COURT OF APPEAL FILE NUMBER:	2203-0043AC
TRIAL COURT FILE NUMBER:	1103 14112
REGISTRY OFFICE:	Edmonton

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

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

APPLICANTS:	ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust ("1985 SAWRIDGE TRUSTEES")
STATUS ON APPEAL:	Respondents
RESPONDENT:	THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA
STATUS ON APPEAL:	Appellant
RESPONDENT:	CATHERINE TWINN
STATUS ON APPEAL:	Respondent
INTERVENORS:	SAWRIDGE FIRST NATION AND SHELBY TWINN
STATUS ON APPEAL:	Interveners

and

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RESPONDENT	CATHERINE TWINN
STATUS ON APPEAL:	Appellant
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STATUS ON APPEAL:	Respondents
RESPONDENT:	THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA
STATUS ON APPEAL:	Respondent
INTERVENERS:	SAWRIDGE FIRST NATION AND SHELBY TWINN
STATUS ON APPEAL:	Interveners
DOCUMENT:	**FACTUM**

Appeal from the Decision of
The Honourable Mr. Justice J.T. Henderson
Dated the 4th day of February, 2022
Entered May 13, 2022

FACTUM OF THE INTERVENOR, SHELBY TWINN

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OVERVIEW

Access to Justice

….can mean many things…Having courts that can resolve your problem on time…And it means having confidence that the system will come to a just result – knowing you can respect it, and accept it, even if you don't agree with it. Ultimately, it is about getting justice for everyone, not perfect justice for a lucky few. It's a democratic issue. It's a human rights issue – Its even an economic issue…"

Right Honorable Richard Wagner. P.C. – Chief Justice of Canada, 7th Speech to 7th Annual Pro Bono Conference, Vancouver, BC – October 4, 2018

1. The Appellants – the Office of the Public Guardian and Trustee (OPGT) and Catherine Twinn (Twinn) - raise arguments about the February 4, 2022 decision, and the approach leading to it, taken by the new Case Management Justice (the new CMJ). But deeper issues are raised, going directly to the fair administration of justice and access to it. Purporting to interpret "what flows from"[1] the Asset Transfer Order (ATO), never appealed and granted years earlier in the same proceedings by his predecessor (CMJ Thomas), the new CMJ overturned the Court approved Trust to Trust transfer of the legal and beneficial[2] ownership of Trust assets in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust").

2. The result of the February 4, 2022 Decision is devastating to me and others, excluded from SFN membership. It appropriates $70+ M in Trust assets for SFN "members," already richly benefitting from the 1986 Trust. The Trustees used 1985 Trust monies to litigate our exclusion and as a pretext for denying us Trust benefits.[3]

3. The new CMJ directed application and Decision devastates confidence in and access to the fair administration of justice, in particular, the expectation of the neutrality of the Court.[4]

[1] April 25, 2019 Transcript, page 2, lines 17 – 22; page , 7 lines 20-27.
[2] Denny Thomas Decision, April 28, 2017, para 30
[3] January 5, 2018 Transcript page 4, lines 36-38

Case managers do not enter the fray; defer to those with whom they have outside relational connections while diminishing opposing parties; grant final relief in these circumstances; or purport to interpret an Order granted years earlier that no one called into question. Until the new CMJ questioned it, the meaning and effect of the ATO was not in issue between the parties and other participants including the SFN, Canada and 1985 Trust Beneficiaries.[2] It arose after the Briefs were filed on the Jurisdictional application suggesting the Court did not have authority, without making new law, to amend the Trust beneficiary definition to just SFN membership.[4]

4. The new CMJ's directed application and Decision echoes the 2017 SFN threat to apply to dissolve the Trust which "….fails as being discriminatory and contrary to public policy."5 These are the same reasons given by the new CMJ in stripping the 1985 Trust of its assets.

5. The new CMJ's result that the ATO approved the transfer of assets to the 1985 Trust subject to the 1982 Trust, is gob-smacking and gaslights my experience of the procedural history and the common understanding of the ATO. That he conceived, directed and ruled on his motion under the guise of interpretating the ATO is chilling, irreconcilable with the years of settlement discussions after the ATO6, to identify and grandfather those excluded by the beneficiary definition of just SFN members sought by the SFN and Trustees.7

6. This history raises questions about the relational membership web in the Legal Forum, a private legal Club, and the 12 year Denton's thread. Both CMJ's and the SFN lawyer, Ed Molstad (Molstad), are members of the Legal Forum, and both CMJ's were former Dentons' lawyers, along with Justice Feehan who endorsed the urgings of Doris Bonora, his former partner at Dentons' he holds in esteem, to restrict my June 15, 2022 Intervention.[8]

7. Overall, questions arise about judicial neutrality, judicial overreach, collateral attack on the ATO that was never appealed, ignored limitations, misconstrued Trust law principles, death by costly procedural gamesmanship, the 2017 threatened application of the SFN, a non-party, to dissolve the Trust, ignored fiduciary duties and the new CMJ's directed application and Decision

[4] April 25, 2018 Transcript
[5] September 18, 2017 Molstad letter to CMJ Denny Thomas
[6] January 5, 2018 Transcript, page 3, lines 1- 15, page 10, lines 1 – 5; see also paragraph 10(d) & (e) Settlement process by OGPT & Twinn for withdrawing their Appeals of Decision #3
[7] Trustees Proposed Beneficiary Definition for the 1985 Trust filed in this Action and attached to my Factum;
[8] June 15, 2022 Transcript

stripping Trust property from vulnerable Beneficiaries.

8. Integral to confidence in the administration of justice, is strict adherence by lawyers and Judges to standards of judicial integrity, neutrality and utmost candor by Judges and lawyers. Under the guise of, and instead of interpreting the ATO – which did not require "interpretation"- the new CMJ engaged in a collateral attack upon the ATO. He failed to properly apply the test for the interpretation of an order, palpably misconstrued the context in which the ATO had been granted, reached an erroneous result, and abused trust law principles in his analysis underlying his collateral attack on the ATO. This shatters confidence in the fair administration of justice.

PART I - FACTS AND PERSPECTIVE FROM MY LIVED EXPERIENCE

9. The decision under appeal arose in the context of an ongoing application for advice and direction, to facilitate a distribution of assets from the 1982 Trust to the 1985 Trust's beneficiaries whose beneficiaries were determined by vested, identical rules. By the time this Appeal is heard, the application will be in its 12th year. The 1985 Trust was settled in 1985 by Walter Patrick Twinn, with assets transferred to it in 1985 by the Sawridge Trustees of a 1982 Trust.

Background and Timeline of My Application for Trust Indemnified Party Status to being Self-Represented

10. Patrick Twinn, Deborah Serafinchon and I retained Nancy Golding in July, 2016 to apply for trust funded Party status. The SFN – a non-party – was funded privately by the Trust without a Court application.

11. I applied in response to the adversarial and litigious conduct of the Trustees, supported by the SFN, threatening my beneficiary status and Trust property:

a. In June 2015, the Trustees made a lightning attempt to CMJ Thomas to approve a Settlement that included grandfathering a politically determined small list of minor beneficiaries, while excluding legally entitled beneficiaries like me, in exchange for the Court approving a definitional change to band membership controlled by the SFN Council. Twinn intervened, her counsel

appearing for the first time in this Action to object to the Offer. Twinn raised, amongst other concerns, s.42 of the Trustee Act, that requires the consent of existing beneficiaries to any variation of the Trust. The Trustees denied their Offer involved a variation. Faced with opposition, the Trustees first adjourned their Settlement Offer (see the June 30, 2015 Order of Justice Thomas) then later withdrew it altogether. What remained was their intention to strip me of my interest in the 1985 Trust.

b. In January 2016 the Trustees brought forward a Distribution Plan based on Trust Benefits distributed to 1986 Trust beneficiaries whose status is exclusively and secretly determined by the SFN. [9]

c. Decision #3 of CMJ Thomas issued December 17, 2015 that, inter alia, prohibited anyone from talking about the SFN Band Membership system – which was not an issue not before him and which he already decided in Decision #1. The Trustees' stated end goal was always to restrict beneficiary status to SFN band members. I am not a SFN member. The Trustees disingenuously used one form of discrimination to replace the Trust beneficiary definition with a far more discriminatory SFN membership regime, directly threatening my interest in the Trust. Also, the Trustees and the SFN's agenda aimed to advance the SFN inherent right to decide membership, unrestricted by legal standards. The SFN twice failed in having a Court declare it possessed this inherent right.

d. The OPGT and Catherine Twinn appealed Decision #3 then withdrew their Appeals in exchange for Terms of Settlement that included the requirement to hold settlement meetings <u>to identify and grandfather existing 1985 Trust beneficiaries and their issue</u>.

e. The Trustees engaged in settlement discussions on numerous occasions, but

[9] The Benefits Plan were developed by Four Worlds based on 2009/2010 consultations with beneficiaries of the 1985 and 1986 Trust. They were promised confirmation of their status in one or both Trusts which the Trustees never fulfilled. See extensive evidence in this Action, 1403 04885; 1503 08727; Code of Conduct Complaints before Phyllis Smith;

without any participation by the beneficiaries despite requests they do so.

