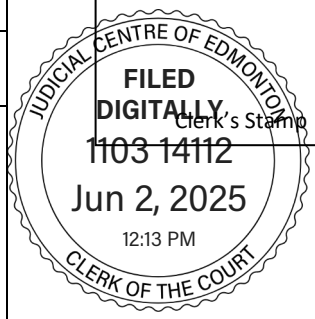
COURT FILE NUMBER	1103 14112
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE *TRUSTEE ACT*, R.S.A. 2000, c.T-8, AS AMENDED, and IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, on April 15, 1985 (the "**1985 Trust**")
APPLICANTS	ROLAND TWINN, EVERETT JUSTIN TWINN, MARGARET WARD, TRACEY SCARLETT, AND DAVID MAJESK, as Sawridge Trustees for the 1985 Sawridge Trust (the "**Trustees**")
RESPONDENTS	THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE and CATHERINE TWINN
INTERVENOR	THE SAWRIDGE FIRST NATION
DOCUMENT	REPLY BRIEF OF CATHERINE TWINN TO TRUSTEE "THRESHOLD" APPLICATION
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	CATHERINE TWINN TP LAW P.O. Box 1460 Slave Lake, AB T0G 2A0 P: 780.886.2921 F: 780.488.1893 E: ctwinn@twinnlaw.com



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I. INTRODUCTION

1. The Trustees' Threshold Question is the relief that seeks a declaration:

> Affirming that notwithstanding that the definition of "Beneficiary" set out under the 1985 Sawridge Trust is discriminatory, and includes certain non-members of the Sawridge Nation, the Sawridge Trustees may proceed to make distributions to the Beneficiaries of the 1985 Sawridge Trust, including to non-members of the SFN who qualify as Beneficiaries of the 1985 Sawridge Trust.

2. A January 22, 2018 Consent Order declared the 1985 Trust definition to be discriminatory insofar as it prohibits those SFN members from being beneficiaries of the 1985 Trust.

3. The Discrimination Order, paragraph 3, provides:

> "The Justice who hears and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief."

4. As will be demonstrated, the courts found that the 1985 amendments to the *Indian Act* did not entirely correct and actually perpetuated certain forms of sex discrimination, contrary to the *Charter*, compelling further amendments to the Indian Act in 2010, 2017 and 2019.

5. Subsequent amendments to the 1985 amendments to the *Indian Act* occurred in 1988 (Death Rule Amendments), 2011 (McIvor Amendments), 2017 and 2019 (Descheneaux Amendments), with further amendments to implement relief in the Nicholas et al case**.** Those amendments are not limited to s. 15 sex equality.

6. The Trustees are attempting, through the Threshold Application, to validate, normalize, perpetrate and continue discrimination and other Charter flagrant violations as a permanent feature of the 1985 Trust.

II. FACTS

A. History of Relevant Colonial and Post-Confederation Laws Governing Indian Status

i. Prior to 1850

ii. From 1850 until Confederation

iii. From Confederation until the adoption of the Indian Act in 1876

iv. Amendments in subsequent versions of the Indian Act up to 1985

v. The post-Charter amendments to the Indian Act

vi. Benefits of the law

vii. Nicholas et al v AG Canada, AMENDED NOTICE OF CIVIL CLAIM, filed Oct 11/24

viii. Coming Charter Challenge to s.10 of the Indian Act

ix. UNDRIP – further changes to the Indian Act and other Canadian laws by December 2027

x. Repeal of the Indian Act

i. Prior to 1850[1]

7. Prior to 1850, the status of "Indian" was not defined by the colonial laws of British North America. Indigenous peoples determined for themselves the principles and rules of membership in their own political communities.

8. Membership in an Indigenous community could occur in various ways, including through birth, marriage, adoption, and residence, moderated by other indigenous law considerations not easily seen, touched or measured including character, values, skills, world view and commitment.

[1] Nicholas et al v Canada, Amended Notice of Civil Claim, filed 2024-10-11, Vancouver Registry, portions of the Legislative History are taken from the Nicholas et al Claim, confirmed and supplemented by Catherine Twinn's research, including adding the Drummond Memo

ii. From 1850 until Confederation

9. Prior to joining Confederation in 1871, the colonies of Vancouver Island and mainland British Columbia, and their union as British Columbia after 1866, had laws referring to "Indians" or "Aborigines", but such laws contained no explicit definitions of these terms.

10. Definitions of "Indian" in Canadian law find their earliest roots in pre-Confederation legislation from the Province of Canada.

11. In 1850, with devolution of control over Indigenous-settler relations from Britain to the colonies, the Province of Canada adopted *An Act for the better protection of the Lands and Property of the Indians in Lower Canada*, 13 & 14 Vict, c 42 ("*1850 Lower Canada Act*").

12. Section V of the *1850 Lower Canada Act*, "for the purpose of determining any right of property, possession or occupation in or to any lands belonging or appropriated to any Tribe or Body of Indians in Lower Canada", identified four "classes of persons" to "be considered as Indians belonging to the Tribe or Body of Indians interested in such lands." These four classes were:

    a. "persons of Indian blood, reputed to belong to the particular Tribe or Body […] and their descendants";

    b. "[a]ll persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons";

    c. "[a]ll persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such"; and

    d. "[a]ll persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants."

13. Simultaneous with the adoption of the *1850 Lower Canada Act*, the Province of Canada adopted a related act applying to Upper Canada, *An Act for the protection of*

the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury, 13 & 14 Vict, c 74 ("*1850 Upper Canada Act*").

14. While the *1850 Upper Canada Act* did not provide an explicit definition of "Indian" as in the *1850 Lower Canada Act*, it did refer repeatedly to Indians and those who may be inter-married with Indians, declaring in Section X, e.g., that "it shall not be lawful for any person or persons other than Indians, and those who may be inter-married with Indians, to settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada".

15. In 1851, the Province of Canada adopted *An Act to repeal in part and to amend an Act, intituled, An Act for the better protection of the Lands and Property of the Indians in Lower Canada*, 14 & 15 Vict, c 59 ("*1851 Lower Canada Act*"). This Act amended the definition of persons "considered as Indians" in Lower Canada by removing the category of persons adopted by Indians and by including as Indian only women, but not men, who married a person considered as Indian.

16. Some western thinkers today characterize the 1851 amendments brought forward by Solicitor General Lewis Drummond as sex discrimination against Indian women. But an 1851 Memo by Solicitor General Lewis Drummond, responsible for the 1851 amendments, posits a different perspective. The amendment excluding white men married to Indian women from being classified as Indians of the Tribe, was to protect collectively held Indian land. The 1851 amendments, introduced and passed in response to the protests and urgings of Indian Tribes themselves, is explained by Drummond: [2]

> In this condition of things I felt that it was the duty of the Government to endeavour to put an end to those conflicts by passing a law defining clearly the rights of all persons residing in these villages, in accordance with the <u>ancient customs and traditions of the Indians</u> themselves. The Act of last session was

[2] Solicitor General Drummond Memo, 1851, reproduced at Tab 4, Shelby Twinn Supplemental Brief, filed November 27, 2020

> framed with a strict view to equity and to these customs and traditions; that part of it which confers upon all persons intermarried with Indians the same rights as the Indians themselves is obnoxious to the latter. Moreover, assuming that the system of isolating these remnants of the Indian Tribes must, at least for a considerable time to come, be persisted in, without reference to the policy in which it originated, it may be considered as a violation of the rights of the present proprietors to allow the white man who marries an Indian woman to claim a share in the rights of her tribe. I, therefore, propose to amend that portion of the law so as to exclude the white man who marries an Indian woman and his descendants, without depriving the Indian who marries a white woman, or his heirs, from a share in the rights of the tribe.

17. Tribal apprehension and foresight were confirmed by parallel events in the USA, evidenced by the tragic process led by the American Senator, Henry Dawes, resulting in the liquidation of the independent Indian Republics of the Choctaws, Chickasaws, Cherokees and Seminoles, known as the "Five Civilized Tribes". USA Tribes, like Canadian Tribes, held their lands in common. They maintained their own legislative bodies and judicial systems.

18. But by 1890 white people who had settled among the Tribes were overwhelmingly in the majority. Tribal lands were rich in resources. Congress therefore abrogated treaties it had promised would last "as long as the waters run" to begin the process ending in 1907 with the admission of Oklahoma into American Union, giving to Indians, what Angie Debo called, the "perilous gift of American citizenship". The orgy of exploitation between 1890 and 1907 and thereafter[3] is documented in the book, And Still the Waters Run", by Angie Debo.[4] It began with making thousands of persons tribal citizens without tribal consent who did not qualify under Tribal law, and culminated in the individual allotment of Indian land through the Dawes Allotment Act. Senator Dawes, quoted in 1890, said:

> In 1883 a small group of Eastern humanitarians began to meet annually at Lake Mohonk, where with an agreeable background of natural beauty, congenial companionship, and crusading motive, they discussed the Indian problem. At their third meeting Senator Henry

[3] See also the film, Killers of the Flower Moon, depicting the aftermath in 1920s Oklahoma

[4] Angie Debo, And Still the Waters Run, 1940, Princeton University Press, copy of the book given to J Little April 4, 2025 by C Twinn

> Dawes of Massachusetts, a distinguished Indian theorist, gave a glowing description of a visit of inspection he had recently made to the Indian territory. The most partisan Indian would hardly have painted such an idealized picture of his people's happiness and prosperity and culture, but illogically, the Senator advocated a change in this perfect society because it held the wrong principles of property ownership. Speaking apparently of the Cherokees, he said:
>
> > *"The head chief told us that there was not a family in that whole nation that had not a home of its own. There was not a pauper in that nation, and the nation did not owe a dollar. It built is own capital, in which we had this examination, and it built its schools and its hospitals. Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivated, they will not make much more progress."*[5]

19. In 1857, the Province of Canada for the first time legislated for the "enfranchisement" of Indians in *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians*, 20 Vict, c 26 ("*1857 Gradual Civilization Act*"). The Act allowed for the enfranchisement of Indian men who were at least 21 years old and who met a number of criteria, including being "of good moral character".

20. The *1857 Gradual Civilization Act*, section III explained that upon the enfranchisement of an Indian man, "enactments making any distinction between the legal rights and habilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof." Among other things, an enfranchised Indian would thereby lose, under Canadian law, the various rights to reside on Indian lands as laid out in the *1850 Upper Canada Act* and the *1850 Lower Canada Act*, as amended by the *1851 Lower Canada Act*.

[5] Ibid 3, pg 21, 22

21. Under section VIII of the *1857 Gradual Civilization Act*, the "wife, widow, and lineal descendants" of an Indian man were automatically enfranchised upon his enfranchisement. The Act provided no means for reversing the legal effects of enfranchisement, except in the case of an enfranchised Indian wife or daughter who subsequently "shall marry an Indian not enfranchised", in which case she "shall no longer be held to be enfranchised under this Act."

22. The 1996 *Report of the Royal Commission on Aboriginal Peoples* ("*RCAP Report*"), vol 1, page 249, described the *1857 Gradual Civilization Act* as "one of the most significant events in the evolution of Canadian Indian policy. Its premise was that by eventually removing all legal distinctions between Indians and non- Indians through the process of enfranchisement, it would be possible in time to absorb Indian people fully into colonial society."

23. The *RCAP Report*, vol 1, page 251, also highlighted the sex-based discrimination inherent in enfranchisement:

> Moreover, the *Gradual Civilization Act* continued and reinforced the sexism of the definition of Indian in the Lower Canada land act, since enfranchisement of a man automatically enfranchised his wife and children. The consequences for the wife could be devastating, since she not only lost her connection to her community, but also lost the right to regain it except by marrying another man with Indian status.

24. While the consequences of enfranchisement could be particularly devastating for involuntarily enfranchised wives, the *RCAP Report*, vol 1, page 251, also noted that the enfranchisement policy was by its very nature an assault on Indian cultural identity, including that of any Indian man "voluntarily" opting for enfranchisement:

> Finally, the tone and goals of the *Gradual Civilization Act*, especially the enfranchisement provisions, which asserted the superiority of colonial culture and values, also set in motion a process of devaluing and undermining Indian cultural identity. Only Indians who renounced their communities, cultures and languages could gain the respect of colonial and later Canadian society. In this

> respect it was the beginning of a psychological assault on Indian identity that would be escalated by the later *Indian Act* prohibitions on other cultural practices such as traditional dances and costumes and by the residential school policy.

25. As detailed below, the enfranchisement mechanism of the *1857 Gradual Civilization Act* was subsumed within federal legislation following Canadian confederation, subsequently extended to other provinces and territories, including British Columbia and Manitoba, and ultimately adopted in successive versions of the *Indian Act* .

iii. From Confederation until the adoption of the Indian Act *in 1876*

26. In 1867, section 91(24) of the *British North America Act, 1867*, 30 & 31 Vict, c 3, granted the newly established Parliament of Canada "exclusive Legislative Authority" "in relation to […] Indians, and Lands reserved for the Indians."

27. In 1868, Parliament adopted *An Act providing for the organisation of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, SC 1868, c 42 ("*1868 Indian Lands Act*").

28. Section 5 of the *1868 Indian Lands Act* named the Secretary of State as "Superintendent General of Indian affairs" having the control and management of the lands and property of the Indians in Canada.

29. For "the purpose of determining what persons are entitled to" hold interests in Indian lands, section 15 of the *1868 Indian Lands Act* adopted the same three categories of "Indian" listed in the *1851 Lower Canada Act*:

> *Firstly*. All persons of Indian blood, reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and their descendants;
>
> *Secondly*. All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and

the descendants of all such persons; And

> *Thirdly*. All women lawfully married to any of the persons included in the several classes hereinbefore designated; the children issue of such marriages, and their descendants.

30. In 1869, Parliament adopted *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, SC 1869, c 6 ("*1869 Enfranchisement Act*").

31. Section 6 of the *1869 Enfranchisement Act* amended the categories of Indians in section 15 of the *1868 Indian Lands Act* to exclude "any Indian woman marrying any other than an Indian" as well as "the children issue from such marriage". The same section also provided that "any Indian woman marrying an Indian of any other tribe, band or body" ceased to be a member of her former tribe, band or body and became a member of her husband's only, as did any children born of such marriage.

32. Section 13 of the *1869 Enfranchisement Act* authorized the Governor in Council "on the report of the Superintendent General of Indian Affairs" to "order the issue of Letters Patent granting to any Indian who from the degree of civilization to which he has attained, and the character for integrity and sobriety which he bears, appears to be a safe and suitable person for becoming a proprietor of land, a life estate" on land allotted to him from the reserve land of his "tribe, band, or body" of Indians. The children of an Indian granted such letters patent could inherit the land in fee simple.

33. Section 16 of the *1869 Enfranchisement Act* provided that "[e]very Indian shall before the issue" of such letters patent, "declare to the Superintendent General of Indian Affairs the name and surname by which he wishes to be enfranchised and thereafter known, and on his receiving such letters patent, in such name and surname, he shall be held to be also enfranchised, and he shall thereafter be known by such name and surname, and his wife and minor unmarried children, shall be held to be enfranchised".

34. The *1869 Enfranchisement Act* thus carried forward into federal legislation the essence of the enfranchisement policy and provisions set out in the *1857 Gradual Civilization Act*.

35. Through the *Rupert's Land and North-Western Territory Order* (UK) (reprinted in RSC 1985, App II, No 9), dated June 23rd, 1870, and pursuant to section 146 of the *British North America Act, 1867*, Rupert's Land and the North-Western Territory were annexed to Canada, effective July 15, 1870, with a portion of the annexed territory entering confederation as the Province of Manitoba on the terms set out in the *Manitoba Act*, 1870, SC 1870, c 3.

36. By *Order of Her Majesty in Council admitting British Columbia into the Union* (UK), dated May 16th, 1871, and pursuant to section 146 of the *British North America Act, 1867*, British Columbia entered confederation and became a province of Canada on July 20th, 1871 on the terms set out in the *British Columbia Terms of Union* (UK) (reprinted in RSC 1985, App II, No 10).

37. By article 13 of the *British Columbia Terms of Union*, "[t]he charge of the Indians" was "assumed by the Dominion Government".

38. In 1874, Parliament adopted *An Act to amend certain Laws respecting Indians, and to extend certain Laws relating to matters connected with Indians to the Provinces of Manitoba and British Columbia*, SC 1874, c 21 ("*1874 Act respecting Indians*").

