 15 correct?
 16 A Yes. According to the document, yes.
 17 Q And one of the purposes of the trustee-in-training
 18 program was to expose a potential future trustee to the
 19 trust meetings and what was required of a trustee. Is
 20 that correct?
 21 A That was one of the purposes.
 22 Q Now, in terms of the --
 23 A There were other purposes but that was one of them.
 24 Q Of course. Now, in terms of the trustee meeting on
 25 August 25, 2005, I'd like you to turn to --
 26 A Sorry, August 25?
 27 Q 2005. The second page, item 3, Decision-making

1 Criteria, and that item indicates, Majority
2 decision-making will be the criteria. And at the
3 bottom, it says, Catherine, majority of trustees abide
4 by trust document. Do you recall at that meeting that
5 you agreed to abide by the trust documents with respect
6 to the decision-making criteria?

7 A And there was also a consensus decision-making process
8 document to build consensus.

9 Q All right, but you would agree with me that the minutes
10 indicate that for you in terms of decision-making
11 criteria, you had indicated, A majority of trustees and
12 to abide by the trust document. Is that correct?

13 A And the other documents that we had set into place
14 including the consensus document.

15 Q And you had previously agreed with me that both trust
16 deeds allowed for decisions to be made by a majority of
17 the trustees?

18 A Yes.

19 MS. CUMMING: If we could mark that as the next
20 exhibit, please.

21 MS. OSUALDINI: T.

22 **EXHIBIT NO. T FOR IDENTIFICATION: TRUSTEE MEETING**
23 **MINUTES OF AUGUST 25, 2005.**

24 Q MS. CUMMING: Were you aware that Margaret Ward
25 was a beneficiary of both the '85 and '86 Trusts?

26 A Yes, I believed her to be a beneficiary of both trusts.

27 Q Was she also living on the Reserve?

1 A She's never lived on the Reserve.

2 Q Were you during all those years that she was a trustee-

3 in-training aware of her educational background and

4 work experience?

5 A Somewhat. She is in education.

6 Q Were you aware that she had a Ph.D. or has a Ph.D. in

7 educational policy and administrative studies?

8 A Yes, I was aware she has a Ph.D.

9 Q Were you aware that she had a Master's in Indian and

10 Northern Education?

11 A I can't recall that particular point at this moment.

12 Q Were you aware that she had taught as a teacher,

13 instructor, professor at various educational

14 institutions?

15 A I was aware that she had taught.

16 Q Were you aware that she had written a paper on post-

17 secondary education in Alberta?

18 A I don't recall at this moment.

19 Q Do you recall when Mr. Bujold was hired as the

20 administrator that you had recommended to him that he

21 contact Margaret Ward and obtain her paper on post-

22 secondary education?

23 A I don't recall.

24 Q I'll provide you with a copy of Margaret Ward's resume.

25 A I've read it.

26 Q Would you agree with me that it appears from the resume

27 that Margaret Ward has a significant amount of

1 experience and interest in First Nations?

2 A In education. I don't know about First Nations.

3 Margaret Ward is non-aboriginal. She has not lived in
4 the community, and she's recently started to attend
5 some of the Band meetings.

6 MS. CUMMING: If we can mark that resume as the
7 next exhibit, please.

8 MS. OSUALDINI: For identification, U.

9 **EXHIBIT NO. U FOR IDENTIFICATION: RESUME OF**
10 **MARGARET WARD.**

11 Q MS. CUMMING: Ms. Twinn, when you came to the
12 meeting on August 12, 2014 and heard the name Margaret
13 Ward, that name was not new to you?

14 A No, it was not.

15 Q Am I correct --

16 A And it hadn't been provided prior to the meeting.

17 Q Well, we'll get to that in a moment. There was a
18 discussion amongst the trustees about Margaret Ward and
19 whether she would be suitable as a trustee. Is that
20 correct?

21 A According to those minutes that you've produced which,
22 you know, I have not agreed to the minutes, and I've
23 told you that before.

24 Q Well, I'm going to ask for an undertaking that you
25 review all of the minutes that have been entered as
26 exhibits in your cross-examination on affidavit, both
27 over the last two days and until your cross-examination

1 is complete and --

2 MS. OSUALDINI: I think we've already given that
3 undertaking.

4 MS. CUMMING: I don't know if I gave it just for
5 the ones that had been marked or for future ones as
6 well.

7 MS. OSUALDINI: Okay, because that's fine. I think
8 that was the intention is all of the minutes you were
9 producing that she review and advise if she agreed that
10 they were reproductions of what was produced as the
11 minutes and whether she agreed that these reflected the
12 meeting that occurred.

13 MS. CUMMING: And to produce any notes that she
14 may have made at each of the meetings.

15 MS. OSUALDINI: I think that was only requested in
16 relation to one meeting minute. I don't know if it was
17 a general undertaking.

18 MS. CUMMING: All right. Well, then I want an
19 undertaking that you review your records and produce
20 any and all notes you made at or immediately following
21 any trustee meeting that has been referred to in this
22 cross-examination.

23 MS. OSUALDINI: That's fine.

24 **UNDERTAKING NO. 26: REVIEW RECORDS AND PRODUCE**
25 **ALL NOTES MS. TWINN MADE AT OR IMMEDIATELY**
26 **FOLLOWING ANY TRUSTEE MEETING THAT HAS BEEN**
27 **REFERRED TO IN THIS CROSS-EXAMINATION.**

1 Q MS. CUMMING: Now, at the August 12, 2014 special
 2 trustee meeting, you provided a proposal, correct?
 3 A Correct.
 4 Q If you refer to those minutes, that proposal is
 5 attached to the minutes, correct?
 6 A There's a -- yeah, there's a document that says
 7 Sawridge Trust, trustee replacement August 12th, 2014
 8 Catherine Twinn.
 9 Q And then the next page as well?
 10 A Yes.
 11 Q And then following that, you have attached some
 12 resumes, correct?
 13 A Correct.
 14 Q I'm going to call that the August 12, 2014 proposal,
 15 okay?
 16 A Okay.
 17 Q Did you provide that proposal to the trustees, the
 18 Chair, or the administrator prior to the August 12,
 19 2014 meeting?
 20 A I don't recall if I did or not. I suspect I may not
 21 have because I know I was still working on this. It
 22 took a lot of time, a lot of time.
 23 Q My understanding is that you handed out this proposal
 24 at the meeting following the discussion concerning
 25 Margaret Ward. Is that correct?
 26 A Following the discussion? I don't know.
 27 Q Well, it's my understanding that you provided this

1 written proposal at the meeting and not prior to the
2 meeting. Is that correct?

3 A That may be true. I'll have to check. I don't recall.

4 Q You check and let me know.

5 MS. OSUALDINI: That's fine.

6 **UNDERTAKING NO. 27: CONFIRM WHETHER THE AUGUST**
7 **12, 2014 PROPOSAL WAS PROVIDED PRIOR TO OR AT THE**
8 **AUGUST 12, 2014 TRUSTEE MEETING.**

9 Q MS. CUMMING: Ms. Twinn, you have taken issue
10 with not being advised in advance of Margaret Ward or
11 Justin Twin, but you didn't see fit to have a
12 discussion or provide this proposal to the trustees
13 prior to the meeting?

14 A Incorrect.

15 Q Why is that incorrect?

16 A Because I've already told you that my memory of this is
17 that I was working on this right up to. I had also, my
18 memory, reached out to everyone to ask who they were
19 proposing and received no response. If they don't wish
20 to speak with me or communicate with me, I don't think
21 it's up to me to do all the heavy lifting.

22 Q And you're assuming that you asked them for names in
23 advance of the August 12th meeting?

24 A I have a memory that that's what I asked.

25 Q And you're going to produce your e-mails confirming
26 that, correct?

27 A I believe we've given that.

1 Q As an undertaking, yes, you have.

2 MS. OSUALDINI: Yes.

3 Q MS. CUMMING: You had time to gather these

4 resumes, correct?

5 A I did gather these resumes, yes.

6 Q And you had to time to put in a skills matrix and type

7 up two proposals, correct?

8 A Yes, I worked on this. And as I said, it took a lot of

9 time and thought, and I do recall working on the skills

10 matrix.

11 Q The skills matrix that you provided, you provided that

12 in terms of the skills that a trustee should have. Is

13 that correct?

14 A I was doing my best to produce a set of skills that we

15 should think about when making our selections.

16 Q I want you to turn to that skills matrix. It says it's

17 prepared by Higgins Executive Search.

18 A Yes, there's -- on the bottom, it says Higgins. It may

19 have been a template that I requested.

20 Q Well, just above that, it talks about -- it says, "The

21 total dollar value of all trust assets and the number

22 of trust relationships administered by your firm in

23 Canada." And it says, "The total dollar value and

24 number --

25 A I'm sorry. I'm trying to find where you are on the

26 document.

27 Q I'm looking at the bottom left-hand corner. And then

1 it also says, "The total dollar value and number of
2 relationships specific to any First Nation, Metis, or
3 Inuit trusts administered in Canada." Is this not a
4 skills matrix used to determine whether an investment
5 firm had the skills, experience, and knowledge to
6 administer a trust fund?

7 A I don't think this skills matrix is so limited.

8 Q But you would agree with me that you don't expect a
9 trustee to answer questions about the total value of
10 all trust assets and number of trust relations
11 administered by your firm in Canada?

12 A It depends on who you're recruiting.

13 Q Well, were you putting forth an investment firm to act
14 as a trustee?

15 A The document speaks for itself in terms of what I was
16 putting forward. And if it's not clear, perhaps I can
17 try to clarify. I was putting forward Judith Sayers
18 and Victor Leginsky.

19 Q No, I understand that.

20 A And I was also putting forward a process.

21 Q Now, Victor Leginsky, do you know whether any of the
22 trustees had ever heard of him?

23 A I don't believe they had heard of him.

24 Q From his resume, it indicated that he was living in
25 Dubai since 2007.

26 A Right, and I indicated that he was looking at moving to
27 Alberta.

1 Q Well, his resume says that he was living in Dubai since
2 2007. Is that correct?

3 A I have to go to his resume. I have not -- sorry, what
4 page of his?

5 Q You just went by it. It's the first page.

6 A Resident in Dubai since 2007, correct.

7 Q It doesn't appear that he is aboriginal.

8 A No, he's not.

9 Q Obviously, never lived on the Reserve, Sawridge
10 Reserve?

11 A No.

12 Q I don't see anything in his resume indicating that he
13 is familiar with the Sawridge First Nation. Is that
14 correct?

15 A His resume speaks for itself. If there's no mention,
16 there's no mention.

17 Q And it appears that he was an arbitrator, that
18 background?

19 A Yes, and a mediator.

20 Q Did you ever speak to Mr. Leginsky?

21 A I would have to check.

22 Q Well, you check and let me know, please.

23 A Yes.

24 MS. OSUALDINI: That's fine.

25 MS. CUMMING: And if you did speak to him, I'd
26 like to know when you spoke to him, how you
27 communicated with him, and what was discussed.

1 A Okay.

2 MS. OSUALDINI: That's fine.

3 **UNDERTAKING NO. 28: ADVISE IF MS. TWINN**
4 **COMMUNICATED WITH VICTOR LEGINSKY AND, IF SO,**
5 **ADVISE WHEN, HOW, AND WHAT WAS DISCUSSED.**

6 Q MS. CUMMING: Now, Judith Sayers, I understand
7 that she lived in Victoria, British Columbia.

8 A Yes.

9 Q Obviously had never lived on the Sawridge Reserve,
10 correct?

11 A No, she's First Nation. She had been a Chief. She's
12 got a lot of business experience, trust experience.
13 And my memory is that she was involved in a trust and I
14 think involved in the distribution of benefits that
15 were quite significant per year.

16 Q But she'd never lived on the Sawridge Reserve?

17 A Not the Sawridge Reserve. There's only 44 Band members
18 or now, I guess, 45. And I'm not sure how many of
19 those 45 live on the Reserve, probably half maybe.

20 Q Is there anything in her resume to indicate that she
21 was familiar with the Sawridge First Nation people?

22 A Is there anything in her resume that indicates she's
23 familiar with the Sawridge First Nation people?

24 Q Yes.

25 MS. OSUALDINI: Nancy, the document speaks for
26 itself.

27 MS. CUMMING: That's fine.

1 Q MS. CUMMING: Do you know whether any of the
2 trustees knew Judith Sayers?

3 A I would think that they would know of her. She's
4 fairly well known and highly respected.

5 Q Did any trustee at the meeting indicate that they were
6 familiar with her?

7 A I didn't sense that they had any interest in her or
8 anything that I had to propose.

9 Q That wasn't my question. Did any of the trustees
10 indicate at the meeting that they were familiar with
11 Judith Sayers?

12 A I don't recall. All I do recall is a lack of interest.

13 Q Did you show any interest in Margaret Ward and the
14 discussion concerning her becoming a replacement
15 trustee?

16 A I had concerns about Margaret Ward.

17 Q What were your concerns about Margaret Ward?

18 A Independence.

19 Q How was that a concern for you?

20 A Will she be independent-thinking. Will she be
21 beholdng to those who appointed her. Will she have
22 the courage to be free-thinking and critical-thinking.

23 Q Well, did you have some information to suggest that she
24 wouldn't be any of those things?

25 A Well, you asked me if I knew her, and I really didn't
26 know her. She was very quiet, and she struck me as
27 quite submissive and wanting to please.

1 Q You didn't know Victor Leginsky either, correct?

2 A No, I can't say I know him, but I know of his
3 reputation.

4 Q But you had never met him?

5 A I can't recall at this time. I know of his reputation.
6 That's what I'm telling you.

7 Q Had you ever met Judith Sayers in person?

8 A I have known of Judith Sayers for many years.

9 Q That wasn't my question. Have you ever met Judith
10 Sayers in person?

11 A Yes, I have but I don't remember when or where.

12 Q Was that prior to August of 2014?

13 A Judith Sayers worked at Hobeema --

14 Q Was it prior to August, 2014?

15 A -- as a lawyer for a number of years which was prior to
16 August, 2014, but I can't put a time frame around that
17 at this moment.

18 Q Now, at the August, 2014 meeting, a motion was put
19 forth for Margaret Ward to be appointed as trustee to
20 replace Clara Midbo, correct?

21 A I recall that that motion was put forward.

22 Q And you opposed the motion?

23 A That's correct.

24 Q The motion was passed by a majority of the trustees.
25 Is that correct?

26 A I believe that's correct. That would have been Bertha,
27 Roland, and Justin.

1 MS. CUMMING: Before I forget, let's mark those
2 special trustee meeting minutes for August 12, 2014.

3 **EXHIBIT NO. V FOR IDENTIFICATION: TRUSTEE SPECIAL**
4 **MEETING MINUTES OF AUGUST 12, 2014.**

5 Q MS. CUMMING: At the time that the motion was
6 made to appoint Margaret Ward as a trustee, there was a
7 position open for a beneficiary, correct?

8 A Sorry? I'm not following you.

9 Q Sorry, it wasn't a very well-phrased question. At the
10 time the motion was made for Margaret Ward to become a
11 trustee, there was a vacancy for a trustee who was a
12 beneficiary of the trust, correct?

13 A The replacement of Clara was open to a non-beneficiary
14 if we're talking about the replacement of Clara.

15 Q But under the trust deeds, there was also an opening
16 for a beneficiary to be a trustee, correct?

17 A You're going to have to explain that. I'm not
18 following you.

19 Q Well, Margaret Ward was a beneficiary of both trusts,
20 correct?

21 A That's my belief, yes.

22 Q And at the time that she --

23 A But you have to remember the '85 beneficiaries had
24 never been ascertained by the trustees.

25 Q Well, let's just talk about the '86 Trust, then.

26 A Except by Paul Bujold.

27 Q The '86 Trust allowed for a certain number of

1 beneficiaries to be trustees, correct?

2 A Sorry, the '86 Trust?

3 Q Yes.

4 A Correct.

5 Q And Margaret Ward was a beneficiary of the '86 Trust --

6 or is a beneficiary of the '86 Trust?

7 A She's on the Band list, correct.

8 Q So when she became a trustee, she was one of the

9 trustees who was a beneficiary?

10 A She was a beneficiary.

11 Q So under the terms of the 1986 Trust, one could have a

12 certain number of non-beneficiaries and a certain

13 number of beneficiaries, correct?

14 A Correct.

15 Q So when she became trustee, she was one of the

16 beneficiary trustees, correct?

17 A She is a beneficiary.

18 Q So her appointment did not violate the terms of the

19 1986 Trust, correct?

20 A In that regard.

21 Q And similarly in terms of the wording of the 1985

22 Trust, her appointment did not violate the terms of the

23 1985 Trust, correct?

24 A I believe she's a beneficiary of the '85 Trust.

25 Q Thank you. Now, as part of your proposal at the

26 August, 2014 meeting, you had a proposal -- I'll call

27 it a second proposal for a succession plan for

1 trustees.

2 A The process proposal?

3 Q Yes.

4 A Is that what you're referring to?

5 Q Yes. And you were proposing that there be a
6 recruitment team comprised of three individuals?

7 A Yes.

8 Q Now, I understand that at the meeting both Justin Twin
9 and Roland Twinn had indicated that they were prepared
10 to discuss this process proposal at a subsequent
11 meeting. Is that correct?

12 A That's what the minutes you produced suggest.

13 Q Is your recollection of that meeting different than
14 what the minutes suggest?

15 A I recall Justin expressing an openness to dealing with
16 how to modernize these trust deeds that were created in
17 the 1980s which, by today's trust deeds, definitely
18 show their age.

19 Q And that's something you recall Justin Twin saying at
20 that meeting?

21 A That's what I recall.

22 Q Okay. And did Roland Twinn suggest that a special
23 meeting of trustees be convened to deal with the
24 process proposal?

25 A Well, the minutes suggest that, I believe, but that's
26 not what I recall. I'll just go back to your minutes.
27 I'm sorry. Where are you referring to this in these

1 minutes? What page?

2 Q Page 3 of 5.

3 A Page 3 of 5.

4 Q About just over halfway down the page, Roland pointed

5 out.

6 A Oh, Roland pointed out that Catherine's proposal --

7 Q Could be considered at a special meeting in October.

8 Do you remember him suggesting that to be the case?

9 A I don't recall Roland suggesting that. I do recall

10 Justin being open to exploring.

11 Q And did you bring your proposal forward at any

12 subsequent trustee meetings?

13 A I had already brought it forward.

14 Q Did you bring the proposal forward again at any

15 subsequent trustee meetings?

16 A It had been -- it was there. It was up to them to take

17 action. I'm not in a position to put anything through

18 and that's obvious.

19 Q So at any trustee meeting subsequent to August 12,

20 2014, did you bring forth either in writing or verbally

21 your process proposal?

22 A I'm waiting.

23 Q So you didn't?

24 A I'm waiting.

25 Q You didn't bring it forward again?

26 A I don't recall bringing it forward. I'm waiting on

27 them to follow through on what they say.

1 MS. OSUALDINI: Nancy, could you clarify what you
2 mean by bringing forward?

3 A A motion?

4 Q MS. CUMMING: Bring forward a motion or bringing
5 forward for discussion, raising it at a subsequent
6 trustee meeting. I'm not using bringing forward as a
7 term of art. I'm just asking, did you ever bring up at
8 any subsequent trustee meeting your process proposal?

9 A As I said, I tabled it. I went to a lot of work. It's
10 in their court to follow through on what they say. If
11 they wish to, they will. If they don't, they won't and
12 haven't.

13 Q Now, you had indicated in your affidavit that your
14 proposal was met with criticism by Justin and Roland
15 Twinn. Is that correct?

16 A Sorry, you're referring to what?

17 Q Your affidavit, September affidavit, paragraph 25.

18 A Okay, I've read my paragraph, yes.

19 Q In past meetings, had you ever criticized the position
20 of other trustees?

21 A I don't know. I don't recall. Perhaps you have
22 something specific you want to ask me. It's a very
23 large question.

24 Q I'm just asking you. You've indicated that Justin and
25 Roland criticized your proposal, and I'm just asking
26 whether you had similarly criticized any proposals put
27 forth by other trustees at trustee meetings.

1 A Well, if you can perhaps point me towards a proposal, I
2 might be able to answer the question.

3 Q So you have no independent recollection sitting here
4 today as to whether you criticized any proposals
5 brought forth by the other trustees?

6 A I honestly cannot recall a proposal and I don't know.
7 I really don't know. You would have to be more
8 specific and then I can address it.

9 Q Maybe I won't talk about a proposal, because maybe
10 that's not the proper term. Do you have a recollection
11 of ever criticizing or disagreeing with any comments
12 made by any of the trustees at trustee meetings?

13 A Disagreeing, yes. For example, Roland Twinn
14 consistently says that the beneficiaries of the '85
15 Trust cannot be ascertained by that current definition.
16 And the deed says we shall administer the trust in
17 accordance with the terms of deed. The definition is
18 set out in the trust, and it is fully capable of being
19 applied. In fact, the registrar of Indian Affairs
20 applies it all the time. So yes, I have disagreed with
21 him on that.

22 I have also disagreed with him with respect to his
23 comments that the trusts work for the Band. The Band
24 is not a beneficiary. We work for the beneficiaries.
25 Yes, I have disagreed.

26 Q And certainly, it's open to trustees to disagree with
27 each other?

1 A Of course.

2 Q Now, I understand that you were again asked to sign the
3 transfer documents transferring the assets to the new
4 group of trustees. Is that correct?

5 A The minutes have attached the deed transfers, I
6 believe. Are they in here?

7 Q They're in the previous --

8 A Where did I see them? In the e-mail?

9 Q Yes. That's Exhibit R.

10 A Yes.

11 Q Were you asked to sign the documents appended to
12 Exhibit R?

13 A The -- I objected at the August meeting and so
14 therefore I didn't sign. I eventually signed. And my
15 lawyer dealt with Doris Bonora, who is also my lawyer,
16 on that issue and it was signed.

17 Q Going back to the August 12, 2014 meeting, you did not
18 sign the documents appended to Exhibit R, correct?

19 A On August 12th?

20 Q Yes.

21 A No, I did not. In fact, I objected August 12th. And
22 after that meeting, I immediately called Peggy Ward to
23 ask to meet with her. She agreed to meet with me. And
24 just before we were to meet, she cancelled. She left a
25 voicemail. And I believe that either Brian Heidecker
26 or Paul Bujold or perhaps the lawyer, Doris, or someone
27 suggested she not talk to me.

1 Q Do you have any proof of that?

2 A I said I think that that's what may have happened,
3 because she was willing to meet with me and then
4 suddenly she, just before the meeting, refused to meet
5 with me.

6 Q Well, you don't know why she cancelled the meeting?

7 A No, I don't know why but that's my suspicion.

8 Q I'm showing you an application filed September 10,
9 2014, and that application dealt with the transfer of
10 assets from the -- what I'll call the previous trustees
11 to the new trustees, correct?

12 A Yes, I see the document.

13 Q As a result of that application, I'm providing you with
14 the Order of Justice Acker.

15 A Yes, it's consented to by my lawyer, Karen Platten.

16 Q But that application necessitated a court appearance,
17 correct?

18 A Did it? It says that I was willing to sign the
19 transfer of assets as a separate document.

20 MS. CUMMING: I just need five minutes.
21 (BRIEF ADJOURNMENT)

22 Q MS. CUMMING: If I could refer you to Exhibit 7,
23 please.

24 MS. OSUALDINI: Which one is that, Nancy?

25 MS. CUMMING: That is the transcript from the May
26 16, 2014 court application.

27 Q MS. CUMMING: At that application, you were

1 represented by your counsel, Ms. Platten?

