Court File #	2203 0043AC and 2203 0045AC
Court	Court of Appeal of Alberta
Trial Court File Number	1103 14112
Registry Office	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 INDIANE BAND, NO. 19 now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985, (the "1985 Sawridge Trust")
Applicant to Intervene (in this Appeal)	**SHELBY TWINN**
APPLICANTS	**ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTICE TWINN AND DAVIE MAJESKI, as Trustees for the 1985 Sawridge Trust ("1985 SAWRIDGE TRUSTEES")**
Status on Appeal	**RESPONDENT**
Status on Application	**APPLICANT**
RESPONDENT	**THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA (the "OPGT")**
Status of Appeal	**Appellant**
Status on Application	**Respondent**
RESPONDENT	**CATHERINE TWINN**
Status on Appeal	**Appellant**
Status on Application	**Respondent**

Clerk's Stamp

Document	**AFFIDAVIT OF SHELBY TWINN**
Address for Service and Contact Information for Party Filing this Document	Shelby Twinn, Self-Represented 9918-115 St NW Edmonton, AB T5K 1S7 P: (780) 264-4822 E: s.twinn@live.ca

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AFFIDAVIT OF SHELBY TWINN
Sworn on May 25, 2022

I, Shelby Twinn**,** of Edmonton, in the Province of Alberta, **MAKE OATH AND SAY** THAT:

1. My vested beneficiary status is rendered meaningless by Sawridge Decision #12 which guts the 1985 Trust of its property. I work fulltime in Northernn Alberta often 10 or 14 days straight. I cannot afford legal counsel. My work schedule and health also hamper sme. Justices Thomas and Henderson denied all funding requests. The Trustees funded the SFN.

2. I have participated throughout mostly self-represented except for an initial period when Nancy Golding acted as counsel to Deborah Serafinchon, Patrick Twinn and myself. Our application for party status and funding was denied by Justice Thomas who awarded solicitor/client costs against Patrick Twinn and myself. The Court of Appeal overturned the costs award but not the denial of funded party status; the Court relied on a "legal presumption" that Trustees <u>always act</u> in the best interests of its beneficiaries. The Trustees confirmed, on the Asset Transfer application, their conflicting duties to Sawridge First Nation (SFN) band members versus 1985 Trust beneficiaries.

3. Justice Henderson replaced Justice Thomas on this file, as he has on other court files. He continued to deny me funding for legal counsel despite the power imbalance and what was at stake on the Asset Transfer application he conceived, directed and ruled in favor of. I self-represented on the abruptly adjourned, never heard Jurisdiction Application. My Affidavit (without Exhibits) sworn October 23, 2019 provides a partial recap of my involvement and is attached as **Exihibit 1.**

4. The parties consent to my participation on the same terms as the SFN.

5. I am informed by Catherine Twinn and do verily believe that Ron Ewoniak and Maurice Cullity were able and willing to give evidence. Just before Ron Ewoniak was to sign his Affidavit, he was called off by the Trustees through Deloitte, their accounting firm. She also advised that it was falsely suggested that Maurice Cullity was senile which was deeply offensive. The law office of Davies, Ward, Philips, and Vineberg still holds evidence.

6. My grandfather was not permitted by Indian Affairs policy to use SFN monies to invest off reserve. This policy restricted the use of band monies at least into the late 1980's and thereafter. This fact is gaslit by the SFN and Trustees on the Asset Transfer application.

7. The Trustees chose not to call the evidence of Michael McKinney who since 1988 to the present is in house legal counsel to the SFN and the Sawridge Group of Companies, assets owned by the 1985 and 1986 Trusts. He and Roland Twinn have never been produced or have given evidence in this Action. Instead, Darcy Twin was proferred, born in 1977 and 8 years old in 1985, with no professional and personal knowledge on the matter. Attached as **Exhibit 2**, is the September 24, 2019 transcript of Darcy Twin's examination on Affidavit.

8. Michael McKinney was involved in and gave evidence in many Actions including the Stuart Olson action suing the Sawridge Band, Sawridge Holdings (parent company of the 1985 Trust) and Sawridge Plaza. Michael McKinney's many Affidavits were sealed, however, in an extract to a Notice of Motion filed by Stuart Olson October 27, 1997, he testifies under oath why he is not adopting the erroneous evidence earlier given by Walter Twinn, specifically correcting the error of ownership of corporate assets, relevant to the asset transfer application.

   Mr. Kenny: Could you turn to page 6, line 7?

   Q: Sawridge Holdings Ltd. was one of the Band companies, was it?

   A: That's correct

   To Mike McKinney "Why is that not the information of the Band:

   A: It may lead – it appears to say that the Band owns Sawridge Holdings, and that's not the case. ….

   Q: These companies are owned by trusts, are they?

   A: Yes.

   Exhibit 3, Extract of McKinney Evidence

9. Up until Justice Henderson conceived and directed the Asset Transfer application he ruled in favour of, it was understood the 2016 Consent Order confirmed a proper transfer of assets to the 1985 Trust for 1985 Trust beneficiaries who have legal and beneficial ownership of property independent of current SFN band membership.

10. My paternal grandfather, Walter Twinn settled the 1985 Trust, attended Indian Residential School for about 8 years, emerging with maybe the equivalent of grade 4 education. His first language was Cree. He was wounded by racism, colonialism and discrimination. He was sober the last 8 years of his life. Some exploited his trauma. Despite his trauma, he was gifted and built the Sawridge Group of Companies, including using grant monies, loans, and personal guarantees. He made many personal sacrifices including time for his family. I believe the Court was provided a copy of a video celebrating my grandfather's 20th year as Chief.

11. I find Decision #12 colonial, lacking knowledge and understanding of and compassion for this complex history including the per capita payments and unconditional surrenders and releases signed by persons enfranchising prior to 1985. Attached to my Affidavit is a copy of a standard Surrender and Release everyone signed when enfranchising from Indian status to gain full rights of Canadian citizenship status.

Exhibit 4 Standard Release and Surrender on Enfranchisement.

12. The notorious issue of Band discrimination under s.10 of the Indian Act is outstanding. Bands like the SFN are permitted under s. 10 to pass and administer membership rules provided they comply with the Indian Act and Canadian law. Administrative oversight is lacking. Despite the Deschenueax decision guaranteeing Deborah Serafinchon equal status to her brother, Trustee/Chief Roland Twinn', like me she is a bandless status Indian because the SFN discriminates against her. We are denied equality in terms of identity, belonging and constitutional rights. We are excluded from per capita distributions of Specific Claims such as Cows and Ploughs and Ammunition and Twine. Only SFN members on the s.10 Band List are counted and receive per capita distributions from such claims. One current specific claim could see each SFN member receiving $50,000 plus in per capita distributions. On May 5, 2022, this Court noted that "In about 2005 the face value of these claims was said to be between $42,500 and $51,000 per band member."

    Tallcree First Nation v Rath & Company, 2022 ABCA 174 (CanLII)

    https://www.canlii.org/en/ab/abca/doc/2022/2022abca174/2022abca174.html

13. Reducing the membership count benefits Canada. Canada was present and supported the 2016 Consent Order but is silent and absent on Band membership discrimination, another off-loading of Canada's constitutional, fiduciary and oversight duties benefiting itself under the rubric of "self-government". If Canada cannot discriminate, how can a First Nation exercising delegated governmental authority under the Indian Act?

14. But for the SFN's discriminatory membership rules and processes, Indians like myself who are 1985 Trust beneficiaries would be band members. As an update to my October 23, 2019 Affidavit, over four silent years have passed since the membership applications of

Aspen Twinn, Cameron Shirt, Deborah Serafinchon and myself were hand submitted to the SFN. Justice is inaccessible to people like me who cannot afford to hire a lawyer. SFN membership applications languish unless you are the child of an elected Band official. Roland Twinn's sons jumped the membership queue and were secretly admitted into membership months after they applied, in time to determine the outcome of a 2015 election won with one vote in favor of Roland Twinn, which also included denying an Elder recasting his vote minutes of the poll closing, after their first ballot was declared "spoiled".

Exhibit 5, Sam Twinn's Affidavit without Exhibits
Exhibit 6, April 26, 2017 decision of J Russell in Twinn v SFN, 2017 FC 407

15. The SFN agreed but never reformed its membership rules and system despite legal advice. This is detailed in the Affidavits and transcripts of Catherine Twinn since this protracted Application began in August 2011 without a constating application until ordered by the Court of Appeal. On January 5, 2018 Justice Thomas was reminded of the need for a Constating Application but said:

> "I will say this: You know the Court of Appeal, I can jump over what they have to say to get this dispute resolved… I mean it would probably be a good idea to kick out, I think it is called a constating document, whatever that is…"

Exhibit 7 January 5, 2018 Transcript, lines 18 – 40

16. The conclusions of Justice Denny Thomas in Decision #1 about structural conflicts, discrimination, and procedural fairness (see 1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365, Paras 25, 28, 29, 45-49, 54) seem to have vanished except to gut the 1985 Trust suggesting a hypocritical, shallow and colonial view of discrimination.

17. Despite Justice Thomas' June 12, 2012 conclusion that a litigation representative was appropriate and required because of the 'structural conflict' that exists for the Sawridge Trustees and the adult members of the Sawridge First Nation, I've been denied party status and funding to support effective participation . Justice Thomas found that there is a potential conflict between the personal interests of these Trustees and their duties as fiduciaries. He focused on the fact that some of the Trustees were or are in elected positions. This structural conflict and the power imbalance between vulnerable, non-Band member 1985 adult Trust beneficiaries and the Trustees and the SFN was not appreciated until the Trustees September 27, 2021 admission. The Trustees and SFN appear to me to operate in demonstrable lock step to achieve the Trustees' stated "end goal" of ownership and control of the 1985 Trust only for SFN admitted members.

18. The vested status of 1982 and 1985 Sawridge Band members as of April 15, 1985 was determined under s.11 of the 1970 Indian Act rules, specified in the 1985 Trust. The 1985 Trust property is to ensure continued benefits to that class, including their descendants, notwithstanding future legal uncertainty around status and membership. The s.11 class never relinquished their band membership through enfranchisement. I am a direct descendant from my father who is part of that class. The s.11 entitlement rules continue today through s.6(1)(a) of the Indian Act.

19. There were many enfranchisement and per capita payments taken from SFN monies paid to enfranchisees who never paid back these significant sums to the SFN when returned into membership. They benefit enormously from the 1986 Trust. Roland Twinn admitted the SFN membership decision involves an economic calculation: keeping the pool small maintains status quo benefits. The "women" returned to membership are now seniors and receive valuable benefits including medical, dental and life insurance, home care and $2,500 per month under the Seniors Benefit.

Exhibit 8 – Roland Twinn February 17, 2016 letter to Gina Donald and March 4, 2016 reply

20. The Ontario Court in R v R.S. ONSC 2263 (CanLII) said this about enfranchisement:

> "to escape the blatant discrimination that existed, some "chose" enfranchisement. For Indigenous persons to benefit from any social economic, or political rights and benefits enjoyed by others such as being able to pursue higher education, hold private property, or to vote, they were forced to give up being an "Indian." Moreover, an Indigenous man who gave up their status, gave it up for their wife and children. They had no "choice".

21. I live the inter-generational trauma impacts and adverse childhood experiences. I am estranged from my father, a SFN band member. I was 5 years old, 25 years ago, when I last saw him. Justice Henderson ignored the complexity faced by my grandfather who settled the 1985 Trust and lived the complex history when Indian status was a huge burden. He sought to achieve balance, fairness, and equity. Decision #12 continues tearing families apart, taking vested Trust property from membership outcasts to further enrich privileged SFN members.

22. I see little chance of non-Band member 1985 Trust beneficiaries being admitted into band membership, given the SFN's discriminatory and secretive approach to its membership/electoral list, condemned by the Federal Court in response to the 2015 Election. See **Exhibit 7**.

23. Decision #12 discriminates a sub-class of 1985 Trust beneficiaries represented by Leo Morawski, the son of a Bill C-31 woman born out of wedlock before Bill C-31. Leo and his

wife, children and grandchildren are 1985 Trust beneficiaries. The Court ordered Leo's mother, Clara Ward, onto the SFN List on March 27, 2003 without application under a continuing injunction. Attached is Leo's letter to the SFN demonstrating his vested pre Bill C-31 entitlement at birth to be on the SFN Band List. Leo informs me the SFN sent him an membership application to complete.

Exhibit 9 – Leo Morawski's March 29, 2022 letter to the SFN
Exhibit 10 - March 27, 2003 Continuing Injunction decision against SFN

24. Another class discriminated by Decision #12 is represented by Michelle Ward. Her pre Bill C-31 right to be on the Sawridge Band List was upheld by Justice Cavanaugh of the Alberta Court of Queen's Bench and was on the Band List but vanishes with the SFN's administration of its Band List. The SFN and the Trustees are aware of this omission but have not corrected it by restoring her name to the SFN Band List and providing the removal date of Michelle's name as required by s.10 of the Indian Act.

Exhibit 11 – May 31, 1985, QB, Docket No 8503-12228
Exhibit 12 – Exhibit #2, July 22, 1985 letter of the Registrar to the SFN attaching the SFN Band List as it stood immediately before Bill -31, taken from the November 10, 2016 Transcript from cross examination of Catherine Twinn by the Trustees

25. Pre-Bill C-31 all the illegitimate children of a female SFN were entitled to be SFN members. The illegitimate children of male Indians were not entitled until the Supreme Court decision in Martin v Chapman that the male illegitimate child of a male SFN Indian could be registered. Allan McDonald was acknowledged by Darcy Twin as his older brother sharing the same SFN father, Chester Twin. Allan was born before Bill C-31 but his name has not been added to the SFN List by the SFN despite Darcy Twin being an SFN Councilor.

Exhibit 3, page 48, lines 15 – 27, page 49 lines 1-13, September 24, 2019 transcript of Darcy Twin's examination on Affidavit

26. I have a unique perspective and insight concerning the issues raised by Appeals of Sawridge #12 as the interests of the adult 1985 Trust beneficiaries are not currently represented by the parties to the Appeals. The same logic and legal arguments adding the SFN apply to me. I will file a Memorandum of Argument as soon as possible.

27. I swear this affidavit in support of an application for an Order, pursuant to Rule 14.58 of the Alberta Rules of Court, Alta Reg 124/2010, granting me status to intervene in the Appeals of Sawridge #12.

SWORN (OR AFFIRMED) BEFORE ME at)
Edmonton, Alberta, this 25th day of May 2022.)
)
)
)
)
Barrister & Solicitor in the Province of Alberta)
) Shelby Twinn

ROBERT A PHILP, Q.C.

COURT FILE NO.	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON

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

Clerk's Stamp

JUDICIAL CENTRE OF EDMONTON
FILED
OCT 23 2019
Clerk of the Court

APPLICANTS

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

DOCUMENT **AFFIDAVIT OF SHELBY TWINN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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

Sworn on the 25th day of October, 2019

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

This is Exhibit " 1 " referred to in the Affidavit of
Shelby Twinn
Sworn before me this 25th day
of May A.D., 2022
A Commissioner for Oaths in and for the Province of Alberta

ROBERT A PHILP, Q.C.

1. I am a beneficiary of the 1985 Trust and as such have personal knowledge of the matters deposed to unless to be stated to be based upon information and belief, in which case I verily believe the same to be true.

2. It is my understanding that the Office of the Public Guardian and Trustee of Alberta represents all minor beneficiaries of the 1985 Trust in this litigation, including those beneficiaries who were minors at the beginning of the litigation and who have subsequently become adults.

3. The adult beneficiaries are not represented in this litigation, I am one of those persons.

4. I am currently 27 years old and was born on January 3, 1992.

5. As a beneficiary of the 1985 Trust, I have been attempting to follow this Court proceeding and retained counsel at one point to advise me. Although I have asked for and received some assistance in preparing this affidavit, I cannot afford counsel at this point.

Jurisdictional Applications

6. I am aware of a Consent Order issued by Justice Thomas on August 24, 2016 in this litigation which approved the transfer of assets from the 1982 Trust to the 1985 Trust (the "**Transfer Order**").

7. Prior to the Consent Order being issued, it was brought to my attention through my then legal counsel, Nancy Golding. Ms. Golding was present at the Court application on August 24, 2016 and did not object to the Consent Order. I understood the Order to be approving that all of the assets that had transferred to the 1985 Trust from the 1982 Trust were properly held by the 1985 Trust and were subject to the 1985 Trust terms. Attached as **Exhibit "A"** to my Affidavit is a copy of the relevant portions of the August 24, 2016 transcript.

8. I am aware that in 2019 the Court directed a hearing on the Transfer Order and the Trustees of the 1985 Trust filed an application on September 13, 2019 to address this matter. I am further aware that a hearing is pending on matters raised in a Consent Order filed on December 18, 2018. I understand these two applications are being collectively referred to as the "Jurisdictional Applications".

My Lineage and Membership Prospects in the Sawridge First Nation

9. I am a registered Indian with the federal government.

10. The late Chief Walter Twinn was my grandfather. The current Chief of the Sawridge First Nation, Chief Roland Twinn, is my uncle.

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

12. It was a difficult decision for me to apply for membership in the First Nation as I know that the membership process is biased and, from my perspective, unfair. It is painful for me to have my heritage denied by my own family members.

13. I am aware that others struggle with these same concerns. I am aware that others are genuinely afraid to apply for membership in Sawridge as a result of their belief that the membership process is abusive and painful. Many of us believe that we will never be given membership unless we are political supporters or otherwise useful to the Chief. I note that the Band presently only has 45 members.

14. I am aware that Deborah Serafinchon (Daughter of late Chief Walter Twinn), Aspen Twinn (minor – father is Patrick Twinn and grandfather is late Chief Walter Twinn) and my uncle Cameron Shirt (brother to Patrick Twinn) applied for membership in April 2018. In speaking with Patrick, Cameron and Deborah, I understand their experiences have been the same as mine – namely they have heard nothing from the First Nation and neither Aspen, Cameron or Deborah have been admitted into membership.

15. Based on my personal experience and my discussions with others, it is my belief that the membership system at Sawridge is corrupt, biased and unfair and is unlikely to change anytime in the near future as not many people have the necessary financial resources to challenge the Chief and counsel who control membership.

Intervenor Status

16. I am aware the Trustees of the 1985 Trust have historically sought to change the current beneficiary definition of the 1985 Trust to include only those persons whose names appear on the Sawridge First Nation membership list that is controlled by Chief and Council. I am not a band member. I will lose my beneficiary status if the Trustees succeed in changing the current definition to their proposed definition.

17. I am aware that in August 2016 the Trustees made a proposal to Justice Thomas seeking this solution and stated that those who lost their beneficiary status could simply apply for membership in the First Nation. Attached as **Exhibit "C"** to my Affidavit is a copy of the Trustees' Distribution Proposal as submitted in their written submissions filed August 5, 2016 ("Distribution Proposal").

18. I am aware the Trustees premised this position on their belief that the current beneficiary definition of the 1985 Trust is discriminatory because it discriminates against Bill C-31 women who would not qualify for beneficiary status because they married non-indigenous men.

19. I understand that all Bill C-31 women were Court ordered on to their respective Band lists in 1985 as a consequence of amendments to the *Indian Act*. As such, the Sawridge Bill C-31 women have been able to enjoy all of the benefits of being a member of Sawridge.

20. I am aware that my status as a beneficiary of the 1985 Trust is contingent on me not marrying a non-indigenous man. In this way, I share the same concerns as the Bill C-31 women who came before me in 1985. However, unlike the Bill C-31 women, the Government of Canada is not helping me, and others like me, to gain membership in the First Nation. The 1985 Trust is the only official link to my heritage, identity and belonging.

21. From my perspective it is important to retain my beneficiary status on the terms currently set out in the 1985 Trust. If the definition was changed to membership in the First Nation, I have no control over whether I ever become a member and if I ever was to, I have no control over whether the First Nation elects to take that status away from me. It would be a significant change to lose clear beneficiary status than to leave my status to the whim of the First Nation.

22. I am aware the Trustees used me (personally) as an example of discrimination in their written submissions to the Court arising from the jurisdictional questions raised in the December 2018 Consent Order – see paragraph 46 of the Trustee written submissions filed on March 29, 2019. While the Trustees argue that my situation demonstrates inappropriate discrimination, I do not agree. The Trustees never consulted with me about my views on the subject before using me as an example to support their objectives.

23. I am aware Catherine Twinn must personally pay for her legal costs associated with this litigation. I am advised by Catherine that this makes it difficult for her to fully participate in the litigation as it is very expensive.

24. I am further advised by Catherine Twinn and do verily believe the Trustees have historically provided full indemnity funding to the Sawridge First Nation for its participation in this litigation, despite the fact that the Sawridge First Nation is not a beneficiary and has taken hostile positions against the 1985 Trust. Ms. Twinn has advised me that by November 2017 the First Nation has been indemnified over $550,000 from the 1985 trust assets for their involvement in this litigation.

25. I do not believe the Trustees of the 1985 Trust are taking care of my best interests. I note that Chief Roland Twinn is a trustee of the 1985 Trust. I believe the trustees are motivated by the political agenda of the First Nation. This belief is founded in my personal experience with the Trustees and the documents that I have read from this Court file, which include:

    (a) Their opposition to my application to be a party in this litigation, including aggressive cross examination and maintaining on appeal that they should be entitled to solicitor/client costs against me for my application. Attached as **Exhibit "D"** to my Affidavit are the relevant excerpts from the Trustees factum filed October 20, 2017.

    (b) The trustees have elected not to examine Darcy Twinn on his application for intervenor status (a person who is clearly seeking to advocate for the demise of the 1985 trust), but yet were willing to mount a vigorous defense against my application and others who have attempted to interfere with their plans. Attached as **Exhibit "E"** to my Affidavit are the relevant excerpts from the transcript from questioning of Darcy Twinn from October 18, 2019.

    (c) The trustees have opposed the participation of any party that seeks to object to their plan to have the beneficiary definition changed, for example:

        (i) The application by myself, Patrick and Deborah Serafinchon for party status;

        (ii) Party status for the Office of the Public Trustee and Guardian (see *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365);

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

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

(d) The trustees have refused to properly identify all of the 1985 Trust beneficiaries and have taken the position that the beneficiaries aren't capable of ascertainment until the Court gives a ruling in this litigation. (see Bujold Transcript Page 526-527, Lines 11-24 and Pages 530-536, Lines 25-18);

(e) The majority of the trustees are also members of the First Nation and thus would stand to personally benefit if the beneficiary group was reduced to only those on the Band list (currently 45 people);

(f) To date and to my knowledge, the trustees have refused to acknowledge that they will protect the interests of *all existing and future beneficiaries of the 1985 trust.* Attached as **Exhibit "F"** to my Affidavit is a letter dated October 16, 2019 from counsel for Catherine Twinn to counsel for the Trustees seeking this confirmation. I understand from Ms. Twinn that the trustees have not yet responded. In fact, the Trustees have historically taken positions in this litigation that are obviously adverse to us, for example:

(i) Seeking the beneficiary definition to be amended to only allow for inclusion for Band members (see Affidavit of Paul Bujold filed February 15, 2017 at Exhibit "A" para. 33)

(ii) Distribution Proposal;

(iii) Settlement application to Justice Thomas filed June 12, 2015 and attached as **Exhibit "G"** which sought to change the beneficiary definition to only Band members with grandfathering for a select group of minor beneficiaries. This application had the potential to end this litigation. The settlement did not consider the impact on adult beneficiaries, unborn beneficiaries and was not transparent as to how the list of minors for grandfathering had been developed;

(iv) Accepted that their preferred outcome to this litigation would lead to "collateral damage" and "winners and losers" amongst the current beneficiary group (see Bujold Transcript Page 367, Lines 18-22 and Page 366, Lines 14-15).

(g) Worked to further the interests of the First Nation, for example:

(i) The Trustees have been informed by Dr. Donovan Waters that the First Nation's membership code was likely discriminatory and not Charter

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

(ii) Were aware of the issues with the First Nation's membership system and voted to proceed with this litigation on the basis that they work with the First Nation to ensure the application process was expedited (applications for membership determined within six months from receipt) and work with the First Nation to make amendments to its membership code to ensure its decision making criteria met appropriate legal standards (See Exhibit H to Affidavit of Catherine Twinn filed May 11, 2017) and that all existing 1985 beneficiaries were grandfathered (See Bujold Transcript Exhibit 10). Despite initiating the litigation on this basis, the Trustees have not followed through on these parameters;

(iii) Failed to advise the Court of these issues with the membership process and in fact on more than one occasion represented to the Court that "the membership process is working" and "functioning" (see attached as **Exhibit "H"** transcripts from June 24, 2015 and September 2, 2015 Court dates).

(iv) Stated that Catherine Twinn's concerns about corruption within the membership process were "dramatic" and inciting investigation, based on information received only from Chief Roland Twinn and Bertha L'Hirondelle (former Chief) (see Bujold Transcript, page 6-7, Lines 26-13);

(v) Asked Catherine Twinn to remove portions of affidavit evidence submitted in this litigation that speak to problems with the First Nation's membership process (see undertakings requested of Catherine Twinn in 2016/17 – 32-33);

(vi) Supported the First Nation in this litigation to oppose the OPGT's attempts to inquire into its membership process (see *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799). I am advised by Catherine Twinn that they even indemnified the First Nation's legal fees for this defence from the 1985 Trust's assets;

(vii) Have considered the controversy that may arise for the First Nation if the membership system is investigated in its approach to this litigation (See Bujold Transcript and Exhibit 11).

26. I, and others like me, have a unique perspective and insight concerning the issues raised by the Jurisdictional Applications, as a result of our experiences and lineage with the Sawridge First Nation and cannot rely on the trustees to protect our interests.

Funding

27. I cannot afford to pay a lawyer to bring this application on my behalf. I make only enough to cover my modest living requirements. I have very little in savings. If I do not have funding from the Trust, I will not be able to have meaningful representation in these proceedings as I am not a lawyer and do not understand all of the legal complexities.

28. If the Court grants me funding, I will hire a lawyer to assist me with my participation at the Jurisdictional Applications. This will help level the "playing field" which in my view has historically been stacked against the beneficiaries of the 1985 trust.

SWORN BEFORE ME at the
City of Edmonton
in the Province of Alberta
the 23 day of October, 2019

Catherine Twinn

A Commissioner for Oaths in and
for the Province of Alberta

Barrister : Solicitor
Alberta

Shelby Twinn.

COURT FILE NUMBER: 1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE *TRUSTEE ACT*, RSA 2000, C. T-8, AS AMENDED, AND

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 NOW KNOWN AS SAWRIDGE FIRST NATION ON APRIL 15, 1985 (THE "1985 SAWRIDGE TRUST")

APPLICANT: SAWRIDGE FIRST NATION

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

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

E. Molstad, Q.C.
E. Sopko
Parlee McLaws LLP
1700, 10175 - 101 Street NW
Edmonton, Alberta T5J 0H3
780.423.8500

For the Applicant

This is Exhibit "2" referred to in the Affidavit of
Shelby Twinn
Sworn before me this 25th day
of May A.D., 20 22
A Commissioner for Oaths in and for the Province of Alberta

D. Bonora Dentons LLP 2500, 10220 - 103 Avenue NW Edmonton, Alberta T5J 0K4 780.423.7100	For the Respondents Roland Twinn, Margaret Ward, Tracey Scarlett, Everett Justin Twinn and David Majeski, as Trustees for the 1985 Sawridge Trust
J. Hutchison Hutchison Law Unit #190, 130 Broadway Boulevard Sherwood Park, Alberta T8H 2A3 780.417.7871	For the Respondent Office of the Public Guardian and Trustee of Alberta
C. Twinn Twinn Law Box 1460 Slave Lake, Alberta T0G 2A0 780.886.2921	On Her Own Behalf
Shelley Becker, CSR(A)	Court Reporter

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

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

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

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

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

MR. MOLSTAD: No.

MS. HUTCHISON: No? Wonderful. Thank you.

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

A Yeah.

Q And you have your Affidavit in front of you?

A Yes.

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

A Yes.

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

A Yeah.
Q And I'm giving an approximate --
MR. MOLSTAD: Let me interject. I apologize. I meant to advise you at the outset that there was a minor typographical in paragraph 1 of Mr. Twin's Affidavit. The second line, where it says February of 2015, that's actually, we learned yesterday, when the election took place, and there were subsequent bi-elections or --
MS. SOPKO: Two runoffs.
MR. MOLSTAD: Runoff elections, and he became elected June 2nd, 2015.
MS. HUTCHISON: Good. Okay.
MR. MOLSTAD: Yes.
A Yeah.
Q MS. HUTCHISON: Thank you. And you adopt that information, Mr. Twin?
A Yes, I do.
MS. HUTCHISON: Thank you, Ed.
Q MS. HUTCHISON: So, Mr. Twin, we are going to be talking about quite a few events that happened in 1982, 1985, that sort of era. Am I correct in understanding you would have been about 7 years old in April of 1985?
A Yeah.
Q Just a couple of housekeeping items, Mr. Twin. I am probably going to use some shortened terms because we

have all adopted these abbreviated ways of referring to things in these proceedings. So if I refer to the OPGT, will you understand I am referring to my client the Office of the Public Guardian and Trustee of Alberta?

A Okay. Yeah.

Q And if I refer to Sawridge, you will understand I am referring to Sawridge First Nation?

A Yeah.

Q If I refer to the 1982 Trust, will you understand that I am referring to the trust created by the trust deed, originally created by the trust deed that is at Exhibit "A" of your Affidavit. And you might want to just take a look at that.

A Yeah.

Q Okay. And if I refer to the 1985 Trust, you will understand that I am referring to the Sawridge Band inter vivos settlement created by a trustee that was dated April 15th, 1985?

A Yeah.

Q If I do use any other terms that you don't understand and you need clarification, please just interrupt me and ask.

A Yeah.

Q Thank you. Okay. Mr. Twin, your election to council in June -- or February or June of 2015, was that your first term on council?

A Yes, it was.
Q Okay. And you have subsequently been re-elected; is that correct? Or are you still in your first term?
A Yeah, this is my second. By acclamation.
Q When was the second election?
A February of '19.
Q Of 2019?
A Yes.
Q So it's a four-year term, then?
A Yeah.
Q And, Mr. Twin, is it your understanding that when you're elected to council in Sawridge, that's under section 74 to 80 of the *Indian Act*, or are you elected on some other basis?
A Well, we have our own elections act, constitution.
Q Okay. Now, Mr. Twin, I wanted to get a better understanding of if Sawridge's application to intervene is granted, who exactly Sawridge is planning to speak on behalf of. So is it to speak on behalf of chief and council of Sawridge?
MR. MOLSTAD: That's a legal question.
MS. HUTCHISON: I am asking for his understanding.
MR. MOLSTAD: Well, it's still a legal question. If you would like to know who he will be speaking on behalf of, I can advise you of that.
MS. HUTCHISON: Well, I would be happy to let

you put it on the record and we'll --
MR. MOLSTAD: He'll be speaking on behalf of chief and council and its representative members of the Sawridge First Nation.
MS. HUTCHISON: Okay.
Q MS. HUTCHISON: Now, Mr. Twin, when -- sorry, do you adopt that answer by your counsel?
A Yes.
Q When we talk about Sawridge representing the members of Sawridge First Nation, is that limited to the people that are actually on Sawridge's band membership list?
A Yes.
Q So it wouldn't include people that might be entitled to be on the list but are not currently on it?
A No.
Q Okay. Mr. Twin, did chief and council have a meeting to discuss bringing this intervention application, a chief and council meeting?
A The councillor and I did.
Q Gina Donald?
A Yeah.
Q Do you know approximately when that meeting occurred?
A I don't know exactly.
Q Do you know if a BCR was passed authorizing chief and council to bring this intervention application?
A No.
Q You know it was not, or you don't know?

A There is -- no.
Q There is no resolution?
A There was no BCR.
Q Okay. I will ask you to undertake to provide us a copy of the band council minutes where the intervention application was discussed.
MR. MOLSTAD: No.
MS. HUTCHISON: And the basis for your refusal, Mr. Molstad?
MR. MOLSTAD: Sure. The application, the Affidavit, and the brief in relation to our motion to intervene in this matter was served on September 26th, 2019. On September 30th, 2019, the Public Trustee advised that they will be questioning on Darcy Twin's Affidavit. On October 7th, 2019, Ms. Twinn's counsel advised that they intended to examine Mr. Twin and that they were available for the 18th of October and requested at that time that we start at 10 o'clock in the morning, which we agreed to.

This questioning today is pursuant to Rule 6.7 of the Rules of Court, which means that the Rule 6.16 to 6.20 apply. A notice requesting questioning provides in mandatory language that you must describe any records the person is required to bring for questioning. The parties who wish to question had more than sufficient time to consider this and have provided no request to our offices or to Mr. Twin, this witness,

to bring any records for questioning. So we will not enter into any undertakings to produce records.

MS. HUTCHISON: Thank you for putting your position on the record, Mr. Molstad.

UNDERTAKING NO. 1 (REFUSED)

PRODUCE COPY OF SAWRIDGE BAND COUNCIL MINUTES WHERE THE INTERVENTION APPLICATION WAS DISCUSSED

Q MS. HUTCHISON: Mr. Twin, did chief and council hold a Sawridge members meeting to discuss with Sawridge members directly the intervention application?

A No.

Q Mr. Twin, in paragraph 1 of your Affidavit, you state that I am a beneficiary of the 1982 Trust. And you also have a statement in paragraph 5 and 6 of your Affidavit that refer to the 1982 trustees being chief and council, including yourself. How did it come to your attention that you were a 1982 trustee, Mr. Twin?

A I just knew about the '82 trust and that chief and council was the trustees of the '82 trust.

Q And when was that?

A A long time ago. I knew through -- I guess through my dad.

Q So it's your evidence that as of the date of your first election to council in June of 2015, you understood that you were also a 1982 trustee?

A Yeah.

Q How many 1982 trustee meetings have you attended?

A None.
Q And how many have actually occurred since --
A None.
Q None. Are you aware of whether or not the 1982 Trust has filed any sort of tax returns with CRA?
A Not aware. No. I don't know.
Q Never seen any documents like that?
A No.
Q Have you ever seen any sort of a resolution or document confirming that you are appointed as a 1982 trustee or that you hold that position?
A Through the Exhibit "A", yeah.
Q Have you ever seen anything that explicitly names you?
A Just that it says chief and council in Exhibit "A". I believe paragraph 6, I believe.
Q Could you just take me specifically to the section you are looking at, Mr. Twin?
A Okay. Paragraph 5. Sorry. Exhibit "A".
Q And so nothing that specifically named you, Gina Donald and Roland Twinn as trustees of the 1982 Trust?
A Just this, what I read.
Q And what was the first time that you recall looking at this document that you have produced as Exhibit "A"? When did you first see it?
A I don't remember the exact date.
Q Give me a year, approximately.
A Oh, just this year.