12. Our Application and Affidavits were filed on August 17, 2016.

13. Nancy Golding first appeared before Justice Thomas on August 24, 2016, with a consent order that counsel had agreed to which Justice Thomas refused to sign. That Order simply gave procedural notice until our application was determined. After berating a lawyer from Priscilla Kennedy's firm, representing Maurice Stoney, a non-party with no right to speak, CMJ Thomas deferred to Ed Molstad, representing another non-party, the SFN, whether to sign the Consent Order.[10]

14. We were aggressively questioned on September 22, 2016, by Doris Bonora and submitted extensive Undertakings. Patrick Twinn took offence to how Doris Bonora mistreated him.[11]

15. Our Brief of Argument and Book of Authorities was filed September 30, 2016.

16. Deborah Serafinchon's Affidavit was filed December 2, 2016, proving her registration as an Indian, long delayed in part by the refusal of some SFN relatives to recognize her as the Settlor's daughter, despite DNA proof. The Descheneaux decision[12] struck down S. 6 of the Indian Act. It ruled that persons in Deborah's circumstances should enjoy the same status as her male sibling. Her brother is Roland Twinn, they share the same father. Applying equality, Deborah ought then to have the same entitlement to be registered under s.6(1)(a) effective April 17, 1985, prior to the SFN Rules, thereby dispensing with a membership application to the SFN, bound by a Continuing Injunction.[13]

17. Our Reply Brief was filed on December 5, 2016.

18. CMJ Thomas's decision denying our application was filed July 5, 2017. He awarded

[10] August 24, 2016 Transcript deals with the consent order that counsel agreed to which CMJ Thomas refused to sign and what CMJ Thomas said about not signing the order;

[11] September 22, 2016 Transcript of Patrick Twinn

[12] Descheneaux decision, August 3, 2015, the Superior Court of Quebec. See also https://www.sac-isc.gc.ca/eng/1467227680166/1572460465418#chp2

[13] March 27, 2003 Decision of J Huggesson in Shelby Twinn's Affidavit, May 25, 2022, paragraph 23 reference

solicitor-client costs against Patrick Twinn and me. The initial drafts of the order contained a declaration that Patrick and I were beneficiaries. Various drafts of the Order were submitted including one without this declaration which CMJ Thomas preferred and signed.[14] Ultimately, our 1985 Trust beneficiary status was Court acknowledged.

19. A Civil Notice of Appeal was filed on August 4, 2017.

20. The Appeal Record was filed on September 5, 2017.

21. The Factum and Book of Authorities was filed on September 25, 2017.

22. The Appeal was heard on November 1, 2017.

23. The Court of Appeal Decision issued December 12, 2017. A transcript of the exchanges in that hearing was unavailable. The Decision states:

> [18] In this case, it is unclear what interest the individual appellants have that is not represented by the parties already before the court, or what position they would bring to the litigation, necessary to permit the issues to be completely and effectually resolved, that will not be presented by those existing parties. As a matter of law, the Trustees represent the interests of the Beneficiaries, who include Patrick and Shelby Twinn. Catherine Twinn, as dissenting trustee, is separately represented, has taken an opposing view as to the need for amendment of the Trust, and will place that position before the court. The Public Trustee is tasked with representing the interests of all Beneficiaries who were minors when the litigation began, although it is acknowledged that the Public Trustee does not represent the interests of Patrick and Shelby Twinn (notwithstanding a comment made by the case management judge to the contrary).
>
> [19] Neither the record, nor the oral or written submissions of the appellants, puts forward the positions each of the proposed parties intends to advance. As such, it is impossible for us to conclude that each proposed party has an interest that is not yet represented. Given the absence of information about the actual views of the appellants, we have no foundation to conclude otherwise. It is to be presumed that the Trustees and Public

[14] See Court record for communications.

Trustee will put forward the various arguments regarding proposed amendments to the Trust and how those proposed amendments could affect the interests of various categories of current and potential beneficiaries. That there is a separately represented dissenting Trustee before the court adds to the likelihood that all views will be canvassed and all interests protected.

[20] The case management judge has been involved in the Trust litigation for several years, and deference is owed to his assessment of which parties need to be before the court in order for the questions raised in the litigation to be effectively resolved. His cautious approach to increasing the cost burden on the Trust and its beneficiaries, and unnecessarily expanding the Trust litigation, is well founded. Adding all the beneficiaries and potential beneficiaries as full parties to the Trust litigation is neither advisable nor necessary. We would not interfere with the case management judge's decision not to grant party status to the appellants.

[21] The appellants and Catherine Twinn also argue that the process followed here is flawed, as no originating application was filed to commence the Trust litigation. The Trustees say that it was always intended that the Procedural Order made by the case management judge on August 31, 2011 would be the constating document for the application for advice and direction. We agree with the Trustees that the lack of an originating application is not fatal to the litigation. However, the lack of an originating application, setting out specifics of the relief being sought, has resulted in a lack of clarity regarding if and how the Trust will be varied, whose interests will be affected by the variation, and how those interests might be affected. The Procedural Order provides details of how the litigation will proceed, including notice provisions and timelines, but it does not address the nature of the relief being sought.

[22] During the oral hearing, this issue and a number of others arose that have not yet been the subject of an application to, or direction from the case management judge. One such issue is whether there is a need for a formal pleading setting forth the position of the Trustees and the relief being sought; specifically, whether the Trust is discriminatory; and if so, what remedy is being sought. A second issue is what procedure will be implemented

for beneficiaries and/or potential beneficiaries to participate in the Trust litigation either individually or as representatives of a particular category of beneficiary. In addition, concern was raised to whether discrete legal issues could be determined prior to the merits of the Trust litigation being heard. These include whether the Trust is discriminatory, and whether s 42 of the *Trustee Act* applies. To date, we understand no formal application has been made to the case management judge on any of these matters. We strongly recommend that they be dealt with forthwith.

24. Amongst other things, the evidence showed:

a. the Trustees were advocating to change the Trust beneficiary definition to SFN band membership, leveraging the s.12(1)(b) discrimination argument, without first identifying and grandfathering current beneficiaries and their issue;

b. the Trustees had authorized large payments to the SFN to cover its legal fees in this Action;

c. the September 18, 2017, SFN letter to CMJ Thomas to apply to dissolve the 1985 Trust, for control of $70+ M in Trust assets; and,

d. Twinn's concerns about the conflicting roles of Roland Twinn who as SFN Chief, enjoys deference by other Trustees, with consequences to this Trust.