2 A Correct.

3 MS. OSUALDINI: Wait. Oh, yes, okay.

4 Q MS. CUMMING: And if you could turn to page 10 of
5 that transcript, please.

6 A This is missing pages. 1 and then it goes to 3 and
7 then 5.

8 MS. OSUALDINI: It's missing the even-numbered
9 pages. Because you've got double-sided.

10 MS. CUMMING: Give me a second. Let me see if
11 the actual exhibit is two-sided.

12 (BRIEF ADJOURNMENT)

13 Q MS. CUMMING: Ms. Twinn, I had referred you to
14 page 10, line 23, and Ms. Platten's representations to
15 the Court indicating that it was complicated because
16 you were away. She had been trying to contact you.
17 She had sent three e-mails the day before, two e-mails
18 the day of the application, tried to call you without
19 success. Was that accurate as far as you know?
20 Ms. Platten was making accurate representations to the
21 Court?

22 A I have no reason to think otherwise.

23 Q And then she indicates at line 30, and I quote, "I know
24 that she did want to do an affidavit to indicate her
25 full position as to why she was objecting to the asset
26 transfer. Was that accurate in terms of what
27 Ms. Platten told the Court?

1 A My recollection of what was going on was I had to leave
2 for down East. Before I left, there were discussions
3 between Doris Bonora and Karen Platten.

4 Q I'm just asking you about whether Ms. Platten was
5 making an accurate representation to the Court on lines
6 30 and 31. Was that accurate?

7 A We -- I -- when I left, discussions were ongoing
8 regarding a proposal that I had prepared that I had
9 stayed up actually all night doing before I left. And
10 there was an indication from Doris Bonora that this
11 would be possible.

12 So there was a period where I did not have e-mail
13 or phone access. And at the very last minute, and this
14 is my memory, Doris did an about-turn and said she was
15 running to court. And my lawyer, I think, had to go to
16 court with her coat on. And I believe that Brian
17 Heidecker had prepared an affidavit and that came
18 sliding in quickly, I think.

19 And my -- one of the questions that I had on all
20 of this was with respect to the unanimity requirement.
21 Because if they can appoint a trustee by majority, I
22 would expect that they also have the same supplemental
23 authority to implement that with the asset transfer.
24 And to this day, I still don't understand why there's a
25 higher threshold. But in any event, with respect to
26 line 30.

27 MS. OSUALDINI: 1.

1 A 1, as to why she was objecting to the asset transfer, I
2 believe that that would be extremely accurate. And
3 there were a lot of reasons why there was this issue,
4 and we were working to resolve them.

5 Q MS. CUMMING: I'm going to read to you
6 Ms. Platten's response to the Court again.

7 A Sure.

8 Q Ms. Platten stated, "I know that she did want to do an
9 affidavit to indicate her full position as to why she
10 was objecting to the asset transfer." Was that an
11 accurate statement? Yes or no?

12 A If it had to go to court, yes, and we were doing
13 everything we could to work it out.

14 Q So your answer is yes, that was an accurate statement?

15 A That is an accurate statement.

16 Q I'm providing you with the proceedings from the October
17 1, 2014 court proceedings. So it was necessary to go
18 to court, correct, it appears?

19 A Well --

20 MS. OSUALDINI: Necessary is a bit of a loaded
21 word.

22 A Doris Bonora chose to go to court, yes.

23 Q MS. CUMMING: As of October 1, 2014, had you
24 signed any documents transferring assets to the new
25 trustees?

26 A I don't recall when I signed.

27 MS. CUMMING: Let's mark those proceedings as the

1 next exhibit.

2 MS. OSUALDINI: That's fine.

3 **EXHIBIT NO. 10: PROCEEDINGS OF OCTOBER 1, 2014.**

4 MS. CUMMING: And if we can enter the application
5 filed September 10, 2014 as the next exhibit. I've
6 given you a copy already.

7 **EXHIBIT NO. 11: APPLICATION FILED SEPTEMBER 10,**
8 **2014.**

9 MS. CUMMING: And then the Order of Justice Acker
10 as the next exhibit.

11 **EXHIBIT NO. 12: ORDER OF JUSTICE ACKER DATED**
12 **OCTOBER 1, 2014.**

13 Q MS. CUMMING: If I could turn you to paragraph 25
14 of your September 23, 2014 affidavit.

15 A Yes, I've read paragraph 25.

16 Q Can you explain to me what you mean by your last
17 sentence, "This concerns me because a trustee ought not
18 to fetter their discretion."

19 A It's in reference to the statements before, Roland
20 Twinn stated trust beneficiaries were unhappy with
21 having outside directors for the corporations held by
22 the trusts in the sale of the Slave Lake Hotel. And
23 further, the beneficiaries would not be supportive of
24 having independent professional individuals appointed
25 as trustees for the trusts.

26 Q You've stated that Roland Twinn made some comments
27 about unhappiness of the beneficiaries, correct?

- 1 A Correct.
- 2 Q So I still don't understand why that concerned you.
- 3 And then you say, "Because a trustee ought not to
- 4 fetter their discretion." Whose discretion?
- 5 A Their discretion, the trustees' discretion.
- 6 Q So how was Roland Twinn by talking about the
- 7 beneficiaries fettering the trustees' discretion?
- 8 A Well, for example, if I as a trustee think the sale of
- 9 the Slave Lake Hotel is a prudent move but I think that
- 10 some of the beneficiaries may be upset with it, I think
- 11 it's inappropriate to fetter my discretion with the
- 12 beneficiaries who would be unsupportive of a sale.
- 13 Q All right.
- 14 A Does that answer the question?
- 15 Q Yes, thank you. But in any event, at that August 12,
- 16 2014 meeting, the majority of the trustees passed
- 17 motions appointing Margaret Ward as a trustee of both
- 18 trusts, correct?
- 19 A The three elected Band officials, Justin Twin, Roland
- 20 Twinn, and Bertha L'Hirondelle, passed the motion and I
- 21 objected.
- 22 Q Now, I had put to you the court proceedings from
- 23 October 1, 2014 and the subsequent Order of Justice
- 24 Acker dated October 1, 2014. Those documents indicate
- 25 that it was necessary to obtain a Court Order to
- 26 transfer the assets?
- 27 MS. OSUALDINI: I object to that question.

1 Q MS. CUMMING: Prior to October 1, 2014, had you
2 agreed to sign a transfer of assets?

3 A I did sign and it was --

4 Q That wasn't my question. I asked you, prior to October
5 1, 2014, prior to the date of the court application,
6 had you agreed to sign the transfer of assets?

7 A I cannot recall what time frame this transfer separated
8 from the appointment came up as the solution, but I was
9 willing and I did sign the transfer when it was a
10 separate document. And I don't recall when that was,
11 but I think it was probably in early October, but
12 that's going by memory.

13 Q I'd like you to review your records and provide any
14 documentation or any communications indicating that you
15 had agreed to sign the transfer of assets document.

16 MS. OSUALDINI: Subject to privilege because at
17 that point Karen would have likely been handling it on
18 her behalf.

19 MS. CUMMING: Okay.

20 **UNDERTAKING NO. 29: REVIEW RECORDS AND PROVIDE**
21 **ANY DOCUMENTATION OR ANY COMMUNICATIONS INDICATING**
22 **THAT CATHERINE TWIN HAD AGREED TO SIGN THE**
23 **TRANSFER OF ASSETS DOCUMENT - SUBJECT TO**
24 **PRIVILEGE.**

25 Q MS. CUMMING: Now, you indicate in paragraph 28
26 of your affidavit that you were -- and I'll quote,
27 "deeply troubled" with how and the circumstances in

1 which Peggy Ward's appointment was conducted. Did you
2 not think that the trustees would be equally deeply
3 troubled with your providing them with a proposal at
4 the meeting and recommending two individuals who they
5 didn't even know?

6 MS. OSUALDINI: I'm going to object to that. It's
7 requiring her to speculate on how other people might
8 have felt.

9 Q MS. CUMMING: Peggy Ward or Margaret Ward was an
10 individual who was known to all the trustees, correct?

11 A I don't know.

12 Q Well, certainly Roland Twinn knew her. Is that
13 correct?

14 A I can't say for Roland. I can't speak for them.

15 Q Well, she was a trustee-in-training and went to Board
16 meetings, so are you suggesting Roland Twinn didn't
17 know who she was?

18 A No, I'm not suggesting that. You said knew her. And
19 again I go back to, I guess, my understanding of that
20 word which is obviously different than yours.

21 Q Now, at the August 12, 2014 meeting, you were proposing
22 as trustees two individuals who were neither
23 beneficiaries of the trusts nor members of the Sawridge
24 First Nation, correct?

25 A Correct.

26 Q So you were choosing, I suppose, what you would call
27 independent trustees or putting forward?

1 A I think they would be good trustees and independent,
 2 and independence is included in that word good.

3 Q During the time that Chief Walter Twinn was a trustee
 4 of the trusts, did he ever choose an independent
 5 trustee to become a trustee?

6 A He had two individuals, Doc Horner and Ernest Manning,
 7 and he had them in mind to be trustees.

8 Q And they never were, were they?

9 A That was not implemented, but he was definitely
 10 thinking along that line and for a variety of reasons.
 11 And I believe they were paid.

12 Q Are you aware of any motions being put forward by your
 13 husband, the Chief, that an independent trustee be
 14 appointed as a trustee to either trust?

15 A That an independent trustee be appointed to either the
 16 '85 or '86 Trust? No.

17 Q Your husband passed away in October of 1997?

18 A Correct, October 30th.

19 Q Prior to that date, had you ever attended a trustee
 20 meeting?

21 A That's a good question. I don't know. All the
 22 documentation was in the Band office under the control
 23 of the Chief and Council and their lawyer, Mike
 24 McKinney.

25 Q Well, certainly, you don't have any independent
 26 recollection of attending a trustee meeting prior to
 27 your husband passing away?

1 A I don't recall. I don't recall.

2 Q You would agree with me that since the inception of the
3 1985 Trust no benefits have been paid from the trust?

4 A From the 1985 Trust, that's my understanding.

5 Q And in terms of the 1986 Trust, the trustees set up a
6 number of programs for the benefit of the beneficiaries
7 of the 1986 Trust. Is that correct?

8 A There was a beneficiary engagement process.

9 Q That was the Four Worlds?

10 A Led by Four Worlds to connect with beneficiaries. And
11 I don't think it was limited to '86 beneficiaries
12 because some of the '86 beneficiaries are '85
13 beneficiaries and some of the '85 beneficiaries are not
14 '86 beneficiaries, and so on and so forth.

15 The process -- the engagement process was to
16 identify needs and priorities and from that build a
17 benefits -- a series of benefits that would -- in the
18 trustees' opinion were appropriate based on the
19 information received from the beneficiaries.

20 That took -- that was a long struggle to get Four
21 Worlds in, and there was resistance from some of the
22 trustees to do that. But it was finally done and led
23 by Michael and Judy Bopp. And if my recollection is
24 right, I think this was possibly at least in -- as an
25 idea as of 2005, and I'm not sure when they completed
26 their report. I don't recall the date, but it was
27 after that that Paul Bujold was brought in. And I

1 believe he was brought in sometime around September,
2 2009, but I could be wrong about that.

3 Q The 1986 Trust has set up a number of programs,
4 correct?

5 A Correct.

6 Q There are beneficiaries of the '86 Trust who are also
7 beneficiaries of the '85 trust?

8 A Correct.

9 Q And those programs are available for those
10 beneficiaries?

11 A Of the '86 Trust.

12 Q Of the '86 Trust, correct?

13 A Yes.

14 Q And some of the beneficiaries of the '86 Trust are also
15 beneficiaries of the '85 Trust, correct?

16 A Right, but not all the '86 beneficiaries are on the
17 Band list or receiving benefits.

18 MS. OSUALDINI: Of the '86 Trust?

19 A Yes.

20 Q MS. CUMMING: Do you have a list of those people?

21 A I think Paul Bujold would have a list, many lists.

22 Q Well, I'd like you to undertake to provide me with the
23 names of the individuals who you are referring to.

24 A Well, I can provide a name right now.

25 Q Well, I would like you to undertake to provide all of
26 the names that you are referring to.

27 A If I'm given access to all the information, I'm happy

1 to do that, but there's been a series of motions passed
2 by the trustees and it's designed to prevent me from
3 having access to information.

4 Q Well, what's the one name that you said you know?

5 A William MacDonald. He has an absolute entitlement to
6 be on the Band list. The Band has an obligation to put
7 him on the Band list, and he is not on the Band list.
8 He is the illegitimate child of Chester Twin, and I
9 believe Chester Twin was a trustee at one point but I'd
10 have to check that. But Paul Bujold knows of these
11 people.

12 Q Did you receive as trustee a legal opinion from Donovan
13 Waters that the legal authority to determine who
14 qualifies for Band membership is the Band?

15 A There was many legal opinions from Donovan Waters, and
16 I recall him expressing concerns about the Band
17 membership rules and the Band system.

18 Q That wasn't my question, Ms. Twinn. I really would
19 like you to answer my question rather than giving me
20 answers that are not responsive. If you'd like, we can
21 take a break again.

22 MS. OSUALDINI: I mean, for this question, though,
23 context -- my client is trying to provide context to
24 her answer.

25 A And I'm trying to recall --

26 MS. CUMMING: Well, we seem to be getting context
27 for every answer.

1 MS. OSUALDINI: This one needs context.

2 A Well, you need to understand something and maybe it
3 will help you understand me. When I look at
4 something -- maybe you look at it through a black
5 screen and you poke a few little holes and that's what
6 you peer through. I come from a different culture. I
7 look at the whole thing. Now, if that is problematic,
8 I'm doing my best. But we have a cultural disconnect
9 here.

10 Now, with respect to your question about Donovan
11 Waters' opinions, I recall many opinions.

12 Q MS. CUMMING: Do you remember him providing an
13 opinion that who qualifies for Band membership is
14 within the purview of the Band and not the trustees?

15 A I recall him saying that they need to get to the Band
16 table to fix it and that -- or he or Brian Heidecker or
17 Paul Bujold -- I'm not sure -- and that there were
18 problems with that system.

19 Q Do you feel that you as trustee have the ability or
20 authority to interfere in the dealings of the Sawridge
21 First Nation as a trustee of the trusts?

22 A The Sawridge First Nation is subject to the law, and
23 I'm a fiduciary and my loyalty is to the beneficiaries
24 including those who are entitled to be beneficiaries.
25 And if I perceive that there is injustice, there is
26 wrongful, unfair discrimination, exclusion, I believe I
27 have a duty.

1 Q So you feel --

2 A I have a duty to act and not remain passive,
3 submissive, silent.

4 Q So you feel you have the right as a trustee to
5 interfere in the Band membership process for the
6 Sawridge First Nation?

7 A I have an oversight duty. I would not use the word
8 interfere. I have an oversight duty. And I raised a
9 concern in March of this year with the Chief at the
10 trustee meeting. And he got very angry, walked out,
11 and told me to kiss his ass. I'd like a break.

12 MS. CUMMING: That's fine.

13 (BRIEF ADJOURNMENT)

14 Q MS. CUMMING: Ms. Twinn, are you familiar with
15 Justice Thomas's decision of December 17, 2015?

16 A Yes.

17 Q I'm going to give you a copy of the decision. Did you
18 proceed with an appeal of this decision?

19 A Yes, I filed a Notice of Appeal and a factum, I
20 believe.

21 Q And it was subsequently abandoned, correct?

22 A Yes, in exchange for, I believe, terms of settlement.

23 Q But his decision stands, correct? It hasn't been --

24 A Yeah, the appeal was discontinued.

25 Q I'm going to refer you to a couple sections of his
26 decision starting with page 10, paragraph 35. You've
27 had a chance to review that paragraph?

1 A Mm-hm.

2 Q And the last sentence of that paragraph states and I
3 quote, "If there are outstanding disputes on whether or
4 not a particular person should be admitted or excluded
5 from Band membership, then that should be reviewed in
6 the federal court and not in this 1985 Sawridge Trust
7 modification and distribution process." So you were
8 aware of that statement?

9 A Yes.

10 Q And if you could go to page 15, paragraph 69. Starting
11 with the second sentence, Justice Thomas stated and I
12 quote, "I've already stated that the Public Trustee has
13 no right to engage and shall not engage in collateral
14 tax on membership processes of the SFN. The 1985
15 Sawridge trustees or any of them likewise have no right
16 to engage in collateral attacks on the SFN's membership
17 processes. Their fiduciary duty, and I mean all of
18 them, is to the beneficiaries of the trust and not
19 third parties." You were aware of that statement of
20 Justice Thomas?

21 A Yes.

22 Q So Justice Thomas has indicated that the Sawridge
23 trustees will not engage in an attack on the Sawridge
24 First Nation membership processes?

25 MS. OSUALDINI: I'm objecting to that. My client
26 is not interpreting or commenting on the decision.

27 Q MS. CUMMING: Well, you have made various

1 comments in your affidavits about your concerns with
2 the Sawridge First Nation membership process, correct?

3 A Can you refer me to my affidavit?

4 Q Well, you can read paragraphs 29(a), (b), and (c).

5 MS. OSUALDINI: Which affidavit? The December?

6 MS. CUMMING: The September affidavit.

7 MS. OSUALDINI: I note for the record that this
8 affidavit was filed prior to this Court decision.

9 A Sorry, could you give me those paragraphs again.

10 Q MS. CUMMING: 29(a), (b), and (c).

11 A Yes, I've read (a), (b), and (c).

12 Q And in those paragraphs, you are taking issue with the
13 Band membership application process, correct?

14 A I am trying to observe the trust deed definition of
15 beneficiary which says that all persons who qualify
16 under the general laws of Canada as these exist from
17 time to time and including Band membership rules and
18 customary laws to the extent that these are recognized
19 and/or incorporated by the general laws of Canada.

20 Q Well, will you agree with me that Justice Thomas in his
21 December 17, 2015 decision indicated that the 1985
22 Sawridge trustees were not to engage in any attacks on
23 the Sawridge First Nation membership processes?

24 MS. OSUALDINI: And I'm objecting for the same
25 reason. The decision says what it says. She's not
26 here to interpret it.

27 Q MS. CUMMING: Well, Justice Thomas gave a

1 previous decision, correct?

2 MS. OSUALDINI: Are you looking for Sawridge No. 1?

3 Q MS. CUMMING: Yes. You're familiar with the
4 Sawridge No. 1 decision?

5 A Yes.

6 Q And in fact, you chose to interpret that decision,
7 correct?

8 MS. OSUALDINI: Can you point my client to what
9 you're referring to?

10 Q MS. CUMMING: Well, you provided a letter in
11 January, 2014 to a number of individuals whereby you
12 were quoting and interpreting Justice Thomas's Sawridge
13 No. 1 decision, correct?

14 A Well, I try to comply and I try to fulfill my duties.

15 Q But you're not prepared to acknowledge that Justice
16 Thomas in his December, 2015 decision indicated that
17 there were to be no attacks by the trustees on the
18 Sawridge First Nation membership process?

19 MS. OSUALDINI: On the objection of her counsel,
20 she's not answering those questions.

21 MS. CUMMING: I'd like to mark Justice Thomas's
22 December 17, 2015 decision as the next exhibit.

23 MS. OSUALDINI: Is that necessary to do that?

24 MS. CUMMING: I think so.

25 MS. OSUALDINI: Sure.

26 **EXHIBIT NO. 13: DECEMBER 17, 2015 DECISION OF**
27 **JUSTICE THOMAS.**

1 Q MS. CUMMING: I'm providing you with an Order
2 filed June 24, 2015.

3 A Sorry, December -- oh, filed June. Okay.

4 Q And --

5 A I'm sorry. I'm still --

6 Q I'll let you read it. I'm sorry.

7 A Yes, I've now read this.

8 Q Paragraph 3 of the Order indicates that the
9 respondents, being the trustees Twinn, L'Hirondelle,
10 Twinn, and Ward, were entitled to costs of the
11 application in any event of the cause. Have you paid
12 those costs?

13 A No.

14 MS. CUMMING: Let's mark that as the next
15 exhibit.

16 **EXHIBIT NO. 14: ORDER FILED JUNE 24, 2015.**

17 Q MS. CUMMING: In the 1403 action, you've brought
18 an Application for Advice and Directions with respect
19 to the removal of Justin Twin as a trustee and, in
20 fact, the removal of all the trustees and replacement
21 with a Board of independent trustees. Is that correct?

22 A I need to refresh my memory on the application.

23 MS. CUMMING: Do you have that, Crista?

24 MS. OSUALDINI: I do. You know what? I don't have
25 the September one with me today.

26 MS. CUMMING: I think I do. Let me just see.

27 There you go.

1 A Thank you. So I've read the remedy claimed. I haven't
2 read all of the document. It's been a while.

3 Q MS. CUMMING: Can you tell me how paragraphs
4 29(a), (b), and (c) of your September affidavit relate
5 to the 1403 Application for Advice and Directions?

6 MS. OSUALDINI: That's a legal argument. My client
7 isn't required to do that.

8 Q MS. CUMMING: So the comments that you make in
9 paragraphs 29(a), (b), and (c), have you expressed any
10 concern in those paragraphs in terms of Justin Twin
11 being a trustee?

12 MS. OSUALDINI: I think they speak for themselves.

13 Q MS. CUMMING: In paragraphs 29(a), (b), and (c),
14 you make comments about the Band membership process.
15 Are you suggesting that Margaret Ward has had any role
16 to play in that Band membership process?

17 A I don't believe I've suggested that in my affidavit.

18 Q In terms of your comments about your concerns with the
19 Band membership process, what remedy are you seeking?

20 MS. OSUALDINI: The application speaks for itself.
21 My client is not required to speak to the legal
22 remedies she's seeking or entitled to.

23 MS. CUMMING: All right. So, Ms. Osualdini,
24 you're suggesting that I simply look at the remedies
25 claimed in the 1403 action in order to understand why
26 29(a), (b), and (c) are contained in the affidavit?

27 MS. OSUALDINI: What I'm saying is a legal remedy

1 being sought is a legal issue. My client is here to
2 speak to facts. She's not here to interpret or reply
3 to law.

4 Q MS. CUMMING: Well, your legal remedy that you're
5 seeking in your application is to remove Justine Twin
6 and Margaret Ward as trustees, correct? Is that
7 correct?

8 MS. OSUALDINI: My client is not providing legal
9 argument or opinion on what remedies are being sought.
10 The application is what it is.

11 MS. CUMMING: Well, certainly your client should
12 have some understanding as to the application she's
13 making and the remedy she's seeking.

14 MS. OSUALDINI: She has counsel.

15 MS. CUMMING: Well, especially considering the
16 fact that she's a lawyer herself.

17 MS. OSUALDINI: Yes, but she's got counsel.

18 MS. CUMMING: All right.

19 Q MS. CUMMING: Have you ever commenced a charter
20 challenge with respect to the Sawridge First Nation
21 membership process?

22 A No.

23 Q While you sat as a member of the membership committee,
24 did you ever take any steps to change the membership
25 process?

26 A I made suggestions.

27 Q Do you have any records showing what suggestions that

1 you made?

2 A I don't know.

3 Q Well, I'd like you to review your records, and if you
4 did --

5 A I do know --

6 Q Just a minute. Just let me finish the undertaking. If
7 you did make any suggestions with respect to changes to
8 the membership process, if you would provide those
9 documents, please.

10 A I do know --

11 MS. OSUALDINI: We'll take that under advisement.

12 **UNDERTAKING NO. 30: IF MS. TWINN HAS ANY**
13 **DOCUMENTS WITH RESPECT TO SUGGESTIONS SHE PUT**
14 **FORTH TO MAKE CHANGES TO THE MEMBERSHIP PROCESS,**
15 **PRODUCE SAME - TAKEN UNDER ADVISEMENT.**

16 A I attended a meeting at which I asked those present
17 which included the membership committee, Mike McKinney,
18 and Chief and Council if they had read the decision of
19 Justice Thomas June 12th, 2012, and a number of them
20 hadn't. I asked Mike McKinney to make copies of the
21 decision so that we could go through it.