Q So you have been a 1982 trustee, in your understanding, since 2015, but you have only ever looked at that trust deed this year?
A Yes.
Q Mr. Twin, have you seen a copy of that document before?
A No.
Q Never?
A No.
Q So obviously you didn't review a copy of that document before you swore this Affidavit, correct?
A Let's see. Let me -- hold on. It may be in here. I don't know.
MR. MOLSTAD: No, it's not in there.
A Okay, no, then I haven't.
Q MS. HUTCHISON: Okay. So you weren't aware that the original provisions of the 1982 Trust had been amended?
MR. MOLSTAD: Objection. That's a legal question.
MS. HUTCHISON: I am asking for his knowledge of what occurred, Ed.
Q MS. HUTCHISON: Were you aware, Mr. Twin, that this document existed?
A I don't know. I may have, but I don't know.
Q You certainly didn't see it before you swore your Affidavit?
A No.

Q Looking at paragraph 5 and 6 of your Affidavit, Mr. Twin, you don't reference any source of information about your knowledge of who the trustees of the 1982 Trust would be. That's just your personal point of view; is that correct?

MR. MOLSTAD: Well, that's not a fair question. He does refer to Exhibit "A" in his Affidavit.

Q MR. MOLSTAD: Other than the declaration of trust, Mr. Twin, you don't refer to any source of information for the statements you make in paragraphs 5 and 6?

A Other than Exhibit "A", yeah.

Q That's your only source of information?

A Yeah.

Q And, Mr. Twin, are you a lawyer?

A Am I lawyer? No.

Q And are you otherwise qualified to interpret provisions of trust deeds and what they mean?

A Not on my own, no.

Q Mr. Twin, are you aware of what we are generally referring to as the asset transfer that occurred in 1985?

A Yeah.

Q You are aware that happened?

A Yes.

Q What is your understanding of what happened?

A That the '82 trust was transferred into the '85 Trust before the Bill C-31 took place, is my understanding.

Q Mr. Twin, I am showing you --

MS. HUTCHISON: I forgot to ask to mark that as an exhibit for identification. I apologize. Two documents --

MR. MOLSTAD: Let's just go one at a time.

EXHIBIT A: (FOR IDENTIFICATION)

TRUST DEED DATED JULY 5, 1983

MR. MOLSTAD: Why don't we find out if the witness has seen these documents before --

MS. HUTCHISON: Yes, that was where I was going to start.

MR. MOLSTAD: Before he reads through them.

MS. HUTCHISON: Yes.

Q MS. HUTCHISON: Mr. Twin, have you seen either of these documents before?

A No, I haven't.

Q Was the existence of these documents discussed with you before you swore your Affidavit?

MR. MOLSTAD: Objection. It's not a proper question.

Q MS. HUTCHISON: Mr. Twin, throughout your Affidavit, you refer to the information you received from your counsel Edward Molstad. Did Edward Molstad discuss these documents with you in the course of your preparing the Affidavit?

MR. MOLSTAD: Objection. That's not a proper question. The information that he received from me is specifically described in his Affidavit, and you may ask him questions about that.

MS. HUTCHISON: Let's mark these as Exhibit B and C for Identification, please.

EXHIBIT B: (FOR IDENTIFICATION)
TRUST DEED DATED APRIL 16, 1985

EXHIBIT C: (FOR IDENTIFICATION)
RESOLUTION OF TRUSTEES DATED APRIL 15, 1985

Q MS. HUTCHISON: Mr. Twin, can I just ask you to flip to the signature pages. So first we will look at Exhibit B, and the signature page is page 2.

MR. MOLSTAD: She is talking about Exhibit B for Identification; I believe. Is that correct?

Q MS. HUTCHISON: Exhibit B for Identification, correct.

A Okay.

Q If you just flip to the second page. And am I correct in my understanding, Mr. Twin, that at the time that this document was executed in 1985 Walter Twinn was chief of Sawridge?

A Yes.

Q And if you go back to the first page of that document where it refers to the old trustees and the new trustees as Walter Patrick Twinn, Sam Twin and George Twin, am I correct in understanding that those three

individuals were the only members of Sawridge chief and council at that time?

A I believe so, yes.

Q Okay. I f you have any information or learn of any information to the contrary, Mr. Twin, will you advise me?

MR. MOLSTAD: No. That's his information.

MS. HUTCHISON: You won't grant that undertaking, Mr. Molstad?

MR. MOLSTAD: No.

MS. HUTCHISON: Okay.

UNDERTAKING NO. 2 (REFUSED)

ADVISE IF DARCY TWIN HAS ANY INFORMATION OR LEARNS OF ANY INFORMATION TO THE CONTRARY THAT WALTER PATRICK TWINN, SAM TWIN AND GEORGE TWIN WERE THE ONLY MEMBERS OF SAWRIDGE CHIEF AND COUNCIL AT THE TIME EXHIBIT B FOR IDENTIFICATION WAS EXECUTED IN APRIL OF 1985

Q MS. HUTCHISON: And, Mr. Twin, have you seen or are you aware of any documents other than Exhibit B and Exhibit C for Identification, and other than anything attached to your Affidavit, that sets out the decision of the 1982 and 1985 trustees to conduct the asset transfer in 1985? Have you ever seen anything else?

A No.

Q And so, Mr. Twin, you haven't seen a band council resolution that authorized Walter Twinn to establish

the 1985 Trust?
A If it's not in here, then no.
Q Did you attempt to look for any documents of that nature in preparation for your Affidavit, to prepare that evidence?
A No.
Q No? So you don't know if that exists or not?
A No.
Q Do you know if Sawridge retains its band council resolutions back to 1985?
A I don't know.
Q Do you have any understanding of what Sawridge's filing system is for band council resolutions?
A No, I don't know. That's office stuff.
Q Mr. Twin, can I just get you to take a look at that document that is a Sawridge Band Resolution dated April 15th, 1985. Just let me know when you have had a chance to look at it.
A Okay.
Q Were you made aware of -- sorry, have you seen that document before?
A No.
Q And so prior to swearing your Affidavit, you weren't aware that that document existed?
A No.
Q Okay.
MS. HUTCHISON: Can we mark that as Exhibit D

for identification, please.

EXHIBIT D: (FOR IDENTIFICATION)

SAWRIDGE BAND RESOLUTION DATED APRIL 15, 1985

Q MS. HUTCHISON: Aside from the document itself, Mr. Twin, were you aware that the members of Sawridge had met in 1985 to approve and ratify the transfer of assets from the 1982 to the 1985 Trust?

A No. At that time, no.

Q Am I correct that the third signature from the bottom is your father's signature? Are you able to confirm that?

A Yes, it is.

Q You never had a discussion with your father about this Sawridge Band members meeting?

A All -- not really, no. I just -- no.

Q So you have no personal knowledge about the meeting that occurred on April 15th, 1985?

A As a kid I heard things. You know, I didn't have -.

Q Okay. What did you hear, Mr. Twin?

A Just about Bill C-31 and stuff like that. I don't know. Not -- I don't really remember.

Q So there is nothing you can tell me about the meeting that occurred with the Sawridge Band members on April 15th, 1985?

A No.

Q In terms of the asset transfer that occurred, Mr. Twin, is it your understanding that Sawridge completed that

and the trustees involved completed that transaction with the assistance of a team of professional advisors?

A I don't know.

Q You don't know?

A No.

Q You have no knowledge as to whether or not that asset transfer was done with advice from lawyers and accountants or if Sawridge --

A I don't know.

Q Sawridge might have just done it themselves?

A I don't --

MR. MOLSTAD: Well, no, don't answer that question. He has answered your question.

Q MS. HUTCHISON: You have no knowledge?

A No.

Q Does the name Ron Ewoniak mean anything to you?

A No.

Q Does the name Maurice Cullity mean anything to you?

A No.

Q Does the law firm Davies Ward & Beck mean anything to you?

A No.

Q Dave Fennell?

A No.

Q David Jones?

A No.

Q Mo Litman?

A No.
Q Mike McKinney?
A I know him, yeah.
Q And you know him in what capacity?
A He's our band manager, lawyer.
Q And how long has he been in that position?
A Don't know exactly. I was a kid, so quite a few years. I don't know the exact date he started, but quite a while, a long time.
Q Have you ever talked about the asset transfer with Mike McKinney?
A Yeah.
Q Okay. When was that?
A When we were going through my Affidavit and stuff.
Q And what did you discuss with Mike McKinney about the asset transfer?
MR. MOLSTAD: We will object to that. Mr. McKinney is legal counsel and now is counsel for the Sawridge First Nation. So any discussion, that would be subject to solicitor-client privilege.
Q MS. HUTCHISON: Were you speaking to Mr. McKinney as band manager or as legal counsel?
A A little of both, I guess.
Q And what did you discuss with Mr. McKinney about the asset transfer?
MR. MOLSTAD: Objection. We have already stated our objection, for the record, that Mr. McKinney

acts as in-house legal counsel for the Sawridge First Nation. That is my information, and that any discussion that he would have had with Mr. Twin would have been in his capacity as legal counsel.

MS. HUTCHISON: That might be your information, Mr. Molstad. But this witness has just indicated that he spoke to Mr. McKinney also in his capacity as band manager. That's not privileged.

MR. MOLSTAD: Well, make an application.

OBJECTION NO. 1:

TO QUESTION AS TO WHAT DARCY TWIN DISCUSSED WITH MIKE McKINNEY ABOUT THE ASSET TRANSFER

Q MS. HUTCHISON: I would ask this, Mr. Twin. In your discussions with Mr. McKinney about the asset transfer, did he indicate he had personal knowledge of that transaction?

MR. MOLSTAD: Objection.

MS. HUTCHISON: On what grounds, Mr. Molstad?

MR. MOLSTAD: Solicitor-client privilege.

OBJECTION NO. 2

TO QUESTION AS TO WHETHER IN DARCY TWIN'S DISCUSSIONS WITH MIKE MCKINNEY ABOUT THE ASSET TRANSFER, MR. MCKINNEY INDICATED HE HAD PERSONAL KNOWLEDGE OF THAT TRANSACTION

Q MS. HUTCHISON: Mr. Twin, moving to paragraph 4 of your Affidavit, you refer in that paragraph to Roland Twinn abstaining from involvement in this

intervention application. Did Roland Twinn explain to you why he needed to abstain?

A No, I -- I just understood that he's a trustee and that he can't be involved in this. It's a conflict of interest.

Q So you didn't ever have a discussion with Mr. Twinn about that?

A No, I understood that.

Q How did you come to understand that?

A Because he's a trustee on the other side. And it's a conflict of interest if he's involved.

Q And you just figured that out yourself?

A I -- yeah. Yeah.

Q Or there was a source of information for that?

A I knew that.

Q So was the need for abstention discussed at a chief and council meeting at some point?

A No.

Q Was it discussed in any meeting you attended?

A No.

Q And what is your understanding of at what point in time Mr. Twinn implemented this abstention? When did it start?

A When we were -- the band was going to intervene.

Q And when was that?

A Sometime in September. I don't know exactly.

Q So Mr. Twinn has only been abstaining from involvement

since September of this year?
A Well, for this, yes.
Q Has he abstained in involvement for something else, Mr. Twin? I'm not following.
A Well, this is the only time that I'm here to talk about as far as I know.
Q That wasn't my question. Are you aware of Roland Twinn abstaining on something other than what you discussed in paragraph 4 of your Affidavit?
MR. MOLSTAD: And what is the relevance of that question?
Q MS. HUTCHISON: In relation to this proceeding.
MR. MOLSTAD: Sorry?
Q MS. HUTCHISON: In relation to this proceeding, are you aware of anything other than what you have described? Is Mr. Twinn currently abstaining on other matters relevant to this action?
MR. MOLSTAD: To this application to intervene?
Q MS. HUTCHISON: To this action.
MR. MOLSTAD: Well, there's only an application to intervene at this time.
MS. HUTCHISON: There is an overall action actually, Mr. Molstad. And if Mr. Twinn is abstaining on other matters relevant to Court File 1103 14112, that may indeed be relevant to Sawridge's intervention application.

Q MS. HUTCHISON: Are there other matters on which Roland Twinn is abstaining in relation to?
A I don't know. I don't really understand your question, so.
Q Okay. Your understanding is that Roland Twinn is abstaining from involvement in this intervention application?
A Yes.
Q And when you say from involvement, what do you mean by that? What is he abstaining from doing?
A He has nothing to do with this.
Q So he doesn't attend meetings where it's discussed?
A No.
Q He doesn't make decisions about this intervention application?
A No. Not at all.
Q Doesn't consult with legal counsel about this application?
A No.
Q I am asking you if there are other topics that relate to Action 1103 14112 that Mr. Twinn is also abstaining from involvement in?
A I don't know what that number is or what you're talking about. I don't know.
Q Sorry, it's the proceeding in which you swore your Affidavit, Mr. Twin.
A Yeah, he had nothing to do with that. That was my

Affidavit.

Q I understand he had nothing to do with your Affidavit. Do you understand that Sawridge is bringing an application to intervene in a larger court proceeding?

A Yes.

Q Is Mr. Twinn abstaining from involvement in anything to do with the larger court proceeding?

A As what?

Q Well, as --

A As chief or as trustee?

Q As anything. Is he abstaining from involvement?

A As chief he has nothing to do with this. That's all I know.

Q When you say this, you mean this intervention application?

A This intervention.

Q So you are not aware of any other --

A Anything else I don't know.

Q You don't know?

A Yeah, I don't know.

Q Prior to the date on which Mr. Roland Twinn decided to abstain from involvement in this intervention application, do you know if he, as chief, brought forward the concept of an intervention application at any --

A No.

Q No? So at anytime from 2011 until September of 2019?

A No. We don't discuss anything about the trusts. That's a separate entity. We are council of the first nation. We deal with first nation business. Trust business is trust business. He takes that elsewhere.
Q Well, with respect, Mr. Twin, at some point at chief and council meetings there must have been something to indicate Roland Twinn is abstaining from involvement in this intervention application, correct?
A Not in a duly convened meeting. Just he didn't have anything to do with it. He abstained.
Q So in the chief and council meetings for Sawridge that you have been involved in since your election in 2015, your evidence is that there has never been a discussion at a chief and council meeting about whether Sawridge should become involved in this larger court action prior to the intervention application in September?
A No.
Q That's not your evidence?
A I got from him, from our lawyer.
Q What did you get?
A We got news from him and this is where Gina and I discussed it and decided to intervene. He saw it best fit to intervene. We took his advice, we intervened.
MS. HUTCHISON: Shelley, can I just get you to read back my first question.
COURT REPORTER: (By Reading)
Q So in the chief and council meetings for

Sawridge that you have been involved in since your election in 2015, your evidence is that there has never been a discussion at a chief and council meeting about whether Sawridge should become involved in this larger court action prior to the intervention application in September?

MR. MOLSTAD: And let me just go on the record here, I am assuming that that question relates to the application to intervene because if it doesn't --

MS. HUTCHISON: Absolutely.

MR. MOLSTAD: All right.

MS. HUTCHISON: Sawridge's delay in bringing this application is extremely relevant.

MR. MOLSTAD: So you are asking him in relation to the application to intervene? That's the question that --

Q MS. HUTCHISON: I am asking him if Sawridge chief and council, in any meeting that he has been in since his election, have discussed the concept of intervening in this larger court action?

A Not a duly convened chief and council meeting, no.

Q Okay. Have you had that discussion in any other kind of meeting amongst chief and council since you were elected in 2015?

MR. MOLSTAD: I am assuming before he decided

in this case.
MS. HUTCHISON: I was quite clear about that, yes.
A Well, yeah, our -- Mike and Gina and I got the advice from Mr. Molstad and we decided from there.
Q MS. HUTCHISON: And so right now you are talking about the decision that led to the September 2019 application?
A Yes.
Q I am talking about any discussion prior to September of 2019.
A Was there a discussion, no.
Q So there is no discussion that you participated in --
MR. MOLSTAD: This is not relevant. We object. This is not relevant questioning.
MS. HUTCHISON: All right. Okay.
MR. MOLSTAD: It has nothing to do with the application or the Affidavit.
MS. HUTCHISON: Well, we disagree on that, Mr. Molstad. But I think Mr. Twin has made it clear he has no other information, so.
Q MS. HUTCHISON: Mr. Twin, could I ask you to flip to your paragraph 7, please. So as I understand the events that you are referring to in paragraph 7(a) through (f) of your Affidavit, you are talking about events that occurred between roughly 1966 and the April 15th, 1985 establishment of the 1985 Trust; is

that fair?

MR. MOLSTAD: Sorry, I didn't understand that question, so I'm not sure the witness could.

Q MS. HUTCHISON: If I understand what you are saying in these paragraphs, Mr. Twin, you are referring to events or information that arose between 1966 -- and that's in paragraph (a).

A Yeah.

Q And the time the 1985 Trust was established, which is April 15th, 1985; is that fair?

A Yeah.

Q So you were either not born or under the age of 10 at the time that any of this occurred?

A Yes.

Q So you have no personal knowledge of any of this?

A Well, what I read from -- and the -- from Mr. Molstad previously.

Q So the information that's included in paragraph 7(a) to (f) is essentially your summary of Walter Twinn's evidence before the Federal Court of Canada; is that correct?

A Yes.

Q Was there anything beyond the transcript that Mr. Molstad advised you on about these topics? What was his information?

A Exhibit "B".

Q So Mr. Molstad gave you the transcript?

A Yes.
Q Did he also tell you anything about the transcript?
A No, I just read through it and -.
Q So in paragraph 7, when you say I am informed by our counsel Edward H. Molstad, QC, the only information you are referring to is Mr. Molstad handing you a copy of the transcript at Exhibit "B" of your Affidavit?
A Yeah, he handed it to me, yeah. I read through it.
Q And he didn't give you any other information about it; is that correct?
A No.
Q Turn to your paragraph 8 and your Exhibit "C", Mr. Twin. Do you need a second to take a look at Exhibit "C"? Just let me know when you have had a chance to read Exhibit "C", Mr. Twin.
A Okay, give me a minute. Okay.
Q Mr. Twin, had you seen that letter before you swore this Affidavit?
A No.
Q Would you agree with me that that letter is indicating that INAC would like to meet with Sawridge about the trusts? And I am looking at the second-last paragraph of the letter.
A Yeah.
Q Do you know if those meetings occurred?
A I don't know.
Q Do you have any information about how INAC's concerns

were resolved or how Sawridge addressed them?
A I don't know.
Q You have no knowledge?
A No.
Q And you didn't take any steps to independently look into that question before you swore your Affidavit?
A No.
Q Am I correct at least in understanding, Mr. Twin, that INAC has not taken any steps to try and stop the operation of Sawridge trusts?
A Yeah, I don't think so. I don't know, though. I don't think so.
Q You are not aware of anything?
A Yeah, not aware.
Q I would like you to turn to paragraph 9 and 10 of your Affidavit, Mr. Twin. I don't think you will need to go to your Exhibit "D", but you can certainly take a minute to take a look at it if that's useful.
A Yeah.
Q Is there any part of your evidence in paragraph 9 and 10 that is based on your own personal knowledge as opposed to information given to you by your counsel?
A No. It's what I've read.
Q Is there anything that Mr. Molstad informed you about in relation to the August 26th, 2014 consent order that you have not included in these two paragraphs?
A No.

Q Were you made aware prior to executing this Affidavit, Mr. Twin, that Sawridge First Nation, through its counsel Parlee McLaws, was involved in the discussions leading up to the August 24th, 2016 consent order?
A Can you repeat the question? Sorry.
MS. HUTCHISON: Can you read it back for him. Thanks.
COURT REPORTER: (By Reading)
Q Were you made aware prior to executing this Affidavit, Mr. Twin, that Sawridge First Nation, through its counsel Parlee McLaws, was involved in the discussions leading up to the August 24th, 2016 consent order?
A Yeah, I don't think they were that I'm aware of.
Q MS. HUTCHISON: Okay. I am going to show you three pieces of correspondence, Mr. Twin.
MR. MOLSTAD: Just bear with us for a moment here.
Q MS. HUTCHISON: Just let me know when you have had a chance to look at those three items, Mr. Twin.
MR. MOLSTAD: And I'll let you know when I have too.
MS. HUTCHISON: Great. Thank you, Ed.
MR. MOLSTAD: Why don't we shorten this and just ask the witness if he has ever seen these documents before.
MS. HUTCHISON: Yes, we'll get there, Ed, but

he hasn't had a chance to take a look at them yet. He hadn't told me he has. I take it you have?

MR. MOLSTAD: Yes.

MS. HUTCHISON: Great, thanks.

Q MS. HUTCHISON: Just let me know when you're done, Mr. Twin.

A Okay.

Q Okay. You have had a chance to look at those documents, Mr. Twin? Could I ask you to pull out the e-mail that has Doris McKenna at the top in Exhibit 5 of the Questioning of Paul Bujold. It's the second document.

Prior to today, had you seen that document?

A No.

MS. HUTCHISON: Could we mark that as our next exhibit for identification, please. I think it's E.

EXHIBIT E: (FOR IDENTIFICATION)
E-MAIL CHAIN COMMENCING WITH E-MAIL FROM DORIS BONORA TO JANET HUTCHISON AND OTHERS, DATED MAY 13, 2016

Q MS. HUTCHISON: And I take it, Mr. Twin, that you weren't made aware that Dentons had included your legal counsel in an e-mail providing a draft of the asset consent order for comments in May of 2016 before you swore your Affidavit?

A No.

Q And do you know if your counsel responded with comments

to Dentons?
A I don't know.
Q Can I ask you to undertake to produce any correspondence that shows they did respond to Dentons with comments after this e-mail, please?
MR. MOLSTAD: No, we won't make that undertaking.
MS. HUTCHISON: And the basis for your objection, Mr. Molstad?
MR. MOLSTAD: It's simply not relevant.

UNDERTAKING NO. 3 (REFUSED)
PRODUCE ANY CORRESPONDENCE THAT SHOWS THAT PARLEE MCLAWS RESPONDED TO DENTONS WITH COMMENTS AFTER RECEIPT OF EXHIBIT E FOR IDENTIFICATION (MAY 13, 2016 E-MAIL CHAIN)

MS. HUTCHISON: Just for the record, Mr. Molstad, the evidence before the court at the moment is that Sawridge was not a party to the consent order and its counsel declined to make submissions on its behalf in relation to the consent order, referring to the August 24th, 2016 appearance. We would suggest that Sawridge's extensive involvement in developing the consent order is quite relevant and ask you to reconsider your position.
MR. MOLSTAD: Well, no, we are not reconsidering our position. The evidence is clear that in terms of the transcript, when we were asked to make

submissions, we made none. And we were not a party that consented to that order.

Q MS. HUTCHISON: Turning to the next item in those three documents, Mr. Twin. I am looking at the June 22nd, 2016 letter from Dentons, and if you could please turn to the second page. Under Ms. Bonora's signature, you would agree with me that that document was copied to Ed Molstad, QC, at Parlee McLaws by e-mail?

A Yeah.

Q And this is another document where Dentons sets out an offer to settle the transfer issue by entering an attached consent order?

MR. MOLSTAD: Well, let me object to that. That's a characterization of the document. The document speaks for itself.

Q MS. HUTCHISON: Mr. Twin, I will just ask you to read paragraph 2 of the letter. And you would agree with me that Dentons is sending everybody a copy of an attached consent order that they would like everyone to sign; is that correct?

MR. MOLSTAD: Why are you asking this witness to tell you what this document says? The document speaks for itself.

MS. HUTCHISON: All right. Thank you, Ed.

Q MS. HUTCHISON: Have you seen that letter before today, Mr. Twin?

A No.

MS. HUTCHISON: Can we mark that as Exhibit F for Identification, please.

EXHIBIT F: (FOR IDENTIFICATION)
LETTER DATED JUNE 22, 2016, FROM DORIS BONORA TO JANET HUTCHISON

Q MS. HUTCHISON: And I take it, Mr. Twin, that when you were preparing to swear your Affidavit, you weren't made aware of this exchange of correspondence either?

A No.

Q Turning, then, finally to the July 6th, 2016 letter from Parlee McLaws to Hutchison Law, have you ever seen that letter before?

A No.

Q And I take it your legal counsel didn't make you aware of that correspondence before you swore your Affidavit, even the contents of it?

A No.

Q So before you swore your Affidavit, then, you were not aware that your counsel had taken the position on behalf of Sawridge that it is the position of Sawridge First Nation that this settlement offer is reasonable and resolves any possible concerns with respect to the approval of the transfer of the assets from the 1982 Trust to the 1985 Trust? You were not aware of that when you swore your Affidavit?

A No.
Q And you weren't aware that Sawridge took the position if the OPGT didn't sign the consent order there could be cost consequences; is that correct?
A Yeah.
Q Regarding your evidence about the August 24th, 2016 case management meeting, Mr. Twin -- and I am just going to, as a courtesy, give you a copy of that to look at. It's a transcript, a portion of the transcript from that appearance. Before you swore your Affidavit, were you made aware that Mr. Molstad's submissions on that day included, and I am looking at page 39:

> I think that my friend Ms. Bonora made mention of this in her brief. The purpose of the transfer in '82, '85, in terms of transfer from trust, was to avoid any --

MR. MOLSTAD: Sorry, I have no idea where you are reading from. So I'm sure the witness doesn't either.
A Yeah, I don't know where you are.
Q MS. HUTCHISON: Page 39.
MS. BONORA: Which exhibit are you in?
MS. HUTCHISON: We haven't marked it as an exhibit.
Q MS. HUTCHISON: So, Mr. Twin, if you would like to follow along with me, it's at the top of page 39.

A Top, okay.

Q So prior to swearing your Affidavit, were you made aware that Mr. Molstad's submissions included:

> The purpose of the transfer in '82, '85, in terms of transfer from trust, was to avoid any claim that others might make in relation to these assets after the enactment of Bill C-31. So Sawridge First Nation would be highly motivated to ensure that those that were acting as trustees made the transfer of all assets from the '82 Trust to the '85 Trust. That was the reason. The reason was clearly one where it was in everyone's best interests to make sure the transfer took place.
>
> I would point out that the resolution of this matter, in accordance with this order, is similar to the resolution that was proposed by the Sawridge Trustees to the Public Trustee on May 13th, 2016. And a copy of that is Exhibit 5 to the questioning of Mr. Bujold.

Were you made aware that your counsel made those submissions on behalf of Sawridge before you swore your Affidavit?

A No.

Q Do you recall chief and council having any discussions about the positions your counsel took on the asset transfer consent order?

A No.
Q Did Sawridge or Sawridge chief and council, directly or through their legal counsel, receive drafts of the trustees' proposed consent order prior to Exhibit E for Identification?
A I don't know.
Q I am going to ask you to undertake to try to find out that answer, Mr. Twin.
MR. MOLSTAD: No, we won't undertake to do that.
MS. HUTCHISON: On what basis, Mr. Molstad?
MR. MOLSTAD: It's not relevant and it goes beyond the scope of this application.

UNDERTAKING NO. 4 (REFUSED)
ATTEMPT TO DETERMINE AND ADVISE WHETHER SAWRIDGE OR SAWRIDGE CHIEF AND COUNCIL, DIRECTLY OR THROUGH ITS LEGAL COUNSEL, RECEIVED DRAFTS OF THE TRUSTEES' PROPOSED CONSENT ORDER PRIOR TO EXHIBIT E FOR IDENTIFICATION (MAY 13, 2016 E-MAIL CHAIN)

Q MS. HUTCHISON: And, Mr. Twin, do you know if Sawridge or Sawridge chief and council, directly or through their legal counsel, received the trustees' proposed submissions on a consent order before they were filed?
A I don't know.
Q I'll ask you to undertake to try and find out that answer, Mr. Twin.

MR. MOLSTAD: No. We won't do that.
MS. HUTCHISON: On what basis?
MR. MOLSTAD: It's not relevant and it's beyond the scope of this application.
MS. HUTCHISON: Thank you, Mr. Molstad.

UNDERTAKING NO. 5 (REFUSED)

ATTEMPT TO DETERMINE AND ADVISE WHETHER SAWRIDGE OR SAWRIDGE CHIEF AND COUNCIL, DIRECTLY OR THROUGH THEIR LEGAL COUNSEL, RECEIVED THE TRUSTEES' PROPOSED SUBMISSIONS ON A CONSENT ORDER BEFORE THEY WERE FILED

Q MS. HUTCHISON: And, Mr. Twin, do you know if there was ever a discussion between Sawridge chief and council and representatives of the 1985 Sawridge Trust, whether that was trustees or Mr. Heidecker or Mr. Bujold, about the asset transfer consent order in 2016?
A No.
Q There was not, or you don't know?
A I don't -- there is not.
Q So you distinctly recall that there was not such a discussion?
A Yeah, no.
Q But you don't recall whether chief and council had any other discussions?
A Yeah, I don't recall.
Q Mr. Twin, I am going to show you a document that was

filed in this proceeding. It's called a litigation plan.

(DISCUSSION OFF THE RECORD)

(ADJOURNMENT)

Q MS. HUTCHISON: Do you acknowledge you are still under oath?

A Thank you. Mr. Twin, I omitted to ask Madam Reporter to mark the July 6, 2016 letter as the next exhibit for identification. So we will just do that. And we were looking at a litigation plan that --

MR. MOLSTAD: Sorry, which exhibit?

MS. HUTCHISON: That will be Exhibit G.

EXHIBIT G: (FOR IDENTIFICATION)
LETTER DATED JULY 6, 2016 FROM EDWARD MOLSTAD QC TO JANET HUTCHISON

Q MS. HUTCHISON: And then we were looking at a January 16th, 2019 litigation plan, Mr. Twin. Have you seen that document before?

A No.

MS. HUTCHISON: We will just mark that as an Exhibit H for Identification, please.

EXHIBIT H: (FOR IDENTIFICATION)
JANUARY 16, 2019 LITIGATION PLAN

Q MS. HUTCHISON: I take it, then -- well, I won't assume, Mr. Twin. So before you swore your Affidavit, had you been made aware that Sawridge had an opportunity to file an application to participate in

the 2018 jurisdiction application by January 31st, 2019?

A No.

Q You hadn't been made aware of that?

A No.

Q And do you recall chief and council discussing whether or not Sawridge should bring that application?

A No.

Q So nothing in late 2018?

A We don't discuss anything about trusts, like I said.

Q Okay. Turning to your Affidavit, Mr. Twin, paragraph 15. What is the source of your information for the statements at paragraph 15, Mr. Twin?

A Okay. Repeat the question, sorry.

Q What is the source of your information for the evidence you are giving at paragraph 15?

A The Exhibit "A", I believe.

Q So the 1982 trust declaration?

A Yeah, the declaration of trust, 1982 trust.

Q Mr. Twin, we have already established you don't have a law degree, and I just want to confirm, you are not suggesting that you are qualified to interpret sections of the *Indian Act* any more than you are qualified to interpret a trust declaration; is that fair?

A I understand it somewhat, I guess.

Q Okay.

A 64 and 66, I think, is basically saying you can use

monies for the band members, for --

Q When the original release of capital and revenue funds is approved by the Minister?

A Yeah.

Q Yes. Your statements in paragraph 15 also seem to be presuming that the 1982 Trust still exists, Mr. Twin. And you are not qualified to give a legal opinion on that either, are you?

A I don't -- not a legal.

Q In the course of the questioning today, Mr. Twin, there have been quite a number of documents that you hadn't seen before you prepared your Affidavit and before you attended today. So I just need to confirm a few things with you.

When you were preparing your evidence about Sawridge's unique perspective and how you, as a nation, would be specially affected, did you, independent of your lawyers, review the files of Sawridge's legal and accounting advisors from the 1980s, at least up to the date of the '85 transfer in April?

A Not on my own.

Q Not on your own. Did you review Sawridge's own files regarding the creation of the '82 and '85 Trust?

A No.

Q Regarding the asset transfer?

A No.

Q Did you discuss the asset transfer or the consent order

with anyone other than the lawyers at Parlee?
A No.
Q Did you make any efforts independent of Mr. Molstad and Parlee to assure yourself the contents of your Affidavit were complete?
A I read through it and I swore an oath to my Affidavit, yeah.
Q You didn't review any documents outside of the documents your counsel gave you?
A No.
Q Now, Mr. Twin, so I understand if Sawridge was granted intervention status in the application, is it your understanding that Sawridge would cooperate with the existing parties to this proceeding to produce relevant and material documents, at least regarding the 1982 Trust and the asset transfer?
MR. MOLSTAD: Don't answer that question.
MS. HUTCHISON: Why not?
MR. MOLSTAD: It's not relevant and it's not within the scope of this documentation.
MS. HUTCHISON: So you are refusing to allow this witness to answer whether or not Sawridge would cooperate on production of relevant evidence if they were granted intervention status?
MR. MOLSTAD: In terms of the application to intervene, we are. It's our information that the Sawridge trustees provided, after receiving the

documentation from the Sawridge First Nation, all the documents that they had available to them in relation to the transfer, from the '82 to the '85 Trust.

OBJECTION NO. 3

TO QUESTION AS TO WHETHER IF SAWRIDGE WAS GRANTED INTERVENTION STATUS IN THE APPLICATION, IT IS DARCY TWIN'S UNDERSTANDING THAT SAWRIDGE WOULD COOPERATE WITH THE EXISTING PARTIES TO THIS PROCEEDING TO PRODUCE RELEVANT AND MATERIAL DOCUMENTS, AT LEAST REGARDING THE 1982 TRUST AND THE ASSET TRANSFER

Q MS. HUTCHISON: Do you adopt the evidence your counsel has given on your behalf, Mr. Twin?

A Yeah.

Q Now, I am providing this document really just because it focuses a question I was going to ask in any event. And we don't need to mark this. But we all got a copy of Shelby Twinn's application to intervene the other day. And one of the grounds that she refers to -- have you seen that document, Mr. Twin?

A No.

Q Oh, you haven't. Okay. Were you aware of the fact that she was also applying to intervene?

A No.

Q I see. Well, I am just giving you this as a source of reference. Ms. Twinn suggests --

MR. MOLSTAD: Can you help us in terms of the relevance of this?

MS. HUTCHISON: I sure will, Mr. Molstad. I'm about to get there.