25. On January 4, 2018, Nancy Golding wrote CMJ Thomas and Counsel offering comments for the January 5, 2018, Case management meeting, relying on Sawridge #5. On January 5th, the Court dismissed her letter because we are not parties but accepted Ed Molstad's January 3, 2018, letter to the Court on behalf of the non-party SFN. CMJ Thomas invited Molstad to open and close the January 5, 2018, Case Management, as the SFN must speak when its interests are affected.[15]

26. On January 5, 2018 CMJ Thomas responded to the constating application:

"I will say this: You know, the Court of Appeal, I can jump over what they have to say to

[15] January 5, 2018 Transcript, pages 1 – 2; pages 5 – 7, page 8 , lines 1-6, page 24, lines 4 - 7

> 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 it 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."[16]
>
> What is a constating application?[17]
>
> 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, ….[18]

27. The question of our meaningful participation was given cursory attention by Doris Bonora to limit us, while admitting, "these funds [1985 Trust funds] don't belong to these litigants. It belongs to the beneficiaries and the beneficiaries don't have choices as to what is happening here…[19]

28. As throughout, CMJ Thomas demonstrated utmost deference to non-party SFN, while excluding us and musing about whether Twinn is a party, why she is involved and keeps showing up.[20]

29. Doris Bonora implored CMJ Thomas, in the interests of efficiency, to ignore the Rules of Court and enshrine into an Order the Trustees' Schedule A, the remaining issues to achieve an "efficient end to this litigation,"[21] noting that all parties had agreed the 1985 Trust had discriminatory elements. [22] J Thomas pressed the OPGT and Twinn to agree, with comments such as "…you know this thing is really starting to irritate me..."[23] amid frequent and permitted

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[16] January 5, 2018 Transcript page 9, lines 35-39
[17] January 5, 2018 Transcript, page 11, line 37
[18] January 5, 2018 Transcript, page 23, lines 3-7
[19] January 5, 2018 Transcript page 4, lines 33-35; 5 & 6
[20] January 5, 2018 Transcript page 1 & 2; page 5 – 7; page 24, lines 4 – 7
[21] January 5 2018 Transcript, page line 20
[22] January 5, 2018 Transcript, pages 8,9
[23] January 5, 2018 Transcript, page 10, lines 9-10, page 14, lines 18-25

interruptions by Doris Bonora who suggested others were causing delay.[24]

30. The OPGT responded, saying; "*having a determination on discrimination [as advanced by Doris Bonora per Schedule A] without accompanying evidence and argument on remedy frankly opens the door for the application that the SFN 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, and 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*."[25]

31. The Trustees could not appear to advance the SFN application to dissolve the Trust, given their fiduciary duties to selflessly, loyally and with utmost good faith serve the Deed and its defined beneficiaries.

32. Doris Bonora said: "We started on Day 1 with, we need to change this definition because it was discriminatory"[26], to just band membership[27]. Clearly, I have a direct and immediate interest in this change, nonetheless, on January 10, 2018, the CMJ advised Nancy Golding we no longer had standing before the Court, given the Court of Appeal in Twinn v Twinn. Your voice to speak when your interest was in issue only extended to the SFN.

33. On January 9, 2018, the Trustees filed their constating application providing a statement of issues and relief sought. The sole issue identified as remaining for determination was whether the 1985 Trust beneficiary definition was discriminatory and if so, direction from the Court regarding the appropriate remedy to address that discrimination. If not, the Trustees did not seek any other relief and acknowledged their application was over.[28]

34. Throughout 2018, the trustees treated litigation plans as their method for dealing with the question of how to include or provide for beneficiary participation. Their January 2018 Plan provided for Nancy Golding to comment on the agreed Statement of Facts.

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[24] January 5, 2018 Transcript, page 10 & 11
[25] January 5, 2018 Transcript page 19, lines 8-14
[26] January 5, 2018 Transcript, page 14, lines 9-10
[27] Trustees Preferred Beneficiary Definition, from 2011
[28] January 5, 2018 Transcript, page 13, lines 37-40

35. On May 29, 2018, in spite of legal costs, we provided comments to an Agreed Statement of Facts. By June 28, 2018, legal costs were unaffordable. In anticipation of the September 25, 2018 Case Management meeting, I filed a letter with the Court September 21, 2018. Nancy Golding withdrew from the record September 21, 2018.

36. During this period, new litigation plans were proposed to eventually be dealt with in case management. The written submissions of the trustees filed in support of the litigation plan for the September 25, 2018, Case Management (cancelled by CMJ Thomas) discussed allowing the beneficiaries up to five pages of submissions while proposing punitive cost penalties for duplicitous submissions. Counsel for the OPGT and Twinn were unable to agree to that Trustee Litigation Plan. The Trustees had not identified and grandfathered their beneficiaries. Also, filing a submission to a maximum of 5 pages, subject to solicitor client costs for duplicative submissions (including party submissions) was oppressive to self-represented beneficiaries trying to protect their beneficiary status from being stripped.

37. In the Fall of 2018, the Trustees proposed and staged a Vote offering 1985 Trust beneficiaries two options. I adopt the information of the OPGT in paragraphs 36 – 39. Only 8 ballots were returned and the vote was unsuccessful.

38. I adopt paragraphs 40 – 42 of the OPGT describing events in the Fall of 2018 and the Order signed by the new CMJ at his first Case Management Meeting on December 18, 2018 including the new CMJ's comments describing the jurisdictional issue as fundamental.

39. On October 23, 2018, we learned that the new CMJ replaced CMJ Thomas, as he has on at least one other file, approved by Chief Justice Moreau.[29]

40. On November 30, 2018, Twinn's lawyer replied to a November 5, 2018, letter from Ed Molstad. His client, the SFN Chief and Council (not a party), wanted 'without prejudice" information shared by the parties to further settlement and demanded answers to questions before the SFN will determine what position the Trust funded Band will take in the 2011 Action and what, if any, applications it will advance.[30] Twinn's counsel responded November 30, 2018,

[29] October 23, 2018 letter of Justice Thomas to parties and SFN; see Wilcox v Alberta, Court file 1903 01343
[30] November 30, 2018 Crista Osualdini letter to Ed Molstad, attached to this Factum

noting the outstanding jurisdictional question the Court must hear, and addressed Molstad's threatened application, set out in his September 17, 2017, letter to CMJ Thomas, ("best suited"[31] to hear the SFN application), to dissolve the 1985 Trust and gain control and ownership of its assets.

41. Twinn's Counsel responded to the threatened application saying:

> Our respectful submission is that Mr. Molstad's clients do not have standing in this action and should not be allowed to come in through the back door. Mr. Molstad should have to file his own application, not under this action, and proceed as all applications are required to.
>
> Additionally, if Mr. Molstad is allowed to bring this application a very real structural conflict will exist because Chief Roland Twinn will be instructing his counsel to apply to dismantle the Trust when his role as Trustee is to protect the Trust. This cannot possibly be part of any application made by the Trustees acting in the best interests of the beneficiaries of the Trust.
>
> There will be the need for further applications relative to any application made by the Sawridge First Nation, including an application to have Chief Roland Twinn removed as a Trustee, which could be a drawn-out process. The application to collapse a trust is a very complicated trust question not easily answerable.[32]

42. On December 16, 2018, Nate Whitling wrote to counsel he would appear at the December 18, 2018, Case Management to represent a list of Adult Beneficiaries and Potential Beneficiaries. December 17, 2018, Ed Molstad advised he would also attend this being with the new CMJ's first Case management. That same day, Doris Bonora advised Nate Whitling to step down as he was in a conflict of interest, while Ed Molstad confirmed that if the 1985 Trust definition was not varied to the inherent right of the SFN to decide Band membership, he will destroy the Trust.[33]

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[31] September 18, 2017 hand delivered Molstad letter to CMJ Thomas; Nov 30, 2018 Crista Osualdini letter
[32] Insert references
[33] Insert references

43. Nate Whitling attended the December 18, 2018, Case Management meeting, to assist me and other self-represented adult beneficiaries prepare an application for standing. Doris Bonora cut him off, and with Ed Molstad, successfully opposed this pro bono assistance.[34]

44. I sent my concerns to the trustees December 19, 2018 about the December 18, 2018 case management who have never spoken or engaged with me.

