

Clerk's stamp:



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

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

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

DOCUMENT **BRIEF OF THE SAWRIDGE TRUSTEES IN RESPECT OF
THE IMPACT OF THE DEFINITION OF BENEFICIARIES IN
RESPECT OF THE 1982 AND 1985 TRUST**

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LIST OF AUTHORITIES

A. INTRODUCTION

1. With respect to the merits of the asset transfer application, the Trustees do not have any material additions to the submissions that they have previously made and provided to the court on November 1, 2019 and November 20, 2019.
2. Nevertheless, during a case management application held on November 27, 2019, Your Lordship requested some high-level information with respect to the individual beneficiaries pursuant to the definition in the 1985 Sawridge Band Inter Vivos Settlement Deed (the "1985 Trust") as well as the 1982 Sawridge Band Trust Deed (the "1982 Trust").¹ We had indicated that we would provide you with this information in order to assist you in your understanding of the potential consequences of a decision in the current application. We note in providing this information that the exact constitution of the 1985 Trust beneficiaries is a matter of debate and potentially further protracted litigation. We are providing this overview simply to assist the court.
3. In general terms, the definition of a beneficiary pursuant to the 1982 Trust are all members, present and future, of the Sawridge First Nation. Therefore, to determine those beneficiaries under the provisions of the 1982 Trust, one simply needs to view the membership list. There are currently 45 members on the Sawridge First Nation membership list.²
4. In 1985 the assets of the 1982 Trust were purportedly transferred to the 1985 Trust. The 1985 Trust defines beneficiaries to be, in general terms, any person who qualifies as a member of the Sawridge Indian Band No. 19 pursuant to the provisions of the *Indian Act*, as that Act existed before the Charter.
5. Ascertaining the current constitution of the 1985 Trust is therefore difficult. Unlike the 1982 Trust, where beneficiaries are determined according to individuals who are on the membership list, the 1985 Trust requires an analysis of individuals and their families rooted in the now outdated definition found in the pre-Charter *Indian Act*. Accordingly, life events like births, deaths, marriages and divorces all significantly impact those who are considered to be beneficiaries.³ By way of example, the legitimacy of a child at their birth, the sex of a child and whether his or her parent who is a member of the Sawridge First Nation is male or female all directly impact whether an individual is a beneficiary. The illegitimate male child of a male member will be a beneficiary but the illegitimate female child of a male member will not be a beneficiary. Females who marry a non-member of the First Nation will lose their rights as will their children. Males who marry,

¹ Transcript of Proceedings of November 27, 2019 [TAB 1]

² Written Interrogatories for Paul Bujold from Questioning on Affidavit of March 7 to 10, 2017, Question 8 [TAB 2].

³ *Indian Act*, R.S.C. 1970, Chapter I-6, as it existed in 1970, [TAB 3] The *Indian Act* was subsequently amended by Bill C-31 (*Indian Act*, 1985) in light of the changes in the newly adopted *Canadian Charter of Rights and Freedoms*.

retain their rights and their new spouse will acquire rights as a beneficiary as will their children.

6. The parties have identified various persons who may qualify as beneficiaries of the 1985 Trust.⁴ For their part, the Trustees believe that only 56 persons would meet the technical requirements set out in the pre-Charter *Indian Act*.
7. There are 45 members of Sawridge First Nation. All of these 45 members would be beneficiaries if the 1982 Trust beneficiary definition applied. Of those 45 members only 30 qualify as beneficiaries of the 1985 Trust. In addition, there are 26 individuals identified by the Trustees as potential beneficiaries who, are not members but are beneficiaries.⁵
8. The Trustees acknowledge that the statistics provided are the interpretation of the Trustees and that the parties may have different opinions on the interpretation of the *Indian Act* as it existed in 1985.⁶

B. BILL C-31 (INDIAN ACT, 1985) AND ITS EFFECTS

9. The Bill C-31 amendments to the *Indian Act*, came into effect 17 April 1985. The amendments deferred to the sovereignty of Indian Bands, allowing those that passed a set of membership rules the authority to determine their own membership from 1985 onwards. The amendments also attempted to remove the discrimination with respect to women who married a non-member, illegitimacy, and discrimination in respect of male and female babies.
10. Following the amendments, women (those who had lost their membership due to marriage outside of the Sawridge First Nation) were permitted membership in the first nation ("Bill C-31 Women"). A group of Bill C-31 Women took the position that the new *Indian Act* permitted their membership to be reinstated to the Sawridge First Nation. The

⁴ List of Beneficiaries - The source of this list is a review and compilation of the following sources: The Trustees have tried to include people identified by the Respondents as well as by the Trustees:

- Paul Bujold UT-24- Questioning of May 27/28, 2014
- Paul Bujold UT-25 - Questioning of May 27/28, 2014
- Paul Bujold UT-31 - Questioning of May 27/28, 2014
- Paul Bujold UT-32 - Questioning of May 27/28, 2014
- Catherine Twinn - Undertakings 74(1), (4), (5), (7), (9), (11), (14), (21), Questioning July 20/21, 2017
- [TAB 4]

⁵ See footnote #4 above

⁶ This interpretation, and the Court's decision in this case, will doubtless affect the interests of minors. Minors involved in this litigation are ostensibly represented by the OPGT, though the exact nature of this representation is unclear. Indeed the Sawridge First Nation has made repeated requests to learn who the OPGT represent from the potential beneficiaries under either definition. The scope of the OPGT has been limited by a decision of Justice Thomas. [TAB 8] The Trustees understand that the OPGT represents illegitimate children who may be protested, females who may lose their status if they marry and other similarly problematic categories of beneficiaries. We note that any of these individuals would be able to apply for membership in the First Nation should the definition of the 1982 Trust apply.

First Nation took the position that the women would be required to reapply for membership. The issue was litigated and ultimately the court ordered the Sawridge Indian Band to add 11 people to the membership list.⁷ Therefore, these women who the court has recognized as being rightful members of the First Nation are beneficiaries using the 1982 Trust definition of beneficiaries by virtue of their membership. However, they are not beneficiaries under the 1985 Trust, which relies on the pre-Charter text of the *Indian Act*. Only 3 of these women are still alive.

11. In addition to the above, 3 other Bill C-31 Women applied for membership and were admitted as members by the Sawridge First Nation. Again they would be beneficiaries only if the definition in the 1982 Trust applies.
12. There are 9 children of these Bill C-31 Women who have applied and been admitted into membership in the Sawridge First Nation ("Bill C-31 Children")⁸. These women and their children who have been admitted to membership would not be eligible to receive benefits from the 1985 Trust but would be eligible if the 1982 Trust provisions applied. One of these women, Bertha L'Hirondelle, was the chief of the Sawridge First Nation, an elder, and a Trustee. She is not a beneficiary under the current 1985 Trust. As a member of the Sawridge First Nation, she would be a beneficiary under the terms of the 1982 Trust.
13. The Indian Act continues to exclude women who marry a non-member. There is at least one such person who, is a member, but who married after 1985 - Winona Twin⁹- who was a beneficiary before her marriage but would lose rights under the 1985 Trust provisions.
14. In contrast, the spouses of male members, who may or may not have First Nation status, are beneficiaries of the 1985 Trust. There are 7 people who are not members of the First Nation, do not have Indian status and still would be beneficiaries under the 1985 Trust only because of their marriage to a male member.¹⁰ They would not be beneficiaries under the 1982 Trust provisions.

C. ILLEGITIMACY AND ITS EFFECTS

15. The pre-Charter *Indian Act* requires the legitimacy of a child to be considered, combined with the child's sex, when ascertaining whether a child is a beneficiary. The following rules apply:
 - (a) The 1985 Trust rejects providing benefits to any illegitimate child—male or female—of an Indian woman if paternity of the child is a non-member. If the father of the child is a non-member and is not acknowledged on the birth certificate and as long as no one protests the inclusion of the name of the child on the band list during a specified period, then the child may qualify as a

⁷ Hugessen J. Decision, *Sawridge Band v Canada*, [2003] 4 FC 748, 2003 FCT 347 [TAB 5]

⁸ List of Beneficiaries [TAB 4]

⁹ List of Beneficiaries at Tab 4

¹⁰ List of beneficiaries Color Coded [Tab 6]

beneficiary but may be subject to protests as set out below. This is a disputed area because it is unclear in some cases if paternity is acknowledged or not and whether protests are still permitted. The parties have identified that there are 15 individuals who may be excluded on this basis. 9 of them are members of the First Nation.¹¹

- (b) In addition, the whole process of protesting was eliminated in Bill C- 31 as it was not needed when the discrimination regarding illegitimacy was removed and thus it is unclear if these children could be protested. ¹²
- (c) The Pre-Charter *Indian Act* states that the illegitimate daughters of a male member of the First Nation are not eligible for membership in the First Nation and thus not beneficiaries while the illegitimate sons of the a male member are considered beneficiaries.
 - (i) We believe that there are 4 illegitimate males who have male member fathers who would be beneficiaries. Of these 1 is a member of the First Nation and would be a beneficiary under the 1982 trust provisions. There are at least 2 illegitimate daughters of male members who are not beneficiaries as a result of this provision.
- (d) The rules will admit some siblings in a family while rejecting others and will not admit a child born out of wedlock even if the parents later married.
- (e) In addition, the Trust Deeds specifically permit the Trustees to not provide benefits to illegitimate children of female band members.¹³

D. AFFILIATES

- 16. Over the course of the litigation, the concept of an "affiliate" has occasionally been raised. This has led to some concern that the actual number of potential beneficiaries may be significantly more than the numbers presented herein. The Trustees address this concept briefly in order to provide the Court with guidance as to how the list was populated.
- 17. Pursuant to the Indian Act, Indigenous Services Canada ("ISC") is responsible to register persons with status. That is, they have satisfied ISC of having sufficient First Nation connection and relationship that they are given status. Once they have status, then ISC affiliates these individuals to a particular First Nation and provides identification numbers that identify to which First Nation they have been attributed. For those Indian Bands who

¹¹ List of Beneficiaries Color coded list at Tab 6

¹² *Indian Act*, s.12(2) "The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph. See Tab 3

¹³ See 1985 and 1982 Trust Deed Section 6.

administer their own membership rolls, such as Sawridge, this has no impact as these individuals must still apply for membership in the First Nation.

18. Therefore, if the 1982 Trust provisions apply, the concept of an "affiliate" is irrelevant. The analysis begins and ends with the membership list of the Sawridge First Nation.
19. In the Trustees attempt to identify potential beneficiaries under the 1985 Trust definition, and out of an abundance of caution, notice of this action was sent to all persons on the affiliate list. Some have come forward claiming to be beneficiaries. There was extensive advertising seeking beneficiaries of the trusts and many came forward from that process.¹⁴ The Trustees also served a great number of individuals.¹⁵ All of those who have come forward have been investigated and from the efforts of the Trustees the lists discussed herein have been derived.
20. It must be emphasized that an individual's place on the affiliate list in no way determines whether or not that individual is a member of the Sawridge First Nation according to the pre-Charter Indian Act definition (i.e. the 1985 Trust definition). An individual who is an affiliate must still satisfy the significant hurdles for membership set out in the pre-Charter Indian Act that have been discussed herein.¹⁶ The list was merely a part of the Trustees significant due diligence efforts to allow the widest pool of potential beneficiaries to come forward and be evaluated as potential beneficiaries pursuant to a now archaic and discriminatory definition.

E. CONCLUSION

21. Beneficiaries as defined under the provisions of the 1982 Trust are easy to ascertain – they are the members of the Sawridge First Nation. There is no debate as to this constitution. Beneficiaries of the 1985 Trust are much more difficult to ascertain, as is outlined above. The parties are divided over numbers and makeup, and the numbers provided merely reflect the position of the Trustees.
22. Beneficiaries under the provisions of the 1982 Trust who are not beneficiaries of the 1985 Trust are unable to achieve beneficial status due to the immutable characteristics of the pre-Charter *Indian Act*. Beneficiaries of the 1985 Trust who are not beneficiaries under the provisions of the 1982 Trust can achieve beneficial status by applying for membership in the Sawridge First Nation. In addition, they may become Beneficiaries by way of a grandfathering decision in this action.

¹⁴ List of Weekly Newspapers in which Legal Notice was placed by Sawridge Trust, Affidavit of Records of Paul Bujold sworn November 2, 2015 and Filed April 30, 2028 [Tab 7]

¹⁵ Mailing List to Individuals [TAB 10]

¹⁶ For example Maurice Stoney and his family are on the affiliates list and of course he has been repeatedly found not to be a member or beneficiary. [TAB 9]

23. By way of summary, we offer the following table based on the above:¹⁷

Category (Number)	1982 Trust Beneficiaries	1985 Trust Beneficiaries
Members of the Sawridge First Nation (45)	45	30
Members of Sawridge First nation who do not qualify as beneficiaries	0	15
Bill C-31 Women	3 (remaining)	0
Bill C-31 Children of women who were enfranchised by marriage	9	0
Potential women who are beneficiaries who lose beneficiary status because they marry a non-member	0	12
Non members who may be beneficiaries by qualifying under the 1970 Indian Act	0	26

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27TH DAY OF NOVEMBER, 2020

DENTONS CANADA LLP

PER: _____


DORIS BONORA
MICHAEL SESTITO
Solicitors for the 1985 Sawridge Trustees

¹⁷ See Tab 6

LIST OF AUTHORITIES

TAB	DESCRIPTION
1	Transcript of Proceedings of November 27, 2019
2	Written Interrogatories for Paul Bujold from Questioning on Affidavit of March 7 to 10, 2017, Question 8
3	<i>Indian Act</i> , R.S.C. 1970, Chapter I-6, as it existed in 1970
4	List of Members and Beneficiaries
5	Hugessen J. Decision, <i>Sawridge Band v Canada</i> , [2003] 4 FC 748, 2003 FCT 347
6	List of Members and Beneficiaries – Color Coded
7	List of Weekly Newspapers – Legal Notices
8	Order of Thomas J pronounced December 17, 2015 and filed August 17, 2016
9.	1985 <i>Sawridge Trust v Alberta (Public Trustee)</i> , 2017.ABQB 436
10	Mailing List to Individuals

TAB 1

AMENDED

Action No.: 1103-14112

E-File Name.: EVQ19TWINNR

Appeal No.: _____

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

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

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

ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT,
EVERETT JUSTIN TWIN and DAVID MAJESKI, as
TRUSTEES FOR THE 1985 SAWRIDGE TRUST (the "1985 Trustees")

Applicants

PROCEEDINGS

Edmonton, Alberta
November 27, 2019

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2

3

4 November 27, 2019

Afternoon Session

5

6 The Honourable
7 Mr. Justice Henderson

Court of Queen's Bench
of Alberta

8

9 D.C.E. Bonora

For R. Twinn, M. Ward, T. Scarlett, E. Justin
Twin, D. Majeski, as Trustees for the 1985
Sawridge Trust ("the 1985 Trustees")

10

11

12 M.S. Sestito

For R. Twinn, M. Ward, T. Scarlett, E. Justin
Twin, D. Majeski, as Trustees for the 1985
Sawridge Trust ("the 1985 Trustees")

13

14

15 E.H. Molstad, Q.C.

For Sawridge First Nation

16 E. Sopko

For Sawridge First Nation

17 P.J. Faulds, Q.C.

For the Office of the Public Trustee

18 J.L. Hutchison

For the Office of the Public Trustee

19 D. Risling

For C. Twinn

20 C. Osualdini

For C. Twinn

21 (No Counsel)

For S. Twinn

22 N. Lachat

Court Clerk

23

24

25 **Discussion**

26

27 MS. BONORA:
28 that's all right.

Sir, I'll just introduce everyone for the record if

29

30 THE COURT:

Sure. Yes. Go ahead.

31

32 MS. BONORA:

Sir, this afternoon, Doris Bonora and Michael
Sestito here for the Sawridge Trustees; Mr. Molstad and Ellery Sopko are here on behalf
of Sawridge First Nation; Janet Hutchison and John Faulds are here on behalf the Office
of the Public Trustee and Guardian; Dave Risling and Crista Osualdini are here behalf of
Catherine Twinn; and Shelby Twinn is here representing herself.

33

34

35

36

37

38 THE COURT:

Welcome.

39

40 MS. BONORA:

So, Mr. Molstad would like to present the order
from October 31st and has a few comments if that would be all right.

41

1
2 MR. MOLSTAD: Thank you. We've circulated the order, Sir, and
3 I can tell you that we almost have an agreement. It was very close.
4
5 THE COURT: Okay. Well, come back when you do.
6
7 MR. MOLSTAD: Well, I don't think we will, Sir.
8
9 THE COURT: Oh, okay.
10
11 MR. MOLSTAD: It's a very small issue that we think you should
12 decide.
13
14 THE COURT: All right.
15
16 MR. MOLSTAD: And it's paragraph 2 of the order. My friend is
17 of the view that the words should be added to that "as a condition of its intervention in
18 the jurisdiction applications". We say that's not what you said at page 6, lines 14 to 21 of
19 your decision.
20
21 THE COURT: What did I say?
22
23 MR. MOLSTAD: Pardon me?
24
25 THE COURT: What did I say?
26
27 MR. MOLSTAD: Page 14 -- page 6, lines 14 are as follows: (as
28 read)
29
30 That the Public Trustee argued that if I were to grant the intervenor
31 application, I should impose conditions specifically with respect to
32 the production of documents. I did hear yesterday Mr. Molstad tell
33 me that all of the documents have been turned over to the trustees
34 apart from the documents over which privilege has been maintained.
35 In my view, nothing but delay and additional expense would be
36 incurred if I were to impose conditions with respect to the
37 production of additional documents.
38
39 THE COURT: M-hm.
40
41 MR. MOLSTAD: (as read)

1
2 We should simply proceed to deal with the important issues that
3 need to be dealt with and that is what we will do.
4

5 THE COURT: Yes. And so the public trustee would like to
6 qualify paragraph 2 to say vis-à-vis or only in respect of the asset transfer issue that I'm
7 going to hear --
8

9 MR. MOLSTAD: Yeah. I --
10

11 THE COURT: -- and the jurisdictional issue.
12

13 MR. MOLSTAD: -- think we'll let her what she would like to add.
14

15 MS. HUTCHISON: Thank you, Mr. Molstad.
16

17 My Lord, we simply suggested adding words "as a condition of leave to intervene" at the
18 end of paragraph 2 to make it clear that it's not a foreclosure of all future productions.
19

20 THE COURT: Okay. Anything else you'd like to say?
21

22 MR. MOLSTAD: Nothing, Sir.
23

24 THE COURT: I was dealing with the issue of your -- Sawridge
25 Band's intervention on two applications. I granted intervenor status with respect to the
26 asset transfer issue and with respect to the jurisdiction issue and my comments with
27 respect to the production of documents related to those. So you've got no obligation with
28 respect to production of documents in relation to those two issues.
29

30 I don't know what is going to happen in the future. It's impossible for me to say. You
31 might become a party to the litigation, your client might become a party to the litigation
32 at some point, you might apply to intervene with respect to another step. I wouldn't want
33 to foreclose something.
34

35 MR. MOLSTAD: We'll redraft it --
36

37 THE COURT: Good. Thanks.
38

39 MR. MOLSTAD: -- consistent with what my friend has requested.
40

41 THE COURT: Good.

1
2 MR. MOLSTAD: I just have two minor points that I wish to make
3 in addition --
4

5 THE COURT: Yes, please.
6

7 MR. MOLSTAD: -- and concerns. And the first one is that on
8 November 22nd when we appeared, Mr. Faulds and Ms. Hutchison made submissions
9 that you do not have jurisdiction to decide this application without their consent.
10

11 THE COURT: Yes.
12

13 MR. MOLSTAD: And that's found in November 22nd transcript --
14

15 THE COURT: Yes, I saw that. M-hm.
16

17 MR. MOLSTAD: -- on page 9 and page 10. And the jurisdiction
18 of the case manager, who is a justice, is set out in *Rules* 4.9 to 4.15. They are broad and
19 they include an obligation, Sir, to hear every application unless the Chief Justice, or you,
20 Sir, order otherwise. And that's found in *Rule* 4.14(2). The only restriction in relation to
21 case management was found in *Rule* 4.15 which provides that unless the parties and the
22 judge agree that he will not hear an application for judgment by way of summary trial and
23 he will not reside as a trial judge in the action. That is the only restriction.
24

25 We say, Sir, that you have an application in front of you, which is at tab T of our book of
26 documents, it is neither for judgment by way of summary trial or the trial for the action,
27 and any suggestion that you do not have jurisdiction to hear the application, in our
28 submission, is devoid of merit.
29

30 THE COURT: Okay.
31

32 MR. MOLSTAD: We didn't respond to that the last time we
33 appeared but we wanted to respond to that today.
34

35 THE COURT: Okay.
36

37 MR. MOLSTAD: Those are our submissions.
38

39 THE COURT: Thank you very much.
40

41 Does anyone else have anything that they want to add? No?

1
2 Mr. Faulds, you --

3
4 MR. FAULDS:

Oh, no. No, I was just saying no, My Lord.