Q MS. HUTCHISON: Ms. Twinn raises in paragraph 10 of her application, her allegation anyway, that the Sawridge trustees have historically provided full indemnity funding to the Sawridge First Nation for their participation in this action. In your role, Mr. Twin, as a councillor of Sawridge First Nation, are you aware of Sawridge receiving payment or indemnity funding from the 1985 Trust for any participation in this proceeding?

MR. MOLSTAD: Don't answer this question. It's not relevant.

MS. HUTCHISON: On what grounds?

MR. MOLSTAD: It's not relevant and it's not related to the scope of this application.

OBJECTION NO. 4

TO QUESTION AS TO WHETHER IN DARCY TWIN'S ROLE AS A COUNCILLOR OF SAWRIDGE FIRST NATION, HE IS AWARE OF SAWRIDGE RECEIVING PAYMENT OR INDEMNITY FUNDING FROM THE 1985 TRUST FOR ANY PARTICIPATION IN THIS PROCEEDING

Q MS. HUTCHISON: I am still going to put my questions on the record. Are you aware of the total amount that Sawridge has received to date, Mr. Twin?

MR. MOLSTAD: Don't answer that question. It's irrelevant and, you know, my position is that

these questions are not relevant and they are not related to the scope of the application that you advance.

MS. HUTCHISON: So prejudice to parties from your intervention application, in your view, is irrelevant, Mr. Molstad?

MR. MOLSTAD: We don't need to argue this. If you wish to make an application, we will appear next week and deal with it.

MS. HUTCHISON: I wasn't arguing it. I was just asking a question.

OBJECTION NO. 5

TO QUESTION AS TO WHETHER DARCY TWIN IS AWARE OF THE TOTAL AMOUNT SAWRIDGE HAS RECEIVED THE 1985 TRUST FOR ANY PARTICIPATION IN THIS PROCEEDING

Q MS. HUTCHISON: Mr. Twin, is it your understanding that if Sawridge was granted intervenor status in this application that it would have its legal fees paid or at any time reimbursed by the 1985 Trust for this intervention?

MR. MOLSTAD: What I can tell you, and I don't know if -- do you know the answer to that question?

A No, I don't.

MR. MOLSTAD: Okay. Well, what I can tell you is that we were advised that the Trust will not be reimbursing Sawridge First Nation in relation to the

application to intervene.

MS. HUTCHISON: At any time?

MR. MOLSTAD: I can't tell you that. I don't have that information.

Q MS. HUTCHISON: But, Mr. Twin, you have no personal knowledge about that; is that correct?

A My understanding is we'd be paying the bill for all this, this application or litigation, whatever.

(DISCUSSION OFF THE RECORD)

Q MS. HUTCHISON: Mr. Twin, those are my questions for you today. I appreciate your time.

A Thank you.

(DISCUSSION OFF THE RECORD)

(PROCEEDINGS ADJOURNED 11:33 A.M.)

(PROCEEDINGS RESUMED 12:45 P.M.)

MS. TWINN QUESTIONS THE WITNESS:

Q MS. TWINN: Hi, Darcy.

A Hello.

Q How are you?

A I'm good.

Q Good. You acknowledge you are still under oath?

A Yeah.

Q And you are giving evidence on your Affidavit?

A Yeah.

Q And it was filed in the Action Number that Ms. Hutchison took you through?

A Yeah.

Q And just so everyone knows, and especially you, I am not going to be asking you many questions today.
A Okay.
Q Janet, Ms. Hutchison, has asked most of the questions that I had.
A Okay.
Q And so you will be on your way very soon.
A Okay.
Q Okay?
A Yeah.
Q Now, I do want to ask a few questions, though, about who the chief and council are representing in this intervention.
A Okay.
Q You mentioned that you are representing the members?
A The members, yes.
Q That's right?
A Of the First Nation.
Q Does that include William McDonald?
A No.
Q And who is William?
A My brother.
Q Your brother?
A Yeah. Half brother.
Q And how is he your half brother?
A My dad's son.
Q And is he older or younger than you?

A Older, yeah.
Q Do you know how much older?
A Not exactly, no.
Q But he was born before you?
A Yeah.
Q And your date of birth is?
A '77.
Q '77?
A August 9th, yeah.
Q August 9, 1977?
A Yeah.
Q And does your representation include Anna Marie McDonald?
A No.
MR. MOLSTAD: Objection. Just a minute here. I don't want to interfere unduly with your questioning of this witness, but you are now embarking upon questions related to membership. And what the witness has testified is that he speaks on behalf, and he and his co-councillors speak on behalf of the members of the Sawridge First Nation. Counsel in these proceedings have been specifically directed not to engage in questioning with respect to membership as it relates to the Sawridge First Nation. So I would ask that you keep that in mind.
MS. TWINN: Thank you very much, Mr. Molstad, but I am just exploring, as I'm entitled

to, who the representation includes.

Q MS. TWINN: And would it include Michelle Ward?

A No.

Q And do you know who Michelle Ward is?

A No.

Q She was on the band list.

MR. MOLSTAD: Well, you are now embarking upon questions related to membership. And if I could take you to Mr. Justice Thomas's Order in that respect.

MS. TWINN: I don't think that's necessary, Mr. Molstad, but thank you for your intervention.

MR. MOLSTAD: If you would like a list of the members, we'll provide you with a list of the members.

MS. TWINN: Sure. Then let's have that.

MR. MOLSTAD: Well, it wasn't asked for.

MS. TWINN: Well, you are offering it, so I'll accept your offer, kindly.

MR. MOLSTAD: Well, we'll have to provide that to you, subject to my client and the privacy rights of those members.

MS. TWINN: So what does that mean, then?

MR. MOLSTAD: Well, I'd have to consult with my client. There may be some privacy issues in terms of the members.

MS. TWINN: Okay.

MR. MOLSTAD: What I can tell you is that he

represents those who are recognized as members of the First Nation.

Q MS. TWINN: Now, I take it, then, Darcy, that you do not represent Shelby Twinn? I'm sorry, I didn't hear.

A No.

Q No?

A No.

Q Okay. And I take it you do not represent the Frank Joseph Ward family?

A No.

Q Now, I wanted to say to you today that, you know, when a lawyer has themself as a client, they say that they have a fool for a client. You have heard that expression?

A No.

Q But the reason I am self-representing today is that I cannot afford to pay for lawyers to conduct this cross-examination.

A Yes.

Q And I appreciate that it's perhaps awkward because you and I are related, correct?

A Yeah.

Q And the people that I've asked you about, many of them are family members to both of us, correct?

A Yes.

Q And I appreciate that the trustees are -- their legal

representation is paid for by the trust, and I appreciate that the band's representation was paid for by the trust.

MR. MOLSTAD: Objection. What's the relevance of that to this motion?

MS. TWINN: Well, we're talking about prejudice.

MR. MOLSTAD: All right. Well, we object to the question.

MS. TWINN: All right. Those are all my questions. Thank you.

A Thank you.

PROCEEDINGS ADJOURNED:

12:50 A.M.

Certificate of Transcript

I, the undersigned, hereby certify that the foregoing is a complete and accurate transcription of the proceedings taken down by me in shorthand and transcribed by means of a computer-aided transcription to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 20th day of October, 2019.

_____

Shelley D. Becker, Examiner

CSR(A)

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October 18, 2019
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Extract from Notice of Motion Filed by Stuart Olson Oct 21, 1997 Cross Examination of Mike M. Kinney

of all, it makes reference to a number of businesses back to the statement that the Band carries on businesses through a number of corporations. That, I've already told you, is not the case.

Q Certainly that was the information that Chief Walter Twinn provided, that the Sawridge Indian Band carried on a number of businesses?

MR. MCLENNAN: What is the question? Is that what the transcripts say?

MR. KENNY: Right.

MR. MCLENNAN: You have already asked that but you can answer it again, I guess.

A The transcript says what it says.

Q MR. KENNY: Could you turn to page 6, line 7?

Q Sawridge Holdings Ltd. was one of the Band companies, was it?

A That's correct.

} evidence given by Walter Twinn in a prior Examination.

Mike McKinney

Why is that not the information of the Band?

A It may lead - it appears to say that the Band owns Sawridge Holdings, and that's not the case.

Q And page 6, line 14:

"Q And are you familiar with 352736 Alberta Ltd.?

A Yes, I believe that's, yeah.

Q Is that one of the Band companies too?

A That's right."

And is that not the information of the Band?

This is Exhibit "3" referred to in the Affidavit of Shelby Twinn

Sworn before me this 25th day of May A.D., 2022

A Commissioner for Oaths in and for the Province of Alberta

ROBERT A PHILP, Q.C.

Swann Hallberg & Associates

Extract from Notice of Motion Filed by Stuart Olson Oct 21, 1997 Cross Examination of Mike McKinney

A That's not the information of the Band.
Q Why not?
A Again, it leaves the impression that that company is owned by the Band, and that is not the case.
Q These companies are owned by trusts, are they?
A Yes.
Q Would you go to page 7? There is discussion at line 10 of Sawridge Plaza Corporation and then at line 13:

"Q And that is another of the Band companies?
A That is another company.
Q Yes?
A Yes."

I take it that is not the information of the Band?
A That's not the information of the Band.
Q Why not?
A Sawridge Plaza Corporation is not owned by the Band.
Q Do you know why Chief Twinn would have been under the impression that these were Band companies?
A No.
Q He seems to have considered them to have been Band companies?
MR. MCLENNAN: What is the question?
MR. KENNY: Just what I asked.
MR. MCLENNAN: I do not think that's a question. I will instruct the witness not to answer. It is a statement.

084

APPLICATION FOR ENFRANCHISEMENT

UNDER THE PROVISIONS OF SECTION 114 OF THE INDIAN ACT BEING CHAPTER 98, R.S.C., 1927

I [redacted], of the of Slave Lake, in the Province of Alberta,

hereby make application to the Superintendent General of Indian Affairs for enfranchisement under the provisions of section 114, Chap. 98, R.S.C., 1927, and I hereby declare as follows:

1. That I am a member of the Sawridge Band of Indians situate in the County of in the Province of Alberta

2. That I hold no land on any Indian Reserve, do not reside on any Indian Reserve and do not follow the Indian mode of life;

3. That I am at present employed at Dene Tha' Band Employee

and that I am self supporting and consider that I am fit to be enfranchised and to exercise all the rights and privileges of citizenship;

4. That I am prepared to comply with all the requirements for enfranchisement as provided by said Section 114;

5. That attached hereto is a certificate under oath as to my fitness for enfranchisement;

6. That my wife and unmarried minor children consist of the following persons, namely:

My wife [redacted]

(Name in full) (Age)

Fee for Affidavit $5.00

Affidavit of [redacted]

Sworn before me this 25th day of May A.D., 20 22

A Commissioner for Oaths in and for the Province of Alberta

ROBERT A PHILP, Q.C.

referred to in the
t of
day
A.D., 20
Oaths in and for
the Province of Alberta

C.T. 17A
100,000-8-46

REQUISITION FOR CHEQUE

TO BE USED FOR ADVANCES OR AUTHORIZED PAYMENTS FOR WHICH THERE ARE NO ACCOUNTS

DEPT. NO.

FILE NO. 8131-73

TREAS. NO.

DEPARTMENT Mines and Resources

BRANCH Indian Affairs DATE November 19, 1946.

APPLICATION IS HEREBY MADE FOR THE ISSUE OF THE FOLLOWING CHEQUE OR CHEQUES:—

CHEQUE NO.	IN FAVOUR OF	AMOUNT
	[redacted]	$255 74

Cheque to be forwarded to:

Adrien Landry, Esq.,
Indian Agent,
Driftpile, Alberta.

NOV 20 1946
INDIAN AFFAIRS

STATE BELOW, WITH DETAILS IN EVERY CASE, WHETHER (a) STANDING ADVANCE, (b) ADVANCE FOR SPECIFIC JOURNEY—ESTIMATING NUMBER OF DAYS, (c) OTHER ACCOUNTABLE ADVANCE, OR (d) AUTHORIZED PAYMENT.

Share of band funds and annuity (No. 21, Sawridge Band) payable to [redacted] on enfranchisement authorized by Order in Council P.C.47/4894, dated November 15, 1946.

CHARGE TO

VOTE 63-310 - $100.00 ENC. NO.

ALLOTMENT Trust Acct. No. 423 Capital $119.63
Interest 34.11

SUB-ALLOTMENT

I CERTIFY THAT THIS APPLICATION IS MADE UNDER THE REQUISITE AUTHORITY, AND THAT THE EXPENDITURE IS NECESSARY IN THE INTERESTS OF THE PUBLIC SERVICE.

HEAD OF BRANCH

TREASURY OFFICE APPROVAL

DEPUTY HEAD

8151-75 (R.1)

Ottawa, November 21, 1946.

EX'D.

Adrien Landry, Esq., Indian Agent, Driftpile, Alberta.

With reference to the application of [redacted], No. 2b of the Sawridge Band, for enfranchisement, I wish to inform you that by Order in Council dated November 13, 1946, this woman was declared enfranchised in pursuance of the provisions of Section 114 of the Indian Act.

Under separate cover you will receive a cheque in the amount of $253.74, payable to [redacted], being her share of band funds and annuity which you are requested to forward to her, together with certified copy of the Order in Council above referred to and enfranchisement card, which are herewith enclosed. She should be advised to sign the card.

Please remove her name from the membership and pay lists of the Band.

for D. J. Allan,
Superintendent,
Reserves and Trusts.

Encls. 2

HF/6 P.C. 47/4694 8131-73

PRIVY COUNCIL

CANADA

Certified to be a true copy of a Minute of a Meeting of the Treasury Board, approved by His Excellency the Governor General in Council, on the 13th November, 1946.

MINES AND RESOURCES

The Board recommend that [redacted] Ward, a member of the Sawridge Band of Indians, Lesser Slave Lake Agency, Alberta, be herewith declared enfranchised in pursuance of the provisions of Section 114 of the Indian Act, and that authority be given for payment to her of her share of the funds of the said Band, as provided by the said Section.

Clerk of the Privy Council.

TRUST DIVISION Entered NOV 20 1946 Indian Affairs Br.

Entered HB

October 29, 1946.

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

The undersigned has the honour to report:

THAT [redacted], an unmarried Indian woman of the full age of twenty-one years, and a member of the Sawridge Band of Indians in the Lesser Slave Lake Agency in the Province of Alberta, has applied for an order of enfranchisement and has complied with the terms and provisions of the Indian Act in that regard.

The undersigned, therefore, recommends that Your Excellency in Council order that the said Lyons Hood be enfranchised and be paid her share of the funds of the Band, in accordance with the provisions of the Indian Act, Section 114, Chapter 98, R. S. 1927.

Respectfully submitted,

Minister of Mines and Resources.

8131-73

RELEASE AND SURRENDER

Department of Mines & Resources
Indian Affairs Branch
JUN 26 1948
REGISTERED

By an Indian belonging to a Band
having funds at its credit

(FOR ENFRANCHISEMENT UNDER SECTION 114 OF THE INDIAN ACT, BEING CHAPTER 98, R.S.C., 1927)

Know all men by these presents that I, [redacted], ... , a member of the Sawridge Band of Indians, whose reserve is located in the County of ..... in the Province of Alberta, for and in consideration of the sum of $153.74 from Band funds and $100.00 in lieu of Annuity ----------

each for self, wife and ..... minor unmarried children, being my share of the funds at the credit of the said band, including the principal of the annuities of the said band, which I hereby accept and in pursuance of my application for enfranchisement under the provisions of section 114, Chapter 98, R.S.C., 1927, do hereby surrender all claims whatsoever to any interest in the lands or property of the said band, and do hereby remise, release and forever discharge the said band and His Majesty, as represented by the Superintendent General of Indian Affairs, and his successors of and from all and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, claims and demands whatsoever which I ever had or now have or can, shall or may have by reason of any matter, cause or thing whatsoever in respect to the said band.

My wife and unmarried minor children consist of the following persons, namely:-

My Wife

[redacted]
(Name in full)

(OTHER SIDE)

MY SONS (Names in full) Dates of birth

MY DAUGHTERS (Names in full) Dates of birth

DATED at Elave Lake this 8th day of June 19 46.

SIGNED, SEALED AND DELIVERED after having been read over and interpreted to the Releasor who appeared to fully understand the contents and effects of the Instruments in the presence of

X [redacted] X

X W.P. Lefaive X
Witness to
alta

This is Exhibit "5" referred to in the Affidavit of Shelby Twinn
Sworn before me this 25th day of May A.D., 2022
A Commissioner for Oaths in and for the Province of Alberta
ROBERT A PHILP, Q.C.

Federal Court Action No. T-1073-15

FEDERAL COURT

BETWEEN:

SAM TWINN and ISAAC TWINN

Applicants

- and -

SAWRIDGE FIRST NATION, SAWRIDGE FIRST NATION formerly known as the Sawridge Indian Band, ROLAND (Roland), acting on his own behalf and in his capacity as CHIEF of the SAWRIDGE FIRST NATION, DENNIS CALLIHOO, in his capacity as the Chief Electoral Officer and HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Attorney General of Canada

Respondents

AFFIDAVIT OF SAM TWINN
(Sworn July 26, 2015)

I, SAM TWINN, of the community of the Sawridge First Nation, in the Province of Alberta, MAKE OATH AND SAY AS FOLLOWS:

1. I am one of the Applicants in these proceedings and as such I have personal knowledge of the matters herein deposed to, except where stated to be on information and belief, and where so stated I verily believe it to be true.

2. I am a resident member of the Sawridge First Nation ("SFN") and I have an interest in the good governance of the SFN.

3. SFN is a band within the meaning of the *Indian Act* RSC 1985, c I-5 and has two Reserves #150G and #150H (within the meaning of the *Indian Act supra*) located approximately 256.8 kilometers north of Edmonton, Alberta. SFN has an office located on Reserve #150G (the "Band Office").

4. SFN is a small community. Information from the Department of Aboriginal Affairs and Northern Development ("AANDC") indicates that the total registered population is 472 people as of July 2015. Attached hereto and marked as **Exhibit "A"** is a document entitled "Registered Population" from the AANDC website.

5. In 1985, with the passing of Bill C-31, *An Act to amend the Indian Act*, 33 – 34 Eliz II c 27, and pursuant to section 10 of the *Indian Act*, the SFN delivered its membership rules and supporting documentation to AANDC, which was accepted by AANDC who transferred the membership list to SFN, on certain conditions set out by the Minister of AANDC.

6. From that point onward, membership in the SFN became the delegated responsibility of the SFN. Attached hereto and marked as **Exhibit "B"** is a copy of the SFN Membership Rules.

7. SFN is presently comprised of 44 members, 41 of the 44 members were listed as eligible electors in the SFN February 17th, 2015 election.

8. In my view, for reasons set out below, I verily believe that the process for adding to and/or deleting individuals from the SFN membership list is relevant to this Application. Attached hereto and marked as **Exhibit "C"** is a copy of the most recent Membership Application in my possession.

9. The Sawridge Constitution was ratified by Sawridge Electors in a referendum held for that purpose on August 24, 2009. Attached hereto and marked as **Exhibit "D"** is a copy of the Sawridge Constitution.

10. The "Sawridge First Nation Elections Act" (the "Election Act") was approved by the SFN members in accordance with the Constitution. Attached hereto and marked as **Exhibit "E"** is a copy of the Election Act and the Elections Act Amendment Act.

11. In short, the Constitution and the Election Acts provide that the SFN will have a band council of one Chief and two Council members who shall serve for a term of four years. The term was changed from two to four years in 2011.

12. The SFN's framework documents, include:

(a) the SFN Governance Act, which is attached hereto and marked as **Exhibit "F"**;

(b) the SFN Financial Administration Act which is attached hereto and marked as **Exhibit "G"**;

EVENTS LEADING INTO THE ELECTION OF FEBRUARY 17, 2015

13. The Respondent Dennis Callihoo ("Callihoo") was the Chief Electoral Officer for the SFN's February 17th, 2015 election, appointed by the then Chief and Council.

14. On or about December 12th, 2014, I received the 1st mail out from Callihoo dated December 3rd, 2014 enclosing the notice of and date for the election, the notice of nomination date, the resident elector sub list (19 names), and the non-resident electors sub list (22 names).

15. On or about December 22nd, 2014, I received the 2nd mail out from Callihoo dated December 9th, 2014 enclosing the notice of nomination, the eligibility requirements, the nomination form, the statutory declaration for candidate and chief financial officer's certificate.

16. On or about January 6th, 2015, 2014, I received the 3rd mail out from Callihoo enclosing his letter dated December 23rd, 2014, correcting the sub lists (i.e. he moved 4 names from the non-resident sub list- now 18 names- to the resident sub list- now 23 names).

17. On or about January 13th, 2015, I completed with my two nominators and submitted the nomination papers for myself to be a candidate for Chief of SFN.

18. The only other candidate for chief was the Respondent Roland Twinn (Roland), the incumbent Chief who has been on Council since 1997 and Chief since 2003.

19. On or about January 23rd, 2015, 2014, I received the 4th mail out from Callihoo, undated, enclosing the notice of election, the directions for mail in voting, the voter declaration, the ballot for Chief, the ballot for resident Councillor and resident Elder

(a) Refusal to provide Voter's Contact information – Georgina Rose Ward

20. The Elector's list discloses that Georgina Ward was eligible to vote in the February 17, 2015 election. I have never met and do not know Georgina Ward who has not attended any Band meetings or events for as long as I can recall. Her participation, like the participation of all electors, is important. I wanted to reach out to her, encourage her to vote and understand her circumstances. I was prevented from doing so by Callihoo who denied my request for contact information.

21. I am informed by Tracey Poitras Collins and do verily believe she too was denied contact information for Georgina Ward even after she was elected as the Councillor representing non-resident Electors. She wanted to reach out and introduce herself to Georgina Ward.

22. I am informed by Catherine Twinn ('Catherine") and do verily believe that she communicated with Callihoo on my behalf who informed her that candidates were not entitled to the addresses of electors.

23. In an email dated January 7, 2015 Callihoo confirmed that his mail out to two electors had been returned, these two being Georgina Ward and my brother Patrick Twinn. The Band Office has, for years, had our correct mailing address. Communications confirm the Band did not give Callihoo our correct mailing addresses: Callihoo mail-outs were delayed; some breached reasonable and/or required time lines; and our request for email service was not followed despite Callihoo saying he would "recommend" this. I do not know who he was recommending to.

24. I searched for Georgina Ward. Of the 41 electors, she was the one elector who did not vote in the February 17, 2015 Election. After the election, I continued my search. I called 13 Homeless Shelters and Community Service Groups in Kingston, Ontario. One Shelter informed me they had not seen her in a few years. The search led to two Inner City Services in Edmonton which confirmed she had been a client in 2013. I continue to look for Georgina Ward, a missing member.

25. The SFN privacy position that was included in the Election Act, denying challenging candidates the opportunity to contact the SFN's electors is, in my view, in conflict with the Canada Election Act that enables candidates' access to such information and with the principle to encourage all electors to engage in and vote.

(b) Refusal to and Unreasonable Time Lines to permit eligible voters the opportunity to correct the Voter List

26. When I was first provided with a copy of the Elector's list, mailed December 4, 2014 (not 75 days prior to the election), I noted that Roy Twinn ("Roy") had been admitted into membership of SFN. Chief and Council do not give members notice of who they deny or admit into membership. We only learn of an application if a person is denied and appeals to the members as members are not informed about membership applications to the SFN. The process and details regarding the membership applications, including their processing, are kept secret, unless there is an Appeal to the Members at which time some information is disclosed.

27. On December 9, 2014 Callihoo advised Catherine that the deadline for amending the Voter's List was the end of the business day, December 18, 2014. He did not state this in the documents that he sent dated December 3, 2014, mailed December 4, 2014. I note this because as of December 18, 2014 some electors had not received the documents dated December 3, 2014 and so this process and time line did not allow, in my view, the opportunity to address errors and omissions of names from the Membership List that formed the Electors List.

28. Callihoo moved 4 names from the non-resident list to a resident list giving notice of such in a letter dated December 23, 2014, which was received January 6, 2015. The deadline to challenge these changes was January 13, 2015. His notice purported to give 11 days' notice. In actual fact the notice period was 5 days.

29. The problem was also, in my view, compounded by Callihoo's position "*that a general membership issue would be dealt with by membership*"; he had no authority "*except as set out in the Election Act*"; and he was in fact avoiding controversy as to who is entitled to be on the

Electors List restricting himself to the List provided by the SFN.

(c) Corrupt Practices and Procedures While Roland Was Chief both Before and During the Election – Selective Processing of Band Membership and Therefore Votes

30. Roy Twinn (Roy) is the son of the respondent Roland. Although I take no issue with Roy's admission into membership, my concerns are that:

i. Roy, was made a member (along with his younger brother Alexander Twinn ("Alexander") of SFN just before the February 17th, 2015 SFN election ahead of other applications for membership of SFN which are not being processed; and,

ii. Roy voted for Roland at the February 17th, 2015 SFN election;

iii. When SFN ignores or delays applications for membership to SFN, it is my belief that such action was being done for the purpose of controlling votes in the February 17th, 2015 SFN election.

31. I take issue with the fact that Roy and his younger brother Alexander Twinn, were preferentially admitted into membership, before other applicants for membership to SFN who have been waiting for years. For example, Gina Donald (Gina) submitted her 3rd application for membership to SFN and was not able to vote in the 2011 SFN election and 2015 SFN election. Gina and other applicants have been deprived of the potential opportunity to vote and help shape our community.

32. In my view having the children of Roland, the Chief, jump the membership application queue ahead of applicants like Gina, and other persons, damages confidence and trust in that office, the person holding that office and how they apply the laws and administer the process relating to membership.

33. I also verily believe that Gina would have voted for me in the February 17, 2015 SFN election. Attached hereto as **Exhibit "H"** is Gina's Affidavit confirming she would vote for me.

34. My sister Deborah Serafinchon (Deborah) and I share the same father with Roland, the late Walter Patrick Twinn, who was Chief from 1966 until his death October 30, 1997. It is our common father that entitles each of us to registration as Indians and members of the SFN.

35. I have read my sister Deborah's April 1, 2015 sworn statement attached to her July 26, 2015 affidavit detailing her circumstances and the hindrances she faced in applying for membership to SFN. I question why she should be required to do so as she was born long before the Band assumed control of its membership list. Attached hereto as **Exhibit "I"** is Deborah's Affidavit that she would have voted for me.

36. I also verily believe that almost all the children who have been admitted into membership of SFN by the Chief and Council are the children of Roland and his family members namely:

a. Roland;
b. Winona Twinn;
c. Ardell Twinn (Roland's brother who had been a Band Councillor);
d. Frieda Draney (Aunt to Roland and employed by Roland); and
e. The late Clara Midbo (Aunt to Roland and Sawridge Trustee);

37. Roland occupies the position of Chair of the Sawridge Membership Committee which controls applications and provides its recommendation to the Chief and Council on each Applicant and it is the Chief and Council that makes the original decisions on membership applications.

38. I verily believe that Roland engaged in corrupt practices and procedures before and during the election, in that (i) he, through his office and while he was chief, failed to process membership applications for individuals (i.e. potential electors); and (ii) he, through his office, enabled and/or permitted the expedited processing of a membership application for his children, one of whom, Roy, was an elector, entitled then to jump the queue while others with applications for membership filed years prior were kept waiting and therefore denied the potential right to vote.

39. I verily believe the SFN should provide information requested by Catherine April 28, 2015 on my behalf that is relevant to the membership applications. Attached hereto and marked as **Exhibit "J"** is a chain of communications between April 4, 2015 to May 1, 2015 between the SFN, the Elders Commission and Catherine on my behalf.

40. The information provided by the SFN should include details of all applications by individuals for membership to the Sawridge First Nation including:

a. the date(s) when those applications were sent to the SFN;

b. the status of all those applications as of February 17, 2015;

c. an explanation as to why each application were accepted for membership to the SFN, denied for membership to the SFN and/or remains pending for membership to the SFN;

d. an explanation how the subjective criteria used to deny applications such as character, lifestyle, knowledge of and commitment to the is understood, assessed and applied by the Chief and Council and Roland as Chair of the Membership Committee;

e. how a fair process is given to applicants;

f. an explanation of the different treatment of children which appears to be based on what family they belong to;

g. why some applicants had to even apply given they had a right to have their name entered on the Band List such as Kieran Cardinal, whose application took 22 years for the Chief and Council to make a decision on;

h. for those application that were denied, whether the individual appealed the decision and the status of the applications under appeal as of February 17, 2015;

i. how the Chief and Council understand and apply customary laws of the Band, such as adoption, to the membership application process and the extent to which Canadian law recognizes customary adoption and other customary law relevant to membership;

j. an explanation of whether the Chief and Council have considered amending the Membership Rules and if so, any proposed changes with reasons;

k. an explanation of whether the Chief and Council has reviewed their Membership Rules to ensure compliance with the laws of Canada as to which persons qualify under

Canadian law for membership and in what circumstances the SFN can exclude such persons from membership;

l. an explanation of whether the Chief and Council have reviewed their Membership Rules and process to ensure they are fair, reasonable, timely, unbiased, fair and complies with human rights;

41. I verily believe Callihoo's avoidance of concerns regarding errors and omissions from the Membership/Electoral List compounded the corrupt practice of adding Roland's children to the Band Membership List shortly before the Election, enabling his son Roy to vote while not processing the applications of others who have been waiting for years. In such a small community of 41 voters, adding this one vote changed the election outcome.

FEBRUARY 17, 2015 ELECTION

(a) **Walter Felix Twin – His Spoiled Ballot of February 17, 2015 and the Refusal to Allow Him to Recast his Vote**

42. Walter Felix Twin ("Walter") is a member of SFN and asked me to run for the position of Chief of SFN in or about the Spring of 2012.

43. In September, 2014 I decided to run for Chief and informed Walter and Yvonne Twinn, his wife, who were both very supportive of my decision.

44. On February 17, 2015, the day of the election, I returned to the Band Office before the 6 p.m. closing of the poll. There were a number of Band members present including Walter and Yvonne Twin.

45. My Scrutineer Ron Rault ("Rault") had been present throughout the entire voting period and before the poll closed I was aware that 40 of 41 voters, except Georgina Ward, had cast ballots.

46. When the Poll closed, Callihoo opened the Mail In Ballots, including Walter's. Callihoo

never deposited Walter's ballot into the Ballot box because after opening the inner envelope which contained the ballot, Callihoo discovered the lower blank portion of the ballot had been cut so the ballot would fit the envelope, thereby removing Callihoo's initials on the bottom back side. Callihoo deemed the ballot spoiled and at that time Callihoo confirmed that Walter had voted for me.

47. Callihoo also deemed two other Ballots spoiled because the electors had identified themselves on their ballot: M.C.Ward voted for Roland; Aaron Potskin voted for me.

48. Aaron Potskin communicated to me that he received his Mail In Ballot Package on February 13, 2015 and quickly filled it out without carefully reading the instructions. He put his name on the upper right hand corner of the ballot to ensure his mail in ballot was noted as his when it was received. His intention was clear, he voted for me.

49. Over the objection of Rault, Callihoo disqualified three of the four ballots he set aside, two of which were cast in favor of myself, and one of which was cast in favor of Roland.

50. The last of the four ballots, cast in favor of Roland, was allowed.

51. This resulted with Roland's election as chief by a vote of 19 in favor of Roland and 18 in favor of myself. Had Walter's ballot counted, it would have been a tie vote. Had Roy not voted, I would have won by one vote.

52. The four ballots set aside by Callihoo, all of which clearly indicated who the elector voted for the position of chief, were as follows:

(a) the disqualified ballot of Walter Felix Twin, cast in favor of myself;

(b) the disqualified ballot of Aaron Potskin, cast in favor of myself;

(c) the ballot of Deana Morton, cast in favor of Roland, which ballot was allowed; and,

(d) the disqualified ballot of Margaret Ward, cast in favor of Roland;

53. Callihoo overruled Rault on the question of whether the ballot of Walter should be spoiled, which decided the election of Chief, despite Walter's clear intention on the ballot. This was the only ballot for Chief cast by Walter and there was no issue that he had voted more than once.

54. Callihoo overruled Rault refusing to allow Walter to recast his vote even though Walter was present before and after the poll closed. After thoroughly examining the Ballot for Chief, Callihoo set it aside; discussions occurred between Callihoo and Rault in the presence of electors, including myself. Irene Twinn, Roland's sister, objected to Walter recasting his votes and Callihoo overruled Rault.

(b) Statements Made by Walter Twinn February 17, 2015 Following the Election Count and at the May 30, 2015 Appeal to Electors and the Appeal to the Elders Commission

55. On February 17, 2015 at approximately 8PM Walter called me to say he was disappointed his vote was disallowed and that he ought to have been allowed to recast his vote. Walter explained to me that he cut the ballot to fit into the letter sized envelope.

56. Following the decisions of Callihoo at the February 17, 2015, election, I followed the procedure prescribed by the Sawridge Constitution, which stipulates that an appeal from a decision from the Electoral Officer lies first to Electoral Officer, then to the Elder Commission and then to a Special General Assembly of the members called for that purpose.

57. My brother Isaac and I appealed to Callihoo on March 2, 2015. Callihoo rejected our appeal in a written Decision dated March 6, 2015.

58. On March 13, 2015 I emailed Callihoo, regarding Rault's denial to inspect the spoiled ballots on February 17, 2015 and an elector's right to see the spoiled ballots and election related documents which he must preserve while the Appeal process is underway including to the Court. Callihoo never replied to me. Attached hereto and marked as **Exhibit "K"** is my March 13, 2015

email. Thereafter I was advised by Rault and do verily believe that Rault made a further request which was denied by Callihoo and Rault never did see and photograph the three spoiled ballots referred to in the reports of Rault and Callihoo.

59. The denial of the right to inspect, photograph or receive a true copy of the spoiled ballots hindered me in preparing our Appeal Record as did production from the SFN relating to membership. The ballots however were subsequently added to the Appeal Record, exhibited in an affidavit of Callihoo sworn April 22, 2015 which I had not seen before. These materials were sent out by the SFN to the Electors, and received by me on or about May 8, 2015. The SFN mentions our additional materials, but not the addition of the Callihoo Affidavit.

60. We then appealed to the Elders Commission April 2, 2015 but the Elders Commission failed to make a decision. I am advised by and do verily believe Elizabeth Poitras, the elected non-resident Elder of the Elders Commission, she tried but was unable to communicate with Vera McCoy, the Resident Elder.