39. Sections 9 and 10 of the *1874 Act respecting Indians* extended the application of various legal provisions, including the enfranchisement provisions of the *1869 Enfranchisement Act*, to Manitoba and British Columbia.

40. Section 8 of the *1874 Act respecting Indians* also affirmed the definition of "Indian" given in section 15 of the *1868 Indian Lands Act*, as modified by section 6 of the *1869 Enfranchisement Act*.

41. As of 1874, then, Canadian laws imposed a patrilineal definition of "Indian", newly applicable in Manitoba and British Columbia, with particular consequences for an Indian woman, at the time of her marriage, that varied according to the identity of her husband.

42. In particular, an Indian woman who married a non-Indian was herself thereby deemed non-Indian under Canadian law.

43. An Indian woman who married an Indian man who was not a member of her "tribe, body, or band" of Indians was thereby deemed no longer a member of her own "tribe, body, or band" but instead a member of her husband's.

44. Moreover, when an Indian woman married an Indian man (whether from her own "tribe, band or body" or otherwise), she lost the right to decide whether to maintain her Indian status under Canadian law or to apply for enfranchisement. Her husband was given the sole right to make that decision on her behalf and on behalf of any of their minor unmarried children.

45. In 1876, Parliament adopted *An Act to amend and consolidate the laws respecting Indians*, SC 1876, c 18 ("*1876 Indian Act* "). Section 3 of the *1876 Indian Act* reinforced the patrilineal definition of "Indian": The term "Indian" means:

    First. Any male person of Indian blood reputed to belong to a particular band;

    Secondly. Any child of such person;

    Thirdly. Any woman who is or was lawfully married to such person.

46. Subsection 3(c) of the *1876 Indian Act* specified that an Indian woman marrying a non-Indian "shall cease to be an Indian", as in prior legislation.

47. Sections 86 to 94 of the *1876 Indian Act* dealt with enfranchisement. These sections largely carried over the provisions of prior legislation, though with some notable changes and added detail, including those noted in the following paragraphs.

48. Section 86 allowed not only for any Indian man aged 21 years or older, but also for any *unmarried* Indian woman aged 21 years or older, to apply for enfranchisement.

49. Section 86 provided that the process of enfranchisement now depended on "the consent of the band of which he or she [i.e., the applicant] is a member".

50. Subsection 86(1) provided that any Indian who acquired a university degree, who was admitted to practise law in a province or to be a notary public, or who became a licensed Christian minister "shall *ipso facto* become and be enfranchised under this Act."

51. Section 88 provided that, as before, if a married Indian man became enfranchised, "his wife and minor unmarried children also shall be held to be enfranchised".

52. Section 94 provided that sections 86 to 93 (i.e., those dealing with enfranchisement) would "not apply to any band of Indians in the Province of British Columbia, the Province of Manitoba, the North-West Territories, or the Territory of Keewatin" unless they were "by proclamation of the Governor-General" extended to any such band of Indians. This effectively reversed, subject to proclamation of the Governor-General, the extension of statutory enfranchisement mechanisms to British Columbia and Manitoba through sections 9 and 10 of the *1874 Act respecting Indians*.

iv. Amendments in subsequent versions of the Indian Act *up to 1985*

53. In 1894, the *Indian Act was* amended to grant the Governor in Council the authority to "make regulations, either general or affecting the Indians of any province or of any named band, to secure the compulsory attendance of children at school": *An Act further to amend "The Indian Act "*, SC 1894, c 32, section 11.

In 1920, the *Indian Act* was amended to make such attendance compulsory by statute: "Every Indian child between the ages of seven and fifteen years who is physically able shall attend such day, industrial or boarding school as may be designated by the Superintendent General for the full periods during which such school is open each year"; penalties were provided for any parent or guardian of an Indian child "who fails

to cause such child" to attend school as required by the amendment: *An Act to amend the Indian Act* , SC 1920, c 50, section 1.

54. Enfranchisement under the *1869 Enfranchisement Act* and later the *Indian Act* required, until 1918, the issuing of letters patent to the applicant conferring an estate in a portion of reserve land allotted to the applicant.

55. In 1918, however, the *Indian Act* was amended to allow for the enfranchisement of "an Indian who holds no land in a reserve, does not reside in a reserve, and does not follow the Indian mode of life": *An Act to amend the Indian Act*, SC 1918, c 26, section 6. (*An Act to amend the Indian Act* , SC 1924, c 47, section 7 clarified that this 1918 addition was not repealed by *An Act to amend the Indian Act*, SC 1920, c 50, section 3, although imprecise drafting had raised the question.)

56. This 1918 amendment provided that upon application by such Indian, "the Governor in Council may order that such Indian be enfranchised […] and from the date of such order such Indian, together with his wife and unmarried minor children, shall be held to be enfranchised": *An Act to amend the Indian Act*, SC 1918, c 26, section 6.

57. This alternative enfranchisement process was also available to unmarried adult Indian women and Indian widows: "Any unmarried Indian woman of the age of twenty-one years, and any Indian widow and her minor unmarried children, may be enfranchised in the like manner in every respect as a male Indian and his said children": *An Act to amend the Indian Act* , SC 1918, c 26, section 6.

58. This provision of an alternative enfranchisement process applied "to the Indians in any part of Canada": *An Act to amend the Indian Act*, SC 1918, c 26, section 6.

59. This provision of an alternative enfranchisement process was inserted as section 122A of *An Act respecting Indians*, RSC 1906, c 81 ("*1906 Indian Act* ").

60. This alternative enfranchisement process was carried forward in section 114 in the 1927 consolidation, *An Act respecting Indians*, RSC 1927, c 98 ("*1927*

Indian Act ").

61. In 1920, the *Indian Act was* amended to extend the application of all its enfranchisement provisions across the country, including British Columbia and Manitoba, removing the requirement that the Governor in Council extend the application of certain provisions by proclamation: *An Act to amend the Indian Act* , SC 1920, c 50, section 3.

62. In 1924, the *Indian Act* was amended to provide that "where a wife is living apart from her husband, the enfranchisement of the husband shall not carry with it the enfranchisement of his wife except on her own written request to be so enfranchised." *An Act to amend the Indian Act* , SC 1924, c 47, section 6.

63. The *1927 Indian Act*, section 2(d) maintained the patrilineal definition of "Indian" given in the *1876 Indian Act*. Section 14 maintained the exclusion of Indian women who married non-Indian men.

64. The *1927 Indian Act,* section 10 maintained compulsory school attendance for "[e]very Indian child between the ages of seven and fifteen who is physically able".

65. The *1927 Indian Act*, sections 110 to 114 carried forward provisions for enfranchisement from earlier legislation.

66. The *Indian Act,* received major amendments in 1951, consolidated in *An Act respecting Indians*, RSC 1952, c 149 ("*1951 Indian Act"*).

67. The *1951 Indian Act* established for the first time a Register of Indians, "in which shall be registered the name of every person who is entitled to be registered as an Indian": section 5.

68. The *1951 Indian Act* defined the corresponding position of "Registrar" as the "officer […] who is in charge of the Indian Register": section 2(n).

69. The *1951 Indian Act* formally defined "Indian" to mean "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian": section 2(g). A person who is entitled to be registered in the Indian Register is generally said to have "Indian status", though that term is not specifically defined in the *Indian Act* . (Generally speaking a person is said to have had "Indian status" at any given time prior to 1951 if that person met the criteria of "Indian" as defined in the relevant federal or colonial legislation in effect at that time. With the *1951 Indian Act* , **meeting such criteria became synonymous with entitlement to registration in the Indian Register**.)

70. More concretely, the *1951 Indian Act provided* that "[u]pon the coming into force of this Act, the band lists then in existence in the Department [of Citizenship and Immigration] shall constitute the Indian Register": section 8.

71. Sections 11 and 12 of the *1951 Indian Act* then provided criteria for categories of further individuals who were entitled to be registered.

72. Subsections 11(a) and 11(b) provided that a person was entitled to be registered if that person belonged to an Indian band, tribe, or body recognized by Canada.

73. Subsection 11(c) provided that "a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b)" is entitled to be registered. That is, this subsection recognized the Indian status of any patrilineal male descendant of an Indian man.

74. Subsection 11(d) provided that the legitimate child of any male person described in subsections 11(a), (b), or (c) was entitled to be registered. In particular, then, any child born of a marriage between an Indian man and a non-Indian woman was granted Indian status.

75. Subsection 11(e) provided that the illegitimate child of an Indian woman was entitled to be registered "unless the Registrar is satisfied that the father of the child was not an

Indian and the Registrar has declared that the child is not entitled to be registered".

76. By subsection 11(f), any woman married to (or widowed by) an Indian man also had Indian status.

77. Section 11 of the *1951 Indian Act* was, however, subject to section 12, which provided categories of individuals who were specifically not entitled to be registered.

78. In particular, subsection 12(1)(a)(iii) provided that a person who was enfranchised was not entitled to be registered. That is, a person was stripped of Indian status upon being enfranchised, as in prior legislation.

79. Subsection 12(1)(a)(iv) introduced what came to be known as "the double-mother rule". This rule provided that a person was not entitled to be registered if that person is "born of a marriage entered into after the 4th day of September, 1951, and has attained the age of twenty-one years, whose mother and whose father's mother" were not entitled to be registered prior to marrying an Indian. In other words, after two successive generations of non-Indian women gaining Indian status by "marrying in", the children of the second-generation marriage would lose Indian status at age 21.

80. Subsection 12(1)(b) provided that a woman married to a non-Indian was not entitled to be registered. Thus, an Indian woman was stripped of Indian status upon marrying a non-Indian.

81. The two processes of applying for enfranchisement under earlier iterations of the *Indian Act* described above (the older process for Indians living on-reserve and the alternative process for those living off-reserve) were amalgamated in subsection 108(1) the *1951 Indian Act*, which continued to allow for application by an Indian male aged 21 years or older.

82. If the Minister responsible was satisfied that an applicant met the conditions listed in subsection 108(1), the Governor in Council could "by order declare that the Indian

and his wife and minor unmarried children are enfranchised."

83. Subsection 108(3) made an exception in the case of an Indian wife living apart from her husband; in such circumstances, her name and the names of any of their minor children living with her were not to appear on an order under subsection 108(1) unless she had herself applied for enfranchisement.

84. Subsection 108(2) allowed the Governor in Council to order the enfranchisement of an Indian woman who had married a non-Indian. (Under subsection 12(1)(b), an Indian woman automatically lost her Indian status upon marrying a non-Indian; an order under subsection 108(2) may have been required for the full legal consequences of enfranchisement to follow.)

85. Because enfranchisement orders under subsection 108(1), or under related provisions in previous versions of the *Indian Act* or earlier statutes, were made pursuant to an application for enfranchisement, this process has often been referred to as "voluntary enfranchisement".[6] By contrast, orders under subsection 108(2), or under related provisions in previous versions of the *Indian Act* or earlier statutes, are typically characterized as a form of "involuntary enfranchisement", because they were made without application from those enfranchised (i.e., Indian women who "married out" and any unmarried minor children they might have had at the time).

86. Reference to "voluntary enfranchisement" may be misleading in specific instances for at least two reasons. First, those applying for enfranchisement may have done so under duress, often from the very nature of the decision whether to retain Indian status or instead to seek the rights and privileges of Canadian citizenship, including freedom from residential schooling for their children. Second, the process was not "voluntary" in the case of wives and minor unmarried children who were automatically enfranchised pursuant to an application made by a husband or father.

[6] This distinction between "voluntary" and "involuntary, developed with Bill C-31, to delineate those "absolutely" entitled to band membership including s.12(1)(b), double mother and certain children, and those "conditionally" entitled after 2 years to be on a s. 11 Band List maintained by the Registrar.

87. Both "voluntary enfranchisement" and "involuntary enfranchisement" involved sex-based discrimination. Notably, whereas an Indian woman who married a non- Indian was thereby stripped of Indian status, an Indian woman who married an Indian man was thereby stripped of the right to decide whether to keep her Indian status. The husband alone had the legal authority to make that decision. While the husband's decision may have been constrained by circumstances, and sometimes made under duress, the wife was entirely stripped of any legal right to decide.

*v. The post-*Charter *amendments to the* Indian Act

88. With the adoption of the *Charter* in 1982, providing for the entry into force of section 15 on April 17, 1985, there was a clear constitutional imperative to address the sex-based inequities in the *Indian Act* 's registration provisions.

89. In 1985, the Minister of Indian Affairs and Northern Development presented Bill C-31: *An Act to Amend the Indian Act* to Parliament with the stated intentions, notably, of removing sex-based discrimination from the *Indian Act* and of restoring Indian status and band membership to those whose status and band membership were lost as a result of discrimination in the *Indian Act*.

90. Bill C-31 was enacted as *An Act to Amend the Indian Act* , SC 1985, c 27 on June 28, 1985, with retroactive effect to April 17, 1985, amending *An Act respecting Indians*, RSC 1985, c I-5 ("*1985 Indian Act* ").

91. Bill C-31 amended the provisions for Indian status according to the following key purposes or effects:

    a. preserving all "acquired rights" to registration existing prior to April 17, 1985, such that everyone registered or entitled to be registered in the Indian Register immediately prior to that date was entitled to be registered after Bill C-31 came into force;

    b. eliminating the gain or loss of Indian status through marriage;

c. reinstating the entitlement to be registered in the Indian Register for individuals born with such entitlement but having lost it under various earlier provisions of the *Indian Act*, notably through marrying out or being enfranchised;

d. enhancing the entitlement to be registered in the Indian Register for those individuals previously subject to the "double-mother rule" by removing their loss of entitlement at age 21.

92. Section 4 of Bill C-31 amended section 6 of the *1985 Indian Act* to provide two categories of individuals with Indian status:

a. "6(1) status" for an individual both of whose parents are entitled to be registered in the Indian Register; and

b. "6(2) status" for an individual with one parent having 6(1) status and the other parent not entitled to be registered in the Indian Register.

93. Individuals with 6(1) status are able to transmit Indian status to their children. That is, the children of such an individual themselves have Indian status.

94. Individuals with 6(2) status are unable to transmit Indian status to their children. That is, the children of an individual with 6(2) status will not have Indian status unless their other parent also has Indian status (either 6(1) or 6(2) status).

95. Section 6(1)(a) provided that everyone who was registered or entitled to be registered immediately prior to April 17, 1985 was entitled to 6(1) status following the adoption of Bill C-31.

96. Under section 6(1)(c), every woman who had lost Indian status upon marrying a non-Indian, or upon being enfranchised due to her marriage to a non-Indian, was entitled to 6(1) status (with the exception of women who had first acquired Indian status through marriage and then lost that status through a subsequent marriage to a non-Indian: section 7(1)(a) of the *1985 Indian Act*, as modified by Bill C-31).

97. Also under section 6(1)(c), every person who had lost Indian status due to the double-mother rule was entitled to 6(1) status. Bill C-31 also eliminated the double- mother rule such that no individual would henceforth lose status under that rule.

98. Under section 6(1)(d) every person who had lost Indian status through order of the Governor in Council pursuant to an application for enfranchisement was entitled to 6(1) status (with the exception of (i) women who had first acquired Indian status through marriage and (ii) individuals who first acquired Indian status through the marriage of their mother to an Indian: sections 7(1)(a) and 7(1)(b) of the *1985 Indian Act*, as modified by Bill C-31).

99. Section 6(1)(f) granted 6(1) status to every person "both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section", i.e. under section 6 (with either 6(1) or 6(2) status).

100. Section 6(3)(b) clarified that for the purposes of sections 6(1)(f) and 6(2), "a person described in paragraph (1)(c), (d) or (e) who was no longer living on April 17, 1985 shall be deemed to be entitled to register under that paragraph."

101. Section 19 of Bill C-31 repealed the enfranchisement provisions of the *Indian Act*. There no longer exists an enfranchisement process under the Act.

102. Finally, section 22 of Bill C-31 provided that within two years of its enactment the Minister of Indian Affairs would present a report to each Chamber of Parliament on the implementation of the Act and that this report would be examined by a designated committee of Parliament.

103. The Standing Committee on Aboriginal Affairs and Northern Development examined this report in 1988. The Committee noted that Bill C-31 amended the registration provisions of the *Indian Act* in order to ensure compliance with international human rights standards and the equality provisions of the *Charter*. The Committee observed that there remained discriminatory provisions in the rules

governing registration in the Indian Register following the adoption of Bill C-31.