22 And as we were going through it, there was a lot
23 of anger and the decision was thrown down on the table
24 saying this is the trust and has nothing to do with the
25 Band.

26 Q MS. CUMMING: Did you provide Mr. McKinney and
27 the others that you mentioned with a copy of Justice

1 Thomas's December, 2015 decision?

2 A No, I did not.

3 Q During the time that Chief Walter Twinn was the Chief
4 and trustee, did you take any steps to challenge the
5 membership process or to change the membership process?

6 A I encouraged it to be fair and non-discriminatory.

7 Q And you communicated that to the Chief?

8 A My husband.

9 Q Yes?

10 A Yes.

11 Q Were any changes made to that membership process while
12 he was alive?

13 A You would have to speak with their in-house lawyer for
14 the Band and Ed Molstad from Parlee who's been involved
15 in these proceedings.

16 Q Do you know how long it took Roland Twinn's children to
17 be added to the membership list?

18 A Very rapidly.

19 Q Well, what's very rapidly?

20 A Within months.

21 Q How many months?

22 A I believe -- I'd have to go back to my records that
23 Paul Bujold sent me an e-mail in the summer of -- let
24 me try to get my dates here -- 2014 and indicating that
25 Roland's children had been added to the list. And I
26 also recall that one of them applied in the latter part
27 of 2013 and the other one earlier in the year of 2013.

1 And I was aware of some applications, not all,
2 because Roland Twinn would come to the membership
3 committee meetings with all the documentation under his
4 tight physical control. So it was not possible for me
5 to see all the applications. But I do know there were
6 people who had waited a long, long time, decades.

7 Q So I'll go back to my question. When you say that
8 Roland Twinn's children were placed on the membership
9 list, you had said, "very rapidly", how long was that?

10 A By comparison.

11 Q How long was that?

12 A How long was what?

13 Q How long was very rapidly?

14 A Within that time frame I just indicated.

15 Q Which was about 18 months?

16 A No.

17 Q You think it was a shorter period of time?

18 A As I indicated, I believe it was around late 2013 that
19 one of the sons applied. And as I said, I believe it
20 was in the summer of 2014, so how many months is that?
21 When Paul Bujold -- when I asked about the Band
22 membership list, the beneficiaries of the '86 Trust.
23 Now, when they were put on that list, I don't know but
24 it was obviously some time before. So I'm going to
25 guess six months for one of them, and the other one
26 probably applied earlier in the year of 2013.

27 Q Do you know when the applications for Roland Twinn's

1 children were received by Band council?

2 A By Band council or by the Band?

3 Q Sorry, by the Band.

4 A As I say, I believe one of the children it was in
5 October of 2013, and the other one had submitted
6 earlier that year.

7 Q Were you aware that Roland Twinn recused himself from
8 the process?

9 A I have no idea what goes on -- what went on with Justin
10 Twin, his sister Winona Twin, and Roland Twinn.

11 Q With you aware that Roland Twinn recused himself when
12 his son's applications for membership were submitted?

13 A I have no idea. I haven't seen any evidence.

14 Q How did you assist in getting Clara Midbo's and Frieda
15 Draney's children approved for membership?

16 A How did I assist?

17 Q Yes.

18 A I've always encouraged the Band to take a fair
19 approach, meet the law. And the children of Frieda
20 Draney and Clara Midbo I believe applied -- I'm just
21 trying to get the year right. Could have been in 2003
22 and they were admitted thereafter, fairly soon.
23 thereafter.

24 Q Very rapidly?

25 A In my opinion, yes, compared to what's happened with
26 other applications.

27 Q Did you advocate for them before Band council?

- 1 A Advocate for them before Band council. I don't know.
2 There was -- there were discussions about membership
3 and there was a -- I had a sense of you need to get
4 this right, your rules and your process. It needs to
5 be fair.
- 6 Q Did you put any pressure at all on Band council to
7 approve the membership applications of the children of
8 Clara Midbo and Frieda Draney?
- 9 A It's their decision to make. They made it.
- 10 Q That's not what I asked you.
- 11 A Well, you're asking a loaded question. Did you put
12 pressure on --
- 13 MS. OSUALDINI: What do you mean by pressure?
- 14 A What do you mean by pressure? Did I put a gun to their
15 head? No. Did I have conversations? Quite possibly.
16 Did they have conversations with others? Quite
17 possibly. Was I asked to give my thoughts? Quite
18 possibly. Did I give my thoughts? Quite possibly. Is
19 that pressure? Depends, I guess. You know, if
20 somebody wants to say that's pressure, that's their
21 opinion.
- 22 Q MS. CUMMING: Clara Midbo's children are not
23 Twinns?
- 24 A Yes, they are. Clara Midbo is my late husband's
25 sister. She's a Twinn. So is Frieda Draney. So is
26 Bertha L'Hirondelle. They are his sisters.
- 27 Q Did you appear before Band council to encourage them to

1 approve the membership of Clara Midbo and Frieda
2 Draney's children?

3 A Did I appear before Band council? I recall there were
4 conversations, but appear before Band council, I can't
5 answer that question.

6 Q Are you aware that Gina Potskin has been admitted into
7 membership?

8 A Yes. I requested a Band list from Paul Bujold. I
9 think it was sent recently, and I saw her name has been
10 added.

11 MS. OSUALDINI: Sorry, is Potskin the right last
12 name?

13 A No, it's Gina Donald.

14 Q MS. CUMMING: But she's a Potskin, correct?

15 A Her mother is Lily Potskin.

16 Q And Tracy Poitras-Collins has also been admitted as a
17 member?

18 A Yes, I think that was an accident.

19 Q Well, she's on the membership list, correct?

20 A She is, yes. But I can tell you that when it came to
21 the next membership appeal, the benches were loaded.

22 Q And she is a Potskin descent?

23 A Her mother is also court-ordered onto the Band list.
24 She is a Potskin. Her and Lily Potskin are sisters,
25 and her name is Liz Poitras.

26 Q Do you know how long it took for Gina and Tracy to be
27 added to the Band list?

1 A I believe that Gina indicated she had submitted her
2 first application in the 1990s. And apparently, that
3 application was lost, resubmitted it -- I'm going by
4 memory -- in and around 2005. That application was
5 lost, resubmitted in -- her third application in 2009,
6 and it sat without decision until obviously recently
7 when a decision was made.

8 And I do know that Roland Twinn wrote her a letter
9 in the spring of this year and suggested that she had
10 not submitted applications one and two and that they
11 take membership very seriously who they admit,
12 something to that effect, and referred to resources. I
13 also --

14 Q Do you have that letter?

15 A I've seen that letter.

16 Q Well, do you have a copy of that letter?

17 A I would have to check.

18 Q Well, your counsel is indicating that you do, so I
19 would like you to provide a copy of it, please.

20 A Yeah, I've seen it and I'll have to double-check. I do
21 know that there was a letter -- there were a number of
22 letters, and I'm just not sure at this moment.

23 MS. OSUALDINI: We'll undertake to review our
24 records and produce it.

25 **UNDERTAKING NO. 31: REVIEW RECORDS AND PRODUCE**
26 **THE LETTER ROLAND TWINN WROTE TO GINA DONALD**
27 **REGARDING HER MEMBERSHIP APPLICATION.**

- 1 Q MS. CUMMING: The assets of the trusts are
2 invested in the companies, the Sawridge Group of
3 Companies, correct?
- 4 MS. OSUALDINI: I don't know if that's a fair
5 question, Nancy. The trusts are the shareholder --
6 they own the shares of the companies. That's their
7 asset.
- 8 Q MS. CUMMING: Well, the trusts are shareholders
9 in the Sawridge Group of Companies, correct?
- 10 A Correct.
- 11 Q And the Sawridge Group of Companies is run by an
12 independent Board of Directors, correct?
- 13 A Yes.
- 14 Q So that independent Board of Directors basically runs
15 and manages the Sawridge Group of Companies?
- 16 A Yes. There's a CEO who reports to the Board of
17 Directors.
- 18 Q Right, and the trustees have previously agreed not to
19 interfere with the corporate Board of Directors of the
20 companies, correct?
- 21 MS. OSUALDINI: What do you mean by interfere?
- 22 A I don't know what you mean.
- 23 Q MS. CUMMING: Well, a motion was passed at a
24 Board meeting that if the trustees had any questions
25 about the Sawridge Group of Companies they were to be
26 asked through the Chair, Mr. Heidecker, correct?
- 27 A I recall that there was protocol established.

1 Q So the trustees of the trusts are not involved in the
2 running of the Sawridge Group of Companies, correct?

3 A I'm not sure what you mean by not involved in the
4 running. I mean, we have oversight. We have a
5 fiduciary duty.

6 Q But you don't tell them what to do?

7 A And we have to act like a prudent, reasonable business
8 person. So when you say we don't tell them what to do,
9 there was an incident in 2008 where Roland Twinn went
10 into the Slave Lake Hotel and did not like the food and
11 raised a very strong complaint with the waitress, that
12 went into the kitchen, that then involved whoever was
13 on duty, that then led to the manager at the time, Dave
14 Nelson, being told to go to the Band office and try to
15 repair whatever rupture there was.

16 That time I was very concerned with that, because
17 Dave Nelson told me himself that when he went to the
18 Band office he was verbally abused by Roland Twinn and
19 his job was threatened. And he resigned and he left
20 the company and he was a good manager.

21 MS. CUMMING: I'm not going to 4. I'm adjourning
22 right now. We can start in the morning. I'm done for
23 the day.

24 (QUESTIONING ADJOURNED AT 3:35 P.M., NOVEMBER 9, 2016)

25 **CATHERINE MAY TWINN**, RE-SWORN AT 9:30 A.M., NOVEMBER 10,
26 2016, QUESTIONED BY MS. CUMMING:

27 Q MS. CUMMING: Ms. Twinn, yesterday, we had

1 briefly discussed the December 17, 2015 decision of
2 Justice Thomas, his most recent decision. You had
3 indicated that you had read that decision.

4 A Yes, I have.

5 Q Are you aware that the membership process is no longer
6 an issue with respect to the 1103 action?

7 MS. OSUALDINI: Objection.

8 MS. CUMMING: Why are you objecting?

9 MS. OSUALDINI: That's a legal conclusion coming
10 from his decision.

11 Q MS. CUMMING: We had referred yesterday to
12 paragraphs 29(a), (b), and (c) of your September
13 affidavit. I'd like to know in Action 1103, are you
14 prepared to withdraw those paragraphs as they relate to
15 the membership process?

16 A I'm going to have to consult with my lawyer about that.

17 Q All right. If you will let me know what your answer is
18 to that question, then, after consulting with your
19 counsel.

20 MS. OSUALDINI: We'll take that as an undertaking.

21 MS. CUMMING: Thank you.

22 **UNDERTAKING NO. 32: ADVISE IF MS. TWINN IS**
23 **PREPARED TO WITHDRAW PARAGRAPHS 29(A) , (B) , AND**
24 **(C) AS THEY RELATE TO THE MEMBERSHIP PROCESS IN**
25 **ACTION 1103 - TAKEN UNDER ADVISEMENT.**

26 MS. OSUALDINI: Just to confirm on the record that,
27 Ms. Cumming, you're acting in the 2014 action not the

1 2011 action, correct, and you're examining on the
2 affidavit filed in the 2014 action?

3 MS. CUMMING: Well, as you're aware, the
4 September affidavits are identical in both actions.

5 MS. OSUALDINI: Correct, but I'm just not clear how
6 in relation to the matter in which you're acting the
7 decision of Justice Thomas in the 2011 matter is
8 relevant given that you're not acting in that action.

9 MS. CUMMING: That's fine.

10 Q MS. CUMMING: Are you prepared to withdraw
11 paragraphs 29(a), (b), and (c) as they relate to
12 membership process in respect of the 1403 action?

13 MS. OSUALDINI: We'll do that as -- I think that
14 requires a legal conclusion on whether she's willing to
15 withdraw, so we'll take that as an undertaking.

16 MS. CUMMING: Okay. That's fine.

17 **UNDERTAKING NO. 33: ADVISE IF MS. TWINN IS**
18 **PREPARED TO WITHDRAW PARAGRAPHS 29(A), (B), AND**
19 **(C) AS THEY RELATE TO THE MEMBERSHIP PROCESS IN**
20 **ACTION 1403.**

21 MS. BONORA: Can we just go off the record for a
22 second?

23 MS. CUMMING: Sure.

24 (DISCUSSION OFF THE RECORD)

25 MS. CUMMING: Based on our off-the-record
26 discussions, I understand that the undertaking to
27 withdraw paragraphs 29(a), (b), and (c) as it relates

1 to the 1103 action is taken under advisement?

2 MS. OSUALDINI: That's correct. Thank you.

3 MS. CUMMING: Thank you.

4 Q MS. CUMMING: Ms. Twinn, I understand that a
5 number of years ago the Sawridge First Nation brought
6 an action to have control over its membership in
7 federal court.

8 A There was an action commenced in 1986. I'm not sure
9 that I would agree with how you've characterized it.

10 Q How would you characterize it? Because I know that at
11 one point you were counsel on that action, so you're in
12 the better position to tell me that.

13 A Well, the way I have understood it, it was that certain
14 sections of the Indian Act unreasonably infringed what
15 they put forward as a Section 35 protected
16 jurisdictional right.

17 Q But as I understand it, the Sawridge First Nation was
18 taking steps to have control over its own membership
19 process. Is that part of that litigation?

20 A Well, the litigation is the litigation.

21 Q All right. Part of that litigation was that the
22 Sawridge First Nation wanted control over its
23 membership, correct?

24 A My understanding of that litigation is what I've
25 already stated that certain provisions of the Indian
26 Act were unreasonable infringement.

27 Q Well, I'll come back to that a little bit later. Would

1 you agree with me that the trustees, other than
2 yourself, feel that membership process is under the
3 sole control of the Sawridge First Nation?

4 MS. OSUALDINI: I'm going to object to that,
5 because my client can't comment on how other people
6 feel.

7 Q MS. CUMMING: All right. Well, in the course of
8 various trustee meetings, was it indicated to you
9 during any of those meetings that the other trustees
10 were taking the position that the membership process
11 was under the sole control of the Sawridge First Nation
12 and was not something that the trustees were to
13 interfere with?

14 A Typically, at trustee meetings, some trustees such as
15 Bertha L'Hirondelle, Peggy Ward, and Justin speak very
16 little and in the case of Bertha, hardly at all. With
17 respect to the Chief, he has expressed views.

18 Q Views that the membership process is within the sole
19 purview of the Sawridge First Nation?

20 A I think you should get that from him. I don't feel
21 comfortable putting his opinions into my words.

22 Q Well, I take it that you do not feel that the
23 membership process is within the sole control of the
24 Sawridge First Nation?

25 A I look to the deed, and I talked about that definition
26 yesterday.

27 Q I'll ask my question again. You don't feel that the

1 membership process is within the sole control of the
2 Sawridge First Nation?

3 MS. OSUALDINI: Nancy, I'm going to object to that
4 because that's a legal conclusion, what the extent of
5 the trustees' duties are. I don't think it's an issue
6 of how my client feels about it. That's a legal
7 argument to be made.

8 MS. CUMMING: Well, we may have to go over on a
9 few applications.

10 Q MS. CUMMING: Now, in paragraph 29 of your
11 September affidavit, you had stated that when your
12 concerns were expressed to other trustees --

13 A Which paragraph?

14 Q 29.

15 MS. OSUALDINI: The September 30th filed affidavit?

16 MS. CUMMING: The September affidavit. I'm just
17 referring to September affidavit or December affidavit,
18 okay?

19 MS. OSUALDINI: Perfect, thank you.

20 Q MS. CUMMING: In paragraph 29 of the September
21 affidavit, you had stated that you were either ignored
22 or met with varying degrees of ridicule, denials,
23 reprisal, and/or contempt. Can you tell me, have you
24 ever treated the Chair or Mr. Bujold with ridicule?

25 A We have had exchanges. As I mentioned yesterday, Brian
26 Heidecker has on many, many occasions in a very, very
27 aggressive way attempted to have me admit that I've

1 breached the Code. And they've made it very clear that
2 they want me out as a trustee. Roland Twinn offered to
3 resign if I resigned and when I accepted --

4 Q I'm sorry. I am going to cut you off here and I'm
5 going to go off the record.

6 (DISCUSSION OFF THE RECORD)

7 Q MS. CUMMING: Ms. Twinn, have you ever treated
8 the Chair or Mr. Bujold with varying degrees of
9 ridicule, denial, reprisal, and/or contempt?

10 A No reprisal, no denial, no contempt. And with respect
11 to ridicule, Mr. Heidecker, Brian Heidecker accused me
12 at a meeting about how I pronounced his name. And
13 there have been very, very heated moments where I've
14 been screamed at. And in fact, Mr. Bujold on one
15 occasion apologized to me.

16 Q Have you ever screamed at anyone in a trustee meeting?

17 A I don't recall screaming. Perhaps voices were raised.
18 You know, when I was told to kiss Roland Twinn's ass,
19 perhaps my voice was raised when I said, No, I'm not
20 kissing your ass.

21 Q Have you raised your voice at other meetings other than
22 the one that you just gave the --

23 A Other meetings? What meetings?

24 Q Other trustee meetings other than the one that you just
25 gave an example --

26 A I don't know. I don't recall. You would have to give
27 me some specific trustee meeting dates that you have in

1 mind.

2 Q Have you ever attempted to control a meeting by talking
3 at length?

4 A I don't try to control. I try to express myself and
5 that's my duty.

6 Q So you never --

7 A But I am operating in an environment where I am being
8 controlled.

9 Q Do you ever in a trustee meeting talk over people when
10 they try to express their views?

11 A I don't recall doing that.

12 Q Have you ever treated Bertha L'Hirondelle with varying
13 agrees of ridicule, denial, reprisal, and/or contempt?

14 A We don't speak.

15 Q So your answer is no?

16 A She does not look at me.

17 Q So your answer is no?

18 A My answer is no.

19 Q Have you ever belittled any of the trustees in trustee
20 meetings?

21 A I'm not a bully. I have been bullied extensively.

22 Q So you feel that your behaviour and conduct in trustee
23 meetings has been perfectly acceptable?

24 A We have a very broken Board. That's why in 2012 I put
25 forward a proposal that we all step down. That's why I
26 put it again in 2014. It has been an issue when, for
27 example, I mentioned the former Chair, Ron Ewoniak,

1 quit. And I believe that was around 2008.

2 Q Well, isn't it --

3 A There's a long history of contempt by Roland Twinn
4 towards me, of hatred and it has infected.

5 Q And you think that that's all one-sided?

6 A I'm not perfect.

7 Q You had indicated that it was a broken Board. Isn't
8 it --

9 A That's why Mr. Heidecker was brought in.

10 Q Isn't it true that the trustees, other than yourself,
11 are able to work quite well together and that the Board
12 is broken as it relates to your involvement?

13 A It would be fair to say that I am the scapegoat in that
14 Board. Even Brian Heidecker acknowledged that. He
15 called me the goat.

16 Q So I'll go back to my question. Isn't it true that the
17 other trustees do get along with each other and are
18 able to conduct business amongst themselves at trustee
19 meetings?

20 MR. RISLING: Ms. Cumming, we've let you ask a
21 number of these questions, but I'm really having
22 trouble understanding the relevance. Because what
23 we're talking about in this matter is not whether
24 there's good or bad relationships in respect to
25 individual trustees.

26 The position of Ms. Twinn is that the Board is not
27 doing what it's supposed to do in relation to its

1 trusts. And whether one trustee disagrees with respect
2 to that particular issue with all the other trustees is
3 what this is about. It's not about -- so the affidavit
4 says "when my concerns", meaning Ms. Twinn's concerns,
5 are expressed to the other trustees that she is being
6 ridiculed, reprised, and been held in contempt.

7 The reason that that's there is she's -- the
8 implication is she's advancing an interest pursuant to
9 her duty as a trustee, and that's what it's being met
10 with, not that she's had a shouting match with
11 somebody. So I'm having a little trouble with the
12 relevance of that.

13 MS. CUMMING: Well, your client's affidavit seems
14 to suggest that she's treated poorly by the Chair and
15 the administrator and the trustees. And so I think
16 that I'm entitled to explore that, because certainly
17 our position is that that's not an accurate reflection
18 of what takes place during trustee meetings.

19 MR. RISLING: But that's in the context of her
20 being the sole trustee that's advancing what she
21 believes to be the proper position with respect to
22 determining the beneficiaries or treatment of the
23 beneficiaries. It's not in the context of some of the
24 other stuff that I'm hearing coming up. You know, do
25 the other trustees get along.

26 It doesn't matter to us whether other trustees get
27 along. What matters is with respect to the interests

1 that this witness is advancing at the trustee meetings
2 in relation to those beneficiaries and to the positions
3 that she believes she has to take as a trustee.

4 MS. CUMMING: But don't forget we're also dealing
5 with the 1403 action Application for Advice and
6 Directions. We're not just dealing with the 1103. In
7 any event, I'll just go on.

8 MR. RISLING: Yes, carry on.

9 Q MS. CUMMING: Now, Ms. Twinn, you had mentioned
10 in your answer that you had put forth a succession
11 proposal back in August of 2012.

12 A Correct.

13 Q And you had indicated that you had volunteered to
14 resign as trustee if everybody else did.

15 A In that proposal.

16 Q So in the proposal, though, isn't it correct that your
17 proposal was that Roland Twinn, Bertha L'Hirondelle,
18 and Walter Twin resign and that you and Clara Midbo
19 would remain as trustees and would be the individuals
20 who would appoint a selection committee?

21 A I don't recall the particulars at this point but there
22 was, I recall, a staggering for a very short period of
23 time. It was a proposal that was there for discussion,
24 and it was not written in concrete. It was to have a
25 conversation about the obvious conflicts of interest
26 both in terms of appearance and structurally as noted
27 by Justice Thomas in his June, 2012 decision.

1 Q So again, your proposal had been for three of the
2 trustees to resign but that you and Clara Midbo would
3 remain as trustees and select a committee to replace
4 the other trustees. Wasn't that the proposal?

5 A I don't recall if we would select or if that would be
6 predetermined and then you would need some staggering
7 to achieve a new Board.

8 Q But you felt that that was fair that your proposal
9 would have three trustees resign immediately but that
10 you and another trustee would stay on for whatever
11 period of time?

12 A It could have been someone else.

13 Q So it could have been --

14 A It could have been someone else, but it was to achieve
15 a new Board, and it was one possibility but it was not
16 entertained.

17 Q All right. So, for example, Roland Twinn and Bertha
18 L'Hirondelle could have been stayed on as the trustees,
19 and you and Clara and Walter could have resigned. That
20 was fine with you?

21 A If we had a process that we agreed to, I would have
22 been open to discussions; but unfortunately, there were
23 none.

24 Q Well, I'd like you to review your records, and if you
25 have any documentation with respect to the proposal
26 that you put forth in August, 2012, if you would
27 produce those documents.

1 A Sure. Mr. Bujold has it.

2 MS. OSUALDINI: I'll take that undertaking.

3 MS. CUMMING: Thank you.

4 **UNDERTAKING NO. 34: IF MS. TWINN HAS ANY**

5 **DOCUMENTATION WITH RESPECT TO THE PROPOSAL SHE PUT**

6 **FORTH IN AUGUST, 2012, PRODUCE SAME.**

7 Q MS. CUMMING: Would you agree with me that the

8 assets of the trusts are managed by a Board of

9 Directors of the companies?

10 MS. OSUALDINI: I think we went through this

11 yesterday. The assets of the trusts are the shares, so

12 the Board of Directors doesn't manage the shares.