61. No decision was rendered by the Elders Commission.

MAY 30, 2015 SPECIAL GENERAL ASSEMBLY OF ELECTORS TO HEAR OUR APPEAL

62. My brother Isaac and I then appealed to the Electors on or about April 13, 2015.

63. The Chief and Council set May 30, 2015 for a Special General Assembly.

64. On or about May 8, 2015 I received SFN's Appeal Record. I compared the SFN Appeal Record against our Appeal Record which had been provided to the Elders Commission on April 2, 2015 and the SFN April 13, 2015 and April 28, 2015 and they were not the same. They differed as follows:

a. The SFN Appeal Record included an incorrect Index;

b. The SFN Appeal Record included the Callihoo Affidavit dated April 22nd which I had never seen before;
c. The SFN Appeal excluded the April 16, 2015 sworn statement of Gina Donald;
d. The SFN Appeal Record excluded the April 27, 2015 sworn statement of Heather Poitras;
e. The SFN Appeal Record included the Affidavit of Alfred Potskin;
f. The SFN Appeal Record included a Notice dated April 23, 2015 of a May 30, 2015 Special General Assembly;

71. On April 28, 2015 Isaac and I provided the SFN the following materials adding to SFN's Appeal Record:

a. April 16, 2015 revised sworn statement of Gina Donald replacing an earlier signed but unsworn statement and Affidavit (part of Tab 12 of our Index);
b. April 27, 2015 sworn statement of Heather Poitras (part of Tab 12 of our Index to our Appeal Record);
c. Notice of Appeal to the Elders signed and served April 2, 2015, by myself and Isaac Twinn, the accompanying Index and Binder having been served on the SFN April 2, 2015 (Tab 20 in our Index to our Appeal Record);
d. April 4 through to 28, 2015 communications between the SFN (Mike McKinney, Fern Homa), Catherine Twinn (on my behalf) and the Elders Commission (Tab 21 in our Index to our Appeal Record);
e. Notice of Run-Off Vote on April 28, 2015 for Councillor Representing Residents between Darcy Twin and Winona Twin (this was the 2nd Run Off Vote between these two candidates) and Statement of Votes from the March 24, 2015 Run Off Vote (Tab 22 in our Index to our Appeal Record);
f. Notice of Election Appeal to the Electors signed and served April 13, 2015 by myself and Isaac Twinn (Tab 23 in our Index to our Appeal Record);

65. On May 30, 2015 we tabled the Affidavit of Gail O'Connell at the Appeal which accidently did not include signed Exhibits M, N, O, P however unsigned Exhibits were provided at that time. Attached hereto and marked as **Exhibit "L"** are Exhibits M, N, O, and P to the sworn

statement of Gail O'Connell.

66. Ed Molstad was present as lawyer to advise any electors, including me and Isaac. I did not object to him participating believing it would preclude him from acting for the Respondents, or any of them. Catherine objected to Ed Molstad's participation.

67. Rarihokwats (Rari), formerly known as Gerry Gamble, acted as "Speaker" for the May 30, 2015 Appeal. Attached hereto and marked as **Exhibit "M"** is a certified true copy of a transcript from the recording of the May 30, 2015 Appeal to Electors provided to my solicitor by the Respondents July 13, 2015.

68. The remaining part of the record is attached hereto as the following Exhibits:

a) as **Exhibit "N"** a true copy of the Applicants' Index to Binder/Appeal Records in support of their Notice of Appeal to the Elders Commission, dated and served April 2, 2015;
b) as **Exhibit "O"** a true copy of the Applicants' Index, updated April 28, 2015 and May 30, 2015, in support of their Notice of Appeal, dated and served April 13, 2015, to the Electors;
c) as **Exhibit "P"** a true copy of a 6th mail out received on May 8, 2015 which contained the notice for the Run Off Vote for June 2nd, 2015 for the third run off election for resident Councillor and the ballot and mail in envelopes for that ballot;

69. I swear this affidavit in support of the following:

(a) An Order declaring that Sam Twinn is the successful candidate of the February 17, 2015 election for Chief of SFN;

(b) Alternatively, an Order setting aside the results of the February 17, 2015 election for the position of Chief and/or declaring that the election of Chief on February 17, 2015 to be null and void, and directing a new election for Chief of SFN to be immediately undertaken;

(c) An order that Roland and Callihoo jointly, and/or severally breached the Election Act;

(d) An Order declaring the sections 16, 17, 18, 19, 20 and 21 of the Election Act that deal with the elector's or voter's list, as amended, to be null, void and invalid. In the alternative, an Order declaring that sections 16, 17, 18, 19, 20 and 21 of the Election Act are of no force and effect;

(e) An Order directing that the following stipulations be implemented forthwith to ensure that the new election is conducted in a fair and proper manner:

(1) Ordering that Roland is not entitled to run in any new or other SFN's elections for a period of not less than six years.

(2) Ordering that Roy Twinn, the son of Roland, is not entitled to vote in the new election, nor his other son, Alexander Twinn, should he be 18 years of age by the time of the new election.

(3) Ordering that Sam Twinn and all candidates be provided the addresses and/or contact information of all Sawridge First Nation eligible voters.

(4) Ordering that Roland not utilize, or otherwise have access to, Sawridge First Nation monies, directly or indirectly, to pay for his legal costs in this proceeding.

(f) Costs of this proceeding to the Applicants on a solicitor-client basis, as against Roland; and

(g) Such further and other Orders as this Honourable Court shall deem just and convenient in the circumstances.

SWORN BEFORE ME at
the City of Edmonton
in the Province of Alberta
this 26th day of July, 2015

Sam Twinn

SAM TWINN

A Commissioner for Taking Affidavits
Being a Solicitor

Federal Court Decisions

Twinn v. Sawridge First Nation

Court (s) Database: Federal Court Decisions

Date: 2017-04-26

Neutral citation: 2017 FC 407

File numbers: T-1073-15

Notes: A correction was made on January 10, 2018

This is Exhibit "6" referred to in the Affidavit of Shelby Twinn

Sworn before me this 25th day of May A.D., 2022

A Commissioner for Oaths in and for the Province of Alberta

ROBERT A PHILP, Q.C.

Docket: T-107

Citation: 2017 FC

Ottawa, Ontario, April 26, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SAM TWINN AND ISAAC TWINN

Applican

and

SAWRIDGE FIRST NATION, SAWRIDGE FIRST NATION FORMERLY KNOWN AS THE SAWRIDGE INDIAN BAND, ROLAND TWINN, ACTING ON HIS OWN BEHALF AND IN HIS CAPACITY AS CHIEF OF THE SAWRIDGE FIRST NATION AND HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Responde

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [Act] for judicial review o connected decisions taken by the Chief Electoral Officer [CEO], made on or about February 17, 2015 [Decisions] related to the 2015 general election [Election] of Sawridge First Nation [SFN].

II. BACKGROUND

[2] On December 4, 2014, prior to the Election, the CEO sent a mail-out package to SFN's electors that contained: a cover letter; Notice of Election; Notice of the Date for Nominations; a resident electors sub-list; and a r

resident electors sub-list. The cover letter advised recipients to refer to s 18 of the *Sawridge First Nation Election*

Act, Consolidated with Elections Act Amendment Act [*Elections Act*] for the provisions that governed the proce for submitting changes to the sub-lists and corresponding deadline.

[3] The CEO received 4 requests to correct the sub-lists and provided notice of the changes to SFN's electors December 23, 2014. The notice also advised that the deadline for submitting a statutory declaration as to why the changes should not be made was 11 days prior to the January 13, 2015 nomination meeting.

[4] On January 13, 2015, Sam and Roland Twinn were nominated for the position of Chief.

[5] The Election took place on February 17, 2015 from 10:00AM to 6:00PM. After the polls closed, the CEO publicly opened the 15 sealed mail-in ballots, including those of Walter Felix Twinn (Walter) and Deana Morton.

[6] Walter's ballot lacked the initials of the CEO, which is a requirement for validity under the *Elections Act*. R Rault [Scrutineer], the scrutineer for Sam Twinn, Tracey Poitras-Collins, and Elizabeth Poitras, suggested that Walte vote be accepted, or that Walter be permitted to cast an in-person vote since he was present at the polls; however, t CEO rejected both suggestions and determined Walter's vote, along with two others, was invalid.

[7] Deana's vote lacked a witness address but was accepted by the CEO.

[8] Roland was declared the winner of the Election for Chief by one vote. According to s 72 of the *Elections A* tie would have required a run-off election.

[9] The Applicants then proceeded to appeal the Election. On March 2, 2015, they filed a Notice of Appeal wi the CEO, which was rejected on March 6, 2015. The Applicants then appealed to the Elders Commission, which d not respond within the required time period. Accordingly, the Applicants appealed to the Special General Assembly [SGA] of the SFN on April 13, 2015. The four grounds of all the appeals were: improper rejection of ballots; non-compliance with election rules; inconsistent administration decisions impacting the popular vote; and non-compliance with the rules regarding the creation and notice of voter lists.

[10] On May 30, 2015, the SGA dismissed the Applicants' appeal. The Applicants then commenced this applica for judicial review.

III. DECISIONS UNDER REVIEW

[11] According to the Applicants, there are three related decisions that constitute the subject of this judicial revie

(1) Rejection of Walter's Vote

[12] According to the Scrutineer, the CEO set aside Walter's ballot upon opening Walter's mail-in vote because had been cut and the CEO's initials removed. The CEO later determined Walter's vote to be invalid, overruling the Scrutineer's suggestion that Walter be permitted to cast a new in-person vote in place of his spoiled ballot.

(2) Conduct of the Election

[13] The mail-out packages were dated December 3, 2014 and mailed December 4, 2014, with the Election hel February 17, 2015.

[14] Two of the mail-out packages, addressed to Patrick Twinn and Georgina Ward, were not delivered and returned.

[15] Following corrections, the CEO sent revised lists of electors. The deadline to correct the new list was Janua 2015. However, Sam Twinn did not receive the notice until January 6, 2015.

[16] On January 12, 2015, the CEO stated in an email to Catherine Twinn, the Membership Registrar, that gener membership issues were dealt with by the Membership rather than the CEO. This response was a reply to Catherin question of whether the CEO had authority to add the names of persons who were entitled to membership to the list electors, including those whose completed applications had been pending for an unreasonable length of time.

(3) SFN Membership Application Process

[17] In the mail-out package of December 4, 2014, Roy Twinn, the son of Roland Twinn, was listed on the non-resident sub-list. There is no documentation indicating when Roy became a member, but Roy was not on the elector for the 2011 election, and others have applied for membership and have not yet received a decision.

IV. ISSUES

[18] The Applicants submit that the following are at issue:

A. Whether the CEO erred in law, including that going to jurisdiction, both in his initial and appeal decisions, in rejecting an election ballot through misinterpretation and misapplication of statutory provisions, compounded breach of rules of natural justice and procedural fairness?

B. Whether the Respondents failed in their fiduciary duty to establish and confirm that a proper and complete li electors was prepared, in disregard of constitutional, statutory, and other legal requirements, compounded b corrupt practices, thereby committing errors going to jurisdiction?

C. Whether the CEO erred in law, including that going to jurisdiction, in failing or declining to make adequate inquiry into the composition of the Electors List, compounded by procedural unfairness and disregard for rul of natural justice?

[19] The Respondents submit that the following are at issue:

A. Whether the information and documents in Sam's affidavit, referred to in the Respondent's arguments, are al irrelevant and inadmissible in a judicial review of the CEO's Decisions?

B. Whether the CEO reasonably, indeed correctly, rejected and did not count Walter's mail-in ballot because it not have "the distinctive mark of the Electoral Officer on the back" as mandated by s 69(1)(b) of the *Electi Act*?

C. Whether the CEO's decision not to give Walter a new, in-person ballot after he had already voted by mail-i ballot and after the polls had closed is neither unfair, discriminatory, nor anti-democratic, but rather a reason indeed correct, interpretation and application of the *Elections Act*?

D. Whether the CEO's decision dismissing the Applicants' March 2, 2015 challenge to the electors sub-lists fo non-compliance with statutory procedures and limitation periods is a reasonable, indeed correct, interpretati and application of the *Elections Act*?

E. Whether this judicial review is subject to public policy?

V. STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a stanc of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may

inconsistent with new developments in the common law principles of judicial review, must the reviewing court undert a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety ar Emergency Preparedness)*, 2013 SCC 36 at para 48.

[21] Although the Applicants raise a wide range of issues in this application, the Court concludes that it is only in position to review a connected series of decisions (and in particular the rejection of Walter's vote) made by the CEC during the 2015 Election and the appeal of those decisions to the CEO. This essentially gives rise to issues of procec fairness and the CEO's interpretation and application of the governing provisions of the *Elections Act*.

[22] Issues of procedural fairness, particularly in regards to the actions of Elections Committees, have been found be reviewable under a standard of correctness: *Beardy v Beardy*, 2016 FC 383 at para 45 [*Beardy*].

[23] Issues of statutory interpretation and application by the CEO will be reviewed on a standard of reasonablen *Mercredi v Mikisew Cree First Nation*, 2015 FC 1374 at para 17.

[24] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existe of justification, transparency and intelligibility within the decision-making process [and also with] whether the decisio falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. P another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "ra of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[25] The following provisions from the *Constitution of the Sawridge First Nation* [*Constitution*] are relevant i this proceeding:

Article 1: Interpretation

1.(1) The definitions in this section apply in this Constitution:

"Law of the First Nation" means a law of the First Nation made in accordance with this Constitution;

"Member" means a member of the First Nation in accordance with the Membership Code of the First Nation;

[...]

"Membership Rules" are those rules adopted by the Sawridge Band to govern its membership system prior to the establishment of this Constitution;

[...]

Article 3: Membership

Membership Code

3.(3) Until amended in accordance with this Constitution, membership in the First Nation shall be determined by the Membership Rules that were in force immediately before the day on which this Constitution came into force with such modification as are required by the Constitution. The Membership Rules shall thereafter be called "the Membership Code".

[...]

Article 4: Governing Bodies

How Elected

4.(2) The Chief, Councilors [sic] and Elder Commissioners shall each be elected in an election of the First Nation by a plurality of the votes cast by Electors pursuant to the provisions of this Constitution in accordance with all of the Election Procedures set out in laws or Codes of the First Nation.

[...]

Article 9: Appointing Electoral Officer

9.(1) The Council, in consultation with the Elders Commission, shall appoint an Electoral Officer not later than eighty days before the date on which an election is to be held.

[...]

Article 10: Calling of Elections

General Elections

10.(3) The Council shall call a general election of the First Nation for the positions of Chief and Councilors [sic], the Elders Commission, and members of an Audit and Compensation Committee to be held not later than four years from the date on which the last general election was held.

[...]

11.(1) Within fourteen days after an election, any candidate in the election or any Elector may lodge a written appeal with the Electoral Officer if the candidate or Elector has reasonable grounds to believe that there was

a) a corrupt practice in connection with the election; or

b) a contravention of this Constitution, or any law of the First Nation that might have affected the result of the election.

(2) The Electoral Officer shall make a decision in respect of any appeal within seven days of receipt.

(3) If any candidate at the election or any Elector is not satisfied with the decision of the Electoral Officer in respect of the appeal, then that person may within 28 days after the decision of the electoral officer is made appeal further to the Elders Commission (if the election was for Council or other office) or the Council (if the election was for the Elders Commission) in writing. The Elders Commission or Council, as the case may be, shall be referred to as "the Appeal Tribunal" and shall make a decision in respect of any appeal within seven days of receipt.

(4) If any candidate at the election or any elector is not satisfied with the resolution by the Appeal Tribunal of any appeal made to them pursuant to subsection (3), then that person may within fourteen days after the appeal was made, lodge an appeal to a Special or Regular General Assembly which shall be called for that purpose within thirty days from the date the appeal is received.

Sending documents to Electoral Officer

(5) Upon the filing of an appeal, the appellant shall forward a copy of the appeal together with all supporting documents to the Electoral Officer and to each candidate.

Written Answers Required

(6) Any candidate may, and the Electoral Officer shall, within fourteen days of the receipts of a copy of an appeal under subsection (4), forward to the Appeal Tribunal, by registered mail, a written answer to the particulars set out in the appeal, together with any supporting documents relating thereto duly verified by affidavit.

The Record

(7) All particulars and documents filed in accordance with this section form the record.

Relief

(8) The Electoral Officer, Appeal Tribunal, or the General Assembly may provide such relief as it sees fit, when it appears that there was

a) a corrupt practice in connection with the election that might have affected the result of the election; or

[...]

Article 21: Amendment to Constitution

When An Amendment is Effective

21.(1) Subject to subsections (2) and (4), an amendment to the Constitution is effective and in force on the day it is approved by seventy-five percent (75%) of the votes cast in a referendum held for the purpose of amending the Constitution, provided that at least seventy-five percent (75%) of the Electors vote in the referendum, or on such later date as is set out in the amendment.

[26] The following provisions from the *Elections Act*, in force as of October 26, 2013, are relevant in this proceeding:

Definitions

2. (2) The following terms are defined herewith:

"candidate" means a candidate for election;

"Deputy Electoral Officer" means a person appointed to that position pursuant to this Act;

"election" means a general election for various offices as stipulated in the Constitution or any Law of the First Nation, or a by-election for one or more of these offices;

"election day" means the day fixed for an election by the Council;

"Electors List" means the list of Electors prepared pursuant to this Act, as corrected from time to time;

"in good standing" with reference to debts owed to the First Nation means that no payments due to the First Nation or a First Nation corporation, as defined by regulation, pursuant to the agreement through which the debt was incurred, may be more than 90 days overdue on the date a certificate of good standing is issued for purposes of eligibility for nomination. Where no payment terms are specified in a loan, the loan is due upon demand. A payment on a demand loan is not due until demanded.

"Membership Registrar" is the person named by Council to maintain the Registry of Members pursuant to the Constitution;

"primary residence" means the place which at the time of determination in respect of a person has been for a period of at least six months the principal place of his or her true, fixed and permanent home and place of habitation whereto, when absent or away therefrom, not including absences for normal vacations, temporary work assignments, study or training, always without intention to establish a domicile at some other place, he or she intends to return;

"scrutineer" means a person appointed by a candidate to act pursuant to this Act to observe the election process and to call the attention of the Electoral Officer to any mistake, contravention of this Act and its regulations, or any other matter which might unfairly or unjustly affect the conduct of the election;

"Sawridge entity" means any department, agency, or unit of the Sawridge government.

[...]

Preparation of Electors List

16. (1) Within seven days after the Council has called an election pursuant to the Constitution, the Membership Registrar shall provide the Electoral Officer named by the Council pursuant to the Constitution with an alphabetical list of all Electors, containing the birth date and last-known address of each Elector. The list shall be in two forms:

(i) one, the Master List, containing the name, date of birth, and address of each Elector and

(ii) the other, the Public List, containing only the names of the Electors.

Creating and Posting of Resident and Non-Resident Voters Lists

(1) From the Public List, the Electoral Officer shall create a Resident Electors Sub-List and a Non-Resident Electors Sub-List. Not less than 70 days prior to the Election Day, the Electoral Officer shall post the sub-lists in all Principal Offices. Each Elector's name shall be on either the Resident Electors Sub-List or the Non- Resident Electors Sub-List, but no name shall appear on both sub-lists. These sub-lists shall not contain addresses or dates of birth.

(2) On the request of any person, the Electoral Officer shall confirm whether the person's name is on the Public List, and if so, which sub-list it is entered on.

(3) Any Elector is entitled to confirm with the Electoral Officer the information regarding the Elector which is shown on the Master List.

Correcting the Sub-Lists

(2) If any elector wishes to show cause as to why the change should not be made, they may at any time prior to 11 days prior to the date set for the nomination meeting provide the Electoral Officer with a statutory declaration containing evidence and the Electoral Officer shall consider the evidence and make a determination as to which list the elector's name shall appear on and notify all Electors.

[...]

Appeal of Electoral Officer's decision

18.2 If any elector wishes to appeal the decision of the Electoral Officer, the matter shall be referred to the Elders Commission no less than 4 days prior to the date set for the

appeal, it shall hear the evidence of the electors who have filed statutory declarations, the elector in question, and the Electoral Officer as to the reasons for his or her decision, and after which, shall decide on which list the name of the Elector in question shall appear. The decision of the Elders Commission must be provided to the Electoral Officer prior to the date set for the nomination meeting.

18.3 After the commencement of the nomination meeting the names which appear on the Electoral List may not be changed and the names which appear on a Sub-List may not be removed from that Sub-List and placed on the other Sub-List.

No Delay in Nomination Meeting or Election

19. Notwithstanding any other section of this Act, no question with respect to the names on the Electoral List or a Sub-List shall cause a delay in the date set for either the Nomination Meeting or the Election or the holding of the Nomination Meeting or the Election.

Correcting the Electors Lists

20. (1) The Electoral Officer shall revise the Electors Lists where it is demonstrated to the Electoral Officer's satisfaction prior to the commencement of the Nomination Meeting that

(a) the name of an Elector has been omitted from the Electors List;

(b) the name or birth date of an elector is incorrectly set out in the Electors List;

(c) the name of a person who is not qualified to vote is included in the Electors List.

(2) For any change made, the Electoral Officer shall give written notice of the correction to any affected person and to any person who provided information which led to the correction.

[...]

Request for Reconsideration of Electoral Officer's decision

21. (1) If an Elector who requested that the Electoral Officer make a correction in the Electors' List or any Elector affected by a decision of the Electoral Officer to correct the Electors' List is not satisfied with the Electoral Officer's decision, such Electors may at any time before the polls close request the Electoral Officer to reconsider his/her decision on one or more of the following grounds, and only on these grounds, namely, that:

(a) the person is eligible to be on the Electors List;

(b) the person's name is on the Membership Registry and he/she will be 18 years of age or over on election day;

(c) the person's name was mistakenly omitted from the Electors List;

(f) [*sic*] the person is ineligible to be on the Electors List.

Responsibility of Each Elector To Keep His/Her Address Current

23. Each Elector is responsible for

(1) keeping the Membership Registrar informed of his/her current address and for notifying the Membership Registrar of any change of address;

(2) checking that his/her address is shown correctly on the Electors' List and notifying the Electoral Officer of any correction to be made;

(3) providing the Membership Registrar with a Declaration of his or her Primary Residence within 120 days of the enactment of this provision or within 120 days of becoming an Elector thereafter, and thereafter within 60 days of any change of his or her Primary Residence.

[...]

Voting Stations

47. (6) Voting stations shall be kept open from 10 a.m., local time, until 6 p.m., local time, on the day of the election unless regulations establish variations in these hours.

[...]

Cancelled ballots

61. (1) If an Elector makes a mistake on a ballot or inadvertently spoils his/her ballot paper in marking it prior to depositing it in the Ballot Box, then the Elector is entitled to another ballot to be issued by the Electoral Officer upon return of the spoiled ballot to the Electoral Officer.

(2) The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and without examining the ballot, store it separately.

(3) An Elector who receives a soiled or improperly printed ballot paper upon returning the ballot paper to the Electoral Officer is entitled to another ballot paper. The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and store it separately.

PART VI

COUNTING OF VOTES

66. As soon as is practicable after the close of the polls, the Electoral Officer shall, in the presence of the Deputy Electoral Officer and any Electors who are present, open each outer envelope without opening the inner envelope containing a mail-in ballot that was received before the close of the polls and, without unfolding the ballot,

(a) set aside the ballot if

(i) it was not accompanied by a Voter Declaration Form, or the Voter Declaration Form is not signed or witnessed,

(ii) the name of the Elector set out in the Voter Declaration Form is not on the Electors' List, or

(iii) the Electors List shows that the Elector has already voted, or if the ballot is not set aside,

(b) open the inner envelope and without unfolding the ballot deposit the ballot in the ballot box and place a mark on the Electors List opposite the name of the Elector set out in the Voter Declaration Form and deposit the ballot in a ballot box.

Counting duties of Electoral Officer

69. (1) As soon as is practicable after the mail-in ballots have been deposited under section 66(b), the Electoral Officer shall, in the presence of the Deputy Electoral Officer, any Electors and any other persons permitted by this Act or its Regulations, open all ballot boxes and shall examine each ballot cast and reject ballots that:

(a) were not issued, mailed out or handed out by the Electoral Officer,

(b) does not have the distinctive mark of the Electoral Officer on the back;

(c) are marked "spoiled" "cancelled" or "declined",

(d) contain a mark that identifies or may identify an Elector.

[27] The following provisions from the *Sawridge First Nation Elections Act*, in force as of January 9, 2010, ar relevant in this proceeding:

Application to correct the Electors Lists

19. Any person whose name is not on the Electoral List and believes he/she is eligible to be on the Electoral List, or whose name is on Electoral List but believes his/her name is on the wrong Sub-List, may request the Electoral Officer to correct one or both Lists by giving to the Electoral Officer

(a) written confirmation from the Membership Registrar that the person is a member and is or will be 18 years of age or older on the day of the election, where the person's name is not on the Electoral List; and

(b) a statutory declaration of the right to be on the Electors List and setting out the basis of eligibility for entry onto one or the other the Sub-List.

Correcting the Electors Lists

20. (1) The Electoral Officer shall revise the Electors Lists where it is demonstrated to the Electoral Officer's satisfaction that

(a) the name of an Elector has been omitted from the Electors List;

(b) the name or birth date of an elector is incorrectly set out in the Electors List;

(c) the name of a person who is not qualified to vote is included in the Electors List; or

(d) the name of an Elector was included in the Resident Elector Sub-List or the Non-Resident Elector Sub-List when it should have been included in the other sub-list.

(2) For any change made, the Electoral Officer shall give written notice of the correction to any affected person and to any person who provided information which led to the correction.

(3) The Electoral Officer may ask the Elders Commission any question with regard to a dispute as to whether a correction, omission, or addition should be made with respect to the Electoral Lists, and shall consider the counsel, opinion, or recommendation of the Elders Commission before making a decision.

[28] The following provisions from the *Sawridge Membership Rules* are relevant in this proceeding:

3. Each of the following persons shall have a right to his or her name entered in the Band List; **[PASSED JULY 4, 1985]**

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

(i) is lawfully resident on the reserve; or

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

(b) a natural child of parents both of whose names are entered on the Band List;

(c) with the consent of the Band Council, any person who

(i) has applied for membership in the Band;

(ii) is entitled to be registered in the Indian Register pursuant to the Act;

(iii) is the spouse of a member of the Band, and

(iv) is not a member of another band;

(d) with the consent of the Band Council, any person who

(ii) was born after the date these rules come into force, and

(iii) is the natural child of a member of the Band, and

(e) any member of another band admitted into membership of the Band with the consent of the council or both bands and who thereupon ceases to be a member of the other band.

[...]

15. No person shall have a right to have his or her name entered in the Band List except as provided in section 3 of these Rules **[PASSED JULY 5, 1985]** and, for greater certainty, no person shall be entitled to have his or her name included in the Band List unless that person has, at some time after July 4, 1985, had a right to have his or her name entered in the Band List pursuant to these Rules. **[PASSED JUNE 24, 1987]**

16. In the event that any of the foregoing provisions of these Rules is held by a court of competent jurisdiction to be invalid in whole or in part on the ground that it is not within the power of the Band to exclude any particular person or persons from membership in the Band, these Rules shall be construed and shall have effect as if they contained a specific provision conferring upon such person a right to have his or her name entered in the Band List, but for greater certainty, no other person shall have a right to have his or her name entered or included in the Band List by virtue of the provisions of this Section and, in particular, no person referred to in Subsection 11(2) of the Act shall be entitled to membership in the Band otherwise than pursuant to Section 3 of these Rules. **[PASSED JUNE 24, 1987]**

17. In the event that any provision, or any part of any provision, of these Rules is held to be invalid or of no binding force or effect by an court of competent jurisdiction, these Rules shall be construed and applied as if such provision or part thereof did not apply to or in the circumstances giving rise to such invalidity and the effect of the remaining provisions, or parts thereof, of these Rules shall not be affected thereby. **[PASSED JUNE 24, 1987]**

VII. ARGUMENT

A. *Applicants*

(1) Rejection of Walter's Vote

(a) *Applicable Jurisprudence*

[29] The Applicants argue that the CEO erred in law, in both his initial and appeal decisions, by rejecting Walter's election ballot through the misinterpretation and misapplication of the relevant statutory provisions, an error which was compounded by a breach of the rules of natural justice and procedural fairness.

[30] This Court has jurisdiction to hear appeals of federal boards, commissions, or other tribunals under s 18.1 o Act. SFN meets this definition as it is a band recognized under federal statute and holds elections under the SFN *Elections Act*. In *Roseau River Anishinabe First Nation Custom Council v Roseau River Anishinabe First Na* 2009 FC 655, at para 27, Justice Phelan determined that this Court has jurisdiction over native band councils regarc of whether their election is pursuant to custom or the *Indian Act*, RSC 1985, c I-5 [*Indian Act*].

[31] The Applicants contend that the Court should review the rejection of Walter's vote under the standard of correctness, as it is part of a band election process and custom cannot ignore or trump natural justice and procedura fairness: *Beardy*, above, at paras 44-45, 126. The right to vote is at the heart of any democratic process; as such, irregularities that affect an election result undermine the integrity of the whole process and are grounds for overturnin election. Moreover, a fair election requires the CEO to be an independent, neutral steward of the integrity of the electoral process: *Longley v Canada (Attorney General)*, 2007 ONCA 852 at para 74; *Stevens v Conservative Party of Canada*, 2005 FCA 383 at paras 19-21. The Court must carefully review the CEO's exercise of discretic and ensure it is fair and consistent with statutory safeguards.

[32] At the heart of this case is the confidence of SFN in its electoral process. If people who are qualified or enti to vote are not permitted to do so, this erodes the foundations of democracy. This view is reflected in *Harper v Ca (Attorney General)*, [2004] 1 SCR 827 at para 103.

[33] The Applicants argue that the aforementioned jurisprudence is applicable to the current matter because statu have never declared that the common law principles associated with elections are not applicable to band elections, a courts have the authority to declare an election void under the common law despite the fact that it could have been voided under the statute: *Cameron v McDonnell*, (1874) Russel R (NS) 42-60; *Howley v Campbell*, [1939] 1 DI 431.

(b) *Application to Walter's Vote*

[34] The Applicants contend that the application of the common law to Walter's vote demonstrates the CEO's decisions were unreasonable and reflect serious errors of law and lack of procedural fairness.

[35] The rejection of Walter's vote directly affected the outcome of the Election for Chief, as the result differed b one vote.

[36] The CEO had the responsibility of ensuring a fair and proper election in accordance with s 12 of the *Electio Act*, which does not specify particulars concerning the vote-counting process, including fair counting, determining the validity of ballots, and processing mail-in ballots. The CEO used his own discretion in his decisions. This was an erro as the *Elections Act* does contain specific rules that govern the cancellation of ballots. In particular: s 47(7) permits elector inside the voting station to vote; s 61(1) entitles an elector who inadvertently spoils his ballot to be issued anc ballot; and s 61(2) requires the CEO to write "Cancelled" on a spoiled ballot without examining the contents.

[37] In rejecting Walter's ballot and refusing him another ballot, the CEO committed an error of law going to jurisdiction. His decisions were based on the fact that the CEO's initials were missing from Walter's ballot, despite tl being no issue as to identity, double voting, or that Walter had been present while the polls were open and afterward The CEO allowed technicality to govern over substance, which is not the correct approach. Moreover, the CEO permitted Deana's vote despite apparent deficiencies. Deana's vote lacked a witness address, which means it shoulc have been set aside pursuant to s 66(a) of the *Elections Act*; yet it was accepted.

[38] The CEO justified his rejection of Walter's vote by stating that the CEO's initials were necessary to ensure identification. However, there was no issue as to identification with Walter. The CEO believed that a ballot could not replaced after 6 p.m., even though a replacement was not necessary and Walter was entitled to vote under ss 47 anc of the *Elections Act*.

[39] The CEO then committed a further error in his handling of the appeal decision by refusing to consider the circumstances regarding Walter's vote on the basis that Walter had not appealed and the Applicants were not elders The *Elections Act* does not identify either factor as a requirement for an issue to be subject to appeal. The CEO effectively rejected the Applicants' appeal on an irrelevant ground and improperly declined jurisdiction to inquire anc investigate.

[40] Additionally, the Applicants submit that the CEO refused to hear Walter's representations. In their Notice of Appeal, the Applicants requested the right to attend and adduce evidence, including hearing from Walter. Yet the CE rendered the appeal decision without any regard for that request. Appeal committees must address the issue put to t *Meeches v Meeches*, 2013 FC 196 at para 14. While this Court has found that the right to an oral hearing may be waived, the Applicants submit that this did not occur in the present case, which distinguishes it from *Gadwa v Kehe First Nation*, 2016 FC 597 [*Gadwa*].

[41] The Applicants argue that the CEO failed to conduct the Election and the appeal process in accordance witl highest standards of correctness and procedural fairness, which is sufficient justification to set aside the result.

(2) SFN Membership Application Process

[42] The Applicants submit that the Respondents have failed in their fiduciary duty to establish and confirm that a proper and complete Voter List was prepared, which is in disregard of constitutional, statutory, and other legal requirements. This failure was compounded by corrupt practices, thereby culminating in an error going to jurisdictior

[43] The SFN has a legal history of attempting to assert complete control over its membership. In *L'Hirondelle v Canada*, 2003 FCT 347, affirmed 2004 FCA 16 [*L'Hirondelle*], this Court held that SFN could not continue to ig the legal requirements regarding membership imposed by the *Indian Act* and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act*, 1982 (UK), 1982, c 11 [*Charter*] and the clear directions of the courts. In *L'Hirondelle*, the Federal Court of Appeal upheld an injunction mandating compliance, stating "For those persons entitled to membership, a simple request to be included in the ban membership is all that is required. The fact that the individuals in question did not complete a Sawridge Band membership application is irrelevant." Yet in 2008, SFN attempted to have the *Indian Act* provisions declared unconstitutional, an application that was dismissed: *Sawridge Band v Canada*, 2008 FC 322. Furthermore, the Co held in *Poitras v Twinn*, 2013 FC 910 that *L'Hirondelle* is not a legal barrier to an applicant's membership status. However, SFN continues to refuse to implement *L'Hirondelle* and, by doing so, corrupts its election process. By nc adding entitled persons to the band list, there cannot be a fair election.

[44] The corruption in the membership process is worsened by the queue jumping permitted to Roland's children who were added to the list while others, such as Ms. Donald, are forced to wait until the law is enforced. The evide demonstrates that it is possible for an individual to be left hanging for years in a SFN membership process that is shrouded in secrecy. The SFN has adopted a stance and process that is the polar opposite of the enfranchisement purpose of the *Indian Act* and any truly fair and democratic electoral process.