104. Nonetheless, Parliament did not bring any further changes to the registration provisions until 2010, subsequent to the British Columbia Court of Appeal's decision in *McIvor v Canada (Registrar of Indian and Northern Affairs Canada)*, 2009 BCCA 153.

105. The Court of Appeal in *McIvor* found that the registration provisions, as amended by Bill C-31, violated section 15 of the *Charter* by perpetuating sex-based discrimination. Notably, under Bill C-31, children born of a marriage between an Indian and a non-Indian entered into prior to April 17, 1985 would acquire 6(1) status if their father was Indian but only 6(2) status if their mother was Indian.

106. The Court of Appeal in *McIvor* declared sections 6(1)(a) and 6(1)(c) of the *Indian Act*, as they then read, of no force or effect, but suspended the effect of that declaration to allow Parliament time to remedy the Act.

107. In March 2010, the government presented to Parliament the Bill that would ultimately be adopted into law as the *Gender Equity in Indian Registration Act*, SC 2010, c 18 ("Bill C-3").

108. Bill C-3 proposed only a narrow amendment of the existing registration provisions, to allow, in certain circumstances, the children of an Indian woman who had lost status through marriage to a non-Indian man to obtain 6(1) status, and thus to be able to transmit Indian status to their own children, i.e., to the grand-children of the Indian woman who had lost status by marrying out.

109. More specifically, Bill C-3 proposed a new provision, subsection 6(1)(c.1), through which 6(1) status would be granted to individuals:

a. who were born to an Indian mother and non-Indian father;

b. whose mother had lost Indian status through marriage to a non-

Indian prior to April 17, 1985;

c. who were born on or after the date of the marriage that caused their mother's loss of Indian status; and

d. who themselves had or adopted a child on or after September 4, 1951 (when the "double-mother rule" took effect) with a person not entitled to be registered in the Indian Register at the time of that child's birth or adoption.

110. The children of individuals registered under subsection 6(1)(c.1) would thus be entitled to register under subsection 6(2), but would not be able to pass Indian status on to their own children, unless they parent with another individual who has Indian status (either 6(1) or 6(2) status).

111. During parliamentary debate on Bill C-3, members in both the Senate and House of Commons expressed concerns that the Bill left clearly discriminatory provisions in place.

112. Nonetheless, Bill C-3 was adopted by the House of Commons on November 22, 2010 and by the Senate on December 9, 2010 without amendment to address the forms of discrimination identified during parliamentary debates on the Bill.

113. Bill C-3 received Royal Assent on December 15, 2010 and entered into force on January 31, 2011.

114. On August 3, 2015, the Superior Court of Quebec issued its judgment in *Descheneaux c Canada*, 2015 QCCS 3555, addressing forms of discrimination remaining in the registration provisions, including forms identified during the parliamentary debates on Bill C-3.

115. Notably, the *Indian Act* as amended by Bill C-3 continued to discriminate against individuals who had a single Indian grandparent who was female and had lost Indian status through marriage. As a category, such individuals had lesser entitlement to registration than individuals similarly situated except for having a male rather than

a female Indian grandparent.

116. Finding that this and other forms of discrimination violated section 15 of the *Charter*, the Court in *Descheneaux* declared sections 6(1)(a), (c), and (f) and 6(2) of the *Indian Act*, as they then read, to be of no force or effect, suspending the effect of that declaration for 18 months to allow Parliament time to adopt remedial legislation.

117. In its concluding remarks, notably paragraphs 235 to 243, the Court in *Descheneaux* urged Parliament not to limit itself to remedying only the instances of discrimination identified in that case, stating at paragraph 243 that "Parliament should not interpret this judgment as strictly as it did the BCCA's judgment in *McIvor*."

118. On January 20, 2017, the Superior Court of Quebec extended until July 3, 2017 the suspension of the effect of its declaration of constitutional invalidity.

119. On August 18, 2017, the Court of Appeal of Quebec, overturning a decision of the Superior Court of Quebec, granted a further extension of the suspension, which was thus extended until December 22, 2017: 2017 QCCA 1238.

120. Meanwhile, Bill S-3, *An act to amend the Indian Act (elimination of sex-based inequities in registration)*, had been introduced and given First Reading in the Senate on October 25, 2016.

121. Bill S-3 was narrowly tailored to address the categories of discrimination specifically identified by the Superior Court of Quebec in *Descheneaux*.

122. During parliamentary debates and committee hearings on Bill S-3, concerns were once again raised about forms of discrimination in the registration provisions that would not be remedied by the Bill.

123. Nonetheless, Bill S-3 received Royal Assent on December 12, 2017 and was adopted into law as *An Act to amend the Indian Act in response to the Superior Court*

of Quebec decision in Descheneaux c. Canada (Procureur général), SC 2017, c 25.

124. Bill S-3 does not amend or address the registration provisions, notably sections 6(1)(d), 6(1)(f), and 6(2), that apply to individuals who were enfranchised pursuant to applications for enfranchisement and to their descendants.

125. Bill C-3 and Bill S-3 have remedied certain discriminatory effects of enfranchisement that Bill C-31 imposed on women who regained status under section 6(1)(c) of the *1985 Indian Act*, as modified by Bill C-31, and on the descendants of such women.

126. Certain provisions of Bill S-3 did not come into force until August 2019. Among other things, these delayed provisions replaced the various provisions under section 6(1)(c) with new provisions under 6(1)(a) and granted Indian status to all descendants of women who had previously regained entitlement under section 6(1)(c), on equal footing with similarly placed descendants of Indian men.

127. That is, the registration provisions currently in force grant status to any direct descendant of an Indian woman who lost status due to marrying a non-Indian, so long as that direct descendant either (i) was born before April 17, 1985 or (ii) was born after April 16, 1985 and their parents were married before April 17, 1985: *Indian Act*, sections 6(1)(a.1) and 6(1)(a.3).

128. However, neither Bill C-3 nor Bill S-3 addressed the discriminatory effects of enfranchisement that Bill C-31 imposed on individuals who regained status under section 6(1)(d) of the *1985 Indian Act* and on the descendants of such individuals.

129. As required by Bill S-3, the federal government launched a consultation process to address forms of discrimination still remaining in the registration provisions of the *Indian Act* following the adoption of that Bill.

130. As also required by Bill S-3, the federal government tabled a Report to

Parliament in June 2019 following the conclusion of that consultation process.

131. The Report to Parliament does not propose any action to address the situation of those who continue to endure the discriminatory effects of enfranchisement imposed by section 6(1)(d) of the current registration provisions.

132. The Report to Parliament nonetheless claims that Bill S-3 eliminated all sex-based discrimination from the registration provisions in the *Indian Act* .

133. The Report to Parliament does, however, recognize that there exist "remaining inequities" suffered by the descendants of individuals who were enfranchised for reasons other than marriage to a non-Indian. Notably, the Report, at page 27 of Appendix B, acknowledges:

> The 2017 amendments (Bill S-3) corrected sex-based inequities for women, and their descendants, when the woman involuntarily lost entitlement to registration due to marriage to a non-Indian man. Bill S-3 brings entitlement to descendants of women who married a non-Indian man in line with descendants of individuals who were never enfranchised. However, the descendants of individuals who were enfranchised for other reasons (both voluntary and involuntary) remain at a disadvantage in comparison. These remaining inequities within the Indian Act continue to have an impact.

134. The Report to Parliament contains demographic information on the number of individuals who gained entitlement to Indian status under earlier amendments to the *Indian Act* registration provisions and estimates on the number who gained entitlement under Bill S-3.

135. The Report to Parliament states, for instance, that the 1985 amendments in Bill C- 31 resulted in an increase of the population entitled to Indian registration (i.e., to Indian status) of 174,500 from 1985 to 1999.

136. The Report to Parliament states that Bill C-3 resulted in more than 37,000 newly

entitled individuals registered from 2011 to 2017 who would not have been entitled under previous versions of the *Indian Act* .

137. The Report to Parliament estimates that Bill S-3 initially increased entitlement to registration by 28,970 and that when delayed provisions of Bill S-3 come into effect (which occurred in August 2019), an estimated 270,000 additional individuals could be registered.

138. The Report to Parliament also cites a demographic report by Stewart Clatworthy that was commissioned by the Government of Canada in the summer of 2017.

139. Mr. Clatworthy's report includes an estimate of the number of individuals who would be newly entitled to register if the same legislative remedies were applied to sections 6(1)(d) and 6(1)(e) as have been applied to section 6(1)(c). Mr. Clatworthy's report estimates that, under that scenario, approximately 2,400 individuals would become newly entitled to register.

140. The Registration provisions currently in force are those of the *1985 Indian Act* as amended by Bill C-31, Bill C-3, and Bill S-3.

vi. Benefits of the law

141. The benefits of the law flow from:

a. registration in the Indian Register, or Indian status,

b. the ability to transmit Indian status to one's offspring, and,

c. being on a band membership list.

142. Registration in the Indian Register, or Indian status, and the ability to transmit that status are sources of both tangible and intangible benefits.

143. There are tangible and intangible benefits flowing from the current registration provisions of the *Indian Act*.

144. The intangible benefits of registration include recognition of identity and socio-cultural belonging, the possibility of living within the community as a status Indian, with a shared and recognized sense of identity, values, customs, and traditions with other members of the community.

145. The intangible benefits of being able to transmit Indian status to one's children, grandchildren, and offspring more broadly, include the transmission of identity and cultural heritage. The ability to transmit Indian status to one's offspring is of significant spiritual and cultural value.

146. The tangible benefits of registration include economic, educational, health, socio- political, and cultural benefits.

147. Some of the tangible benefits of registration are administered by Indian bands or are otherwise linked to band membership. Registration under the *Indian Act* either automatically entails band membership for Bands who did not pass Membership Rules pursuant to s.10 of the Indian Act and whose Band Membership List is administered by the Indian Registrar. These Bands are referred to as "s.11 Bands". Registration as an Indian does not automatically entail band membership where the Band passed Membership Rules pursuant to s.10 of the Indian Act and administers its own Band Membership List.

148. Tangible economic, educational, and health benefits of having both Indian status and Band membership include:

a. the right to share in the capital accounts and revenue of the Band;

b. the right to benefit from financial aid in the construction or renovation of a home on a reserve;

c. tax exemptions, and the protection of goods located on reserve from seizure;

d. elementary and secondary educational services;

e. post-secondary education financial assistance;

f. additional support in accessing medical services such as dental care, prescription drugs, prosthetics, and medical transport;

g. social assistance;

h. opportunities for federal government loans;

i. Employment and Training Opportunities;

j. Per capita payments to members;

k. Banking and other private sector initiatives to implement TRC calls to action;

l. Other affirmative action opportunities; and,

m. Where there is a Trust, as in the case of the Sawridge Band, Trust benefits.

149. Tangible socio-political and cultural benefits of having both Indian status and band membership include:

a. the right to reside on Band reserve lands;

b. the right to vote and be a candidate in Band Council elections;

c. the right to participate and vote in Band referendums;

d. the right to possess, transmit, and inherit property on reserve lands;

e. the right to be buried on reserve;

f. special hunting, fishing, and trapping rights, and,

g. in the case of the Sawridge Band, Trust benefits.

150. The tangible benefits of Indian status and band membership flow also to parents and grand-parents who are responsible for the care, education, and support of the children and grand-children with Indian status and band membership and these include:

a. support for certain medical and dental needs, for post-secondary education, and for extracurricular programs; and

b. certain tax exemptions.

vii. Nicholas et al v AG Canada, AMENDED NOTICE OF CIVIL CLAIM, filed Oct 11/24

151. The Nicholas et al Claim "challenges the voluntary enfranchisement provisions of the Indian Act, relying on the *Charter*, and in particular, sections 7, 15, and 28. The Plaintiffs claim they are deprived of the benefits of the law due to discrimination based on sex, on marital status, on race, on national or ethnic origin, and on family history of Indian enfranchisement. This discrimination violates the rights of the Plaintiffs under section 15 of the *Charter*."

152. The Claim argues that "in *McIvor* and *Descheneaux*, the law was found to discriminate against the descendants of Indian women whom the law had stripped, upon marriage, of Indian status; so here the law discriminates against those Plaintiffs who are descendants of Indian women whom the law stripped, upon marriage, of the power to decide whether to maintain Indian status when their husband voluntarily enfranchised, thus the law perpetuates sex-based discrimination against these Plaintiffs, contrary to section 15."

153. The Claim states that the "current registration provisions also perpetuate discrimination on the basis of marital status. Only married Indian women were subject to enfranchisement by the application of another person (i.e. their husband). At all

relevant times, the law allowed unmarried adult Indian women and widows to apply for enfranchisement themselves; the law did not authorize anyone else to apply on their behalf. The law perpetuates discrimination on the basis of marital status, contrary to section 15, against [some of the Plaintiffs in the Nicholas et al claim], as descendants of Indian women who were stripped, due to their marital status, of the right to decide whether to maintain Indian status."

154. The Claim also argues that "The current registration provisions also perpetuate discrimination on the bases of race or of national or ethnic origin. Only individuals with First Nations ancestry were subjected to the enfranchisement process under the *Indian Act*. By contrast, individuals without First Nations ancestry were never legally required to submit to enfranchisement or otherwise renounce aspects of their ancestry and identity in order to protect their children from residential schooling or to acquire the full rights and privileges of Canadian citizenship. By denying the benefits of Indian status to descendants of individuals who endured the enfranchisement process, the current registration provisions perpetuate discrimination on the bases of the race or of the national or ethnic origin of individuals with First Nations ancestry."

155. The Claim argues that "an individual's family history of Indian enfranchisement ought to be recognized as an analogous ground under section 15 of the *Charter*. Although the current registration provisions allow for some categories of previously enfranchised Indians and their descendants to acquire or reacquire Indian status, section 6(1)(d) continues to mark certain individuals for disadvantageous treatment based on their family history of enfranchisement."

156. Finally, the Claim says "It does not accord with equality rights under section 15 of the *Charter* for Canadian law to continue perpetuating disadvantage, stereotyping, and prejudice against individuals for having been subjected to Indian enfranchisement or for being descendants of such individuals, by depriving them of benefits of the law and erecting barriers to their full participation in their communities. The current registration provisions carry forward effects of the racist and oppressive enfranchisement regimes that have been imposed on such individuals. The law

perpetuates discrimination against all of the Plaintiffs on the basis of their family history of Indian enfranchisement, contrary to section 15. This perpetuation of discrimination based on a family history of enfranchisement also amounts to discrimination on the bases of race or of national or ethnic origin, contrary to section 15."

157. The Claim also says:

a. "violations of section 15 described in paragraphs ~~329, 330, and 332~~ 329 to 332 are not justified under section 1 of the *Charter*."

b. "The registration provisions of the *Indian Act* also interfere with matters of fundamental importance to the personal autonomy and psychological integrity of the Plaintiffs, in ways that arbitrarily deprive them of the benefits of the law, contrary to principles of fundamental justice and to section 7 of the *Charter*."

c. "The violations of section 7 described in paragraph 334 are not justified under section 1 of the *Charter*."

158. As will be detailed in section B, Sawridge First Nation History of Enfranchisement, the SFN has very large numbers of persons who voluntary enfranchised. The Nicholas et al claim seeks a remedy that gives the wives of men who enfranchised, their children and descendants to the same legal treatment as s.12(1)(b) women, namely to restore status once held or transmitted so that today, it continues to be held as a matter of right.

viii. Coming Charter Challenge to s.10 of the Indian Act

159. According to Dr. Ryan Beaton, counsel for the Plaintiffs in the Nicholas et al claim, Canada has conceded the Claim, remedy is being negotiated, and there are

three more cases in the pipeline including one concerning s.10 of the Indian Act. [7]

160. S. 10 enables communities to pass Band Membership Rules requiring community consent without which there is no management of a large influx of new members.

161. The Termination of the Republics of the "Five Civilized Tribes" outlines a legal process that countenanced an orgy of dispossession and fraud, beginning with the imposition of new members onto the Tribes without Tribal consent, followed by the breaking up of collectively held Indian land allocated to individuals pursuant to the Dawes Allotment Act.[8] It is a cautionary tale of unbalanced individual rights superseding collective rights.

ix. UNDRIP – by December 2027 amendments to the Indian Act and other Canadian laws

162. In December 2020, Canada introduced legislation in the House of Commons – Bill C-15 to "provide a road map for the Government and Indigenous peoples to work together to fully implement the Declaration. [9] Bill C-15 is law, having received Royal Assent June 21, 2021.