5
6 THE COURT:

Good. When we left off last time, I indicated
7 that I would review the transcripts from the previous proceedings. Thank you very much
8 for providing those to me. I have had an opportunity to review them. That review was for
9 the purpose of attempting to determine whether or not there was any concern with respect
10 to the issue raised in relation to the application on the asset transfer issue that was to be
11 argued November 27th, but which we have now arranged for January 16th.

12
13 I have reviewed the transcripts. I see no lack of clarity with respect to the issues that have
14 been set out. The issues I initially raised on April 25th, 2019, as I review that transcript,
15 and I was speaking at that time when I knew much less about the case than I do today,
16 but, in any event, going back to that transcript I think that it sets out quite clearly what
17 my concerns were. I raised those very same concerns on September the 4th when the
18 parties were before me. And the notice of motion was filed shortly thereafter. And the
19 notice of motion, it's now called an application I'm afraid, so the application that was
20 filed sets out the application that is being made. There is clarity in that. It conforms very
21 closely to what I discussed in my comments on April 25th and again on September the
22 4th. There is, in my view, no lack of clarity here.

23
24 The issues that we are going to hear on January 16th are a question of the interpretation
25 and the effect of Justice Thomas' order from August of 2016. As part of that process,
26 we're going to consider whether that order should be interpreted so as to confirm that the
27 trust assets are being held by the 1985 trustees for the benefit of the beneficiaries as
28 defined in the 1985 trust deed. Or, alternatively, whether those trust assets are being held
29 by the 1985 trustees for the benefit of the beneficiaries described in the 1982 trust deed.
30 Or, as I mentioned last time, a third alternative. The third alternative is I will not be able
31 to answer that question.

32
33 And maybe I will just elaborate a little more clearly with respect to what I was thinking
34 there because I see that I didn't articulate that the last time. I have not been able to review
35 all the materials on this file. The application refers to essentially the materials on the file
36 as being a record that the trustees rely on in seeking advice and direction. One of two
37 things is going to happen: either I will have sufficient confidence in the state of the record
38 that I will be permitted to answer the question posed by the trustees, or I will not. If I
39 have sufficient confidence in the state of the record, I will provide an answer to the
40 question - do the trustees hold for the benefit of the 1985 beneficiaries? If not, do they
41 hold for the benefit of the 1982 beneficiaries? Or, if the record shows some other

1 alternative, maybe that will arise as well.
2

3 But if I do not have sufficient confidence in the state of the record, I reserve the right to
4 say no, this will not happen on this application. I can't tell you how I will rule on that
5 until I have a better handle on the record that's before me. And I don't have that today, I
6 will propose to address that issue specifically in the reasons. So, I will hear argument, I
7 hopefully will be able to give you an answer, I will do my best to give an answer, but I,
8 sitting here today, cannot tell you with an absolute certainty that you will walk away with
9 an answer. There is a chance that I will be concerned about the state of the record and,
10 therefore, I will not be able to give you an answer. And that's really where I think we will
11 be.
12

13 I want to specifically address a concern or a caution that was raised with me by Mr.
14 Faulds, I believe, at the last appearance, and that is inviting me to look at page 56 and 57
15 of the transcript of the October 30th hearing. And there, Mr. Faulds I think was pointing
16 me to commentary that could suggest that there were two issues at stake here - one, is
17 whether I agreed or would conclude that the 1985 trust assets were being held by the
18 1985 trustees for the benefit of the 1985 beneficiaries; and, if I didn't agree on that front,
19 we would stop and do something else. And I see his -- I see that there is something in the
20 record that would point in that direction but I can tell you that that is not what I was
21 attempting to articulate at the time I made those comments. What I was doing, and if we
22 follow along, I was trying to suggest that that is something that Mr. Faulds had referred to
23 earlier in the presentation.
24

25 The two issues that I see, and always have, are the asset transfer issue and the
26 jurisdictional issue. It would not be possible to cut the asset transfer issue in two parts
27 and finish off by saying yes or no to whether or not the 1985 trustees hold for the benefit
28 of the 1985 beneficiaries, and then wait for further argument. That is not possible.
29 Because to get to the point where I make a ruling on 1985, I'm going to have to have
30 considered the context, and the background, and most importantly, what was the status of
31 this trust immediately prior to Justice Thomas granting his order.
32

33 So that is where I think we are. Now, we did hear further submissions from the parties
34 last time with respect to two issues - document production and process. I've previously
35 given a ruling, and indeed there was debate about that just a few minutes ago, my prior
36 ruling was that there's no need for any further document production. That is the ruling. If
37 there is something in particular that any of the parties think they need in order to properly
38 advocate their position, I am prepared at least on the surface to reconsider my ruling if
39 you tell me what you want and why it would impact the decision that I have to make. So
40 if anyone wants to make submissions on that, they're welcome to do that.
41

1 Secondly, on the issue of process, if someone has some suggestion as to how we could
2 conduct this process in a manner that would come to a fairer result for everyone, I'm
3 happy to hear from you. But, at the moment, we have an application that's been brought
4 by the trustees in the ordinary course, as trustees do from time to time, to seek advice and
5 direction that is routinely conducted on the basis of affidavit evidence and heard in
6 chambers, and that's the way I think that this has been set up. That would seem to be a fit
7 and proper process. It would permit, in my view, a fair opportunity to have all of the
8 submissions made with respect to potential outcomes. And, in the absence of some
9 submissions or suggestions to the contrary, that's how we will go.

10
11 MR. FAULDS: My Lord, might I ask --

12
13 THE COURT: Sure.

14
15 MR. FAULDS: -- in respect of those last two points, how would
16 you like -- if any of the parties or the intervenor do indeed wish to present that, is a letter
17 to Your Lordship sufficient to set that out or would you prefer an application?

18
19 THE COURT: You know, I don't like letters, generally
20 speaking, because then we're waiting for other parties to comment and it just doesn't -- it's
21 not a proper process, in my mind. So if you, or any of the parties, if any of the parties
22 want to deal with either of those issues, if there are particular documents that you want to
23 see, tell me what in particular you want and tell me how those documents will impact in a
24 material way the outcome of the decision, just call my assistant, and I have no free days
25 between now and Christmas, but there's always 8:30, there's lunch hours, and there's 4:30
26 if we need to. Similarly, if someone has an idea as to a fairer mode of hearing that we
27 could undertake on the 16th of January, I'm -- I want to do whatever we can to make sure
28 that we give everyone the fairest opportunity to make a full presentation so that a proper
29 outcome can be had in relation to this case.

30
31 MR. FAULDS: Thank you.

32
33 THE COURT: Okay. Anything else we need to deal with?

34
35 MS. OSAULDINI: In terms of the January hearing, we would like
36 the opportunity to file further written submissions in light of the clarification today.

37
38 THE COURT: Yes. That was the other issue I had wanted to
39 raise. There is been some water under the bridge since the briefs were filed and I -- I
40 think it would be quite appropriate if supplemental briefs were provided if you thought
41 that was necessary. I would -- I don't want to turn this into a ping-pong game where

1 people are passing briefs back and forth but I know certainly from your perspective you
2 have -- did not have a chance to file a brief. But if anyone else has additional submissions
3 to make, that would help me in terms of getting ready for the 16th. So I would be -- I
4 would be content with that for sure.

5
6 One other issue that I would like to have from all the parties an agreement on, if it is a
7 subject of -- it's a factual issue, I've heard numbers kicked around, I think Ms. Hutchison
8 addressed this in part in one of her submissions, she told me I think that there are 30
9 members of the 1985 trust for the beneficiaries who are not members of the Sawridge
10 Band. And so I'm taking that as being a number that's agreed upon. Later there was some
11 reference to 23. But that order of magnitude, 20, 25, 30, that's the number I am thinking
12 of. So, if the parties could confirm that's generally true?

13
14 On the flip side, do we have any handle on the number of people who were not Sawridge
15 Band members prior to 1985 but, because of the change of legislation in April of 1985,
16 became members? So they would -- they would not be members or beneficiaries under
17 '85 but are members of the Sawridge Band. Do we have a handle on those numbers?

18
19 MS. BONORA: So I think in the Justice Hugessen decision,
20 there were 11 people who were made members as a result -- were -- as a result of the Bill
21 C31 legislation. So I think it's those --

22
23 THE COURT: So they came in immediately after April 1985,
24 11 of those people, and they're still around?

25
26 MS. BONORA: Some of them have died.

27
28 THE COURT: Okay. Well, how many --

29
30 MS. BONORA: They were made members as a result of an
31 injunction through the Hugessen decision, but he said they were basically members from
32 1985. But there were 11 people in that decision.

33
34 THE COURT: Okay. So if I use 11 and 30, are those the -- Mr.
35 Molstad?

36
37 MR. MOLSTAD: If I could speak briefly, Sir?

38
39 THE COURT: Yes.

40
41 MR. MOLSTAD: As a litigator, I can tell you that I don't know

1 what the position is of my friends in terms of who ought to be a beneficiary based on
2 their interpretation of the 1985 trust.

3

4 THE COURT: Okay.

5

6 MR. MOLSTAD: I'd like to see that.

7

8 THE COURT: Okay.

9

10 MR. MOLSTAD: I'd like them to tell me who they say is a
11 beneficiary --

12

13 THE COURT: M-hm.

14

15 MR. MOLSTAD: -- and the reason that they say they're
16 beneficiaries.

17

18 THE COURT: M-hm.

19

20 MR. MOLSTAD: In terms of the individuals who --

21

22 THE COURT: I don't need that for this application, Mr.
23 Molstad. I'm just trying to think of order of magnitude because ---

24

25 MR. MOLSTAD: We don't know that though.

26

27 THE COURT: We don't know that. Okay. Well, then there is
28 an agreement on that.

29

30 MR. MOLSTAD: Yeah. And -- and in terms of what my friend,
31 Ms. Bonora, said, that's what Sawridge has, as a First Nation, has encouraged, the fact
32 that these people who, by order of Hugessen, were made members are not beneficiaries.
33 Their objective was to take steps to ensure that they became beneficiaries. Sawridge First
34 Nation wants those 11 people who are members and who, based on the interpretation of
35 the 1985 trust, are not considered beneficiaries, they want them to be beneficiaries.

36

37 THE COURT: Okay.

38

39 MS. BONORA: So, Sir, sorry, I perhaps should've said, I think
40 their second point, there is an agreement it is those 11. I think on the first point, perhaps a
41 way to do it is to maybe have it addressed it in the supplemental briefs and then we can

1 see --

2

3 THE COURT: Sure. I mean, I'd just like to have some -- some
4 indication of what I'm dealing with. Because as I've been reminded several times, there
5 were consequences and I want to understand what those consequences are of making a
6 decision.

7

8 MR. FAULDS: My Lord --

9

10 THE COURT: Not that it would necessarily impact the
11 decision but I'd like to know what those consequences are.

12

13 MR. FAULDS: And, My Lord, the numbers that you referred to
14 and which were referred to in one of the briefs of the Public Trustee --

15

16 THE COURT: M-hm.

17

18 MR. FAULDS: -- those were numbers which were derived from
19 Mr. Bugauld's (phonetic) affidavits from I believe 2011 and then 2015. I don't know
20 whether or not the trustees might be in a position to update those numbers again but, you
21 know, perhaps that might be a useful thing to do.

22

23 We've used those because those -- because those numbers -- the numbers which have
24 been deposed to, there may be some basis for --

25

26 THE COURT: M-hm.

27

28 MR. FAULDS: -- adjusting those numbers based on the
29 interpretation of the -- of the trust beneficiary definitions. But those seem to be -- those
30 seem to be certainly ballpark numbers.

31

32 THE COURT: Okay. Well, maybe you could provide --

33

34 UNIDENTIFIED SPEAKER: We'll address it in our brief.

35

36 THE COURT: -- whatever your best information is.

37

38 UNIDENTIFIED SPEAKER: Yeah. M-hm.

39

40 THE COURT: So, okay. Nothing further?

41

1 UNIDENTIFIED SPEAKER: Thank you.

2

3 THE COURT: Okay. Thank you very much.

4

5

6 PROCEEDINGS CONCLUDED

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1 **Certificate of Record**

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I, Nicole Lachat, certify that this recording is the record made of the evidence of proceedings in the Court of Queen’s Bench, held in courtroom 315, at Edmonton, Alberta, on the 27th day of November, 2019, and I was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

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I, Nicole Carpendale, certify that

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

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

TEZZ TRANSCRIPTION, Transcriber
Order Number: AL-JO-1004-4827
Dated: November 30, 2019

TAB 2

PBI08.0-List of Current SFN Members and Others 1985 Trust.pdf

Sawridge First Nation Members	1985 Trust (Potential Beneficiaries)
Cardinal, Kieran T.	Cardinal, Kieran T. (Ardell Twinn)
Donald, Gina	
Draney, Brenda A.	
Draney, Frieda I	
L'Hirondelle, Bertha	
Lindberg, Rosina A.	
McCoy, Vera	McCoy, Vera
Midbo, David P.	
Midbo, Denise M.	
Midbo, Kristina G.	
Morton, Deana I.	
Postras, Elizabeth B.	
Postras-Collins, Tracey J.	
Potskin, Aaron R .B.	Potskin, Aaron R .B.
Potskin, Jeanine M.	Potskin, Jeanine M.
Potskin, Jonathon B.	Potskin, Jonathon B.
Potskin, Lillian	
Potskin, Trent R. A.	Potskin, Trent R. A.
Quinn-Twin, Rainbow	Quinn-Twin, Rainbow (Winona Twin)
Twin, Darcy A.	Twin, Darcy A. (Chester)
Twin, E. Justin	Twin, E. Justin (Vera Twin)
Twin, Jaclyn D.	Twin, Jaclyn D. (Vera Twin)
Twin, Naomi	
Twin, Starr	Twin, Starr (Winona Twin)
Twin, Walter F.	Twin, Walter F.
Twin, Wesley I.	
Twin, Winona N.	Twin, Winona N. (Vera Twin)
Twin, Yvonne D.	Twin, Yvonne D.
Twinn, Alexander G.	Twinn, Alexander G. (Roland Twinn)
Twinn, Ardell W.	Twinn, Ardell W. (Walter P. Twinn)
Twinn, Arlene	Twinn, Arlene (Walter P. Twinn)
Twinn, Catherine M.	Twinn, Catherine M. (Walter P. Twinn)
Twinn, Cody R.	Twinn, Cody R. (Ardell Twinn)
Twinn, Corey R.	Twinn, Corey R. (Ardell Twinn)
Twinn, Irene M.	Twinn, Irene M. (Walter P. Twinn)
Twinn, Isaac F.	Twinn, Isaac F. (Walter P. Twinn)
Twinn, Paul H.	Twinn, Paul H. (Walter P. Twinn)
Twinn, Roland C.	Twinn, Roland C. (Walter P. Twinn)
Twinn, Roy K.	Twinn, Roy K. (Roland Twinn)
Twinn, Samuel L.	Twinn, Samuel L. (Walter P. Twinn)

PBI08.0-List of Current SFN Members and Others 1985 Trust.pdf

Twinn, W. Patrick	Twinn, W. Patrick (Walter P. Twinn)
Ward, Georgina R.	Ward, Georgina R.
Ward, Margaret C.	
Ward, Margaret S.	Ward, Margaret S.
Ward, Nathan A.	Ward, Nathan A.
	Potskin, William (Aaron Potskin)
	Potskin Keanu N.A. (Aaron Potskin)
	Potskin, Jaise A. (Jeanine Potskin)
	Moodie, Jorja (Jeanine Potskin)
	Potskin, Ethan E.R. (Trent Potskin)
	Potskin, Talia, M.L. (Trent Potskin)
	Twin, Autumn J. (Darcy Twin)
	Twin, Logan F. (Darcy Twin)
	Twin, River C. (Darcy Twin)
	Twin, Laurie (Darcy Twin Ex)
	Twin, Brianne (Darcy Twin)
	Lamouche-Twin, Justice (Justin Twin)
	Lamouche-Twin, Everett (Justin Twin)
	Lamouche-Twin, Kayln (Justin Twin)
	Lamouche-Twin, Maggie (Justin Twin)
	Twin, Destin (Jaclyn Twin)
	Robberstad, Jady (Jaclyn Twin)
	Quinn-Twin, Kaissac P.C. (Rainbow)
	Twinn, Shannon (Ardell Twinn Ex)
	Twinn-Vincent, W. Chase (Arlene Twinn)
	Twinn-Vincent, Seth (Arlene Twinn)
	Twinn, Graham (Irene Twinn)
	Twinn, Clinton (Irene Twinn)
	Twinn, Kristel (Paul Twinn Ex)
	Twinn, Shelby (Paul Twinn)
	Twinn, Kaitlin (Paul Twinn)
	Twinn, Haitina E. (Roland Twinn)
	Twinn, Courtney (Samuel Twinn)
	Megley, Melissa (Patrick Twinn)
	Twinn, Aspen S. (Patrick Twinn)
	MacDonald, William (Chester Twin)

TAB 3



**REVISED STATUTES
OF CANADA
1970**

**STATUTS REVISÉS
DU CANADA
1970**

Proclaimed and Published under
the authority of chapter 48
of the Statutes of Canada, 1964-65

Proclamés et publiés en conformité
du chapitre 48
des Statuts du Canada de 1964-65

VOLUME IV

VOLUME IV



CHAPTER I-6

An Act respecting Indians

SHORT TITLE

Short title **1.** This Act may be cited as the *Indian Act*.
R.S., c. 149, s. 1.

INTERPRETATION

Definitions **2.** (1) In this Act

“band”
«bande»

“child”
«enfant»

“council of the band”
«conseil...»

“Department”
«Ministère»

“elector”
«electeur»

“band” means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after the 4th day of September 1951,

(b) for whose use and benefit in common, moneys are held by Her Majesty, or

(c) declared by the Governor in Council to be a band for the purposes of this Act;

“child” includes a legally adopted Indian child;

“council of the band” means

(a) in the case of a band to which section 74 applies, the council established pursuant to that section,

(b) in the case of a band to which section 74 does not apply, the council chosen according to the custom of the band, or, where there is no council, the chief of the band chosen according to the custom of the band;

“Department” means the Department of Indian Affairs and Northern Development;

“elector” means a person who

(a) is registered on a Band List,

(b) is of the full age of twenty-one years, and

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

CHAPITRE I-6

Loi concernant les Indiens

TITRE ABRÉGÉ

Titre abrégé **1.** La présente loi peut être citée sous le titre : *Loi sur les Indiens*. S.R., c. 149, art. 1.

INTERPRÉTATION

Définitions **2.** (1) Dans la présente loi

«bande» signifie un groupe d'Indiens,

a) à l'usage et au profit communs desquels, des terres, dont le titre juridique est attribué à Sa Majesté, ont été mises de côté avant ou après le 4 septembre 1951,

b) à l'usage et au profit communs desquels, Sa Majesté détient des sommes d'argent, ou

c) que le gouverneur en conseil a déclaré être une bande aux fins de la présente loi;

«biens» comprend les biens réels et personnels et tout intérêt dans un terrain;

«conseil de la bande» signifie

a) dans le cas d'une bande à laquelle s'applique l'article 74, le conseil établi conformément audit article;

b) dans le cas d'une bande à laquelle l'article 74 n'est pas applicable, le conseil choisi selon la coutume de la bande ou, en l'absence d'un conseil, le chef de la bande choisi selon la coutume de la bande;

«deniers des Indiens» signifie toutes les sommes d'argent perçues, reçues ou détenues par Sa Majesté à l'usage et au profit des Indiens ou des bandes;

«électeur» signifie une personne qui

a) est inscrite sur une liste de bande,

b) a vingt et un ans révolus, et

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

"estate" «biens»	"estate" includes real and personal property and any interest in land;	«enfant» comprend un enfant indien légalement adopté;	«enfant» "child"
"Indian" «Indien»	"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;	«Indien» signifie une personne qui, conformément à la présente loi, est inscrite à titre d'Indien ou a droit de l'être;	«Indien» "Indian"
"Indian moneys" «deniers...»	"Indian moneys" means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands;	«Indien mentalement incapable» signifie un Indien qui, conformément aux lois de la province où il réside, a été déclaré mentalement déficient ou incapable, aux fins de toute loi de cette province régissant l'administration des biens de personnes mentalement déficientes ou incapables;	«Indien mentalement incapable» "mentally..."
"intoxicant" «spiritueux»	"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption that are intoxicating;	«inscrit» signifie inscrit comme Indien dans le registre des Indiens;	«inscrit» "registered"
"member of a band" «membre...»	"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;	«membre d'une bande» signifie une personne dont le nom apparaît sur une liste de bande ou qui a droit à ce que son nom y figure;	«membre d'une bande» "member..."
"mentally incompetent Indian" «Indien mentalement incapable»	"mentally incompetent Indian" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;	«ministère» signifie le ministère des Affaires indiennes et du Nord canadien;	«ministère» "Department"
"Minister" «Ministre»	"Minister" means the Minister of Indian Affairs and Northern Development;	«Ministre» désigne le ministre des Affaires indiennes et du Nord canadien;	«Ministre» "Minister"
"registered" «inscrit»	"registered" means registered as an Indian in the Indian Register;	«registraire» désigne le fonctionnaire du ministère qui est préposé au registre des Indiens;	«registraire» "Registrar"
"Registrar" «registraire»	"Registrar" means the officer of the Department who is in charge of the Indian Register;	«réserve» signifie une parcelle de terrain dont le titre juridique est attribué à Sa Majesté et qu'Elle a mise de côté à l'usage et au profit d'une bande;	«réserve» "reserve"
"reserve" «réserve»	"reserve" means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;	«spiritueux» comprend l'alcool, une liqueur ou une combinaison de liqueurs alcooliques, spiritueuses, vineuses, à base de malt fermenté ou autrement enivrantes et une liqueur mélangée dont une partie est spiritueuse, vineuse, fermentée ou autrement enivrante, et tous les breuvages ou boissons et tous les mélanges ou préparations susceptibles de consommation par l'homme, qui sont enivrants;	«spiritueux» "intoxicant"
"superintendent" «surintendant»	"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;	«surintendant» comprend un commissaire, un surveillant régional, un surintendant des Indiens, un surintendant adjoint des Indiens et toute autre personne que le Ministre a déclarée un surintendant aux fins de la présente loi, et, relativement à une bande ou une réserve, signifie le surintendant de cette bande ou réserve;	«surintendant» "superintendent"
"surrendered lands" «terres...»	"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit	«terres cédées» signifie une réserve ou partie d'une réserve, ou tout intérêt y afférent, dont le titre juridique demeure attribué à Sa Majesté et que la bande à l'usage et au profit de laquelle il avait été mis de côté a abandonné ou cédé.	«terres cédées» "surrendered..."

it was set apart.