(3) Pre-Election and Appeal Conduct

[45] The Applicants also submit that the CEO erred in law, including that going to jurisdiction, in failing or declinir make adequate inquiry into the composition of the Voters List, which is compounded by procedural unfairness and a disregard for the rules of natural justice.

[46] According to s 17 of the *Elections Act*, the CEO must send the election packages out not less than 75 days prior to the date of the election. However, SFN did not comply with this in several ways. First, the number of days between December 4, 2014 and February 17, 2015 is 74 days, not 75. Second, electors either received the notice as was the case for Sam on December 12, 2014, or not at all, as was admitted by the CEO in an email to Catherine Third, notice of corrections to the sub-lists was not given until after the deadline for disputing the sub-lists, thereby rendering it impossible to challenge the lists.

[47] Additionally, the CEO erred when he determined that he had no authority to enquire about the issue of outstanding applications for membership. He stated that the issue was one for "membership" in an email on January 2015, and his appeal decision of March 6, 2015 does not even mention the issue, despite its inclusion in the Notice Appeal. The CEO failed to consider this issue, which is a clear decline of jurisdiction and a deprivation of the fair opportunity to be heard.

[48] The Applicants submit that the CEO should have considered this matter as it is within his power to do so un 11(8) of the *Constitution*, which says that the CEO, Appeal Tribunal, or SGA may provide such relief as it sees fit when there is a corrupt practice in connection with the election that might affect the result of the election, or a contravention of the *Constitution* that might affect the result of the election. Section 20 of the *Elections Act* require CEO to revise the list of electors where it is demonstrated to the CEO's satisfaction prior to the nomination meeting

the name of an elector has been omitted from the Electors List. A comparison to an older version of the *Elections A* in force prior to October 26, 2013, demonstrates that additions to the list used to require confirmation from the Membership Registrar. The removal of such a requirement in the *Elections Act* currently in force indicates that the C has the authority to add electors to the lists.

[49] Yet the CEO created the sub-lists from the names provided by SFN and declared that any other names wer matter for "membership," despite the decision in *L'Hirondelle*, above, clearly stating that whether a person has appl for membership or not is irrelevant. The CEO had the responsibility to correct the lists and his failure to do so depriv persons of the opportunity to challenge the lists, which is a complete abdication of jurisdiction and responsibility.

[50] The CEO's errors continued at the appeal stage when he refused to hear from individuals who asserted entitlement to membership by applying irrelevant considerations such as whether a membership application had been processed and accepted. He also breached procedural fairness by depriving the Applicants and others of a fair hear and by abdicating his jurisdiction under s 20 of the *Elections Act*.

[51] The Applicants submit that the CEO's interpretation of s 20 of the *Elections Act* compounds the corrupt practices of SFN. The CEO had the jurisdiction to add to the list, yet refused to do so and referred the matter to "membership." Such an abdication of authority must be resolved by the Court, as the refusal to enquire about unreasonably delayed applications that entitle persons to be electors undermines the integrity of the electoral process

(4) Order Sought

[52] The Applicants seek the following relief:

A. An Order setting aside the results of the February 17, 2015 Election for the position of Chief and/or declari the Election of Chief on February 17, 2015 to be null and void, and declaring a new election for Chief of SF be undertaken;

B. A order requiring a CEO, approved by the Applicants and the Court, to investigate and establish a fair, prop and complete Electors List;

C. An Order setting out such directions as the Court deems fit for the conduct of a new and fair Election;

D. Enhanced costs of this application and prior motions;

E. Such further and other Orders as this Honourable Court shall deem just and convenient in the circumstances

(1) Relevance of Affidavit

[53] The Respondents take issue with the information and documents in Sam Twinn's affidavit. They submit that i irrelevant and inadmissible in a judicial review of the CEO's decision because the information was not before the CE when he made the decisions that are the subject of judicial review, and it does not provide necessary background information to assist the Court in assessing the reasonableness or correctness of the CEO's decisions. Further, it is inadmissible under Rule 81 because most of it is personal opinion or argument. Accordingly, no weight or considerat should be accorded to Sam's affidavit.

[54] The CEO had no power under Sawridge Law to inquire as to why or when an individual's name came to be the Electors List, as this is compiled from the Membership Register under s 16(1) of the *Elections Act*. The CEO's powers are restricted to dividing the list provided by the Membership Registrar into sub-lists of resident and non-resident electors. Once this division is made, any elector can request that an individual be moved from one sub-list tc another, but the CEO can only accede to the request on certain grounds, which are enumerated in ss 20 and 21 of tl *Elections Act*. Such a decision can also be appealed under ss 18.1 and 18.2 of the *Elections Act*.

[55] The Respondents also contend that the Applicants' submissions in paragraphs 70-82 of their memorandum c argument are irrelevant because this judicial review does not review decisions made by SFN under the *Membership Code* between 1984 and 2014. Any interpretation or application of the *Membership Code* is not related or connec to the CEO's decisions and, as such, any submissions regarding this matter should be disregarded by the Court: Rul 302 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*].

(2) Rejection of Walter's Vote

[56] The Respondents submit that the CEO reasonably, indeed correctly, rejected and did not count Walter's ma ballot in accordance with s 69(1)(b) of the *Elections Act*.

[57] The *Elections Act* allows electors to vote either by mail-in ballot or in-person at the polls; however, elector cannot vote both ways in the same election. Mail-in ballots contain the CEO's "distinctive mark" and an elector can either mail the ballot or deliver it to the CEO prior to the close of the polls at 6 p.m. on the date of the election, ss 4:

mail-in ballot for a ballot to be marked and deposited at the voting station, or obtain a ballot and vote in-person at th voting station, if they swear they have not voted in the election by mail or in-person: ss 45(5) and 55(3)(b)) of the *Elections Act*. Once the polls have closed, the CEO opens the mail-in ballot envelopes, checks for a signed and witnessed Voter Declaration Form, and deposits the ballot in the ballot box without unfolding the ballot: s 66 of the *Elections Act*. Following the deposit of the mail-in ballots, the ballot box is then opened and the CEO must examine and reject ballots that: were not issued by the CEO; do not contain the distinctive mark of the CEO; are marked "spoiled," "cancelled," or "declined," or contain a mark that identifies or may identify an elector: s 69(1) of the *Elect Act*.

[58] According to the Scrutineer's report, Walter's ballot was deemed spoiled under s 69(1) of the *Elections Ac* because it lacked the distinctive mark of the CEO on the back. Accordingly, both the Scrutineer and the CEO understood that Walter's vote had to be rejected pursuant to the *Elections Act*. The fact that Walter's ballot should have been deposited unfolded into the ballot boxes without having first been examined by the CEO does not affect t result of the election because as soon as the boxes were opened, the CEO would have had to reject it under s 69(1) Thus, the CEO's decision to reject the ballot was both reasonable and correct and this judicial review should be dismissed.

[59] Similarly, the Respondents take the position that the CEO's subsequent decision to refuse Walter a new, in-person ballot after the polls had closed is neither unfair, discriminatory, or anti-democratic.

[60] Subsection 61(1) of the *Elections Act* clearly allows an in-person voter who errs in voting to return his ballc and receive a new ballot before voting; but this entitlement is not applicable to electors who have chosen to vote by The latter electors can only vote in-person before the polls have closed on the condition that they exchange their unmarked mail-in ballots for in-person ballots, or if they satisfy the CEO that they have not already voted: ss 45(4) a 45(5) of the *Elections Act*.

[61] By the time Walter's vote was discovered as spoiled, the polls had closed and it was too late for him to rece an in-person ballot under s 45 of the *Elections Act*. Thus, the CEO's decision was reasonable and this judicial revie should be dismissed.

[62] The Respondents oppose the Applicants' unsubstantiated suggestion that the CEO used his discretion to rej Walter's vote. In addition to Walter's vote, the CEO applied s 69(1) to reject two additional ballots that had marks identified or potentially identified an elector: s 69(1)(d). Deana's vote, on the other hand, was accepted because it w signed and witnessed, thereby ensuring her identification, as required by s 66(a)(i) of the *Elections Act*. Walter was denied the right to vote; he voted incorrectly and, consequently, his vote was invalid. The rejection of his vote is neitl unfair, discriminatory, or undemocratic; it was mandatory under the rules of the *Elections Act*.

[63] Provisions such as s 69(1) of the *Elections Act* are not unique. Election laws across Canada require voters cast ballots in a basic and prescribed form, lest they be rejected. Some election laws do provide electoral officials w discretion to accept non-conforming ballots but some do not, such as s 86(1)(a) of the *Alberta Local Authorities Election Act*, RSA 2000, c L-21. Yet these provisions are not undemocratic.

[64] Further, the CEO did not breach procedural fairness by deciding the Applicants' election appeals in writing without an oral hearing. The duty of procedural fairness is flexible. In *Gadwa*, above, the election officer was only required to provide a response within 7 days of a notice of appeal and did so without an oral hearing, as is the case here. The CEO rendered a decision within the 7 day time allotment. Additionally, the CEO had all the information required to make a decision because Article 11(1) of the *Constitution* ensures the CEO had a detailed written notic appeal. Further, the issues to be decided in the appeal required the interpretation and application of the *Elections A* undisputed facts, which indicates there could not have been a breach of procedural fairness in not having a hearing between March 2 and 6, 2015. The duty of procedural fairness is limited in this instance because the appeal can be further appealed to the Elders Commission as well as the SGA under Articles 11(3) and 11(4) of the *Constitution*. Thus, the Respondents submit that the Applicants were not denied procedural fairness and this judicial review shouk dismissed.

(3) Dismissal of Challenge to the Electors List and Sub-Lists

[65] The Respondents submit that the CEO's decision to dismiss the Applicants' challenge to the lists of electors non-compliance with the limitation periods in the *Elections Act* was reasonable and correct.

[66] As stated previously, the CEO has no power to inquire into how or why an individual's name is on the list of members entitled to vote that is produced by the Membership Registrar. The CEO's powers are expressly restricted ss 17-20 of the *Elections Act*, which permits the division of the provided list into sub-lists.

[67] The evidence also demonstrates that the Applicants did not challenge the sub-lists until March 2, 2015, when they filed their Notices of Appeal. This was well past the time fixed for challenging the Electors List, as set out in ss 20 of the *Elections Act*. The CEO's decision to apply the statutory limitations was correct and required by law.

(4) Judicial Review Contrary to Public Policy

[68] Even if the Applicants are successful in their arguments that the CEO's decisions were unreasonable, the Respondents submit that this Court should use its overriding discretion under s 18.1(3) of the Act and refuse relief.

[69] The Applicants had several chances before the Election to challenge the list of electors as well as the right to appeal in a three-tiered process. The Applicants did not avail themselves of their rights before the Election, but they exercise their constitutional rights to appeal the results of the Election. However, the doctrine of exhaustion requires t parties exhaust all adequate remedial courses in the administrative process prior to court proceedings: *Re Wilson an Atomic Energy of Canada Ltd*, 2015 FCA 17 at paras 28-33; *President of the Canada Border Services Agenc al v CB Powell Limited*, 2010 FCA 61 at paras 30-32.

[70] While Justice Zinn did not find that the doctrine of exhaustion precluded the Applicants from judicial review, Order does not remove the Applicants' onus of proving entitlement to some relief in their judicial review of the CEO decisions; nor does it remove this Court's inherent discretionary power to refuse any relief even if such an entitlemen proven. In *Strickland v Canada (Attorney General)*, 2015 SCC 37 at paras 37-45, the Supreme Court of Canad found that the Court may exercise its discretion and refuse judicial relief if applicants have an alternative administrati remedy, which is clearly the case in the present matter.

[71] The Respondents submit that to grant the Applicants relief would ignore: the Applicants' failure to challenge sub-lists under the *Elections Act*; the Applicants' first appeal of the Election results on March 6, 2015; the Applicai second appeal of the Election results on May 30, 2015; and the failure to challenge the SGA's decision to dismiss th

final constitutional election appeal. If relief were to be granted in this case, the Court would ignore the principles of administrative law and public law values underlying the doctrine of exhaustion. This Court should not undermine the three-tiered election appeal system established by the *Constitution* or allow the Applicants to circumvent and ignor unchallenged decision of the SGA.

[72] The Respondents therefore submit that the Applicants be denied any relief that might have been available to in a judicial review under s 18 of the Act, even if they are successful in demonstrating the CEO's decisions were unreasonable.

(5) Relief Sought

[73] The Respondents seek dismissal of this application with costs.

VIII. ANALYSIS

The Decisions

[74] Bearing in mind the wide-ranging arguments regarding corrupt practices at SFN brought by the Applicants, i should be kept in mind that the decisions under review in this application are set out in the Notice of Application as confirmed by Justice Zinn in his Order and Reasons of March 30, 2016:

> [3] The applicants' Notice of Application states the following regarding the decision sought to be reviewed:
>
> > This is an application for judicial review, pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985 c. 41 (1st Supp.) (the "Act") as amended, of Dennis Callihoo (being the Chief Electoral Officer ("CEO")) decisions made on or about February 17, 2015 (the "Decision") concerning Sawridge First Nation's (the "Nation") 2015 general election which decision was appealed by Sam Twinn and Isaac Twinn (the "Applicants") on April 13, 2015 to the Sawridge first Nation Special General Assembly which in turn dismissed the appeal on May 30, 2015.

[75] As can be seen in the Applicants' written representations, it is not at all clear what this application is intende encompass. The application refers to "decisions" made on or about February 17, 2015. Those decisions were the subject of appeals to the CEO and, eventually, to the SFN SGA. The Applicants have made it clear that they are no

However, the Amended Notice of Application dated June 26, 2015 seeks broad and extensive relief that goes well beyond the decisions of the CEO and includes, for example, a request for a declaration that certain provisions of the *Elections Act* are invalid and of no force and effect. As becomes clear when the written representations of the Applicants are reviewed, the Applicants have failed to comply with Rule 302 of the *Federal Courts Rules* and are asking the Court to review in one application a variety of matters that do not constitute a "continuous course of cond as defined by the governing jurisprudence. It seems to me that this judicial review is confined to the decisions of the CEO made during the Election, which the Applicants raised in their appeal to the CEO, and which the CEO address in his decision of March 6, 2015:

> **SAWRIDGE FIRST NATION ELECTION APPEAL OF SAMUEL TWINN and ISAAC TWINN DECISION OF ELECTORAL OFFICER**
>
> **PURSUANT TO SECTION 11(2) OF THE CONSTITUTION OF THE SAWRIDGE FIRST NATION 9 (the "Constitution") DATED, MARCH 6, 2015**
>
> 1. An Appeal to the Sawridge First Nation February 17, 2015 Election was received by the Electoral Officer on March 2, 2015. Appeals were filed by Samuel Twinn and Isaac Twinn (referred to as the "Appellants"), both of which appeared to be duplicates. Accordingly, they will be dealt with together.
>
> 2. The Appellants stated four grounds of Appeal as follows:
>
> i. Improper rejection of ballots contrary to Section 61 of the Sawridge First Nation Elections Act (the "Act") and infringements of the Sawridge Constitution.
>
> ii. Non-Compliance with Section 44, 45(4), (7), Section 61 of the Act and Section 2(1)(f) of the Constitution.
>
> iii. Inconsistent Administrative Decision Impacting the Popular Vote.
>
> iv. Non Compliance with Rules regarding the creation and Notice of Voters Lists.
>
> 3. As the first two grounds of Appeal are duplicitous and overlapping, I would propose and will deal with them together.
>
> 4. The Appellants allege and state that an Elector should have been allowed another ballot after the Electoral Officer found the ballot spoiled during the opening of the mail-in ballots. The ballot was found to be spoiled as set out under S. 69(1)(b) of the Act as the ballot did not have the distinctive mark of the Electoral Officer on the back.
>
> 5. Section 61 of the Act is within Part VI and deals with voting. If an Elector makes a mistake, they can return their ballot and receive another ballot However, this is for in-person voting and does not apply for mail-in voting. Section 61(1) states in part:
>
> "If an Elector makes a mistake on a ballot **prior to depositing it in**

6. Section 45(4) and (5) of the Act also allow mail in voters to change their ballots upon signing a written affirmation.

7. Section 47(6) of the Act states that "voting stations shall be kept open from 10:00 a.m., local time, **until 6:00 p.m.**, local time..". I find this applies to both in person voters and mail in voters.

8. There is no provision in the Act for the allowance of voting after the close of the polls at 6:00 p.m. on the election day. The allegations of the Appellants took place after 6:00 p.m. when the polls had closed. Accordingly, this portion of the Appeal is dismissed.

9. It was also alleged that the Electoral Officer allowed a ballot in favour of Roland Twinn despite the irregularity that the Declaration Form did not have an address for the witness. This was not possible as the ballots remained unopened and placed in the ballot box. The assertion of the Appellants of identifying the ballot as in favour of one candidate is based solely on speculation.

10. The purpose of the Declaration Form is to ensure identification of the Elector of which I was satisfied with as the Declaration Form was signed and the Elector identified. This portion of the appeal is dismissed.

11. Further in paragraph 5 of Section II of the Appeal, it is alleged the Electoral Officer should have viewed the in person ballots and correct mistakes before allowing ballots in the ballot box.

12. Section 55(6)(c) of the Act requires the ballot to be folded to conceal printing and any mark placed thereon by the Elector but exposes the distinctive mark of the Electoral Officer. There is no provision to allow the Electoral Officer to view ballots before being placed in the ballot box. This portion of the appeal is dismissed.

13. The Appellants also alleged that an Elector's Rights under S.2 (I)(f) and G) of the Constitution were infringed. This was based in part on the Elector's age as an Elder. I would note the Appellants are not Elders themselves.

14. S. 2(2) of the Constitution states "**when a person believes he or she has been treated unfairly, discriminated against or treated in a manner not in accord with accepted standards of administrative fairness**[.]"

15. In these circumstances, the Elector alleged to have had his rights infringed based on age or other grounds has not made a complaint or appeal, but the Appellants. I find the Appellants do not have standing to bring a complaint under S. 2(2) of the Constitution as their Rights and Freedoms were not affected, but those of another Elector.

16. This ground of the appeal is dismissed.

17. The third ground of appeal also deals with complaints based on another Electors alleged infringement of other Rights under Article 2 of the Constitution.

> 18. Similarly, the Appellants third grounds of Appeal are dismissed for the same reasons as above in paragraph 15.
>
> 19. The Appellants in their fourth grounds of Appeal allege non-compliance with the Voters Lists. There is a process including appeals both to the Electoral Officer and the Elders Commission in "Part III, The Electoral List" of the Act. It is both comprehensive and final. This is necessary to allow the Nomination process and the Voting process to proceed.
>
> 20. The timelines for appeals within Part III of the Act have expired and are concluded. I find the appeals provision in Section 11(2) of the Constitution under which this appeal has been filed does not allow a second opportunity to revisit expired timelines in the Electoral List process under Part III of the Act. The law in Part III of the Act was followed and concluded.
>
> 21. The Appeal is hereby dismissed.
>
> [emphasis in original]

[76] The CEO's reasons as set out above are important because they provide the rationale for the decisions he m in the pre-Election period under review and which are referred to by the parties in their submissions.

Membership Issues

[77] In their written submissions, the Applicants say that the CEO erred in law – including jurisdiction – in failing declining to make adequate inquiry into the composition of the Electors List that was used by the CEO to administer Election. They say this error was further compounded by the CEO's procedural unfairness and disregard for the rule natural justice in his handling of the appeals.

[78] For the obligation to ensure the completeness and integrity of the Electors List, the Applicants rely primarily 20(1) of the *Elections Act* which reads as follows:

> *Correcting the Electors Lists*
>
> 20. (1) The Electoral Officer shall revise the Electors Lists where it is demonstrated to the Electoral Officer's satisfaction prior to the commencement of the Nomination Meeting that
>
> (a) the name of an Elector has been omitted from the Electors List;
>
> (b) the name or birth date of an elector is incorrectly set out in the Electors List;
>
> (c) the name of a person who is not qualified to vote is included in the Electors List

[...]

[79] The Applicants say that these provisions place the responsibility upon the CEO to go behind the Electors Li provided by SFN to ascertain the names of all persons who the Courts have said are rightfully members of SFN, an not just those individuals who SFN has decided to admit to membership in accordance with its own Membership C They say the CEO's decision to leave the status of membership to SFN simply compounds the corrupt practices an procedures regarding membership that the Courts have found to prevail at SFN. In other words, the argument is tha membership for the purposes of the Electors List is not simply a matter of accepting the list provided by SFN's Membership Registrar; it is a matter of the CEO ascertaining and assembling a full membership list in accordance wi the Court's directions on membership entitlement at SFN.

[80] While I think that current membership practices at SFN could give rise to corrupt electoral practices (which will address later), I don't think the CEO can be faulted for taking the position that he cannot be expected to resolv such broad and complex issues of membership in his electoral role. And I think that the governing legislation support that position.

[81] Under the *Elections Act*, the definition of "Electors List" means "the list of Electors prepared pursuant to thi Act" and the preparation of the list is governed by Part III of the *Elections Act*.

[82] Under Part III, it is the "Membership Registrar" who must "provide the Electoral Officer named by the Cou pursuant to the Constitution with an alphabetical list of all members who will be Electors on the day of the Election.. What the CEO can and should do with this list is set out fully in the other provisions of Part III. These provisions de mainly with corrections, omissions and additions to the Electors List provided by the Membership Registrar. And thi must all be done before the nomination meeting because s 18.3 of the *Elections Act* makes it clear that:

> 18.3 After the commencement of the nomination meeting the names which appear on the Electoral List may not be changed and the names which appear on a Sub-List may not be removed from that Sub-List and placed on the other Sub-List.

[83] What is more, s 19 of the *Elections Act* provides as follows:

> *No Delay in Nomination Meeting or Election*

> Nomination Meeting or the Election or the holding of the Nomination Meeting or the Election.

[84] Section 20 of the *Elections Act*, relied upon by the Applicants, allows the CEO to revise the Electors List provided by the Membership Registrar "prior to the nomination meeting" because any application to correct is gover by s 18:

> 18.1 (1) If the Electoral Officer decides that the information provided in the statutory declaration is sufficient evidence, if unrefuted, that the elector's name should be moved from one list to another, the Electoral Officer shall make reasonable efforts to notify all electors that based on the information received, he or she is considering changing the list on which that elector's name appears and offer all electors the opportunity to show cause as to why that elector's name should not be moved from one list to the other.
>
> (2) If any elector wishes to show cause as to why the change should not be made, they may at any time prior to 11 days prior to the date set for the nomination meeting provide the Electoral Officer with a statutory declaration containing evidence and the Electoral Officer shall consider the evidence and make a determination as to which list the elector's name shall appear on and notify all Electors.
>
> (3) The Electoral Officer may ask the Elders Commission any question with regard to a dispute as to whether a correction, omission, or addition should be made with respect to the Electoral Lists, and shall consider the counsel, opinion, or recommendation of the Elders Commission before making a decision.
>
> (4) When considering a request to move an Elector's name from one Sub-- List to another Sub-List in a situation where the Elector has more than one Residence, the Electoral Officer and the Elders' Commission may consider the following in relation to each residence:
>
> i. An Elector may have only one Primary Residence at any point in time;
>
> ii. The location around which the Elector's life is focussed;
>
> iii. The location of the Elector's usual place of employment or education;
>
> iv. The location where the Elector spends the most time;
>
> v. The location which the Elector represents to be the Elector's Residence;
>
> vi. Whether people other than the immediate family of the Elector reside in the residence;
>
> vii. Whether other members of the Elector's immediate family reside in the residence;
>
> viii. Whether the residence is owned or rented, and if rented or leased, the duration of the lease (daily, weekly, monthly, or annual) and the term of the lease (whether it is fixed or indefinite).

> ix. The Elector's social, religious, business, and financial connections to the location of the residence;
>
> x. The location where the majority of the Elector's clothes and personal belongings are located; xi. Regularity and length of stays in a Residence; and
>
> xii. The center of the Electors's vital interests; (5) The Electoral Officer shall make a decision with respect to any appeal received no less than 7 days prior to the date set for the nomination meeting.
>
> 18.2 If any elector wishes to appeal the decision of the Electoral Officer, the matter shall be referred to the Elders Commission no less than 4 days prior to the date set for the nomination meeting which shall decide whether it wishes to hear the appeal, and if not, the Electoral Officer's decision is final. If the Elders Commission decides to hear the appeal, it shall hear the evidence of the electors who have filed statutory declarations, the elector in question, and the Electoral Officer as to the reasons for his or her decision, and after which, shall decide on which list the name of the Elector in question shall appear. The decision of the Elders Commission must be provided to the Electoral Officer prior to the date set for the nomination meeting.
>
> 18.3 After the commencement of the nomination meeting the names which appear on the Electoral List may not be changed and the names which appear on a Sub-List may not be removed from that Sub-List and placed on the other Sub-List.

[85] It is questionable whether s 20 gives the CEO any authority to go beyond s 18 but, even if it did, there woul have to be a request to amend "prior to the commencement of the Nomination Meeting," which did not occur in this case.

[86] It seems clear from Part III that the CEO is neither empowered or obliged to make changes to the Electors or to reject or supplement the Electors List provided by the Membership Registrar, without a request from a membe that he do so. On the facts before me, no such request was made. I see nothing in the *Elections Act* that would allo the CEO to reject the Electors List provided by the Membership Registrar and, on his own initiative, compile an alternative Electors List based upon what the Courts have said about entitlement to membership at SFN. It would m no sense for SFN to put in place an *Elections Act* that did not reflect and conform to its own position on membersh This is not to say, of course, that SFN's position on membership is legal, or that it is not simply defiant of what the Courts have ruled on the issue of membership. But I don't think that those Court rulings give the CEO any power to beyond the present *Elections Act*. And the Court has not been asked to review the legality of the *Elections Act* in t application.

[87] This means that I have to reject the Applicants' argument for reviewable error by the CEO for failing or declining to make inquiry into the composition of the Electors List that was provided to him by the Membership Registrar, after his finding that the "timelines for appeals within Part III of the Act have expired and are concluded." There was no requirement for the CEO to implement some kind of general inquiry into the creation of the Voters Lis

[88] It appears to me that the Applicants accepted this position at the oral hearing before me in Edmonton and agreed, at least, that it would be "impractical" to expect the CEO to deal with membership issues in this broad sense

Failure of Respondents to Establish and Confirm a Proper and Complete Voters List

[89] The Applicants say that the Respondents failed in their fiduciary duty to establish and confirm that a proper a complete Voters List was prepared. They say further that this was done in disregard of constitutional, statutory and c legal requirements, and was compounded by corrupt practices and errors of jurisdiction.

[90] In written representations, the Applicants summarize the situation as follows:

> 81. In *Holland v. Saskatchewan*, [2008] SCC 42, the SCC dealt with the situation where a court issues a binding order which is then not complied with. The court ruled that although some aspect of negligence might be a viable action, the traditional and proper remedy is judicial review for invalidity [para 9]. That is precisely what the Applicants seek. So long as the SFN continues to throw down the gauntlet to the courts by refusing to implement the clear language of this Court in *L'Hirondelle*, *supra*, it continues to irretrievably corrupt the election process. So long as entitled persons are not added to the Band list, despite the clear determination of entitlement, the concept of a truly fair election is illusory.
>
> 82. It is made even worse by the queue jumping which has Roland's scions added to the list whilst others must wait for someone to enforce the law. It is possible, as the evidence indicates, for someone to be left hanging for years, in a SFN process that is shrouded in secrecy. The SFN adopts a stance and process that is the polar opposite of the enfranchisement purpose of the *Indian Act* and a truly fair and democratic electoral process.
>
> [footnotes omitted]

[91] The Respondents take the position that these issues are beyond the scope of review in this application. They that this application is not a challenge to any and all of the decisions made by the Chief and Councillors applying SF Membership Code. Nor is it a challenge to the confidentiality of SFN's membership list under First Nations Law. In c

words, the Respondents say that this issue is entirely irrelevant because it was not before the CEO when he made th pre-Election decisions that are the subject of this judicial review application.

[92] It seems to me that the Applicants are again attempting to use this judicial review of decisions made by the C in the 2015 Election to attack the SFN's Membership Code and the way that membership is dealt with at SFN.

[93] Bearing in mind that this application, as confirmed by Justice Zinn, deals with decisions of the CEO during th 2015 Election, I think that Rule 302 excludes this kind of extensive general inquiry into membership issues at SFN. / the Court has made clear on numerous occasions, where review of multiple decisions is sought, Rule 302 requires a application for each decision to be filed, unless the Court orders otherwise, or the applicant can show that the decisi at issue form part of a continuous course of conduct. However, where two or more decisions are made at different t and involve a different focus, they cannot be said to form part of a continuing course of conduct. See, for example, *Servier Canada Inc v Canada (Minister of Health)*, 2007 FC 196.

[94] In the present case, I do not think that the Respondents' implementation of a Membership Code and the ger process for granting membership at SFN can be said to be part of a continuing course of conduct that includes the decisions made by the CEO at the 2015 Election, except perhaps in one respect. There is an allegation of queue jumping in membership applications that the Applicants say was facilitated by Chief Roland Twinn in the 6 month pe prior to the 2015 Election to ensure that his own son was granted membership, while other applicants for membersh have been kept waiting for years. The inference is that this was done so that Roland's son could vote for his father in 2015 Election. In a First Nation such as SFN with a total membership of only 44, of which only 41 are qualified to v I can see why this might be a concern. In the notice of appeal dated March 2, 2015, the Applicants stated as a grou under IV. Non Compliance with the Rules Regarding the Creation and Notice of Voter Lists:

> 3. The failure to comply with the creation and notice of Voter's Lists was compounded by a process that unfairly added persons and excluded others. In particular, notwithstanding applications for inclusion which had been outstanding for years, only the son of the successful candidate for Chief was added to the List."

This was not addressed by the CEO in the appeal decision. However, the CEO did reply, in an email to the Membe Registrar regarding the Election and his authority to "add the names of persons entitled to membership to the elector

membership issue would be dealt with by Membership." In other words, the CEO felt that he could not deal with thi complaint because, as previously mentioned, his authority to deal with membership issues is restricted by ss 18 and 2 of the *Elections Act*. It seems to me that this position is neither unreasonable or incorrect.

Errors by CEO

[95] The true focus of this application must be the allegations that the CEO, Mr. Callihoo, erred in law (including jurisdiction) in rejecting Walter's election ballot through misinterpretation and misapplication of the governing statuto provisions, and that this error was compounded by a breach of the rules of natural justice and procedural fairness.

[96] It is noteworthy that the error identified is the rejection of "an election ballot," and this would appear to be a reference to the ballot of Walter Felix Twinn.

[97] The Applicants explain the problems associated with the rejection of Walter's ballot as follows, and I think it would be helpful to set out the arguments of both sides on this central point in detail:

> 16. Walter Felix Twin ("Walter") is an elderly resident member of the SFN. He asked Sam in 2012 to run for the position of Chief which Sam, in Sept., 2014, decided to do. Walter was about 80 years old, has health issues and may have difficulty reading and comprehending English, Cree being his first language. On election day Sam was present in the polling station before 6 p.m., as were Walter and his wife.
>
> 17. Mail in ballots were mailed to electors. Before the poll opened at 10 a.m.; the CEO showed Sam's Scrutineer, Ron Rault ("Scrutineer") all the Mail In Ballots, 15 in total, all unopened. The 15 mail in ballots showed the name of the elector on the return envelope and these 15 names were recorded. One of these names was life time resident elector Walter. A non-resident elector, Wesley Twinn, completed his mail in ballot and asked the CEO if he could drop it off but was refused. Therefore, on Feb. 12, 2015 he express posted the ballot. However, Wesley was not one of the 15 names recorded at the polling station. Wesley Twin had to vote in person. Some electors arrived with mail in ballots but without Voter Declarations as required but were permitted to vote in person.
>
> 18. After 6 p.m., the CEO opened the 15 mail in ballots, including Walter's, who was still at the polling station. His ballot was set aside as the portion that had the CEO's initials had been cut off to fit the paper into the return envelope. Discussion ensued between the scrutineer, the CEO and his deputy, in the presence of other electors. The scrutineer's position was that the ballot should be counted as there was no issue as to the elector's intent, identity, nor any suggestion that Walter had voted more than once. Of the 41 electors all were accounted for except for Georgina Ward. Nevertheless, the

the Voter Registration had a witness signature but no witness address as required. The CEO ruled that ballot was valid. In total, the CEO disqualified three of four ballots (all mail-in ballots). He set aside two cast in favour of Sam, one cast in favour of Roland. Thereafter, Sam and his Scrutineer sought to inspect the spoiled ballots, and these requests ignored and/or denied.

19. The Scrutineer suggested that as Walter was present he should be permitted to cast an in person vote. Others waded into the discussion. Irene Twinn, sister of Roland, objected to Walter casting and in person vote. Roland stated that mail in ballots are a problem. The CEO rejected the request. This result was Roland won by one vote rather than a tie vote which would have necessitated a runoff election. In any event, three runoff elections were required as a result of voting for council members and Elders.

20. The Applicants appealed on March 2, 2015, setting out their Grounds of Appeal and expressly indicating their desire to attend and intention to call oral evidence of named individuals, and others. Without notice or otherwise communicating the CEO rejected the appeal on March 6, 2015. In his written decision the CEO makes no mention of the request to attend or call evidence. The decision was, therefore, rendered without hearing evidence or submissions. His stated reason for rejecting the appeal was his interpretation that a spoiled ballot cannot be replaced after 6 p.m., whether the elector is voting in person or by mail in ballot. The purpose of the CEO's initials was to ensure identification. He rejected any element of unfairness or discrimination because Walter was not the appellant and because the Applicants were not elders.

...

58. In this case, the plurality separating Roland Twin and Sam Twinn was one vote. The rejection of Walter Twin's vote directly affected the outcome.

59. The CEO has direct responsibility for ensuring a fair and proper election. Any discretion must necessarily be confined by the law in relation to the purpose of the legislation, and rules of procedural fairness. The Election Act, s. 12, states:

> 12.(1) The Electoral Officer shall be responsible for the fair, efficient and proper conduct of an election held in accordance with this Act and the regulations.
>
> (2) The Electoral Officer may take all reasonable means to encourage, in an impartial manner, all Electors to engage in and to vote at an election.
>
> (3) As such, the Electoral Officer may make such decisions and rules, that are not inconsistent with the provisions of the Constitution, this Act or any regulation made pursuant to this Act, to fulfill his/her responsibilities and to deal with any matter that circumstances require so as to protect the integrity of the election within generally accepted standards for the conduct of elections.

