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

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

APPLICANT	**ROLAND TWINN, EVERETT JUSTIN TWIN, MARGARET WARD, TRACEY SCARLETT and DAVID MAJESKI, as Trustees for the 1985 Trust ("Sawridge Trustees")**
RESPONDENTS	**THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE and CATHERINE TWINN**
DOCUMENT	**WRITTEN BRIEF OF SAWRIDGE FIRST NATION**

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PART 1 INTRODUCTION

1. Sawridge First Nation ("**SFN**" or "**Sawridge**") was granted intervenor status in relation to what has been referred to as the "Threshold Question". More particularly, the Threshold Question is the relief sought by the Trustees 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. The definition of "Beneficiary" set out under the 1985 Trust deed has been declared by this Court, through a Consent Order entered on January 22, 2018, to be discriminatory **in so far as it prohibits SFN members from being beneficiaries of the 1985 Trust pursuant to the amendments made to the *Indian Act* after April 15, 1982** [1]

3. The Discrimination Order also provides at paragraph 3: "The Justice who hears and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief." In fact, the courts found that the 1985 amendments to the *Indian Act* did not entirely correct but actually perpetuated certain forms of sex discrimination, contrary to the *Charter*, and further amendments to the statute were made in 2010, 2017 and 2019.

4. In essence, the Threshold Application seeks to validate the discriminatory nature of the 1985 Trust, including the discrimination against SFN members. SFN is highly concerned by what is extensive, vast and unacceptable discrimination against its members. There appears to be little dispute amongst the parties as to the abhorrent nature of the discrimination plaguing the beneficiary definition.

5. The following submissions will outline why the discrimination contained in the 1985 Trust should **not** be ratified by this Court and thus why the Trustees should **not** be permitted to make distributions thereunder.

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[1] Consent Order of Justice Thomas filed January 22, 2018, para. 1. ("**Thomas Consent Order**") **[TAB 9]**

PART 2 RELEVANT FACTS AND EVIDENCE

A. *The 1985 Trust and the 1986 Trust*

6. The 1985 Trust was settled by Chief Walter Twinn of SFN on April 15, 1985, for the benefit of its beneficiaries,[2] using assets that had largely been acquired from the capital and revenue funds being held by the Crown for Sawridge and previously released by the Minister and that such moneys were expended pursuant to sections 64 and 66 of the *Indian Act*, for the benefit of the members of Sawridge.[3]

7. The definition of "Beneficiaries" found in the 1985 Trust preserves the definition of a member by relying on the definition of an Indian found in the *Indian Act* as then in force:[4]

> all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of this execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band No 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purpose of this Settlement.[5]

8. On August 15, 1986, Chief Walter Twinn settled an additional and separate trust, the 1986 Trust, for the benefit of:

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[2] Affidavit of Paul Bujold, dated September 12, 2011, at para 4. ("**Bujold September 12, 2011 Affidavit**") **[TAB 5]**

[3] Affidavit of Darcy Twin dated September 24, 2019 at para 8. [**TAB 3**]

[4] *Indian Act*, R.S.C. 1970, c. I-6 ("1970 *Indian Act*").

[5] Bujold September 12, 2011 Affidavit, Exhibit G **[TAB 5]**.

> all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada.[6]

9. Effective April 17, 1985, two days after the 1985 Trust was settled, there were meaningful changes made to the existing *Indian Act*[7] by *An Act to amend the Indian Act* ("***Bill C-31***").[8] The *Bill C-31* amendments, amongst other matters, affected who would qualify for membership in a band and the band membership process generally. A major change was that a First Nation could elect to administer, in accordance with the law, their own band membership list rather than the list being administered by the federal government, as had previously been the practice. Following the *Bill C-31* amendments, SFN elected to take control of its band list and continues to do so at present.

10. At the time of the *Bill C-31* amendments, their full impact on SFN membership was unknown.[9] However, Bill C-31 was already before Parliament when the 1985 Trust was created[10] and a known consequence of *Bill C-31* was that certain women who had lost Indian status (and with it their membership) for marrying men without status under the existing discriminatory (and non-*Charter*-compliant) provisions of the *Indian Act* would be reinstated both as Indians and band members – history has referred to these as the "*Bill C-31* women."[11] SFN was concerned that the *Bill C-31* amendments could cause membership numbers in the SFN to dramatically increase.[12]

11. The Trustees state, as a fact, at paragraph 8 of their written submissions that:

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[6] Bujold September 12, 2011 Affidavit, Exhibit K **[TAB 5]**

[7] Formally, Bill C-31 amended the *Indian Act* as consolidated in the R.S.C. 1985, but the consolidation did not come into force until 1987, by which time the Bill C-31 amendments were in effect: *Revised Statutes of Canada, 1985 Act*, RSC 1985, c 40 (3rd Supp), s 2, For simplicity's sake, these submissions refer to the pre-amendment statute as "the 1970 *Indian Act*," which is also the version referred to in the 1985 Trust.