"Band"

(2) The expression "band" with reference to a reserve or surrendered lands means the band for whose use and benefit the reserve or the surrendered lands were set apart.

(2) L'expression «bande», en ce qui concerne une réserve ou des terres cédées, signifie la bande à l'usage et au profit de laquelle la réserve ou les terres cédées ont été mises de côté.

«Bande»

Exercise of powers conferred on band or council

(3) Unless the context otherwise requires or this Act otherwise provides

- (a) a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band, and
- (b) a power conferred upon the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened. R.S., c. 149, s. 2; 1966-67, c. 25, s. 40.

(3) Sauf si le contexte s'y oppose ou si la présente loi dispose autrement,

- a) un pouvoir conféré à une bande est censé ne pas être exercé, à moins de l'être en vertu du consentement donné par une majorité des électeurs de la bande, et
- b) un pouvoir conféré au conseil d'une bande est censé ne pas être exercé à moins de l'être en vertu du consentement donné par une majorité des conseillers de la bande présents à une réunion du conseil dûment convoquée. S.R., c. 149, art. 2; 1966-67, c. 25, art. 40.

Exercice des pouvoirs conférés à une bande ou un conseil

ADMINISTRATION

Minister to administer Act

3. (1) This Act shall be administered by the Minister of Indian Affairs and Northern Development, who shall be the superintendent general of Indian affairs.

3. (1) Le ministre des Affaires indiennes et du Nord canadien, qui doit être surintendant général des affaires indiennes, est chargé de l'application de la présente loi.

Le Ministre est chargé de l'application de la loi

Authority of Deputy Minister and chief officer

(2) The Minister may authorize the Deputy Minister of Indian Affairs and Northern Development or the chief officer in charge of the branch of the Department relating to Indian affairs to perform and exercise any of the duties, powers and functions that may be or are required to be performed or exercised by the Minister under this Act or any other Act of the Parliament of Canada relating to Indian affairs. R.S., c. 149, s. 3; 1966-67, c. 25, s. 40.

(2) Le Ministre peut autoriser le sous-ministre des Affaires indiennes et du Nord canadien ou le fonctionnaire en chef de la division du ministère relative aux affaires indiennes à accomplir et exercer tout devoir, pouvoir et fonction que peut ou doit accomplir ou exercer le Ministre aux termes de la présente loi ou de toute autre loi du Parlement du Canada concernant les affaires indiennes. S.R., c. 149, art. 3; 1966-67, c. 25, art. 40.

Autorité du sous-ministre et du fonctionnaire en chef

APPLICATION OF ACT

Application of Act

4. (1) A reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as Eskimos.

4. (1) La mention d'un Indien, dans la présente loi, ne comprend pas une personne de la race d'aborigènes communément appelés Esquimaux.

Application de la loi

Act may be declared inapplicable

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

- (a) any Indians or any group or band of Indians, or
- (b) any reserve or any surrendered lands or any part thereof,

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

- a) à des Indiens ou à un groupe ou une bande d'Indiens, ou
- b) à une réserve ou à des terres cédées, ou à une partie y afférente,

On peut déclarer la loi inapplicable

and may by proclamation revoke any such declaration.

et peut par proclamation révoquer toute semblable déclaration.

Certain sections inapplicable to Indians living off reserves

(3) Sections 114 to 123 and, unless the Minister otherwise orders, sections 42 to 52 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province. R.S., c. 149, s. 4; 1956, c. 40, s. 1.

(3) Les articles 114 à 123 et, sauf si le Ministre en ordonne autrement, les articles 42 à 52 ne s'appliquent à aucun Indien, ni à l'égard d'aucun Indien, ne résidant pas ordinairement dans une réserve ou sur des terres qui appartiennent à Sa Majesté du chef du Canada ou d'une province. S.R., c. 149, art. 4; 1956, c. 40, art. 1.

Certains articles ne s'appliquent pas aux Indiens vivant hors des réserves

DEFINITION AND REGISTRATION OF INDIANS

DÉFINITION ET ENREGISTREMENT DES INDIENS

Indian Register

5. An Indian Register shall be maintained in the Department, which shall consist of Band Lists and General Lists and in which shall be recorded the name of every person who is entitled to be registered as an Indian. R.S., c. 149, s. 5.

5. Est maintenu au ministère un registre des Indiens, lequel consiste dans des listes de bande et des listes générales et où doit être consigné le nom de chaque personne ayant droit d'être inscrite comme Indien. S.R., c. 149, art. 5.

Registre des Indiens

Band Lists and General Lists

6. The name of every person who is a member of a band and is entitled to be registered shall be entered in the Band List for that band, and the name of every person who is not a member of a band and is entitled to be registered shall be entered in a General List. R.S., c. 149, s. 6.

6. Le nom de chaque personne qui est membre d'une bande et a droit d'être inscrite doit être consigné sur la liste de bande pour la bande en question, et le nom de chaque personne qui n'est pas membre d'une bande et a droit d'être inscrite doit apparaître sur une liste générale. S.R., c. 149, art. 6.

Listes de bande et listes générales

Deletions and additions

7. (1) The Registrar may at any time add to or delete from a Band List or a General List 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.

7. (1) Le registraire peut en tout temps ajouter à une liste de bande ou à une liste générale, ou en retrancher, le nom de toute personne qui, d'après la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste.

Additions et retranchements

Date of change

(2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom. R.S., c. 149, s. 7.

(2) Le registre des Indiens doit indiquer la date où chaque nom y a été ajouté ou en a été retranché. S.R., c. 149, art. 7.

Date du changement

Existing lists to constitute Register

8. The band lists in existence in the Department on the 4th day of September 1951 shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that serves the band or persons to whom the List relates and in all other places where band notices are ordinarily displayed. R.S., c. 149, s. 8.

8. Les listes de bande dressées au ministère le 4 septembre 1951 constituent le registre des Indiens et les listes applicables doivent être affichées à un endroit bien en vue dans le bureau du surintendant qui dessert la bande ou les personnes visées par la liste et dans tous les autres endroits où les avis concernant la bande sont ordinairement affichés. S.R., c. 149, art. 8.

Les listes existantes constituent le registre

Deletions and additions may be protested

9. (1) Within six months after a list has been posted in accordance with section 8 or within three months after the name of a person has been added to or deleted from a Band List or a General List pursuant to section 7

9. (1) Dans les six mois de l'affichage d'une liste conformément à l'article 8 ou dans les trois mois de l'addition du nom d'une personne à une liste de bande ou à une liste générale, ou de son retranchement d'une telle liste, en vertu de l'article 7,

Les retranchements et les additions peuvent être l'objet d'une protestation

(a) in the case of a Band List, the council of the band, any ten electors of the band, or any three electors if there are less than ten electors in the band,
 (b) in the case of a posted portion of a General List, any adult person whose name appears on that posted portion, and
 (c) the person whose name was included in or omitted from the List referred to in section 8, or whose name was added to or deleted from a Band List or a General List,
 may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person, and the onus of establishing those grounds lies on the person making the protest.

Registrar to
cause
investigation

(2) Where a protest is made to the Registrar under this section he shall cause an investigation to be made into the matter and shall render a decision, and subject to a reference under subsection (3), the decision of the Registrar is final and conclusive.

Reference to
judge

(3) Within three months from the date of a decision of the Registrar under this section

(a) the council of the band affected by the Registrar's decision, or

(b) the person by or in respect of whom the protest was made,

may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registrar shall refer the decision, together with all material considered by the Registrar in making his decision, to the judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other county or district as the Minister may designate, or in the Province of Quebec, to the judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other district as the Minister may designate.

Inquiry and
decision

(4) The judge of the county, district or Superior Court, as the case may be, shall inquire into the correctness of the Registrar's decision, and for such purposes may exercise

a) dans le cas d'une liste de bande, le conseil de la bande, dix électeurs de la bande ou trois électeurs, s'il y en a moins de dix,

b) dans le cas d'une portion affichée d'une liste générale, tout adulte dont le nom figure sur cette portion affichée, et

c) la personne dont le nom a été inclus dans la liste mentionnée à l'article 8, ou y a été omis, ou dont le nom a été ajouté à une liste de bande ou une liste générale, ou en a été retranché,

peuvent, par avis écrit au registraire, renfermant un bref exposé des motifs invoqués à cette fin, protester contre l'inclusion, l'omission, l'addition ou le retranchement, selon le cas, du nom de cette personne, et il incombe à la personne qui formule la protestation d'établir ces motifs.

Le registraire
fait tenir une
enquête

(2) Lorsqu'une protestation est adressée au registraire, en vertu du présent article, il doit faire tenir une enquête sur la question et rendre une décision qui, sous réserve d'un renvoi prévu au paragraphe (3), est définitive et péremptoire.

Renvoi devant
un juge

(3) Dans les trois mois de la date d'une décision du registraire aux termes du présent article,

a) le conseil de la bande que vise la décision du registraire, ou

b) la personne qui a fait la protestation ou à l'égard de qui elle a eu lieu,

peut, moyennant un avis par écrit, demander au registraire de soumettre la décision à un juge, pour révision, et dès lors le registraire doit déférer la décision, avec tous les éléments que le registraire a examinés en rendant sa décision, au juge de la cour de comté ou district du comté ou district où la bande est située ou dans lequel réside la personne à l'égard de qui la protestation a été faite, ou de tel autre comté ou district que le Ministre peut désigner, ou, dans la province de Québec, au juge de la cour supérieure du district où la bande est située ou dans lequel réside la personne à l'égard de qui la protestation a été faite, ou de tel autre district que le Ministre peut désigner.

Enquête et
décision

(4) Le juge de la cour de comté, de la cour de district ou de la cour supérieure, selon le cas, doit enquêter sur la justesse de la décision du registraire, et, à ces fins, peut exercer tous

all the powers of a commissioner under Part I of the *Inquiries Act*; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive.

les pouvoirs d'un commissaire en vertu de la Partie I de la *Loi sur les enquêtes*. Le juge doit décider si la personne qui a fait l'objet de la protestation a ou n'a pas droit, selon le cas, d'après la présente loi, à l'inscription de son nom au registre des Indiens, et la décision du juge est définitive et péremptoire.

One reference only

(5) Not more than one reference of a Registrar's decision in respect of a protest may be made to a judge under this section.

(5) La décision du registraire à l'égard d'une protestation ne peut être renvoyée qu'une seule fois devant un juge aux termes du présent article.

Un seul renvoi

Burden of proof

(6) Where a decision of the Registrar has been referred to a judge for review under this section, the burden of establishing that the decision of the Registrar is erroneous is on the person who requested that the decision be so referred. R.S., c. 149, s. 9; 1956, c. 40, s. 2.

(6) Lorsque la décision du registraire a été renvoyée devant un juge, pour révision, aux termes du présent article, il incombe à la personne qui a demandé ce renvoi d'établir que la décision du registraire est erronée. S.R., c. 149, art. 9; 1956, c. 40, art. 2.

Fardeau de la preuve

Wife and minor children

10. Where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be. R.S., c. 149, s. 10.

10. Lorsque le nom d'une personne du sexe masculin est inclus dans une liste de bande ou une liste générale, ou y est ajouté ou omis, ou en est retranché, les noms de son épouse et de ses enfants mineurs doivent également être inclus, ajoutés, omis ou retranchés, selon le cas. S.R., c. 149, art. 10.

L'épouse et les enfants mineurs

Persons entitled to be registered

11. (1) Subject to section 12, a person is entitled to be registered if that person

11. (1) Sous réserve de l'article 12, une personne a droit d'être inscrite si

Personnes ayant droit à l'inscription

(a) on the 26th day of May 1874 was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;

a) elle était, le 26 mai 1874, aux fins de la loi alors intitulée: *Acte pourvoyant à l'organisation du Département d'État du Canada, ainsi qu'à l'administration des Terres des Sauvages et de l'Ordonnance*, chapitre 42 des Statuts du Canada de 1868, modifiée par l'article 6 du chapitre 6 des Statuts du Canada de 1869 et par l'article 8 du chapitre 21 des Statuts du Canada de 1874, considérée comme ayant droit à la détention, l'usage ou la jouissance des terres et autres biens immobiliers appartenant aux tribus, bandes ou groupes d'Indiens au Canada, ou affectés à leur usage;

(b) is a member of a band

b) elle est membre d'une bande

(i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May 1874, have been agreed by treaty to be set apart, or

(i) à l'usage et au profit communs de laquelle des terres ont été mises de côté ou, depuis le 26 mai 1874, ont fait l'objet d'un traité les mettant de côté, ou

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;

(ii) que le gouverneur en conseil a déclarée une bande aux fins de la présente loi;

(c) is a male person who is a direct descendant in the male line of a male

c) elle est du sexe masculin et descendante directe, dans la ligne masculine, d'une personne du sexe masculin décrite à l'alinéa

	<p>person described in paragraph (a) or (b); (d) is the legitimate child of (i) a male person described in paragraph (a) or (b), or (ii) a person described in paragraph (c); (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).</p>	<p>a) ou b); d) elle est l'enfant légitime (i) d'une personne du sexe masculin décrite à l'alinéa a) ou b), ou (ii) d'une personne décrite à l'alinéa c); e) elle est l'enfant illégitime d'une personne du sexe féminin décrite à l'alinéa a), b) ou d); ou f) elle est l'épouse ou la veuve d'une personne ayant le droit d'être inscrite aux termes de l'alinéa a), b), c), d) ou e).</p>	
Exception	<p>(2) Paragraph (1)(e) applies only to persons born after the 13th day of August 1956. R.S., c. 149, s. 11; 1956, c. 40, s. 3.</p>	<p>(2) L'alinéa (1)e) s'applique seulement aux personnes nées après le 13 août 1956. S.R., c. 149, art. 11; 1956, c. 40, art. 3.</p>	Exception
Persons not entitled to be registered	<p>12. (1) The following persons are not entitled to be registered, namely, (a) a person who (i) has received or has been allotted half-breed lands or money scrip, (ii) is a descendant of a person described in subparagraph (i), (iii) is enfranchised, or (iv) is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a),(b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e), unless, being a woman, that person is the wife or widow of a person described in section 11, and (b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.</p>	<p>12. (1) Les personnes suivantes n'ont pas le droit d'être inscrites, savoir: a) une personne qui (i) a reçu, ou à qui il a été attribué, des terres ou certificats d'argent de métis, (ii) est un descendant d'une personne décrite au sous-alinéa (i), (iii) est émancipée, ou (iv) est née d'un mariage contracté après le 4 septembre 1951 et a atteint l'âge de vingt et un ans, dont la mère et la grand-mère paternelle ne sont pas des personnes décrites à l'alinéa 11(1)a), b) ou d) ou admises à être inscrites en vertu de l'alinéa 11(1)e), sauf si, étant une femme, cette personne est l'épouse ou la veuve de quelqu'un décrit à l'article 11, et b) une femme qui a épousé un non-Indien, sauf si cette femme devient subséquemment l'épouse ou la veuve d'une personne décrite à l'article 11.</p>	Personnes n'ayant pas droit à l'inscription
Protest re illegitimate child	<p>(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.</p>	<p>(2) L'addition, à une liste de bande, du nom d'un enfant illégitime décrit à l'alinéa 11(1)e) peut faire l'objet d'une protestation en tout temps dans les douze mois de l'addition et si, à la suite de la protestation, il est décidé que le père de l'enfant n'était pas un Indien, l'enfant n'a pas le droit d'être inscrit selon cet alinéa.</p>	Protestation au sujet d'un enfant illégitime
Certificate	<p>(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.</p>	<p>(3) Le Ministre peut délivrer à tout Indien auquel la présente loi cesse de s'appliquer, un certificat dans ce sens.</p>	Certificat
Exception	<p>(4) Subparagraphs (1)(a)(i) and (ii) do not apply to a person who</p>	<p>(4) Les sous-alinéas (1)a)(i) et (ii) ne s'appliquent pas à une personne qui,</p>	Exception

	(a) pursuant to this Act is registered as an Indian on the 13th day of August 1958, or	a) en conformité de la présente loi, est inscrite à titre d'Indien le 13 août 1958, ou	
	(b) is a descendant of a person described in paragraph (a) of this subsection.	b) est un descendant d'une personne désignée à l'alinéa a) du présent paragraphe.	
Idem	(5) Subsection (2) applies only to persons born after the 13th day of August 1956. R.S., c. 149, s. 12; 1956, c. 40, ss. 3, 4; 1958, c. 19, s. 1.	(5) Le paragraphe (2) s'applique seulement aux personnes nées après le 13 août 1956. S.R., c. 149, art. 12; 1956, c. 40, art. 3, 4; 1958, c. 19, art. 1.	Idem
Admission to band and transfer	13. Subject to the approval of the Minister and, if the Minister so directs, to the consent of the admitting band,	13. Sous réserve de l'approbation du Ministre et, si ce dernier l'ordonne, sous réserve du consentement de la bande qui accorde l'admission,	Admission au sein d'une bande et transfert d'un membre
	(a) a person whose name appears on a General List may be admitted into membership of a band with the consent of the council of the band, and	a) une personne dont le nom apparaît sur une liste générale peut être admise au sein d'une bande avec le consentement du conseil de la bande, et	
	(b) a member of a band may be admitted into membership of another band with the consent of the council of the latter band. 1956, c. 40, s. 5.	b) un membre d'une bande peut être admis parmi les membres d'une autre bande avec le consentement du conseil de celle-ci. 1956, c. 40, art. 5.	
Woman marrying outside band	14. A woman who is a member of a band ceases to be a member of that band if she marries a person who is not a member of that band, but if she marries a member of another band, she thereupon becomes a member of the band of which her husband is a member. R.S., c. 149, s. 14.	14. Une femme qui est membre d'une bande cesse d'en faire partie si elle épouse une personne qui n'en est pas membre, mais si elle épouse un membre d'une autre bande, elle entre dès lors dans la bande à laquelle appartient son mari. S.R., c. 149, art. 14.	Femme qui épouse un homme n'étant pas de la bande
Payments to persons ceasing to be members	15. (1) Subject to subsection (2), an Indian who becomes enfranchised or who otherwise ceases to be a member of a band is entitled to receive from Her Majesty	15. (1) Sous réserve du paragraphe (2), un Indien qui devient émancipé ou qui, d'autre manière, cesse d'être membre d'une bande a droit de recevoir de Sa Majesté	Paiements aux personnes qui cessent d'être membres
	(a) one per capita share of the capital and revenue moneys held by Her Majesty on behalf of the band, and	a) une part <i>per capita</i> des fonds de capital et de revenus détenus par Sa Majesté au nom de la bande, et	
	(b) an amount equal to the amount that in the opinion of the Minister he would have received during the next succeeding twenty years under any treaty then in existence between the band and Her Majesty if he had continued to be a member of the band.	b) un montant égal à la somme que, de l'avis du Ministre, il aurait reçue durant les vingt années suivantes aux termes de tout traité alors en vigueur entre la bande et Sa Majesté s'il était demeuré membre de la bande.	
Payments not to be made in certain cases	(2) A person is not entitled to receive any amount under subsection (1)	(2) Une personne n'a pas droit de recevoir un montant quelconque sous le régime du paragraphe (1)	Certains cas où les paiements ne sont pas versés
	(a) if his name was removed from the Indian register pursuant to a protest made under section 9, or	a) si son nom a été rayé du registre des Indiens à la suite d'une protestation faite en vertu de l'article 9, ou	
	(b) if he is not entitled to be a member of a band by reason of the application of paragraph 11(1)(e) or subparagraph 12(1)(a)(iv).	b) si elle n'a pas droit d'être membre d'une bande en raison de l'application de l'alinéa 11(1)(e) ou du sous-alinéa 12(1)a)(iv).	
Payments to minors	(3) Where by virtue of this section moneys	(3) Lorsqu'en vertu du présent article, des	Paiements aux mineurs

are payable to a person who is under the age of twenty-one, the Minister may

(a) pay the moneys to the parent, guardian or other person having the custody of that person or to the public trustee, public administrator or other like official for the province in which that person resides, or

(b) cause payment of the moneys to be withheld until that person reaches the age of twenty-one.