163. Article 6(1) of the law requires an Action Plan:

> 6(1) The Minister must, in consultation and cooperation with indigenous peoples and with other federal Ministers, prepare and implement an action plan to achieve the objectives of the Declaration.

[7] March 27, 2025 Dr Ryan Beaton Lecture, The Legacy of Voluntary Enfranchisement Under the Indian Act, U of A Law School. Dr. Beaton is a lawyer, Law Professor Allard School of Law, and clerked for CJ Beverly Mclachlin at the SCC 2014-14, prior to which he clerked for the Court of Appeal for Ontario.
[8] Angie Debo, And Still the Waters Run, 1940 Princeton
[9] https://www.myplomer.com/?p=502 "If the Indian Act is so bad why has it not been reformed or abolished"

164. That Action Plan calls for alignment of all Canadian laws, including the Indian Act, with the UNDRIP law by December 2027. As federal laws will surely change, First Nation communities are scrambling to put their laws into place. This includes the Anishinabek Nation who represent 39 member First Nations across Ontario. These First Nations are spread across the province, from the east (Algonquins of Pikwakanagan) to the south (Aamjiwnaang) and north (Fort William First Nation and Namaygoosisagagun). They are focusing on assisting communities develop their tailored Citizenship laws, offering a template Citizenship law.

165. Independent of the UNDRIP development, SFN members, at a Fall 2022 Assembly, gave up waiting for the then Chief and Council to act. They demanded and created a Sawridge Membership Reform Committee, of which I am a member. In 2023, Terms of Reference were approved and Committee members selected by the Members in Assembly, following a fair, open and transparent process, unlike the secret Trustee selection process.

166. In 2024 then in house SFN legal counsel Mike McKinney, and as of June 2024, the CEO of the Sawridge Group of Companies, responded to a series of written Committee questions. The responses were non-answers, incomplete, inadequate.

167. Undeterred, some Committee members, unpaid, embarked on a fact-finding and research mission, refining the Work Plan accordingly. The Committee sourced other First Nation Citizenship or Membership Laws, such as the Haida Citizenship Law and the Anishinabek Nation (E-DBENDAAGZIJIG NAAKNIGEWIN) Citizenship Law. The committee also sourced online Videos showing how these Nations engaged with member First Nation communities, explaining the need for and the development of Citizenship Laws. One such leader featured in the videos is Jeanette Lavell, infamous in the 1973 SCC decision regarding her and Yvonne Bedard's merged challenges to

s.12(1)(b) of the Indian Act.[10]

168. In one of the links to these Videos, the Anishinabek Nation forecasts an additional 400,000+ new Indians by December 2027 when Canada intends to align all its laws, including the Indian Act, to its UNDRIP Act.[11] These Communities are deeply concerned about the impacts of population increases.

x. Repeal of the Indian Act – Background and Context

169. In the 1950's and prior, aboriginal policy was entirely a federal unilateral affair and that in all respects, its goal was assimilative. Aboriginal rights were never recognized or taken into account, treaty issues were regarded as irrelevant and programs for health, education, housing etc. were rudimentary and entirely inadequate.

170. After 1960, when Indians were declared to be citizens of Canada and the provinces, and ceased to be treated as resident aliens, the Indian Act was targeted for dismantling. The process was gradual, was accompanied by devolving program delivery responsibilities to First Nation communities, and ending any Crown trust obligations associated with such programs. By 1966, a plan under the title "Choosing a Path" was produced by Indian Affairs proposing a full scale termination to the Indian Act. The initiative was rigorously opposed by First Nations, whose preferred agenda focused exclusively on aboriginal and treaty rights, including their rights to continuity as indigenous collections of Nations with inherent jurisdiction;

171. In 1968, at the start of Prime Minster Pierre Trudeau's regime, Indian Affairs was listed as top priority for rapid resolution. Mr. Chrétien's efforts as a new Minister

[10] https://www.thecanadianencyclopedia.ca/en/article/bedard-case; https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5261/index.do

[11] See Marsha Smoke, April 1, 2025 Video, at 54.10 minutes https://anishinabek.ca/departments/governanceactivities/edbendaagzijig/#:~:text=CITIZENSHIP%20OVERVIEW,Voting%20Thresholds%20in%20November%202023

was to provide a plan. What finally emerged in 1969 was the "White Paper". When the assimilative goal of the "White Paper" become known to First Nations, it resulted in an unprecedented backlash against the government capped by the "Red Paper".

172. Citizens Plus, also known as the Red Paper, was a report presented to the federal government on 4 June 1970. It was prepared under the leadership of Harold Cardinal and the Indian Association of Alberta. It was driven by the Elders and was a response to the 1969 White Paper.

173. Eerily, the "White Paper" was based in similar policy attempted in the United States which was a full disaster, as documented by Angie Debo in her book, And Still the Waters Run, with its continuing aftermath captured in part by Martin Scorsese's' film, the Killing of the Flower Moon. Nevertheless, the "White Paper" was approved by Cabinet and was to be implemented regardless of First Nation resistance.

174. Peter Miles, quoting J.R. Miller, the esteemed historian of Indian-White relations in Canada, states with respect to the process leading to the White Paper that:

> "the policy formulation process became subordinated to the needs of government. … [T]he political operatives in the Prime Minister's Office and the Privy Council Office … seized control of the [policy] review. Since their most immediate constituency was the new prime minister, they shaped the proposals according to Trudeau's notions about individualism, equality, and the inappropriateness of recognizing ethnic and racial groups as collectivities. The brutal truth was that the series of consultations that had been carried out with Indian leaders never had any impact on the review of policy. When Indian leaders at the end of April 1969 had been congratulating Chretien [the Minister of Indian Affairs at the time] for listening to them and agreeing to continue the dialogue, officials were putting the final touches to a white paper whose assumptions, arguments, and recommendations were the antithesis of what Indians had been saying."[12]

175. In 1971, Mr. Trudeau agreed to meet with First Nation leaders along with many

[12] Ibid 7

of his Ministers. The meeting took place in spite of Mr. Chrétien's opposition. The result was a promise that no future unilateral policy would be imposed on First Nations until such time as there was a consensus.

176. After 1971, a new strategy was adopted by the federal government to implement the White Paper policy, based on a letter from Mr. Chrétien to the Prime Minister dated June 17th 1971. A Cabinet decision to the effect that the "principles of the 1969 policy remain firm" meant that it would go underground. Its aim was to remain assimilative. This was not revealed to First Nations.

177. Sections relating to aboriginal and treaty rights were included in the patriated Constitution in 1982, on condition that the original intent was to make them subject to "perfection" either in First Ministers' Conferences provided by Section 37 or operationally. The rationale was to ensure that there would be no risk to an entrenched and ongoing federal policy dedicated to assimilation.

178. Federal policy unilateralism resulted in widespread objections and resistance to Bill C31 when it was enacted in 1985. It soon became evident that funding provisions fell far short of the ability of most communities to accommodate new members. Ignored were the numerous representations by First Nations to take into account their diverse and special circumstances.

179. As applied operationally, Bill C31 was perceived as a denial of aboriginal and treaty rights and essentially assimilative.[13] Its potential effects are to erode the nature

[13] Gerard Hartley, The Search for Consensus: the Legislative History of Bill C-31, 1969-1985, 2007 Western University, Aboriginal Policy Research Consortium International, https://www.google.com/search?q=Gerard+Hartley%2C+The+Search+for+Consensus%3A+the+Legislative+History+of+Bill+C-31%2C+1969-1985%2C+2007+Western+University%2C+Aboriginal+Policy+Research+Consortium+International&rlz=1C1CHWA_enCA605CA605&oq=Gerard+Hartley%2C+The+Search+for+Consensus%3A+the+Legislative+History+of+Bill+C-31%2C+1969-1985%2C+2007+Western+University%2C+Aboriginal+Policy+Research+Consortium+International&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTE2ODFqMGoxNagCALACAA&sourceid=chrome&ie=UTF-8

and composition of a collectivity and undermine their duty to preserve and protect their community as Nations or Clans. This is because there are classes of membership imposed by government on communities, who have no loyalty or surviving connection to a particular collectivity. As occurred in the United States, such imposed membership can employ available government mechanisms to liquidate a formerly stable collectivity in favour of sharing in a distribution of its assets.

180. To further reduce risk to a policy direction opposed by First Nations and increasingly, by many sectors of the public, the federal government engaged the services of a "International Communications Groups" in 1987. This group produced a plan for mobilizing public opinion in favor of government measures and against First Nation concerns. A S.W.A.T. (Special Ward and Tactics) team was to be created to advice the Minister on how convey "good optics", which "taboo terms" to avoid, a way to "control the dialogue" and the merit of portraying leaders as "free loaders" aka male, greedy chauvinists related pejoratives.

181. Late Chief Walter Twinn was subjected to SWAT tactics, as he stood for Aboriginal and Treaty rights, Royal Proclamation rights and other rights and freedoms pertaining to Indigenous peoples. The lis in the Plaintiffs' Bill C-31 constitutional challenge, referred to April 4, 2015 by Jon Faulds, was hijacked from a case about the constitutional authority of First Nations to decide membership in accordance with indigenous laws (i.e. for the Cree, referred to as Nature's Laws) to being a case to keep out s.12(1)(b) women.

182. Mr. Faulds acted for the Native Council of Canada (Alberta) led by Doris Ronneburg and her husband/partner Richard Long, a disbarred for life lawyer. The 3 other Interveners were Native Council of Canada, Non-status Indian Association of Alberta and Native Women's Association (represented by Mary Eberts, who heavily lobbied Parliament in support of Bill C-47 (1984) and Bill C-31 (1985). The Court granted all 4 Interveners extremely broad rights from discovery, production, cross examination, leading evidence, cross examination at trial, expert reports, etc,

183. All four Intervenors were heavily funded by Canada regardless of their representation and overlapping constituency. The Native Council of Canada had no members, deriving membership through its provincial chapters. The Native Council of Canada (Alberta) admitted under oath that in 1989 they had 8 members, membership cost $1 and was open to anyone. Richard Long was a member. None of the Plaintiff First Nations were funded by government.

184. A secret two day meeting held in Quebec on June 19 and 20, 1988, indicates that a S.W.A.T. approach to communications was in play. The minutes record an intent to project an image that the government "honours its commitments, is fair, and is making progress." In the same minutes, it is admitted that Crown liabilities are mounting. These are attributed to "neglect, inadequate professionalism, generalized incapacity and possible maladministration." For the future, it was also decided that federal financial responsibilities would not be expended beyond reserves, provinces would be recruited to share in the case, and historic treaties would remain shelved.

185. The SWAT tactic of portraying First Nation leaders as "free loaders" controlled the public discourse, in turn, public thinking, shaping public policy and law. It was extremely effective. SWAT tactics created toxic stress on leaders, particularly Chief Walter Twinn, who was publicly condemned and humiliated at all levels. Justice Muldoon, the 1st trial Judge, may have been swayed by the SWAT narrative, as he referred to Indian men as the "beads and buckskin boys, just after the Crown shilling", along with other comments. Such comments contributed to the Federal Court of Appeal overturning Justice Muldoon's decision, finding of reasonable apprehension of bias. The remedy? The self-funded Plaintiffs had to start over.

186. A luncheon meeting in 1988 with a senior federal official revealed that there was serious concern about the potential scale of liabilities arising out of the government's residential school involvement. The government was not prepared to acknowledge damages resulting from efforts to assimilate children from their

languages, culture, families and communities in the cause of assimilation. To do so could bring a more general assimilation policy into question as it had been and continues to be applied to First Nations as a whole.

187. During Jean Chrétien's regime as Prime Minister between 1993 and 2003, a policy of gradualism in implementing the principles of his "White Paper" policy was translated into a suite of proposed statutes. Mr. Chrétien confirmed the intent of his legislative initiatives to a journalist by suggesting he read his 1969 policy. During his tenure, the final report and recommendations of the Royal Commission on Aboriginal Peoples which was published in 1969 was shelved and written off as a waste of money. Among the findings of the Royal Commission was a study of the methods employed by the government to evade and negate judgments of the Courts favourable to First Nations.

188. On November 1, 1984 the SCC issued a landmark decision in the Guerin case.[14] Canada's argument it only had a "political", legally unenforceable relationship with First Nations was rejected. Instead, the Court found 4 pillars – control, dependence, knowledge and vulnerability – inherent in the Indian Act relationship between Canada and Indian communities. This gave rise to a legally cognizable, trust-like, sui generis relationship.

189. High level bureaucrats, including a Deputy Minister who later became a Supreme Court Justice, were galvanized by the Guerin decision, as opening liability for Canada's actions and omissions - past, present and future. Other liabilities began appearing, including Indian Residential Schools. Harry Swain, a top bureaucrat, embarked on a risk management strategy to limit Canada's liability and eliminate federal Trust like obligations. Eventually DIAND endorsed the use of Trusts, to hold Settlement monies, relieving Canada of further liability.

[14] https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2495/index.do

190. One of the initiatives led by Harry Swain became known as the "LRT" Review.[15]

> "The next stage is Indian jurisdiction – the challenge of the 1990s. The Department is working with the Indian and provincial governments to draft laws that will create room for Indian governments to legislate in fields of critical importance to who are interested in writing their own governing legislation. This has been a slow, inductive process, but it is beginning to bear fruit. Commissioners have already noted the Sechelt Act, which took one band by its own will beyond the penumbra of the Indian Act . There are another dozen bands or groups of bands in the advanced planning stage.
>
> Special acts affect special groups, but changing the Indian Act has the potential to affect all First Nations. In this regard, the Lands, Revenues and Trusts review is the single most important activity now under way.
>
> The LRT review, which is described more fully in documents deposited with the Commission, is aimed squarely at the 19th century heart of the Indian Act."

191. The goal of the LRT Review was to replace the Indian Act with subject matter legislation, some of which was enacted.[16] This was in addition to the negotiation of comprehensive or sectoral self-government agreements. The LRT legislation would transition to 'self-government' by supporting First Nations in building governance capacity and moving out from under the Indian Act to assume greater control of reserve lands and band assets. These initiatives include the First Nations Land Management Act, which provided participating First Nations with jurisdiction over management of reserve lands. As of September 2004, 12 First Nations were currently operating under that act and another 50 First Nations had signaled their desire to participate. Proposed optional legislation for a First Nations Oil and Gas and Money

[15] Harry Swain, Deputy Minister of Indian Affairs, Speech dated November 21, 1989 at pg 7

[16] First Nation Land Management Act; First Nations Fiscal Management Act, 2005; First Nations Oil and Gas and Moneys Management Act (S.C. 2005, c. 48). For commentary, also see https://www.myplomer.com/?p=502

Management Act and proposed legislation on First Nations fiscal institutions was then underway and have since been enacted. The Federal Government supported these initiatives in many ways, including offering abundant government funding.

192. In 1982 Chief Walter Twinn submitted on behalf of Treaty Eight a draft Act to the Penner Committee on Indian Self Government, an alternative to the Indian Act . The Penner Committee became side tracked in its work, and was forced to do a special report on s.12(1)(b).

193. In 1984 the then Liberal Government Minister', John Munro, introduced a Bill called C-47, to amend the Indian Act. It was the precursor to Bill C-31, its effect was far reaching, going back multiple layers of ancestors to grant Indian status and band membership. One example of a person entitled to status was Premier Lougheed. Chief Twinn and others stopped Bill C-47 in the Senate, persuading a hand full of Senators, including Senator Charlie Watt, an Inuit, to deny unanimity to 3 Readings in one remaining sitting day, before Parliament recessed for the Summer.

194. On June 27, 1984, John Munro, introduced framework legislation (Bill C-52) to allow for the recognition of Indian governments. The federal government emphasized a community approach, recognizing that local government would vary among different bands. However, the bill died on the order paper, rejected by the Indian people.

.

195. The summer of 1984 John Turner called an election and Bill C-47 died. That fall, Brian Mulroney swept to power. He appointed David Crombie as the Minister of DIAND.

196. In early 1985 Minster Crombie introduced amendments to the Indian Act known as Bill C-31. Chief Walter Twinn led the Treaty 8 Brief,[17] dated March 1985, which became known as the High Impact Band Brief.

[17] Treaty 8 High Impact Band Brief, March 1985, see Shelby Twinn Affidavit, November 27, 2020, Tab 11

197. Minister Crombie, in response to the Treaty 8 High Impact Band Brief, assured Parliament the average increase in Band Membership would be 8% on average.