Our Current Status:

45. Patrick Twinn is an uncontested beneficiary of both Trusts who opposes changing his irrevocable status to revocable at the pleasure of the SFN Chief and Council, under the SFN's Membership system, whose Rules and process are notoriously discriminatory, delayed, unfair and secretive.[35]

46. I am a beneficiary of the 1985 Trust but not the 1986 Trust. I applied for Band Membership April 23, 2018 along with the applications of 3 others including Deborah Serafinchon. All 4 applications have been ignored by the SFN Chief and Council, continuing the decades long pattern where the SFN ignores applications unless fast tracked by nepotism.[36]

47. Deborah Serafinchon is not a beneficiary of the 1986 Trust or the 1985 Trust but easily could be if the SFN admitted her into membership by respecting the Descheneaux decision, [37] which guarantees Deborah Serafinchon equal status to her male sibling. Her brother Trustee/Chief Roland Twinn', sharing the same father, Walter Patrick Twinn, my Mosom, who settled the 1985 Trust. Deborah's matrilineal and patrilineal lineage under Treaty 8 is impeccably SFN on both sides. Like me she is a bandless status Indian because the SFN discriminates against her by refusing to add her name to its Band List.

April 25, 2019 Jurisdiction Application

48. Following the December 18, 2018 Case Management, the focus was on the April 25,

[34] December 18, 2018 Transcript
[35] April 26, 2017 decision of J Russell in Twinn v SFN, 2017 FC 407

[36] Shelby Twinn Affidavit, May 25, 2022, paragraph 14
[37] Shelby Twinn Affidavit, May 25, 2022, paragraph 12

2019 Jurisdictional application. Filed Briefs raised serious doubts whether the Court had the authority to amend the beneficiary definition. If the Court had no power, the Trustees had conceded the proceeding was over.

49. On the morning of April 25, 2019 I and other self-represented beneficiaries were present for the hearing that was abruptly adjourned. The new CMJ began a process to dissolve the Trust of its assets by challenging the concluded 1985 asset transfer, confirmed by the long-settled ATO.

50. Until the new CMJ conceived and directed the Asset Transfer application, the SFN and Trustees acted upon a proper transfer of assets to the 1985 Trust for 1985 Trust beneficiaries, whose status was determined by s.11 of the Indian Act, 1970.

51. The new CMJ vowed to bring "*fresh eyes…fresh perspective*" to a settled issue. He uprooted the reality of the Consent Order saying "*Well, it looks like Justice Thomas said the transfer is proper but what flows from that I don't know…. I wouldn't, as I said earlier, immediately conclude that what flows from that is that these trust assets are subject to the definition of beneficiary in the 1985 trust.* " [38]

52. The new CMJ's reality shifting began by asking, "what flows" from the Consent Order, thereby countering Justice Thomas' Decision of April 28, 2017 about what the Consent Order did: "…*the process will not be permitted to fritter away the Trust assets so that they do not reach the people who own that property in equity, namely the Trust beneficiaries.*" The reality, the meaning and what flows from the 2016 Consent Order was understood to be **a proper transfer** of assets from the 1982 Trust to the 1985 Trust **for the 1985 Trust beneficiaries "who own that property in equity" (para 30)**.

53. The new CMJ discussed three options to vary a Trust, his limited judicial authority to amend this Trust, and that he:

[38] April 25, 2019 Transcript, page 2, lines 17 – 22; page , 7 lines 20-27.

"…*would have to go probably further to achieve that in this case than the law has gone to date*…" He also stated that:

"*The assets, while they may be situated in the 1985 Trust – because Justice Thomas said that they were – are still subject to the 1982 Trust terms. The definition of beneficiaries is members or future members of the Band, that's the end of it. There is still some discrimination in the 1982 Trust which we would need to deal with*…" .

"*So the easiest thing to do here is just to say you haven't satisfied me that this 1985 Trust is relevant. I'm not going to exercise my discretion to modify the definition of beneficiaries in the 1985 Trust. 1982 is where we're going, that's where we are*"… "*So my plan is to figure out what the facts are, determine what the law is. I'm not afraid to extend the common law if that's where we need to go*." [39]

54. Making "new law"[40] was side-stepped by adjourning the Jurisdiction Application the parties had agreed to. [41] The new CMJ's directed motion wasted precious time and hundreds of thousands of dollars spent on the Jurisdiction Application, imposing new costs to deal with his directed application, a particular hardship to Twinn who is self-funded.

55. I adopt paragraphs 44 – 47 of the OPGT's Factum. Replacing the 1985 Trust's beneficiary definition (s. 11 of the Indian Act, 1970), with the SFN's discriminatory and uncertain regime, strips my beneficial interest in the trust.

56. I adopt paragraphs 48 – 66 of the OPGT's Factum.

57. The new CMJ commenting on the scant evidence produced in relation to the Asset Transfer, nonetheless noted, "*other background information of a circumstantial nature that does assist in understanding what went on and we know, at least one can infer …that the Trust was created for a very specific purpose. That purpose was to ensure that the trust assets were not going to be shared with a group of people who were likely to become members of the band as a*

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[39] April 25, 2019 Transcript, Page 3, page 4, 17 – 21, lines 25 – 27, lines 37-38;
[40] April 25 2019 Transcript
[41] April 25, 2019 transcript.

result of proposed modifications to the Indian Act in 1985 which were imminent, and which would permit women, primarily, to re-join the band as members". [42]

Fiduciaries' Lack of Candor & A Disingenuous Abuse of Discrimination on Issues Relevant to this Appeal

58. Some illegitimate children of female Indians were selectively added without protest by the SFN to its Band List (e.g. Trustee Justin Twin)[43], but not others (Leo Morawski)[44], and in one known case (Michelle Ward), was removed by the SFN after her name was added by the Registrar, whose decision was confirmed in May, 1985 by the Alberta Queen's Bench Court.[45] The SFN has knowingly discriminated against some absolutely entitled children born before its Membership Rules, by not adding their names to its Band List. Children absolutely entitled before the SFN Membership rules include all the illegitimate children of a female SFN Indian and the illegitimate and legitimate male children of a male SFN Indian. This includes the absolutely entitled brother to SFN councilor Darcy Twin.[46]

59. The SFN's Membership Rules took effect October, 1985. It is thus a s.10 Band, meaning the Registrar does not add or deletes names from its Band List. The Registrar does add and delete names under s.11 of the 1970 Indian Act, treating Indian status and band membership as the same.

60. The SFN and Trustees impeach the 1985 Trust as discriminatory, using s.12(1)(b) women yet refuse to admit that the SFN membership system they propose replace the 1985 Trust beneficiary definition, relies on old, new and deadlier forms of discrimination.[47]

61. Three of the five Trustees are SFN members, two of whom support and benefit from

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[42] April 25, 2019 Transcript, page 3 line 40 – page 3, line 40
[43] See record in Action 1403 04885
[44] Shelby Twinn Affidavit, May 25, 2022, paragraph 23
[45] Shelby Twinn Affidavit, May 25, 2022, paragraph 12
[46] There are male illegitimate persons like Willian McDonald and Leo Morawski, known to the SFN Council and Trustees, who have not been added to the SFN Band List despite their absolute entitlement to be on the Band List before the Band's Membership Rules. William is brother to Darcy Twin, SFN Councilor. Shelby Twinn Affidavit, May 25, 2022, para 25
[47] See this Action, Actions 1403 04885; 1503 08727; Code of Conduct Complaints Phyllis Smith. See also footnotes 60 & 61 for the 2022 Senate Report titled "Make It Stop! Ending Indian Act ….Discrimination;

Trustee/Chief Twinn's stance to restrict the SFN membership for economic reasons[48] to some 40+ SFN members. and hence, restrict the beneficiary pool, The 2 "Independent Trustees" are non-Indigenous, defer to the majority, and lack insight into these complexities, unaware of buried facts.

62. The evidence produced or allowed by the Trustees was scant, not that the evidence itself was scant. It was abundant, available but suppressed.[49]

63. The myopic tunnel visioning in a tightly controlled application framed by the new CMJ, enables the deception that the SFN maintained beneficial ownership of 1985 Trust assets.