Compensation for permanent improvements

(4) Where the name of a person is removed from the Indian Register and he is not entitled to any payment under subsection (1), the Minister shall, if he considers it equitable to do so, authorize payment, out of moneys appropriated by Parliament, of such compensation as the Minister may determine for any permanent improvements made by that person on lands in a reserve.

Commutation of payments under former Act

(5) Where, prior to the 4th day of September 1951, any woman became entitled, under section 14 of the *Indian Act*, chapter 98 of the Revised Statutes of Canada, 1927, or any prior provisions to the like effect, to share in the distribution of annuities, interest moneys or rents, the Minister may, in lieu thereof, pay to such woman out of the moneys of the band an amount equal to ten times the average annual amounts of such payments made to her during the ten years last preceding or, if they were paid for less than ten years, during the years they were paid. R.S., c. 149, s. 15; 1956, c. 40, s. 6.

Transfer of funds

16. (1) Section 15 does not apply to a person who ceases to be a member of one band by reason of his becoming a member of another band, but, subject to subsection (3), there shall be transferred to the credit of the latter band the amount to which that person would, but for this section, have been entitled under section 15.

Transferred member's interest

(2) A person who ceases to be a member of one band by reason of his becoming a member of another band is not entitled to any interest in the lands or moneys held by Her Majesty on behalf of the former band, but he is entitled to the same interest in common in lands and moneys held by Her Majesty on behalf of the latter band as other members of that band.

deniers sont payables à une personne de moins de vingt et un ans, le Ministre peut

a) payer les deniers au père ou à la mère, au tuteur ou à l'autre personne ayant la garde de cette personne, ou au curateur public ou administrateur public ou autre semblable fonctionnaire de la province où réside ladite personne, ou

b) faire suspendre le paiement des deniers jusqu'à ce que la personne ait atteint l'âge de vingt et un ans.

(4) Lorsque le nom d'une personne est rayé du registre des Indiens et que celle-ci n'a droit à aucun paiement aux termes du paragraphe (1), le Ministre, s'il l'estime équitable, doit autoriser le paiement, à même les deniers votés par le Parlement, de l'indemnité qu'il fixe pour toute amélioration permanente faite par cette personne sur des terres d'une réserve.

Indemnité relative aux améliorations permanentes

(5) Lorsque, avant le 4 septembre 1951, une femme est devenue admissible, selon l'article 14 de la *Loi des Indiens*, chapitre 98 des Statuts révisés du Canada de 1927, ou selon quelque disposition antérieure ayant le même effet, à participer à la distribution d'annuités, intérêts ou rentes, le Ministre peut, en remplacement des susdits, payer à cette femme, sur les deniers de la bande, un montant égal à dix fois les montants annuels moyens de ces paiements à elle effectués au cours des dix années précédentes ou, s'ils l'ont été pendant moins de dix ans, au cours des années pendant lesquelles ils ont été faits. S.R., c. 149, art. 15; 1956, c. 40, art. 6.

Commutation de paiements prévus par une loi antérieure

16. (1) L'article 15 ne s'applique pas à une personne qui cesse d'appartenir à une bande du fait qu'elle devient membre d'une autre bande, mais, sous réserve du paragraphe (3), le montant auquel cette personne aurait eu droit en vertu de l'article 15, sans le présent article, doit être transféré au crédit de la bande en dernier lieu mentionnée.

Transfert de fonds

(2) Une personne qui cesse de faire partie d'une bande du fait qu'elle est devenue membre d'une autre bande n'a droit à aucun intérêt dans les terres ou deniers détenus par Sa Majesté au nom de la bande en premier lieu mentionnée, mais elle a droit au même intérêt en commun, dans les terres et les deniers détenus par Sa Majesté au nom de la bande en deuxième lieu mentionnée, que les

L'intérêt d'un membre transféré

Transfer of woman by marriage

(3) Where a woman who is a member of one band becomes a member of another band by reason of marriage, and the per capita share of the capital and revenue moneys held by Her Majesty on behalf of the first-mentioned band is greater than the per capita share of such moneys so held for the second-mentioned band, there shall be transferred to the credit of the second-mentioned band an amount equal to the per capita share held for that band, and the remainder of the money to which the woman would, but for this section, have been entitled under section 15 shall be paid to her in such manner and at such times as the Minister may determine. R.S., c. 149, s. 16.

autres membres de cette dernière.

(3) Lorsqu'une femme qui fait partie d'une bande devient membre d'une autre bande du fait de son mariage et que la part *per capita* des fonds de capital et de revenu détenus par Sa Majesté au nom de la bande en premier lieu mentionnée, est plus élevée que la part *per capita* des fonds ainsi détenus pour la bande en deuxième lieu mentionnée, il doit être transféré au crédit de la bande en deuxième lieu mentionnée un montant égal à la part *per capita* détenue pour cette bande, et le solde des deniers auxquels cette femme aurait eu droit aux termes de l'article 15, sans le présent article, doit lui être versé de la manière et aux époques que le Ministre détermine. S.R., c. 149, art. 16.

Quand une femme change de bande du fait de son mariage

Minister may constitute new bands

17. (1) The Minister may, whenever he considers it desirable,
 (a) constitute new bands and establish Band Lists with respect thereto from existing Band Lists or General Lists, or both,
 (b) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated, and
 (c) where a band has applied for enfranchisement, remove any name from the Band List and add it to the General List.

17. (1) Le Ministre peut, chaque fois qu'il l'estime opportun,
 a) constituer de nouvelles bandes et établir à leur égard des listes de bande en se servant des listes de bande ou des listes générales existantes, ou des deux à la fois,
 b) fusionner des bandes qui, par un vote majoritaire de leurs électeurs, demandent la fusion, et
 c) lorsqu'une bande a demandé l'émancipation, retrancher tout nom de la liste de bande et l'ajouter à la liste générale.

Le Ministre peut constituer de nouvelles bandes

Division of reserves and funds

(2) Where pursuant to subsection (1) a new band has been established from an existing band or any part thereof, such portion of the reserve lands and funds of the existing band as the Minister determines shall be held for the use and benefit of the new band.

(2) Si, conformément au paragraphe (1), une nouvelle bande a été constituée à même une bande existante ou quelque partie de cette dernière, on doit détenir à l'usage et au profit de la nouvelle bande telle fraction des terres de réserve et des fonds de la bande existante que le Ministre détermine.

Division des réserves et des fonds

No protest

(3) No protest may be made under section 9 in respect of the deletion from or addition to a list consequent upon the exercise by the Minister of any of his powers under subsection (1). R.S., c. 149, s. 17; 1956, c. 40, s. 7.

(3) Aucune protestation ne peut être faite selon l'article 9 à l'égard du retranchement d'une liste ou de l'addition à une liste par suite de l'exercice, par le Ministre, de l'un quelconque de ses pouvoirs prévus au paragraphe (1). S.R., c. 149, art. 17; 1956, c. 40, art. 7.

Aucune protestation

RESERVES

RÉSERVES

Reserves to be held for use and benefit of Indians

18. (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart; and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any

18. (1) Sauf les dispositions de la présente loi, Sa Majesté détient des réserves à l'usage et au profit des bandes respectives pour lesquelles elles furent mises de côté; et, sauf la présente loi et les stipulations de tout traité ou cession, le gouverneur en conseil peut

Les réserves sont détenues à l'usage et au profit des Indiens

TAB 4

Class	Initial Age Status	Current Age Status	Category	Name	Notes
MEMBERS WHO ARE BENEFICIARIES OF THE 1985 TRUST (Members of SFN are Beneficiaries of the 1982 Trust)					
11(1)(c)	Adult	Adult	Members, Beneficiaries	Cardinal, Kieran	is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Darcy	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Naomi	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Walter F.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Wesley	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Ardell	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Arlene	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Cody	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Irene	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Isaac	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Patrick	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Paul	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Roland	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Roy	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Samuel	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Adult	Members, Beneficiaries	Twinn, Alexander G.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Adult	Members, Beneficiaries	Twinn, Corey R.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Aaron	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Jeanine	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Jonathon	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Trent	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Twin, E. Justin	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Twin, Jaclyn	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Ward, Georgina	is the illegitimate child of a female person
11(1)(e)	Minor	Adult	Members, Beneficiaries	Quinn-Twin, Rainbow	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Members, Beneficiaries	Twin, Starr	is the illegitimate child of a female person
11(1)(f)	Adult	Adult	Members, Beneficiaries	Twin, Yvonne	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Members, Beneficiaries	Twinn, Catherine	is the wife or widow of a person who is the legitimate child of male person
11(1)(f) and 109(3)	Adult	Adult	Members, Beneficiaries	Ward, Margaret S.	is the wife or widow of a person who is the legitimate child of male person and where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement
11(d)(i) and 109(3)	Adult	Adult	Members, Beneficiaries	Ward, Nathan	is the legitimate child of male person and where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement
TOTAL	30				
MEMBERS WHO ARE NOT BENEFICIARIES OF THE 1985 TRUST (Members of the SFN are Beneficiaries of the 1982 Trust)					
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Draney, Frieda	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	L'Hirondelle, Bertha	is a woman who married, a person who is not an Indian

Class	Initial Age Status	Current Age Status	Category	Name	Notes
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras, Elizabeth	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Potskin, Lillian	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Twin, Winona	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Ward, Margaret C.	is a woman who married, a person who is not an Indian
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Donald, Gina	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Draney, Brenda	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Midbo, David	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Midbo, Denise	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Midbo, Kristina	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Morton, Deana	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras, Nicole	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras-Collins, Tracey	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras-John, Crystal	is a child of a woman who married, a person who is not an Indian (first generation)
TOTAL	15				

TOTAL MEMBERS = 45

Class	Initial Age Status	Current Age Status	Category	Name	Notes
NON-MEMBERS WHO ARE BENEFICIARIES OF 1985 TRUST (Non-Members would NOT be Beneficiaries of the 1982 Trust)					
11(1)(c)	Adult	Adult	Non-Members, Beneficiaries	McDonald, William	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Lamouche-Twin, Everett	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Potskin, Ethan E.R.	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Potskin, Keanu N. A.	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Potskin, William	is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Non-Members, Beneficiaries	Twin, Brittany	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Shelby	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Alexander L.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Autumn J.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Justice W.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Logan F.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, River C.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Adult	Non-Members, Beneficiaries	Twinn, Kaitlin	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(e)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Graham	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Non-Members, Beneficiaries	Ward, Michelle*	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Non-Members, Beneficiaries	Potskin, Jaise A.	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Non-Members, Beneficiaries	Quinn-Twin, Kaissac P. C.	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Non-Members, Beneficiaries	Twin, Destin D.	is the illegitimate child of a female person
11(1)(e)	Minor	Adult	Non-Members, Beneficiaries	Twinn, Clinton	is the illegitimate child of a female person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Megley, Melissa	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twin (Anderson), Laurie	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twin, Brianne	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twin, Kerri-Lynne	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Courtney	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Haitina	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Shannon	is the wife or widow of a person who is the legitimate child of male person
TOTAL	26				

*Michelle Ward does not appear on the official membership list but was added by court order - she may be a member and a beneficiary

Class	Initial Age Status	Current Age Status	Category	Name	Notes
NON-MEMBERS WHO ARE NOT BENEFICIARIES					
11(1)(f), Other Band	Adult	Adult	Non-Members, Non-Beneficiaries	McDonald, Joshlyn	is the wife or widow of a person who is the legitimate child of male person but member Chippewa of the Thames First Nation
Child of 12(1)(a)(iii)	?	Adult	Non-Members, Non-Beneficiaries	Ward, Angie	is a child of a person who is enfranchised
Child of 12(1)(a)(iii)	?	Adult	Non-Members, Non-Beneficiaries	Ward, Elvina Beatrice	is a child of a person who is enfranchised
Child of 12(1)(b)	Adult	Adult	Non-Members, Non-Beneficiaries	Cardinal, Peter Allan	is a child of a woman who married a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Robberstad, Jady	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Moodie, Jorja L.	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Twinn-Vincent, Seth	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Twinn-Vincent, W. Chase	is a child of a woman who married, a person who is not an Indian (first generation)
Grandchild of 12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Burd, Svea A.	is a grandchild of a woman who married, a person who is not an Indian (second generation)
Member Other Band	Adult	Adult	Non-Members, Non-Beneficiaries	Shirt, Cameron	child of a member but is a member of Saddle Lake First Nation
Non-Member, Non-Indian	Adult	Adult	Non-Members, Non-Beneficiaries	Rudkowski, Julie	is not a member, not married to member/beneficiary
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Lamouche-Twin, Justice	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Lamouche-Twin, Kalyn	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Lamouche-Twin, Maggie	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Nataucappo, Ariana J.I.	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Potskin, Talia M.L.	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Twinn, Aspen S.	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Adult	Adult	Non-Members, Non-Beneficiaries	Anne McDonald	illegitimate child who is not a male person who is a direct descendant in the male line of male person
Not 11(1)(c)	Adult	Adult	Non-Members, Non-Beneficiaries	Serafinchin, Deborah	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Awad, Zayna	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Awad, Zayne	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Casey E.	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Ethan R.	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Kendra	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Midbo, Kieran	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Kylee	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Sydney	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Midbo, Tristan	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Morton, Caelyn	is a child of a woman who married, a person who is not an Indian (first generation)
TOTAL	29				

TAB 5



Sawridge Band v. Canada, [2003] 4 FC 748, 2003 FCT 347 (CanLII)

Date: 2003-03-27

Docket: T-66-86A

Other [2003] 3 CNLR 344; 232 FTR 54

citations:

Citation: Sawridge Band v. Canada, [2003] 4 FC 748, 2003 FCT 347 (CanLII), <<http://canlii.ca/t/hbq>>, retrieved on 2018-01-16

T-66-86 A

2003 FCT 347

Bertha L'Hirondelle suing on her own behalf and on behalf of all other members of the Sawridge Band (*Plaintiffs*)

v.

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*)

Indexed as: Sawridge Band v. Canada (T.D.)

Trial Division, Hugessen J.--Toronto, March 19 and 20; Edmonton, March 27, 2003.

Native Peoples -- Registration -- Crown motion for interlocutory declaration or mandatory injunction requiring registration on Band List of persons having acquired rights under 1985 amendments to Indian Act -- Crown says Band has refused to comply with Bill C-31 remedial provisions -- Interim relief necessary due to old age of women seeking registration, protracted litigation -- Band's argument: doing only what empowered by legislation -- Interim declaration could not be granted -- Band having effectively given itself injunction to which not entitled in terms of irreparable harm, balance of convenience -- Public interest damaged by Band's flouting of law enacted by Parliament -- Court having power to grant injunction -- Crown not lacking standing -- Irrelevant that some of 11 women in question not having applied under Band membership rules as implicitly refused -- Amendments intended to bring Indian Act into line with Charter guarantee of gender equality -- Band having imposed onerous membership application rules for acquired rights persons -- Whether acquired rights persons entitled to automatic membership, inclusion in Band's own List -- As of date assumed control of List, Band obliged to include names of acquired rights women -- Could not create membership barriers for those deemed members by law -- Intention of

Parliament revealed by House of Commons debates -- Amendments recognized women's rights at expense of certain Native rights -- Mandatory injunction granted.

Administrative Law -- Judicial Review -- Injunctions -- Interlocutory mandatory injunction sought by Crown requiring registration on Indian Band List of persons having acquired rights under 1985 Indian Act amendments -- Crown says Band refused to comply with remedial legislation -- Interim relief needed as litigation protracted, women seeking registration aged -- Band says just exercising powers conferred by legislation -- Band having, in effect, given itself injunction, disregarding law -- Three-part test reversed in unusual circumstances: has Band raised serious issue, will it suffer irreparable harm if law enforced, where lies balance of convenience? -- Band not meeting last two parts of test -- Enforcement of law rarely causes irreparable harm -- Flouting of law damaging to public interest -- Private interests of women seeking registration -- Delegated, subordinate Band legislation (membership rules) insufficient to abrogate Charter-protected rights -- Mandatory injunction granted.

Some 17 years ago, plaintiff commenced litigation against the Crown seeking a declaration that the 1985 amendments to the *Indian Act*--Bill C-31--were unconstitutional. That legislation, while conferring on bands the right to control their own band lists, obliged them to include certain persons in their membership.

This motion by the Crown was for an interlocutory declaration, pending final determination of plaintiff's action, that those who acquired the right of membership in the Sawridge Band before it took control of its List, be deemed to be registered thereon or, in the alternative, an interlocutory mandatory injunction requiring plaintiffs to register such persons. The Crown alleged that the Band has refused to comply with the remedial provisions of Bill C-31 and that 11 women who lost Band membership due to marriage to non-Indians continue to be denied the benefits of the amendments. Interim relief is needed since these women are getting on in years and it may still be a long time before a trial date is fixed. The Band argued that it is merely exercising the powers conferred upon it by the legislation.

Held, a mandatory injunction should be granted.

An interim declaration of right could not be granted for that is a contradiction in terms. A declaration of right puts an end to a matter. On the other hand, there can be no entitlement to have an unproved right declared to exist. Therefore the motion was considered as one for an interlocutory injunction.

In the unusual--perhaps unique--circumstances of this case, the three-part test was, in effect, reversed. If the allegations of non-compliance are true, the Band has effectively given itself an injunction, choosing to act as if the law did not exist. Would the Band have been entitled to an interlocutory injunction suspending the effects of Bill C-31 pending trial? The classic test required that the Court determine (1) whether the Band had raised a serious issue, (2) whether it will suffer irreparable harm if the law is enforced, and (3) where lay the balance of convenience. The test was not altered in that the injunction sought was mandatory in nature.

While the Band met the first part of the test, it could not possibly meet the other two parts. Rarely will the enforcement of a law cause irreparable harm. Any inconvenience to the Band in admitting 11 elderly women to membership is nothing compared to the damage to the public interest caused by the flouting of a law enacted by Parliament and to the private interests of these women who are unlikely to benefit from a statute adopted with persons such as them in mind.

The argument that the Court lacked power to grant the injunction in that the Crown had not alleged a cause of action in support thereof in its statement of defence, was rejected. The Court's power to

issue injunctions is granted by *Federal Court Act*, section 44 and is very broad. Nor could the Court agree that the Crown lacked standing. It is the Crown which represents the public interest in upholding the laws of Canada unless and until struck down by a court of competent jurisdiction.

It was irrelevant that only some of these women had applied in accordance with the Band's membership rules. They were refused, at least implicitly, because they could not fulfil the onerous application requirements.

The amending statute was made retroactive to the date Charter, section 15 took effect. That was an indication that the amendments were intended to bring the legislation into line with the Charter guarantee of gender equality.

The Band lost no time in taking control of its List and none of these 11 women were able to have their names entered by the Registrar before the Band took control. Under the Band's membership rules, to secure membership acquired rights individuals must either be resident on the reserve or demonstrate a significant commitment to the Band and they must also complete a 43-page application form requiring the composition of several essays. In addition, they must submit to interviews. If the legislation provides for automatic membership entitlement, these requirements would violate it. The Act does entitle women who lost status for marrying non-Indians to be registered as status Indians and to have their names automatically added to the Departmental Band List. The question remains as to whether a band is obliged to add names to its own Band List. Unfortunately, subsections 10(4) and 10(5) do not make it absolutely clear that acquired rights persons are entitled to automatic membership and that a band may not establish pre-conditions for membership. But the use of "shall" in section 8 makes it clear that a band must enter the names of all entitled persons on the list, which it maintains. As of the date the Sawridge Band assumed control of its List, it was obliged to include therein the names of the acquired rights women. A band may not create barriers to membership for those deemed by law to be members. By reference to certain debates in the House of Commons and what was said by the Minister to the Standing Committee on Indian Affairs and Northern Development, it was clear that Parliament's intention was to create an automatic right to Band membership even though this would restrict a band's control over membership. The legislation establishes a membership regime that recognizes women's rights at the expense of certain Native rights.

Subsection 10(5) states, by reference to paragraph 11(c), that nothing can deprive an acquired rights individual of automatic membership entitlement unless the entitlement is subsequently lost. The Band's membership rules fail to make specific provision for the subsequent loss of membership and establishment of the application requirements was not enough to abrogate the rights of Charter-protected persons. The Band's application of its membership rules in which pre-conditions were created to membership, is in contravention of the *Indian Act*.