198. The Treaty 8 Bands undertook a careful analysis, and working from incomplete records and calculating potential population increases from 3 of the 63 new legal categories for entitlement to registration created by Bill C-31, disputed the Minister's estimate of an 8% increase on average. The Treaty 8 Bands estimated population increases ranged from 100 to 400%. [18]

199. As the facts disclose, the Treaty 8 Brief grossly underestimated the population increase. In the case of the SFN, as of April 2025, the Registered Indian Population is 713 persons.[19] Contrast this to the 60 members currently on the SFN Band List and its 38 members at the time of the Treaty 8 Brief, March 1985.

200. 1985 Ministerial promises given to Parliament to mitigate the high impact on Bands remain unfulfilled, now the victim of amnesia. The promising politicians are long gone. Canada's promises in 1985 included:

- The creation of new Bands
- No Band will be worse off
- New reserve lands will be set aside
- Canada will fully pay for the cost associated with implementation of Bill C-31
- There will be no negative impact on Band's lands and resources
- Canada will monitor and report on the impact on Band's lands and resources

B. Sawridge First Nation History of Enfranchisement

[18] Treaty 8 High Impact Band Brief, copy given to the Court April 4, 2025, see Shelby Twinn Affidavit, November 27, 2020, Tab 11
[19] https://fnp-ppn.aadnc-aandc.gc.ca/fnp/Main/Search/FNRegPopulation.aspx?BAND_NUMBER=454&lang=eng

201. The Sawridge First Nation, like other First Nations in Treaty 8 and elsewhere, experienced very high rates of enfranchisement, including voluntary enfranchisement.

202. All persons who enfranchised signed Surrenders and Releases and paid a per capita share from Band monies held in their Capital and Revenue Accounts, controlled by Ottawa. If forms were not signed and proof was not submitted, persons would not be enfranchised, including s.12(1)(b) women who refused to submit proof of marriage, sign forms or cash per capita cheques. Their names remained on the Indian Register as Band members.

203. Prior to the 1985 amendments, virtually every Indian was concurrently a Band Member. Today that is no longer the case. A significant consequence of the Bill C-31 changes was that while an individual could qualify for Indian status they may not necessarily become a member of a particular First Nation, thus leaving the individual without membership in any First Nation. Many registered Indians are "bandless" as a result of s.10 of the Indian Act . This legal fact places heavy pressure on s.10 membership rules, evidenced by the Nicholas claim.

204. From August 1939 or prior, payments from the SFN Capital and Revenue Accounts were made to all persons who enfranchised, either on application or marriage. An affidavit filed in this Action by Roland Twinn, details the Stoney family who enfranchised.[20] The SFN sought and obtained a Court designation of Maurice Stoney as a frivolous and vexatious litigant. Today, this designation would not issue in light of Canada conceding the Nichalas Claim.

205. Beginning in 1978, 24 Sawridge Band members enfranchised, taking 6 figure payouts in exchange for signing Surrenders and Releases. The total amount taken in today's dollars is equivalent to $21,714,782.32 which excludes accrued interest. Of

[20] Affidavit of Roland Twinn, filed September 28, 2016.

the 24 who enfranchised, 15 were Potskins, 8 were Wards, and 1 was a Twinn (Roland Twinn's mother).

206. Part of Parliament's response to the Treaty 8 "High Impact Band" Brief, March 1985, was to include a provision in Bill C-31 enabling Bands to pass Pay Back Bylaws:

> Expenditure of capital moneys in accordance with by-laws[21]
>
> **64.1 (2)** If the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect, a person who has received an amount that exceeds $1,000 under paragraph 15(1)(a), as it read immediately before April 17, 1985, or under any former provision of this Act relating to the same subject matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(a.1), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(b) to (k), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds $1,000, together with any interest, has been repaid to the band.
>
> **(3)** The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of subsections (1) and (2).

207. The Sawridge Band passed and submitted Pay Back Bylaws, however, at some point under Roland Twinn's tenure (Councilor 1997-2003, Chief 2003-2023), enforcement of the Bylaw lapsed but the Bylaws were never rescinded.

C. Proven and Potential Population Impacts of:

a. Charter driven amendments to the Indian Act (1985 Bill C-31, 1988 Death Rule Amendments, 2011 Bill C-3 (McIvor), 2017 & 2019 Bill S-3 (Descheneaux).

[21] https://laws-lois.justice.gc.ca/eng/acts/i-5/page7.html#:~:text=(2)%20If%20the%20council%20of,been%20repaid%20to%20the%20band.&text=(3)%20The%20Governor%20in%20Council,1)%20and%20(2).

208. The Nichols et al claim, para 257- 270,[22] indicates that **at least 510,470 people were added** to the Indian Register from Charter driven amendments to the Indian Act

209. However, neither Bill C-3 nor Bill S-3 remedied the discriminatory effects of enfranchisement that Bill C-31 imposed on individuals who regained status under section 6(1)(d) of the 1985 Indian Act and on the descendants of such individuals. The Nicholas et al Plaintiffs are all individuals who have regained status under section 6(1)(d) or are the descendants of such individuals.

210. As required by Bill S-3, the federal government launched a consultation process to address forms of discrimination still remaining in the registration provisions of the Indian Act following the adoption of that Bill.

211. As also required by Bill S-3, the federal government tabled a Report to Parliament in June 2019 following the conclusion of that consultation process.

212. The Report to Parliament does not propose any action to address the situation of the Plaintiffs, who continue to endure the discriminatory effects of enfranchisement imposed by section 6(1)(d) of the current registration provisions.

213. The Report to Parliament nonetheless claims that Bill S-3 eliminated all sex-based discrimination from the registration provisions in the Indian Act .

214. The Report to Parliament does, however, recognize that there exist "remaining inequities" suffered by the descendants of individuals who were enfranchised for reasons other than marriage to a non-Indian. Notably, the Report, at page 27 of Appendix B, acknowledges:

> The 2017 amendments (Bill S-3) corrected sex-based inequities for women, and their descendants, when the woman involuntarily lost entitlement to registration due to marriage to a non-Indian man. Bill S-3 brings entitlement to descendants of women who married a non-Indian

[22] Ibid 1, Nicholas et al v Canada, Amended Notice of Civil Claim, filed 2024-10-11, Supreme Court of BC, Vancouver Registry

> man in line with descendants of individuals who were never enfranchised. However, the descendants of individuals who were enfranchised for other reasons (both voluntary and involuntary) remain at a disadvantage in comparison. These remaining inequities within the Indian Act continue to have an impact.

215. The Report to Parliament contains demographic information on the number of individuals who gained entitlement to Indian status under earlier amendments to the Indian Act registration provisions and estimates on the number who gained entitlement under Bill S-3.

216. The Report to Parliament states, for instance, that the 1985 amendments in Bill C-31 resulted in an increase of the population entitled to Indian registration (i.e., to Indian status) of 174,500 from 1985 to 1999.

217. The Report to Parliament states that Bill C-3 resulted in more than 37,000 newly entitled individuals registered from 2011 to 2017 who would not have been entitled under previous versions of the Indian Act .

218. The Report to Parliament estimates that Bill S-3 initially increased entitlement to registration by 28,970 and that when delayed provisions of Bill S-3 come into effect (which occurred in August 2019), an estimated 270,000 additional individuals could be registered.

219. The Report to Parliament also cites a demographic report by Stewart Clatworthy that was commissioned by the Government of Canada in the summer of 2017.

220. Mr. Clatworthy's report includes an estimate of the number of individuals who would be newly entitled to register if the same legislative remedies were applied to sections 6(1)(d) and 6(1)(e) as have been applied to section 6(1)(c). Mr. Clatworthy's report estimates that, under that scenario, approximately 2,400 individuals would become newly entitled to register.

221. The Nicholas et al Plaintiffs represent a subset of those estimated 2,400 individuals, as they are all individuals affected by section 6(1)(d), but not section 6(1)(e), of the Indian Act.

222. The Registration provisions currently in force are those of the 1985 Indian Act as amended by Bill C-31, Bill C-3, and Bill S-3.

223. The Nicholas claim estimates an additional 2,400 persons who are descendants of persons who voluntary enfranchised before April 17, 1985, will be added as a result of the remedy the Plaintiffs and Canada are agreeing to. Dr. Beaton advised that Canada has conceded the claim and the lawyers are discussing "relief", as the only remaining issue. It is anticipated that Bill C-38 will become law.

224. Based on the high rates of voluntary enfranchisement in Treaty 8, I believe the estimate of 2,400 individuals who will be entitled to registration underestimates the numbers, just as Minister Crombie's estimated 8% increase on average was a gross underestimation.

225. In 1984, the registered Indian population in Canada was **348,809**. This number includes the total number of registered status Indians living on and off reserves. The data indicates the number of bands (representing Indigenous communities) was 581 at that time.[23]

226. In 2020, there were 1,021,356 registered Indians in Canada. Between 2000 and 2020, the number of registered Indians in Canada experienced an increase, going from some 670 thousand to over one million.[24]

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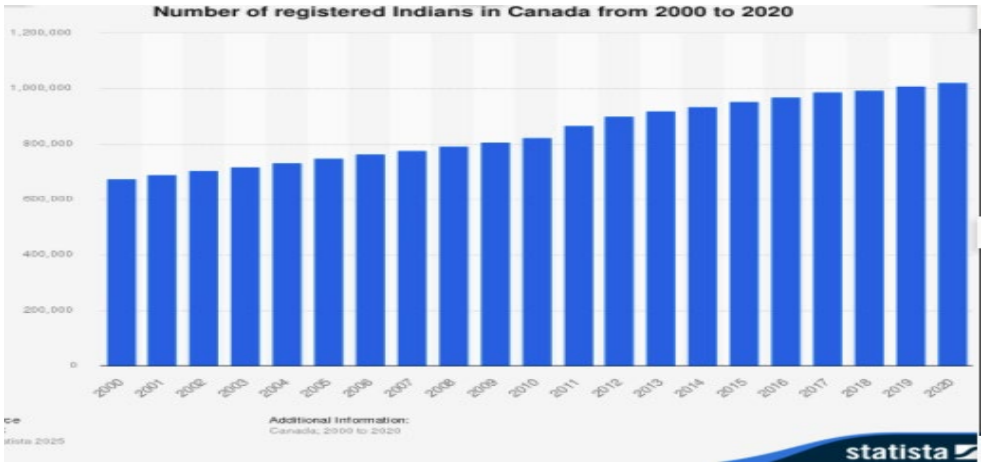
[23] https://www.google.com/search?q=What+was+the+population+of+registered+status+indians+in+Canada+in+1984%3F&rlz=1C1CHWA_enCA605CA605&oq=What+was+the+population+of+registered+status+indians+in+Canada+in+1984%3F&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRiPAtIBCjMzODA0ajBqMTWoAgiwAgHxBTTXSan0LRyu&sourceid=chrome&ie=UTF-8

[24] https://www.statista.com/statistics/538050/registered-indian-population-in-canada/#:~:text=In%202020%2C%20there%20were%201%2C021%2C356,thousand%20to%20over%20one%20million.



227. The foregoing shows that with the passage of time, the population of Indians who became entitled as a result of Charter driven amendments to the Indian Act eclipse the original pre-1985 population.

228. This trend seems to be mirrored in the current SFN membership population, where less than 25% of current band members qualify as beneficiaries under the 1970 Indian Act rules. S. 11 of the 1970 Act sets out entitlement categories, s. 12 sets out disentitlement rules.

229. It is not possible to determine how many people today qualify as beneficiaries of the 1985 Trust and how this compares to the total number of persons who are currently SFN members and to the 38 band members on April 16, 1985. This is because:

a. The majority Trustees refused to take action in response to a 2004 Memo I provided outlining the categories of entitlement (s.11) and disentitlement (s.12) of the 1970 Indian Act;

b. In 2009 the Trustees hired the first and only Trust Administrator, Paul Bujold, (he refers to himself as the CEO). One of his first tasks was to initiate a process to identify 1985 Trust beneficiaries. That process was aborted by the majority Trustees and never resumed. This is detailed in my previous Affidavits filed in this Action;

c. In 2011, when this Action was irregularly commenced by Paul Bujold's Affidavit and not by a constating application, the Trustees position was to limit the 1985 Trust Beneficiary pool to SFN members. Identifying

beneficiaries is not only a fundamental duty but crucial to enable Trustee replacement.

d. The Trustees have refused multiple demands from 1985 and 1986 Trust beneficiaries to provide an Accounting to them;[25]

e. Since the inception of both Trusts, the Trustees have never provided an Accounting to beneficiaries showing the opening balance of monies from the SFN and accounting over time to the present for asset growth;

f. The Trustees rationalize their breach of duty using this litigation to grant themselves an injunction from identifying beneficiaries and providing a full accounting.

g. This self-granted injunction has continued despite the 2023 amendments to the Trustee Act. One of the three key aims of the new legislation are greater transparency through expanded accountability and duties for trustees;

h. The Trustees have refused beneficiary demands to be transparent in their purported Trustee replacement process, to disclose the name of their purported expert advising on entitlement. The current and outgoing November 2025 Trustee Chair, Tracey Scarlett, cited privilege in support of Trustee refusal.

b. UNDRIP predicated population impacts add a further 400,000+.

230. The figure of 400,000+ was from the Anishinabek Nation's community engagement video. See paragraph 168.

231. If Charter challenges to the Indian Act wind down, UNDRIP challenges will likely begin.

232. The combined population increase from Charter and UNDRIP amendments dwarfs the pre–Bill C-31 population. This appears to be mirrored by the fact that more than 75% of the current SFN membership do not qualify as beneficiaries of the 1985 Trust. Yet when the 1985 Trust was established, all SFN members were beneficiaries of the 1985 Trust.

[25] Some instances of accounting demands are contained in the Application and Affidavits of Patrick Twinn, Shelby Twinn and Deborah Serafinchon filed August 17 2026. But there were other Demands for an Accounting including Demands from Catherine Twinn

233. In 2012, Janet Hutchinson filed some 30 Affidavits from persons, all but one were not SFN band members, wishing to be beneficiaries of the 1985 Trust. A number of those persons either voluntarily, or descend from persons who voluntarily enfranchised. None live or have continuing and enduring relationships within the SFN community. Canada's concession of the Nicholas claim invites legal attack on the 1985 Trust's restriction on voluntary enfranchisement.

234. Paragraph 7, of Darcy Twin's Affidavit filed September 26, 2019, under the heading, "Source of Funds to Purchase the Trust Assets and Purpose of the Trusts", states:

> 7. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of certain portions of the transcript of the testimony of Chief Walter Patrick Twinn in the first trial of Sawridge's constitutional challenge to Bill C-31, copies of which are attached hereto as Exhibit "B" to this my affidavit, and do verily believe the following:
>
> a. When Walter Patrick Twinn became Chief of the Sawridge in 1966, Sawridge did not have any businesses (p 3418).
>
> b. Sawridge's goal was to save as much as possible and use the capital and revenue funds to become totally self-supporting one day. (pp 3885-3887)
>
> c. Sawridge was concerned that Bill C-31 would result in automatic reinstatement of a large group to membership in Sawridge. (p 3761)
>
> d. The 1985 Trust was created two days before Bill C-31 was enacted, in anticipation of the passage of Bill C-31, and with the objectives that the beneficiaries of the 1985 Trust would be people who were considered Sawridge members before the passage of Bill C-31, that the people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries for a short time until Sawridge could see what Bill C-31 would bring about. The people who might become

Sawridge members under Bill C-31 would be excluded as beneficiaries. (pp 3906-3909)

e. Ultimately, the intention was that the assets from the 1985 Trust would be placed in the 1986 Trust. (pp 3948-3949)

f. The primary source of income for Sawridge originated with the discovery of oil on the Sawridge reserve lands. The royalty monies resulting from the sale of oil and gas were received and held in Sawridge's capital account in accordance with the Indian Act , RSC 1970, c I-6. The Sawridge capital moneys were expended with the authority and direction of the Minister and the consent of the Council of Sawridge. The Sawridge capital moneys were used for economic development, specifically to invest in various companies carrying on business under the Sawridge name, and were placed in the Sawridge Trusts. (pp 3953-3957, 4004-4005)

217. The nature and correct characterization of the Trust was not determined at the April 25, 2019 Jurisdiction Application, the Application abruptly adjourned sine die by Justice Henderson the morning of the hearing. Despite thousands of dollars in preparing for the Jurisdiction Application, these Trustees abandon what was directed by a Litigation Plan, Order and Case Management. Important questions remain requiring judicial answers.