64. In attacking the ATO, the SFN floats ownership through unproven assertions acquiesced to by the Trustees. This false narrative began with Paul Bujold, advancing mistaken evidence given by Mosom[50] in 1993 during the 1st Bill C-31 trial that the SFN owned Trust assets. Neither the SFN or the Trustees produced or disclosed that my Mosom's mistaken evidence was corrected by Michael McKinney (McKinney), during his September 30, 1997 cross Examination. McKinney, since 1988 to the present, is in house legal counsel to the SFN and Trust owned companies, who cost share his salary.

65. McKinney's cross examination arose in the Stuart Olson action, suing the Sawridge Band, later adding the Sawridge Plaza and Sawridge Holdings (parent company of the 1985 Trust) as co-defendants (see Action # 9003 08301). The SFN position was that it did not own the Mall and was not liable for claims brought by Stuart Olson for the construction of the Mall. Three Affidavits of McKinney were filed and sealed. But a glimmer of McKinney's evidence is disclosed in an extract included in a Notice of Motion filed by Stuart Olson October 27, 1997. McKinney, under oath, does not adopt the mistaken evidence earlier given by Mosom that the SFN owned Sawridge Holdings. McKinney corrects the evidence that Holdings is owned by a Trust (the 1985 Trust):

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

[48] Shelby Twinn Affidavit, May 25, 2022, paragraph 12
[49] Crista Osualdini letter and attachments to new CMJ, November 20, 2019 re Maurice Cullity, not senile as Doris Bonora alleged
[50] Mosom is Cree for Grandfather

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. [51]

66. In avoiding liability or engaging in tax driven Trust distributions and transactions, the Trustees affirmed 1985 Trust ownership of its assets, not the SFN.[52] In this Action the Trustees misrepresented there were no distributions from the 1985 Trust, when there were distributions.[53] The Trustees have chosen to rely on this Action to deny beneficiaries like me from receiving Trust benefits, and cannot honestly assert there have been no 1985 Trust distributions which they withheld.

67. Both the SFN and the Trustees failed to disclose evidence in the Bill C-31 first trial relating to issues in this matter, importantly, the Settlor's purpose and circumstances in settling the 1985 Trust. They offer no account of complex Indian Act history; enfranchisement to avoid discrimination inherent in Indian status; per capita payments of Band monies to those enfranchising and signed Surrenders and Releases; the proven potential of high impact on Bands from Bill C-31's imposition of new members; equity; and other considerations relevant to the Settlor's "purpose" and the circumstances in settling and transferring assets from the 1982 Trust to the 1985 Trust, in particular:

a. The discrimination suffered by status Indians who never enfranchised including their compulsory attendance at Indian Residential Schools;

[51] Shelby Twinn Affidavit, Exhibit 3, Extract of McKinney Evidence
[52] Reference re Trust distributions and tax avoidance
[53] Reference re Trust distributions and tax avoidance

b. How descendants like myself carry the inter-generational trauma from this discrimination;

c. That enfranchising mitigated the discrimination inherent in Indian status;

d. The complexity of the Indian Act enfranchisement process. Not everyone who applied was permitted by Indian Affairs to enfranchise;

e. The large SFN per capita payments to enfranchising persons including the payment to one SFN family of some $1.2 Million shortly before C-31;

f. That Indian women who married non-Indian men engaged in a voluntary, transactional enfranchisement process including providing proof of marriage, signing forms including Surrenders and Releases and acceptance of per capita payments. Indian women who "married out" from their Band, like Delia Opekokew, Rita Okanee and Marie Marule, who refused to disclose, sign and cash payments, were never enfranchised;

g. Surrenders and Releases were signed by every Indian in Canada who enfranchised;

h. Until Bill C-31, Indian status and band membership, with a handful of exceptions capturing "bandless" Indians, were synonymous. It is post Bill C-31 the number of "bandless" Indians on the General List explodes, often children, severed by C-31 from belonging to a Band;

i. Bill C-31's protection of acquired rights before the Band's Membership Rules came into force;

j. Judicial deference to rights acquired before Bill C-31 under s. 11(1)(a), as demonstrated in the McIvor BCCA decision.[54]

k. The judicial pattern to expand and extend rights, not strip rights from

[54] McIvor v Registrar of Indian Affairs, *2009 BCCA 153*

Indians;

l. Trust benefits other First Nation Trusts have paid to pre-Bill C-31 members notwithstanding this entitlement arose from "discriminatory" provisions.[55]

m. Since April 17, 1985, Canada has negotiated and settled Treaties that constitutionally entrench sex based customary rules despite S. 15 of the Charter. The Nisga'a Treaty confers membership status based on the matrilineal, matrilocal line.[56]

n. The evidence produced by the SFN in the constitutional challenge of Bill C-31 relating to historical Cree patriarchal and patrilocal customs demonstrated the Cree man's responsibility as provider in a hunter-gatherer society, requiring recognized territorial rights to a specified territory belonging to his group to access resources. This was not "discrimination", it was survival.

o. Typically until more recent times, communities worldwide were patrilineal and patrilocal.

p. S.12(1)(b) is now disingenuously deployed by the Trustees and the SFN in this Action to justify appropriating 70+ million of 1985 Trust assets to the SFN's control;

q. The SFN vigorously opposed Bill C-31's unilateral imposition of new members as violating its s.35(1) sovereignty rights, unjustified under s.15 and neutralized by s.25. In this action, the SFN and Trustees appropriate s.12(1)(b) women they excluded, to enrich the SFN with 1985 Trust assets.

r. Further exposing the disingenuousness of the discrimination complaint is the fact the SFN never reformed its membership regime nor did the Trustees

[55] Twinn Brief filed in support of the April 25, 2019 Jurisdiction Application
[56] Nisgaa Treaty https://www.nisgaanation.ca/sigidim-haanak, Understanding the Nisga'a Treaty, Joseph Gosnell Sr., September, 1998 attached

require they do so, despite legal advice. Trustees still delegate their power to the SFN membership regime to identify 1986 Trust beneficiaries. That regime discriminates against the children and descendants of s.12(1)(b) women; those with a pre-existing right to membership before the SFN Membership Rules (e.g. William McDonald, Leo Morawski, Michelle Ward and others); and excludes persons like me and Deborah Serafinchon, equally qualified as Roland Twinn, his sons and others he has agreed to admit.[57]

s. Beneficiary identification became a political decision, not a legal decision based on certain, knowable criteria and standards of law.[58]

68. Acting in lockstep, the Trustees have sat mute while the SFN distorts the history as part of its attacks on the ATO. The Trustee response could not be weaker.

69. On the issue of discrimination they ignore the many forms of Indian Act generated discrimination; indeed taking advantage of these discriminatory forms.[59]

70. Beneficiaries like myself live these new forms of discrimination wrought by the Indian Act and the Sawridge First Nation (SFN) [60] membership regime. We have not been permitted in this Action to raise these forms of discrimination. Even mentioning the SFN membership system, the proposed replacement for the current Trust definition, is vigorously attacked by the SFN and the Trustees. What cannot be denied is that these new forms of discrimination exist and eventually will be dealt with.[61]

71. My Mosom foresaw how stringy and complex this is and would become. He therefore carefully and thoughtfully created inclusive protections for people like me to mitigate against

[57] Shelby Twinn May 25, 2022 Affidavit, para 24
[58] Shelby Twinn Affidavit, Roland Twinn's letter
[59] Senate Report
[60] 2022 Senate Report https://sencanada.ca/en/info-page/parl-44-1/appa-make-it-stop-ending-the-remaining-discrimination-in-indian-registration/
[61] I refer to the treatment of late Maurice Stoney and his lawyer Priscilla Kennedy, punished with Solicitor Client costs, for asserting a constitutionally protected right to membership, supported by the recent BC case, Nicholas et al v AG, No S215579, Canada is now trying to settle outside court. https://www.cbc.ca/news/politics/charter-challenge-bc-supreme-court-status-enfranchisement-1.6088049

the possibility of our becoming, under the ever evolving Indian Act, the new "road allowance people".[62]

72. Despite the well remedied cause of s.12(1)(b) woman – the new CMJ loaded this old gun against the most marginalized and discriminated classes of persons comprising the 1985 Trust beneficiaries. We hold Indian status but are denied band membership, yet remain beneficiaries of a now gutted Trust.