A mandatory injunction should be granted and the names of these 11 acquired rights women shall be added to the Band List. They shall be accorded all the rights of Band membership.

statutes and regulations judicially

considered

An Act to amend the Indian Act, R.S.C., 1985 (1st Supp.), c. 32.

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 15.

Federal Court Act, R.S.C., 1985, c. F-7, s. 44.

Federal Court Rules, 1998, SOR/98-106, r. 369.

Indian Act, R.S.C., 1985, c. I-5, ss. 2(1) "member of a band", 5 (as am. by R.S.C., 1985 (1st Supp.)), c. 32, s. 4), 6 (as am. *idem*), 8 (as am. *idem*), 9 (as am. *idem*), 10 (as am. *idem*), 11 (as am. *idem*), 12 (as am. *idem*).

cases judicially considered

applied:

Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd., 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495; (1996), 136 D.L.R. (4th) 289; 21 B.C.L.R. (3d) 201; 45 Admin. L.R. (2d) 95; 50 C.P.C. (3d) 128; 198 N.R. 161.

considered:

Sawridge Band v. Canada, 1997 CanLII 5294 (FCA), [1997] 3 F.C. 580; (1997), 3 Admin. L.R. (3d) 69; 215 N.R. 133 (C.A.); *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110; (1987), 38 D.L.R. (4th) 321; [1987] 3 W.W.R. 1; 46 Man. R. (2d) 241; 25 Admin. L.R. 20; 87 CLLC 14,015; 18 C.P.C. (2d) 273; 73 N.R. 341; *RJR -- MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311; (1994), 111 D.L.R. (4th) 385; 54 C.P.R. (3d) 114; 164 N.R. 1; 60 Q.A.C. 241.

referred to:

Sankey v. Minister of Transport, [1979] 1 F.C. 134 (T.D.); *Ansa International Rent-a-Car (Canada) Ltd. v. American International Rent-a-Car Corp.* (1990), 32 C.P.R. (3d) 340; 36 F.T.R. 98 (F.C.T.D.); *Canada (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC), [1998] 1 S.C.R. 626; (1998), 157 D.L.R. (4th) 385; 6 Admin. L.R. (3d) 1; 22 C.P.C. (4th) 1; 224 N.R. 241.

authors cited

Canada. *House of Commons Debates*, Vol. II, 1st Sess., 33rd Parl., March 1, 1985, p. 2644.

Canada. House of Commons. *Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development*, Issue No. 12 (March 7, 1985).

MOTION for an interlocutory declaration or an interlocutory mandatory injunction with respect to the registration of names on an Indian Band List. Mandatory injunction granted.

appearances:

Martin J. Henderson, Lori A. Mattis, Catherine M. Twinn and Kristina Midbo for plaintiffs.

James E. Kindrake and Kathleen Kohlman for defendant.

Kenneth S. Purchase for intervener Native Council of Canada.

P. Jonathan Faulds for intervener Native Council of Canada (Alberta).

Michael J. Donaldson for intervener Non-Status Indian Association of Alberta.

Mary Eberts for intervener Native Women's Association of Canada.

solicitors of record:

Aird & Berlis LLP, Toronto, for plaintiffs.

Deputy Attorney General of Canada for defendant.

Lang Michener, Ottawa, for intervener Native Council of Canada.

Field LLP, Edmonton, for intervener Native Council of Canada (Alberta).

Burnet, Duckworth & Palmer LLP for intervener Non-Status Indian Association of Alberta.

Eberts Symes Street & Corbett, Toronto, for intervener Native Women's Association of Canada.

The following are the reasons for order and order rendered in English by

[1]Hugessen J.: In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the *Indian Act*, R.S.C., 1985, c. I-5, commonly known as Bill C-31 [*An Act to amend the Indian Act*, R.S.C., 1985 (1st Supp.), c. 32], 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 [*Sawridge Band v. Canada*, 1997 CanLII 5294 (FCA), [1997] 3 F.C. 580 (C.A.), at paragraph 2]:

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

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

- a. An interlocutory declaration that, pending a final determination of the Plaintiff's action, in accordance with the provisions of the *Indian Act*, R.S.C. 1985 c. I-5, as amended, (the "*Indian Act, 1985*") the individuals who acquired the right to be members of the Sawridge Band before it took control of its own Band List, shall be deemed to be registered on the Band List as members of the Sawridge Band, with the full rights and privileges enjoyed by all band members;
- b. In the alternative, an interlocutory mandatory injunction, pending a final resolution of the 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 Bill 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 paragraph 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 Bill 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*, [1979] 1 F.C. 134 (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 Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110 and *RJR--MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [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 Bill 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), 32 C.P.R. (3d) 340 (F.C.T.D.))

[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 elderly 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* [R.S.C., 1985, c. F-7] and is very broad. Interpreting a similar provision in a provincial statute in the case of *Brotherhood of Maintenance of Way Employees Canadian Pacific*

System Federation v. Canadian Pacific Ltd., 1996 CanLII 215 (SCC), [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 (Human Rights Commission) v. Canadian Liberty Net*, 1998 CanLII 818 (SCC), [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.

[13]This brings me at last to the main question: has the Band refused to comply with the provisions of Bill 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 28, 1985 but was made to take effect retroactively to April 17, 1985, the date on which section 15 of the Charter [*Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]] 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 Bill 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]Subparagraphs 3(a)(i) and (ii) clearly create pre-conditions to membership for acquired rights individuals, referred to in this provision by reference to subsection 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 subsection 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 (*House of Commons Debates*, Vol. II, March 1, 1985, page 2644):

. . . 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.

[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 (*House of Commons Debates, idem*, at page 2645):

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.

[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 (*House of Commons Debates, idem*, at page 2646):

. . . 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.

[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 (*Minutes of Proceedings and Evidence on the Standing Committee on Indian Affairs and Northern Development*, Issue No. 12, March 7, 1985, at page 12:7):

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.

[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 individuals of 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 Bill C-31 has the effect of imposing on it members that it does not want. Paragraph 22 of the fresh as amended statement of claim reads as follows:

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

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

[40]I reserve the question of costs for the Crown. If it seeks them, it should do so by moving pursuant to rule 369 of the *Federal Court Rules, 1998* [SOR/98-106]. 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.

TAB 6

Class	Initial Age Status	Current Age Status	Category	Name	Notes
MEMBERS WHO ARE BENEFICIARIES OF THE 1985 TRUST (Members of SFN are Beneficiaries of the 1982 Trust)					
11(1)(c)	Adult	Adult	Members, Beneficiaries	Cardinal, Kieran	is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Darcy	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Naomi	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Walter F.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twin, Wesley	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Ardell	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Arlene	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Cody	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Irene	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Isaac	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Patrick	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Paul	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Roland	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Roy	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Members, Beneficiaries	Twinn, Samuel	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Adult	Members, Beneficiaries	Twinn, Alexander G.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Adult	Members, Beneficiaries	Twinn, Corey R.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Aaron	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Jeanine	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Jonathon	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Potskin, Trent	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Twin, E. Justin	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Twin, Jaclyn	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Members, Beneficiaries	Ward, Georgina	is the illegitimate child of a female person
11(1)(e)	Minor	Adult	Members, Beneficiaries	Quinn-Twin, Rainbow	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Members, Beneficiaries	Twin, Starr	is the illegitimate child of a female person
11(1)(f)	Adult	Adult	Members, Beneficiaries	Twin, Yvonne	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Members, Beneficiaries	Twinn, Catherine	is the wife or widow of a person who is the legitimate child of male person
11(1)(f) and 109(3)	Adult	Adult	Members, Beneficiaries	Ward, Margaret S.	is the wife or widow of a person who is the legitimate child of male person and where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement
11(d)(i) and 109(3)	Adult	Adult	Members, Beneficiaries	Ward, Nathan	is the legitimate child of male person and where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and his minor children who are living with the wife shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement
TOTAL	30				
MEMBERS WHO ARE NOT BENEFICIARIES OF THE 1985 TRUST (Members of the SFN are Beneficiaries of the 1982 Trust)					
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Draney, Frieda	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	L'Hirondelle, Bertha	is a woman who married, a person who is not an Indian

Class	Initial Age Status	Current Age Status	Category	Name	Notes
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras, Elizabeth	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Potskin, Lillian	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Twin, Winona	is a woman who married, a person who is not an Indian
12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Ward, Margaret C.	is a woman who married, a person who is not an Indian
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Donald, Gina	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Draney, Brenda	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Midbo, David	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Midbo, Denise	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Midbo, Kristina	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Morton, Deana	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras, Nicole	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras-Collins, Tracey	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Adult	Adult	Members, Non-Beneficiaries	Postras-John, Crystal	is a child of a woman who married, a person who is not an Indian (first generation)
TOTAL	15				

TOTAL MEMBERS = 45

spouses who are beneficiaries because of m f marriage to a male member

beneficiaries who could be protes ted - 9

female beneficiaries who could lose status through marriage - 11

Class	Initial Age Status	Current Age Status	Category	Name	Notes
NON-MEMBERS WHO ARE BENEFICIARIES OF 1985 TRUST (Non-Members would NOT be Beneficiaries of the 1982 Trust)					
11(1)(c)	Adult	Adult	Non-Members, Beneficiaries	McDonald, William	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Lamouche-Twin, Everett	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Potskin, Ethan E.R.	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Potskin, Keanu N. A.	is a male person who is a direct descendant in the male line of a male person
11(1)(c)	Minor	Minor	Non-Members, Beneficiaries	Potskin, William	is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Non-Members, Beneficiaries	Twin, Brittany	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Shelby	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Alexander L.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twinn, Autumn J.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Justice W.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, Logan F.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Minor	Non-Members, Beneficiaries	Twin, River C.	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(d)(ii)	Minor	Adult	Non-Members, Beneficiaries	Twinn, Kaitlin	is the legitimate child of a person who is a male person who is a direct descendant in the male line of a male person
11(1)(e)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Graham	is the illegitimate child of a female person
11(1)(e)	Adult	Adult	Non-Members, Beneficiaries	Ward, Michelle*	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Non-Members, Beneficiaries	Potskin, Jaise A.	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Non-Members, Beneficiaries	Quinn-Twin, Kaissac P. C.	is the illegitimate child of a female person
11(1)(e)	Minor	Minor	Non-Members, Beneficiaries	Twin, Destin D.	is the illegitimate child of a female person
11(1)(e)	Minor	Adult	Non-Members, Beneficiaries	Twinn, Clinton	is the illegitimate child of a female person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Megley, Melissa	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twin (Anderson), Laurie	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twin, Brianne	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twin, Kerri-Lynne	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Courtney	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Haitina	is the wife or widow of a person who is the legitimate child of male person
11(1)(f)	Adult	Adult	Non-Members, Beneficiaries	Twinn, Shannon	is the wife or widow of a person who is the legitimate child of male person
TOTAL	26				
female beneficiaries who could lose status through marriage					
beneficiaries who could be protested 6					
spouse who are beneficiaries through marriage to a male member 7					
*Michelle Ward does not appear on the official membership list but was added by court order - she may be a member and a beneficiary					

Class	Initial Age Status	Current Age Status	Category	Name	Notes
NON-MEMBERS WHO ARE NOT BENEFICIARIES					
11(1)(f), Other Band	Adult	Adult	Non-Members, Non-Beneficiaries	McDonald, Joshlyn	is the wife or widow of a person who is the legitimate child of male person but member Chippewa of the Thames First Nation
Child of 12(1)(a)(iii)	?	Adult	Non-Members, Non-Beneficiaries	Ward, Angie	is a child of a person who is enfranchised
Child of 12(1)(a)(iii)	?	Adult	Non-Members, Non-Beneficiaries	Ward, Elvina Beatrice	is a child of a person who is enfranchised
Child of 12(1)(b)	Adult	Adult	Non-Members, Non-Beneficiaries	Cardinal, Peter Allan	is a child of a woman who married a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Robberstad, Jady	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Moodie, Jorja L.	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Twinn-Vincent, Seth	is a child of a woman who married, a person who is not an Indian (first generation)
Child of 12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Twinn-Vincent, W. Chase	is a child of a woman who married, a person who is not an Indian (first generation)
Grandchild of 12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Burd, Svea A.	is a grandchild of a woman who married, a person who is not an Indian (second generation)
Member Other Band	Adult	Adult	Non-Members, Non-Beneficiaries	Shirt, Cameron	child of a member but is a member of Saddle Lake First Nation
Non-Member, Non-Indian	Adult	Adult	Non-Members, Non-Beneficiaries	Rudkowski, Julie	is not a member, not married to member/beneficiary
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Lamouche-Twin, Justice	illegitimate child who is not a male person who is a direct descendent in the male line of male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Lamouche-Twin, Kalyn	illegitimate child who is not a male person who is a direct descendent in the male line of male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Lamouche-Twin, Maggie	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Nataucappo, Ariana J.I.	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Potskin, Talia M.L.	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Minor	Minor	Non-Members, Non-Beneficiaries	Twinn, Aspen S.	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
Not 11(1)(c)	Adult	Adult	Non-Members, Non-Beneficiaries	Anne McDonald	illegitimate child who is not a male person who is a direct descendent in the male line of male person
Not 11(1)(c)	Adult	Adult	Non-Members, Non-Beneficiaries	Serafinchin, Deborah	illegitimate child who is not a male person who is a direct descendant in the male line of a male person
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Awad, Zayna	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Awad, Zayne	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Casey E.	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Ethan R.	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Kendra	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Midbo, Kieran	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Kylee	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Midbo, Sydney	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Adult	Non-Members, Non-Beneficiaries	Midbo, Tristan	is a child of a woman who married, a person who is not an Indian (first generation)
12(1)(b)	Minor	Minor	Non-Members, Non-Beneficiaries	Morton, Caelyn	is a child of a woman who married, a person who is not an Indian (first generation)
TOTAL	29				

TAB 7

LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009

Alberta Weekly Newspapers

Airdrie City View
Airdrie Echo
Athabasca Advocate
Banff/Canmore Bow Valley Crag & Canyon
Barrhead Leader
Bashaw Star
Beaumont News
Beaverlodge West County News & Advertiser
Bonnyville Nouvelle
Bow Island Commentator
Brooks & County Chronicle
Brooks BulletinTue
Brooks Weekend Regional
Calgary (Rural) Rocky View Weekly
Calgary Fast Forward Weekly
Camrose Canadian
Canmore/Banff Rocky Mountain Outlook
Cardston Temple City Star
Carstairs Courier
Castor Advance
Chestermere Anchor Weekly
Claresholm Local Press
Coaldale Sunny South News
Cochrane Eagle
Cochrane Times
Cold Lake Sun
Consort Enterprise
(Coronation-Stettler) East Central Alberta Review
Crowsnest Pass Herald
Devon Dispatch News
Didsbury Review
Drayton Valley Western Review
Drumheller Mail
Drumheller, Inside
Eckville Echo
Edmonton Examiner
Edmonton Vue Weekly
Edson Leader
Edson Weekly Anchor
Elk Point Review
Elk Valley Herald
Fairview Post
Falher Smoky River Express

LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009

Flagstaff County & Sedgewick Community Press
Fort Macleod Gazette
Fort McMurray Connect
Fort Saskatchewan Record
(Fort Simpson) Deh Cho Drum
Fort Smith Northern Journal
Fox Creek Times
Grande Cache Mountaineer
Grimshaw Mile Zero News
Hanna Herald
Hay River Hub
High Level Echo
High Prairie South Peace News
High River Times
Hinton Parklander
Hinton Voice
Innisfail Province
Inuvik Drum
Jasper Fitzhugh
La Crete/ Fort Vermilion Northern Pioneer
Lac La Biche Post
Lacombe Globe
Lamont Farm 'N' Friends
Lamont Leader
Leduc Representative
Leduc/Wetaskiwin Pipestone Flyer
Lethbridge Sun Times
Lloydminster Meridian Booster
Lloydminster Source
Manning Banner Post
Mayerthorpe Freelancer
Morinville Free Press
Nanton News
Okotoks Western Wheel
Olds Albertan
Oyen Echo
Peace River Record-Gazette
Pincher Creek Echo
Ponoka News
Provost News
Raymond Magrath Westwind Weekly News
Red Deer Express
Redwater Review
Rimbey Review
Rocky Mountain House Mountaineer

LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009

Rycroft Central Peace Signal
Sherwood Park News
Slave Lake Lakeside Leader
Slave Lake Scope
Smoky Lake Signal
Spruce Grove Examiner
St. Albert Gazette
St. Paul Journal
Stettler Independent
Stony Plain Reporter
Strathmore Standard
Strathmore Times
Sundre Round-Up
Swan Hills Grizzly Gazette
Sylvan Lake News
Taber Times
Three Hills Capital
Tofield Mercury
Two Hills & County Chronicle
Valleyview Valley Views
Vauxhall Advance
Vegreville Observer
Vermilion Standard
Vermilion Voice
Viking Weekly Review
Vulcan Advocate
Wabasca Fever
Wainwright Star/Edge
Westlock News
Wetaskiwin Times Advertiser
Whitecourt Press
Whitecourt Star
Yellowknife Yellowknifer

British Columbia Weekly Newspapers

100 Mile House Free Press
Abbotsford News
Agassiz-Harrison Observer
Alaska Highway News
Alberni Valley News
Alberni Valley Times
Aldergrove Star
Ashcroft-Cache Creek Journal
Boundary Creek Times

**LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009**

Bowen Island Undercurrent
Bridge River / Lillooet News
Burnaby NewsLeader
Burnaby Now
Burns Lake / Lakes District News
Campbell River Courier-Islander
Campbell River Mirror
Campbell River North Island Midweek
Cariboo Connector
Castlegar News
Chilliwack Times
Cloverdale Reporter
Columbia Valley Pioneer
Comox Valley Echo
Coquitlam, Tri-City News
Courtenay / Comox Valley Record
Cranbrook Daily Townsman
Creston Valley Advance
Dawson Creek Daily News
Delta Optimist
Duncan Cowichan Valley Citizen
Duncan, Cowichan News Leader Pictorial
Elk Valley Herald
Ferne Free Press
Fort Nelson News
Fort St. James Caledonia Courier
Gabriola Sounder
Golden Star
Goldstream News Gazette
Grand Forks Gazette
Haida Gwaii Observer
Hope Standard
Houston Today
Invermere, The Valley Echo
Kamloops This Week
Kelowna Capital News
Keremeos, The Review
Kimberley Daily Bulletin
Kitimat, Northern Sentinel
Ladysmith-Chemainus Chronicle
Lake Cowichan Gazette
Lakeshore News
Langley Advance
Langley Times
Maple Ridge-Pitt Meadows News

LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009

Maple Ridge-Pitt Meadows Times
Merritt Herald
Mission City Record
Nakusp, Arrow Lakes News
Nanaimo Daily News
Nanaimo News Bulletin
Nanaimo, Harbour City Star
Nelson Star
New Westminster NewsLeader
New Westminster Record
North Shore News
North Thompson Star/Journal
North Thompson Times
Northern Connector
Oak Bay News
Oliver Chronicle
Osoyoos Times
Parksville Oceanside Star
Parksville/Qualicum Beach News
Peace Arch News, White Rock/South Surrey
Peachland View
Penticton Western News
Port Hardy, North Island Gazette
Powell River Peak
Prince George Free Press
Prince Rupert, The Northern View
Princeton, The Similkameen Spotlight
Quesnel, Cariboo Observer
Revelstoke Times Review
Richmond News
Richmond Review
Rocky Mountain Goat
Rossland News
Saanich News
Salmon Arm Observer
Salmon Arm, Shuswap Market News
Salt Spring Island, Gulf Islands Driftwood
Sechelt / Gibsons Coast Reporter
Sicamous, Eagle Valley News
Sidney, Peninsula News Review
Smithers, Interior News
Sooke News Mirror
Squamish Chief
Summerland Review
Surrey, North Delta Leader

**LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009**

Terrace Standard
The Chilliwack Progress
The Mirror
The Northerner
The Now Newspaper, serving Surrey, White Rock and North Delta
The Prince George Citizen
The Tri-Cities Now
Tofino-Ucluelet Westerly News
Trail Daily Times
Tumbler Ridge News
Valemount/McBride, Valley Sentinel
Vancouver Courier (Downtown Edition)
Vancouver Courier (East Side Edition)
Vancouver Courier (West Side Edition)
Vanderhoof, Omineca Express
Vernon, Morning Star
Victoria News
WE Vancouver
Westside Weekly
Whistler Question
Whitehorse, Yukon News
Williams Lake Tribune
Winfield, Lake Country Calendar

Saskatchewan Weekly Newspapers

Assiniboia Times
Battlefords News Optimist
Battlefords Regional Optmist
Bengough Deep South Star
Biggar Independent
Broadview Express
Canora Courier
Carlyle Observer
Carnduff Gazette Post News
Coronach Triangle News
Creighton Flin Flon Reminder
Cut Knife Highway 40 Courier
Davidson Leader
East Central Trader (REG: E Cen SK)
Esterhazy Miner-Journal
Estevan Lifestyles Publication
Estevan Mercury
Estevan Southeast Trader Express (REG: SE SK)
Eston-Elrose Press Review

LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009

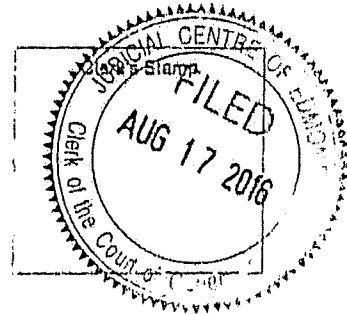
Foam Lake Review
Fort Qu'Appelle Times
Gravelbourg Tribune
Grenfell Sun
Gull Lake Advance
Herbert Herald
Hudson Bay Post Review
Humboldt Journal
Indian Head-Wolseley News
Ituna News
Jogajog
Kamsack Times
Kerrobert Citizen
Kindersley Clarion
Kipling Citizen
L'Eau vive (Provincial French newspaper)
La Ronge Northerner
Langenburg Four-Town Journal
Lanigan Advisor
Leader News
Lloydminster Meridian Booster
Lloydminster Source
Lumsden Waterfront Press Regional
Macklin Mirror
Maple Creek & Southwest Advance Times
Maple Creek News
Meadow Lake Northern Pride
Melfort Journal
Melfort/Nipawin Northeast Sun (REG: NE SK)
Melville Advance
Moose Jaw FYI
Moosomin World-Spectator
Nipawin Journal
Nokomis/Strasbourg Last Mountain Times
NWT News/North
Outlook (The)
Oxbow Herald
Preeceville Progress
Prince Albert Rural Roots (REG: N Cen SK)
Radville Star
Redvers Optimist
Regina Sunday Post
Rosetown Eagle
Rosthern The Saskatchewan Valley News
Saskatchewan Senior (The)

LIST OF WEEKLY NEWSPAPERS IN WHICH LEGAL
NOTICE WAS PLACED BY SAWRIDGE TRUSTS
7 AND 14 DECEMBER 2009

Saskatoon Sunday Phoenix
Saskatoon Verb
Shaunavon Standard
Shellbrook Chronicle
Spiritwood Herald
Swift Current Prairie Post (REG: SW SK)
Swift Current SW Booster
Tisdale Parkland Review (REG: NE SK)
Tisdale Recorder
Unity/Wilkie Press Herald
Wadena News
Wakaw Recorder
Warman Clark's Crossing Gazette(REG: Saskatoon Rural)
Watrous Manitou
West Central Crossroads
Weyburn Review
Weyburn This Week
White City Star
Whitewood Herald
Wynyard Advance/Gazette
Yorkton News Review
Yorkton This Week

TAB 8

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



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

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

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

DOCUMENT ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT Dentons Canada LLP
2900, 10180 101 Street
Edmonton, AB T5J 3V5
Attention: Doris Bonora
Telephone: (780) 423-7188
Facsimile: (780) 423-7276
File No.: 551880 -1

DATE ON WHICH ORDER WAS
PRONOUNCED:

December 17, 2015

LOCATION WHERE ORDER WAS
PRONOUNCED:

Edmonton, Alberta

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

UPON THE APPLICATION of the Office of the Public Guardian and Trustee of Alberta ("Public Trustee"), and Upon hearing from the counsel for: Sawridge First Nation, the Public Trustee, Sawridge Trustees and Catherine Twinn; and Upon the decision of The Honourable Mr. Justice Dennis R. Thomas dated December 17, 2015 (2015 ABQB 799);

IT IS HEREBY ORDERED THAT:

1. The Public Trustee's application for production of records/information from the Sawridge First Nation ("SFN") is denied.
2. Document production by SFN shall only be compelled pursuant to *Rule 5.13(1) of the Alberta Rules of Court, Alta Reg 124/2010*.
3. The Public Trustee shall not conduct an open-ended inquiry into the membership of the SFN and the historic disputes that relate to that subject.
4. The Public Trustee shall not conduct a general inquiry into potential conflicts of interest between SFN, its administration and the Sawridge Trustees.
5. The Public Trustee shall be limited to four tasks:
 - (a) Representing the interests of minor beneficiaries and potential minor beneficiaries so that they receive fair treatment (either direct or indirect) in the distribution of the assets of the 1985 Sawridge Trust; and
 - (b) Examining on behalf of the minor beneficiaries the manner in which the property was placed/settled in the Trust; and
 - (c) Identifying potential but not yet identified minors who are children of SFN members or membership candidates as these are potentially minor beneficiaries of the 1985 Sawridge Trust; and
 - (d) Supervising the distribution process itself.

6. The Public Trustee and the Sawridge Trustees are to immediately proceed to complete the first three tasks outlined in paragraph 5 above.
7. The Sawridge Trustees will submit a distribution arrangement by January 29, 2016.
8. The Public Trustee shall have until March 15, 2016 to prepare and serve an application, pursuant to *Rule 5.13(1)*, on SFN identifying specific documents it believes are relevant and material to test the fairness of the proposed distribution arrangement to minors who are children of beneficiaries or potential beneficiaries.
9. If no *Rule 5.13(1)* application is made in relation to the proposed distribution scheme, submissions on the distribution proposal shall be made by the Public Trustee and Sawridge Trustees at a case management meeting held before April 30, 2016.
10. The Public Trustee shall have until January 29, 2016 to prepare and serve an application, pursuant to *Rule 5.13(1)*, on SFN identifying specific documents for production which it believes are relevant and material to the issue of the assets settled in the 1985 Sawridge Trust.
11. If necessary, a case management meeting will be held before April 30, 2016 to decide any disputes concerning any *Rule 5.13(1)* application by the Public Trustee.
12. SFN shall provide the following to the Public Trustee by January 29, 2016:
 - (a) the names of individuals who have:
 - (i) made applications to join the SFN which are pending; and
 - (ii) had applications to join the SFN rejected and are subject to challenge;
 - (b) the contact information for those individuals where available.
13. The Public Trustee is instructed that if it requires any additional documents from the SFN to assist it in identifying the current and possible members of category 2, (Minors who are children of members of the SFN), the Public Trustee shall file a *Rule 5.13(1)* application by January 29th, 2016.
14. The SFN and the Sawridge Trustees shall have until March 15, 2016 to make written submissions in response to any application by the Public Trustee described in paragraph 13 above.
15. The Public Trustee shall not engage in collateral attacks on membership processes of the SFN. The Sawridge Trustees shall not engage in collateral attacks on SFN's membership processes.
16. The decision on costs in relation to the Public Trustee's production application is reserved until the Court evaluates any *Rule 5.13(1)* applications brought by the Public Trustee.

DL

Honourable Justice D.R.G. Thomas

Thomas

TAB 9



Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 436

Date:
Docket: 1103 14112
Registry: Edmonton

In the Matter of the Trustee Act, RSA 2000, c T-8, as amended

**And in the matter of the Sawridge Band, Inter Vivos Settlement, created by
Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known
as Sawridge First Nation, on April 15, 1985 (the "1985 Sawridge Trust" or "Trust")**

Between:

Maurice Felix Stoney and His Brothers and Sisters

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 -

**The Sawridge Band
(the "Band" or "SFN")**

Intervenor

**Case Management Decision (Sawridge #6)
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 12, 2016 (the “Stoney Application”) by Maurice Felix Stoney “and his brothers and sisters” (Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty Jean Stoney, Gail Stoney, Alma Stoney, and Bryan Stoney) to be added “as beneficiaries to these Trusts”. In his written brief of September 28, 2016, Maurice Stoney asks that his legal costs and those of his siblings be paid for by the 1985 Sawridge Trust.

[2] The Stoney Application is opposed by the Trustees and the Sawridge Band, which applied for and has been granted intervenor status on this Application. The Public Trustee of Alberta (“OPTG”) did not participate in the Application.

[3] The Stoney Application is denied. Maurice Stoney is a third party attempting to insert himself (and his siblings) into a matter in which he has no legal interest. Further, this Application is a collateral attack which attempts to subvert an unappealed and crystallized judgment of a Canadian court which has already addressed and rejected the Applicant’s claims and arguments. This is serious litigation misconduct, which will have costs implications for Maurice Stoney and also potentially for his lawyer Priscilla Kennedy.

II. Background

[4] 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”.

[5] 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 for appeal denied 2016 ABCA 51, 616 AR 176, *1985 Sawridge v Alberta (Public Trustee)*, 2017 ABQB 299 (“*Sawridge #4*”). A separate motion by three third parties to participate in this litigation was rejected on July 5, 2017, and that decision is reported as *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377 (“*Sawridge #5*”), (collectively the “*Sawridge Decisions*”).

[6] Some of the terms used in this decision (“*Sawridge #6*”) are also defined in the various Sawridge Decisions.

[7] I directed that this Application be dealt with in writing and the materials filed include the following:

August 12, 2016	Application by Maurice Felix Stoney and His Brothers and Sisters
September 28, 2016	Written Argument of Maurice Stoney, supported by an Affidavit of Maurice Stoney sworn on May 17, 2016.
September 28, 2016	Written Submission of the Sawridge Band, supported by an Affidavit of Roland Twinn, dated September 21, 2016, for the Sawridge Band to be granted Intervenor status in the Advice and Direction Application in relation to the August 12, 2016 Application, and that the Application be struck out per <i>Rule 3.68</i> .
September 30, 2016	Application by the Sawridge Trustees that Maurice Stoney pay security for costs.
October 27, 2016	Written Response Argument to the Application of Sawridge First Nation filed by Maurice Stoney.
October 31, 2016	The OPTG sent the Court and participants a letter indicating it has “no objection” to the Stoney Application.
October 31, 2016	Trustees’ Written Submissions in relation to the Maurice Stoney Application and the proposed Sawridge Band intervention.
October 31, 2016	Sawridge Band Written Submissions responding to the Maurice Stoney Application.
November 14, 2016	Reply argument to Maurice Stoney’s Written Response Argument filed by the Sawridge Band.

November 15, 2016

Further Written Response Argument of Maurice Stoney.

III. Preliminary Issue #1 - Who is/are the Applicant or Applicants?

[8] As is apparent from the style of cause in this Application, the manner in which the Applicants have been framed is unusual. They are named as “Maurice Felix Stoney and His Brothers and Sisters”. The Application further states that the Applicants are “Maurice Stoney and his 10 living brothers and sisters” (para 1). Para 2 of the Application states the issue to be determined is:

Addition of Maurice Stoney, Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty Jean Stoney, Gail Stoney Alma Stoney, Alva Stoney and Bryan Stony as beneficiaries of these Trusts.

[9] There is no evidence before me or on the court file that indicates any of these named individuals other than Maurice Stoney has taken steps to involve themselves in this litigation. The “10 living brothers or sisters” are simply named. Maurice Stoney’s filings do not include any documents such as affidavits prepared by these individuals, nor has there been an *Alberta Rules of Court*, Alta Reg 124/2010 [the “Rules”, or individually a “Rule”] application or appointment of a litigation representative, per *Rules* 2.11-2.21. In fact, aside from Maurice Stoney, the Applicant(s) materials provide no biographical information or records such as birth certificates for any of these additional proposed litigants, other than the year of their birth.

[10] Counsel for Maurice Stoney, Priscilla Kennedy, has not provided or filed any data to show she has been retained by the “10 living brothers or sisters”.

[11] Participating in a legal proceeding can have significant adverse effects, such as exposure to awards of costs, findings of contempt, and declarations of vexatious litigant status. Being a litigant creates obligations as well, particularly in light of the positive obligations on litigation actors set by *Rule* 1.2.

[12] In the absence of evidence to the contrary and from this point on, I limit the scope of Maurice Stoney’s litigation to him alone and do not involve his “10 living brothers and sisters” in this application and its consequences. I will return to this topic because it has other implications for Maurice Stoney and his lawyer Priscilla Kennedy.

IV. Preliminary Issue #2 - The Proposed Sawridge Band Intervention and Motion to Strike Out the Stoney Application

[13] To this point, the role of the Sawridge Band in this litigation has been what might be described as “an interested third party”. The Sawridge Band has taken the position it is not a party to this litigation: *Sawridge #3* at paras 15, 27. The Sawridge Band does not control the 1985 Sawridge Trust, but since the beneficiaries of that Trust are defined directly or indirectly by membership in the SFN, there have been occasions where the Sawridge Band has been involved in respect to that underlying issue, particularly when it comes to the provision of relevant information on procedures and other evidence: see *Sawridge #1* at paras 43-49; *Sawridge #3*.

[14] The Sawridge Band argued that its intervention application under *Rule 2.10* should be granted because the Stoney Application simply continues a lengthy dispute between Maurice Stoney and the Sawridge Band over whether Maurice Stoney is a member of the Sawridge Band.

[15] The Trustees support the application of the Sawridge Band, noting that the proposed intervention makes available useful evidence, particularly in providing context concerning Maurice Stoney's activities over the years.

[16] The Applicant, Stoney responds that intervenor status is a discretionary remedy that is only exercised sparingly. Maurice Stoney submits the broad overlap between the Sawridge Band and the Trustees means that the Band brings no useful or unique perspectives to the litigation. Maurice Stoney alleges the Sawridge Band operates in a biased and discriminatory manner. If any party should be involved it should be Canada, not the Sawridge Band. Maurice Stoney demands that the intervention application be dismissed and costs ordered against the Band.

[17] Two criteria are relevant when a court evaluates an application to intervene in litigation: whether the proposed intervenor is affected by the subject matter of the proceeding, and whether the proposed intervenors have expertise or perspective on that subject: *Papaschase Indian Band v Canada (Attorney General)*, 2005 ABCA 320, 380 AR 301; *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2014 ABCA 340, 584 AR 255.

[18] The Sawridge Band intervention is appropriate since that response was made in reply to a collateral attack on its decision-making on the core subject of membership. The common law approach is clear; here the Sawridge Band is particularly prejudiced by the potential implications of the Stoney Application. Indeed, it is hard to imagine a more fundamental impact than where the Court considers litigation that potentially finds in law that an individual who is currently an outsider is, instead, a part of an established community group which holds title and property, and exercises rights, in a *sui generis* and communal basis: *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 153 DLR (4th) 193; *R v Van der Peet*, [1996] 2 SCR 507, 137 DLR (4th) 289.

[19] I grant the Sawridge Band application to intervene and participate in the Advice and Direction Application, but limited to the Stoney Application only.

V. Positions of the Parties on the Application to be Added

A. Maurice Stoney

[20] The Applicant's argument can be reduced to the following simple proposition. Maurice Stoney wants to be named as a party to the litigation or as an intervenor because he claims to be a member of the Sawridge Band. The Sawridge 1985 Trust is a trust that was set up to hold property on behalf of members of the Sawridge Band. He is therefore a beneficiary of the Trust, and should be entitled to participate in this litigation.

[21] The complicating factor is that Maurice Stoney is not a member of the Sawridge Band. He argues that his parents, William and Margaret Stoney, were members of the Sawridge Band, and provides documentation to that effect. In 1944 William Stoney and his family were "enfranchised", per *Indian Act*, RSC 1927, c 98, s 114. This is a step where an Indian may accept a payment and in the process lose their Indian status. The "enfranchisement" option was subsequently removed by Federal legislation, specifically an enactment commonly known as "Bill C-31".

[22] Maurice Stoney argues that the enfranchisement process is unconstitutional, and that, combined with the result of a lengthy dispute over the membership of the Sawridge Band, means he (and his siblings) are members of the Sawridge Band. In his Written Response argument this claim is framed as follows:

Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1st Supp.) amended the provisions of the Indian Act, R.S.C. 1985, I-5 by removing the enfranchisement provisions returning all enfranchised Indians back on the pay lists of the Bands where they should have been throughout all of the years.

[23] In 2012, Maurice Stoney applied to become a member of the Sawridge Band, but that application was denied. Maurice Stoney then conducted an unsuccessful judicial review of that decision: *Stoney v Sawridge First Nation*, 2013 FC 509, 432 FTR 253. Maurice Stoney says all this is irrelevant to his status as a member of the Sawridge Band; the definition of beneficiaries is contrary to public policy, and unconstitutional. The Court should order that Maurice Stoney and his siblings are beneficiaries of the 1985 Sawridge Trust and add them as parties to this Action. The Trust should pay for all litigation costs.

[24] The Written Response claims the Sawridge Band is in breach of orders of the Federal Court, that Maurice Stoney and others “have faced a tortuous long process with no success”. Maurice Stoney and his siblings’ participation does not cause prejudice to the Trustees, and claims that Maurice Stoney has not paid costs are false. I note the Written Response was not accompanied by any evidence to establish that alleged fact.

[25] The October 27, 2016 Written Response Argument stresses the Sawridge Band is not a party to this litigation, it has voluntarily elected to follow that path, and a third party should not be permitted to interfere with Maurice Stoney’s litigation. In any case, the Sawridge Band is wrong - Maurice Stoney is already a member of the Sawridge Band. He deserves enhanced costs in response to the *Rule 3.68* Application by the Band.

B. Sawridge Band

[26] The Sawridge Band points to the decision in *Stoney v Sawridge First Nation* and says the Maurice Stoney Application is an attempt to revisit an issue that was decided and which is now subject to *res judicata* and issue estoppel. Maurice Stoney is wrong when he argues that he automatically became a Sawridge Band member when Bill C-31 was enacted. His Affidavit contains factual errors. Maurice Stoney’s claim to be a Sawridge Band member was rejected in court judgments that Maurice Stoney did not appeal.

[27] Instead, Maurice Stoney had a right to apply to become a Sawridge Band member. He did so, and that application was denied, as was the subsequent appeal. The Federal Court reviewed and confirmed that result in the *Stoney v Sawridge First Nation* decision. The issue of Maurice Stoney’s potential membership in the Sawridge Band is therefore closed.

[28] The Sawridge Band has entered evidence that Maurice Stoney has not paid the costs that were awarded against him in the *Stoney v Sawridge First Nation* action, and that Maurice Stoney has unpaid costs awards in relation to the unsuccessful appeal in *1985 Sawridge Trust v Alberta (Public Trustee)*, 2016 ABCA 51, 616 AR 176.

[29] On January 31, 2014, Maurice Stoney filed a Canadian Human Rights Commission complaint concerning the Sawridge Band’s decision to refuse him membership. The Commission

refused the complaint, and concluded the issue had already been decided by *Stoney v Sawridge First Nation*.

[30] The Sawridge Band says this Court should do the same and strike out the Stoney Application per *Rule 3.68*.

[31] As for the “10 brothers and sisters”, the Sawridge Band indicates it has received and refused an application from one individual who may be in that group.

[32] The Sawridge Band seeks solicitor and own client costs, or elevated costs, in light of Maurice Stoney’s litigation history in relation to his alleged membership in the Sawridge Band.

C. 1985 Sawridge Trustees

[33] The Trustees echo the Sawridge Band’s arguments, assert the Application is “unnecessary, vexatious, frivolous, *res judicata*, and an abuse of process”, and that the Stoney Application should be denied. The Trustees seek solicitor and own client costs or enhanced costs as a deterrent against further litigation abuse by Maurice Stoney.

VI. Analysis

[34] The law concerning *Rule 3.68* is well established and is not in dispute. This is a civil litigation procedure that is used to weed out hopeless proceedings:

3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following:

- (a) that all or any part of a claim or defence be struck out;
 - (b) that a commencement document or pleading be amended or set aside;
 - (c) that judgment or an order be entered;
 - (d) that an action, an application or a proceeding be stayed.
- (2) The conditions for the order are one or more of the following:
- ...
 - (b) a commencement document or pleading discloses no reasonable claim or defence to a claim;
 - (c) a commencement document or pleading is frivolous, irrelevant or improper;
 - (d) a commencement document or pleading constitutes an abuse of process;
 - ...
- (3) No evidence may be submitted on an application made on the basis of the condition set out in subrule (2)(b).
- (4) The Court may
- (a) strike out all or part of an affidavit that contains frivolous, irrelevant or improper information;

...

[35] An action or defence may be struck under *Rule 3.68* where it is plain and obvious, or beyond reasonable doubt, that the action cannot succeed: *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959, 74 DLR (4th) 321. Pleadings should be considered in a broad and liberal manner: *Tottrup v Lund*, 2000 ABCA 121 at para 8, 186 DLR (4th) 226.

[36] A pleading is frivolous if its substance indicates bad faith or is factually hopeless: *Donaldson v Farrell*, 2011 ABQB 11 at para 20. A frivolous plea is one so palpably bad that the Court needs no real argument to be convinced of that fact: *Haljan v Serdahely Estate*, 2008 ABQB 472 at para 21, 453 AR 337.

[37] A proceeding that is an abuse of process may be struck on that basis: *Reece v Edmonton (City)*, 2011 ABCA 238 at para 14, 335 DLR (4th) 600. "Vexatious" litigation may be struck under either *Rule 3.682(c)* or (d): *Wong v Leung*, 2011 ABQB 688 at para 33, 530 AR 82; *Mcmeekin v Alberta (Attorney General)*, 2012 ABQB 144 at para 11, 537 AR 136.