D. Trustee refusal to properly identify 1985 Trust Beneficiaries, gerrymandering (shrinking) the pool to a tiny few, and delaying Trustee replacement

235. The Trustees filed an application on June 12, 2015 for Court approval of a Settlement Offer proposed by the trustees of the 1985 Trust (but not me) in order to resolve, in full, the 2011 Action (the "Settlement Offer"). They offered to grandfather certain alleged minor beneficiaries of the 1985 Trust and vary the 1985 Trust's definition of "beneficiary" to include only Band members. The effect of the Settlement Offer, if approved, would avoid Band membership being scrutinized by the OPT. The Settlement Offer was later withdrawn by Dentons after the June 30,

2015 application was case managed and set for hearing on September 2 and 3, 2015, along with the application filed by the OPT in relation to document production.

236. Paragraph 89 of my Jurisdiction Brief filed April 12, 2019 states:

> It is a fundamental duty of a trustee to determine and ascertain the members of a class of beneficiaries and then to make reasonable efforts to identify and locate the members of that class. 52 The Trustees have admittedly failed to do this and take the position that there are not any beneficiaries until the Court resolves this litigation. They take this position, in part, because the reason "we're going through such a convoluted process to try and identify the beneficiaries of the '85 trust" is to avoid giving those beneficiaries any ground or leverage on which to assert that they are entitled to membership in the First Nation.53 The trustees have "always been concerned that if someone was declared to be a beneficiary of the 1985 Trust that they would use this as a justification for admission to membership in the First Nation54". Exacerbating the situation is the Trustees attempt to use this failure as a basis upon which to vary the 1985 Trust and thus expose the current beneficiaries to disentitlement or at the very least a change in the quality of their beneficial interest55. Specifically, they failed to take formal steps to determine Justin Twin's status as beneficiary, and other person's status generally, and use this lack of certainty as a basis to suggest s. 42 of the Trustee Act is an unworkable solution;"[26]

237. On July 15 2015, the Trustees filed an application to deal with their conflict with me. One of the remedies they sought was:

> 1. Advice and direction with respect to resolving the conflict that has developed in relation to the Catherine Twinn, one of the trustees of the Sawridge Band Inter Vivas Settlement dated April 15, 1985 (the "1985 Sawridge Trust") who has now expressed opposition to the endeavour of the 1985 Sawridge Trust in the within action to vary the definition of beneficiary under the 1985 Sawridge Trust.

Their language suggests the conflict was recent and that I made an abrupt change in my position to "vary the definition of beneficiary under the 1985 Sawridge Trust". That is false, they had to know it was false and the evidence in this Court record shows that it is

[26] Jurisdiction Brief, Catherine Twinn, filed April 12, 2019, at para 89

false. It was a linguistic exercise, spinning facts to discredit my integrity, which in the result, influenced the reception I received from Justice Thomas.

238. One month prior, Karen Platten appeared in Court for the first time on my behalf in response to the Trustees June 2015 "Settlement Offer". The Trustees rushed this into Court without my knowledge. That application sought approval for a quick variation of the Beneficiary definition to SFN membership and their proposed list of minor children to be grandfathered, a list prepared excluding me. That list was a political list that included names of children not entitled.

239. Conflict over entitlement was not a new issue, arising years before, including in 2014, when the Trustees hurriedly made a political decision to appoint as a Trustee Justin McCoy Twin, a SFN Band Councilor and cousin to Chief Roland Twinn, without regard to whether he was entitled to be a 1985 Trust Beneficiary based on his facts, the 1970 discriminatory rules and the language of the 1985 Trust deed which removed the Indian Act Protest requirement. The Trustees knew Justin McCoy's true facts:

a. his father was Jody McCoy, a white man, from New Brunswick.

b. Justin was born illegitimate to Vera Twin.

c. Justin's mother Vera Twin and father Jody McCoy married November 1, 1986.

d. Vera Twin's father was also a non-Indian, and Vera was also born illegitimate to Pauline Hamers (Twin).

e. Vera was the daughter of Pauline Hamers (Twin) and Daniel Sinclair, a non-Indian.

240. The 1985 Trust deed dispenses with Indian Act Protests. The Trustees and their lawyers, Mike McKinney and Doris Bonora, relied solely on Justin's erroneous registration in the Indian Register as proof of his entitlement as a 1985 Trust beneficiary. I said then, and I say now: entitlement is based on one's facts to which

the **discriminatory rules** are applied, having regard to the language of the Deed. A Trustee cannot ignore the law and facts to reach a desired outcome. There are ample incidents and case law where the Indian Registrar made an initial error which was then reversed and a person's name was deleted from the Indian Register and Band Membership List. Registration predicated on false or incomplete facts does not create entitlement, facts under the law do. When the Trustees' July 15, 2015 application was filed, the Trustees had already been provided with one of two Larry Gilbert's legal opinions which I paid for. Larry Gilbert was the former Registrar competent in applying 1970 Indian Act discriminatory rules to individual facts. The Trustees refused an ADR process I offered and refused to resolve Justin's McCoy's entitlement. Instead, in a highly adversarial process, I was pinpointed as the problem and the issue to resolve by removing me as a Trustee.

241. The recent April 2025 appointment of Jonathon Potskin as a Trustee of both Trusts raises the same issues raised by Justin McCoy Twin's facts. Is Jonathon entitled to be a 1985 Trust beneficiary? He shares the same factual matrix as Justin McCoy Twin:

a. His father is Lyle Donald.

b. His mother is Lilly Potskin.

c. At the time of Joanthon's birth pre 1985, Lyle Donald was not a registered Indian.

d. Jonathon was born illegitimate.

e. Jonathon's brother, Brent, was also born illegitimate prior to 1985.

f. They have a younger sister, Gina Donald.

g. Gina Donald swore a Statement April 16, 2015, which was filed by the OPGT at the June 2015 hearing when the Trustees presented their Offer to the Court. It is also located in my Affidavit of Records filed February 1, 2018. In that Sworn Statement, paragraphs 1-7, Gina states:

1. I am an individual who is resident in the City of Edmonton in the Province of Alberta and, as such, have a personal knowledge of the matters hereinafter

deposed to, save where stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I was born September 17, 1979. I have two older brothers. We have the same parents. My mother, Lillian Potskin (hereinafter called "mother") was 5 months pregnant with me when she married my father, Lyle Donald, now a registered Indian and a member of the Mikisew First Nation. At the time, he was not recognized as an Indian.

3. The effect of their marriage was to enfranchise my mother from Indian status and membership in the Sawridge Band (hereinafter referred to as the "Band") and to exclude me from being registered as an Indian and Band Member like my older brothers Jonathon and Brent, who were registered and retained their status and membership despite the marriage of our parents.
4. After my birth, my mother received and signed enfranchisement papers and later upon her enfranchisement, a per capita payment after my birth.

5. Following my birth and before 1985, my mother applied for my band membership many times but these efforts were unsuccessful.

6. I am informed by my mother that other children in the same circumstance as me, such as Vera Twin-McCoy, somehow retained their registration as an Indian and membership in the Band even though our mothers married non-Indians and our fathers were non-Indian. Vera Twin-McCoy's three children are registered Indians and Band members even though the two children fathered by Vera's husband, Jody McCoy, is a non-Indian. I wonder why I am treated differently.

7. My mother and brother, Jonathon Potskin, are presently Band members. My brother, Brent, was a Band Member until he enfranchised his membership in or around 1995. I am a status Indian, but do not have membership in any Band.

242. S. 6 of the 1985 Trust Deed specifically enables the exclusion of the illegitimate children of female beneficiaries even where a protest was not filed within one year of the registration of the child under the Indian Act. The Deed dispenses with Protest.

243. Paragraph 25, 2019 of the Trustees Brief filed March 29, 2019 admitted the difficulties in identifying 1985 Trust beneficiaries, citing the situation of Justin Twin McCoy:

> 25. Further, determining who the beneficiaries are is very difficult. If you cannot determine the beneficiaries, you cannot confirm 100% approval. An example of the problem over whether someone is a beneficiary is the debate over whether Justin Twin is a beneficiary. Justin Twin was a member of the Sawridge First Nation when the list of members was transferred to Sawridge First Nation from Indian Affairs in 1985. 19 Since then he has been an active member of the community including being elected to the Sawridge First Nation Council. When he was put forward to become a trustee of the 1985 and 1986 trust, there was opposition to his appointment suggesting that he was not a beneficiary of the 1985 Trust. Various legal and expert opinions were obtained on his status as a beneficiary but there was no consensus. 20 The dispute centres around Justin Twin's mother and is more particularly set out in the various opinions. This is just one example of the problems that exist in trying to work with the antiquated definition for a member set out in the pre-Bill C-31 Indian Act . Just this one issue in relation to one beneficiary prevents the Court from determining that 100% of the Beneficiaries have approved a definition. There are many more similar examples.

244. Trustee life terms ended in March 2018 by the Trustees Settlement Agreement with me, as partial consideration for my resignation. Trustees were limited to two, 3 year staggered terms. The staggered term of the last 2018 Trustee to step down is Roland Twinn, whose 2nd term ends March 2026.

245. Trustees can appoint up to 2 non-beneficiary Trustees. Remaining Trustees must be beneficiaries. These Trustees require that a Trustee be a beneficiary of both Trusts. This position limits the pool of potential Trustees to less than 25% of SFN members. It also excludes unidentified 1985 Trust beneficiaries who are not SFN members and SFN members who are not 1985 Trust beneficiaries. Since 2018, the Trustees have chosen to exclude as 2 non-Beneficiary Trustees, persons who are beneficiaries of the 1986 Trust but not the 1985 Trust. Because the Trustees have gerrymandered the 1985 Trustee pool, the result is that a very tiny pool of 1985 beneficiaries' control both Trusts. This deliberately excludes highly qualified candidates who are 1986 Trust beneficiaries but not 1985 Trust beneficiaries. Such qualified persons include Kristina Midbo, a trained lawyer, Deana Morton, an MNP Tax Partner, and others of high integrity, skill, wisdom and experience.

246. Without any due process or notice, in 2025 the Trustees inferentially rejected my sons as 1985 Trust beneficiaries, ignoring Court declarations that Patrick Twinn was a 1985 Trust beneficiary. My sons had originally applied in the Trustee Replacement process. Facts relevant to this exclusion are found in the Affidavit of Chief Isaac Twinn, filed in support of the SFN Intervenor application in this application.

247. In March 2024 Justin McCoy Twin's second, 3 year term expired. In November 2024 Margaret Ward's second 3 year term expired. Margaret is a white woman who married a Ward. They separated, divorced, he enfranchised and took a very large per capita payment. Margaret remained on the SFN Band List. Margaret and Justin both breached their term limits per the Trustees 2018 Settlement Agreement with me and Trust Policy, which they suspended. In April 2025 two replacement Trustees were announced: Roy Twinn, son of Roland Twinn, and an employee of the Sawridge Group of Companies, whose boss is the CEO. Directors are annually appointed by the Trustees. Directors appoint the CEO, Roy's boss;

248. The period of Roland Twinn's dual leadership as Chief and Trustee yielded many concerns regarding entitlement and the selective, preferential application of rules depending on who it is, along with other concerns. The recent appointments of his son, Roy Twinn and Jonathon Potskin, as Trustees of both Trusts, fuels concerns. This is exacerbated by:

a. the power of the Trustees to make selective distributions to one or more beneficiaries;

b. the refusal to provide proper Accountings since the inception of the Trusts;

c. the amount of money at stake (e.g. combined asset value of $213 M as of 2015 per Catherine Twinn's Affidavit September 30, 2015);

d. the Trustees spending millions of Trust dollars on adversarial litigation;

e. Trustees' refusal of ADR;

f. Trustees refuse to talk to beneficiaries, no engagement or consultation;

g. Trustees have not fulfilled their undertakings given to 1986 Trust beneficiaries;

h. Trustees have refused to inform beneficiaries or answer reasonable questions;

i. the Trustee have created a culture of secrecy, conflicts of interest and non-transparency;

j. the Trustees dramatic shift in treatment of the SFN since Roland Twinn was voted out as Chief February 2023. While Roland was Chief, the Trustees:

- made hundreds of thousands of payments to cover SFN legal fees in the 2011 Action, which is not unauthorized by the Trust Deed;
- extensively collaborated with the SFN in planning and executing the litigation goal to change the beneficiary definition to SFN members including steps to manifest the Asset Transfer Application;

- refused to identify 1985 Trust beneficiaries because Roland Twinn feared non SFN members identified as 1985 Trust beneficiaries may use this to gain SFN band membership;

k. the history of Jonathon Potskin's dealing with the SFN and the Trusts, including proceedings he commenced over loans made to him, and in trust for him to his parents, totaling thousands of dollars to cover expenses. These types of loans were not made to other members;

l. the defamatory comments and abusive behaviour by Jonathon towards Trustees, individual SFN members, employees and elected leaders;

m. the high rates of Potskin enfranchisements, particularly post 1979, when six figure per capita payments were made, including Jonathon's' brother in 1995;

n. the vicious and retaliatory response of Jonathon Potskin towards some SFN members when he disagrees with them or they do not accede to his demands;

249. In the interest of space, the documents below provide ample evidence concerning the Trustees' refusal to properly identify beneficiaries of the 1985 Trust; Justin McCoy Twin's entitlement; conflicts of interest; the Trustees' June 2015 Settlement Offer; refusal to provide an Accounting from inception to present of both Trusts, conduct and other issues:

a. Trustee Application filed June 12, 2015;

b. Trustee Application filed July 15, 2025;

c. Affidavit of Catherine Twinn filed September 30 2015;

d. Affidavit of Catherine Twinn filed December 16, 2015;

e. Affidavit of Catherine Twinn filed October 6, 2017;

f. Application and Affidavits of Patrick Twinn, Shelby Twinn and Deborah Serafinchon filed August 17 2016;

g. Affidavit of Catherine Twinn filed March 9, 2017;

h. Affidavit of Catherine Twinn filed May 11, 2017;

i. Affidavit of Catherine Twinn filed October 6, 2017;

j. 35 page Affidavit of Records of Catherine Twinn, filed February 1, 2018 (Jurisdiction Application) detailing Meeting Minutes, Notes, Emails, Letters, Memos, Charts, List, Resolutions, Legal Advise from Trust lawyers Donovan Waters & Tim Youdan on the Trust beneficiary definition, legal opinions concerning Justin McCoy's entitlement, legal fees paid, etc;

k. Trustee Brief on the Jurisdiction Issue filed March 29, 2019;

l. Other materials filed in this voluminous record;

E. 2025 Trustee reversal in position from vary the Beneficiary definition to SFN membership because of abhorrent discrimination, to perpetrate and administer discrimination

250. The 2011 record is replete with Trustee submissions to vary the Trust to SFN membership because of discrimination. It is not necessary to further document these. The Record speaks for itself.

251. This was the Trustees position and end goal from 2011, when the Action was commenced by Affidavit, up to the Trustees' current "Threshold Application," filed June 2024. Gallons of ink, judicial and otherwise, has been spilt on this goal.

252. The Trustees have taken everyone, including the Court, on a 14 year litigation ordeal, costing millions of dollars, to now abandon the issue of abhorrent discrimination and seek Court permission to administer discrimination.

253. Surely the doctrines of laches and estoppel applies to these Trustees. The Court should deny their Threshold application and resolve the discrimination issue, exploring available options.

F. In Search of Stable Legal Ground to Define Beneficiaries - S.25 and s.35(1)

> **24** "Everyone then who hears these words of mine and does them will be like a wise man who built his house on the rock. **25** And the rain fell, and the floods came, and the winds blew and beat on that house, but it did not fall, because it had been founded on the rock. **26** And everyone who hears these words of mine and does not do them will be like a foolish man who built his house on the sand. **27** And the rain fell, and the floods came, and the winds blew and beat against that house, and it fell, and great was the fall of it." Matthew 7:24-27, English Standard Version.

254. There is zero to little dispute amongst the parties and the Court, as to the abhorrent nature of the discrimination plaguing the beneficiary definition.

255. The foregoing paragraphs trace and paint, cumulatively, a very complex, evolving and changing legal landscape vis a vis the 1970 Indian Act and consequentially, the 1985 Trust definition, which incorporates the 1970 Act as the fulcrum for its administration.