60. The SFN has authority to pass regulations concerning the vote counting process,

ballots are to be discarded, verification of votes, the counting of mail in ballots, the process of verifying ballots, the process of determining what is a proper mail in ballot and how such ballots are to be identified. The CEO did not refer to any such regulations either in his original decision or appeal decision. The simple reason is that regulations do not exist and the CEO is left to make up his or her own rules.

61. However, the Election Act does contain some specific rules which were not referred to by the CEO at either decision level. Ss. 47 and 61 of the *Election Act* states:

> S. 47 (7): *An elector who is inside a voting station at the time that the voting station is to close is entitled to vote.*
>
> *61(1) if and elector makes a mistake on a ballot or inadvertently spoils his/her ballot paper in marking it prior to depositing it in the Ballot Box, then the Elector is entitled to another ballot to be issued by the Electoral Officer upon return of the spoiled ballot to the Elector Officer.*
>
> *(2) The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and without examining the ballot, store it separately.*

62. The CEO did not specify any statutory basis for rejecting Walter's ballot, or refusing another ballot. In doing so he declined to do that which he was directed to do, thereby committing error of law going to jurisdiction.

63. Both his initial and appeal decisions simply state that because his [the CEO's] initials were not on the ballot it would not be counted, notwithstanding that there was no issue as to identity, or double voting, or that Walter was present before and after the 6 p.m. closing, or that there was a clearly discernible voter intention. Technicality governed substance which is the converse of the correct approach.

64. In contrast, the CEO permitted other votes in which the asserted deficiency was at least as serious. The Election Act, s. 66 (a) states that any mail in ballot shall be set aside if not accompanied by a Voter Declaration Form if that form is not signed or witnessed. S. 70 then specifies that any such ballot is void and must not be counted. A mail in ballot by Deana Morton had no witness address but was nevertheless counted. No explanation for the differential standard has been forthcoming.

65. In his appeal decision the CEO stated that the purpose of the initials was to ensure identification of the standard which was the standard he applied to the vote cast in favour of Roland. There was no issue as to identification with Walter and, even if such was somehow conceivable, Walter was present to confirm. However, the CEO was of the view that a ballot could not be replaced after 6 p.m.. There are two problems with that: (a) replacement was not necessary and (b) even if it was, the plain words of ss. 47 and 61 of the *Election Act* govern. His decision can only be reached by reading in further words which would be contrary to the correct statutory interpretation standard, as set out in the law above.

> 66. The errors in his decision were compounded by further error. First, he refused to consider any of the circumstances in relation to Walter because Walter had not appealed and neither of the appellants were elders. The governing statute contains no such requirement just as, on a recount vote a returning officer does not require the individual whose vote is challenged or has been rejected to be the applicant for a recount. As previously indicated direct evidence is not required. What matters is that the appeal body is given notice of an issue triggering a right and duty to investigate. By requiring that the Applicant be elderly he effectively rejected the appeal on an irrelevant ground and improperly declined jurisdiction to inquire and investigate.
>
> 67. The second problem, which goes directly to the heart of procedural fairness, is that in the appeal process the CEO must be taken to have refused to hear from Walter. The Appeal Notice specifically requested a right to attend and adduce evidence, and specifically put forward a request to hear from Walter who would attend. The Appeal decision was rendered without any regard for that request.
>
> 68. As stated in the *Meeches* not only does an appeal committee have power to investigate alleged breaches but must address the issue put to it. The appeal process, as conducted by the CEO, is the mirror opposite of that found in *Gadwa v. Kehewin First Nation* [2016] FC 597. At issue was the counting of certain disputed votes. Because Gadwa failed to raise with the Election Officer his concerns as to the need for an oral hearing, he had waived procedural fairness rights. Further, the Elections Officer had received informal information and indicated that she would take action, provided that affidavits were sworn. That suggestion was declined. In the circumstances the court was satisfied that Gadwa had been given a "meaningful opportunity to put forward his position and evidence in support of that position". Such is the opposite of what occurred here.
>
> 69. The Applicants, and indeed all those entitled to vote in a SFN election, have a legitimate and paramount expectation that the voting process - the fundamental cornerstone of democracy - will be conducted to the highest standards of correctness and procedural fairness. The continuing failure of the CEO to meet those standards is sufficient justification to set aside the election result. Not only were the CEO's decisions unreasonable but reflect serious error of law and lack of procedural fairness.
>
> [footnotes omitted]

[98] The Respondents' position is that the CEO had no choice but to reject Walter's ballot because he was bour do so in accordance with the governing provisions of the *Elections Act*:

> 58. An Elector voting by mail-in ballot receives, under section 40(l)(b), a ballot in the mail bearing the Electoral Officer's "distinctive mark" on it. That Elector can either, choose to mark that mail-in ballot and mail or deliver it to the Electoral Officer "before the time at which the polls close on the day of the Election" under section 45(1)(f). Or, that Elector can, under section 45(4) and section 55(3)(a), choose to "exchange his/her **unmarked** [*sic*] mail-in ballot with the Electoral Officer for a ballot to be marked and deposited in a ballot box at the voting station" or the Elector can, under section 45(5)

that he or she "has not voted in the Election by mail or in person". All mail in ballots received by the Electoral Officer before the polls close remain, under section 66, unopened until after the polls close. Under section 47(6) the polls close at 6:00 pm.

59. An Elector who chooses to vote in person goes to the poll between 10 am and 6 pm and receives a ballot bearing the Electoral Officer's "distinctive mark" if he or she has not already voted in the election either by mail-in ballot or in person: see sections 55(1)(b) and (c) and (e). The Elector then marks the in-person ballot in secret, folds it and deposits it **folded** in the ballot box; section 55(l)(d) and (g).

60. Only after the polls close at 6:00 pm does the Electoral Officer open up the mail-in ballot envelopes he or she received. He or she checks to see whether the Elector has enclosed his or her "signed and witnessed" Voter Declaration Form and, if that form is present, the Electoral Officer shall:

> "... **without unfolding** the ballot deposit the ballot in the ballot box..."

61. Only after all of the mail-in ballots that were accompanied by "signed and witnessed" Voter Declaration Forms are deposited in the ballot box, is the ballot box then opened. Once the ballot box is opened, section 69(1) mandates that the Electoral Officer

"**shall** examine each ballot **and reject** ballots that:

"(a) were not issued, mailed out or handed out by the Electoral Officer,

"(b) **does [sic] not have the distinctive mark of the Electoral Officer**:

"(c) are marked "spoiled", "cancelled" or "declined",

"(d) **contain a mark that identifies or may identify an Elector.**"

Section 69 gives the Electoral Officer no discretion, he or she must reject such ballots.

62. As Sam Twinn's Scrutineer noted in his written report, after the polls closed on February 17, 2015:

> "Every ballot - Mail In or In-Person - had to have the initials of either the Electoral Officer or the Deputy Electoral Officer clearly marked and visible on the back of the ballot before it could be deposited in the ballot box. Both [of Walter Felix Twinn's mail-in] ballots, one for Chief and the other for Resident Council and Resident Elder, had been cut, removing the initials of the Electoral Officer. After thoroughly examining the Ballot for Chief, the Chief Electoral Officer set it aside; discussion occurred between us, in the presence of electors. Later the Chief Electoral Officer declared the ballot spoiled."

And, as explained in the Electoral Officer's March 2, 2015 Decision:

> The ballot was found to be **spoiled as set out under**

Electoral Officer on the back."

63. It was clear, both on February 17, 2015 and on March 2, 2015, that the Electoral Officer rejected Walter Felix Twinn's ballots under section 69(1)(b) because the *Consolidated Elections Act* expressly says that they shall be rejected. They cannot be counted. That reasoning was known and understood on February 17, 2015 by Sam Twinn's Scrutineer. And, as it is an undisputed fact that those ballots did not have "distinctive mark of the Electoral Officer" on them, given the unambiguous meaning of the mandatory wording of section 69(1)(b), the Electoral Officer's decision was reasonable, within the range of possible acceptable outcomes, and indeed correct.

64. Even if Walter Felix Twinn's mail-in ballots should have deposited unfolded into the ballot boxes without having been first examined to see if they had the "distinctive mark of the Electoral Officer on the back", the Electoral Officer's decision not to do so did not affect the result of the election because, as soon as the ballot boxes were opened on February 17, 2015, the Electoral Officer would have then had to summarily reject it under section 69(1)(b). He had no discretion. He could not count it. Indeed, as everyone had already learned from Walter Felix Twinn before the ballot box was opened that he had cut the "distinctive mark of the Electoral Officer" off his ballots, had his Chief ballot been deposited in the ballot box before the ballot box was opened, the Electoral Officer would have also had to reject it under section 69(1)(d). The Electoral Officer's decision not to count Walter Felix Twinn's ballot was reasonable, indeed correct, and this judicial review should be dismissed.

The Electoral Officer's decision not to give Walter Felix Twinn a new, in-person ballot after the polls had closed is neither unfair nor discriminatory nor anti-democratic. It is a reasonable, indeed correct, interpretation and application of the Consolidated Elections Act.

65. As explained by the Electoral Officer in paragraphs 5 - 8 of his March 2, 2015 Decision, while section 61(1) of the *Consolidated Elections Act* allows an **in-person** voter who makes a mistake in the polling booth to return his or her ballot and get a new ballot before actually voting, that section **does not** apply to Electors who have already chosen to vote by mail. Those Electors can only vote in-person before the polls close under sections 45(4) or 45(5); that is, only if they exchange their **unmarked** mail-in ballots for in-person ballots or if they satisfy the Electoral Officer that they have not already voted in the election either in person or by mail-in ballot.

66. By the time it was discovered that Walter Felix Twinn had spoiled his ballot by cutting off "the distinctive mark of the Electoral Officer", it was too late for him to get an in person ballot under section 45(4) or section 45(5). He had already marked his mail-in ballot, he had already mailed or delivered it to the Electoral Officer, who had received it before the polls closed and only opened it after the polls had closed. The Electoral Officer's decision was reasonable. It was transparent, intelligible and within the range of possible acceptable outcomes, given the election regime established by the *Consolidated Elections Act*. This judicial review of the Electoral Officer's decision should be dismissed.

> was inconsistent, unfair, discriminatory or undemocratic must be rejected. The Applicants' unsubstantiated suggestion that the Electoral Officer was left to make up his "own rules" must also be rejected. There is absolutely no evidence to support either of these suggestions.
>
> 68. On the contrary, the evidence is clear that the Electoral Officer did not apply his "own rules". He consistently applied the rules established by the *Consolidated Elections Act*, specifically:
>
> a) he applied the mandatory provisions of section 69(1) to reject not only Walter Felix Twinn' s mail-in ballots but also two in-person ballots that, when the ballot box was opened, were found to have "a mark that identifies or may identify an Elector" contrary to section 69(1)(d); and
>
> b) he accepted the Voter Declaration Form received with Deana Morton's mail-in ballots because it was indeed "signed and witnessed", as required by section 66(a)(i), thus ensuring Elector Morton's identification.
>
> 69. Contrary to the Applicants' suggestion, Walter Felix Twinn was not denied his right to vote. He voted. He marked his mail-in ballot and he mailed or delivered it to the Electoral Officer before the polls closed. He voted "by mail". However, because he did it wrong, just as Electors Morton and Potskin did it wrong, his vote was not counted because it had to be rejected under section 69(1) of the *Consolidated Elections Act*. Section 69(1) was applied consistently by the Electoral Officer to all of the ballots he received. Neither the Consolidated Elections Act nor the Electoral Officer's interpretation and application of them are "unfair", "discriminatory" or "undemocratic".
>
> [emphasis in original, footnotes omitted]

[99] As the Respondents point out, s 69(1) of the *Elections Act* is mandatory ("shall examine each ballot and rej ballots that … (b) does [*sic*] not have the distinctive mark of the Electoral Officer"). The Respondents also point out Walter's ballot could and should also have been rejected under s 69(1)(d) because everyone involved had already learned from Walter himself before the ballot box was opened that he had cut the distinctive mark of the CEO off his ballot.

[100] The Applicants attempt to circumvent the mandatory impact of s 69(1) in several ways. First of all, they refe Court to s 12 of the *Elections Act*:

> 12. (1) The Electoral Officer shall be responsible for the fair, efficient and proper conduct of an election held in accordance with this Act and the regulations.
>
> (2) The Electoral Officer may take all reasonable means to encourage, in an impartial manner, all Electors to engage in and to vote at an election.

> (3) As such, the Electoral Officer may make such decisions and rules, that are not inconsistent with the provisions of the Constitution, this Act or any regulation made pursuant to this Act, to fulfill his/her responsibilities and to deal with any matter that circumstances require so as to protect the integrity of the election within generally accepted standards for the conduct of elections.

[101] It is true that s 12(2) imposes a positive duty on the CEO to encourage electors to engage in the election, bu this does not mean they can vote in a way disallowed by the *Elections Act*, so that it does not override s 69(1). An discretion given to the CEO under s 69(2) can only be exercised in ways "that are not inconsistent with the provisior the Constitution, this Act or any regulations made pursuant to this Act...." Subsection 69(1) is a provision of the *Elections Act* and it says that mail-in ballots cannot be accepted if they do not have the distinctive mark of the CEO if they contain a mark that identifies or may identify an elector.

[102] The Applicants also point to ss 47(7) and 61(1) and (2) of the *Elections Act*:

> *Voting Stations*
>
> 47. (6) Voting stations shall be kept open from 10 a.m., local time, until 6 p.m., local time, on the day of the election unless regulations establish variations in these hours.
>
> [...]
>
> *Cancelled ballots*
>
> 61. (1) If an Elector makes a mistake on a ballot or inadvertently spoils his/her ballot paper in marking it prior to depositing it in the Ballot Box, then the Elector is entitled to another ballot to be issued by the Electoral Officer upon return of the spoiled ballot to the Electoral Officer.
>
> (2) The Electoral Officer shall write the word "Cancelled" on the spoiled ballot and without examining the ballot, store it separately.
>
> [...]

[103] It seems to me that the Respondents are right to point out that these provisions do not assist the Applicants. Walter chose to vote, and did vote, by way of mail-in ballot. He could have chosen to vote in person before the poll closed under ss 45(4) and 45(5) of the *Elections Act*. But this could only have occurred if he had exchanged his unmarked mail-in ballot for an in-person ballot, or if he had satisfied the CEO that he had not already voted in the Election either in person or by mail-in ballot. Walter did not do this. He marked his mail-in ballot and delivered it to t

Walter voted by way of mail-in ballot that was spoiled for reasons later given by the CEO in his March 2, 2015 Decision, *i.e.*:

> The ballot was found to be spoiled as set out under s 69(1) of the Act as the ballot did not have the distinctive mark of the Electoral Officer in the back.

[104] The Applicants' final argument is based upon common sense and fair play. In essence, it is that Walter attenc to vote before the polls closed, he had only cut off the CEO's distinctive mark to fit his mail-in ballot in the envelope. everyone knew who he was, he could easily have been given an in-person ballot and allowed to vote in a way that would not identify him. No harm would have been done to the electoral process in a context (41 electors) where ev vote is highly significant. The Applicants say that the CEO placed form ahead of substance.

[105] This seems to me to be an argument alleging the unreasonable exercise of a discretionary power. But the CE only had the powers granted to him by the *Elections Act*. The Applicants' arguments make sense to me, but they cannot be reconciled with the process chosen by SFN under the *Elections Act*, and I am not here reviewing that *Elections Act*. If form has been placed before substance, then it is SFN who has done this, not the CEO. The way deal with this kind of problem is to seek an amendment to the *Elections Act* that would give the CEO the scope to with the kind of problems that arose in this case over Walter's vote. Given the current wording of the *Elections Act*, cannot say that the CEO was either incorrect or unreasonable in rejecting Walter's ballot.

Queue Jumping

[106] The Applicants complain that the election process is corrupted at SFN by the way that the Membership Committee allocates membership to applicants and controls the Membership Register and hence, the Electors List.

[107] There is no Membership Code decision before the Court in this application, but the Applicants' specific complaint appears to be that Chief Roland Twinn's son was granted membership in the 6-month period prior to the Election – thus effectively ensuring a vote for his father - while other applications for membership have been left hang for years. The Applicants point out that the whole membership process is shrouded in secrecy and this undermines tl democratic process, and did in this case because Chief Roland Twinn's son was granted membership in a way that v not transparent. It is also not disputed that Chief Roland Twinn chaired the SFN Membership Committee which con

Roland Twinn could find himself in a conflict of interest when it comes to deciding any application for membership, a particularly when his own children are involved. Even if he abstains, that does not mean that his influence and his wis will be disregarded.

[108] Because there is no application to review the decision to grant Membership to Chief Roland Twinn's son be me, the Court is not in a position to assess whether that decision was erroneous or unlawful, either in terms of SFN's own constitution or the significant jurisprudence that has dealt with the vexed issue of membership at SFN. The Applicants are simply asking the Court to draw an inference that Chief Roland Twinn, and those he is able to influen have, in this instance, used their control over membership to secure an advantage in the Election. Based upon the rec before me, I do not think that such an influence can be drawn. In any event, however, the Court is reviewing the dec of the CEO during the Election and the Applicants' appeal of the Election.

[109] The grounds of the appeal were:

> **SAWRIDGE FIRST NATION ELECTION APPEAL**
>
> **FEBRUARY 17, 2015**
>
> We provide Notice pursuant to the Constitution of this Nation of our intent to Appeal the results of the General Election of the First Nation for the position of Chief, the position of Councillor and the position for the Elders Commission. I have reasonable grounds to believe that there has been a contravention of the Constitution and contraventions of the laws of the First Nation that have affected the results of the Election. In the final analysis, the announced results do not reflect the popular vote and the Nation is best served by the relief requested and calling for a new Election in order to properly reflect the popular vote.
>
> **GROUNDS OF APPEAL**
>
> **I. Improper Rejection of Ballots, Contrary to s.61 of the Sawridge Election Act and the Sawridge Constitution which Guarantees the Right Not to be Discriminated Against and, the Right to Equal Protection, Treatment and Benefit under the Laws of the First Nation**
>
> **During the Ballot Opening and Count Process of the February 17, 2015 Election:**
>
> 1. The Chief Electoral Officer (CEO) discounted the clear intention of voter Elder Walter Felix Twin who cut his Mail In Ballots to fold and fit the envelope. The CEO, in searching for his own initials, thoroughly examined the Ballots which had been in the sealed envelope. At this point in time, the CEO embraced the now discredited strict

complete, with the exception of the Electoral Officer's identifying initials, was held to be an invalid expression of the Voter's intent. The CEO deemed the ballot cast by Walter Felix Twin "spoiled" or otherwise rejected;

2. On the contrary, the modern electoral guidelines embrace a substantive approach emphasizing the right of the elector to express his free political opinion. There can be no question that all of the usual safeguards were in place, protecting the sanctity of the ballots. With the exception of the CEO's initials, all other safeguards were in place and the unfettered will of the voter clearly expressed. While other voters subsequently enjoyed corrective measures, this specific mail in voter who was present February 17, 2015, did not receive any assistance and was therefore deprived of his right to participate.

3. This error on the face of the record effectively added one vote in favour of the Incumbent and reduced by one the number of votes for the Challenger contesting the position of Chief, resulting in a reversal of the elected representative. At best, the error resulted in a tie, giving rise to a new Election. Subject to the evidence of the Chief Electoral Officer and the Scrutineer, the elections for the position of Councillor and the Election for the position of Resident Elder to the Elders Commission, have been similarly impacted.

II. Non Compliance with Election Rules - s. 44, s.45(4), (7), s.61 and s.2(1) (f) of the Sawridge Constitution which Guarantees the Right to Vote to all Electors

1. The CEO closed the Polls and started opening the Mail In Ballots thereby depriving any elector present, in particular, 80 year old Elector Walter Felix Twin, the opportunity to correct their Mail In Ballot or vote in person as provided for by the Elections Act as amended. We have a custom which shows great deference to age, life, experience, education, health, ability to appreciate and understand the written word and, we make every effort to accommodate these issues. The strict procedural approach by the CEO is contrary to our custom, culture and prevailing law.

2. The CEO refused to allow the 80 year Elector, Walter Felix Twin, present, to cast a new Ballot, despite being asked by Scrutineer Ron Rault. The incorrect interpretation of the procedural rules coupled with the small size of the return envelope, and difficulty appreciating written instructions required the voter to cut down the size of the ballot to fit the envelope with a predictable result. Cutting the Ballot is one of a list of available responses some of which are more reasonable than others. With every other safeguard in place to protect the sanctity of the Ballot itself, this voter response was not so unreasonable as to deprive the voter of the opportunity to participate. On the contrary, participation is to be encouraged and indeed commended.

3. Alternatively if the Rules do not provide an opportunity to substitute a Ballot, such provisions improperly discriminate as between types of electors.

4. In contrast the CEO set aside then allowed a Mail In Ballot in favor of Roland Twinn despite the irregularities in the Voter's Declaration Form which form did not identify the address of the witness to the Elector's Declaration. The form is specific

5. The CEO failed to show the Scrutineer the two Ballots that allegedly identified the Elector. He then deemed these Ballots "spoiled". The CEO and DEO failed to check the Ballots before being deposited into the Ballot Box and enable a correction so each vote would count. The CEO upon request from Sam Twinn confirmed that one of the Ballots was cast in favor of Sam Twinn for Chief.

III. Inconsistent Administrative Decision Impacting the Popular Vote

1. The differential approach by the CEO followed upon the determination of who the votes were cast for, in at least one case. In fact the CEO confirmed his knowledge who the Elector voted for as Chief.

2. Despite Walter Felix Twin's presence to the knowledge of the CEO, no steps were taken to identify any difficulties with the Ballots and allow Walter Felix Twin to exercise his full voting rights under the Election Act as amended and to consider his Mail In Ballot spoiled and offer him the opportunity to vote, as he was entitled to do. Administrative fairness as provided under the Sawridge Dispute Resolution Act requires Notice and an opportunity to express concerns provided it would not cause unreasonable delay. Walter Felix Twin was present and no delay would have occurred.

IV. Non Compliance with the Rules Regarding the Creation and Notice of Voter Lists

1. The Election Act as amended requires that Elector Sub Lists be mailed to each Elector not less than 75 days prior to the Election. This was not complied with.

2. The failure to comply deprives persons who had not been Included in the List the opportunity to present information to the CEO to ensure their proper inclusion as provided by the Election Act as amended.

3. The failure to comply with the creation and notice of Voter's Lists was compounded by a process that unfairly added persons and excluded others. In particular, notwithstanding applications for inclusion which had been outstanding for years, only the son of the successful candidate for Chief was added to the List.

EVIDENCE

I. We intend to call the evidence of Samuel Twinn, Isaac Twinn, Felix Twinn and others as they become known to us, together with the evidence of the Scrutineer, Ron Rault. The Scrutineer's Report is attached for your information and review.

[110] The CEO's decision rejecting this appeal is set out at paragraph 75 above.

[111] As can be seen from the above, this ground of appeal was rejected on the basis of "timeliness" and non-compliance with Part III of the *Elections Act*.

[112] The Applicants have not addressed this aspect of the decision before me.

Procedural Fairness

[113] The Applicants raise the following procedural fairness issues:

> 66. The errors in his decision were compounded by further error. First, he refused to consider any of the circumstances in relation to Walter because Walter had not appealed and neither of the appellants were elders. The governing statute contains no such requirement just as, on a recount vote a returning officer does not require the individual whose vote is challenged or has been rejected to be the applicant for a recount. As previously indicated direct evidence is not required. What matters is that the appeal body is given notice of an issue triggering a right and duty to investigate. By requiring that the Applicant be elderly he effectively rejected the appeal on an irrelevant ground and improperly declined jurisdiction to inquire and investigate.
>
> 67. The second problem, which goes directly to the heart of procedural fairness, is that in the appeal process the CEO must be taken to have refused to hear from Walter. The Appeal Notice specifically requested a right to attend and adduce evidence, and specifically put forward a request to hear from Walter who would attend. The Appeal decision was rendered without any regard for that request.

[114] In their grounds of appeal, the Applicants alleged, *inter alia*, non-compliance with s 2(1)(f) of the *Constitut* which protects the rights and freedoms of members against "unreasonable search or seizure."

[115] In his decision, the CEO says that the "Appellants also allege that an Electors Rights under s 2(1)(f) and (j) c the Constitution were infringed."

[116] The CEO appears to have raised s 2(1)(j) himself because of the mention of Walter's age in the appeal. Subsection 2(1)(f) includes the right not to be discriminated against on the basis of "age."

[117] The Court does not understand the relevance of s 2(1)(f) to the facts and issues at play in this case which ha nothing to do with unreasonable search and seizure. And as the Applicants didn't raise s 2(1)(j), it is hard to see hov they can now say that the appeal was unfairly handled or dismissed based upon this issue.

[118] However, the grounds of appeal do make some mention of age:

Electors

1. The CEO closed the Polls and started opening the Mail In Ballots thereby depriving any elector present, in particular, 80 year old Elector Walter Felix Twin, the opportunity to correct their Mail In Ballot or vote in person as provided for by the Elections Act as amended. We have a custom which shows great deference to age, life, experience, education, health, ability to appreciate and understand the written word and, we make every effort to accommodate these issues. The strict procedural approach by the CEO is contrary to our custom, culture and prevailing law.

2. The CEO refused to allow the 80 year Elector, Walter Felix Twin, present, to cast a new Ballot, despite being asked by Scrutineer Ron Rault. The incorrect interpretation of the procedural rules coupled with the small size of the return envelope, and difficulty appreciating written instructions required the voter to cut down the size of the ballot to fit the envelope with a predictable result. Cutting the Ballot is one of a list of available responses some of which are more reasonable than others. With every other safeguard in place to protect the sanctity of the Ballot itself, this voter response was not so unreasonable as to deprive the voter of the opportunity to participate. On the contrary, participation is to be encouraged and indeed commended.

[119] It seems to me that although Walter's age is mentioned here, as is the custom to deference for age, it is not r explained how Walter's age and status as an elder affected his ability to vote or required that the normal voting rules needed to be modified in his case.

[120] I think this is what the CEO means by citing Walter's constitutional rights under s 2 of the *Constitution* and pointing out that the Applicants are not elders themselves. The point is that the Applicants did not establish that they themselves had had any s 2 rights that were infringed.

[121] I agree with the Applicants that they did not need s 2 standing to bring an appeal under Article II of the *Constitution* which provides that "any Elector may lodge a written appeal... if the ... Elector had reasonable agrou to believe that there was":

(a) a corrupt practice in connection with the election; or

(b) a contravention of this Constitution, or any law of the First Nation that might have affected the result of the election.

[122] The grounds of appeal focus upon the way that Walter's ballot was dealt with and the CEO's refusal to allo him to vote in person. The CEO gave reasons for this aspect of the appeal and I cannot say that, given the governing

not able to vote, but I don't see any provisions in the *Election Act* or the *Constitution* that say that an elder is not bound by the same election rules as everyone else at SFN, or that special dispensation must be made by the CEO w dealing with an elder. The *Constitution* and the *Elections Act* in their totality don't suggest that an elder's vote is ar more valuable than is the vote of other members who qualify as electors.

[123] The balance of the grounds of appeal refer to non-compliance with the rules governing mailing of elector sub lists "not less than 75 days prior to the Election" which was compounded by the queue-jumping issues I have alread referred to.

[124] These voter list issues are dealt with in paragraphs 19 and 20 of the Decision and I can find no reviewable e in the CEO's reasons.

[125] The appeal was not rejected on the irrelevant ground that the Applicants had to be elderly. The substance of appeal was rejected on the basis that Walter's ballot had been handled in accordance with Part III of the *Elections* which is "comprehensive and final." I see no error here.

[126] I see nothing in the "Appeal Notice" or in the record before me to show that the Applicants "specifically put forward a request to hear from Walter who would attend."

[127] In any event, Article II of the *Constitution* requires all appeals to be made in writing and that the "Electoral Officer shall make a decision in respect of any appeal within seven days of receipt." Appeals have to be made within days after the election.

[128] For obvious reasons, SFN has decided that any appeals need to be dealt with quickly and in writing. Long, drawn-out appeals can give rise to significant uncertainty and difficult legitimacy issues for which the whole First Nat can suffer.

[129] The Court has not been asked to review the Article II appeal process in any general way and, on the facts o

appeal in accordance with Article II. Given the issues raised, Article II provided a reasonable process whereby app the *Elections Act* to undisputed facts, the Applicants were able to state their case. It is true that the Applicants wan the CEO to take general soundings with regards to membership at SFN, but that was not within the CEO's compet or jurisdiction. The material matters of concern that the CEO could deal with – the handling of Walter's ballot and th Voters List issues – were reasonably and fairly dealt with on the basis of written submissions.

Conclusions

[130] The Applicants have not convinced me that a reviewable error has occurred in this application.

Costs

[131] The Respondents have asked for their costs in this case, but I feel this is an appropriate case to require that sides meet their own costs. As the jurisprudence shows, there is significant concern and confusion regarding membe and, thus, voting entitlement at SFN. As Justice Zinn pointed out, this application raises "serious matters that will affe the electoral process undertaken in 2015 and future elections." These are serious, public issues that affect all membe SFN and I do not think that individual members should be discouraged from coming before the Court on those occasions when their concerns have some justification. SFN is unique in being such a small and self-contained First Nation. It has also faced numerous disputes on the membership issue. Membership is a requirement which is tightly controlled and the process for granting and withholding membership is opaque and secretive. Hence, there is scope abuse and the lack of transparency is bound to give rise to future disputes. This application is a function of the syste place at SFN. Although I cannot find for the Applicants on the facts of this case, it seems to me that this application some extent at least, a response to a public need at SFN that will persist until membership issues are resolved.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. The parties will bear their own costs.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1073-15
STYLE OF CAUSE:	SAM TWINN ET AL v SAWRIDGE FIRST NATION ET AL
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	MARCH 14, 2017
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	APRIL 26, 2017

APPEARANCES:

Cameron McCoy	FOR THE APPLICAN
Edward Molstad	FOR THE RESPONDEN

SOLICITORS OF RECORD:

Goodtrack Law Regina, Saskatchewan	FOR THE APPLICAN
McCoy St. Albert, Alberta	FOR THE APPLICAN
Parlee McLaws LLP Edmonton, Alberta	FOR THE RESPONDEN

Action No.: 1103 14112
E-File No.: EVQ18SAWRIDGEBAND
Appeal No.: _____

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

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
January 5, 2018

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

This is Exhibit "7" referred to in the Affidavit of
Shelby Twinn
Sworn before me this 25th day
of May A.D., 2022
A Commissioner for Oaths in and for the Province of Alberta
ROBERT A PHILP, Q.C.

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

January 5, 2018	Afternoon Session
The Honourable Justice Thomas	Court of Queen's Bench of Alberta
D.C.E. Bonora	For the Trustees of the 1985 Sawridge Trust
M.L. England	For the Trustees of the 1985 Sawridge Trust
E.H. Molstad, QC	For the Sawridge First Nation
J.L. Hutchison	For the Office of the Public Trustee
K.A. Platten, QC	For C. Twinn
D.D. Risling	For C. Twinn
K.B. Haluschak	For R. Twinn, W.F. Twin, B. L'Hirondelle, and C. Midbo
S. Mebude	Court Clerk

Discussion

THE COURT: Good afternoon.

MS. BONORA: Good afternoon.

THE COURT: Thank you.

MS. BONORA: So I see the clerk has just handed you a list of all the people who are here.

THE COURT: Yes.

MS. BONORA: There's just a couple of additions on client parties, so I'll give you this list instead.

THE COURT: All right. I am going to start this afternoon session by just dealing with an update of the status of all of the litigation that seems to squirrel around the original request for advice and directions that principally involved the counsel for the trustees and the Public Trustee, so I'm going to go to Mr. Molstad and just ask if there is anything to add to his report on the litigation or the status of the litigation which relates to a letter addressed to me, dated January 3, 2018. It seems to be quite a complete report; but given the pace and the number of pieces of litigation in play

here, anything to add?

Submissions by Mr. Molstad

MR. MOLSTAD: Well, it was -- the report was two days ago, Sir, so I believe it's complete unless my friends have anything that they wish to add. The one case that wasn't reported on was the one that was carved out of this, and that was an application that was heard by another justice by Ms. Twinn for advance cost; and we didn't report on that, but these are all the --

THE COURT: Yes.

MR. MOLSTAD: -- matters that you've dealt with.

THE COURT: Yes. No, that piece of litigation was quite consciously separated from this --

MR. MOLSTAD: Yeah. Yeah.

THE COURT: -- stream of proceedings. So nothing since January 3rd then?

MR. MOLSTAD: Nothing since January 3rd, Sir.

THE COURT: All right. Okay. Well, thank you very much for providing that. It takes quite a bit of time to keep track of all of the activities in the Alberta Court of Appeal.

All right. Well, then we are going to go to -- well, we will go to -- I would like an update on the status of what appears to be a parallel settlement process involving Ms. Phyllis Smith, QC, as an arbitrator. I had never heard about that proceeding or process until I ran into the arbitrator at a social function and somehow it came up that she was involved, but can you tell me what is going on there? I mean, if it will lead to a settlement, I would be delighted. Anyway, can you, Ms. Bonora, tell me what is going on?

Submissions by Ms. Bonora

MS. BONORA: Sir, let me start by saying it actually isn't a parallel settlement process.

THE COURT: Okay.

MS. BONORA: It's a separate proceeding involving the five trustees. It involves -- and I'll actually perhaps have Mr. Haluschak address this because he is actually counsel for the four trustees in respect of that proceeding, and then my friend Ms. Platten is counsel for Catherine Twinn in that proceeding; but it involves proceedings around the *Code of Conduct* for the trustees and proceedings to perhaps remove some of the trustees and proceedings to set a process for appointment of trustees. So it -- while it's parallel, I don't believe there's actually any cross-over --

THE COURT: Oh.

MS. BONORA: -- in respect of this litigation.

THE COURT: All right. Well, I think that is all I need to know. I just did not want to -- it just sort of came as a surprise to me. Do you want to add anything there?

Submissions by Mr. Haluschak

MR. HALUSCHAK: Well, Sir, I can update you. Again, it's Ken Haluschak from Bryan and Company representing the four individual trustees and --

THE COURT: Mm-hm.