[38] The documentary record introduced by Maurice Stoney makes it very clear that in 1944 William J. Stoney, his wife Margaret, and their two children Alvin Joseph Stoney and Maurice Felix Stoney, underwent the enfranchisement process and ceased to be Indians and members of the Sawridge Band per the *Indian Act*.

[39] As noted above, the Advice and Direction Application was initiated on June 11, 2011.

[40] On December 7, 2011, the Sawridge Band rejected Maurice Stoney's application for membership. An appeal of that decision was denied.

[41] Maurice Stoney then pursued a judicial review of the Sawridge Band membership application review process, in the Federal Court of Canada, which resulted in a reported May 15, 2013 decision, *Stoney v Sawridge First Nation*. At that proceeding, Maurice Stoney and two cousins argued that they were automatically made members of the Sawridge Band as a consequence of Bill C-31. At paras 10-14, Justice Barnes investigates that question and concluded that this argument is wrong, citing *Sawridge v Canada*, 2004 FCA 16, 316 NR 332.

[42] At para 15, Justice Barnes specifically addresses Maurice Stoney:

I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to [Maurice] Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

I note the original text of this paragraph uses the name "William Stoney" instead of "Maurice Stoney". This is an obvious typographical error, since it was William Stoney who in 1944 sought and obtained enfranchisement. Maurice Stoney is William Stoney's son.

[43] Justice Barnes continues to observe at para 16 that this very same claim had been advanced in *Huzar v Canada*, [2000] FCJ 873, 258 NR 246 (FCA), but that Maurice Stoney as a respondent in that hearing at para 4 had acknowledged this argument had no basis in law:

It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band. [Emphasis added.]

[44] Justice Barnes at para 17 continues on to observe that:

It is not open to a party to relitigate the same issue that was conclusively determined in an earlier proceeding. The attempt by these Applicants to reargue the question of their automatic right of membership in Sawridge is barred by the principle of issue estoppel ...

[45] As for the actual judicial review, Justice Barnes concludes the record does not establish procedural unfairness due to bias: paras 19-21. A *Charter*, s 15 application was also rejected as unsupported by evidence, having no record to support the relief claims, and because the Crown was not served notice of a challenge to the constitutional validity of the *Indian Act*: para 22.

[46] Maurice Stoney did not appeal the *Stoney v Sawridge First Nation* decision.

[47] The Sawridge Band and the Trustees argue that Maurice Stoney's current application is an attempt to attack an unappealed judgment of a Canadian court. They are correct. Maurice Stoney is making the same argument he has before - and which has been rejected - that he now is one of the beneficiaries of the 1985 Sawridge Trust because he is automatically a full member of the Sawridge Band, due to the operation of Bill C-31.

[48] In summary, there are four separate grounds for rejecting Maurice Stoney's application:

1. He is estopped from making this argument via his concession in *Huzar v Canada* that this argument has no legal basis.
2. He made this same argument in *Stoney v Sawridge First Nation*, where it was rejected. Since Mr. Stoney did not choose to challenge that decision on appeal, that finding of fact and law has 'crystallized'.
3. In *Sawridge #3* at para 35 I concluded the question of Band membership should be reviewed in the Federal Court, and not in the Advice and Direction Application.
3. In any case I accept and adopt the reasoning of *Stoney v Sawridge First Nation* as correct, though I am not obliged to do so.

[49] Maurice Stoney has conducted a "collateral attack", an attempt to use 'downstream' litigation to attack an 'upstream' court result. This offends the principle of *res judicata*, as explained by Abella J in *British Columbia (Workers' Compensation Board) v Figliola*, 2011 SCC 52 at para 28, [2011] 3 SCR 422:

The rule against collateral attack similarly attempts to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route ... [Emphasis added.]

[50] McIntyre J in *Wilson v The Queen*, [1983] 2 SCR 594 at 599, 4 DLR (4th) 577 explains how it is the intended effect that defines a collateral attack:

It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally — and a collateral attack may be

described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. [Emphasis added.]

See also: *R v Litchfield*, [1993] 4 SCR 333, 86 CCC (3d) 97; *Quebec (Attorney General) v Laroche*, 2002 SCC 72, 219 DLR (4th) 723; *R v Sarson*, [1996] 2 SCR 223, 135 DLR (4th) 402.

[51] While I am not bound by the Federal Court judgments under the doctrine of *stare decisis*, I am constrained by *res judicata* and the prohibition against collateral attacks on valid court and tribunal decisions. Maurice Stoney's application to be a member of the Sawridge Band was rejected, and his court challenges to that result are over. He did not pursue all available appeals. He cannot now attempt to slip into the Sawridge Band and 1985 Sawridge Trust beneficiaries pool 'through the backdoor'.

[52] I dismiss the Stoney Application to be named either as a party to this litigation, or to participate as an intervenor. Maurice Stoney has no interest in the subject of this litigation, and is nothing more than a third-party interloper. In light of this conclusion, it is unnecessary to address the Sawridge Band's application that Maurice Stoney pay security for costs.

VII. Vexatious Litigant Status

[53] Maurice Stoney's conduct in relation to the Advice and Direction Application has been inappropriate. He arguably had a basis to be an interested party in 2011, because when the Trustees initiated the distribution process he had a live application to join the Sawridge Band. Therefore, at that time he had the potential to become a beneficiary. However, by 2013, that avenue for standing was closed when Justice Barnes issued the *Stoney v Sawridge First Nation* decision and Maurice Stoney did not appeal.

[54] Maurice Stoney nevertheless persisted, appearing before the Alberta Court of Appeal in *1985 Sawridge Trust (Trustee for) v Alberta (Public Trustee)*, 2016 ABCA 51, 616 AR 176, where Justice Watson concluded Mr. Stoney should not receive an extension of time to challenge *Sawridge #3* because he had no chance of success as he did not have standing and was "... in fact, a stranger to the proceedings insofar as an appeal from the decision of Mr. Justice Thomas to the Court of Appeal is concerned.": paras 20-21. Now Maurice Stoney has attempted to add himself (and his siblings) to this action as parties or intervenors, in a manner that defies *res judicata* and in an attempt to subvert the decision-making of the Sawridge Band and the Federal Court of Canada.

[55] *Chutskoff v Bonora*, 2014 ABQB 389 at para 92, 590 AR 288, aff'd 2014 ABCA 444 is the leading Alberta authority on the elements and activities that define abusive litigation. That decision identifies eleven categories of litigation misconduct which can trigger court intervention in litigation activities. Several of these indications of abusive litigation have already emerged in Maurice Stoney's legal actions:

1. Collateral attacks that attempt to determine an issue that has already been determined by a court of competent jurisdiction, to circumvent the effect of a court or tribunal decision, using previously raised grounds and issues;
2. Bringing hopeless proceedings that cannot succeed, here in both the present application and the *Sawridge #3* appeal where Maurice Stoney was declared to be an uninvolved third party; and

3. Initiating “busybody” lawsuits to enforce the rights of third parties, here the recruited participation of Maurice Stoney’s “10 living brothers and sisters.”

[56] The Sawridge Band says Maurice Stoney does not pay his court-ordered costs. Maurice Stoney denies that. Failure to pay outstanding cost awards is another potential basis to conclude a person litigates in an abusive manner. However, I defer any finding on this point until a later stage.

[57] Any of the abusive litigation activities identified in *Chutskoff v Bonora* are a basis to declare a person a vexatious litigant and restrict access to Alberta courts. Maurice Stoney has exhibited three independent bases to take that step. The Alberta Court of Queen’s Bench has adopted a two-step vexatious litigant application process to meet procedural justice requirements set in *Lymer v Jonsson*, 2016 ABCA 32, 612 AR 122, see *Hok v Alberta*, 2016 ABQB 651 at paras 10-11, leave denied 2017 ABCA 63; *Ewanchuk v Canada (Attorney General)*, 2017 ABQB 137 at para 97.

[58] I therefore exercise this Court’s inherent jurisdiction to control litigation abuse (*Hok v Alberta*, 2016 ABQB 651 at paras 14-25, *Thompson v International Union of Operating Engineers Local No. 955*, 2017 ABQB 210 at para 56, affirmed 2017 ABCA 193; *Ewanchuk v Canada (Attorney General)* at paras 92-96; *McCargar v Canada*, 2017 ABQB 416 at para 110) and to examine whether Maurice Stoney’s future litigation activities should be restricted.

[59] To date this two-step process has sometimes involved a hearing on the second step, for example *Kavanagh v Kavanagh*, 2016 ABQB 107; *Ewanchuk v Canada (Attorney General)*; *McCargar v Canada*. However, other vexatious litigant analyses have been conducted via written submissions and affidavit evidence: *Hok v Alberta*, 2016 ABQB 651. Veldhuis J in *Hok v Alberta*, 2017 ABCA 63 at para 8 specifically reproduces the trial court’s instruction that the process was conducted via written submissions and subsequently concludes the vexatious litigant analysis and its result shows no error or legal issues that raise a serious issue of general importance with a reasonable chance of success: para 10.

[60] In this case, I follow the approach of Verville J. in *Hok v Alberta* and proceed using a document-only process. In *R v Cody*, 2017 SCC 31, the Court at para 39 identified that one of the ways courts may improve their efficiencies is to operate on a documentary record rather than to hold in-person court hearings. That advice was generated in the context of criminal proceedings, which are accorded a special degree of procedural fairness due to the fact the accused’s liberty is at stake.

[61] The Ontario courts use a document-based ‘show cause’ procedure authorized by *Rules of Civil Procedure*, RRO 1990, Reg 194, s 2.1 to strike out litigation and applications that are obviously hopeless, vexatious, and abusive. This mechanism has been confirmed as a valid procedure for both trial level (*Scaduto v Law Society of Upper Canada*, 2015 ONCA 733, 343 OAC 87, leave to the SCC denied 36753 (21 April 2016)) and appellate proceedings (*Simpson v Institute of Chartered Accountants of Ontario*, 2016 ONCA 806).

[62] I conclude the procedural fairness requirements indicated in *Lymer v Jonsson* are adequately met by a document-only approach, particularly given that the implications for a litigant of a criminal proceeding application, or for the striking out of a civil action or application, are far greater than the potential consequences of what is commonly called a vexatious litigant order. As Justice Verville observed in *Hok v Alberta*, 2016 ABQB 651 at paras

30-34, the implications of a restriction of this kind should not be exaggerated, it instead "... is not a great hurdle."

[63] I therefore order that Maurice Stoney is to make written submissions by **close of business on August 4, 2017**, if he chooses to do so, on whether:

1. his access to Alberta courts should be restricted, and
2. if so, what the scope of that restriction should be.

[64] The Sawridge Band and the Trustees may make submissions on Maurice Stoney's potential vexatious litigant status, and introduce additional evidence that is relevant to this question, see *Chutskoff v Bonora* at paras 87-90 and *Ewanchuk v Canada (Attorney General)* at paras 100-102. Any submissions by the Sawridge Band and the Trustees are due by **close of business on July 28, 2017**.

[65] In addition, I follow the process mandated in *Hok v Alberta*, 2016 ABQB 335 at para 105, and order that Maurice Stoney's court filing activities are immediately restricted. I declare that Maurice Stoney is prohibited from filing any material on any Alberta court file, or to institute or further any court proceedings, without the permission of the Chief Justice, Associate Chief Justice, or Chief Judge of the court in which the proceeding is conducted, or his or her designate. This order does not apply to:

1. written submissions or affidavit evidence in relation to the Maurice Stoney's potential vexatious litigant status; and
2. any appeal from this decision.

[66] This order will be prepared by the Court and filed at the same time as this Case Management decision.

VIII. Costs

[67] I have indicated Maurice Stoney's application had no merit, and was instead abusive in a manner that exhibits the hallmark characteristics of vexatious litigation. The Sawridge Band and Trustees seek solicitor and own client indemnity costs against Maurice Stoney. Those are amply warranted. In *Sawridge #5*, I awarded solicitor and own client indemnity costs against two of the applicants since their litigation conduct met the criteria identified by Moen J in *Brown v Silvera*, 2010 ABQB 224 at paras 29-35, 488 AR 22, affirmed 2011 ABCA 109, 505 AR 196, for the Court to exercise its *Rule 10.33* jurisdiction to award costs beyond the presumptive *Rule 10.29(1)* party and party amounts indicated in Schedule C. The same principles apply here.

[68] The costs award to the Sawridge Band is appropriate given its valid intervention and the important implications of Maurice Stoney's attempted litigation, as discussed above.

[69] In *Sawridge #5*, at paras 50-51, I observed that there is a "new reality of litigation in Canada":

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.

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. ...

[Emphasis in original.]

[70] Then at para 53, I concluded that the "new reality of litigation in Canada" meant: ... 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.

[71] The Supreme Court of Canada has recently in *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 ["*Jodoin*"] commented on another facet of the problematic litigation, where lawyers abuse the court and its processes. *Jodoin* investigates when a costs award is appropriate against criminal defence counsel. At para 56, Justice Gascon explicitly links court discipline of abusive lawyers to the "culture of complacency" condemned in *R v Jordan* and *R v Cody*. Costs awards are a way to help control this misconduct, and are a tool to help achieve the badly needed "culture shift" in civil and criminal litigation.

[72] I pause at this point to note that *Jodoin* focuses on *criminal* litigation, where the Courts have traditionally been cautious to order costs against defence counsel "in light of the special role played by defence lawyers and the rights of accused persons they represent": para 1.

[73] At paras 16-24 Justice Gascon discusses the issue of costs awards against lawyers in a more general manner:

The courts have the power to maintain respect for their authority. This includes the power to manage and control the proceedings conducted before them ... A court therefore has an inherent power to control abuse in this regard ... and to prevent the use of procedure "in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute" ...

It is settled law that this power is possessed both by courts with inherent jurisdiction and by statutory courts ... It is therefore not reserved to superior courts but, rather, has its basis in the common law ...

There is an established line of cases in which courts have recognized that the awarding of costs against lawyers personally flows from the right and duty of the

courts to supervise the conduct of the lawyers who appear before them and to note, and sometimes penalize, any conduct of such a nature as to frustrate or interfere with the administration of justice ... As officers of the court, lawyers have a duty to respect the court's authority. If they fail to act in a manner consistent with their status, the court may be required to deal with them by punishing their misconduct ...

The power to control abuse of process and the judicial process by awarding costs against a lawyer personally applies in parallel with the power of the courts to punish by way of convictions for contempt of court and that of law societies to sanction unethical conduct by their members. ...

... although the criteria for an award of costs against a lawyer personally are comparable to those that apply to contempt of court ... the consequences are by no means identical. Contempt of court is strictly a matter of law and can result in harsh sanctions, including imprisonment. In addition, the rules of evidence that apply in a contempt proceeding are more exacting than those that apply to an award of costs against a lawyer personally, as contempt of court must be proved beyond a reasonable doubt. Because of the special status of lawyers as officers of the court, a court may therefore opt in a given situation to award costs against a lawyer personally rather than citing him or her for contempt ...

In most cases, of course, the implications for a lawyer of being ordered personally to pay costs are less serious than those of the other two alternatives. A conviction for contempt of court or an entry in a lawyer's disciplinary record generally has more significant and more lasting consequences than a one-time order to pay costs. Moreover, as this appeal shows, an order to pay costs personally will normally involve relatively small amounts, given that the proceedings will inevitably be dismissed summarily on the basis that they are unfounded, frivolous, dilatory or vexatious.

[Emphasis added, citations omitted.]

[74] This costs authority operates in a parallel but separate manner from the disciplinary and lawyer control functions of law societies: paras 22-23. Cost awards against a lawyer are potentially triggered by either:

1. "an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system by the lawyer", or
2. "dishonest or malicious misconduct on his or her part, that is deliberate".

[*Jodoin*, para 29]

[75] The Court stresses that an investigation of a particular instance of potential litigation misconduct should be restricted to the specific identified litigation misconduct and not put the lawyer's "career[,] on trial": para 33. This investigation is not of the lawyer's "entire body of work", though external facts can be relevant in certain circumstances: paras 33-34.

[76] The lawyer who is potentially personally subject to a costs sanction must receive notice of that, along with the relevant facts: para 36. This normally would occur after the end of litigation, once "... the proceeding has been resolved on its merits.": para 36.

[77] I conclude this is one such occasion where a costs award against a lawyer is potentially warranted. Maurice Stoney's attempted participation in the Advice and Direction Application has ended, so now is the point where this issue may be addressed. I consider the impending vexatious litigant analysis a separate matter, though also exercised under the Court's inherent jurisdiction. I do not think this is an appropriate point at which to make any comment on whether Ms. Kennedy should or should not be involved in that separate vexatious litigant analysis, given her litigation representative activities to this point.

[78] I have concluded that Maurice Stoney's lawyer, Priscilla Kennedy, has advanced a futile application on behalf of her client. I have identified the abusive and vexatious nature of that application above. This step is potentially a "serious abuse of the judicial system" given:

1. the nature of interests in question;
2. this litigation was by a third party attempting to intrude into an aboriginal community which has *sui generis* characteristics;
3. that the applicant sought to indemnify himself via a costs claim that would dissipate the resources of aboriginal community trust property;
4. the application was obviously futile on multiple bases; and
5. the attempts to involve other third parties on a "busybody" basis, with potential serious implications to those persons' rights.

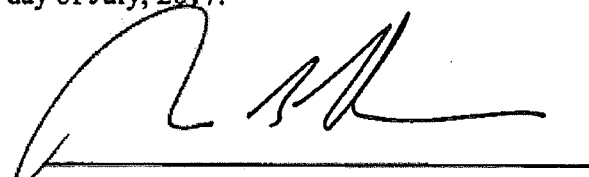
[79] I therefore order that Priscilla Kennedy **appear before me at 2:00 pm on Friday, July 28, 2017**, to make submissions on why she should not be personally responsible for some or all of the costs awards against her client, Maurice Stoney.

[80] I note that in *Morin v TransAlta Utilities Corporation*, 2017 ABQB 409, Graesser J. applied *Rule 10.50* and *Jodoin* to order costs against a lawyer who conducted litigation without obtaining consent of the named plaintiffs. Justice Graesser concludes at para 27 that a lawyer has an obligation to prove his or her authority to represent their clients. Here, that is a live issue for the "10 living brothers and sisters".

[81] *Jodoin* at para 38 indicates the limited basis on which the other litigants may participate in a hearing that evaluates a potential costs award against a lawyer. The Sawridge Band and Trustees may introduce evidence as indicated in paras 33-34 of that judgment. They should also appear on July 28th to comment on this issue.

Heard and decided on the basis of written materials described in paragraph 7 hereof.

Dated at the City of Edmonton, Alberta this 12th day of July, 2017.