256. The Alberta Trustee Act amendments took effect 2023 and S. 78(1) grants new power to the Court:

> **Court may vary non-charitable purpose trust**

78(1) If, on application, the court is of the opinion that an impracticability, impossibility or other difficulty hinders or prevents giving effect to the terms of a non-charitable purpose trust, the court may, subject to subsection (5),

(a) vary or add to the terms of the trust to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust, or

(b) if the court is unable to provide for a purpose that is as close as is practicable or reasonable to an existing purpose of the trust, vary or add to the terms of the trust to provide for a purpose that is consistent with the intention of the original settlement.

(2) Subject to subsection (5), if on application the court is of the opinion that a change in circumstances since the creation of a non-charitable purpose trust has resulted in a purpose of the trust being obsolete or no longer expedient, the court may vary or add to the terms of the trust to provide for a purpose that is consistent with the intention of the original settlement.

(3) In exercising the power under subsection (2), the court may consider the views of the settlor or the trustee concerning the obsolescence or expedience of the purpose of the trust and the proposed variation.

(4) On an application under subsection (1) or (2), the court must take into account the following factors:

(a) the nature of all interests and the effect any proposed variation may have on those interests and objects;

(b) the intentions of the settlor to the extent these can be ascertained;

(c) any other factors the court considers relevant.

(5) Subsections (1) and (2) do not apply if

(a) the trust instrument contains a valid direction concerning the ultimate disposition of the trust property, or

(b) the intention of the settlor concerning the ultimate disposition of the trust property can be inferred from the trust instrument and is valid.

(6) Despite subsections (1) and (2), if the court cannot determine a replacement purpose for a non-charitable purpose trust, the court may order that the trust property be returned to the settlor or to the settlor's personal representative.

(7) The court may make an order that it considers appropriate

(a) to enforce a non-charitable purpose trust, or

(b) to enlarge or otherwise vary the powers of the trustee of a non-charitable purpose trust.

(8) An application under this section may be made by

(a) the Minister,

(b) a person appointed specifically by the settlor in the trust instrument to enforce the trust,

(c) the settlor,

(d) the personal representative of the settlor,

(e) the trustee, or

(f) a person appearing to the court to have a sufficient interest in the matter.

257. Emerging case law on S.25 of the Charter offers stable ground for an indigenous beneficiary definition. The Supreme Court decision in Dickson v. Vuntut Gwitchin First Nation, ruled that the Vuntut Gwitchin First Nation's (VGFN) residency requirement for council members was protected by section 25 of the Canadian Charter of Rights and Freedoms. This case established a new framework for applying section 25, which protects certain Indigenous rights and freedoms from potential Charter infringement. This is not to suggest a discriminatory beneficiary, but to place it on enduring legal ground. The majority held that section 25 "shields" Indigenous rights and freedoms from Charter infringement claims when they irreconcilably conflict with individual Charter rights. The SCC emphasized that section 25 protects rights that are associated with "Indigenous difference," which includes interests related to cultural difference, prior

occupancy, and participation in treaty processes. The decision has significant implications for Indigenous self-government, as it clarifies how Indigenous governments can balance individual Charter rights with their own laws and governance practices. In essence, the Dickson case established that section 25 of the Charter provides a shield for Indigenous rights and freedoms when they conflict with individual Charter rights, particularly when those Indigenous rights are seen to protect "Indigenous difference". This decision has broad implications for how Canadian courts will address the relationship between the Charter and Indigenous self-government in the future.

258. The residency requirement is protected as an "other" right or freedom under section 25 of the *Charter* because it preserves "Indigenous difference".

259. Writing for the majority, Justice Kasirer and Justice Jamal held that the *Charter* applied to the VGFN, but Ms. Dickson's Section 15 *Charter* challenge failed and the residency requirement was upheld, because of the operation of Section 25.

260. The *Charter* applied to the VGFN, principally because it is a government by nature pursuant to Section 32(1). Furthermore, Justice Kasirer and Justice Jamal determined that Ms. Dickson had succeeded in showing that the residency requirement constituted a *prima facie* (or, on its face) infringement of her right to equality under Section 15(1) of the *Charter*.

261. However, Justice Kasirer and Justice Jamal said that the residency requirement was an exercise of an "other" right or freedom that pertains to the Aboriginal peoples of Canada under Section 25 of the *Charter*. As they explained, the purpose of Section 25 is to uphold certain collective rights and freedoms of Indigenous peoples when those collective rights conflict with an individual's *Charter* rights. They declared that the residency requirement protects "Indigenous difference", understood as interests connected to Aboriginal cultural difference, Aboriginal prior occupancy, Aboriginal prior sovereignty, or Aboriginal participation in the treaty process. "Requiring VGFN leaders to reside on settlement land helps preserve the leaders' connection to the land, which is

deeply rooted in the VGFN's distinctive culture and governance practices. It also bolsters the VGFN's ability to resist the outside forces that pull citizens away from its settlement land […]. Such interests are associated with various aspects of Indigenous difference . . ."

262. S. 25 was recently applied by the Federal Court of Canada to uphold the SFN Constitution and Election Law, which Gina Donald, now a SFN member, challenged as a violation of her s.15 right to equality.

263. S. 25 was also recently applied to other communities, such as Swan River First Nation, whose law was subjected to a s.15 challenge.

264. In light of the facts pertaining to this Trust there is merit for the Court taking into account all the facts including:

a. the roots of the Trust;

b. the history of community governance;

c. the community interest in the development of its members who in turn can contribute to the SFN;

d. the source of the funds settled into the Trust;

e. the purpose for which those funds were released, namely to benefit the Band and its members;

f. up until 2023 elected officials were Trustees;

g. the 1985 Trust was settled by the SFN;

h. the high impact on Bands, in particular the SFN, as Canada began remedying its legislative discrimination, necessitating the SFN to develop a risk management strategy to respond to high impact that included establishing, as an interim measure, the 1985 Trust;

Justice requires this Court have regard to the factual and legal nexus of the 1985 Trust to the SFN and the purpose for its creation.

III. The Hypocritical, Cart before the Horse', Trustee Threshold Application

"Once, long ago, we believed in the power of your law. But then we saw that you didn't believe in it. It was only for you and it really was only to help you get what you want or to keep others from getting what you have. It never applied to help people like us."
Kent Nerburn, Neither Wolf nor Dog: On Forgotten Roads with an Indian Elder, quote by Aimee Craft[27]

265. The Trustees "Threshold Question" blind folds this Court by waving off the issue of "abhorrent" discrimination in Indian Act rules incorporated by the 1985 Trust Beneficiary definition. They declare in para 36 of their Brief that:

> "It is not before the Court to determine if the 1985 Trust is valid. The question is whether distributions can occur notwithstanding that the definition of beneficiary is discriminatory."

266. They say there is no case law preventing them from administering Charter flagrant rules which Courts have consistently pronounced as assimilationist. The Trustee approach is problematic because it continuously divides Sawridge Trust beneficiaries using racist and colonial rules, played out in an ongoing cat and mouse litigation process that decapitates the long term interests of reconciliation within the Sawridge First Nation as between its members and Trust beneficiaries. The Threshold application seeks to validate the 1970 Indian Act divisive rules, to the detriment of long-term collective interests of the Sawridge people. The application promotes a continual doctrinal slippage away from the recognition of constitutional rights and freedoms.

267. The Threshold Question is declaratory relief seeking:

> Affirming that notwithstanding that the definition of "Beneficiary" set out under the 1985 Sawridge Trust is discriminatory, and includes certain non-members of the Sawridge Nation, the Sawridge Trustees may proceed to make distributions to the Beneficiaries of the 1985

[27] Aimee Craft, University of Toronto, Faculty of Law, Chapter 3, the Mistaken Approach to Reconciliation

> Sawridge Trust, including to non-members of the SFN who qualify as Beneficiaries of the 1985 Sawridge Trust.

268. This Threshold Question gaslights the record of proceeding, ignoring the January 22, 2018 Consent Order, obliterating paragraph 3 which requires that "The Justice who hears and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief." This was because, as earlier detailed, the 1985 amendments to the *Indian Act* not only continued but actually perpetuated certain forms of sex discrimination, contrary to the *Charter*. This required further amendments in 2010, 2017 and 2019, with more amendments coming to implement the Nicholas Claim settlement.

269. The Trustees Brief filed April 16, 2025 dumbs down the facts and the law, with no mention of the considering all forms of discrimination in determining the appropriate relief. Their Brief is silent about the complex and changing legal landscape in response to other forms of discrimination and reckless as to the potential legal consequences for the 1985 Trust beneficiary definition rooted in the 1970 Indian Act. The Trustees give no consideration to the possible, if not likely, repeal of the Indian Act which is a long time coming.

270. Instead of dealing with the substantive issues, the Trustees brief, paragraph 42, takes aim:

> "The collateral attacks by the SFN on the validity of the 1985 Trust are inappropriate. The SFN is not a party to the Action and it has not brought an action to challenge the validity of the Trust." On April 4, 2025 the OPGT accused the SFN of "introducing new issues" and hijacking the Action. These and other impugning statements are flimsy strategies that distract from substantive legal and factual issues.

271. Such statements are clearly positional, adversarial, inconsistent, distracting and unhelpful. The mindset behind these statements evidences why resolution of complex factual and legal issues have dragged out this litigation 14 years. The legal and ethical obligation is to focus on what the law demands and directs, not

distractions that are patently self-serving and positional. The imperative is to follow the law and the facts wherever these lead.

272. These tactics are unethical when seen against prior Trustee submissions on the same issue. For example, paragraph 36 of the Trustees Brief filed March 29, 2019 says:

> 36. In light of the above, the Trustees submit that it is open to the court to hold that the provisions of the Trust Deed can be challenged. This challenge is based on the conclusion that it is contrary to public policy for a trust (created for the benefit of a community and holding assets derived from that community) to include provisions that provide discriminatory criteria (gender, marital status or family status) for the determination of beneficiaries.

273. In other words, the Trustees believe only they can challenge provisions of the Trust, that are contrary to public policy. This high handedness reeks of an underlying attitude of control: control the narrative, the issues, the facts, the law, the outcome. Silencing the voice and agency of the Settlor, the SFN, harkens back to colonial times of Master and Servant.

274. The Trustees would have us ignore fundamental issues such as whether public interest considerations apply to the Beneficiary definition in the 1985 Trust and whether the Court has the power to vary, amend or delete any terms of the Trust. Those questions were left unanswered when the April 25, 2019 Jurisdiction hearing was adjourned sine die. Those are live questions given the 2023 amendments to the Trustee Act.

275. Essentially, the Trustees wish to quickly end the 2011 Action, so they can perpetrate and preside over administering an unworkable, discriminatory, Charter flagrant beneficiary definition. While no one wants to prolong litigation, it must be resolved properly, carefully, wisely to satisfy the interests of justice. Failing this, ligation will mushroom.

276. My Jurisdiction Brief filed April 12, 2019 asserted that:

a. the Court has no jurisdiction to amend or vary the Definition of the 1985 Trust, except as provided for in the Trustee Act.[28]

b. There are presently four processes recognized by Alberta law that can be utilized to vary a private trust, namely:

a) Variation pursuant to the terms of the trust deed;
b) Variation pursuant to the Trustee Act;
c) Variation pursuant to inherent jurisdiction;
d) Failure of the trust.[29]

245. The time has come for s. 78 of the Trustee Act to be considered. A Court can now vary a non-charitable purpose Trust.

IV. LAW AND ARGUMENT

A. Application of the Settlor's Intention

246. Much has been said about the Settlor's intention. It should be obvious from this Brief that Chief Walter Twinn's concerns about high impact from Charter driven amendments were legitimate, fair and borne out by reality.

247. Chief Twinn was prescient in discerning, in 1985, that Bill C-31 was only the beginning of further Charter driven amendments. Time has proven he is correct.

248. As a leader of the SFN, it was on his shoulders to find means to protect the interest of the community and its members. Experiencing the reality of persons enfranchising, and the power of money, he utilized all the legal tools to build a risk management strategy to preserve SFN patrimony over time. Key elements of that risk management strategy included:

[28] Catherine Twinn Jurisdiction Brief, filed April 12, 2019, page 28
[29] Ibid 23, para 49

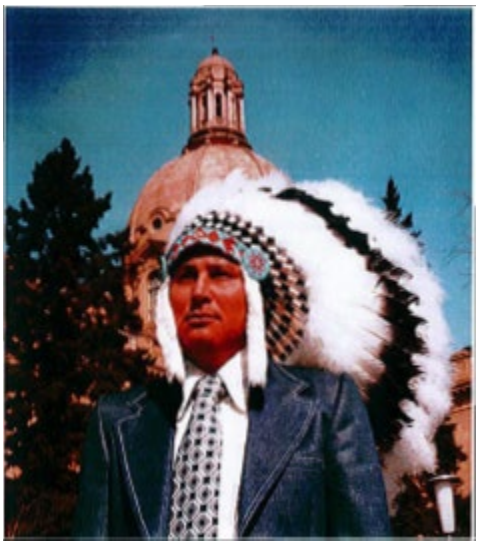
a. Bringing the 1986 Constitutional challenge to certain provisions of Bill C-31 that interfered with First Nations right to decide, in accordance with their laws, their members. This does not imply, as suggested or feared, that the First Nation would violate fundamental human rights and freedoms of individuals. There was a pejorative belief in Ottawa circles that self-government meant just that.

b. Political lobbying. During the Bill C-31 parliamentary process, Chief Twinn negotiated with top officials on amendments to the Bill in response to shared concerns highlighted by the Treaty 8 Brief. Chief Twinn had created access to the Prime Minster, the Deputy Prime Minster and other elected officials. The inclusion of s.10 Band Membership Rules was one of a number of insertions into Bill C-31 as a result of Chief Twinn's efforts;

c. The July 4, 1985 passage by Sawridge members of Membership Rules and assuming control of the Membership List.

d. The Establishment of 2 new Trusts – the 1985 and 1986 Trusts – to replace the 1982 Trust. The 1985 and 1986 Trusts removed the 1982 Trust language that Trustees were whoever was a member of the Council. In practice, the Chief up (until 2023) was a Trustee. But the change was necessitated by the interplay of Indian Act provisions. Creating new members, without Band knowledge or consent, also meant transferring voting power to a new constituency. Given high impact concerns, this could be a new group who do not live in the community, living in cities with mortgages to pay, lacking any real nexus and commitment to the community. If by being elected, they were automatically Trustees, they would have the power to liquidate and distribute assets. If past behavior is a predicator of future behavior, and it is, then individual needs would be paramount. It is imperative that Trustees are persons who have demonstrated integrity, model the values, uphold the highest principles and are committed to the Community's wellbeing.

e. In 1988, opening up the process of negotiations for Sawridge Self Government Recognition legislation, following through on the 1982 submission to the Penner Committee on Self Government.



Chief/Senator Walter Twinn, 1934-1997

FIRST NATIONS GOVERNMENT RECOGNITION ACT: HISTORY

1982 Draft Act tabled by Chief Walter Twinn for Treaty 8 with the Penner Committee on Indian Self Government.

1988 Chief Walter Twinn provides a revised draft Act to Canada (INAC Minister McKnight, 1988).

1989 Agreement in Principle signed by Minister Cadieux and Chief Twinn. Negotiation process 1989-1991 between the Sawridge First Nation (SFN) and Canada (led by INAC Self Government Unit, Chief Federal Negotiator Kerry Kipping with support from DOJ, Steve Aaronson).

April 27, 1991 Agreement in Principle (AIP) comprised of 26 subject matter Sub-Agreements signed by Chief Twinn and Canada and 3rd SFN ratification by Referendum; Cabinet approval October 10, 1991 directing the AIP be drafted into legislative form for introduction into the House of Commons.

1991-1994 Legislative drafting process between the SFN, INAC and DOJ; stopped September 26, 1991 by Canada at draft 7 unless SFN capitulates on the Bill C-31 constitutional issue before the Court which Canada had agreed would be determined by the Court. Drafting stops and never resumes.

September 27, 1990 Chief Twinn appointed to Senate and after September 1994, takes over the drafting process, hires Federal drafter James Ryan who implements the AIP into a Bill which, before his death October 30, 1997, Chief Twinn introduces 3x into the Senate (Bill S-10 March 30, 1995; Bill S-9 June 13, 1996; Bill S-12 November 25, 1996).

<u>Catherine Twinn's Involvement</u>

1. Treaty 8 Draft Act tabled with the Penner Committee on Indian Self-Government, 1982) as an alternative to the *Indian Act* . (Catherine Twinn not involved).

2. 1987/88 the Sawridge First Nation (SFN) drafting team (Catherine Twinn and Professor Moe Litman) draft an Act for the SFN with the Chief and Council and community.