MS. HUTCHISON: -- and in respect of the *Code of Conduct* hearing. Just so that you are up to speed, you are correct that Ms. Smith, QC, has agreed to be the mediator/arbitrator. That process is scheduled for March 5 to and including the 16th of this year. Ms. Cumming for the trustees and Ms. Osualdini for Ms. Twinn agreed on a list of issues, I believe. Mr. Risling who is present in court today, he and I attended for our first meeting with Ms. Smith on November 10th. Ms. Smith made certain directions including an exchange of records each side intends to rely on at the *Code of Conduct* hearing, and that was accomplished in mid-December. Ms. Smith also directed Ms. Twinn to disclose the names of her experts in December, and we received that list of six experts.

The next important date would be January 15th. It's important for two reasons: First, we're due back to visit with Ms. Smith to give her an update on how we're doing, and we're told that we should have the reports of those six experts in our hands by that date; and then we have a final meeting with Ms. Smith scheduled for February 28th. And as I indicated, we are scheduled to start on March 5th.

THE COURT: Okay. Thank you. I do not think I need to hear anymore on that subject.

All right. Let us go to the -- well, I am going to work off the material provided by you, Ms. Bonora, the title "Trustees Proposed Agenda" for the January 5th case management meeting; that is today's session.

Would you like to sit in those really uncomfortable chairs they use for juries? You are welcome to sit there rather than -- you do not have to lean against the wall if you do not want to. Anyway, at any time, please feel free to sit down there. They are only marginally more comfortable than the church pews that are arranged at the back of the room.

So if you would like to just proceed using that material, that would be fine by me.

Submissions by Ms. Bonora

MS. BONORA: Sir, so I'll just start by saying that obviously we're trying to seek an efficient way to end this litigation, and I think the letter you've provided to counsel gave an indication that you are also seeking us to move forward to try and find an efficient way to end this litigation. Ryan Hatticur (phonetic) who acts as the chair of the trustees and also sits on the board of trustees has asked me to address to you the fact that these are difficult times for companies, and this trust is not an exception to that, that the cost of this litigation is becoming very difficult for the companies to fund. This is not a trust that just has a big sum of cash, so these companies have to generate profits that then have to be dividended to the trust; and that's becoming increasingly difficult for the trust, and therefore it becomes even more important for this trust to -- for this litigation to be conducted efficiently and to find an end so that the legal costs can also end.

The -- we also need to be mindful, and I'd like to say this because I think it is important, these funds don't belong to these litigants. It belongs to the beneficiaries, and the beneficiaries don't have choices in what's happening here except through the parties who are representing them; and it is important that we understand that at this point because the trust has been determined to have discriminate -- discriminatory elements, no payments have gone to those beneficiaries until -- and no payments will be made to those beneficiaries until this litigation is ended.

So leading into then the discrimination issue, it is our proposal that we have a discrete and directed hearing on discrimination. But even before you consider that, in looking at

the submissions that we have made and in looking at the submissions made in writing to you by letter from McLennan Ross, from the office -- from Hutchison Law, and from Borden Ladner Gervais, I would suggest to you that in fact all of the parties agree that there is discriminatory elements of this trust.

THE COURT: Actually, that is exactly where I was going to go was if everything is on side on that issue and I think that is the whole reason why this proceeding, if I can call it that, I think it kicked off because of an informal advice and directions application almost seven years ago which came before me just in normal commercial law chambers, if everybody who is really seen as a party, and we perhaps need to have a discussion about that, see this as discriminatory, why not just get there real quick on a consent order --

MS. BONORA: And --

THE COURT: -- or an order that is consented to maybe by some of the participants, and then just put before me and I will deal with it, like, quickly?

MS. BONORA: And -- so we invited that in our agenda. There are concerns raised by the other parties in their letters that we perhaps have not addressed --

THE COURT: Okay.

MS. BONORA: -- all of the elements of --

THE COURT: Okay. Let us --

MS. BONORA: -- discrimination.

THE COURT: -- talk about other parties because as part of the blizzard of emails that started showing up on my desk this morning, I mean, certainly some of them were not a surprise; that is, a position from Ms. Hutchison for the Public Trustee, from Ms. Platten at McLennan Ross on Ms. Twinn's behalf. I saw one from Ms. Golding. I did not -- it is on my phone, I guess, but I did not get it printed off. I am not sure. They are not parties.

MS. BONORA: No, Sir, and so I didn't actually want to start on a negative element --

THE COURT: Okay.

MS. BONORA: -- but it is certainly our submission that those submissions such not be regarding by this Court. They are not parties. We including Ms. Golding in our agenda and had provided it to her because part of the agenda we are addressing today is how should non-parties participate. In your direction in *Sawridge 5* , *you suggested that those persons who were not made parties could still have some element of participation. The Court of Appeal in the Saw -- in the appeal of Sawridge 5* --

THE COURT: Mm-hm.

MS. BONORA: -- also said, Perhaps an application should be brought to you to address what that participation looks like, and so that's why we've addressed it in our agenda. When I invited Ms. Golding -- or when I sent the agenda to Ms. Golding, I assumed she would address only that issue; and in fact, she didn't address that issue at all and started to address procedure. It's our view that she is not a party, and procedure is not in her realm of participation.

THE COURT: Mm-hm.

MS. BONORA: So --

THE COURT: Okay.

MS. BONORA: -- we invite her certainly, and you see in our agenda, our thought is that non-parties can participate perhaps by providing evidence and providing short, non-repetitive submissions, but nothing more. And so when I say the parties in terms of what they've said, my thoughts are really in terms of the parties which are the Office of the Public Trustee and Guardian and Catherine Twinn.

THE COURT: Sorry. Just -- okay. Ms. Twinn, Public Trustee?

MS. BONORA: And the --

THE COURT: I have the trust --

MS. BONORA: -- Sawridge Trustees.

THE COURT: And --

MS. BONORA: Those are really the only the --

THE COURT: -- the trustees --

MS. BONORA: -- parties.

THE COURT: -- the three --

MS. BONORA: Yes.

THE COURT: -- parties that have sort of -- are participants.

MS. BONORA: Correct.

THE COURT: So I am still not quite sure what Ms. Twinn's status in all of this is, but certainly she has been showing up through counsel for some --

MS. BONORA: Yes.

THE COURT: -- time.

MS. BONORA: And she is a trustee.

THE COURT: Mm-hm.

MS. BONORA: And it is the five trustees who brought this action. She's now become an opposing party to the --

THE COURT: Mm-hm.

MS. BONORA: -- trustees, but I suspect that we wouldn't say she is not a party to these proceedings.

THE COURT: Okay. All right.

MS. BONORA: She is certainly named as a party and named as an applicant.

THE COURT: Okay. Okay. Well, let us just go back, so just making the assumption, and I agree with you, that is how I see it because the First Nation has always been very careful not to be a party, although it is always hard to overlook

Mr. Molstad, but they are not a party.

MS. BONORA: No.

THE COURT: Never have been except on a limited basis when the interests of the First Nation were affected. So we are down to the three parties.

MS. BONORA: Correct.

THE COURT: Now, can all three parties agree on an order that the 1985 Trust is discriminatory, period, without going through a big piece of more litigation?

MS. BONORA: So perhaps, Sir, if I could just simply address a bit more --

THE COURT: Mm-hm.

MS. BONORA: -- on that issue and then I wonder if it --

THE COURT: Okay.

MS. BONORA: -- makes sense to hear from the other two parties on that issue at this time?

THE COURT: Yes.

MS. BONORA: So -- and I think what -- the one concern that has been raised is whether we, as the trustees, have addressed all of the elements of discrimination. And it is our submission that it doesn't matter if we have or not if this trust is deemed to be discriminatory, that then leads to certain element -- that then leads to fixing that problem; and we don't need to address all of the elements of discrimination. If there's even one, then we've gotten past the first major question we asked this Court to address; and so I would submit that we are at that stage and that we should, in fact -- we don't actually need a directed hearing, although obviously you know I've set out the procedure for that --

THE COURT: Mm-hm.

MS. BONORA: -- if we have to go there. So I would say that I believe we're at the stage where there is no dispute on that issue; but in the event that

there is any dispute, I think it's very clear that it would be a small directed hearing on the specific issue of whether this trust discriminates certainly against certain women that have now been corrected by legislation. So if that's sufficient, Sir, I'll let my friends address that issue?

THE COURT: Okay.

Ms. Hutchison?

Submissions by Ms. Hutchison

MS. HUTCHISON: Happy New Year, My Lord. My Lord, I think really the key thing is to take a look at the Court of Appeal decision in *Sawridge 5* on this matter. If the Court turns to paragraph 21 and 22 of that decision --

THE COURT: Mm-hm.

MS. HUTCHISON: -- the Court is, we would suggest, quite clear that the next step that we have to deal with in this matter is filing of an originating document. It may be that it is possible to come to some consensus on, and I'm using air quotes, My Lord, the discrimination issue. The first step is for the trustees to finally formally put that issue in writing in an originating document with the relief that they're seeking --

THE COURT: Yes. Well, yes.

MS. HUTCHISON: -- for the parties to be able to form their positions on --

THE COURT: Okay.

MS. HUTCHISON: -- that, My Lord, and --

THE COURT: Well, I will accept that. I mean, not -- although I will say this: You know, the Court of Appeal, I can jump over what they have to say to get this dispute resolved. I do not have to -- I mean, if all the parties come together on it, I do not need all this little paperwork. I mean, probably it would be a good idea to kick out, I think it is called a constating document, whatever that is. I think it is a pleading to put it back in litigation terms. But anyhow, okay, sorry, I butted in but okay. So that problem could be solved pretty quick.

MS. HUTCHISON: And our position, My Lord, is that we can provide the trustees with a final position when we see their actual originating pleading, framing the discrimination issue, framing the relief that they're seeking as directed by the Court of Appeal; and it is possible that whatever they frame as the discrimination issue in that document can be dealt with in a shorter process, but that's really, I believe, where the other parties are as well. We need to see that document.

THE COURT: Well, just a minute. You know, why do you not all sit down together and work out something that will do that instead of this -- you know, this thing is really starting to irritate me how this goes on and on, you do something, you will respond. Why do you not just all sit down and get that worked out?

Submissions by Ms. Bonora

MS. BONORA: Sir, we actually provided what we thought what was our constating document in Schedule 'A' of our sufficient. So it is our application. I don't think it's a negotiable point. We're seeking the remedies --

THE COURT: Mm-hm.

MS. BONORA: -- and we are asking today that the Court order that this -- these are the issues that need to be addressed.

THE COURT: Mm-hm.

MS. BONORA: So we didn't want there to be any delay on that. Again, in the interests of efficiency, it is quite odd to us that we've been through eight written decisions, many other orders, five orders of the Court of Appeal, and we're still wondering what this application is about. But I'm beyond that. I think we just need to have something in writing if that's what the parties want.

THE COURT: Yes.

MS. BONORA: And so that's why we put Schedule 'A' together, and we're asking today for the Court to say --

THE COURT: Mm-hm.

MS. BONORA: -- That's what the issues are and now we can move forward, that we --

THE COURT: Okay.

MS. BONORA: -- don't need to have any other document; and then that court order can be posted to the website like all the other documents so it's accessible to all the beneficiaries. So we're trying to be efficient --

THE COURT: Mm-hm.

MS. BONORA: -- and moving forward today without having any more delay.

THE COURT: Okay. Well, let me go back to Ms. Hutchison. You probably had a bit more to say before I cut you off. What about just on the simple straightforward point, is this trust discriminatory in some respects? Is it not capable of being -- I mean, you may have to refine that somewhat.

Submissions by Ms. Hutchison

MS. HUTCHISON: My Lord, we've certainly filed written submissions on behalf of our client in -- at early stages of this proceeding that speak to that issue, and I invite the Court to refer back to those. They were filed in 2011 and 2012. I'm not aware of the Public Trustees' position having changed; however, the background to this matter has changed, and some of the submissions that have been put in by other parties or these participants refer to that. The issue of gender discrimination in the *Indian Act* is changing daily in Canada. Our client needs to see what this trust today is seeking to deal with before this Court, and then we'd be most pleased to provide a final position on that. Our understanding of what would happen next in this litigation after we left the *Sawridge 5* Court of Appeal decision or after we received it is that the trustees would take steps to file a constating document.

With the greatest of respect to my friend --

THE COURT: Well, no --

MS. HUTCHISON: -- I read --

THE COURT: -- what is a constating document? Is it --

MS. HUTCHISON: An originating document, My Lord.

THE COURT: Okay. A pleading.

MS. HUTCHISON: A pleading. Yes.

THE COURT: Okay. Let us --

MS. HUTCHISON: Correct.

THE COURT: -- use that. Okay?

MS. HUTCHISON: Whatever the Court's preference is, My Lord.

Schedule 'A' to my friend's submissions, I had not actually read that as their -- that was their originating document in part because it seeks in many ways, as I read it, to have the Court determine what the appropriate relief is. I found that a bit unusual. It's normally up to the party to frame that and frame it in a definitive way, but I'll certainly review Schedule 'A' with my friend's submissions in mind.

THE COURT: Okay. Ms. Platten, just on -- I am just really pursuing this point of trying to short-circuit all of this stuff --

MS. PLATTEN: I agree, Sir --

THE COURT: -- and get to the point of how we are going to tune up this trust if it has got some defects in it; so just on the discrimination point, if you could state your client's position?

Submissions by Ms. Platten

MS. PLATTEN: I agree, Sir, that we can probably sit down and talk about what we can put before the Court; however, the issue of the discrimination in the trust is a new issue that was not in play in 2011 and 2012. When you made your order in 2011, it was simply the definition of beneficiary and the transfer of the trust assets. So this is a new issue that should be determined by the Court, and so perhaps an originating document with respect to that would be appropriate.

I think that we can sit down -- I apologize for my voice, Sir. I think that we can sit down and come to an agreement as to what we put before the Court. The issue, Sir, is not cut and dried however. It is not just is it discriminatory, but is it discriminatory if it is what happens?

THE COURT: Yes.

MS. PLATTEN: And so that has to be -- all of that has to be put before the Court.

THE COURT: Yes. Well, let us just stay on just getting a determination on is it or is it not discriminatory, period. Worried about, you know, clearly, remedies is something -- that is the next phase or stage, but is your client -- what is your client's position on whether or not this 1985 Trust contains features that would be considered discriminatory?

MS. PLATTEN: Well, I don't have particular instructions from our client with respect to that, Sir, because it's a -- as I said, it's a new issue. I think there are concerns with the trust. Whether it's discrimination or not is a different question, so I think we need to discuss that.

THE COURT: With your client?

MS. PLATTEN: Yes.

THE COURT: All right.

Submissions by Ms. Bonora

MS. BONORA: Sir, just in respect of the submissions made by my friend Ms. Hutchison in terms of not understanding that we were seeking a direction today, paragraph 6 of our submissions, the last sentence says:

> The trustees seek the direction of the Court and an order determining that the issues set out in Schedule 'A' are the issues in dispute in this action.

So we believe we gave notice to everyone that Schedule 'A' would be what we would ask this Court to make an order is the proceeding and is -- are the issues that need to be determined. I don't think there's any magic in calling it a pleading or calling it a constating document. The issue is apparently that parties are concerned that they don't understand what is to be determined, and we believed that Schedule 'A' clearly sets out what needs to be determined. We very clearly set out that the definition is -- we believe the definition is discriminatory insofar as it refers to the *Indian Act*. We say if it's discriminatory, then the application -- and if it's not discriminatory, then the application will be at an end.

In terms of the remedies, we've said that there are alternatives, that we can modify the language or the trust can be amended; and at that point, we need to also deal with Section 42 issue and also to deal with grandfathering. We believe this sets out all the issues. We don't believe any other discussion about this would clarify the issues, and we are asking you to make that order today so that we can move beyond this constating document and then get onto the issue of discrimination.

I have to say I'm very surprised by my friend's, McLennan Ross, suggesting that this issue of discrimination is new. I've never known it to be a new issue. We started on Day 1 with we need to change this definition because it was discriminatory, and I --

THE COURT: See, that --

MS. BONORA: -- don't have the original orders here --

THE COURT: Well, actually that is my --

MS. BONORA: -- but --

THE COURT: -- memory of what I was told the first day that I touched this file.

MS. BONORA: Yeah.

THE COURT: You know, and --

MS. BONORA: There's never been any other issue other than the fact that the trust was -- we believe the trust to be discriminatory and needed some form of amendment in certain ways to fix that discriminatory element. There have been several references, certainly in submissions made by me and in written submissions, to the Bill C-31 women who were discriminated against and whose discrimination was remedied by Bill C-31. So I certainly dispute the issue of whether discrimination is a new issue.

In any event, we are seeking that Schedule 'A' be ordered today so that we can post it and get beyond that issue; and again, in terms of discrimination, we would -- in the event that the parties cannot deal with discrimination by way of a consent matter, that we have some alternative direction from you today on a directed issue on that iss -- that very specific issue of whether this trust is discriminatory because it is our view that it's quite obviously discriminatory in respect of how it treats women.

Submissions by Ms. Hutchison

MS. HUTCHISON: My Lord, if I may just for a moment based on my friend's submissions, and we'll just take you back to our submission done by way of letter. I feel it's key to remind the Court as I hear my friend, she is repeating that she's seeking a specific order from the Court today, an order directing that this list of issues in Schedule 'A' are the issues in this litigation; but the trustees have not put an application before you, My Lord. They filed an agenda --

THE COURT: Okay. Well, let --

MS. HUTCHISON: -- on two days' notice --

THE COURT: Yes, I saw that in your letter, you know. If they go away and get a piece of paper, if they go get an originating notice cranked up --

You could do that, right?

MS. BONORA: We could do that.

THE COURT: Then do you have a problem? Just move on past that --

MS. HUTCHISON: My Lord, it's not --

THE COURT: -- nitpick. Let us get on to what do you say in response to the proposal that Schedule 'A' simply become a matter of an order today?

MS. HUTCHISON: My Lord, my position on that is set in our submission. If the trustees wish to bring an application before this Court for advice and directions on what their pleading should state, they have an obligation to serve an application, they have an obligation to serve an affidavit supporting it if they wish to, and there's an obligation to allow all parties adequate time to respond with submissions. And simply because the Court called a case management meeting for an update does not allow the trustees to ignore those procedures of this court. That is my position. The parties are entitled to receive proper notice and to have the trustees follow the *Rules of Court* in the process, My Lord. If they're seeking that application, have -- we're happy to have them seek it.

Our proposed litigation plan, My Lord, attached to our submission asked the trustees to, as they've said they can, file their formal pleading by July -- or by January 31st. If they wish to move forward with this application for advice and directions as raised in their

January 3rd material, there is a proposed schedule set out for that.

I'm not aware of anything that would exempt the trustees from the normal application of the *Rules of Court* My Lord.

THE COURT: You want to add anything to that?

Submissions by Ms. Platten

MS. PLATTEN: Sir, I just would like to say that I don't think there's any evidence before the Court today with respect to discrimination, and I don't think there's ever been any evidence before the Court.

THE COURT: No. That may be. This is a case management meeting. It is not everybody is standing around on, you know, there is no evidence or this, that, or the other thing. Case management meetings are meant to cut to the quick and see if we can get this resolved.

Now, do you have any problem with Schedule 'A' going into existence? Assuming these formalities of having an originating notice of motion presumably in respect to today's application for directions and the broader issue seen by the Court of Appeal about what is all this litigation founded in, just put those aside. Have you got a position on whether Schedule 'A' could be put into effect through an order today?

MS. PLATTEN: I don't have any instructions either way, Sir.

THE COURT: Okay. Okay.

Submissions by Ms. Bonora

MS. BONORA: I guess I would just say by way of conclusion on that issue, it's not an issue that's in dispute. It's not an application where we need submissions from the other parties. If there's a -- some kind of document that needs to settle the issues, if the application by the trustees, it should just be the appli -- the issues should be put forward by the trustees. So again, we're asking you to make that order today.

THE COURT: Okay.

Submissions by Ms. Hutchison

MS. HUTCHISON: My Lord, case management meetings aside, case management meetings must deal with what the parties are notified that they are intended to deal with; and the Court's correspondence of December 20th and January 2nd asked for an update, asked for a draft litigation plan.

THE COURT: Mm-hm.

MS. HUTCHISON: It did not ask or it did not notify the parties that there was going to be a shortened version of a de -- or a decided issue dealt with.

Our concern about Schedule 'A' -- and I don't have instructions today to consent to that as an originating document or not because, quite frankly, we've taken the position there's no live application before you; but our concern about the way that that's framed is it is putting the onus on this Court to decide if the relief the trustees are seeking is the right relief. It's not just asking them to decide it and decide if that relief will be awarded. So we certainly have some concerns over wording, My Lord.

We would suggest that the parties should sit down with these materials and see if they can't work out a proposal that's acceptable to the Court. Ideally, the trustees would just file their constating or originating document and then that meeting would occur. Although I understand the trustees have a different view, the Public Trustee has been very encouraged by settlement discussions, and it's quite possible we can sort out these issues in those discussion, My Lord. Thank you.

THE COURT: Ms. Bonora?

Submissions by Ms. Bonora

MS. BONORA: I think I would just say, Sir, remember -- we should remember that this is an advice and direction application. It's not one in -- and it can be fluid, and can -- the Court can direct how these things are to happen. We are not seeking the Court's direction on whether these are the issues. We're just simply asking the Court to make this the document so that they're -- we can move beyond this issue of the constating document that continues to arise. It's all about efficiency. We don't even think we need that, but I am giving one so that we can move beyond that issue and carry on.

I will also say that in terms of a pleading or an originating document, the Court of Appeal addressed that issue and said they accepted that the order that you gave back in 2011 was the originating application but that it might be helpful to have another document that set out issues. So that's what we're doing by way of Schedule 'A'.

Those are all my submissions.

THE COURT: Okay. All right. I am just looking for that timetable --

MS. BONORA: Sir, the timetable we've put forward in the litigation plan is at Tab 5 of our submissions.

THE COURT: Tab 5, right. So that is really what falls out of -- if Schedule 'A' is directed, this is the companion piece to the Schedule 'A'?

MS. BONORA: Yeah. I would -- I probably would frame it slightly differently. I think the Schedule 'A' is simply a distinct issue that we just need to get beyond so that we can move forward and is separate. I don't think anything necessarily falls from it. We just want to get that on the record so that we don't have to deal with that issue any longer.

Our litigation plan that's set out at Tab 5 is really to then start with how do we move to the end of this litigation, and we think the first issue is discrimination. So in the event that the parties cannot consent that this trust is very clearly discriminatory on its face and we can bring a consent order to you on that, then we need -- we are asking you to direct an issue on the issue of whether this trust is discriminatory. Because we believe the trust is discriminatory on its face in reading it and maybe discriminatory in many forms, we think that this could be done in a four-month process where we decide we have affidavits if they need to be filed, questioning, and then briefs filed so that we can help the Court determine whether the trust is discriminatory as a distinct -- as a directed issue. After that, we can then set procedure for determining the remedies that would flow from the determination that the trust is discriminatory.

I think that in the event that you direct the issue, then the parties will be put to that test of saying, Okay, well, now both the other parties in this litigation will have to submit briefs and decide whether they're going to say that this trust is discriminatory or not, put evidence in about whether the trust is discriminatory or not.

We should remember that this trust was drafted in (INDISCERNIBLE) We don't have original drafters that are going to come and speak to this trust. The issue will -- we would suggest has to be determined on the face of the document, perhaps with some history around Bill C-31, but we don't think this is a very complex issue at all and we believe that once we get that determination, then the remedies around how to fix that become much clearer; and that's why we're asking for a directed issue on that.

Submissions by Ms. Hutchison

MS. HUTCHISON: My Lord, to be clear, we are taking the position that what we're discussing with you today should be the subject of substantive submissions to you after an actual application is brought; however, I think it's important that this Court hear one of the concerns about the proposal the trustees have here which is having determination on discrimination without accompanying evidence and argument on remedy frankly opens the door for the application that Sawridge First Nation has suggested they will bring which is to dissolve the trust. The normal process, if you're going to deal with an allegation of discrimination with a -- in a trust is to deal with the allegation of discrimination, the extent of it, the impact on it -- on the trust itself, and a determination of appropriate remedies hand in hand because otherwise we have an order sitting out there saying this trust is discriminatory with no solution to that discrimination.

The Public Trustee is not of the view --

THE COURT: Well, is not the solution to that simply, yes, you know, yet another sort of paper roadblock, but surely the solution to that is it is conditionally found to be discriminatory and let us get on with the remedy? You know, I mean --

MS. HUTCHISON: My Lord, our current position is that to hear and decide the issue of whether the trust is discriminatory separate, completely separate from remedy, is not consistent with the best interests of the beneficiaries of this trust. It creates a grave danger --

THE COURT: Well, how?

MS. HUTCHISON: -- that the Sawridge First Nation could actually succeed in an application for dissolution; whereas dealing with it as this was originally proposed, which is to deal with a trial of whether the trust was discriminatory, the extent of the discrimination, and the remedy to that discrimination all in one hearing is much more likely to preserve the interests of the beneficiaries of this trust, My Lord. So --

THE COURT: Except by the --

MS. HUTCHISON: -- it needs to be clear --

THE COURT: -- time you get through there, there will not be any money left.

MS. HUTCHISON: We don't agree, My Lord. We're very --

THE COURT: No.

MS. HUTCHISON: -- we're very pleased at the progress that's been made this year. I -- we're not quite clear why the trustees are of a different view at this point, but the last settlement meeting was December 7th. That's not even a month ago, My Lord.

THE COURT: But --

MS. HUTCHISON: The Public Trustee does --

THE COURT: -- answer my question on why is not a conditional finding -- I mean, this sort of structure is often entered into in litigation. Pierringers, all those sorts of techniques to sort of advance the resolution of a dispute without, you know, spending millions of dollars in legal fees. I mean, why not a conditional finding of discrimination but on the condition that the remedies be worked out if they -- how does that cause any prejudice? How does that prejudice the beneficiary or people who may be beneficiary?

MS. HUTCHISON: The risk of dissolution, My Lord, but to be clear --

THE COURT: No, no. But if --

MS. HUTCHISON: -- the Public Trustee --

THE COURT: -- but if you put into the order it is conditional, you cannot dissolve the trust until the Court is satisfied on an appropriate remedy, what is the problem?

MS. HUTCHISON: My Lord, we stand by our submissions. There is not application before this Court today for advice and direction. It was not filed. There is no evidence to support it. The parties have not had adequate notice to prepare submissions to talk to the Court about the very ramifications you're discussing today, and this order should not be granted. This was to be a case management meeting to provide this Court with an update, and those are our submissions, My Lord.

THE COURT: Okay.

Okay, Ms. Bonora, anything more to say?

MS. BONORA: Do you want to hear from McLennan Ross?

Submissions by Ms. Platten

MS. PLATTEN: Sir, just to say that even if the trust is found to discriminate -- be discriminatory doesn't mean that there's any effect on the trust. There are a number of cases that talk about trust that are discriminatory that are allowed to continue on just as they have been, so the fact that it's discriminatory is not definitive of anything at this point in time; and that is a problem. I think the order has to indicate that nothing -- if there is an order that says it's discriminatory, it has to say that nothing can flow from that order until such time as the Court rules on what the effect of the discrimination is and what the relief sought can be. It's a two-part question.

THE COURT: So are you sort of agreeing with me, you can have a conditional order that then gets all the resources not only of the parties but of the Court focused on the remedies --

MS. PLATTEN: Well, I --

THE COURT: -- or the remedial measures to tune up the trust?

MS. PLATTEN: I agree that I don't think that application is before you, Sir, and because of that, I don't have instructions from my client with respect to that.

THE COURT: All right.

Submissions by Ms. Bonora

MS. BONORA: Sir, just two quick comments to conclude this issue: Right now, the trust is being treated as a discriminatory trust. It's really in abeyance and being held conditionally in any event. No payments are being made from it with the exception of legal expenses and other expenses of the trust, so we already have a 30-year history -- 33-year history of a trust that is being treated basically as a discriminatory trust. So nothing would change if there was a direction from the Court on that, and so I think your suggestion that the direction could be made and then it would be conditional on remedies being directed would be completely acceptable and would be in keeping with the status quo.

I think my friend is correct that certainly it could be that the -- one of the remedies would be that nothing would happen. Maybe that would be the case. I don't know how you could have a discriminatory trust and then not fix the discrimination, but certainly that could be an argument in respect of the remedies. I don't see that as an argument against making that directed issue.

In terms of Ms. Hutchison's arguments that this should not be happening in this case management meeting, all we're asking for is a directed issue with -- and then the timeframes around that. It's a procedural request. It's exactly what case management is meant to do.

In terms of notice, I will tell you that you while the formal agenda went out on December 3rd, I did provide a draft on December 29th even though you haven't asked for it yet because I knew that we would have to provide something to you. So this isn't -- and granted, that's still not very much notice and it was during the holidays, so I'm not suggesting my friends had lots of notice; but I am suggesting that this procedural request is certainly in keeping with what should happen.

In terms of efficiency, it's very odd to me that the Office of the Public Trustee and Guardian would be asking for a four-month litigation plan to determine whether we should have a directed issue. That is completely inefficient, completely a great cost only to decide if there should be a directed issue; and so we're asking that we, in fact, use that four-month litigation plan to deal with the directed issue and not with whether we should have one or not.

Thank you, Sir.

Decision

THE COURT: Okay. All right. Well, I am going to give some directions here. What I am going to do is I am going to adjourn this matter for a further case management meeting for two weeks which would bring the -- and we will be doing this at a noon hour or something. I think I am sitting in some criminal proceeding, but I am going to do today because I can see this effects a lot of people, and let us say 1 PM on Friday, January 19th, we will come together for a case management continuation; and in the meantime, what I would like you to do, Ms. Bonora, on behalf of the trustees is clear up this paperwork issue, there being the absence of an originating notice of motion to respond to in respect to the directions you seek. If you could get that cranked out right away and to the other parties, and I say "the other parties", it is just the Public Trustee of Alberta and Ms. Twinn through Ms. Platten. Let us clean up that technical

deficiency.

The other thing I would like cleaned up in the two-week period is let us get an originating notice of motion or whatever you are going to call the pleading that the Court of Appeal seemed to think was so necessary. Let us get this litigation founded. I guess they seem to think it, for some reason, does not have some legal foundation, so let us clean that up; and you can put that document up on the website, and you just take it on and do it --

MS. BONORA: Thank you.

THE COURT: -- and, you know, send it to the parties; namely, the Public Trustee and Ms. Twinn.

In the meantime, I am expecting counsel to get together and get some -- well, the Public Trustee and Ms. Platten can get some instructions on where we are going to go on this discrimination issue. See, it is quite clear to me that what could be a very expensive and time-consuming step in the litigation could be jumped right over and get the resources of the parties focused on remedial measures or the definition of remedial measures. So I want and I am expecting that counsel will get together on that and see if you can get a deal worked out on this discrimination issue, and we will deal with it on a consent basis with or without conditions. All right?

MS. BONORA: Thank you, Sir. Just some clarity, so obviously we'll file our application and we'll post it on the website. In respect of the first issue, you're just asking for an application with respect to all the issues we raised --

THE COURT: Yes.

MS. BONORA: -- in our agenda, serve it on the parties so we have proper procedure --

THE COURT: Yes.

MS. BONORA: -- to be in front of you in two weeks? Thank you.

THE COURT: And in two weeks, I want answers from -- you know, no more of this refuge, I do not have instructions. You come back here with instructions so we can get on with this, all right? And hopefully I will not even have to deal with you on that issue because I am hoping you will get this discrimination issue knocked off on a consent basis. All right?

MS. BONORA: Thank you very much, Sir.

THE COURT: All right. Anything else? Mr. Molstad, you always like to have the last word?

MR. MOLSTAD: Not today, Sir. I'll leave it with you.

THE COURT: All right. Thanks very much.

MS. BONORA: Thank you.

THE COURT: See you in two weeks.

MS. HUTCHISON: See you in two weeks, Sir.

THE COURT: Go ahead. I have got a lot of paper to organize, so you can all go. I am just organizing the paperwork.

PROCEEDINGS ADJOURNED UNTIL 1:00 PM, JANUARY 19, 2018

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Sawridge

February 17, 2016

Gina Donald-Potskin
4324 – 37 Street
Edmonton, AB T6L 4J7

Dear Madam,

RE: Membership Application

Thank you for your letter dated December 6, 2015. We note in your letter that you state that you "have been waiting over 2 decades for a decision to be made". We find this statement to be misleading and unproductive. We note that we received an application for membership from you on February 27, 2009. That application was reviewed by the Membership Committee in due course, and they determined that it was not complete. The First Nation wrote to you on December 12, 2012 to advise that the application was not complete. On January 24, 2014 you provided an updated application.

We note that the Council has been reviewing the method of processing membership applications and has determined that it will no longer be utilizing its Membership Committee. Once the process review has concluded, the Council will be processing membership applications. We note that there are currently 19 applications before the Council (not including those that have been determined to be incomplete). We also note that the Council is striving to ensure that the growth of the First Nation is sustainable and that the First Nation has enough resources to provide appropriate programs and services for all members. Given the current economic conditions, the First Nation is re-evaluating the level of membership that can be supported.

We understand that you are anxious to become a Member of the Sawridge First Nation, but note that Sawridge takes Membership very seriously and this takes a significant amount of time. We will continue to strive to process all applications in a fair way. We trust that you will understand the position that we are in and will bear with us through this process. Thank you.

Yours truly,
SAWRIDGE FIRST NATION

Per:

Chief Roland Twinn

This is Exhibit "8" referred to in the Affidavit of
Shelby Twinn
Sworn before me this 25th day
of May A.D., 2022

A Commissioner for Oaths in and for the Province of Alberta
ROBERT A PHILP Q.C

March 4-2016.
Lillian Potskin
454 00109.01

Dear Chief Louie

I am writing in response to the letter you wrote my daughter. Dated Feb 17 2016

re Membership Application (Gina Dowd-Potskin)

As she has been waiting over Two Decades for membership as you well know.

You even informed me one day in the past that you read all my correspondence I was writing to I.A in Ottawa.

As you remember in one of my letters in 1985 I write there that Gina should have been a member at birth, as I did not sign any documents until after she was born. I may have not wrote in those exact words, but it is in reference to that.

Also in 2007 I delivered her application on a Friday in October to Donna, I saw her put it in the file cabinet. it was the Friday before our Saturday meeting.

Leo Morawski
LMorawski@DawsonWallace.com
Cell 780-217-9343

This is Exhibit "9" referred to in the Affidavit of Shelby Twinn
Sworn before me this 25th day of May A.D., 2022
A Commissioner for Oaths in and for the Province of Alberta
ROBERT A PHILP, Q.C.