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

Submissions in writing from:

Priscilla Kennedy
DLA Piper
for Maurice Felix Stoney (Applicant)

D.C. Bonora and
A. Loparco, Q.C.
Dentons LLP
for 1985 Sawridge Trustees (Respondents)

J.L. Hutchison
Hutchison Law LLP
for the OPTG (Respondent)

Edward Molstad, Q.C.
Parlee McLaws LLP
for the Sawridge Band (Intervenor)

TAB 10

Notice List for Application for Advice and Direction, 26 August 2011

Last	First	Address	Town	Pr	Code	Category
Awad	Zayna	P. O. Box 1337	Slave Lake	AB	T0G 2A0	g
Awad	Zayne	P. O. Box 1337	Slave Lake	AB	T0G 2A0	g
Belcourt	Conway	222, 7401 Poplar Drive	Grande Prairie	AB	T8V 5M7	e, f
Belcourt	Dion W.	P.O. Box 583	Hythe	AB	T0H 2C0	e, f
Belcourt	Garry C.	45, 9700-18 Street	Dawson Creek	BC	V1G 5A4	e, f
Belcourt	Gordon C.	P. O. Box 583	Hythe	AB	T0H 2C0	e, f
Belcourt	Margerie	P. O. Box 583	Hythe	AB	T0H 2C0	e, f
Belcourt	Sandra G.	P. O. Box 571	Hythe	AB	T0H 2C0	e, f
Belcourt-Hommy	Beverly S.	P. O. Box 745	Hythe	AB	T0H 2C0	e, f
Boudreau	Julius A.	132 Montgomery Road	Prince Rupert	BC	V8J 4M1	f
Brosseau	Joyce E.	1820-35 Avenue	Edmonton	AB	T6T 1Y9	g
Brule	Martha A.	47, 121 Robinson Street	Winnipeg	MB	R2W 4E1	f
Burd	Svea A.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	g
Cardinal	Barbara J.	P. O. Box 935	Dawson Creek	BC	V1G 4H9	e, f
Cardinal	Dale B.	P. O. Box 591	Dawson Creek	BC	V1G 4H4	f
Cardinal	Kieran T.	6 Arbor Crest Heights NW	Calgary	AB	T3G 4V3	b, d, f
Cardinal	Owen L.	P. O. Box 591	Dawson Creek	AB	V1G 4H4	e, f
Cardinal	Peter A. W.	P.O. Box 134	Slave Lake	AB	T0G 2A1	f
Cardinal	Sheena L.	9601-69 Avenue	Grande Prairie	AB	T8V 5E3	e, f
Courtoreille	Isabelle	RR 1 Site 3 Camp 32	Dawson Creek	BC	V1G 2E7	e
Courtoreille	Thomas A.	P. O. Box 68	Valemount	BC	V0E 2Z0	f
Dokken	Misty L.	27 Afton Crescent	St. Albert	AB	T9N 1P5	e, f
Donald	Gina R. A.	11001-159 Street	Edmonton	AB	T5P 3C2	e, f
Donald	Niomi M. A.	11001-159 Street	Edmonton	AB	T5P 3C2	f
Donald	Stiles A.	11001-159 Street	Edmonton	AB	T5P 3C2	f
Donald Lewis	Nia B.	11001-159 Street	Edmonton	AB	T5P 3C2	f
Draney	Brenda A.	15821-102 Avenue	Edmonton	AB	T5P 4P7	b, f
Draney	Frieda M. I.	P. O. Box 2366	Slave Lake	AB	T0G 2A0	b, d, f
Gabert	Anita M.	1011 Babine Crescent	Prince George	BC	V2M 3X5	f
Garnot	Darlene M.	2324 Victoria Street	Prince George	BC	V2L 4Z5	f
Henry	Yvonne L.	15 1844-4th Avenue	Prince George	BC	V2M 1J2	f
Hill	Violet M.	131 Gull Crescent	Prince Rupert	BC	V8J 4G4	f
Hill	Violet Mary	131 Gull Crescent	Prince Rupert	BC	V8J 4G4	f
Huzar	Aline E.	3953 Weisbrod Road	Prince George	BC	V2K 2S4	e, f
Jackson	Arthur B.	4405-25 Street	Vernon	BC	V1T 3E2	f
Kautz	Gina M.	6, 54022 - RR 275	Spruce Grove	AB	T7X 3V4	f
Kautz	Jennifer N.	103, 33-5 Avenue	Spruce Grove	AB	T7X 2C5	f
Kautz	Kristine G.	7 Brown Street	Spruce Grove	AB	T7Z 1E8	f
Ketlo	Sherry L.	P. O. Box 1034	Fraser Lake	BC	V0T 1S0	f
Kolosky	June M.	P. O. Box 25	Chetwynd	BC	V0C 1J0	e, f
L'Hirondelle	Bertha	P. O. Box 102	Slave Lake	AB	T0G 2A0	b, d
L'Hirondelle	Mary R.	45, 7850 King George Highway	Surrey	BC	V3W 5B2	b, d, f
Lamouche-Twin	Everett	P. O. Box 462	Slave Lake	AB	T0G 2A0	g
Lamouche-Twin	Justice	P. O. Box 463	Slave Lake	AB	T0G 2A1	g
Lamouche-Twin	Kalyn	P. O. Box 464	Slave Lake	AB	T0G 2A2	g

Lamouche-Twin	Maggie	P. O. Box 465	Slave Lake	AB	T0G 2A3	g
L'Hirondelle	Bertha	P. O. Box 102	Slave Lake	AB	T0G 2A0	b, d
L'Hirondelle	Victoria Z.	43 Moquem Place	Deroche	BC	V0M 1G0	f
L'Hirondelle	Wayne V.	45, 7850 King George Highway	Surrey	BC	V3W 5B2	f
Lindberg	Dallas (Rosina)					g
Lindberg	Garry C. (Rosina)					g
Lindberg	Rodney (Rosina)					g
Lindberg	Rosina A.	16518-104 Avenue	Edmonton	AB	T5P 0S7	b, d, f
Loyie	Buddy A.	1106-1 Street East	Fort Francis	ON	P9A 1N6	f
MacLeod	Joan A.	301, 32767 Fraser Crescent	Mission	BC	V2V 1C9	f
Mandel-Auger	Shawn	P. O. Box 763	Slave Lake	AB	T0G 2A0	f
McCoy	Vera I.	P. O. Box 992	Slave Lake	AB	T0G 2A0	b, d
McDermott	Alan F.	420-9 Avenue SE	Calgary	AB	T2G 0R7	f
McDermott	Richard W.	200 Beddington Circle NE	Calgary	AB	T3K 1K7	e, f
McDonald	Allan A.	4400-44 Street	Stony Plain	AB	T7Z 1J3	e, f
McDonald	Joshilyn M.	604, 10350-122 Street	Edmonton	AB	T5N 3W4	f
McDonald	William A.	7719-188 Street	Edmonton	AB	T5T 5J4	e, f
McRee	Theresa J.	700-1A Avenue SE	Slave Lake	AB	T0G 2A3	f
Midbo	Casey E.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	f
Midbo	Clara A. E.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	b, d, f
Midbo	David P.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	b, d
Midbo	Denise M.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	b, d
Midbo	Ethan R.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	f
Midbo	Gordon A.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	f
Midbo	Kieran P.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	f
Midbo	Kristina G.	303, 9905-112 Street	Edmonton	AB	T5K 1L6	b, d
Midbo	Kylee M.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	g
Midbo	Sydney	20 Newport Drive	Sherwood Park	AB	T8A 5L3	f
Midbo	Tristan G.	20 Newport Drive	Sherwood Park	AB	T8A 5L3	f
Minchau	Lisa A.	P. O. Box 935	Dawson Creek	BC	V1G 4H9	e, f
Morton	Caelyn O.	340 Calderon Crescent	Edmonton	AB	T6V 1R3	g
Morton	Deana I.	341 Calderon Crescent	Edmonton	AB	T6V 1R4	g
Mountain	Lee Kenneth	Unit 6, 17409-95 Street	Edmonton	AB	T5Z 2A9	f
Neesotasis	N. Richard	P. O. Box 326	Slave Lake	AB	T0G 2A0	b, d, f
Nesootasis-Twin-Willier	Yvonne E.	12820 - 120 Street	Edmonton	AB	T5E 5N6	f
O'Connell	Ashley D.	P. O. Box 405	Penhold	AB	T0M 1R0	f
O'Connell	Gail E.	3 Dodge Avenue	Red Deer	AB	T4R 3H6	e, f
O'Connell	Lucas D.	B, 2811 East 21 Avenue	Vancouver	BC	V5M 2W5	f
O'Connell-Hunt	Jamie G.	522 McKenzie Court	North Bay	ON	P1B 9M5	f
Ostrowski	Mary M.	37, 12165-75 Avenue	Surrey	BC	V3W 0W7	f
Paquette	Brenda L.	1011 Babine Crescent	Prince George	BC	V2M 3X5	f
Paquette	Lawrence C.	P. O. Box 636	Prince George	BC	V2L 4S8	f
Paquette	Louis J.	P. O. Box 766	Prince George	BC	V2L 4T3	f
Paquette	Melvin K.	213 590 Dominion Street	Prince George	BC	V2L 5T4	f
Paquette	Michelle E.	3345 Ponderosa Street	Abbotsford	BC	V2T 5G2	f
Paquette	Richard D.	940 La Salle Avenue	Prince George	BC	V2L 4J3	f
Paquette	Robert D.	1011 Babine Crescent	Prince George	BC	V2M 3X5	f

Paquette	Roland G.	539 Pilot Street	Prince George	BC	V2M 5H9	f
Paquette	Ronald F.	539 Pilot Street	Prince George	BC	V2M 5H9	f
Paquette	William F.	139 Pointview Drive	Perth	ON	K7H 3C7	f
Paquette-Henry	Cecile P.	539 Pilot Street	Prince George	BC	V2M 5H9	f
Paquette-Ketlo	Sherry L.	33-44 Endalco Avenue	Fraser Lake	BC	V0J 1S0	f
Poitras	Bruce	P. O. Box 387	Elk Point	AB	T0A 1A0	f
Poitras	Corbin J.	P. O. Box 387	Elk Point	AB	T0A 1A0	f
Poitras	Elizabeth B.	P. O. Box 387	Elk Point	AB	T0A 1A0	b, d, f
Poitras	Heather J.	136 Woodborough Way	Edmonton	AB	T5Y 1N2	f
Poitras	Nicole T. M.	P. O. Box 9	Kehewin	AB	T0A 1C0	f
Poitras-Collins	Tracey J.	4805-188 Street	Edmonton	AB	T6M 2S2	e, f
Poitras-John	Crystal M.	P.O. Box 5352	Bonnyville	AB	T9N 2G5	f
Potskin	Aaron R. B.	11832-88 Street	Edmonton	AB	T5B 3R8	b, d, f
Potskin	Albert Gene Ernest	P.O. Box 114	Cold Lake	AB	T9M 1P1	f
Potskin	Angus James	Unit 6, 17409-95 Street	Edmonton	AB	T5Z 2A9	f
Potskin	Blaine Almer	9217-146 Avenue	Edmonton	AB	T5E 2J9	f
Potskin	Brent Albert	8419-186 Street	Edmonton	AB	T5T 1H3	f
Potskin	Elsie Helen	Unit 6, 17409-95 Street	Edmonton	AB	T5Z 2A9	f
Potskin	Ethan E.R.	10, 11820-105 Street	Edmonton	AB	T5G 2N2	g
Potskin	Harriet	P. O. Box 185	Slave Lake	AB	T0G 2A0	g
Potskin	Jaise A.	5111-54 Street	Bonnyville	AB	T9N 2B2	g
Potskin	Jean Baptiste Robert	121-10726 103 Street NW	Edmonton	AB	T5H 2V8	e, f
Potskin	Jeanine M.	5111-54 Street	Bonnyville	AB	T9N 2B3	b, d, f
Potskin	Jonathon B.	P. O. Box 390	Smith	AB	T0G 2B0	b, d, f
Potskin	Jorja L.	5111-54 Street	Bonnyville	AB	T9N 2B3	e, f
Potskin	Judy D. A.	11832-88 Street	Edmonton	AB	T5B 3R8	f
Potskin	Karly G. R. A.	P. O. Box 185	Slave Lake	AB	T0G 2A0	f
Potskin	Lillian A. M.	P. O. Box 390	Smith	AB	T0G 2B0	b, d, f
Potskin	M. Jean V.	P. O. Box 185	Slave Lake	AB	T0G 2A0	b, d, f
Potskin	Michael Jonathon	Basement, 12921-117 Street	Edmonton	AB	T5E 5J8	f
Potskin	Richelle M.	P. O. Box 593	Enoch	AB	T7X 3Y3	f
Potskin	Sonia O.	61 Lees Street	Red Deer	AB	T4R 2P3	f
Potskin	Talia M.L.	10, 11820-105 Street	Edmonton	AB	T5G 2N1	f
Potskin	Trent R. A.	10, 11820-105 Street	Edmonton	AB	T5G 2N2	b, d, f
Sawan	Frederic L.	P. O. Box 1664	Wabasca	AB	T0G 2K0	e
Sawan	Juliette					e
Seneca-McDonald	Alannah-Lee	604, 10350-122 Street	Edmonton	AB	T5N 3W4	f
Seneca-McDonald	Clinton T.	604, 10350-122 Street	Edmonton	AB	T5N 3W4	f
Seneca-McDonald	Kyle A.	604, 10350-122 Street	Edmonton	AB	T5N 3W4	f
Serafinchon	Deborah A.	12233-47 Street	Edmonton	AB	T5N 2X6	f, g
Shirt	E. Cameron	P. O. Box 1460	Slave Lake	AB	T0G 2A0	f, g
Stoney	Maurice F.	500-4 Street NW	Slave Lake	AB	T0G 2A1	e, f
Stoney	William C.	10421-142 Street	Edmonton	AB	T5N 2P4	f
Stoney-Calder	Terry J.	1609, 17319-69 Avenue	Edmonton	AB	T5T 3S7	f
Twin	Alexander L. L.	1919-151 Avenue	Edmonton	AB	T5Y 1W1	e, f, g
Twin	Autumn J.	P. O. Box 58	Slave Lake	AB	T0G 2A0	f
Twin	Brittany E. M.	1919-151 Avenue	Edmonton	AB	T5Y 1W1	e, f, g

Twin	Darcy A.	P. O. Box 58	Slave Lake	AB	TOG 2A0	b, d
Twin	Destin D.	P. O. Box 992	Slave Lake	AB	TOG 2A0	g
Twin	E. Justin	P. O. Box 462	Slave Lake	AB	TOG 2A0	b, d
Twin	Jaclyn D.	P. O. Box 992	Slave Lake	AB	TOG 2A0	b, d, f
Twin	Jimmy A.	3405 Harrington Street	Saskatoon	SK	S7H 3Y3	f
Twin	Justice W. W.	1919-151 Avenue	Edmonton	AB	T5Y 1W1	f, g
Twin	Kerri-Lynne	1919-151 Avenue	Edmonton	AB	T5Y 1W1	e, f, g
Twin	Logan F.	P. O. Box 58	Slave Lake	AB	TOG 2A0	g
Twin	Mary R. B.	238 Burton Road	Edmonton	AB	T6R 1P3	f
Twin	Naomi I.	P. O. Box 1653	Slave Lake	AB	TOG 2A0	b, d, f
Twin	Nicole C. C.	12925-69 Street	Edmonton	AB	T5C 0H3	f
Twin	Orleane J. C.	238 Burton Road	Edmonton	AB	T6R 1P3	f
Twin	Rainbow	P. O. Box 1337	Slave Lake	AB	TOG 2A0	g
Twin	River C.	P. O. Box 58	Slave Lake	AB	TOG 2A0	g
Twin	Robert Peter	700 1A Avenue SE	Slave Lake	AB	TOG 2A3	f
Twin	Starr	P. O. Box 1337	Slave Lake	AB	TOG 2A0	g
Twin	Walter F.	P. O. Box 534	Slave Lake	AB	TOG 2A0	b, d, f
Twin	Wesley I.	1919-151 Avenue	Edmonton	AB	T5Y 1W1	b, d, f
Twin	Winona N.	P. O. Box 1337	Slave Lake	AB	TOG 2A0	b, d
Twin	Yvonne D.	P. O. Box 534	Slave Lake	AB	TOG 2A0	b, d, f
Twin-Abdi	Miel B.	238 Burton road	Edmonton	AB	T6R 1P3	f
Twinn	Alexander G.	P. O. Box 1307	Slave Lake	AB	TOG 2A0	g
Twinn	Ardell W.	P. O. Box 191	Slave Lake	AB	TOG 2A0	b, d
Twinn	Arlene T.	P. O. Box 121	Slave Lake	AB	TOG 2A0	b, d
Twinn	Catherine M.	P. O. Box 1460	Slave Lake	AB	TOG 2A0	b, d
Twinn	Cody R.	P. O. Box 191	Slave Lake	AB	TOG 2A0	e, f, g
Twinn	Corey R.	P. O. Box 191	Slave Lake	AB	TOG 2A0	g
Twinn	Haitina E.	P. O. Box 1307	Slave Lake	AB	TOG 2A0	c, f
Twinn	Irene M.	P. O. Box 402	Slave Lake	AB	TOG 2A0	b, d
Twinn	Isaac F.	P. O. Box 1460	Slave Lake	AB	TOG 2A0	b, d
Twinn	Kaitlin	P. O. Box 326	Slave Lake	AB	TOG 2A0	g
Twinn	Paul H.	P. O. Box 326	Slave Lake	AB	TOG 2A0	b, d
Twinn	Roland C.	P. O. Box 1307	Slave Lake	AB	TOG 2A0	b, d, f
Twinn	Roy K.	P. O. Box 1308	Slave Lake	AB	TOG 2A1	g
Twinn	Samuel L. A.	P. O. Box 1460	Slave Lake	AB	TOG 2A0	b, d
Twinn	Shannon L.	P. O. Box 191	Slave Lake	AB	TOG 2A0	c
Twinn	Shelby	P. O. Box 326	Slave Lake	AB	TOG 2A0	g
Twinn	W. Patrick	P. O. Box 1460	Slave Lake	AB	TOG 2A0	b, d
Twinn-Vincent	Seth	P. O. Box 121	Slave Lake	AB	TOG 2A0	g
Twinn-Vincent	W. Chase	P. O. Box 121	Slave Lake	AB	TOG 2A0	g
Ward	Angeline D.	P. O. Box 1155	Slave Lake	AB	TOG 2A0	f
Ward	Frank J.	P. O. Box 1155	Slave Lake	AB	TOG 2A0	f
Ward	Georgina R.	10925-98 Street NW	Edmonton	AB	T5H 2P7	b, d
Ward	Johnny M.	P. O. Box 36, Site 1 RR2	Gibbons	AB	T0E 1N0	f
Ward	Margaret A. C.	P. O. Box 134	Slave Lake	AB	TOG 2A1	b, d, f
Ward	Margaret S.	P. O. Box 284	Red Earth Creek	AB	TOG 1X0	b, d, f
Ward	Nathan A.	1, 2748 Brentwood Blvd NW	Calgary	AB	T2L 1J4	b, d, f

Williams	Brett A.	P. O. Box 591	Dawson Creek	BC	V1G 4H4	e
Williams	Debra E.	P. O. Box 591	Dawson Creek	BC	V1G 4H4	e, f
Williams	Kayla M.	P. O. Box 591	Dawson Creek	BC	V1G 4H4	e, f
Willier	Kelvin J.	12820 - 120 Street	Edmonton	AB	T5E 5N6	f
Willier	Shirley A.	12820 - 120 Street	Edmonton	AB	T5E 5N6	f
Willier	Stephanie A.	416, 10118-106 Avenue	Edmonton	AB	T5H 0B8	f
Office of the Public Trustee		4th Floor, JE Brownlee Building, 10365 - 97 Street	Edmonton	AB	T5J 3Z8	h
Department of Justice, Frank Bosscha, Director of Aboriginal Affairs		211 Bank of Montreal Building, 10199-101 Street	Edmonton	AB	T5J 3Y4	j, i
Sawridge First Nation		P. O. Box 326	Slave Lake	AB	T0G 2A0	a

List of Applicants

Last	First	Address	Town	Prov	Code
Belcourt	Conway	9213 94A Avenue	Grande Prairie	AB	T8V 6W5
Belcourt	Dion Wayne	P.O. Box 583	Hythe	AB	T0H 2C0
Belcourt	Garry Chuck	45, 9700-18 Street	Dawson Creek	BC	V1G 5A4
Belcourt	Gordon Christopher	P.O. Box 583	Hythe	AB	T0H 2C0
Belcourt	Margerie	P.O. Box 583	Hythe	AB	T0H 2C0
Belcourt	Sandra Gay	P.O. Box 571	Hythe	AB	T0H 2C0
Belcourt-Hommy	Beverly Sharon	P.O. Box 745	Hythe	AB	T0H 2C0
Boudreau	Julius Antoine	132 Montgomery Road	Prince Rupert	BC	V8J 4M1
Brule	Martha Ann	47, 121 Robinson Street	Winnipeg	MB	R2W 4E1
Cardinal	Barbara Jean				
Cardinal	Dale Bernard	P.O. Box 591	Dawson Creek	BC	V1G 4H4
Cardinal	Kieran Trevor		Calgary	AB	T3G 4V3
Cardinal	Owen Louis	P.O. Box 591	Dawson Creek	AB	V1G 4H4
Cardinal	Peter Allan Ward	P.O. Box 134	Slave Lake	AB	T0G 2A1
Cardinal	Sheena Lee				
Courtoreille	Thomas Albert	P.O. Box 68	Valemount	BC	V0E 2Z0
Dokken	Misty Lee	27 Afton Crescent	St. Albert	AB	T9N 1P5
Donald	Niomi Mary Ann	11001-159 Street	Edmonton	AB	T5P 3C2
Donald	Stiles Ansley	11001-159 Street	Edmonton	AB	T5P 3C2
Donald Lewis	Nia Brooke	11001-159 Street	Edmonton	AB	T5P 3C2
Donald Potskin	Gina Robin Ann	11001-159 Street	Edmonton	AB	T5P 3C2
Draney	Frieda M.	P.O. Box 148	Slave Lake	AB	T0G 2A0
Gabert (nee Paquette)	Anita Marlene	1011 Babine Crescent	Prince George	BC	V2M 3X5
Garnot (nee Paquette)	Darlene Marie	2324 Victoria Street	Prince George	BC	V2L 4Z5
Henry (nee Paquette)	Yvonne Leona	15 1844-4th Avenue	Prince George	BC	V2M 1J2
Hill	Violet Mary	131 Gull Crescent	Prince Rupert	BC	V8J 4G4
Huzar	Aline Elizabeth	3953 Weisbrod Road	Prince George	BC	V2K 2S4
Jackson	Arthur Bernard	4405-25 Street	Vernon	BC	V1T 3E2
Kautz	Gina Marilyn	6, 54022 - RR 275	Spruce Grove	AB	T7X 3V4
Kautz	Jennifer Nicole	103, 33-5 Avenue	Spruce Grove	AB	T7X 2C5
Kautz	Kristine Gina	7 Brown Street	Spruce Grove	AB	T7Z 1E8
Ketlo (nee Paquette)	Sherry Lynn	P. O. Box 1034	Fraser Lake	BC	V0T 1S0