3. 1988 the SFN Chief and Council review and provide final changes to the draft Act which the SFN community approves.

4. 1988 Draft Act submitted to INAC Minister McKnight by Chief Twinn.

5. 1989 Framework Agreement signed between SFN and Canada to govern the Negotiation process.

6. 1989-1991 SFN negotiating team and Canada reduce the draft Act into 26 subject matter Sub Agreements, the principles of which are circulated broadly throughout federal and provincial departments (Alberta) and agreed upon.

7. September 27, 1990 Chief Twinn appointed to the Senate of Canada.

8. An Agreement in Principle (AIP) comprised of the 26 Sub Agreements is signed April 27, 1991 by Canada's Chief Negotiator (Kerry Kipping) and the SFN (Chief Walter Twinn) and ratified by the community in its 3rd Referendum.

9. October 10, 1991 the Federal Cabinet approves the community ratified AIP and directs it be drafted into a Bill for introduction into the House of Commons by Canada as a Sawridge Self Government Act.

10. 1991- 1994 Drafting process between Canada and the SFN. By letter dated September 26, 1991, signed by Kerry Kipping, the drafting stops unless the SFN capitulates on a constitutional issue before the Court which the parties had agreed at the outset of the negotiations would be left to the Court to determine. SFN refuses. No further drafting occurs.

11. Senator/Chief Twinn retains, through his Senate office, a top legislative drafter (James Ryan) to implement the community and Cabinet ratified AIP into a generic Bill which any federally or Court recognized, land based, indigenous community can opt into from whatever legislation governs them (e.g. Indian Act , Cree Naskapi Act, Yukon Self Government Act, etc).

12. Bill S-10 - Senate Bill introduced March 30, 1995 by Senator Twinn (drafter James Ryan)

13. Bill S-9 - Senate Bill introduced June 13, 1996 by Senator Twinn (drafter James Ryan)

14. Bill S-12 - Senate Bill introduced November 25, 1996 by Senator Twinn (drafter James Ryan)

15. Bill S-14 - Senate Bill introduced March 25, 1998 introduced by Senator Tkachuk (drafter James Ryan)

16. Bill S-38 - Senate Bill introduced February 6, 2002 by Senator Gerry St. Germain:

a. February 24, 2003 revisions to Senate Bill by Drafting Team (The Right Honorable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, Willie Littlechild, Patrick Macklem and Catherine Twinn)

b. May 16, 2003 Draft Recognition Legislation – by Senate Legislative drafter Michael Clegg – review by drafting team.

c. December 15, 2003 Draft Recognition Legislation – by Senate Legislative drafter Michael Clegg – review by drafting team.

d. March 12, 2004 Draft Recognition Legislation – by Senate Legislative drafter Michael Clegg – review by drafting team.

e. March 15, 2004 Revised Draft Recognition Legislation – by Senate Legislative drafter Michael Clegg – review by drafting team.

17. Bill S-16 – Senate Bill introduced October 27, 2004 by Senator St. Germain. This Bill includes changes resulting from Catherine Twinn retaining former Chief Justice Antonio Lamer and others whose suggestions were implemented. Committee hearings held.

18. Bill S-216 -Senate Bill introduced May 30, 2006 by Senator St. Germain

19. Bill S 212 – Senate Bill introduced October 30, 2012 by Senator St. Germain. Catherine Twinn not involved in this Bill. The then AFN Vice Chief Jody Wilson-Raybould took over the Bill and with Steven Stewart of Senator St. Germain's office made further changes which have not been compared and analyzed against Bill S-16. Senator Germain retires and the Bill dies.

249. Paragraph 219, (c), (d) and (e) of this Brief reproduces extracts from Darcy Twin's Affidavit that summarizes transcript evidence of Chief Walter Twinn, given under oath in the first Bill C-31 trial:

c. Sawridge was concerned that Bill C-31 would result in automatic reinstatement of a large group to membership in Sawridge. (p 3761)

d. The 1985 Trust was created two days before Bill C-31 was enacted, in anticipation of the passage of Bill C-31, and with the objectives that the beneficiaries of the 1985 Trust would be people who were considered Sawridge members before the passage of Bill C-31, that the people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries for a short time until Sawridge could see what Bill C-31 would bring about. The people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries. (pp 3906-3909)

e. Ultimately, the intention was that the assets from the 1985 Trust would be placed in the 1986 Trust. (pp 3948-3949)

250. The evidence concerning the Settlor's intention, and the motivators behind that intention, are irrefutable and well placed. The lawyers in this proceeding and the Court share the duty to honor this.

B. The best interests of the objects of the 1985 Trust

251. The object of a trust refers to the beneficiaries, whether they are specific individuals or a broader group, who will benefit from the trust. A trust can also have a purpose, such as charitable or non-charitable objectives, with beneficiaries being those who will benefit from the trust's assets.

252. Based on the sworn testimony of the Settlor, the purpose of the 1985 Trust, was a temporary protective measure to safeguard SFN patrimony until the scope and scale of members imposed by Bill C-31 was legally established. When safe, 1985 Trust wealth would be placed in the 1986 Trust.

253. The best interests of beneficiaries includes having a community to belong to, a community that is the living vessel transmitting history, culture, language, values, ceremonies, identity, where indigenous laws are lived, versus “obeyed.” It means healing from the trauma and breaking the yoke of colonization. That is reconciliation.

C. The Duty of Honor and Reconciliation - constitutional imperatives

a. These Trustees

254. The Crown, in its dealings with Indigenous peoples, has a duty to act honorably, rooted in the "honour of the Crown" doctrine. This duty requires the Crown to respect Aboriginal rights, consult with Indigenous peoples, and negotiate in good faith, particularly when Crown activities may affect those rights. The "honour of the Crown" ensures the Crown acts with integrity and avoids any appearance of unfair dealing which includes sharp, litigious practices.

255. The "honour of the Crown" is also closely linked to the broader goal of reconciliation between the Crown and Indigenous peoples, aiming to address historical injustices and build a more equitable relationship.

256. It is clear from the history of Relevant Colonial and Post Confederation laws governing Indian status that great harm and historical injustices have been done to the Indian people. The Nicholas et al Claim cites the following, which Canada has conceded:

> 4. The registration provisions deprive certain individuals and their descendants of benefits of the law in a manner that interferes with fundamental matters of personal autonomy and psychological integrity, thereby infringing interests of liberty and security of the person protected by section 7 of the *Charter*.
> 5. The interference with personal autonomy and psychological integrity described in paragraph 14 is not in accordance with the principles of fundamental justice.

6. The interference with personal autonomy and psychological integrity described in paragraph 14 is not justified under section 1 of the *Charter*.

257. Trustees of the Sawridge Trusts are bound by these same standards. Honor is a concept intrinsic to Trust law and fundamental to the fulfillment of Trustee duties. But this duty is constitutionalized when dealing with Sawridge Trusts as you are dealing with indigenous people. Asking the Court for permission to continue applying provisions that are Charter flagrant, which profoundly interfere with fundamental matters of personal autonomy and psychological integrity, is, in 2025, shocking.

258. The relationship between Trustees and indigenous beneficiaries is trust-like, rather than adversarial, and contemporary recognition and affirmation of their interests including psychological integrity, must be defined in light of the historic relationship experienced under colonization.

259. These Trustees have a duty to in a manner, which includes how litigation is conducted, which preserves and enhances the collective identity of the Sawridge First Nation community, and allows the community and its members to evolve and flourish in the future.

260. The special historic and constitutional status of Aboriginal peoples is not well understood by the Canadian public but must be well understood by these Trustees. They must aim to advance reconciliation, consistent within a framework of existing constitutional rights. A framework of principles of reconciliation, grounded in constitutional law, and in the relationship principles of mutual recognition, respect, sharing, transparency and responsibility, is fundamental to meeting the fiduciary standards binding on these Trustees.

261. These Trustees wish to continue the Charter flagrant provisions incorporated in the 1985 Trust, producing litigation on an ad hoc basis. This type of reactive approach

will result in slow or no progress, creating a stagnation that will choke the Trusts, including limiting growth of Trust wealth. This is evident by recent Trustee appointments, selected by gerrymandering beneficiary identification, excluding beneficiaries who are best qualified. It will also encourage increased litigation to lever Trust administration, characterized by crisis management responses. This will generate increased uncertainty for third parties, Trustees and beneficiaries. Conflict will continue to undermine efforts to establish cooperative approaches for improving the social and economic conditions of the indigenous beneficiaries of the Sawridge Trusts.

262. A number of key principles for reconciliation include the principles of mutual recognition, mutual respect, mutual benefit and mutual responsibility, which are grounded in the work of RCAP. Combined with the directions provided by the SCC, they provide the basis for articulating a principled Trustee approach for engaging Sawridge Trust beneficiaries to ensure beneficiaries are on a strong footing, able to participate in society at large while enhancing capacities for contribution to community life.

263. Since 1982. a significant body of constitutional law has emerged that provides guidance on how reconciliation should operate in the Canadian constitutional context. Between 1982 and 2004, there were over 40 SCC cases and a variety of other court decisions which have articulated key principles with respect to the exercise and interpretation of Aboriginal and treaty rights and Crown duties in dealing with those rights. The Jurisprudence has been accompanied by the emergence of a significant body of public policy literature on the concept of reconciliation. This includes the work of RCAP, and papers prepared by Aboriginal groups, academics, various public interest groups and policy think tanks and institutes. In both the jurisprudence and public policy literature there is common ground and a convergence of views on certain key themes and principles that must characterize the process of reconciliation, which is binding on these Trustees.

b. This Court

264. The American indigenous legal scholar, Robert Williams Jr in his book, Like a Loaded Weapon, wrote about the Rehnquist Court, boldly exposing the ongoing legal force of the racist language directed at Indians in American society. Fueled by well-known negative racial stereotypes of Indian savagery and cultural inferiority, Williams contends this language has functioned "like a loaded weapon" in the Supreme Court's Indian law decisions. Beginning with Chief Justice John Marshall's foundational opinions in the early nineteenth century and continuing today in the judgments of the Rehnquist Court, Williams shows how undeniably racist language and precedent are still used in Indian law to justify the denial of important rights of property, self-government, and cultural survival to Indians. Building on the insights of Malcolm X, Thurgood Marshall, and Frantz Fanon, Williams argues that racist language has been employed by the courts to legalize a uniquely American form of racial dictatorship over Indian tribes by the U.S. government. Williams concludes with a revolutionary proposal for reimagining the rights of American Indians in international law, as well as strategies for compelling the current Supreme Court to confront the racist origins of Indian law and for challenging bigoted ways of talking, thinking, and writing about American Indians.

265. Canadian Courts, as upholders of Canadian law, including various iterations of the Indian Act , have been important institutional instruments in the colonial process. But it is the Courts who have intuited important, unwritten constitutional principles including the honor of the Crown, reconciliation as the purpose of s.35 conceived as an ongoing process of improving the relationship of indigenous peoples with government and society at large. Our constitutional landscape is rich and open for discovery in the search for unwritten constitutional principles.

266. The Courts, as an important institution mandated to uphold the rule of law, naturally would perceive constitutional duties, such as the honor of the Crown, as equally applicable to the Courts when addressing indigenous issues.

267. For example, an offshoot from the respect, recognition and deference accorded aboriginal and treaty rights, Royal Proclamation rights and other rights and freedoms pertaining to aboriginal peoples, is the principle of statutory interpretation in Canada, particularly when it comes to statutes relating to Indigenous peoples. Courts must interpret statutes liberally and in favour of Indigenous peoples. This means that when interpreting a law, courts should give it the broadest meaning possible, and if there are multiple interpretations, they should choose the one that best benefits Indigenous peoples

268. Thus, this Court when approaching its options on how to respond to the Trustees' application they be granted power to validate and administer charter flagrant provisions unquestionably harmful to indigenous persons, families and communities, it should carefully consider its new s.78 powers under the Trustee Act to remedy Charter flagrant discrimination.

V. Conclusion:

c. Deny the Trustee application with solicitor-client costs to those that are self-funded;

d. Direct, on an expedited basis, an application to confirm and apply the Court's jurisdiction as provided for in s. 78 of the *Trustee Act* to vary, add to or strike from the Definition of the 1985 Trust.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 26th day of May, 2025.

Catherine Twinn

CATHERINE TWINN, K.C.
Self-Represented

VI. Appendix of Footnotes and Authorities

1. Nicholas et al v Canada, Amended Notice of Civil Claim, filed 2024-10-11, portions of the Legislative History are taken from the Nicholas et al Claim, confirmed by Catherine Twinn's research, with supplemental information added including the Drummond Memo

2. Solicitor General Drummond Memo, 1851, reproduced at Tab 4, Shelby Twinn Supplemental Brief, filed November 27, 2020

3. See also the film, Killers of the Flower Moon, depicting the aftermath in 1920s Oklahoma

4. Angie Debo, And Still the Waters Run, 1940, Princeton University Press, copy of the book given to J Little April 4, 2025 by C Twinn

5. Ibid 3, pg 21, 22

6. [1] This distinction between "voluntary" and "involuntary developed with Bill C-31, to delineate those "absolutely" entitled to band membership including s.12(1)(b), persons affected by the double mother rule and certain children, and those "conditionally" entitled after 2 years to be on a s. 11 Band List maintained by the Registrar.

7. March 27, 2025 Dr Ryan Beaton Lecture, The Legacy of Voluntary Enfranchisement Under the Indian Act, U of A Law School. Dr. Beaton is a lawyer, Law Professor Allard School of Law, and clerked for CJ Beverly Mclachlin at the SCC 2014-14, prior to which he clerked for the Court of Appeal for Ontario

8. Angie Debo, And Still the Waters Run, 1940 Princeton

9. https://www.myplomer.com/?p=502 "If the Indian Act is so bad why has it not been reformed or abolished"

10. https://www.thecanadianencyclopedia.ca/en/article/bedard-case; https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5261/index.do

11. See Marsha Smoke, April 1, 2025 Video, at 54.10 minutes https://anishinabek.ca/departments/governanceactivities/edbendaagzijig/#:~:text=CITIZENSHIP%20OVERVIEW,Voting%20Thresholds%20in%20November%202023

12. Ibid 7

13. https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2495/index.do

14. Harry Swain, Deputy Minister of Indian Affairs, Speech dated November 21, 1989 at pg 7

15. First Nation Land Management Act; First Nations Fiscal Management Act, 2005; First Nations Oil and Gas and Moneys Management Act (S.C. 2005, c. 48). For commentary, also see https://www.myplomer.com/?p=502

16. Treaty 8 High Impact Band Brief, March 1985, see Shelby Twinn Affidavit, November 27, 2020, Tab 11

17. Treaty 8 High Impact Band Brief, copy given to the Court April 4, 2025, see

18. https://fnp-ppn.aadnc-aandc.gc.ca/fnp/Main/Search/FNRegPopulation.aspx?BAND_NUMBER=454&lang=eng

19. Affidavit of Roland Twinn, filed September 28, 2016.

20. https://laws-lois.justice.gc.ca/eng/acts/i-5/page7.html#:~:text=(2)%20If%20the%20council%20of,been%20repaid%20to%20the%20band.&text=(3)%20The%20Governor%20in%20Council,1)%20and%20(2)

21. Ibid 1, Nicholas et al v Canada, Amended Notice of Civil Claim, filed 2024-10-11, Supreme Court of BC, Vancouver Registry

22. https://www.google.com/search?q=What+was+the+population+of+registered+status+indians+in+Canada+in+1984%3F&rlz=1C1CHWA_enCA605CA605&oq=What+was+the+population+of+registered+status+indians+in+Canada+in+1984%3F&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRiPAtIBCjMzODA0ajBqMTWoAgiwAgHxBTTXSan0LRyu&sourceid=chrome&ie=UTF-8

23. https://www.statista.com/statistics/538050/registered-indian-population-in-canada/#:~:text=In%202020%2C%20there%20were%201%2C021%2C356,thousand%20to%20over%20one%20million

24. Some instances of accounting demands are contained in the Application and Affidavits of Patrick Twinn, Shelby Twinn and Deborah Serafinchon filed August 17 2026. But there were other Demands for an Accounting including Demands from Catherine Twinn

25. Jurisdictional Brief, Catherine Twinn, filed April 12, 2019, at para 89

26. Aimee Craft, University of Toronto, Faculty of Law, Chapter 3, the Mistaken Approach to Reconciliation

27. Catherine Twinn Jurisdiction Brief, filed April 12, 2019, page 28

28. Ibid 23, para 4