13 Q MS. CUMMING: So let's put it this way, then.

14 The shares make up the trusts' wealth.

15 MS. OSUALDINI: Correct.

16 Q MS. CUMMING: So isn't it true that the Board of

17 Directors of the companies manage the trusts' wealth?

18 A The Board of Directors, an outside Board of Directors

19 was established in 2006 and it has control over the

20 appointment of the CEO. They inherited an outside CEO,

21 John MacNutt, who is still the CEO. The CEO reports to

22 the Board and they have operational control over the

23 operating businesses and real estate and other assets,

24 and we have oversight.

25 Q But they have operational control?

26 A The day to day.

27 MS. OSUALDINI: Just to be clear, of the companies,

1 not of the trust assets.

2 Q MS. CUMMING: Yes. The Board of Directors of the
3 companies have operational control over the companies?

4 A Over the operating businesses, yes.

5 Q Right, and it's the companies that constitute the
6 trusts' wealth through the shares?

7 MS. OSUALDINI: Correct.

8 Q MS. CUMMING: Yes?

9 A Correct.

10 Q Have any of Wesley Twin's five children been admitted
11 as members of the Band?

12 A I don't know. There's a secrecy around applications,
13 and I don't know when decisions are made. We, as
14 members, do not know.

15 Q If you could go to paragraph 29(b) of your affidavit.
16 The first sentence of 29(b), you have indicated that
17 individuals who are responsible for managing, growing,
18 and distributing the trusts' wealth are demonstrating
19 bias. Can you give me some concrete examples of what
20 you consider to be demonstration of bias?

21 A I mentioned yesterday the children of Roland Twinn. Do
22 you want me to repeat that?

23 MS. OSUALDINI: I also note the affidavit itself
24 has a specific example.

25 MS. CUMMING: Well, that's fine. I realize that
26 but I'm asking for other examples.

27 Q MS. CUMMING: Roland Twinn -- I don't even know

- 1 if it was Roland Twinn. Perhaps it was his wife but
2 someone, one of the parents, if not both, made
3 application to the Band for membership for the
4 children, correct?
- 5 A Applications were made, I understand.
- 6 Q And they are entitled as Band members to do that for
7 their children, correct?
- 8 A Roland's wife is not a Band member although she's a
9 beneficiary of the 1985 Trust.
- 10 Q But Roland Twinn is a Band member?
- 11 A Roland Twinn is a Band member.
- 12 Q So he's entitled to assist his children in bringing an
13 application for his children to become members of the
14 Band, correct?
- 15 A No issue with that.
- 16 Q And you have no information to suggest that Roland
17 Twinn somehow influenced anyone on Band council to
18 approve his children for membership, do you?
- 19 A Can you repeat your question? It's very strangely
20 worded. I have no what? Evidence?
- 21 Q No, I won't ask you about evidence, so I'll ask the
22 question again. What information do you have to
23 indicate that Roland Twinn somehow influenced council
24 or the Band to approve his children for membership?
- 25 A Those children queue-jumped ahead of people who had
26 been waiting for years. That's improper.
- 27 Q How do you know that? Who did they queue-jump?

- 1 A One of them was Gina Donald, but there are other
2 applicants.
- 3 Q Do you know whether Gina Donald had a fully-completed
4 application for membership?
- 5 A I understand her application was complete and was at
6 the time that Roland's children in 2013 applied, but
7 for some reason, hers was unreasonably delayed and
8 theirs was fast-tracked. And Roland Twinn was also the
9 Chair of the membership committee, and the Chair of the
10 membership committee appeared to me to have control
11 over application -- his selection of applications and
12 the recommendations to Chief and Council himself and
13 his cousin Justin who tends to follow what Roland does.
- 14 Q What information do you have that Roland Twinn's
15 children's applications were fast-tracked?
- 16 A I've already answered that question.
- 17 Q No. I want to know what information you have that
18 Roland Twinn's children's applications were fast-
19 tracked.
- 20 A Because their applications were submitted in 2013. One
21 of them was submitted in October, 2013.
- 22 Q So you are just assuming that they must have been fast-
23 tracked because of the time from when they applied to
24 when they became Band members?
- 25 A All I know is that by the time the summer of 2014 the
26 list I received from Paul Bujold had their names on it.
- 27 Q Do you have any other concrete examples of bias?

1 A The one that I have put into (b).

2 Q That was dealing with Alfred Potskin?

3 A Yes.

4 Q Were you aware that Alfred Potskin had enfranchised?

5 A Alfred Potskin was a child when his mother and father

6 enfranchised. And my late husband allowed him to live

7 on the Reserve in his trailer for years. And when

8 Bertha and Roland -- after he died, when Bertha and

9 Roland were on council, they forced him to move his

10 trailer. Alfred Potskin ...

11 Q I'm just not sure that has any relevance. So Alfred

12 Potskin --

13 MS. OSUALDINI: The relevance is we're talking

14 about what examples of bias you have, and she's

15 explaining an example of bias as you asked.

16 Q MS. CUMMING: Well, Alfred Potskin is a child of

17 an individual who enfranchised, correct?

18 A That's my understanding, yes.

19 Q And that also applies to Albert Potskin?

20 A Sorry, Albert?

21 Q Yes.

22 A I don't believe I've referred to an Albert Potskin in

23 my affidavit, have I?

24 Q Yes, you did so I was going to ask you if that's a

25 typo.

26 A Where is this?

27 Q If you read the paragraph.

- 1 A Oh, I see. As of August 10th, 2014, Albert Potskin.
- 2 Q Should that be Alfred?
- 3 A Yes, it should be Alfred, yes. Sorry, that's a
4 mistake. I didn't notice it.
- 5 Q Thank you. Because I think there is an Albert Potskin,
6 so that's why I wasn't sure. Did Roland Twinn or
7 Bertha L'Hirondelle ever advise you as to why Alfred
8 Potskin's application was not recommended by them?
- 9 A At that meeting, they rejected it.
- 10 Q But did they tell you why it was being rejected?
- 11 A I said that he should at least be afforded an
12 interview.
- 13 Q Did Alfred Potskin appeal to the electors?
- 14 A He died. He had cancer. And he was a person of good
15 repute, as far as I could see. He was sober, hard
16 working, hadn't been on welfare, and had lived in the
17 area his entire life.
- 18 Q How soon after his application was denied did he pass
19 away?
- 20 A I don't recall exact dates, but it would have been
21 fairly soon after, I believe. I'd have to double-
22 check.
- 23 Q But he did have the ability under the membership rules
24 to appeal to the electors, correct?
- 25 A I believe he wanted to appeal. I believe that his
26 illness precluded him from appealing.
- 27 Q But the process was such that he could have done that

1 as anyone could who was initially denied?

2 A The process, in my opinion, is biased.

3 Q Well, let's talk about Tracy Poitras-Collins. Her

4 application was initially denied by council, correct?

5 A Correct.

6 Q And she appealed to the electors, and her application

7 was accepted for membership, correct?

8 A I think it was by a very, very narrow margin.

9 Q But it was accepted, correct?

10 A As I said -- correct, and at the next appeal the

11 benches were loaded. And that was Gail O'Connell.

12 Q But the fact is that she appealed to the electors and

13 she was successful, correct?

14 A She did appeal and she was admitted.

15 Q Now, yesterday --

16 A And she waited a very, very long time.

17 Q Yesterday, you had said that the admission of Tracy

18 Poitras-Collins was a mistake, and I wanted you to tell

19 me. I never asked you what you meant by that.

20 A Mistake in the sense that they didn't have enough of

21 their family members present to vote against her and I

22 think underestimated that some -- there was some

23 support for her, which I said was corrected on the Gail

24 O'Connell appeal that came next. And the Gail

25 O'Connell appeal was to be heard with Tracy.

26 Q So ultimately, the membership process worked for Tracy

27 Poitras-Collins because she is a member?

- 1 A She is a member. And I don't know how many years her
2 application sat, but I know it was many, many years.
- 3 Q You sat on the membership committee over what years?
- 4 A I don't recall.
- 5 Q It was several years, though?
- 6 A That would be correct.
- 7 Q Up until 2013. Is that correct?
- 8 MS. OSUALDINI: I think we've got an undertaking to
9 confirm that from September.
- 10 MS. CUMMING: All right.
- 11 Q MS. CUMMING: In paragraph 29(b) at the end of
12 your paragraph, you had indicated that other children
13 had been discounted or discouraged from applying. Can
14 you give me some concrete examples of that?
- 15 A Yes, I can. Deborah Serafinchon. She is Walter's
16 daughter. I had advised Brian Heidecker, Paul Bujold,
17 the trustees, that there's DNA evidence that proves
18 that. My children and I provided blood to her when her
19 older siblings her age, Roland and his siblings, and
20 mother failed to provide their blood to her so she
21 could establish her paternity.
- 22 Q So that's the example that you were referring to?
- 23 A Deborah -- do you wish me to answer the question?
- 24 Q Well, I had just asked about who the other children
25 were that you feel were discounted or discouraged from
26 applying.
- 27 A Deborah Serafinchon was told straight out not to apply.

1 Q Anyone else?

2 A The treatment of Gail O'Connell I think certainly had
3 the chilling effect of discouraging her sister. And
4 the -- Kieran Cardinal was another one who shouldn't
5 have even had to apply to the Band, because he had a
6 pre-existing right to be on the Band list prior to 1985
7 which the Band council knew. And in fact, I was
8 approached by the father, Larry Cardinal, the adoptive
9 father, and I tried to speak to some of the people
10 about this.

11 And I definitely spoke to Ed Molstad and Marco
12 Poretti about it who are counsel in -- well, Marco
13 Poretti is co-counsel with Doris Bonora in the 2011
14 action. And Ed Molstad is the lawyer from Parlee for
15 the Band who has been funded by the Trust to
16 participate in the 2011 action.

17 Q Are you aware of parents who are Band members who
18 simply haven't submitted applications for membership on
19 behalf of their children?

20 A I don't know about existing Band member parents and
21 what they have done and haven't done about their
22 children and applying. I do know that I have asked
23 Roland Twinn for an application form for a minor, but I
24 have not had the courtesy of a reply.

25 Q Are you suggesting in that statement in paragraph 29(b)
26 that minor children have been discouraged from
27 applying?

1 A I'm sorry? Am I stating what in paragraph what?

2 Q The last sentence in paragraph 29(b), are you
3 suggesting that minor children have been discouraged
4 from applying?

5 A I can't answer that question. First of all, the
6 current application form requires many things including
7 essays that minors I don't think are capable of
8 answering.

9 Q I'm just trying to get clarification --

10 A But I do --

11 Q Let me just get clarification here. What you're
12 referring to in the last sentence of 29(b) are adult
13 children?

14 A Yes, I'm referring to children because when they see
15 favouritism by those in power with control, it is
16 discouraging, especially when they know that
17 applications have been sitting for a very long time,
18 some cases years.

19 And it's discouraging when people such as Gail
20 O'Connell went through a very, very biased and unfair
21 process. The speaker or the Chair of that appeal
22 process was Rarihokwats whose name is Jerry Gambill.
23 And he both authored a genealogy on the Ward family
24 that, in my opinion, created confusion and distorted
25 the facts, but he also chaired it without disclosing
26 that he had authored a document that had tremendous
27 influence on the people at that appeal. And my son had

1 asked for a genealogy to be built with the Ward family,
2 not against the Ward family.

3 Q You had indicated in paragraph 29(b), you had stated, I
4 also note that with the exception of only a few
5 individuals only the children of former and currently-
6 elected Band officials have been granted Band
7 membership. Who are the exceptions that you refer to?

8 A I think the exception that I was referring to then
9 would have been Tracy Poitras-Collins. Kieran Cardinal
10 is the biological son of Ardell Twinn, and I don't know
11 at this point if Ardell was on council or not but he is
12 Roland's brother. And Kieran was finally admitted but
13 only because of the vigorous effort by his parents.

14 Q So we've got Tracy, Kieran.

15 A That's all I can recall.

16 Q Gina?

17 A Gina came just recently. Gina came --

18 MS. OSUALDINI: She couldn't have been referring to
19 her in this.

20 A I was not referring to Gina because I understand Gina
21 was just admitted.

22 Q MS. CUMMING: But that is another example?

23 A That is now another example, and I think that's because
24 of litigation pressure. I don't think without that
25 litigation pressure Gina would have been admitted.

26 Q And that's your opinion?

27 A That's my opinion. She could have and should have been

1 admitted a long time ago.

2 Q You had indicated in your affidavit that the Band is
3 comprised of three family groups, the Twinns, the
4 Potskins, and the Wards, correct?

5 A Currently.

6 Q The Band membership only has approximately 45 members?

7 A Today, I understand it's 45. You've asked me a
8 question about Wesley, so maybe there's been something
9 that's occurred there that I don't know about.

10 Q No, no, that's not correct. One would expect to see
11 Band membership being put forth by Twinns, correct?

12 A It should include all the families, and there are some
13 families -- for example --

14 Q Are there mostly Twinn -- in terms of the three family
15 groups, in terms of those 45, are they mostly Twinns?

16 A There would be a large number of Twinns followed by
17 Potskins followed by Wards.

18 Q So would the Twinns be the majority?

19 A I'd have to look at a list and count it. I don't know
20 off the top of my head.

21 Q In 29(c), you had indicated one applicant who waited 28
22 years for a decision. Who are you referring to there?

23 A I'd have to check, but I think it may have been Tracy
24 Poitras-Collins, but I'm not a hundred percent sure at
25 this moment.

26 Q What do you have to check? Because you swore this
27 affidavit.

1 A I swore this affidavit --

2 Q So what do you have to check?

3 A It was done over two years ago, I think.

4 Q What would you have to check to determine who you were
5 referring to?

6 A I would have to check my records.

7 Q Well, if you would do so and let me know who you were
8 referring to in 29(c)?

9 A I'll confirm. I think it was Tracy but I'm not sure.

10 MS. OSUALDINI: And that's fine. We'll do that.

11 MS. CUMMING: Thank you.

12 **UNDERTAKING NO. 35: ADVISE WHO IS BEING REFERRED**
13 **TO IN PARAGRAPH 29(C) OF THE SEPTEMBER AFFIDAVIT.**

14 A And it may have been Gina. I'd have to do the math,
15 because I know she applied the first application in the
16 1990s which Winona Twin confirmed that there were two
17 prior applications.

18 Q MS. CUMMING: Now, in paragraph 29(d), you had
19 indicated, in your opinion, that the trustees have
20 never gone through a process of independently
21 determining who qualifies as beneficiaries to the 1985
22 Trust. Am I correct that the trustees advertised in
23 newspapers across Western Canada searching for
24 beneficiaries? Did that occur?

25 A Paul Bujold at some point had a list with over 130
26 names on it.

27 Q Well, I'm just asking did they advertise across Western

1 Canada in search of beneficiaries?

2 A I would have to check. I don't recall where and when
3 this advertising took place.

4 Q Well, if you would check and get back to me, then?

5 A But I do know that Paul Bujold sent a letter --

6 Q Sorry, I would like to get that undertaking before you
7 finish your answer.

8 MS. OSUALDINI: That's fine.

9 MS. CUMMING: Thank you.

10 **UNDERTAKING NO. 36: ADVISE IF THE TRUSTEES**
11 **ADVERTISED ACROSS WESTERN CANADA IN SEARCH OF**
12 **BENEFICIARIES.**

13 A I do know that Paul Bujold sent a letter in 2010. I do
14 know that there were people who filled out
15 applications. And I do know that there was a list of
16 some over 130 names. I have no idea --

17 Q MS. CUMMING: So a number of people responded to
18 the newspaper advertisement?

19 A I don't know if they responded to the newspaper
20 advertisement. I don't know if they saw it. But I do
21 know that there was a letter that he sent that said he
22 would be following up regularly with them.

23 Q And in fact, the letter was sent out to all of the
24 affiliates on the Indian Affairs list too, correct?

25 A I don't know how Paul did that. You would have to ask
26 him if that was his process.

27 Q In paragraph (d), you said at the beginning that you

1 have concluded that based on information received from
2 persons who may be entitled to beneficiary status under
3 the 1985 Trust rules. Who are those persons?

4 A One of the names that I mentioned is William MacDonald.

5 Q Anyone else?

6 A The illegitimate son of Chester Twin. There is a
7 question mark in my mind about Georgia Ward's daughter,
8 Michelle Ward, who was born pre-Bill C-31, and I
9 understand she was put on the Band list by the
10 registrar.

11 I did find a case, but I don't recall the date
12 where -- and I think it was Justice Cavanagh said that
13 he had jurisdiction to take a protest. I don't know
14 what happened subsequent. I do know that Georgia
15 Ward's daughter, Michelle, is not on the Band list that
16 Paul Bujold has provided.

17 Q In terms of 29(d), you had indicated that you came to a
18 conclusion based upon information received from
19 persons. Those persons would be William MacDonald,
20 Chester Twin's son, and Georgia Ward's daughter. Is
21 that correct?

22 A There are others.

23 Q Who are the others?

24 A Well, I'm trying to remember.

25 Q Why don't we just undertake that you advise us of which
26 persons you received information from as set out in
27 29(d) of your affidavit?

1 MS. OSUALDINI: That's fine.

2 MS. CUMMING: Thank you.

3 **UNDERTAKING NO. 37: ADVISE WHICH PERSONS**
 4 **MS. TWINN RECEIVED INFORMATION FROM AS SET OUT IN**
 5 **29(D) OF HER SEPTEMBER AFFIDAVIT.**

6 Q MS. CUMMING: Now, keep in mind that I don't know
 7 these individuals. The son of Chester Twin, is he
 8 still alive?

9 A Yes, as far as I know.

10 Q Did you contact him and advise him to put in an
 11 application?

12 A I believe he put in an application. I think I recall
 13 seeing it on the list that Paul Bujold had. There were
 14 many people on that list.

15 Q What about Georgia Ward's daughter, Michelle?

16 A I don't know. I don't recall if she's on there or not.

17 Q Did you contact her and encourage her to notify
 18 Mr. Bujold?

19 A I have -- we've been denied contact information for her
 20 mother, Georgia Ward, so it's a little difficult to
 21 trace someone given --

22 Q What about William MacDonald?

23 A -- given the obstructions that have occurred. William
 24 MacDonald, what about him?

25 Q Is he still alive?

26 A To the best of my knowledge, he is.

27 Q But you haven't contacted him?

1 A I spoke with him some time ago, but I also saw his name
2 on the list. I recall seeing it on that list. And I
3 think his wife and children were on that list as well,
4 if my memory serves me.

5 Q Are you taking the position that everyone on that list
6 should be considered by the trustees to be
7 beneficiaries of the 1985 Trust?

8 A No, what I said and I'm saying is that there should be
9 a proper process to assess those applications, and it
10 should be fair. And it should not be done in back
11 rooms by the trust administrator with one trustee or
12 the Band lawyer or someone else. It should be a
13 proper, fair, independent process.

14 Q And you think that that process should be put in place
15 before the 1103 Application for Advice and Directions
16 is dealt with?

17 MS. OSUALDINI: I'm not sure how that relates to
18 the 2014 action that you're questioning on.

19 MS. CUMMING: Well, I think that I have latitude
20 given the length of your client's affidavit. I have a
21 hard time seeing how I can be possibly restricted in
22 any of my questions given the length and breadth of the
23 affidavit sworn by your client.

24 MS. OSUALDINI: But this affidavit is sworn in the
25 2014 action and speaks to what should be occurring.
26 Her beliefs on what should be occurring in the 2011
27 action I don't see as relevant.

1 MS. CUMMING: Well, perhaps you can tell me how
2 paragraph 29(d) is relevant to the 1403 application.

3 MS. OSUALDINI: Well, the 1403 application has to
4 do with the composition of the Board.

5 MS. CUMMING: Of the trustees.

6 MS. OSUALDINI: Yes. So this is concerns about
7 what -- this is background information to what's
8 happening and how the trustees should be composed.
9 It's not relating to what should or shouldn't occur in
10 the 2011 action.

11 MS. CUMMING: Let's just go off the record for a
12 moment.

13 (DISCUSSION OFF THE RECORD)

14 Q MS. CUMMING: Ms. Twinn, in paragraph 29(d) of
15 your affidavit, you had indicated that the eligible
16 pool of candidates to be trustees who qualify as
17 beneficiaries of both trusts is greatly limited.. Isn't
18 it true that the eligible pool of candidates has always
19 been small?

20 A Always? I don't think so.

21 Q Well, at what point in time was there a larger pool?

22 A Well, first of all, you can have two outside
23 non-beneficiary trustees, and I think that's a good
24 practice. Secondly, Sawridge historically had many
25 families and I think in 1912 may have had something
26 like 78 Band members. It's unnatural that it has
27 shrunk to what it is today, and I think that's a

1 distortion of what the normal membership looks like in
2 First Nation communities particularly when you only
3 have one minor child. That's unnatural. Where are the
4 children? And I'm concerned about that.

5 Q From 1985 to 1997, your husband was the Chief and a
6 trustee, correct?

7 A Yes.

8 Q And certainly as Chief, he was involved in the
9 membership process?

10 A Yes.

11 Q And do you know how many individuals were admitted into
12 membership from 1985 to 1997 while your husband was
13 Chief?

14 A I don't recall. It wasn't many. And I do recall he
15 died before the litigation you referred to was
16 completed.

17 Q Isn't it true that the electors can rule on membership?

18 A What do you mean?

19 Q Well, as I understand the process, someone applies, and
20 if they don't get past the first level of the process
21 which is council, then they appeal to the electors.

22 A Well, they can apply and they can stay stuck in the
23 application process forever. Then there's a Chief and
24 Council decision, and then there is an appeal to the
25 electors.

26 Q Do you know --

27 A But as I said, I have problems with that process. I

1 just want it to be fair and non-discriminatory.

2 Q Am I correct that the membership committee was
3 disbanded in approximately 2013?

4 A I think it was -- formally stopped all the committees
5 earlier this year. I'd have to check that. There were
6 many committees.

7 Q So the membership committee was still --

8 A Was one of many.

9 Q It was still in place in 2013, 2014?

10 A I believe the committees formally ceased earlier this
11 year, but that's my recollection. Don't hold me to it.

12 Q All right. When is the last time you attended a
13 membership committee meeting?

14 A I don't recall. It was up to the Chair to call them.

15 Q And I'm not sure whether we --

16 A Which is the Chief, Roland Twinn.

17 Q I'm not sure whether we had asked for that undertaking
18 previously, so I would like an undertaking that you
19 review your records and advise as to the last time that
20 you attended a membership committee meeting.

21 MS. OSUALDINI: That's fine.

22 MS. CUMMING: Thank you.

23 **UNDERTAKING NO. 38: ADVISE THE LAST TIME**

24 **MS. TWINN ATTENDED A MEMBERSHIP COMMITTEE MEETING.**

25 Q MS. CUMMING: Have you done anything, taken any
26 steps to amend either of the two trusts in terms of who
27 can be a trustee?

1 A Amend the trust deed?

2 Q Yes.

3 A The trust deeds? Well, other than saying we should be
4 having conversations about some fundamental issues and
5 offering processes for that, including the binding
6 issue resolution process that went through Doris Bonora
7 that went nowhere and the suggestion in the proposal of
8 August, 2014, there's been no discussions subsequent to
9 that.

10 Q So you haven't taken any formal steps to amend or vary
11 the trust deeds as it relates to the trustees?

12 A I -- other than my 2014 action that raises some
13 questions for the Court for advice and direction, I
14 would say -- and what I've already described. I think
15 that's probably a fairly accurate description of my
16 efforts.

17 Q Are you aware that in the 1986 Trust it can only be
18 amended by receiving the approval in writing of at
19 least 80 percent of the beneficiaries?