73. We descend from never enfranchised, pre-Bill C-31 members. The new CMJ advanced the one feminist, popularized form of discrimination with the false assumption these Trustees act in the best interests of their beneficiaries, despite the wealth of evidence documented by Twinn, [63] demonstrating their stated agenda was always harmful to our interests. [64]

74. Throughout this Action, the Trustees have denied my trust funded party status arguing they represent my best interests. Finally, during the hearing of the new CMJ directed application, the Trustees admitted they owe conflicting duties to beneficiaries who are SFN members and those, like me, who are not. This conflict was excused by the new CMJ in his February 4, 2022 Reasons.

75. The new CMJ projected a narrow and skewered framing of the Settlor's purpose in establishing the 1985 Trust as keeping out s.12(1)(b) women. This distracts, distorts and obfuscates the Settlors' truth, supported by well-known public facts:

a. My Mosom was not the Indian Act He did not cause the Indian women's loss of status – that was between the individual, the Indian Act and its bureaucracy. The women had the option of not giving up their status, could refuse to play the Indian Act enfranchisement game and retain their Indian status and membership despite marrying non-Indian men.[65]

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[62] Road allowance people https://www.cbc.ca/radio/unreserved/from-scrip-to-road-allowances-canada-s-complicated-history-with-the-m%C3%A9tis-1.5100375/forced-to-live-on-roadsides-the-dark-history-of-m%C3%A9tis-road-allowances-1.5100660

[63] See Twinn Briefs, Affidavits and Questionings in the 3 Actions

[64] CA decision re legal presumption Trustees act in best interests of its beneficiaries

[65] Shelby Twinn Affidavit, May 25, 2022, paras 11, 18, 19, 20

b. Over one third of the Bands in Canada opted out of the application of s.12(1)(b) before Bill C-31 was passed.[66]

c. My Mosom was not the "villain" whose s.12(1)(b) "victims" must be rescued from Mosom's discrimination. His challenging of Bill C-31, along with 5 other First Nations, was preemptive. He understood the potential increase in membership was 400%, not the 8% average increase forecast by Canada.[67]

d. No one knew then, or now, C-31's assimilative effects, given other provisions of the Indian Act and how status would be transmitted. Equality yes, assimilation no, was my Mosom's purpose. Increases in membership meant increases in voting power, including the transfer of voting power and control over fundamental community necessities such as preserving reserve lands. He did not want the lands sold for per capita distributions. He felt unsafe with persons who had not lived in or bonded with the community having voting control over community necessities or Trust wealth he personally sacrificed to build up.

e. C-31's impact on lands and resources has never been properly examined nor has Canada fulfilled its promises to Parliament to monitor, report on and mitigate C-31 impact.[68]

f. The C-31 challenge aimed to unhinge the determination of SFN membership from the Indian Act, minimizing exposure to ongoing Charter churning. The Membership would be determined by Indigenous legal norms, known to the Cree as Nature's laws. Significant evidence was produced in the C-31 case about Nature's Laws.

g. The successful misattribution used against Nimosom[69] and 5 other Plaintiffs in the Bill C-31 challenge is a well-known psychological primer used by

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[66] See Articles by Professor Doug Sanders, 1984 and older versions of the Annotated Indian Act by Woodward
[67] March, 1985 Treaty 8 Brief to Parliament on Bill C-31, filed by Shelby Twinn and others in this Action
[68] See the Record in the Corbierre et al case filed by Treaty 8?Lesser Slave Lake Indian Regional Council
[69] Cree for My Grandfather

behavioralists to manipulate to achieve a particular result. It is easy to tap into long held, colonial, schematized ways of thinking about Indian men as greedy and sexist. This invocation creates a psychological acceptance to what follows, suspending critical thinking and basic justice. The new CMJ appears to have focused on and been motivated by the popularized view of historical discrimination of s. 12(1)(b) women, perceiving this to have occurred through the 1982 trust transfer. The new CMJ then engages in a collateral attack on the ATO that confirmed the 1985 asset transfer. He overturned the 1985 transfer, after decades without challenge by anyone and years after the un-appealed ATO. Ironically, his decision allows far more discrimination currently and into the future, harming a larger vulnerable group whose futures he has dimmed.

h. Who defines the Lis wins! The Plaintiffs' defined Lis in the C-31 challenge was successfully mis-characterized by state actors (Defendant Canada) and 4 Interveners funded by the state, as a case to keep out s.12(1)(b) women. The Trustees and the SFN borrowed Canada's Defense playbook, mobilizing the successfully mischaracterized Lis to achieve their "end goal" – the $70+ million of 1985 trust assets are only for Band members on the s.10 Band List.

i. The SFN and Trustees anti-discrimination position is inauthentic and disingenuous, given their refusal to apply Nature's laws norms to determine membership and beneficiary status, despite the 1986 Trust definition requiring Cree "customary law."[70] This is demonstrated in their exclusion of family members who are entitled to SFN membership. Ample evidence on this point was provided by Twinn. Nor has the SFN reformed its discriminatory Membership system or codified their customary law, despite legal advice this must done. It is unconscionable that the Trustees continue to defer to the SFN to determine 1986 Trust beneficiaries.

j. Unlike the new CMJ, my Mosom lived and understood Indian Act realities.

[70] See Twinn materials with legal advice from David Ward Trustees must define Cree customary law but refused

A fluent Cree speaker of old, high Cree, he was intimate with Cree legal norms embedded in the language. He also experienced the lead up to Bill C-31, including the last minute enfranchisement of certain s.12(1)(b) women who took large per capita sums from Band capital and revenue monies. They correctly anticipated "restoration" of Indian status and membership, given the extensive lobbying and power of highly privileged and powerful, non-Indian feminists advocating unconditional restoration.[71] Per capita payments were never paid back.

k. But for my Mosom, neither Trust would exist or have its wealth. He personally guaranteed financing for many of the companies, incubating them into existence.[72]

l. Society today, including Courts are beginning to understand that those who remained Indians and did not enfranchise experienced the full force of discrimination, transmitting onto future generations the deep historic and inter-generational trauma. This historic, inter-generational and individual trauma explains today's sorrow systems' over-representation of Indians.[73] Those who enfranchised, avoided or at least mitigated the legal abuse for themselves and family. They were not wrong to mitigate, but their discrimination should not be used to privilege them by taking from us. Nor should the severe discrimination and resultant trauma experienced by those who never enfranchised be ignored. This trauma lives on, exacerbated by this Action, and the February 4, 2022 Decision stripping our Trust of its wealth.

m. On what basis can this Court or any right minded person presume the CMJ knows more and better than the Settlor? The CMJ's approach and the result is alarming to every Settlor and beneficiary.

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[71] Maureen McTeer, Sheelagh Day, Laura Sabia, Halyna Freeland, many others; Canadian Feminist Alliance for International Action, NAC, LEAF, etc

[72] Video, previously filed, on my Mosom's 20th Anniversary as Chief: One for All: A Tribute to Chief Walter Twinn and Shelby Twinn Affidavit May 25, 2022, and Affidavit of Twinn filed in this application

[73] Cite Child Welfare paper CT co-wrote

76. The Trustees and the SFN have been woefully silent, and aggressively silenced others, about the existence of the 1986 Trust and how the 1985 Trust and the 1986 Trust work together to achieve equity, fairness and equality.

77. Not only are they silent about the forced admission of s.12(1)(b) into SFN membership by a Court Injunction[74] and the rich benefits these woman today receive from the 1986 Trust, including a $2,500 tax free senior's benefit, the Trustees, with Trust funds, leverage the legal process against those who speak truth to their deceptive narrative. The s.12(1)(b) women's right to membership crystallized April 17, 1985, before SFN's membership rules came into force. The Court Injunction ordered the SFN to add these women without application to the SFN. Persons whose right to membership crystallized before Bill C-31 and who are 1985 Trust beneficiaries, have not been added by the SFN to the Band List despite the Continuing Injunction.