March 29, 2022

Chief Roland Twinn ch.rct@sawridgefirstnation.com
Sawridge First Nation
Box 326, Slave Lake, AB; T0G 2A0

Re: Request for addition of my name to the SFN Band List

Dear Chief Twinn,

I am writing to introduce myself and to request that my name be added to the band list of Sawridge First Nation (SFN).

My name is Leo Morawski and I was born outside of marriage as the son of Margaret Agnes Clara (Clair) Ward on February 9, 1965. My father was not identified on my birth certificate, a copy of which is attached.

I was put into the foster system and adopted by the Morawski family in January of 1970, though Leo Francis is the name that my birth mother gave me. I recently found my birth mother, and my half-brother Lee Tanghy.

I have sought legal advice and learned that I was entitled to registration as an Indian under section 11(1)(e) of the *Indian Act* at the time of my birth because my birth mother was registered as an Indian at the time, though she later lost her status due to marriage. I am therefore applying to the Registrar of Indians for registration under the current section 6(1)(a).

As you know, 1965 was well before the SFN's Membership Rules came into effect in 1985. The legal advice I received is that I am therefore a person who meets the *Indian Act* definition of a *member of a band* as "a person who is "entitled to have his name appear on a Band List" and in my case, since birth and therefore before the SFN Membership rules of 1985.

My understanding is that my entitlement is the same as many current and deceased SFN members. For example, the late Vera Twin was a daughter born outside marriage to Pauline Hamers née Twin, who was an SFN member, and to Daniel Sinclair, a non-Indian. Since Vera's registration was not the subject of a protest her name was added to the Sawridge band list before 1985. Since Vera's three children were also born outside of marriage, they were also added to the SFN Band List, in the absence of a protest. Michelle Ward was born outside of marriage to Georgina Ward, a SFN member. The SFN protest of the Registrar's decision to add

Michelle's name to the Band List before 1985 was unsuccessful. Similarly, Trent and Aaron Potskin were registered on the band list after their births in 1981 and 1982; their mother, Judy Doreen Anne Potskin was not yet married to their father William Joseph Moosewah at the time of their registration. The SFN unsuccessfully protested the Registrar's decision to add their names to the band list and the court dismissed SFN's appeal in 1985.

Under the circumstances, I believe that I qualify for SFN membership under section 10(4) of the current *Indian Act* since I am a person who was entitled to membership before the SFN Membership Code came into force. **I would therefore appreciate your responding to me as soon as possible to confirm that my name has been added to the SFN band list. If I have not received a positive response within six (6) months, I will assume that my request has been denied.**

If you disagree with me about my existing entitlement to membership, I believe that I would still be eligible under section 3(1)(a) of the SFN Membership Code since "but for" the establishment of its rules, I would have been entitled under section 11(1) of the pre-1985 *Indian Act* to have my name entered in the Band List maintained by the Department of Indian Affairs and Northern Development. Obviously, I realize that I have not been a resident of the reserve since 1985, but that is because I was adopted into another family that lived elsewhere, not by choice.

Who My Family Is:

1. I am married, have three adult children, one grandson and look forward to more grandchildren.
2. We are an independent family; we live productive lives in the Edmonton area.
3. I am a Construction Professional of 44+ years' tenure.
4. We own our homes, have successful careers, and pay our own way in society.
5. These honorable traits were instilled in me by my adopted family.
6. I would like my membership status to be formalized so that I may be a productive and contributing member of the SFN community.

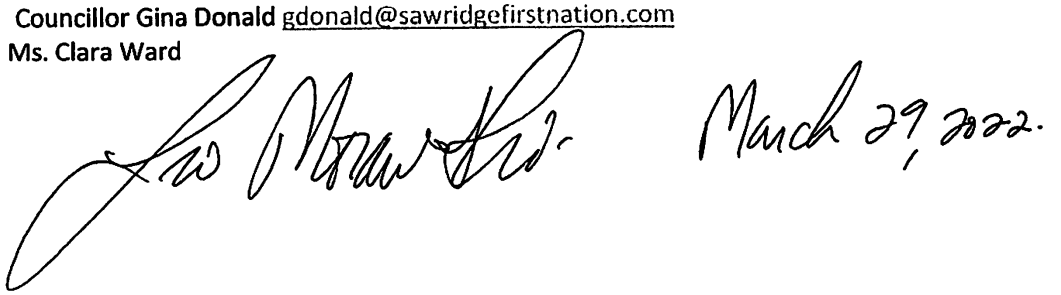
Please contact me if you have further questions.

Yours most sincerely,

Leo Morawski

cc. Mr. Mike McKinney, SFN General Counsel m.mckinney@sawridgefirstnation.com
Councillor Darcy Twin dtwin@sawridgefirstnation.com
Councillor Gina Donald gdonald@sawridgefirstnation.com
Ms. Clara Ward

encl.



Federal Court Decisions

L'Hirondelle v. Canada

Court (s) Database: Federal Court Decisions
Date: 2003-03-27
Neutral citation: 2003 FCT 347
File numbers: T-66-86
Notes: Reported Decision

This is Exhibit "10" referred to in the Affidavit of Shelby Twinn
Sworn before me this 25th day of May A.D., 20 22
A Commissioner for Oaths in and for the Province of Alberta
ROBERT A PHILP, Q.C.

Date: 20030327

Docket: T-66-86A

Neutral citation: 2003 FCT 347

BETWEEN:

BERTHA L'HIRONDELLE suing on her own behalf

and on behalf of all other members of the Sawridge Band

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

- and -

NATIVE COUNCIL OF CANADA,

NATIVE COUNCIL OF CANADA (ALBERTA)

NON-STATUS INDIAN ASSOCIATION OF ALBERTA

NATIVE WOMEN'S ASSOCIATION OF CANADA

Interveners

REASONS FOR ORDER AND ORDER

HUGESSEN, J.:

[1] In this action, started some 17 years ago, the plaintiff has sued the Crown seeking a declaration that the 1985 amendments to the Indian Act, R.S.C. 1985, c. I-5, commonly known as Bill C-31, are unconstitutional. While I shall later deal in detail with the precise text of the relevant amendments, I cannot do better here than reproduce the Court of Appeal's brief description of the thrust of the legislation when it set aside the first judgment herein and ordered a new trial:

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

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

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

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

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

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

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

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

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

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

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

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

Canadian courts since *Channel Tunnel* have applied it for the proposition that the courts have jurisdiction to grant an injunction where there is a justiciable right, wherever that right may fall to be determined...This accords with the more

general recognition throughout Canada that the court may grant interim relief where final relief will be granted in another forum.

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

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

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

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

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

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

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

...

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

...

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

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

...

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

...

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

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

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

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

...

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

[16] On July 8, 1985, the Band gave notice to the Minister that it intended to avail itself of the provisions of section 10 allowing it to assume control of its own Band List and that date, therefore, is the effective date of the coming into force of the Band's membership rules.

Because C-31 was technically in force but realistically unenforceable for over two months before it was adopted and because the Band wasted no time in assuming control of its own Band List, none of the 11 women who are in question here were able to have their names entered on the Band List by the Registrar prior to the date on which the Band took such control.

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

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

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

(i) is lawfully resident on the reserve; or

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

...

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

...

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

[18] Section 3(a)(i) and (ii) clearly create pre-conditions to membership for acquired rights individuals, referred to in this provision by reference to section 11(1) of the Act. Those individuals must either be resident on the reserve, or they must demonstrate a significant commitment to the Band. In addition, the process as described in the evidence and provided for in section 11 of the membership rules requires the completion of an application form some 43 pages in length and calling upon the applicant to write several essays as well as to submit to interviews.

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

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

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

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

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

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

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

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

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

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

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

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

[29] A little further, he spoke about the careful balancing between these rights in the Act. In this section, Minister Crombie referred to the difference between status and membership. He stated that, while those persons who lost their

status and membership should have both restored, the descendants of those persons are only automatically entitled to status :

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

[*Debates, supra* at 2645]

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

... I have to reassert what is unshakeable for this Government with respect to the Bill. First, it must include removal of discriminatory provisions in the Indian Act; second, it must include the restoration of status and membership to those who lost status and membership as a result of those discriminatory provisions; and third, it must ensure that the Indian First Nations who wish to do so can control their own membership. Those are the three principles which allow us to find balance and fairness and to proceed confidently in the face of any disappointment which may be expressed by persons or groups who were not able to accomplish 100 per cent of their own particular goals.

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

[*Debates, supra* at 2646]

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

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

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

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

We are both aware that Parliament intended that those persons listed in paragraph 6(1)(c) would at least initially be part of the membership of a Band which maintains its own list. Read in isolation your membership rules would appear to create a prerequisite to membership of lawful residency or significant commitment to the Band. However, I trust that

your membership rules will be read in conjunction with the Act so that the persons who are entitled to reinstatement to Band membership, as a result of the Act, will be placed on your Band List. The amendments were designed to strike a delicate balance between the right of individuals to Band membership and the right of Bands to control their membership. I sponsored the Band control of membership amendments with a strongly held trust that Bands would fulfill their obligations and act fairly and reasonably. I believe you too feel this way, based on our past discussions.

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

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

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

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

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

[38] While not necessarily conclusive, it seems that the Band itself takes the same view. Although on the hearing of the present motion, it vigorously asserted that it was in compliance with the Act, its statement of claim herein asserts without reservation that C-31 has the effect of imposing on it members that it does not want. Paragraph 22 of the Fresh as Amended Statement of Claim reads as follows :

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

to individuals without regard for their actual connection to or interest in the First Nation, and regardless of their individual desires or that of the First Nation, or the circumstances pertaining the First Nation. This exercise of power by Parliament was unprecedented in the predecessor legislation.

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

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

ORDER

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

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

Judge

Edmonton, Alberta

March 27, 2003

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

DOCKET: T-66-86

STYLE OF CAUSE: Bertha L'Hirondelle et al v. Her Majesty The Queen et al

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING:MARCH 19 AND 20, 2003

REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE HUGESSEN.

DATED: March 27, 2003

APPEARANCES BY:

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

SOLICITORS OF RECORD:

Aird & Berlis LLP	
Toronto, Ontario	FOR THE PLAINTIFFS
Morris Rosenberg	
Deputy Attorney General of Canada	FOR THE DEFENDANT
Lang Michener	
Ottawa, Ontario	FOR THE INTERVENER, NATIVE COUNCIL OF CANADA
Field Atkinson Perraton LLP	
Edmonton, Alberta	FOR THE INTERVENER, NATIVE COUNCIL OF CANADA (ALBERTA)
Burnet Duckworth & Palmer LLP	FOR THE INTERVENER, NON-STATUS INDIAN ASSOCIATION OF ALBERTA
Eberts Symes Street & Corbett	
Toronto, Ontario	FOR THE INTERVENER, NATIVE WOMEN'S ASSOCIATION OF CANADA

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF EDMONTON

NO. 8503-12228

IN THE MATTER OF MICHELLE WARD AND
IN THE MATTER OF THE INDIAN ACT

BETWEEN:

SAWRIDGE INDIAN BAND

Applicant

- and -

MICHELLE WARD

Respondent

This is Exhibit "11" referred to in the Affidavit of Shelby Twinn
Sworn before me this 25th day of May A.D. 2020
A Commissioner for Oaths in and for the Province of Alberta

ROBERT A PHILP, Q.C.

REASONS FOR JUDGMENT OF THE

HONOURABLE MR. JUSTICE J. C. CAVANAGH

In this matter on April 23rd last, I rendered a judgment on a preliminary objection raised by the Respondent. I rejected the objection to my jurisdiction and counsel for both parties have now filed their written argument.

This is a reference to me pursuant to the provisions of s. 9(3) of the Indian Act. The Respondent was born on May 8, 1981 to Georgina Rose Ward, a member of the Sawridge Indian Band. Georgina Rose Ward was not married and she registered

the birth of her daughter and gave no information as to the father of the child. A copy of that live birth registration was given to the Registrar. On May 11, 1982, the Registrar added the Respondent's name to the Sawridge Indian Band List. On July 26, 1982, the Band Council protested this addition pursuant to provisions of s. 12(2) of the Act. The last sentence of their protest reads:

> "Further that as the father is non-treaty, that Michelle Danielle Ward be struck from the Sawridge Band Membership List."

On August 22, 1984, the Registrar wrote to the Lesser Slave Lake Regional Council with a copy to the lawyer for the Sawridge Indian Band giving his decision. The text of that letter is as follows:

> "Re: Protest of Michelle Danielle Ward
> No. 98 Sawridge Band
>
> I refer to the protest by the Sawridge Band Council to the addition of Michelle Danielle Ward to their Band List.
>
> In this regard, I have the Registration of Live Birth of Michelle Danielle Ward indicating she was born on May 8, 1981 to Georgina Rose Ward. I also have the letter dated June 2, 1983 from Mrs. Marie Hodam, your Band Membership Clerk, confirming that Georgina Rose Ward No. 98 Sawridge Band has refused to make any statement with regard to the father of her child Michelle Danielle Ward.

In addition, I have the letter dated July 19, 1983 from Mr. David A. Fennell, the lawyer for the Sawridge Band Council, enclosing an Affidavit completed on July 19, 1983 by Bruce McCaffery, a private investigator retained by the Council. According to his Affidavit, Mr. McCaffery, acting on information received, visited the Drumheller Institute where he interviewed an inmate who identified himself as Ron Maglis; that Mr. Maglis replied, "It should be" when asked if he was the natural father of a child named Michelle Danielle Ward born to Ms. Georgina Ward; that Mr. Maglis stated emphatically that he was not prepared to make any sworn Affidavit until he had had the opportunity to discuss this matter with Georgina Ward; that when asked if he himself was an Indian, Mr. Maglis replied, "I might be a bit I guess"; and when asked if he knew the name of the child he replied that he only knew the infant as "The Baby". Furthermore, I have the letter dated January 3, 1984 from Mr. David A. Fennell indicating that he has been advised by the Band Council that it is their information that at the time of the birth of Michelle Danielle Ward, Georgina Ward was a prostitute living in a common-law relationship with Mr. Maglis and had done so for approximately the previous year and also that the child, Michelle Danielle Ward has been given up as a ward to the Alberta Government.

In response to my request for Statutory Declarations completed by individuals having a personal knowledge of the common-law relationship which the Band Council has advised existed between Georgina Ward and Ron Maglis, by his letter dated February 5, 1984, Mr. Fennell confirmed that his clients are unable to provide any further information.

Finally, Mr. John Mould, A/Assistant Director of Child Welfare Delivery, Alberta Social Services and Community Health, has advised in his letter of February 28, 1984 that he has reviewed their child welfare file and can find no information concerning the paternity of Michelle Danielle Ward.

> As there is insufficient evidence of non-Indian paternity, the protest by the Sawridge Band Council is not upheld and I hereby declare Michelle Danielle Ward entitled to be registered in membership in the Sawridge Band of Indians.
>
> Would you please notify the mother, Georgina Rose Ward, of this decision.
>
> A copy of this decision is being forwarded to Mr. David A. Fennell, the lawyer for the Sawridge Band Council."

On September 5, 1984, the Sawridge Band Council agreed that:

> "The Sawridge Indian Band requested the Registrar of the Department of Indian and Northern Affairs refer his decision of August 22, 1984 disallowing the Band protest of the inclusion of Michelle Danielle Ward as a Sawridge Band member to a Judge of the Court of Queen's Bench of Alberta."

The Registrar then referred the file to me.

I have examined the file and the allegations of the Applicant are outlined in the Registrar's decision quoted above. There is no new evidence since the Registrar dealt with the matter.

The Applicant argues that because the mother refuses to co-operate and state who the father of the child is, that

that should give rise to an adverse inference against her. That argument then is that an adverse inference against the mother should be used against the child. I do not agree with that argument.

The affidavit of the investigator, Bruce McCaffery, is at best hearsay evidence. Furthermore, the hearsay evidence is not clear and unequivocal. There is the further question whether the circumstances are established that this man could swear to paternity of the child. He may be able to swear to the possible paternity of the child, but I think that is all. There is the further situation that the Applicant has in its material alleged that the mother was working as a prostitute. If that is so, that could well cast doubt on her ability to identify the father of the child. In my view, the Registrar was right. There is no sufficient evidence of non-Indian paternity to justify setting aside the Registrar's decision. I, therefore, dismiss the application by the Applicant Indian Band.

J.C.Q.B.A.

DATED AT EDMONTON, ALBERTA
THIS 31st DAY OF MAY,
A.D. 1985

COUNSEL:

David A. Fennell, Esq.,
910, 10310 Jasper Avenue,
EDMONTON, Alberta,
T5J 2W4. For the Applicant

J. P. Brumlik, Esq., Q.C.,
2100 Oxford Tower,
10235 - 101 Street,
EDMONTON, Alberta,
T5J 3Y1. For the Respondent

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Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

JUL 22 '85

Your file / Votre référence

Our file / Notre référence

E6000-1 (LH8-4)

Walter Patrick Twinn
Chief
Sawridge Indian Band
P.O. Box 326
SLAVE LAKE, Alberta
T0G 2A0

RECEIVED
JUL 29 85
SAWRIDGE ADMINISTRATION

Dear Chief Twinn:

Under the provisions of Section 14(1) of an Act to amend the Indian Act assented to on June 28, 1985, I am required to provide the Council of each band with a copy of its band list as it stood immediately prior to that date.

Attached you will find a copy of the membership list for the Sawridge Indian Band as it appeared on June 27, 1985. Would you kindly present this list to your Band Council at your earliest convenience.

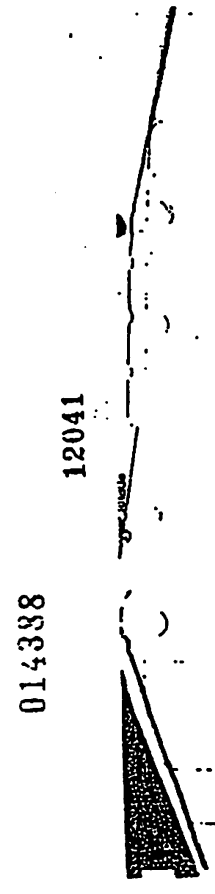
Yours sincerely,

L.G. Smith
Registrar
OTTAWA, Ontario
K1A 0H4

Attachment

Catherine Twinn
EXHIBIT NO. 2
Nov. 18/86
D. WILLIAMS

Canada



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JOB NO. : INMEAR03
PROG NO. : INMEPC04
RUN DATE / DATE DU PASSAGE : 1985/07/03

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTERE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

REPORT NO. / RAPPORT NO. : PR

PAGE NO: 0

INDIAN MEMBERSHIP SYSTEM
SYSTEME DES BANDES INDIENNES

FAMILY GROUPING LISTING
LISTE PAR GROUPE DE FAMILLE

DISTRICT : 700 ALBERTA
ALBERTA
BAND : 454 SAWRIDGE
BANDE SAWRIDGE

FAMILY NO. / NO DE FAMILLE	SURNAME / NOM	GIVEN NAMES / PRENOMS	ALIAS / NOM D'EMPRUNT	BIRTHDATE / NAISSANCE	PROV	MAR ST / ST MAT	RES	S
008702	LOYER	CYNTHIA YVETTE GALE		1967/09/26	08	1	6	
008001	NEESOTASIS	GEORGE		1939/06/03	08	1	1	
008201	NEESOTASIS	CHESTER		1961/10/01	08	2	1	
008202	NEESOTASIS	DENLIA		1953/02/21	08	2	1	
008203	TWIN	DARCY ALEXANDER		1977/08/09	08	1	1	
008601	NEESOTASIS	NOEL RICHARD		1964/11/23	08	1	1	
003602	POTSKIN	JENNIE		1924/12/26	02	3	1	
007001	POTSKIN	HARRY		1927/06/09	08	1	1	
008902	KANOEL	SHAWN		1969/04/01	08	1	6	
009302	POTSKIN	SONIA ODETTE		1970/08/25	08	1	1	
009502	POTSKIN	BRENT ALBERT		1975/09/11	08	1	6	
009503	POTSKIN	JONATHON GARRET		1978/04/04	08	1	6	
009703	POTSKIN	JEANINE MARIE		1979/10/10	08	1	6	
009704	POTSKIN	AARON ROYCE BERNARD		1982/10/01	08	1	6	
009705	POTSKIN	TRENT RYAN ALBERT		1981/09/06	08	1	6	
007201	TWIN	SAN GILBERT		1928/07/30	08	1	1	
007901	TWIN	WALTER FELIX		1934/05/30	08	2	1	
007902	TWIN	YVONNE DORIS		1939/05/27	08	2	1	
009601	TWIN	VERA IRENE		1956/12/15	08	6	1	

JOB NO. : INMEARG3
PROG NO. : INMEP604
RUN DATE / DATE DU PASSAGE : 1985/07/03

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTÈRE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

INDIAN MEMBERSHIP SYSTEM
SYSTÈME DES BANDES INDIENNES

PAGE-NO: 0
REPORT NO. / RAPPORT NO. : PR

FAMILY GROUPING LISTING
LISTE PAR GROUPE DE FAMILLE

DISTRICT -700 ALBERTA
ALBERTA

BAND -454 SAWRIDGE
BANDE SAWRIDGE

FAMILY NO. NO DE-FAMILLE	SURNAME NOM	GIVEN NAMES PRENOMS	ALIAS NOM D'EMPRUNT	BIRTHDATE NAISSANCE	PROV	MAR ST ST MAT	RES	S S
009602	TWIN	WINONA NADINE		1976/06/16	08	1	1	
009603	TWIN	EVERETT JUSTIN		1982/09/23	08	1	1	
009604	TWIN	JACLYN DANIELA		1983/11/10	08	1	1	
007501	TWINN	WALTER PATRICK		1936/03/29	08	2	1	
007507	TWINN	PAUL HENRY		1969/05/12	08	1	6	
007508	TWINN	KATHERINE MAY		1953/12/28	08	2	1	
010301	TWINN	IRENE MARIE		1963/12/19	08	1	6	
010501	TWINN	ROLAND CHRISTOPHER		1965/05/21	08	1	6	
010701	TWINN	ARDELL WALTER		1966/07/09	08	1	6	
010801	TWINN	ARLENE THERESA		1966/07/09	08	1	1	
008105	WARD	DEAN DANIEL		1967/09/10	08	1	6	
008106	WARD	FRANK JAMES		1969/05/21	08	1	6	
009201	WARD	MARGARET SUE		1947/09/02	08	2	6	
009204	WARD	NATHAN ALEXANDER		1981/12/02	08	1	6	
009801	WARD	GEORGINA ROSE		1959/05/23	08	6	6	
010001	WARD	JOHNNY MAXWELL		1962/03/25	08	1	6	
010201	WARD	GLORIA MARIE		1963/06/27	08	1	6	
010601	WARD	MARGARET SOPHIE		1965/12/09	08	1	6	

TOTAL NUMBER OF INDIVIDUALS: 37
NOMBRE TOTAL DES INDIVIDUS

*** END OF REPORT ***

RECEIVED
JUL 29 85
SAWRIDGE ADMINISTRATION

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JOB NO. : INMEAR07
PROG NO. : INMEP611
RUN DATE / DATE DU PASSAGE : 1985/07/05

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTÈRE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

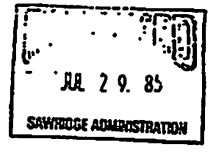
PAGE NO: 1

REPORT NO. / RAPPORT NO. : PR30

INDIAN MEMBERSHIP SYSTEM
SYSTÈME DES BANDES INDIENNES

A-LIST REPORT
RAPPORT DE LA LISTE A

DISTRICT	BAND/ BANDE	FAMILY NO./ NO DE FAMILLE	SURNAME/ NOM	GIVEN NAMES/ PRÉNOMS	BIRTH DATE/ NAISSANCE	RESIDENCE	PROV.RES.	SEX SEXE
730	454	009502	JARD	MICHELLE DANIELLE	1981/05/08	6	08	F



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Indian and Northern Affairs Canada / Affaires indiennes et du Nord Canada

JUL 2 2 1985

Your file / Votre référence

Our file / Notre référence

E6000-1 (LH8-4)

Walter Patrick Twinn
Chief
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P.O. Box 326
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Yours sincerely,

L.G. Smith
Registrar
OTTAWA, Ontario
K1A 0H4

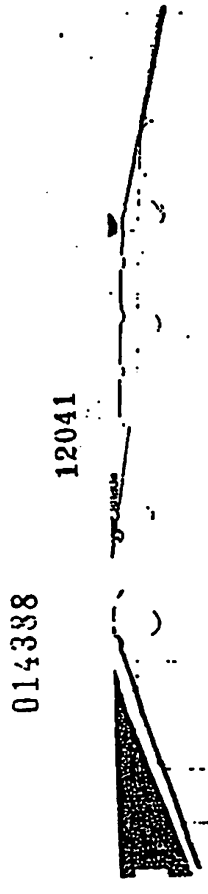
Attachment

Canada

Catherine Twinn
EXHIBIT NO. 2
Nov. 10/16
D. WILLIAMS

This is Exhibit "12" referred to in the Affidavit of
Shelby Twinn
Sworn before me this 25th day
of May A.D., 20 22
A Commissioner for Oaths in and for the Province of Alberta

ROBERT A. PHILP, Q.C.



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JOB NO. : INMEAN03
PROG NO. : INMEPC04
RUN DATE / DATE DU PASSAGE : 1985/07/03

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTERE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

REPORT NO. / RAPPORT NO. : PR

PAGE-NO: 0

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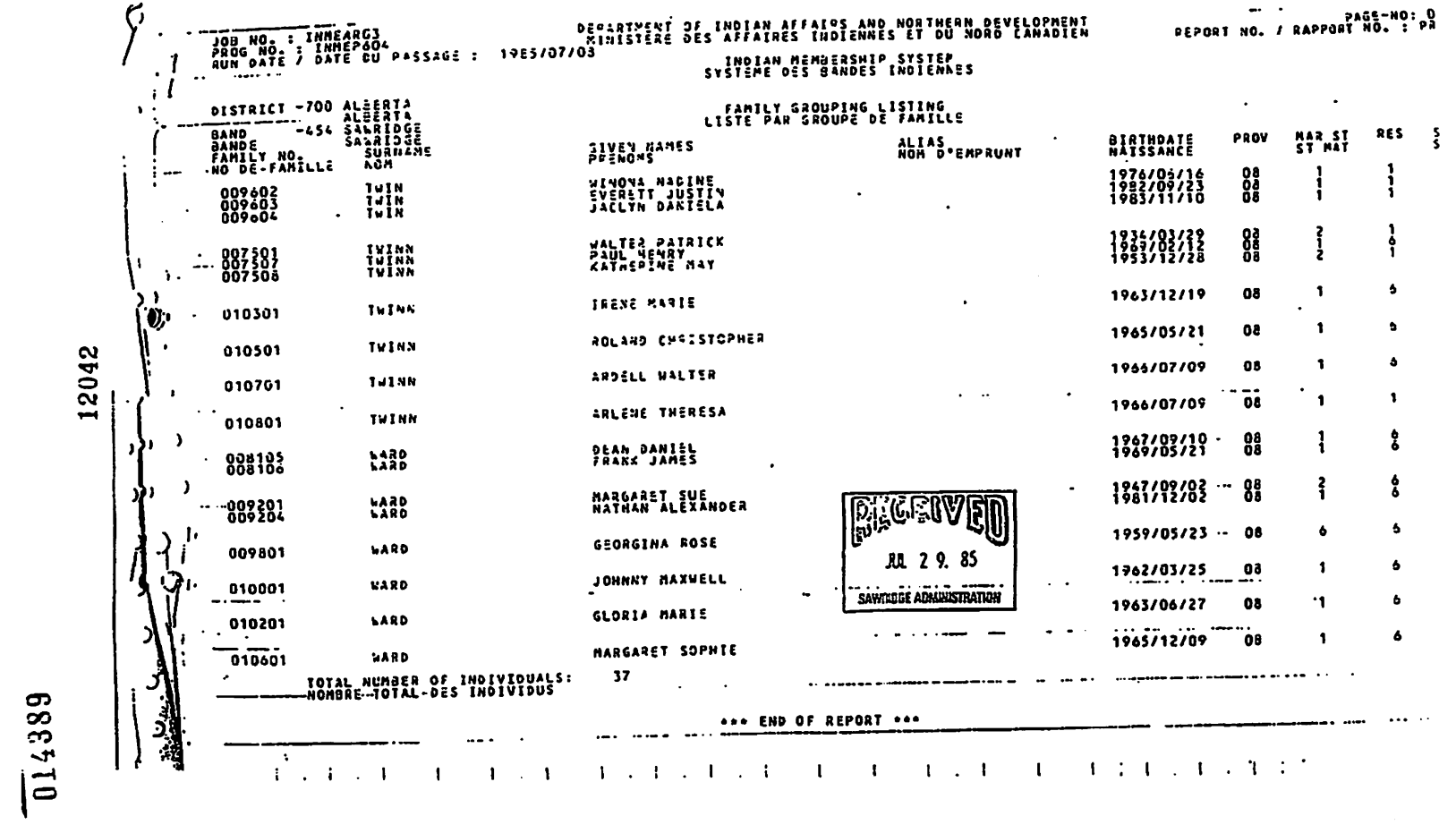
JUL 29 85
SAWRIDGE ADMINISTRATION



JOB NO. : INMEARG3
PROG NO. : INMEP604
RUN DATE / DATE DU PASSAGE : 1985/07/03

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTÈRE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

INDIAN MEMBERSHIP SYSTEM
SYSTÈME DES BANDES INDIENNES

PAGE-NO: 0
REPORT NO. / RAPPORT NO. : PR

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ALBERTA

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BANDE SAWRIDGE

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010601	WARD	MARGARET SOPHIE		1965/12/09	08	1	6	

TOTAL NUMBER OF INDIVIDUALS: 37
NOMBRE TOTAL DES INDIVIDUS

*** END OF REPORT ***

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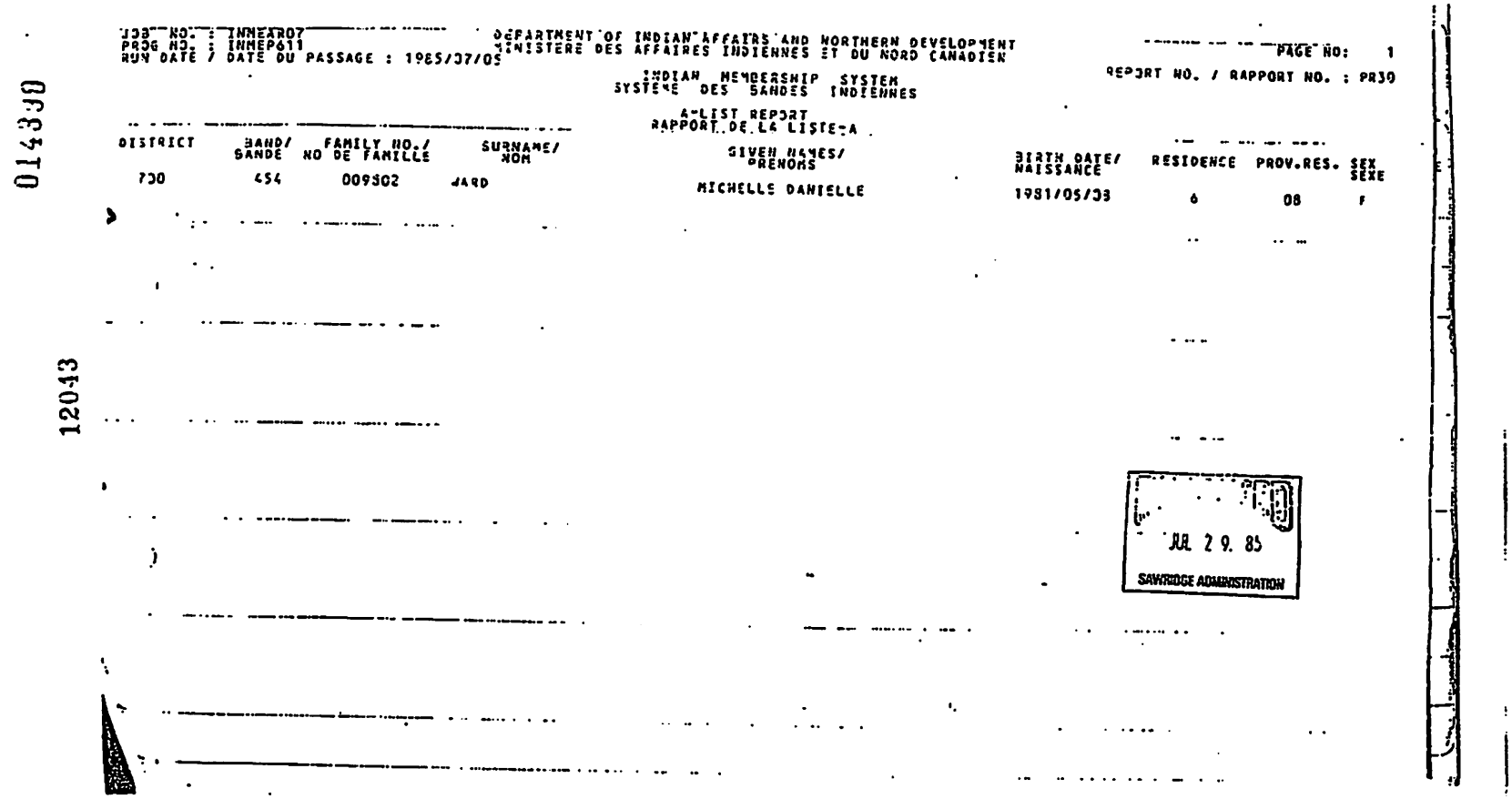

JOB NO. : INMEAR07
PROG NO. : INMEP611
RUN DATE / DATE DU PASSAGE : 1985/07/05

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT
MINISTERE DES AFFAIRES INDIENNES ET DU NORD CANADIEN

PAGE NO: 1

INDIAN MEMBERSHIP SYSTEM
SYSTEME DES BANDES INDIENNES

REPORT NO. / RAPPORT NO. : PR30

A-LIST REPORT
RAPPORT DE LA LISTE A

DISTRICT	BAND/ BANDE	FAMILY NO./ NO DE FAMILLE	SURNAME/ NOM	GIVEN NAMES/ PRENOMS	BIRTH DATE/ NAISSANCE	RESIDENCE	PROV.RES.	SEX SEXE
730	454	009302	JARD	MICHELLE DANIELLE	1981/05/03	6	08	F

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