20 A Yes, I'm aware of that provision.

21 Q And have you taken any steps to request the approval of
22 80 percent of the beneficiaries to amend the trust as
23 it relates to the composition of trustees?

24 A No, other than what I've described in terms of efforts
25 at the trustee table and also some advice and direction
26 issues for the Court.

27 Q In paragraph 29(e) of your September affidavit, partway

1 through that paragraph, you refer to the September
2 Chair agenda.

3 A Can I have a moment to read?

4 Q Of course, yes.

5 A Thank you.

6 MS. CUMMING: Just off the record.

7 (DISCUSSION OFF THE RECORD)

8 A Okay, I've read that paragraph (e).

9 Q MS. CUMMING: Thank you. I'd like you to
10 undertake to produce your copy of the September Chair
11 agenda that's referred to in that paragraph.

12 MS. OSUALDINI: That's no problem.

13 **UNDERTAKING NO. 39: PROVIDE MS. TWINN'S COPY OF**
14 **THE SEPTEMBER CHAIR AGENDA REFERRED TO IN**
15 **PARAGRAPH 29(E) OF HER AFFIDAVIT.**

16 Q MS. CUMMING: Now, in that paragraph, you refer
17 to a letter that you wrote to David Ward on January 19,
18 2009. I understand that that letter reflects your
19 thoughts as opposed to the position of the other
20 trustees.

21 A Those are my thoughts.

22 Q At the bottom of that first page of your letter of
23 January 19, 2009, you say, The trustees as a group are
24 not functional. When you wrote that, did you consider
25 that you were part of the problem in the trustee group
26 not being functional?

27 A I am part of the trustee group. There's a problem

1 there. Therefore, I'm part of the problem and I'm part
2 of the solution.

3 Q Did you receive a written response to your letter to
4 David Ward?

5 A A written response from who?

6 Q David Ward.

7 A Oh, from David Ward. Honestly, I don't recall at this
8 point.

9 Q If you would review your records, and if you did
10 receive a response to provide it, please.

11 MS. OSUALDINI: Yes, that's fine.

12 **UNDERTAKING NO. 40: PROVIDE ANY RESPONSE RECEIVED**
13 **FROM DAVID WARD TO MS. TWINN'S LETTER OF JANUARY**
14 **19, 2009.**

15 Q MS. CUMMING: I understand subsequent to that
16 letter an administrator was appointed.

17 A Yes.

18 Q Prior to writing to David Ward, did you consult with
19 the trustees to see whether they agreed that you could
20 write to him?

21 A I didn't realize that I have lost my voice to express
22 my views.

23 Q Did you allow the trustees to review the content of
24 your letter before you sent it to David Ward?

25 A I don't believe I did.

26 Q I understand that you were proposing that a trustee
27 performance review be undertaken by an independent

1 individual.

2 A That's what this letter says. Page 3A, Performance
3 evaluation should be undertaken.

4 Q I understand that that did not go ahead.

5 A It was initiated. Monies were spent but there was no
6 -- it did not complete itself. Roland Twinn would not
7 -- he did not show up.

8 Q Well, Walter Twin didn't want to participate in it
9 either, did he?

10 A I can't recall, but that could well be true.

11 Q I'm showing you a letter written by Walter Twin dated
12 December 3, 2009. I'll give you a moment to read it.

13 A Okay.

14 Q Did you ever refer to the elder trustees as "dead
15 weight"?

16 A I don't believe I would have referred to them as dead
17 weight. I do recall that in the case of Walter Twin,
18 there were many of us who expressed concerns about his
19 health and his abilities.

20 Q Did you have a discussion with David Ward about wanting
21 to somehow remove or get rid of Bertha, Clara, and
22 Walter?

23 A I wanted, as my letter stated, a functional Board, a
24 good Board, whatever that looks like. And I think I've
25 been fairly consistent about that.

26 MS. CUMMING: If we could mark that letter as the
27 next exhibit.

1 A And I've never, by the way, seen this letter before.

2 MS. OSUALDINI: I think that's for identification
3 because she can't ...

4 A It was actually never brought to my attention.

5 **EXHIBIT NO. W FOR IDENTIFICATION: LETTER DATED**
6 **DECEMBER 3, 2009 FROM WALTER TWINN.**

7 Q MS. CUMMING: Isn't it true that in 2010 the
8 trustees agreed to and did set up a self-evaluation
9 process?

10 A Could be. I don't recall at this moment.

11 Q Do you recall that the self-evaluation process required
12 trustees to provide something in writing in terms of
13 their own self-evaluation as a trustee?

14 A I do recall.

15 Q Am I correct that you have never completed those
16 self-evaluations yourself?

17 A I've done self-evaluations, but I have not -- I may not
18 have shared it with the others, but I don't know that
19 they shared theirs with the rest of us. I cannot
20 recall.

21 Q All right. So your --

22 A But have we ever had conversations about this and a
23 good process with outside independent facilitation? I
24 think that would be useful -- would have been useful.

25 Q So your self-evaluation that you said you did, who did
26 you share it with, if anyone?

27 A I don't recall. It's been a while.

1 Q The self-evaluations that you did, did you put pen to
2 paper, so to speak, do something in writing?

3 A I recall the evaluation. I don't recall what I did
4 with it; who, if anyone, I shared it with.

5 Q So you may have shared it with no one?

6 A That's possible. That doesn't mean I didn't self-
7 reflect or self-evaluate.

8 Q If you would review your records, and if you did any
9 self-evaluations, if you would produce them, please.

10 MS. OSUALDINI: That's fine. Actually, I'm sorry,
11 Nancy, we're going to take that under advisement.

12 MS. CUMMING: That's fine.

13 **UNDERTAKING NO. 41: PRODUCE ANY SELF-EVALUATIONS**
14 **MS. TWINN PERFORMED AND RECORDED - TAKEN UNDER**
15 **ADVISEMENT.**

16 MS. OSUALDINI: Catherine, we've been at it an hour
17 and a half. Do you need a break?

18 A I think we should keep going.

19 MS. CUMMING: Why don't we take five minutes.

20 (BRIEF ADJOURNMENT)

21 Q MS. CUMMING: Ms. Twinn, you had earlier
22 suggested when I put to you Walter Twin's letter of
23 December 3, 2009 that it had never been provided to
24 you. Is that accurate?

25 A I don't recall that being provided to me.

26 Q All right. I'd like to show you the minutes from the
27 December 15, 2009 Board meeting, and I would simply

1 refer you to page 9, paragraph 13:

2 A Page 9, letter from Walter Felix, mediation options,
3 tabled for a future meeting.

4 Q I'm going to suggest to you that Walter Twin's letter
5 was actually provided at a trustee meeting.

6 A That agenda suggests that, but as I say, I don't recall
7 that. I do recall Walter being very upset.

8 Q Do you recall having a discussion with Walter at that
9 meeting concerning the letter?

10 A I'd have to go back. I don't recall.

11 Q Well, if you would go back and look at your notes, if
12 you have any, with respect to the December, 2009
13 meeting and produce them.

14 MS. OSUALDINI: That's fine.

15 **UNDERTAKING NO. 42: PRODUCE ANY NOTES MS. TWINN**
16 **HAS WITH RESPECT TO THE DECEMBER, 2009 MEETING.**

17 MS. CUMMING: Let's mark this as the next
18 exhibit, please.

19 MS. OSUALDINI: X.

20 **EXHIBIT NO. X FOR IDENTIFICATION: TRUSTEE MEETING**
21 **MINUTES OF DECEMBER 15, 2009.**

22 Q MS. CUMMING: In paragraph 29(f) of your
23 affidavit, you indicate that it had been made clear to
24 you by the Chair, Mr. Bujold, and the trustees who are
25 also elected Band officials. At the time that you
26 swore your affidavit, how many elected Band officials
27 were also trustees?

- 1 A This was sworn -- this affidavit is sworn September
2 23rd, 2015. The other affidavit --
- 3 MS. OSUALDINI: The one she's questioning on is the
4 '14. The one that was filed in '11 was sworn later
5 than the original copy that was filed in '14.
- 6 A The date was the 24th day of September, 2014 and that
7 paragraph (f) -- sorry, what was your question?
- 8 Q MS. CUMMING: I wanted to know at the time you
9 swore the affidavit how many trustees were elected Band
10 officials.
- 11 A September 24th, the majority, I believe, would have
12 been elected Band officials.
- 13 Q So who were they?
- 14 A Bertha L'Hirondelle, she was an elected elder, Justin
15 Twin who was a councillor, and Roland Twinn who was the
16 Chief.
- 17 Q At the time that you swore your September 23, 2015
18 affidavit, how many of the trustees were also elected
19 Band officials?
- 20 A That would have changed. So this paragraph (f) should
21 have actually been -- it says -- well, at that point to
22 September, 2015, it would have been Roland Twinn.
- 23 Q So just one of five trustees was an elected Band
24 official at that time?
- 25 A At that time, yes.
- 26 Q Now, you had indicated in 29(f) that it was made clear
27 to you that how membership is determined is not the

1 concern of the trustees.

2 A Yes, that's what I said.

3 Q Would you agree with me that the majority of the
4 trustees take that position?

5 A Take the position that it's not the concern of the
6 trustees?

7 Q Yes.

8 MS. OSUALDINI: Nancy, I'm uncomfortable with the
9 question about her knowing what the position of other
10 trustees are. I would feel better if the question is
11 framed have they indicated to you and what her
12 knowledge is, not what their knowledge is.

13 Q MS. CUMMING: That's fine. Have the majority of
14 the trustees indicated to you that how membership is
15 determined is not a concern of the trustees?

16 A Yes, that's been made clear to me. Membership is off
17 the table.

18 Q And that was made apparent to you or communicated to
19 you by the majority of the trustees?

20 A Well, certainly by Roland Twinn. As I said earlier,
21 the other tend to be fairly quiet, but Roland has been
22 very clear. And I believe Brian Heidecker has also
23 said that we're not to talk about it. That followed --
24 I have a recollection of that from the 2016 meeting
25 where I raised -- I asked Roland about the queue-
26 jumping of his children, and he got very angry. And he
27 jumped up, left the room, told me to kiss his ass, came

1 back. He made an apology to the others but not to me
2 who had been told to kiss his ass. And I recall the
3 Chair saying we're not going to be talking about
4 membership at the table. And that is my recollection.

5 Q Isn't it true that the trustees have a legal opinion
6 that they're not to engage in the membership process?

7 A We've discussed this yesterday and I've given my
8 answer.

9 Q And your answer is that there are a number of legal
10 opinions?

11 A There's many things that have been said including
12 concerns about the definition of beneficiary in the '86
13 Trust. I've expressed a concern about this minimizing
14 it to the membership rules. And there's been concerns
15 about discrimination and fairness.

16 Q I take it that you are saying that the trustees have an
17 obligation to engage in or investigate the membership
18 process of the Band?

19 MS. OSUALDINI: I'm going to object to that because
20 I think that's a legal argument.

21 Q MS. CUMMING: Do you feel that you as a trustee
22 should be engaging in the membership process of the
23 Band?

24 A I'm saying I should have confidence in how
25 beneficiaries of either trust are determined, that it
26 must be fair and discrimination-free.

27 Q Well, if you don't have that confidence, which clearly

1 you don't, are you taking the position that as trustee
2 you should become involved in the membership process of
3 the Band?

4 A I've tried to have this resolved at the trustee table,
5 but I've been met with the don't talk, don't trust, and
6 don't feel rules of this operating system.

7 Q So you're telling me that the other trustees have told
8 you, but I want to hear from you. If you do not have
9 confidence in the membership process, do you feel that
10 as a trustee you should become involved in that
11 membership process of the Band?

12 A My duty is --

13 MS. OSUALDINI: Actually, I'm going to object to
14 that because I think that's a legal conclusion as to
15 what she feels she should do.

16 MS. CUMMING: I'm asking her what she feels her
17 obligations are as a trustee. It's not a legal
18 question. I'm entitled to ask that.

19 MS. OSUALDINI: What her legal duties are?

20 MS. CUMMING: You're saying legal. I'm saying,
21 what did you feel your responsibilities were as a
22 trustee.

23 MS. OSUALDINI: Okay.

24 Q MS. CUMMING: Do you feel that you as a trustee
25 have an obligation to engage in or question the Band
26 membership process?

27 A I believe that I, as a trustee, have an obligation to

1 the beneficiaries to ensure that they're ascertained
2 and treated fairly.

3 Q And does that position lead you to believe that a
4 trustee should be engaged in the Band membership
5 process?

6 A What I'm saying is that if there are concerns, I have a
7 duty to raise them and I have tried to raise them. And
8 I understood from some time ago, including the legal
9 opinions, that these concerns were real and would be
10 addressed.

11 Q Did you raise those concerns with the Band?

12 A Have I raised them with the Band?

13 Q Yes.

14 A I gave evidence yesterday, and I don't want to repeat
15 it.

16 Q Well, you're going to have to.

17 A I gave evidence yesterday that I have tried to talk to
18 -- at the Band -- with the council and the then
19 membership committee, and again I was met with this
20 anger, hostility, suppression, intimidation to shut up
21 and not talk about it.

22 Q Do you feel --

23 A They do have an in-house lawyer who is very well paid.
24 I would hope that these issues would be addressed.

25 Q Do you feel that the Band should involve itself in the
26 administration of the trusts?

27 A What I'm concerned about with what's been going on is

1 the Band capture of the trust to exclude people as
2 beneficiaries, convert assets of the '85 Trust for the
3 benefit of a few Band members that the Chief and
4 Council decide. I have concerns with that scenario,
5 big concerns with that scenario.

6 Q But you would agree with me that who becomes a Band
7 member doesn't stop at the Chief and Council. There's
8 a process in place to appeal to the electors and a
9 process even after that to appeal to the Court,
10 correct?

11 A Many of the people are quite vulnerable, quite
12 marginalised, and it's a pretty intimidating scenario
13 to even make an application. When Deborah was told to
14 never even try and given her history, I think it's very
15 sad that it is -- this situation is the way it is.

16 Q But there's a process in place for Band membership,
17 correct?

18 A And I've told you my views about the process.

19 Q Do your views change in light of the Maurice Stoney
20 decision?

21 MS. OSUALDINI: I'm sorry. I think that's -- I
22 don't see the relevance of that question.

23 Q MS. CUMMING: Are you familiar with the Maurice
24 Stoney case?

25 A I've heard Ed Molstad talk about the Stoney case in
26 court, yes, in front of Justice Thomas. Yes, I've
27 heard him.

1 Q I suspect that you must have read the decision.

2 A Which decision?

3 Q The decisions concerning Maurice Stoney that upheld the
4 Band membership process.

5 A Well, not quite. I'm not going to get into this with
6 you. I do trust my own -- what I see, hear, observe,
7 perceive. I do trust myself. And I know what I've
8 seen, heard, and it's caused great concerns for me in
9 terms of fairness, impartiality, discrimination. This
10 is not new. And I discussed this with Doris Bonora
11 when she was still talking to me as my lawyer.

12 Q In paragraph 29(g), you indicated that you have
13 expressed concern about the Band membership lists. Are
14 you suggesting that there are people on that Band
15 membership list that should not be on the list?

16 A My concern is with the people who are being excluded.
17 And my concern, as I've already given evidence on, is
18 that I think the definition is not just who the Chief
19 and Council put on a Band list. I think there's law
20 and other things that go into it. The trust deed says
21 all persons who qualify.

22 Q Are you suggesting that the trustees should be involved
23 or have an obligation to assist people to get onto the
24 Band list?

25 A Could you repeat the question?

26 Q Sure. Are you suggesting that the trustees have an
27 obligation to assist people to get onto the Band list?

1 A You have a trustee, Roland Twinn, who is also Chief of
2 the Band, and I would say that he's got a double
3 fiduciary duty. And the rules cannot discriminate,
4 must not discriminate, and they must be capable of
5 being properly applied and there needs to be a fair
6 decision-making process.

7 I've detailed some of my concerns on this, and my
8 view is that trustees are not just to be deaf, dumb,
9 and blind and accept a Band list from the Band if they
10 are aware that there are issues there, as I've been
11 made aware.

12 Q So I take it, then, that you feel that the trustees
13 have an obligation to assist individuals to get onto
14 the Band list?

15 MS. OSUALDINI: That's not what she said.

16 A No, that's not what I said. That's what you've said.
17 I have not said that.

18 Q MS. CUMMING: And you don't agree with that?

19 A I think the trustees have an obligation to
20 beneficiaries that there is a fair, honest, non-
21 discriminatory process to ascertain their status.

22 Q Have you brought your concerns to the assembly?

23 A I don't know if I have or not. The assembly is a very
24 hostile place for me. It's not a space that I feel
25 safe in and I know other people don't feel safe in it.
26 And I've referred to the don't talk, don't trust, don't
27 feel rules. Those are the operating rules.

1 Q Give me a better understanding as to why you feel the
2 assembly is a very hostile place for you.

3 A Oh, I've been personally attacked there in -- you know,
4 by some people, and I really don't like to put myself
5 into that. And I think other people feel the same way.
6 I've watched people wait for how Roland is going to
7 vote, and then they follow how he votes. It's
8 understandable but it's not a safe place.

9 Q Have you been hostile to any members of the assembly?

10 A I try not to be hostile to people. I try to express my
11 thoughts and concerns. If you're being attacked -- if
12 I'm being attacked, does my adrenaline go up? I am
13 sure it does. I am a human being after all. I do have
14 feelings.

15 Q So you've talked to me a lot about your concerns about
16 the Band membership process, but I take it that you are
17 not prepared to acknowledge Justice Thomas's December,
18 2015 decision wherein he indicated that the Band
19 membership process was not something that the trustees
20 were to interfere with?

21 MS. OSUALDINI: As I've objected on this question
22 before, my client is not answering questions to
23 interpret the meaning of that decision especially when
24 it's in another action.

25 Q MS. CUMMING: In paragraph 29(h) of your
26 affidavit, you indicate that benefits from the trusts
27 have only been extended to the 1986 Trust

1 beneficiaries. Isn't it true that benefits have been
2 extended not only to the '86 Trust beneficiaries but
3 also to their dependents which include their spouses
4 and children?

5 A There are some benefits for dependents. But what I'm
6 -- my point in that is that the '85 Trust beneficiaries
7 have not been ascertained and are not receiving
8 benefits, for example, Shelby Twinn.

9 Q But there are a number of 1985 Trust beneficiaries who
10 are also 1986 Trust beneficiaries?

11 A There are some -- there's overlap.

12 Q So those ones who have overlap --

13 A They're receiving benefits from the '86 Trust.

14 Q Right, as are their spouses and their children?

15 A There's some ...

16 MS. OSUALDINI: Legally, I'm a little uncomfortable
17 with the question. Are you suggesting that the trusts
18 are paying benefits to people who aren't beneficiaries
19 of the trusts?

20 MS. CUMMING: No, I didn't suggest that at all.

21 MS. OSUALDINI: Maybe I'm misunderstanding your
22 question, but are you suggesting that they're paying
23 them to spouses and dependents? I mean, a trust can
24 only pay benefits to its beneficiaries. If the
25 beneficiaries are using them for their dependents and
26 children, that's fine, but I just want to be clear
27 there's no suggestion that they're being paid to other

1 people than what the trust deed allows for.

2 MS. CUMMING: Which allows for beneficiaries
3 including spouses and children.

4 MS. OSUALDINI: That's not what the trust deed
5 says.

6 MS. BONORA: Let's just go off the record.

7 (DISCUSSION OFF THE RECORD)

8 Q MS. CUMMING: Have the trustees received any
9 legal opinions that the definition of beneficiary in
10 the 1985 Trust is discriminatory?

11 A There have been legal opinions received.

12 MS. OSUALDINI: I'm going to object to that because
13 I think that's a 2011 issue. It's not a 2014 issue.
14 How does that relate to the 2014 action?

15 MS. CUMMING: Let's go off the record.

16 (DISCUSSION OFF THE RECORD)

17 Q MS. CUMMING: Now, you had indicated that
18 benefits have not been extended to 1985 beneficiaries,
19 correct?

20 A Those who are '85 beneficiaries, not '86 beneficiaries,
21 people like Shelby Twinn who is a beneficiary in my
22 mind of the '85 Trust. I don't think anyone disputes
23 that.

24 Q In paragraph 29(h) of your affidavit, you indicate that
25 it has been to the detriment of the 1985 Trust
26 beneficiaries who you feel can be ascertained under the
27 1985 Trust rules. Is that correct?

1 A I've already answered that question about
2 ascertainment.

3 Q Okay, that's good. Thank you. So my follow-up
4 question to that, then, is do you feel that the 1985
5 Trust rules are discriminatory?

6 A The question that has yet to be put to the Court is
7 that question and whether or not it's void as a result.
8 We've been -- I've been waiting for that to be put to
9 the Court which was supposed to have been put to the
10 Court a long, long time ago. I understood that that
11 would happen back in 2011.

12 Q And you're talking about the 1103 action?

13 A That's where this question has arisen.

14 Q Okay. Thank you. You had indicated in paragraph 29(h)
15 that the settlor had intended that the 1985 Trust
16 beneficiaries be included and would benefit from the
17 trust, correct?

18 A Sorry, are you looking at (h)?

19 Q Yes.

20 A Yes, that's what I've said there, that the -- this has
21 been to the detriment of the '85 Trust beneficiaries
22 who can be ascertained under the 1985 Trust rules and
23 who the settlor expressly intended to include and
24 benefit. That's what I've said.

25 Q Was it also the intention of the settlor that once the
26 effects of the Bill C-31 litigation were known that the
27 two trusts would be merged?

1 A I'm not going to speak to that today, because I would
2 want to go back and check before I speak. I know that
3 that has been put forward quite recently and -- but I
4 do know that there were these two trusts, and they do
5 have two different definitions.

6 Q You said you needed to check before you speak on it.
7 What do you have to check?

8 A Well, I want to check because I know that -- I believe
9 Doris Bonora and others have been saying that that is
10 the case, Paul Bujold. So I want to check into that
11 and find out what they're relying on and then see where
12 that takes me.

13 MS. OSUALDINI: You don't have any records, though?

14 A You know, I don't recall and they're saying it, so what
15 are they basing it on. He was my husband. So let's
16 see what they're basing it on.

17 Q MS. CUMMING: Are you aware that the settlor
18 testified under oath that the two trusts were to be
19 merged?

20 A Yes. I was not in court when he testified. I stayed
21 out of the court.

22 Q Have you read his transcript?

23 A I may have read it a long, long time ago but not
24 recently.

25 Q You had indicated in paragraph 29(h) that you felt that
26 the 1985 Trust beneficiaries was much larger than the
27 Band membership group who comprise the 1986 Trust

1 beneficiaries. How do you come to that belief?

2 A Well, in this Band membership group, I'm referring to
3 the 44 -- the then 44 Band members. Although as I've
4 said before, the definition is not -- it doesn't read
5 all persons who are put on the Band list by Chief and
6 Council pursuant to the membership rules. That's not
7 how the definition reads.

8 But as I mentioned earlier, Paul Bujold had a list
9 that was over 130, and I certainly have -- I'm not
10 aware that all of those applications were properly
11 processed and if -- based on Deborah Serafinchon and
12 Shelby Twinn, William MacDonald, possibly his wife and
13 children -- I don't know -- Georgia Ward's daughter and
14 others. It could be many people, but that's the work
15 that should have been done, needs to be done. These
16 beneficiaries need to be ascertained.

17 Q Did you ever prepare a list of who you felt were
18 beneficiaries under the 1985 Trust?

19 A I recall we've been wrestling with this issue in 2004.
20 Tim Youdan was supposed to do what I think should have
21 been done a long time ago. Anybody that we knew of or
22 thought may be, we were to obviously identify.