78. Part of the Trustees false narrative is they cannot identify 1985 Trust beneficiaries, that s.11 rules no longer exist or are capable of being applied.[75] To maintain this false narrative, they must ignore or deny the continuing application by the Registrar of S. 11 rules of the Indian Act and the many options offered to the Trustees to properly identify and grandfather their beneficiaries. Twinn and the OPGT have tried to clean up false impressions left with the Court but only so much correction can be done and they've failed in settling the identification and grandfathering of beneficiaries.

79. The Trustees have refused to grandfather 1985 Trust Beneficiaries who are not SFN members. Their continued and aggressive position is to change the definition change first, then argue about individual entitlement later, shifting the onus onto marginalized individuals to establish their entitlement. Yet the SFN controls access to the historical documents, such as SFN pay lists, denied to individuals to prove their entitlement.

80. The Trustees have misled on their alleged commitment and obligation to identify and grandfather 1985 Trust beneficiaries under prior Trust decisions, undertakings and advice, even before this Action was commenced. Ample evidence on this point was filed by Twinn.[76] When

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[74] March 27, 2003 decision
[75] December 18, 2018 Transcript, page 9, lines 32 – 35, page 10, lines 1-5
[76] See Twinn Actions Action 1403 04885; 1503 08727; Code of Conduct Complaints before Phyllis Smith; this Action

questioned about grandfathering, Molstad oscillates.

81. Together, they've deprived the Court of relevant information to issues on Appeal, including the Settlor's purpose; circumstances and factors taken into account in settling the 1985 Trust and transferring assets to it; the availability and willingness of key witnesses like Maurice Cullity and others; the origins of Trust assets that included grants and loans[77]. Instead the SFN has floated false restrictions, and both are silent about the inequities from the large per capita payments taken by those prior to Bill C-31, now unjustly and doubly enriched from 1985 Trust benefits by depriving beneficiaries like me of the 70+ million of 1985 Trust assets acquired before Bill C-31.

82. The Trustees actively ignored and restricted information coming before the Court concerning important differences between the 1982 Trust and the 1985 Trust, which the new CMJ did not see. The Trustee group changed from elected SFN officials to non-elected SFN officials, at least in theory. The sound reason being to prevent the political hijacking of the Trust and truly and independently focus solely on the best interests of the beneficiaries.[78]

83. The SFN, with implicit Trustee support, have floated false assertions that the 1985 Trust assets derive from Band Capital and Revenue Band monies, and the further suggestion that Trust funds can only be used for Band members. Acting in lockstep throughout, they've impeded evidence to the contrary.

84. There is a convergence of interest between Canada and the SFN to restrict membership and maintain continuing forms of discrimination. Keeping the membership pool small limits constitutional rights holders. Constitutional rights arise through membership in the group, that entitles them to participate and benefit from Claims and other arrangements.[79]

PART II - GROUNDS OF APPEAL

85. I am not a lawyer. I adopt the grounds cited by the Appellants.

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[77] Shelby Twinn Affidavit May 25, 2022, paragraphs 5, 6, 7; various Twinn Affidavits and evidence under cross examination
[78] Twinn Actions Action 1403 04885; 1503 08727; Code of Conduct Complaints before Phyllis Smith; this Action
[79] Shelby Twinn Affidavit, May 25, 2022, paragraph 12

PART III – STANDARD OF REVIEW

86. I am not a lawyer. I adopt:

Part 111, paragraphs 68- 72 of the OPGT's Factum.

Part 111, paragraphs 26-27 of Twinn's Factum.

PART IV - ARGUMENT

87. I am not a lawyer. I adopt the legal arguments of the Appellant. I have shared the facts as I understand them and my perspective from my lived experience. I believe I have made myself clear.

PART V - RELIEF SOUGHT

88. I respectfully pray that the within appeal be allowed, the 1985 Trustees be advised that the ATO confirms the 1985 transfer of assets was proper and that the transferred assets are held for the benefit of the 1985 beneficiaries, and the matter be remitted to a **new** CMJ, free of connection to the Denton's law firm, for further proceedings in accordance with the judgment of this Court that adult beneficiaries be Trust funded with independent legal counsel, first being identified and grandfathered forthwith.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of July, 2022

Estimated time for oral submissions: 20 minutes

LIST OF AUTHORITIES

Tab	Authorities
A.	Alberta Rules of Court
B.	Trustee Act, SA 2022, c T-8.1
C.	1985 Sawridge Trust v. Alberta (Public Trustee), 2017 ABQB 377
D.	1985 Sawridge Trust v. Alberta (Public Trustee), 2017 ABQB 436
E.	1985 Sawridge Trust v. Alberta (Public Trustee), 2017 ABQB 530
F.	1985 Sawridge Trust v. Alberta (Public Trustee), 2017 ABQB 548
G.	Al-Ghamdi v. Alberta, 2016 ABQB 424
H.	Allard v. Shaw Communications Inc. 2010 ABCA 316
I.	Benhaim v. St-Germain, 2016 SCC 48
J.	Campbell v. Campbell, 2016 SKCA 149
K.	Decore v. Decore, 2016 ABQB 246
L.	Hartley, Gerard, The Search for Consensus: A legislative History of Bill C-31, 1969- 1985, 2007, Aboriginal Policy Research Consortium International (APRCi) 98
M.	Hartson v. Park Paving Ltd., 2021 ABQB 742
N.	Hiles v. Hiles, 2021 ABCA 57
O.	Jonsson v. Lymer, 2020 ABCA 167
P.	Kachur Estate v. Kachur, 2021 ABCA 343
Q.	Lameman v. Alberta, 2013 ABCA 148
R.	*Manseau & Perron Inc. v. ThyssenKrupp Industrial Solutions (Canada) Inc.*, 2018 ABQB 949
S.	*Piikani Nation v. McMullen,* 2020 ABCA 366

INDEX OF APPENDICES

Tab 2

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

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

B E T W E E N :

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

OF THE FIRST PART,

- and -

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

OF THE SECOND PART.

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

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

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

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

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

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

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

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

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

(b) "Trust Fund" shall mean:

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

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

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

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

Tab AA.

MC LENNAN ROSS LLP
LEGAL COUNSEL

Our File Reference: 144194

Crista Osualdini
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PLEASE REPLY TO EDMONTON OFFICE

November 30, 2018

SENT BY E-MAIL

Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta T5J 4K1

Attention: Ed Molstad

Dear Sir:

Re: Court of Queen's Bench Action No. 1103 14112 ("1103 Action")

Further to your letter of November 5, 2018, we are writing with our response. Firstly, until the jurisdictional question before the Court is answered, namely what jurisdiction the Court has to amend the 1985 Trust Deed, the positions you are seeking cannot be finalized. As such, we cannot respond to your client's questions as they are premature.

Notwithstanding the outstanding jurisdiction question before the Court, we draw to your attention your letter dated September 18, 2017 to the Court, with a copy enclosed for your ease of reference. This letter confirms you received instructions from the Sawridge First Nation Chief and Counsel to consider an Application to dissolve the 1985 Trust. As a non-party to the 1103 Action and a non-party who has advised of a significant adverse position to the 1985 Trust, my client is not prepared to share information at this time on any "without prejudice" information that is being shared between the parties to the 1103 Action in order to further settlement. This information is essentially what your current letter seeks.

Can you please advise if the instructions stated in your letter of September 18, 2017 remain the same. Further, can you please advise if you plan on attending and being heard at the December 18, 2018 case management meeting. If so, can you please advise on what basis

your client is attending given that they are a non-party without any current recognized standing in the 1103 Action and further, what issues your client intends to raise.