23 Q So you had a list?

24 A I don't know if I have a list. It's been a long time.

25 Q Didn't you prepare a list which you then provided to
26 Paul Bujold?

27 A I may have. There may have been lists floating around

1 from our group efforts, from this exercise that I've
2 just described.

3 Q I'd like you to review your records and if you have any
4 such lists to produce them.

5 MS. OSUALDINI: I'll take it under advisement.

6 **UNDERTAKING NO. 43: IF MS. TWINN HAS ANY LISTS OF**
7 **BENEFICIARIES OF THE 1985 TRUST, PRODUCE SAME -**
8 **TAKEN UNDER ADVISEMENT.**

9 Q MS. CUMMING: In paragraph 29(i), you have stated
10 that Chief Roland Twinn and Band council are the
11 directors of Sawridge Resource Development. How do you
12 know that?

13 A Excuse me, which paragraph?

14 Q (I), the first sentence.

15 A I've been told that.

16 Q By whom?

17 A I believe at a Band meeting.

18 Q But you've never done a --

19 A Corporate search? I can't recall if I have or not. I
20 think I can rely on what is said, though, about this.

21 Q And you've said that the Band is the shareholder.

22 A That's my understanding.

23 Q And that its Chief and Council will appoint directors.
24 Do you have any documentation to show that that's the
25 case?

26 A I don't know.

27 Q Well, if you would review your records and if you have

1 such documentation to produce it.

2 MS. OSUALDINI: That's fine.

3 **UNDERTAKING NO. 44: PROVIDE ANY DOCUMENTATION**
4 **THAT INDICATES THE CHIEF AND COUNCIL WILL APPOINT**
5 **THE DIRECTORS FOR SAWRIDGE RESOURCE DEVELOPMENT.**

6 Q MS. CUMMING: And if you have any documentation
7 indicating that the Chief and Band council are the
8 directors of Sawridge Resource Development, then I'd
9 like you to produce those records as well.

10 MS. OSUALDINI: That's fine.

11 **UNDERTAKING NO. 45: PROVIDE ANY DOCUMENTATION**
12 **THAT INDICATES THE CHIEF AND BAND COUNCIL ARE THE**
13 **DIRECTORS OF SAWRIDGE RESOURCE DEVELOPMENT.**

14 Q MS. CUMMING: I'd also like you to produce any
15 document you have in your possession showing that Chief
16 Roland Twinn is the CEO of Sawridge Resource
17 Development.

18 MS. OSUALDINI: That's fine.

19 **UNDERTAKING NO. 46: PROVIDE ANY DOCUMENT IN**
20 **MS. TWINN'S POSSESSION THAT INDICATES CHIEF ROLAND**
21 **TWINN IS THE CEO OF SAWRIDGE RESOURCE DEVELOPMENT.**

22 Q MS. CUMMING: Do you know how many Band members
23 work for Sawridge Resource Development?

24 A Not off the top of my head.

25 Q Do you know whether Sawridge Resource Development
26 employs managers who are in charge of hiring and firing
27 of staff?

1 A I understand Roland has a friend. I don't remember his
2 name. I don't know his role. I do know that there was
3 conflict between him and Irene Twinn, Roland's sister.
4 Q And in fact, Roland's sister Irene is no longer an
5 employee of Sawridge Resource Development. Is that
6 correct?
7 A That may be true.
8 Q So going back to my earlier question, do you know
9 whether Sawridge Resource Development employs managers
10 who are in charge of the hiring and firing of staff?
11 A I believe there's one individual who's Roland's friend.
12 I forget his name.
13 Q Do you have any information to suggest that this
14 individual who's Roland's friend is influenced by
15 Roland in terms of who should be hired and fired? Do
16 you have any such information?
17 A I would assume that his employment if -- turns on
18 Roland.
19 Q So you're making assumptions? You have no direct
20 information or knowledge?
21 A From what I hear, what has been said at Band meetings.
22 Roland was described as the CEO. CEOs hire and fire.
23 Q So you think that every CEO of a business is in charge
24 of hiring and firing the staff?
25 A Depends on the size. I wouldn't say that of John
26 MacNutt. But SRD, I don't think it's that big an
27 operation. I think it's -- I don't think it's been

1 financially successful, but I could be wrong about
2 that. I recently found out that the Band has loaned
3 that SRD money.

4 Q And this is something that you just heard through the
5 grapevine? You don't have any details on that at all?

6 A I've heard it from someone who was present when they
7 rapidly went -- as it was described, rapidly went
8 through an audit.

9 Q So if there was any such loan, you don't have any
10 documentation in terms of the circumstances surrounding
11 the loan?

12 A I don't have any documentation about that loan.

13 Q So it may well be a legitimate business dealing,
14 correct?

15 A I don't know.

16 Q Is it fair to say that you do not like Chief Roland
17 Twinn?

18 A It's fair --

19 MS. OSUALDINI: Objection.

20 MS. CUMMING: Well, she gave the answer.

21 A No, no. I got cut off.

22 Q MS. CUMMING: You don't want to answer that
23 question?

24 MS. OSUALDINI: Well, I just objected.

25 A She objected and I stopped what I was going to say.

26 Q MS. CUMMING: You had indicated in paragraph
27 29(i) that the Chief influences Band membership. And

1 you would agree with me, I take it, that the Chief and
2 Council are the first step in an application for
3 membership?

4 A Up until the disbanding of the membership committee
5 which he was the Chair of for a period of time. I
6 don't know what their process is now when an
7 application comes in.

8 Q Well, you've got the membership rules that are part of
9 the Sawridge First Nation constitution, correct?

10 A Yes, there are membership rules.

11 Q And the membership rules indicate that, in the first
12 instance, the application goes to Chief and Council?

13 A I don't have those rules in front of me. I'm just
14 going by what had been the practice, the process, and I
15 indicated there was a membership committee that he was
16 the Chair of.

17 Q Well, given your understanding of the practice, isn't
18 it part of the practice that applications go to the
19 Chief and Council?

20 A Correct.

21 Q And the Chief is just one of three councillors?

22 A The Chief is one of three.

23 Q You had indicated in paragraph 29(i) that the Chief
24 influences employment. Are you suggesting that he
25 influences employment because he's the CEO of Sawridge
26 Resource Development?

27 A He has influenced it in that capacity, yes.

1 Q Can you give me an example? Are you referring to the
2 individual you referred to as his friend?

3 A There are Band members who are hired and given
4 opportunities, and then there's Band members who are
5 not given any opportunities or given opportunities.

6 Q Such as whom?

7 A Such as Samuel Twinn.

8 Q Anyone else?

9 A I hear different things.

10 Q Samuel Twinn is your son?

11 A Is my son.

12 Q Any other names?

13 A I know there's been other names, but I just don't
14 recall at the moment.

15 Q Well, if you do recall other names, if you would advise
16 me, please.

17 MS. OSUALDINI: We'll take that under advisement.

18 **UNDERTAKING NO. 47: IF MS. TWINN RECALLS ANY**
19 **OTHER NAMES OF BAND MEMBERS WHO ARE NOT GIVEN**
20 **OPPORTUNITIES, ADVISE OF SAME - TAKEN UNDER**
21 **ADVISEMENT.**

22 Q MS. CUMMING: In paragraph 29(i), you also
23 indicated that the Chief influences beneficiary status.
24 How does the Chief influence beneficiary status?

25 A Isn't that obvious? '86 Trust, Band list. How is the
26 Band list created? Who creates it?

27 Q Well, the Band list is created through a membership

1 process, correct?

2 A Paul Bujold receives a Band list from the Band. That
3 has now become the beneficiaries of the '86 Trust.

4 Q And you do not feel that Band membership is synonymous
5 with beneficiary status under the '86 Trust?

6 A Sorry?

7 Q Do you feel that Band membership is synonymous with
8 beneficiary status under the 1986 Trust?

9 MS. OSUALDINI: I think we've already gone through
10 this.

11 A It's persons who are entitled or on the list. And
12 again, I've gone through this in terms of the
13 definition in the '86 deed.

14 Q MS. CUMMING: When you say that the Chief
15 influences Band membership employment and beneficiary
16 status, are you suggesting that he improperly
17 influences such things?

18 A In my opinion, the way in which Gail O'Connell's appeal
19 was handled was horrifying. He hired, through the Band
20 office, Rarihokwats. Rarihokwats wears multiple hats,
21 gets multiple work through Roland Twinn. He chaired
22 that appeal. And as I said earlier, he also prepared
23 what I thought was an unfair and distorted genealogy to
24 suggest that Gail O'Connell's grandmother, Elizabeth
25 Ward, did not belong to Sawridge.

26 And I heard people after they rejected or during
27 the process of rejecting Gail O'Connell's appeal say,

1 She doesn't belong here; she belongs to Driftpile. And
2 that's where the genealogy -- that was the intention --
3 purpose of the genealogy. Rarihokwats should have
4 disclosed that he had authored that document. I only
5 found out after when I asked Mike McKinney, Who
6 authored this document? Why wasn't the genealogy done
7 in collaboration with the Ward family in an honest and
8 transparent way?

9 Q So going back to my question, then --

10 A I also saw how the mother was treated at that hearing
11 by Rarihokwats and others who worked for Roland.

12 Q So is it your position that the Chief improperly
13 influences Band membership --

14 A You can draw your conclusions --

15 Q -- employment, and beneficiary status?

16 A -- from what I have just described. I have concerns
17 about that.

18 Q Ms. Twinn. I don't have to draw conclusions. I can
19 ask a question and you're to give me an answer. So do
20 you feel that the Chief improperly influences Band
21 membership, employment, and beneficiary status? Yes or
22 no?

23 A Yes.

24 MS. CUMMING: Let's break for lunch.

25 (QUESTIONING ADJOURNED AT 11:55 A.M.)

26 (QUESTIONING RESUMED AT 1:05 P.M.)

27 Q MS. CUMMING: Ms. Twinn, you acknowledge you're

1 still under oath?

2 A Yes.

3 Q Just going back to Sawridge Resource Development, am I
4 correct that that business is not a trust asset?

5 A No.

6 Q Are you agreeing with me? It is not a trust asset?

7 A I agree with you.

8 Q Thank you. Is it your position in this litigation that
9 the Chief of the Sawridge First Nation, whether it's
10 Roland Twinn or anyone else, should not be a trustee of
11 the trusts?

12 A Yes, that's my position.

13 Q Cameron Shirt is your son?

14 A Yes.

15 Q And he is a member of the Saddle Lake First Nation?

16 A Yes.

17 Q Did you ask Paul Bujold to put Cameron Shirt's name on
18 the 1985 beneficiary list?

19 A I asked him to put him because he was being excluded
20 from that potential list, and there is a basis for it
21 which is custom adoption, and I've had those
22 discussions with Paul Bujold. Paul Bujold was, as I
23 recall, extremely reluctant, and I think that's one of
24 the times where I got yelled at. But he was, in my
25 opinion, definitely within that potential. And
26 given -- and of course, that's based on a customary
27 adoption.

- 1 Q But you had asked the administrator to put your son's
2 name on the beneficiary list?
- 3 A I asked him to ensure that he was included for that
4 consideration when there would be a proper process to
5 ascertain who is in fact a beneficiary of the '85
6 Trust.
- 7 Q All right. Tracy Poitras-Collins, I understand she's
8 an elected Band councillor.
- 9 A Correct.
- 10 Q So she was elected by the electors at a general
11 election?
- 12 A She was elected by the off-Reserve electors in the
13 February 17th, 2015 election.
- 14 Q Are you aware as to whether any Twinn family members
15 voted for Tracy?
- 16 A I don't know how people voted.
- 17 Q Nobody told you how they voted?
- 18 A I don't know how they voted, and I can't recall what
19 the -- each candidate for the -- elected by the
20 nonresident electors. I can't remember right now. I'd
21 have to go back and check the candidates and what the
22 vote outcome was. I don't remember off the top of my
23 head.
- 24 Q Just going back to an earlier question. You had at the
25 August, 2014 trustee meeting put forth as a potential
26 trustee Victor Leginsky.
- 27 A Correct.

- 1 Q Did you ever ask Mr. Leginsky if he was prepared to be
2 a trustee?
- 3 A I believe I would have, and I believe I would have done
4 the same with Judith Sayers.
- 5 Q Well, I'm sure you can appreciate that would have isn't
6 necessarily I did. Do you recall actually speaking to
7 Mr. Leginsky and asking him if he was prepared to
8 become a trustee of the Sawridge trusts?
- 9 A I believe there was communication with him. I can't
10 recall how that -- what the form of that communication.
11 And I recall there was the same with Judith, and I
12 can't recall if it was telephone or what.
- 13 Q And you, I think, had undertook to check your records
14 and let me know for both of them.
- 15 A Right. I did ask, you know, for -- I was searching for
16 names of persons that I thought would make a good
17 trustee.
- 18 Q Before you put Mr. Leginsky's name forward to the
19 trustees, had you canvassed any of the beneficiaries as
20 to whether they were agreeable to an independent
21 trustee becoming a trustee of the two trusts?
- 22 A Did I canvass all the beneficiaries?
- 23 Q All or any?
- 24 A I would think that there was some conversations around
25 the independence piece.
- 26 Q Who did you speak to in terms of beneficiaries?
- 27 A I would have spoken to my children for sure.

1 Q Anyone other than your children?

2 A I don't recall. It's possible but I don't recall at
3 this moment.

4 Q Have you been advised by any of the trustees that it's
5 their understanding that the beneficiaries do not want
6 an independent trustee?

7 A I haven't heard that from beneficiaries. I've heard
8 that from Roland Twinn at meetings.

9 Q Has --

10 A I mean at that August, 2014.

11 Q Has Bertha told you that she is not in favour of the
12 appointment of an independent trustee?

13 A I think that was clear from the August, 2014 because of
14 their decision, because they refused to consider Judith
15 or Victor.

16 Q All right. So neither Roland nor Bertha nor Justin
17 were agreeable to the appointment of an independent
18 trustee?

19 A Correct. They chose Peggy Ward.

20 Q You had earlier today spoken to me about Michelle Ward,
21 and I just wanted to clarify. I had asked you whether
22 you had made any effort to contact Michelle Ward, and I
23 just want to make sure I was correct that you had
24 indicated that you were denied contact information by
25 her mother, Georgia?

26 A No, for her mother, Georgia Ward.

27 Q So you wanted to contact Georgia Ward, and you were

1 denied contact information?

2 A Georgia Ward is a Band member. I have no -- I don't
3 know how to reach her. And I believe Paul Bujold has
4 her contact information, but as you know, there's been
5 all these motions to deprive me of accessing
6 information. So I wouldn't know how to go about
7 looking for Michelle. I don't even know what name she
8 goes by.

9 Q Do you know where Georgia lives?

10 A Georgia?

11 Q She lives on the Reserve, doesn't she?

12 A No.

13 Q She doesn't?

14 A No. She's not lived in the community, to my knowledge,
15 for as long as I've been in the community which was
16 1984.

17 Q Did you ask the administrator for contact information
18 for Michelle Ward or Georgia Ward?

19 A I'm not sure because that -- the exclusion of
20 information from me started some time ago. So I don't
21 know if I even tried, because the answer would be no.

22 Q But you don't know if you even tried?

23 A I don't recall. I really don't recall.

24 Q In paragraph 29(j) of your affidavit, you've indicated
25 that you are afraid that if you speak out at trustee
26 meetings you'll be faced with reprisal. Isn't it true
27 that you frequently dominate the conversation during

1 trustee meetings?

2 A I don't know that I dominate. You know, just because I

3 speak doesn't mean that I don't have a fear of reprisal

4 for raising topics that people don't want to address.

5 Q Have you raised your voice or yelled at the Chair?

6 A I think we've gone through this already.

7 Q You have suggested that the Chief threatened to take

8 your house away. When did that occur?

9 A I believe that was in around 2008.

10 Q Where did that threat occur?

11 A It was in Slave Lake. My children were present -- or

12 some of them. I can't remember if all of them were

13 there.

14 Q But where in Slave Lake?

15 A It may have been in the Band office, but I'd have to

16 ask my children if they remember. I think it was.

17 Q I'd like to know what was said. How did this

18 conversation come about?

19 A Well, you would have to talk to Chief Roland Twinn.

20 Q Well, no. You had said that Chief Roland Twinn

21 threatened to take your home on the Band Reserve away

22 from you, and I want to know --

23 A Sorry, I must have misunderstood your question, then.

24 Can you repeat it?

25 Q In paragraph 29(j), you indicate that Chief Roland

26 Twinn threatened to take your home on the Band Reserve

27 away from you. So I want to know what happened. What

1 was said?

2 A My recollection was that Justin and Winona Twin were
3 there and possibly Mike McKinney, myself, my children,
4 and I'm not sure who else. And I think it was in the
5 Band office. And I was being grilled about my -- how
6 much time I was spending in my home and that I was at
7 risk of losing my home.

8 And of course, in the legal regime that's been
9 constructed now, if you want to come and visit me for
10 more than a week, I think you have to get a pass, a
11 permit. Even if I've put a lot of money into my home
12 in terms of improvements, I have no security. And
13 Chief and Council appear to have constructed a legal
14 regime or framework that gives them all the power over
15 the housing.

16 Q What regime are you referring to?

17 A A series of policies, and I don't know if there's
18 actual laws as well. I've stopped going to Band
19 assembly meetings, so I'm not keeping up with --

20 Q Do you have access to these policies or laws that
21 you're referring to?

22 A I may have. I may have some of that in my records. I
23 don't know.

24 Q I'd like you to review your records and produce any
25 such policies or laws that you're referring to.

26 MS. OSUALDINI: I'll take that under advisement.

27 **UNDERTAKING NO. 48: PRODUCE ANY DOCUMENTS**

1 MS. TWINN IS REFERRING TO WHEN SHE MENTIONED A
2 LEGAL REGIME OR FRAMEWORK THAT GIVES THE CHIEF AND
3 COUNCIL ALL THE POWER OVER THE RESERVE HOUSING -
4 TAKEN UNDER ADVISEMENT.

5 Q MS. CUMMING: You say that you were grilled about
6 how much time you spent in your home on the Reserve.
7 Who was grilling you? Who was asking these questions?

8 A Roland for sure, Winona. I think Justin was fairly
9 silent. He's usually fairly silent.

10 Q Well, did Roland say to you, We're going to take your
11 home away?

12 A It was an implied. I definitely took it -- the
13 comments as a very strong implied threat that my home
14 could well be taken from me.

15 Q But he never said that to you?

16 A Not maybe in those exact words because I don't remember
17 the exact words, but I think we all left that feeling
18 very insecure and very threatened, and it wasn't just
19 me. It was those of my children who were present.

20 Q But how did this meeting come about?

21 A They called it.

22 Q Had they indicated that it was called because the Band
23 members who lived on the Reserve were indicating that
24 you weren't living in the home?

25 A I wasn't told. I don't recall being told that.

26 Q You said that that incident was only one example of
27 many reprisals you have experienced from Chief Roland

1 Twinn. What other reprisals have you experienced from
2 him?

3 A Well, if you're a nonresident member under the
4 membership rules as they are, one of the categories of
5 people that are discriminated against are the
6 nonresident members, because Chief and Council can
7 revoke their membership and there's no criteria.

8 Q So how is that an example of a reprisal?

9 A It's the -- well, if your home is being threatened,
10 your security is being threatened to your home and then
11 that makes you -- you're no longer resident on the
12 Reserve. The next thing is that your Band membership
13 can be arbitrarily revoked by Chief and Council under
14 the current membership rules, and I did have a threat
15 about my membership.

16 Q By Roland Twinn?

17 A By Bertha L'Hirondelle at a meeting. She looked
18 directly at me and said, You know, we can start kicking
19 members out; we have the power to do that. Words to
20 that effect.

21 Q Did you ever indicate to Bertha that trustees could be
22 kicked out?

23 A Sorry?

24 Q Did you ever indicate to Bertha that trustees could be
25 kicked out?

26 A Trustees could be kicked out?

27 Q Yes, that trustees could be removed?

1 A The deed is the deed.

2 Q So you never said that to her?

3 A I have absolutely no recollection of saying that to

4 her. Why would I say that to her?

5 Q Your home on the Reserve, are there any expenses

6 associated with that home that are paid for by the

7 Band?

8 A Yes. And I have also -- I myself and my late husband

9 put a lot of improvements into our home which is a home

10 for ourselves, our children, and hopefully our

11 grandchildren.

12 Q So going back to these reprisals that you have

13 experienced from Chief Twinn, so far all you've told me

14 about is your impression that he was threatening to

15 take your home away from you. Then you gave me an

16 example of Bertha. Anything else in terms of Chief

17 Twinn?

18 A Yeah, there's been lots of comments made to me --

19 Q Well, I'd like to know --

20 A -- by him.

21 Q -- these many reprisals.

22 A I recall a telephone call with David Ward and Roland

23 threatening to kick me out because I had married into

24 the Band. I recall a very strong incident involving a

25 lawyer's account. And when I raised it in front of my

26 employees at the time, he made a very threatening

27 comment which was to the effect that I would be the

1 fired lawyer. There's just been lots of experiences
2 that I've had.

3 Q This call with David Ward, was Roland Twinn also on
4 this call?

5 A Yes, he was.

6 Q What was the purpose of the phone call?

7 A Oh, I don't recall now. It's a long time ago.

8 Q So you're indicating that during the course of that
9 phone conversation Roland threatened to kick you out
10 because you married in?

11 A Yeah. And he made it very clear to me that he wanted
12 me out as a trustee. As I said earlier, he offered to
13 resign if I resigned. And when I said, Okay, let's --
14 I'm prepared to resign if you resign, he then resiled
15 from the offer.

16 Q Well, you want Roland out as a trustee as well too,
17 don't you?

18 A I want a good functioning Board that can keep pace with
19 the companies and the scope scale and magnitude of the
20 investments. And there's also an aging member of the
21 Board. Bertha will be turning 85, I think, in March.
22 She has eyesight issues because she will say at
23 meetings that she can't read documents.

24 Q Do you want Roland Twinn removed as a trustee?

25 A I want to see a good functioning Board.

26 Q That's not my question. Do you want Roland Twinn
27 removed as a trustee?

1 A At this point, I think that would be appropriate for
2 him to remove himself given all of the circumstances.

3 Q And do you feel it would be appropriate for you to
4 remove yourself as a trustee?

5 A I have said --

6 MS. OSUALDINI: Objection.

7 MS. CUMMING: Why? Why are you objecting to that
8 for?

9 MS. OSUALDINI: I don't see how that's relevant.

10 MS. CUMMING: It's clearly relevant.

11 MS. OSUALDINI: How?

12 MS. CUMMING: She's talked before about
13 resigning, not resigning. How is that not relevant?

14 MS. OSUALDINI: I just don't see how her feelings
15 on that are relevant.

16 MS. CUMMING: So I can ask her whether she thinks
17 Roland should be removed as a trustee, but I can't ask
18 her whether she thinks she should be removed as a
19 trustee. Is that your position?

20 MS. OSUALDINI: I was considering objecting to that
21 too but I didn't.

22 Q MS. CUMMING: In paragraph 29(k), you indicated
23 that you objected to the trust paying the Band's legal
24 fees in relation to the Band's participation in the
25 matter before Justice Thomas. Is that correct?

26 A Correct.

27 Q Is it correct that the majority of the trustees voted

1 in favour of authorizing payment of the Band's legal
2 fees in relation to the Band's participation in the
3 matter before Justice Thomas?

4 A The payment of over \$260,000 to Parlee has, I believe,
5 been authorized by a majority of the trustees. And I'm
6 sure that that started -- I'm not sure in time when
7 that first was authorized but it's been continued.
8 Payments have continued.

9 Q Isn't it true that the Sawridge First Nation became
10 involved because the office of the Public Trustee
11 brought an application against the Sawridge First
12 Nation?