Yours truly,

CRISTA OSUALDINI

CCO/mfr

Encl.

cc: Dentons Canada LLP
Attn: Doris Bonora

cc: Hutchison Law
Attn: Janet L. Hutchison

00144194 - 4134-8085-6601 v.1

PARLEE McLAWS LLP
BARRISTERS & SOLICITORS | PATENT & TRADEMARK AGENTS

September 18, 2017

EDWARD H. MOLSTAD, Q.C.
DIRECT DIAL: 780.423.8506
DIRECT FAX: 780.423.2870
EMAIL: emolstad@parlee.com
OUR FILE #: 64203-7/EHM

Delivered by Hand and
Via email to denise.sutton@albertacourts.ca

Court of Queen's Bench of Alberta
6th Floor Law Courts Building
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2

Attention: The Honourable Mr. Justice D.R.G. Thomas

Dear Mr. Justice Thomas:

Re: Sawridge Band Inter Vivos Settlement (1985 Trust)
Court of Queen's Bench Action No: 1103 14112

We reply to your letter of September 13, 2017 on behalf of the Sawridge First Nation (SFN).

There are a number of matters that are continuing in this action including the following:

- Ms. Catherine Twinn's application for indemnification for legal fees and disbursements in this action and in Action No. 1403 04885 from the 1985 Sawridge Trust (1985 Trust) scheduled to be heard in Chambers on October 13, 2017. We are advised that the claim for indemnification relates to past legal fees and disbursements in the approximate amount of $855,000.00 plus future legal fees and disbursements. (SFN is not a party to this application).

- We are advised that Patrick Twinn, Shelby Twinn and Deborah Serafinchon have appealed Sawridge #5. (SFN is not a party to this application or appeal).

- Maurice Felix Stoney has filed a Notice of Appeal in relation to Sawridge #6 (SFN is a party intervenor in relation to this matter).

Chief and Council of SFN (Chief and Council) are concerned that the legal costs that have been paid by the 1985 Trust to date and the future legal costs in relation to these proceedings and related proceedings will substantially impair the ability of the 1985 Trust to provide benefits to the beneficiaries who are members of SFN. As a result, Chief and Council have instructed our offices to review the evidence and the Record in this matter and to consult with them in relation to an application to dissolve the 1985 Trust on grounds that it fails as being discriminatory and contrary to public policy and other grounds.

Should the 1985 Trust be dissolved, it is the intention of Chief and Council to settle a new trust which would be for the benefit of SFN members today and future generations of SFN members as it is the position of Chief and Council of the SFN that this was the intended purpose of the 1985 Trust when it was settled.

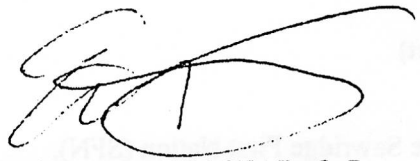
We would anticipate being in a position to advise the parties and the Court as to whether SFN will be proceeding with this application/action by approximately mid-October, 2017.

Should the SFN proceed with this application/action, it is our view that Your Lordship would be the person best suited to hear this matter; however, this would be subject to SFN advancing an application within this action and your agreement and availability.

As a result, we would request that we be given notice of the in person Case Management Meeting which is to be scheduled in order that we might attend and advise the Court and the parties of our position at that time.

Yours truly,

PARLEE McLAWS LLP



EDWARD H. MOLSTAD, Q.C.
EHM/mb

cc: Doris Bonora, Dentons Canada LLP
Via email: doris.bonora@dentons.co

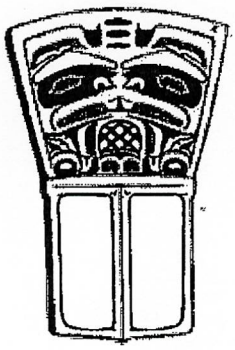
cc: Janet Hutchison, Hutchison Law
Via email: jhutchison@jlhlaw.ca

cc: Karen Platten, Q.C., McLennan Ross
Via email: kplatten@mross.com

Tab BB.

UNDERSTANDING THE NISGA'A TREATY

September, 1998



PREFACE

The Nisga'a Treaty stands as a symbol of hope and reconciliation between aboriginal and non-aboriginal Canadians.

This summary sets out the basic principles and facts of the Treaty, initialed August 4, 1998 in Gitlaxt'aamiks.

It offers insight into the historic background of the Treaty and emphasizes the importance of traditional Nisga'a culture in accordance with the Ayuuk.

By reconciling the aboriginal rights of the Nisga'a Nation with the sovereignty of the Crown, the Treaty is intended to be a just and equitable settlement of the Nisga'a Land Question that spells out a new relationship based on mutual recognition and sharing.

To the Nisga'a people, a treaty is a sacred instrument, the legal framework for a new society based on self-reliance and self-actualization. Fairly and honourably negotiated, the Treaty represents a major breakthrough for aboriginal self-determination — one of the most pressing issues in contemporary Canada and around the world.

Joseph Gosnell, Sr.
President, Nisga'a Tribal Council

September, 1998

Nisga'a Treaty

ELIGIBILITY AND ENROLMENT

Overview

This chapter explains the rules governing who is eligible to be enrolled under the Treaty and how enrolment takes place.

Who is entitled to be enrolled under the Treaty?

An individual is eligible to be enrolled under the Treaty if the individual is:

a. Of Nisga'a ancestry, and his or her mother was born into one of the Nisga'a tribes;

b. A descendant of an individual described in sub-paragraph (a) or (c);

c. An adopted child of an individual described in sub-paragraphs (a) or (b); or

d. An aboriginal individual who is married to someone described in sub-paragraphs (a), (b) or (c) and who has been adopted by one of the Nisga'a tribes in accordance with Ayuukhl Nisga'a, that is, the individual has been accepted by a Nisga'a tribe, as a member of that tribe, in the presence of witnesses from the other Nisga'a tribes at a settlement or stone moving feast.

Does enroling under the Treaty affect rights or benefits under the Indian Act?

No.

Can an individual be enrolled under the Treaty and at the same time be enrolled under another land claims agreement in Canada?

No.

How does an individual become enrolled under the Treaty?

By applying to the Enrolment Committee. During the initial enrolment period, until September 30, 1999, the Enrolment Committee will consider each application made to it, and will enrol each individual who demonstrates they are eligible.

How is the Enrolment Committee established?

The Enrolment Committee is established by, and is governed by enrolment rules adopted by, the General Executive Board of the Nisga'a Tribal Council. The Committee has two members from the Laxsgiik (Eagle) Tribe, two members from the Gisk'aast (Killer Whale) Tribe, two members from the Ganada (Raven) Tribe, and two members from the Laxgibuu (Wolf) Tribe.

Is there a connection between enroling under the Treaty and voting in the referendum on the Treaty?

Yes. The voters list for the referendum on the Treaty will be based on information supplied by the Enrolment Committee.

Can an individual whose application may be refused provide the Committee with more information?

Yes. Before the referendum on the Treaty, if the Enrolment Committee forms the opinion that an individual's application will be refused, the Enrolment Committee will provide the individual with a reasonable opportunity to provide more information or make more submissions.

Can children be enrolled? Or adults who cannot manage their own affairs?

Yes. An individual may apply to the Enrolment Committee on their own behalf, or on behalf of a minor or an adult whose affairs they have the legal authority to manage.

How will an individual know if his or her application has been accepted by the Enrolment Committee?

The Enrolment Committee will provide written notice of its decision to each applicant. If an application is refused, the Enrolment Committee will include written reasons for its decision.

Can decisions of the Enrolment Committee be appealed?

Yes. For two years after the effective date, an Enrolment Appeal Board will hear and decide appeals from decisions of the Enrolment Committee. The Enrolment Appeal Board will consist of one member appointed by the Nisga'a Nation, one member appointed by Canada, and a jointly appointed chairperson.

Who can bring an appeal to the Enrolment Appeal Board?

Any applicant, the Nisga'a Nation, a Nisga'a Village, Canada or British Columbia.

Can decisions of the Enrolment Appeal Board be reviewed?

Yes. An application for judicial review can be made to the Supreme Court of British Columbia by an applicant, the Nisga'a Nation, a Nisga'a Village, Canada or British Columbia.

Who will be responsible for enrolment after the initial enrolment period?

After the initial enrolment period ends on September 30, 1999, the Nisga'a Nation will be responsible for ongoing enrolment.