13 A I don't know that I accept how you've phrased what the
14 office of the Public Trustee has done. The office of
15 the Public Trustee was given a mandate by Justice
16 Thomas in June, 2012, as I understood, to investigate
17 and report back to the Court on whether the Band rules
18 and decision-making is fair, reasonable, timely,
19 unbiased due process, and charter-compliant. So I
20 don't know the ins and outs of what's occurred. As you
21 know, Paul Bujold and Brian Heidecker who's here today
22 have really led that litigation.

23 Q Now, you referred to what the Public Trustee was to do
24 in the litigation and that was based upon Justice
25 Thomas's decision, correct?

26 A Well, I'm going back to the June, 2012 decision.

27 Q Yes, Sawridge No. 1 as it's been referred to. Is that

1 correct?

2 A Sawridge No. 1, correct.

3 Q But you're not prepared to acknowledge that -- or are
4 you prepared to acknowledge that the December, 2015
5 decision of Justice Thomas redirected and restricted
6 what the Public Trustee's role was in that litigation?

7 MS. OSUALDINI: I think we've been through that.
8 My client is not interpreting the Sawridge No. 3
9 decision.

10 MS. CUMMING: But she can interpret the Sawridge
11 No. 1 decision?

12 MS. OSUALDINI: I believe she is. She's not
13 answering questions about interpreting it. We can all
14 read it. It says what it says.

15 Q MS. CUMMING: Are you aware of the fact that the
16 Sawridge First Nation did not want to be involved in
17 the litigation?

18 MS. OSUALDINI: Can you just rephrase that
19 question, because you're assuming that it's a fact that
20 they did not want to be involved in the litigation.

21 MS. CUMMING: Okay.

22 MS. OSUALDINI: Maybe just phrase it as any
23 information that my client has.

24 Q MS. CUMMING: To your knowledge, has the Sawridge
25 First Nation taken the position that it does not want
26 to be involved in this litigation?

27 A Well, I know that it's -- the Sawridge First Nation is

1 not a party, but I also saw August 24th Sawridge First
2 Nation legal counsel, Ed Molstad, present. He does
3 speak to -- by using the Stoney case to suggest that
4 the membership rules and process are fine. So as far
5 as the Sawridge First Nation wanting to or not wanting
6 to, I can't speak to that. I can tell you what I have
7 seen and heard.

8 Q Are you aware that the Public Trustee brought an
9 application compelling the Sawridge First Nation to
10 produce a number of documents?

11 A I'm aware of a production document in general terms.
12 I'm not at this point aware of the details of that
13 production request.

14 Q Is it your position that any legal fees that the
15 Sawridge First Nation has incurred in dealing with this
16 litigation should not be paid for by the trusts?

17 A I would have liked to have seen a collaborative
18 approach taken, as I said in my August, 2012 proposal,
19 to work cooperatively with the Public Trustee. What
20 are your concerns? If there's things that need repair,
21 be open-minded; let's do it. And that was the approach
22 that was to be taken. That was based on -- I mean, it
23 was reflected in legal advice that acknowledged that
24 there were problems with the Sawridge membership rules
25 and process, and hopefully we would have avoided this.

26 MS. CUMMING: Madam Reporter, can you go back to
27 my last question, please, and indicate the question

1 that was asked.

2 THE COURT REPORTER: (By Reading)

3 "Q Is it your position that any legal fees that
4 the Sawridge First Nation has incurred in
5 dealing with this litigation should not be
6 paid for by the trusts?"

7 Q MS. CUMMING: Yes or no?

8 A I don't think that the payment of the fees in the
9 amount of these fees is appropriate for the trusts to
10 be paying.

11 Q Well, let's divide that into two questions. I don't
12 want to talk about the amount of the fees. I want to
13 know is it your position that the legal fees incurred
14 by the Sawridge First Nation in this litigation should
15 not be paid for from the trusts? Is that your
16 position?

17 A The fees are inappropriate.

18 Q That's not what I asked you.

19 A Payment of those fees in these circumstances is not
20 appropriate.

21 Q Are you talking about the amount of the fees or simply
22 that payment was approved by the trustees of any
23 amount?

24 A The Band has a well-paid in-house lawyer, and I don't
25 understand why an outside firm has been required.
26 There's many concerns that I have with how this has
27 been conducted. Unfortunately, we cannot, as a trustee

1 group, talk about these things. It's very, very
2 difficult.

3 Q Would you agree with me that the trusts allow for
4 expenses of or in connection with the trusts to be paid
5 from the trusts?

6 A Would you like to show me the deed, and I'm happy to
7 read it.

8 Q Sure. It's paragraph 9.

9 A Thank you. Yes, I've read that. It says,
10 Administration costs and expenses of or in connection
11 with the trust shall be paid from the trust fund
12 including without limiting the generality of the
13 foregoing. Reasonable reimbursement to the trustees or
14 any of them for costs and reasonable fees for their
15 services as trustees incurred in the administration of
16 the trust and for taxes of any nature whatsoever which
17 may be levied or assessed by federal, provincial, or
18 other governmental authority upon or in respect of the
19 income or capital of the trust fund.

20 Q So would you agree with me that a majority of the
21 trustees can authorize payment of expenses incurred in
22 connection with the trusts?

23 A I don't dispute that.

24 Q Thank you. In paragraph 29(k) of your affidavit, you
25 refer to the Band's participation in the matter before
26 Justice Thomas regarding Band membership. But isn't
27 the matter before Justice Thomas regarding the

1 definition of beneficiary in the 1985 Trust Deed?

2 A The trustees want to vary the definition to substitute
3 by membership.

4 Q The definition of beneficiary.

5 A And there's been many statements made to the Court
6 about that being a good system by Doris Bonora and I
7 believe also by Ed Molstad from Parlee.

8 Q But that's the matter before Justice Thomas?

9 A The variation? The definition?

10 Q Yes.

11 A That is the matter in the 2011 action.

12 Q In fact, the application before Justice Thomas was
13 approved by you at a trustee meeting, correct, the
14 commencement of the application?

15 A The application was to be in certain steps. The first
16 was to put the definition to the Court because we, the
17 trustees, don't declare the law. We apply the law, as
18 I understand, and put that definition to the Court.
19 That is yet to be done. It's over five years now.

20 Q In paragraph 29(m) of your affidavit, you indicate that
21 the Chief and Bertha had advised at a trustee meeting
22 that some records had been burned.

23 A Yes.

24 Q Were you told that those were simply some bar chits?

25 A It could have been -- I could have been told that it
26 was just simply bar chits. I don't know what exactly
27 was burned. I never was given a list before the

1 burning. I can't speak to that.

2 Q Well, if it was bar chits, I take it that wouldn't be a
3 concern to you?

4 A I don't think it would be, but I don't know what was
5 burned and why it was burned, particularly when we're
6 trying to get our records in order and complete.

7 Q Speaking of your records, do you hold some records in a
8 storage container in Camrose?

9 A Yes, I do.

10 Q Have you produced those records?

11 A Produced those records?

12 MS. OSUALDINI: Can you explain what you mean by
13 that?

14 Q MS. CUMMING: You had indicated that efforts had
15 been made to obtain records in paragraph (m).

16 A Yes.

17 Q And I'm wondering if you had produced the records
18 contained in your Camrose storage container.

19 MS. OSUALDINI: Can you first establish an
20 obligation as to why she should be producing these
21 records? Was a request made of her or where is this
22 coming from?

23 Q MS. CUMMING: Well, a request was made for you to
24 produce those records, correct?

25 A I supported Paul Bujold in trying to ensure that all
26 the records relating to the trusts and the companies
27 were properly and orderly transferred. And as I say,

1 in paragraph (m), those were under the control of Chief
2 and Council and their lawyer, Mike McKinney.

3 Q I'm talking about the storage container. You have
4 records --

5 A The storage container is not in relation to these
6 records.

7 Q So the records that are in the Camrose storage
8 container, are you telling me today that none of them
9 have any relevance to the trusts?

10 MS. OSUALDINI: I first want to establish what the
11 request of her was to produce them. I just don't
12 understand where the obligation was to go through
13 these.

14 MS. CUMMING: Well, your client swears in
15 paragraph 29(m) that it took years to gather records
16 relating to the trust assets, suggesting that somebody
17 was remiss in gathering those records. So I'm trying
18 to establish whether there were any such records in the
19 Camrose storage container. Because if there were, they
20 should be produced.

21 A Everything I had, I gave to Paul. And I helped Paul a
22 lot in order to -- this was one of his first jobs when
23 he came in. There was a memo, I believe, certainly
24 discussions between Mike McKinney and John MacNutt that
25 Mike McKinney was to gather up and turn over all of the
26 records to John MacNutt who was brought in in 2003 when
27 the Band's management contract was terminated.

1 It turns out that that transition I don't believe
2 was completed. And I recall Paul Bujold going to Slave
3 Lake and going through documents and, from various ways
4 and means, building up the record base. Is it
5 complete? I don't believe it's complete. I don't
6 think Paul Bujold believes it's complete either.

7 Q Did you indicate to anyone that you had trust records
8 in your Camrose storage container?

9 A You are saying I have trust records and that is a
10 really -- I don't know where you come from in saying
11 that.

12 Q So you don't have any trust records in the container?

13 A Everything I have, as I said before, I have provided.

14 Q So you don't have any trust records in the storage
15 container?

16 A I may have some of my notes and things from the trusts,
17 but I don't have "the trust records from the
18 operational control". That was done by the Band and
19 the Chief and Council and their lawyer, Mike McKinney.
20 All of that was in their control. I can tell you --
21 well, never mind.

22 Q Can you tell me what point you were trying to make with
23 respect to paragraph 29(m) of your affidavit?

24 A It speaks for itself.

25 Q That many efforts have been made to gather records?

26 A It speaks for itself.

27 Q Are you aware that efforts were made to gather records

1 from a number of sources?

2 A I believe that's true.

3 Q So from the First Nations?

4 A Well, particularly because they were the record-keeper.

5 Q From accountants?

6 A I would expect and I would expect from lawyers, and I
7 myself went to the courthouse and ran searches trying
8 to find things.

9 Q And these were all records that related to the trusts'
10 assets?

11 A To the assets, yes. There was -- there's many, many
12 actions at the Court of Queen's Bench in Alberta
13 involving various of the corporate entities. There's
14 sealed affidavits of Mike McKinney.

15 Q And that is relevant for what reason?

16 A They're just records in relation to these companies,
17 where they've been, what's happened.

18 Q In paragraph 29(n) of your affidavit, you speak of an
19 office and community centre complex.

20 A Yes.

21 Q My understanding is that that proposal was put forth by
22 the Chair of the trust, Brian Heidecker. Is that
23 correct?

24 A It may have been put forward by the Chair who's not a
25 trustee.

26 Q Exactly. So it wasn't a trustee that made that
27 suggestion. It was the Chair?

1 A I believe that he did it because some of those trustees
2 wanted that, were in favour of it, and he did it for
3 them.

4 Q What information do you have that it was the trustees
5 or some of the trustees that were pushing forth this
6 community centre complex as opposed to being a proposal
7 put forth by the Chair on his own?

8 A Because I have ears and eyes and I watch and I listen,
9 and it was very obvious that Roland Twinn wanted this
10 new Band office building or community centre. It was
11 going to be also a Band office. And Brian Heidecker, I
12 think, was acting at their behest.

13 Q If Brian Heidecker told you that the community centre
14 complex project was his idea, you would say he was
15 lying?

16 A I didn't say that it was his idea. I'm saying that it
17 had -- it was something that Roland Twinn vigorously
18 wanted. He had drawings. He had retained an
19 architect. The Band had put money into this, and it
20 needed the money to make it happen.

21 Q I'm providing you with a copy of the September 17, 2013
22 trustee minutes.

23 MS. OSUALDINI: Which page?

24 Q MS. CUMMING: 6.2.

25 A Scenarios plan. Yes, I've read 6.2, the one little
26 paragraph.

27 Q And it says, Brian, who is the Chair, raised the notion

1 of building a community centre for the Sawridge First
2 Nation. It's your position that that was actually a
3 proposal that Roland Twinn wanted as opposed to Brian
4 Heidecker putting forward?

5 A I'm saying that they both wanted it. And I'm saying
6 that the Band discussed this, and I don't know when,
7 about getting a new building. And it's my belief that
8 the Band hired an architect and was pretty deeply into
9 this.

10 Q A community centre for the Sawridge First Nation, that
11 would be for use of the community, for the people of
12 the community, correct?

13 A Yes.

14 Q It wasn't --

15 A It was called a community centre, yes.

16 Q It wasn't for Roland Twinn to use. It was for all
17 community to use, correct?

18 A It would house the Band office. It would give them new
19 space, yes.

20 Q But it would also be open to the community as a
21 community centre, correct?

22 A That's what was being discussed, yes.

23 MS. CUMMING: If we could mark the minutes as the
24 next exhibit, please.

25 **EXHIBIT NO. Y FOR IDENTIFICATION: TRUSTEE MEETING**
26 **MINUTES OF SEPTEMBER 17, 2013.**

27 Q MS. CUMMING: Am I correct that the proposal to

1 conduct a community centre was not passed by a majority
2 of the trustees?

3 A Excuse me?

4 Q Am I correct that the proposal for the community centre
5 complex was not passed by a majority of the trustees?
6 They didn't vote in favour of that initiative?

7 A Well, I recall that there was a discussion that \$1.5
8 million would go towards it through the companies.

9 Q Do you know whether that happened?

10 A I don't believe that happened because trying times came
11 and other things intervened.

12 Q During the course of trustee meetings, are various
13 proposals put forth in terms of programs to offer to
14 the beneficiaries or discussions about various
15 programs?

16 A Well, we always have a discussion about our existing
17 programs when we're reviewing, for example, the
18 financials. There's usually questions in relation to
19 various of the programs.

20 Q But in the course of trustee meetings, are other
21 potential programs discussed, new initiatives?

22 A Sometimes.

23 Q Have you put forth any initiatives to the trustees?

24 A I have in the past, yes.

25 Q Have you benefitted from any of those initiatives?

26 A What do you mean?

27 Q Well, have you as a beneficiary benefitted from those

- 1 initiatives?
- 2 A Well, there's programs and some of them I benefit from.
- 3 Health care plan.
- 4 Q Life insurance?
- 5 A Health care plan, personal development plan.
- 6 Q Life insurance?
- 7 A Life insurance.
- 8 Q In paragraph 33 of your affidavit, you indicate that,
- 9 As members of council, individuals are called to act in
- 10 the best interest in the community. I'm presuming that
- 11 you meant to say in the best interests of the
- 12 community?
- 13 A Sorry, can you ask your question? Did I intend to --
- 14 MS. OSUALDINI: Should that say "of"?
- 15 A It probably would improve the grammar.
- 16 Q MS. CUMMING: When you refer to the community,
- 17 you're referring to individuals, correct, because
- 18 individuals make up the community?
- 19 A It can be individuals. It can be groups within or that
- 20 comprise the Band membership population.
- 21 Q Right, people. The community is people, right?
- 22 A Yes, the individuals are -- the Band is comprised of
- 23 individual members, correct. They're people. We're
- 24 people.
- 25 Q The elected officials are obviously elected by the
- 26 electors, right?
- 27 A Right.

- 1 Q Electors are members of the community?
- 2 A Members of the Band. Some live in the community; some
3 do not.
- 4 Q But they're part of the Sawridge community?
- 5 A Define community.
- 6 Q Well, let's define them as electors.
- 7 A Okay.
- 8 Q Are you suggesting that elected officials aren't
9 concerned about the community?
- 10 A What I'm saying is that elected officials have a
11 different agenda, political agenda that is -- I think
12 can be -- is different than that of trustees. That is
13 why, for example, many of the modern First Nation trust
14 deeds specifically say that if you are an elected
15 official, employee, or agent of the Band, you cannot be
16 a trustee. And there's a reason why people have
17 settled on that.
- 18 Q Who are the present members of the Band council?
- 19 A Darcy Twin, Tracy Poitras-Collins, and Roland Twinn is
20 the Chief.
- 21 Q Do you suggest that Darcy Twin and Tracy
22 Poitras-Collins are in any way acting in a biased
23 manner or making decisions due to political
24 motivations?
- 25 A I'm saying that their interests have to take into
26 account the political dynamics within the community,
27 and I expect that they do.

1 Q Wouldn't elected officials have a good understanding of
2 the needs of the community?

3 A They may. It depends.

4 Q Well, certainly if they live on the Reserve, they would
5 be aware of the needs of individuals who live on the
6 Reserve?

7 A It depends whether or not they have a connection with
8 those individuals. In the Reserve, people don't visit
9 very much or talk very much with one another.

10 Q Are you suggesting that the elected officials aren't
11 aware of the needs of the community?

12 A I'm saying -- as I said, it depends on their connection
13 with the individuals and how well they know.

14 Q Does the Chief know the members of the community?

15 A He definitely --

16 MS. OSUALDINI: I guess it's another question -- I
17 don't know if she can answer what the Chief knows.

18 A Yeah, I cannot answer what the Chief knows.

19 Q MS. CUMMING: Well, the Chief lives on the
20 Reserve?

21 A Yes, he does.

22 Q Do you feel that as Chief he would be able to bring
23 valuable knowledge as to what the needs are of members
24 of the community living on the Reserve?

25 A He might be able to, but I don't think he -- to do that
26 he has to be a trustee, he or she. And I don't think
27 he/she is the only one. I think it's a different set

1 of skills and qualities for trustees. I like the way
2 the Nunavut have described it in terms of their
3 trustees.

4 Q Is it part of your 1403 application to ask the Court to
5 direct that the trusts appoint independent trustees?

6 A I don't know what the Court would do, but I was
7 definitely seeking some advice and direction on certain
8 issues.

9 Q Are you proposing to vary the trusts? Is that part of
10 your 1403 application?

11 MS. OSUALDINI: Nancy, I'm going to interrupt here
12 because the application speaks for itself. My client
13 doesn't need to interpret the application documents.
14 Those are legal issues that are being put to the Court.
15 The application is for advice and direction.

16 Q MS. CUMMING: Have you ever indicated to the
17 Chair, Mr. Heidecker, that you were going to have him
18 removed as Chair?

19 A How would I remove Brian Heidecker as Chair? He has
20 the support, for example, of the trustees.

21 Q It's not what I asked you. Have you ever indicated to
22 him that you were going to have him removed as Chair?

23 A Well, I doubt that I would say something that is --
24 even if I had wanted that is not possible for me.

25 Q Have you ever indicated to the administrator that you
26 were going to have him fired?

27 A How can I have him fired? He's -- he and Brian

1 Heidecker, they're with the support of the majority of
2 the trustees.

3 Q So you've never said that, then?

4 A I have no recollection of uttering such threats that I
5 would be incapable of carrying out. Why would I do
6 that?

7 Q Based upon your affidavit, you would like to see all
8 elected officials removed as trustees. Is that
9 correct?

10 A I would like to see a healthy, functional, competent
11 Board of Trustees. I'd like to see independence
12 amongst all the trustees so that they can fearlessly
13 asked difficult questions, they can forcefully distance
14 themselves from personal and political concerns, and
15 they can do their job as trustees to act in the best
16 interests of beneficiaries who are individuals.

17 Q Do you wish to remove Margaret Ward as a trustee?

18 A I am not happy with how she was selected. I don't
19 think it was done in a good way.

20 Q So do you wish to have Peggy Ward removed as a trustee?

21 A I would have to think about that. I wonder if -- I'd
22 have to think about that.

23 Q So you think about that and provide me with your
24 answer, please.

25 MS. OSUALDINI: We'll take that under advisement.

26 **UNDERTAKING NO. 49: ADVISE IF MS. TWINN WOULD**
27 **LIKE TO HAVE PEGGY WARD REMOVED AS A TRUSTEE -**

TAKEN UNDER ADVISEMENT.

1

2 Q MS. CUMMING: Am I correct that you wish to have
3 Justin Twin removed as a trustee because it's your
4 position that he's not a beneficiary of the 1985 Trust?

5 A No, it's not my position that he's not a beneficiary.
6 There's conflicting legal advice. As I said, I never
7 saw the Indian Affairs letter. I did see a Mike
8 McKinney opinion and then later, I believe, Doris
9 Bonora repeated that opinion.

10 But I -- this is the problem we have here. We
11 have rules in one trust that are different than the
12 other. Then the rules need to be applied in a fair and
13 even-handed manner. There needs to be an honest and
14 fair process that makes these determinations. And he
15 was appointed before that issue was even resolved.

16 When I met with Justin, he and I -- he, as I said
17 yesterday, said what is the next step? I said the next
18 step is to talk with the Chair. And unfortunately, the
19 Chair and others decided to take it legal. And that's
20 what happened.

21 Q But you took it legal. You've bought an Application
22 for Advice and Directions to have Justine Twin removed
23 as a trustee.

24 A I was served by the lawyer who's supposed to be
25 representing me, Doris Bonora, with a motion. I think
26 you put it in as an exhibit, and I believe that was
27 around April 1st, 2014.

1 Q That was an application to transfer the assets of the
2 trusts from the former trustees to the present
3 trustees.

4 A Right, which had embedded in it the appointment of
5 Justin Twin. And when that was separated, I could sign
6 and did sign.

7 Q Are you still taking the position in your Application
8 For Advice and Directions that Justin Twin should be
9 removed as a trustee of the 1985 Trust?

10 A The application speaks for itself. There's some
11 questions for the Court to answer.

12 Q Do you take any issue with Justin Twin being a
13 beneficiary of the 1986 Trust?

14 A I have not taken issue with his Band membership.

15 Q Are you agreeing that Justin Twin is a beneficiary of
16 the 1986 Trust?

17 A Justin Twin and his sister Jacqueline Twin are on the
18 Band list. And as of right now, that is the -- the
19 Band list is what identifies 86 beneficiaries. As I
20 said before, it may not include all of the 86
21 beneficiaries.

22 Q Just going back to Justin Twin, I found another letter
23 from Indian and Northern Affairs. You'll recall that
24 in your initial Questioning we had entered as an
25 exhibit an October, 1985 letter from Indian Affairs
26 which included a Band membership list with Justin
27 Twin's name on it. Do you remember that? I can pull

1 out the document if you like.

2 MS. OSUALDINI: Do you remember which exhibit that
3 was?

4 MS. CUMMING: I'll find it. Exhibit L.

5 Q MS. CUMMING: I just want to show you a letter
6 from Indian Affairs to your husband and Chief, Walter
7 Patrick Twinn, dated July 22, 1985 which is a letter
8 that also includes a Band's list with Justin Twin's
9 name on it.

10 A I see Michelle Daniel-Ward is on this list. What is
11 your question?

12 Q Have you seen that letter before and the list?

13 A This particular document?

14 Q Yes, the document I've given you.

15 A I don't recall. I may have. I don't know.

16 Q Are you aware of any background as to why Indian
17 Affairs sent lists in July, 1985 and again in October,
18 1985?

19 A I am aware. I am aware of the letter that is
20 referenced in the October 4th cover letter. By his
21 letter of September 26, the Minister informed you that
22 your Band now has control of its own membership. I
23 recall that letter from September 26, 1985 because the
24 Minister told Walter that it was a sacred trust and
25 they were not to discriminate.

26 MS. CUMMING: I guess that will be marked as
27 Exhibit Z.

**EXHIBIT NO. Z FOR IDENTIFICATION: LETTER FROM
INDIAN AFFAIRS TO WALTER PATRICK TWINN DATED JULY
22, 1985.**

1
2
3
4 Q MS. CUMMING: Now, your Application For Advice
5 and Directions in the 1403 action is being opposed by
6 the other four trustees. Is that correct?
7 A Correct.
8 Q They constitute, obviously, a majority of the trustees?
9 A Correct.
10 Q So can you tell me on what basis the trusts should pay
11 for the legal fees of a minority trustee?
12 MS. OSUALDINI: Objection. That's a legal
13 question.
14 Q MS. CUMMING: What authority are you aware of
15 that the Court has to change the decision of a majority
16 of trustees?
17 MS. OSUALDINI: Objection. Same basis.
18 Q MS. CUMMING: Do you feel that you intimidate the
19 other trustees at Board meetings or any of the trustees
20 at trustee meetings?
21 A Do I feel I intimidate them?
22 Q Yes.
23 A I can't speak for how they feel.
24 Q Has Bertha L'Hirondelle told you that she feels
25 intimidated and belittled by you?
26 A I don't recall. I do recall Clara yelling at me, so I
27 don't know that she would feel intimidated.

- 1 Q So everybody yells at you, but you don't yell at anyone
2 else?
- 3 A That's not what I said. I said I recall Clara yelling
4 at me at a Band office -- in the Band office one time.
- 5 Q Do you recall yelling at anyone, any of the trustees?
- 6 A I don't recall yelling. I recall emotions being high
7 at times, and that's going to have an impact on voice
8 tone, et cetera.
- 9 Q You have indicated in paragraph 34 of your affidavit
10 that you find it hard to cast a vote against the Chief,
11 but you do that routinely at trustee meetings, do you
12 not?
- 13 A It doesn't mean that it's pleasant or it's easy. I
14 find it hard.
- 15 Q But you do vote against --
- 16 A I have to do my duty. I have to make decisions that I
17 feel are the right decisions whether or not other
18 people get angry, are angry, don't talk to me.
- 19 Q But you would agree with me that at trustee meetings
20 you have on several occasions voted against the motions
21 presented at trustee meetings?
- 22 A I have voted against motions. I have brought forward
23 some motions.
- 24 Q And some of your motions have been approved, correct,
25 by the majority of trustees?
- 26 A Possibly in the past. I don't recall in the recent
27 times that anything I've put forward or said is

1 considered.

2 Q Do you recall the last time you brought a motion
3 forward at a trustee meeting?

4 A I know I brought forward the motion to establish access
5 for any trustee up to a certain amount to talk to a
6 lawyer if they're uncertain about what their fiduciary
7 duties are. No one approved that. And I believe
8 there's been subsequent motions. I just don't recall
9 at the moment. There was clearly the one back in
10 August, 2014 regarding the trustee process.

11 Q You had indicated in paragraph 34 that the trustees who
12 are elected officials of the Band have an undue
13 influence at the trustee table. Am I correct that the
14 present group of trustees only has one elected
15 official?

16 A And two recently former-elected officials and they're
17 very -- they operate in a very close way with each
18 other.

19 Q But the present composition of the trustees, there's
20 only one elected official?

21 A Correct.

22 Q Thank you. In paragraph 34 of your affidavit, you make
23 reference to undue influence. You've made that comment
24 twice in that affidavit. What undue influence do you
25 feel there has been at the trustee table in terms of
26 the administration of the 1986 Trust?

27 A What undue influence? Is that the --

1 Q Yes.

2 A Well, there's a lot of deference given to the Chief,
3 and that's not just Sawridge. I mean, that I think is
4 probably across the board when it comes to First
5 Nations. So it's kind of an unspoken dynamic.

6 Q The 1986 Trust has a series of programs in place,
7 correct?

8 A Yes.

9 Q And those programs can be accessed by beneficiaries of
10 the 1986 Trust?

11 A Yes.

12 Q Are you suggesting that there has been some undue
13 influence by any of the trustees in terms of the
14 provision of those programs to beneficiaries?

15 A I'll give you an example. Paul Bujold and Roland Twinn
16 are close. They're very friendly. They go outside.
17 They smoke together. They talk together, he, Justin,
18 Roland.

19 Q Is that a bad thing?

20 A It's common. There was an occasion where there was a
21 ceremony at my home and my stepson, Paul Twinn, came
22 late and it was obvious that he had been drinking. And
23 after the ceremony in the presence of myself and
24 others, he asked me for help with his addiction.

25 And I immediately contacted Brian Heidecker and
26 Paul Bujold that he wanted to go into a treatment
27 centre and that this time he would follow the treatment

1 centre's recommendations regarding after-care. And in
2 the past, those recommendations have been do not return
3 to the home community; because if you want to get well,
4 stay sober, you need to stay out of there. You need to
5 stay away. So there was some arrangements made. And
6 the next morning, Paul Twinn with my son Sam Twinn went
7 to B.C. And my son Sam made sure that Paul arrived at
8 the treatment centre.

9 It wasn't long after that some of the trustees
10 were very angry at me. I don't know why, but I could
11 tell. I could feel it and that was Roland and Bertha
12 and I believe Clara. And later Paul Bujold said I
13 acted without authority which was not true. And
14 helping a beneficiary and immediately calling the Chair
15 and the administrator -- the administrator made the
16 arrangements, I don't think is acting without
17 authority.

18 But that's what I mean about the dynamics and the
19 politics. It's very oppressive and hard to do the
20 right things, to take the right actions. I have
21 been --

22 Q Did your son Paul access the program?

23 A Let me finish. I have been accused in a trustee
24 meeting by Paul Bujold of having brought about the
25 firing of Arlene Twinn which was not true. And John
26 MacNutt would verify that, the CEO. But these things
27 just get said, and it's perpetrating the poison and the

- 1 animosities, and it's hard for me to defend myself.
2 And if I try to defend myself, then I'm painted as
3 something unreasonable. But like I say, that's the
4 reality at ground zero. It's not very healthy.
- 5 Q You say it's hard for you to defend yourself, but you
6 do in fact make your positions known to the trustees,
7 don't you?
- 8 A They don't understand because they don't listen. They
9 don't want to talk with me or listen or hear me.
- 10 Q But you feel that you listen to them?
- 11 A I try and I'm willing, and I've asked for facilitation.
12 It can't be by Paul Bujold or Brian Heidecker. But I
13 did go through a mediation process with Roland, but
14 when the recommendations came out, he was not prepared
15 to follow them.
- 16 Q Have any of the trustees indicated to you that they
17 don't feel able to speak about their positions because
18 of the Chief?
- 19 A I'm sorry? Have any of the --
- 20 Q Have any of the trustees indicated to you that they are
21 hesitant to speak at trustee meetings because of the
22 presence of the Chief?
- 23 A Nothing from Peggy. Nothing from Justin. And with
24 respect to Bertha, Clara, Walter Felix, I remember --
- 25 Q Well, let's not talk about Clara and Walter because
26 they're not trustees anymore.
- 27 A I remember I was attacked in a meeting at Deloitte's

1 and -- by Roland. And afterwards, Bertha and Walter
2 were very silent. I think when that comes, it's --
3 what's the right word.

4 Q Well, has Bertha --

5 A It has definitely caused -- thrown me off balance and
6 sometimes left me speechless.

7 Q Has Bertha ever indicated to you that she is hesitant
8 to speak at a trustee meeting because of the Chief?

9 A She has not said that to me, I'm afraid to speak at a
10 trustee meeting because of Roland. I think her
11 approach in the past when he would turn his gun on me
12 was just to be silent.

13 Q So that's your impression?

14 A She would be silent. Nobody would intervene.

15 Q You indicate in paragraph 34 of your September
16 affidavit that elected Band officials should not be
17 trustees. Is that correct?

18 A Sorry, where exactly are you quoting me? I'm trying to
19 see where.

20 Q It's about two-thirds into that paragraph. You talk
21 about the separation rule that elected Band officials
22 and their employees and agents cannot be trustees.

23 A In paragraph 34?

24 Q Yes.

25 A Undue influence and conflict of interest are compelling
26 reasons to employ the separation rule that elected Band
27 officials and their employees and agents cannot be

- 1 trustees. Yes.
- 2 Q So you're stating here that not only elected Band
3 officials can't be trustees but their employees and
4 agents cannot be trustees. Is that correct?
- 5 A That's the -- that's a common provision.
- 6 Q And that's the position that you're taking?
- 7 A I think there's a lot of value in that.
- 8 Q When you say their agents, who are you referring to as
9 agents?
- 10 A What do you mean who am I referring to as their agents?
11 Whoever their agents are.
- 12 Q But I'm asking you what you mean by agents. You've
13 said that elected Band officials, their employees, and
14 agents cannot be trustees, and I want to know what you
15 mean by agents. Who are you referring to?
- 16 A Well, in that particular sentence, I'm not referring to
17 any particular individual. I'm referring to agents.
- 18 Q But what do you mean by agents?
- 19 A Well, I'll give you a definition if you give me a
20 moment.
- 21 MS. OSUALDINI: Is now perhaps a good time to take
22 a break?
- 23 MS. CUMMING: Sure.
- 24 (BRIEF ADJOURNMENT)
- 25 Q MS. CUMMING: Ms. Twinn, just before we broke,
26 you were going to tell me what you meant when you
27 referred to agents in paragraph 34 of your affidavit.

1 A Yeah. So I looked up a definition that expresses what
2 I understand by that word. A person who does business
3 for another person or a person who acts on behalf of
4 another. A person or a thing that causes something to
5 happen.

6 So I'm talking about people. So it's people that
7 basically act for another, does business for another.
8 So, for example, Paul Bujold and Brian Heidecker are
9 agents of the trustees, of the majority of the
10 trustees.

11 Q What about family of elected officials? Do you feel
12 that family of elected officials should not be
13 trustees?

14 A I have a -- sorry, family of -- it depends. I mean,
15 how independent is that person in their own thinking
16 and their own critical thinking and decision-making?
17 Are they easily influenced? You know, there's a
18 personal quality to this, and I'll quickly explain what
19 I mean by that, and I hope you don't think I'm rambling
20 but very quickly.

21 There is a German physicist, I believe, and he
22 tells a story when he was in high school. The teacher
23 took 40 of the students to look through a telescope at
24 a planet and a number of moons around the planet. The
25 first student looked through and said he saw. The
26 second student said I can't see. The teacher came over
27 and said, Here's how you adjust the lens. All the

1 students looked through. All of them said they saw the
2 planet and the moons until the 39th student who said
3 all I can see is black. When the teacher in anger went
4 over to the telescope, he found that the cap was on the
5 lens. No one had seen the planet and the moons.

6 So at a personal level, you have to, I think, have
7 a lot of independence and critical-thinking skills and
8 other skills.

9 Q When you make reference to employees of Band officials,
10 are you including in that category anyone who works for
11 Sawridge Resources?

12 A I don't know. I haven't thought that one through. I
13 was thinking in terms of the Band council, their
14 employees.

15 Q But Band council can change?

16 A Yes.

17 Q With each successive election?

18 A It can.

19 Q So if a trustee -- if you have a sitting trustee who
20 isn't an employee or agent of a member of Band council,
21 but then in a subsequent election that existing trustee
22 is an employee or agent of the new Band council, then
23 what do you do? Do you expect that trustee to step
24 down?

25 A There's -- you're pointing to nuances, and all of these
26 would have to be thought through. But the general
27 proposition is -- as I've stated from my research and

1 discussions which is it's a good practice. And many of
2 the First Nation trustees stipulate that if you're
3 going to be a trustee, you cannot be an elected
4 official of the Band, an employee, or agent of the
5 Band. And all of these different nuance circumstances
6 that you're describing, I would have to consider it.

7 Q So in terms --

8 A But that's the starting point.

9 Q In terms of your Application For Advice and Directions,
10 are you asking that the Court prevent all elected
11 officials, employees, and agents from being trustees?

12 MS. OSUALDINI: Objection for similar grounds. The
13 application speaks for itself. That's a legal
14 conclusion. That's a legal argument that we're going
15 to be making about what the application says.

16 Q MS. CUMMING: Well, it's certainly something that
17 you appear to be suggesting in your affidavit, aren't
18 you, that elected officials, their employees, and
19 agents should not be trustees?

20 MS. OSUALDINI: I think Catherine answered that
21 question. She said it's a general proposition that
22 that's a good place to start from and that other First
23 Nation trusts are using that position.

24 Q MS. CUMMING: There are also First Nation trusts
25 that have elected officials also as trustees?

26 A Yes, I accept that. I think again if personal
27 qualities and performance and other factors suggested

1 and if there's other checks and balances in place, it
2 may be appropriate for that community. What I'm saying
3 is here given everything that's occurred, I think it's
4 a very good practice for this trust. And I hope to see
5 the trustees comprise -- the Board of Trustees
6 comprised a very strong collection of individuals who
7 can take it forward and grow the assets.

8 Q Well, the assets are actually grown by the Board of
9 Directors of the companies. Isn't that correct?

10 A The -- they don't operate in a void, the Board of
11 Directors.

12 Q All right, but they are in charge of the business
13 operations, correct?

14 A Yes, they are but there's also issues on the table like
15 diversification and the strategic plan and so forth.
16 And trustees have to have some -- not only oversight
17 over that but some decision-making in that.

18 Q But it's the Board of Directors of the companies that
19 bring those proposals forward, correct?

20 A It can be. It certainly has been, but it doesn't
21 preclude a Board of Trustees that's doing its job from
22 also being able to bring things to the table in terms
23 of, say, how we can and should diversify the portfolio.

24 Q You've talked about reprisals. Do you know of any
25 situations in which the Chief has sought retribution
26 against a trustee for voting against him at a trustee
27 meeting?

- 1 A I can only speak for myself. There's also, as between
2 Bertha, Roland, Justin, a political pact in terms of
3 their support.
- 4 Q Now, going back to this issue that you've raised of
5 undue influence of trustees. Have you ever attempted
6 to influence the Board of Directors of the companies?
- 7 A I would say yes, at the -- for example, at the last
8 annual general meeting, we talked about diversification
9 and I put forward a suggestion. I guess that's a form
10 of trying to influence.
- 11 Q Well, have you ever met with Ralph Peterson to discuss
12 the management of the Sawridge Group of Companies?
- 13 A I may have in the past, yes.
- 14 Q Have you ever met with Ron Gilbertson to discuss the
15 management of the Sawridge Group of Companies?
- 16 A There may have been discussions. I'm not sure on what
17 topics. I recently had discussions with Ron Gilbertson
18 on a health idea.
- 19 Q Have you ever met with John MacNutt to discuss the
20 management of the Sawridge Group of Companies?
- 21 A I've definitely had discussions with John MacNutt. I
22 don't know about -- how you would -- you're saying
23 management of the companies. I recently was asked by
24 John MacNutt to join him in a conversation with
25 NorQuest which I did. So I don't call that in relation
26 to management of the companies.
- 27 Q Well, have you ever met with any of the Board of

1 Directors of the companies in order to promote the
2 purchase of some Alex Janvier paintings?

3 A Oh, yes. A long time ago I put forward an idea whether
4 or not that was a good investment.

5 Q What about Tesla?

6 A Tesla?

7 Q Yes.

8 A I think I've, in the spirit of the diversity,
9 diversification thinking, asked questions about oil and
10 gas and its future.

11 Q Did you --

12 A May I finish?

13 Q Sure.

14 A The alternative forms of energy, whether or not those
15 are ideas that we should be thinking about. I think
16 that's all part and parcel of my duty to think about
17 those things.

18 Q Did you ever meet with any of the Board of Directors of
19 the companies to promote an aboriginal oil upgrader?

20 A I had conversations, I believe, with Brian Heidecker
21 and Eric Newell and -- I can't recall. But these are
22 -- that was, I think, exploration.

23 Q And I take it that you don't see anything wrong with a
24 trustee meeting with the Board of Directors in order to
25 put forth their ideas?

26 A I would hope we can all work together in a good way.

27 MS. CUMMING: I'm finished with the September

1 affidavit.

2 (DISCUSSION OFF THE RECORD)

3

4

5 PROCEEDINGS CONCLUDED SINE DIE

6 (3:40 P.M., NOVEMBER 10, 2016)

7

8

9

10

11

12 Certificate of Transcript

13

14 I, the undersigned, hereby certify that the
15 foregoing pages are a complete and accurate transcript of
16 the proceedings taken down by me in shorthand and
17 transcribed to the best of my skill and ability.

18 Dated at the City of Edmonton, Province of
19 Alberta, this 21st day of November, 2016.

20

21

22

23 _____
Dolores Williams,
24 Court Reporter

25

26

27

Dolores Williams, Court Reporter
(780) 238-1157

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Catherine Twinn
November 9 & 10, 2016

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Indian and Northern
Affairs Canada



Affaires indiennes
et du Nord Canada

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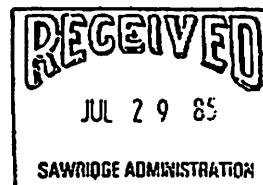
JUL 22 1985

Your file / Votre référence

Our file / Notre référence

E6000-1 (LH8-4)

Walter Patrick Twinn
Chief
Sawridge Indian Band
P.O. Box 326
SLAVE LAKE, Alberta
TOG 2A0




Dear Chief Twinn:

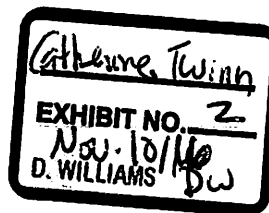
Under the provisions of Section 14(1) of an Act to amend the Indian Act assented to on June 28, 1985, I am required to provide the Council of each band with a copy of its band list as it stood immediately prior to that date.

Attached you will find a copy of the membership list for the Sawridge Indian Band as it appeared on June 27, 1985. Would you kindly present this list to your Band Council at your earliest convenience.

Yours sincerely,


L.G. Smith
Registrar
OTTAWA, Ontario
K1A 0H4

Attachment



Canada

014388

12041

JOB NO. : INEVAR03
 PROGRAM : INEVAR03
 RUN DATE / DATE DU PASSAGE : 1985/07/03
 DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
 MINISTÈRE DES AFFAIRES INDiennes ET DU NORD CANADIEN
 INDIAN MEMBERSHIP SYSTEM
 SYSTÈME DES BANDES INDIENNES
 FAMILY GROUPING LISTING
 LISTE PAR GROUPE DE FAMILLE
 ALIAS
 NCM D'EMPRUNT
 BIRTHDATE
 NAISSANCE
 PROV
 MAR ST
 RES
 S

DISTRICT -700	BAND -454	FAMILY NO	FAMILY NC	NO DE FAMILLE	ALIAS	NCM D'EMPRUNT	BIRTHDATE	NAISSANCE	PROV	MAR ST	RES	S
008702	LOVER	NEESOTASIS	CYNTHIA YVETTE GALE	GEORGE	1967/09/26	08	1	6				
008001	NEESOTASIS	NEESOTASIS	NEESOTASIS	NEESOTASIS	1939/06/03	08	1	1				
008203	NEESOTASIS	NEESOTASIS	NEESOTASIS	NEESOTASIS	1941/10/01	08	2	1				
008001	NEESOTASIS	NEESOTASIS	NEESOTASIS	NEESOTASIS	1977/08/09	08	1	1				
008001	NEESOTASIS	NEESOTASIS	NEESOTASIS	NEESOTASIS	1944/11/23	08	1	1				
008002	POTSKIN	POTSKIN	JENNIE	JENNIE	1924/12/26	02	3	1				
007001	POTSKIN	POTSKIN	HARRY	HARRY	1927/06/09	08	1	1				
008902	MANDEL	MANDEL	SHAWN	SHAWN	1969/04/01	08	1	6				
009302	POTSKIN	POTSKIN	SCMIA ODETTE	SCMIA ODETTE	1970/08/25	02	1	1				
003502	POTSKIN	POTSKIN	GRENT ALBERT	GRENT ALBERT	1975/09/11	08	1	6				
009303	POTSKIN	POTSKIN	JONATHAN EARET	JONATHAN EARET	1978/04/02	08	1	6				
008702	POTSKIN	POTSKIN	JEANNE MARIE BERNARD	JEANNE MARIE BERNARD	1979/10/10	08	1	6				
008703	POTSKIN	POTSKIN	AARON ROYCE BERNARD	AARON ROYCE BERNARD	1982/10/01	08	1	6				
007201	TWIN	TWIN	TRENT RYAN ALBERT	TRENT RYAN ALBERT	1981/09/06	08	1	6				
007901	TWIN	TWIN	SAM GILBERT	SAM GILBERT	1928/07/30	08	1	1				
007902	TWIN	TWIN	WALTER FELIX	WALTER FELIX	1934/05/30	08	2	1				
009601	TWIN	TWIN	YVONNE DORIS	YVONNE DORIS	1939/05/27	08	1	1				
009601	TWIN	TWIN	VERA IRENE	VERA IRENE	1956/12/15	08	6	1				

JUL 29 85
 SAVAGE ADMINISTRATION

014389

12042

JOB NO. : INNEAR03
 PROG NO. : INNEP04
 RUN DATE / DATE CU PASSAGE : 1985/07/03

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
 MINISTRE DES AFFAIRES INDIENNES ET DU NORD CANADIEN
 INDIAN MEMBERSHIP SYSTEM
 SYSTEME DES GRANDES INDIENNES

REPORT NO. / RAPPORT NO. : 0
 PAGE NO. : 0

DISTRICT - 700 ALBERTA
 BANDO - 454 ALBERTA
 BANDO - 454 ALBERTA
 FAMILY NO. : 454 ALBERTA
 NO DE-FAMILLE : 454 ALBERTA

FAMILY GROUPING LISTING LISTE PAR GROUPE DE FAMILLE

PIERRE NAMES
 ALIAS
 NOM D'EMPRUNT

009602 TWIN
 009603 TWIN
 009604 TWIN

WYMONA MACINE
 EVERETT JUSTIN
 JACLYN DANIELA

BIRTHDATE
 1976/03/14
 1982/09/23
 1983/11/10

007301 TWIN
 007302 TWIN
 007303 TWIN

MAITEZ PATRICK
 PAUL MERRY MAY
 KATEPINE MAY

1934/03/29
 1969/02/12
 1953/12/28

PROV
 08
 08
 08

010301 TWIN

IRENE MARIE

1963/12/19

08

010501 TWIN

ROLAND CHRISTOPHER

1965/05/21

08

010701 TWIN

ARDELL WALTER

1966/07/09

08

010801 TWIN

ARLENE THERESA

1966/07/09

08

008105 LARD
 008106 LARD

DEAN DANIEL
 FRANK JAMES

1967/09/10
 1969/03/21

08
 08

009201 LARD
 009202 LARD

MARGARET SUE
 NATHAN ALEXANDER

1967/09/03
 1981/12/02

08
 08

009801 LARD

GEORGINA ROSE

1959/05/23

08

010001 LARD

JOHNNY MAXWELL

1962/03/25

08

010201 LARD

GLORIA MARIE

1963/06/27

08

010601 LARD

MARGARET SOPHIE

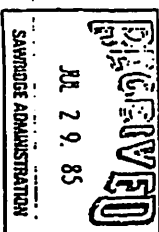
1965/12/09

08

TOTAL NUMBER OF INDIVIDUALS:
 37

37

*** END OF REPORT ***



014330

12043

JOB NO. : INTERIOR
 PROG NO. : INTERIOR
 MINISTÈRE DES AFFAIRES INDiennes ET DU NORD CANADIEN
 DATE DU PASSAGE : 1983/07/05

INDIAN MEMBERSHIP SYSTEM
 SYSTEME DES SAOUES INDIENNES

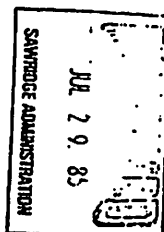
A-LIST REPORT
 RAPPORT DE LA LISTE-A

DISTRICT : SANDO / FAMILY NO. / SURNAME /
 720 454 009502 JARD

GIVEN NAMES /
 MICHELLE DANIELLE

BIRTH DATE / RESIDENCE PROV. RES. SEX
 MAISSANCE 1981/05/03 6 08 F

REPORT NO. / RAPPORT NO. : P830
 PAGE NO: 1



014391

12044

014391 12044