[8] S.C. 1985, c. 27; R.S.C. 1985, c. 32 (1st Supp.). The statute received royal assent on June 27, 1985, but had retroactive effect.

[9] Affidavit of Darcy Twin dated September 24, 2019 at para 7. ("**Darcy Twin 2019 Affidavit**") **[TAB 3]**

[10] *McIvor v. The Registrar, Indian and Northern Affairs Canada*, 2007 BCSC 827, para 74; aff'd. 2009 BCCA 153.

[11] *Sawridge Band v. Canada)*, 2003 FCT 347, para. 20-21; aff'd. 2004 FCA 16.

[12] Bujold September 12, 2011 Affidavit, *supra* note 2, at para 15. **[TAB 5]**

> The deliberate intention of the 1985 Trust was therefore to protect the assets in the 1982 Trust for the then-Beneficiaries of the 1982 Trust, to keep the Beneficiary group small, and mitigate against the unknown effects of the *Indian Act* amendments.

12. This statement is not entirely accurate. No beneficiary of the 1982 Trust would have lost that status as a result of *Bill C-31* since the 1982 beneficiaries were "all members, present and future, of the Band."[13] The intent of the 1985 Trust was not to protect the assets in the 1982 Trust for the existing beneficiaries of the 1982 Trust, but rather to benefit those who were members of the SFN at the time and only those future members who would have acquire membership in accordance with the discriminatory rules in effect at the time of settlement, the rules that would be repealed effective two days later.

13. As such, the purpose, or at least the effect, of the 1985 Trust was to propagate into the future the *Charter* violations contained in the 1970 *Indian Act.*

14. On January 9, 2018, the Trustees filed a constating application that sought, *inter alia*:

    a) Direction on whether the definition of "beneficiary" in the 1985 Trust is discriminatory;

    b) If so, directions on how the definition can be modified.[14]

B. *Discrimination*

1. *The 2018 Order*

15. The parties to the litigation agreed to a Consent Order, entered on January 22, 2018, which confirmed the beneficiary definition is discriminatory "insofar as it prohibits persons who are members of the Sawridge Indian Band No. 19 pursuant to the amendments to the *Indian Act* made after April 17, 1982 from being beneficiaries of the 1985 Trust" (the "**Discrimination Order**").[15]

16. However, the Discrimination Order also provides at paragraph 3: "The Justice who hears

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[13] Bujold September 12, 2011 Affidavit, *supra* note 2, at Exhibit A. **[TAB 5]**

[14] Application for advice and direction, filed January 9, 2018. **[TAB 6]**

[15] Thomas Consent Order, supra note 1. **[TAB 9]**

and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief."

2. *Discrimination against Members of the SFN*

17. To date, the Trustees have not fully determined who qualifies as a beneficiary of the 1985 Trust under the existing definition,[16] such that the full extent of the discrimination remains unknown. More particularly, the Trustees have not filed any evidence in this litigation confirming the list of persons from current SFN membership who are disqualified as beneficiaries by virtue of the discrimination contained in the existing definition.

18. The only individuals from current SFN membership who have been declared by this Court in these proceedings to be beneficiaries of the 1985 Trust are Shelby Twinn and Patrick Twinn.[17] That said, if Shelby Twinn marries a man without Indian status or even a registered Indian who is a member of another band, she will lose her status as a beneficiary pursuant to the operation of the terms of the 1970 *Indian Act* and if she has children with such a man outside marriage, the Trustees retain the power to disqualify the children as beneficiaries; those rules would not apply to her if she was a man.

19. In addition, 1970 *Indian Act* included the "double-mother rule", shown partially in Appendix 5, which was repealed by *Bill C-31* in 1985. Under this rule, the children born after 1951 to an Indian man and a mother who had acquired her status through marriage would, if the children's paternal grandmother was also not entitled to status by birth, lose their own status when the children turned 21.[18] The Trustees have never stated whether they apply the same rule to remove beneficiaries of the 1985 Trust.

3. *Other Discrimination*

20. The Trustees admit that even if all SFN members were beneficiaries of the 1985 Trust, discrimination based on sex would not automatically be cured.[19]

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[16] Affidavit of Isaac Twinn, dated August 14, 2024, at para 9. ("**Isaac Twinn Affidavit 2024**") **[TAB 2]**

[17] *Ibid* at para 11.

[18] *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555, para 21-27.

[19] Brief of the Trustees on Threshold Question, para. 13. **[TAB 8]**

21. For example, daughters born outside of marriage before 1985 to male members are not entitled to membership as of right, so that the late Chief Walter Twinn's daughter born outside marriage was excluded.[20] If Walter Twinn had instead had a son outside marriage, however, that son would have been registered before 1985 and would be a beneficiary. This discrimination was found to be unconstitutional by limiting the right to registration as an Indian ("status") and was corrected by the 2017 amendments to the *Indian Act*.[21] The discrimination and the effects of the amendments are shown in Appendix 2.

PART 3 ISSUES

22. The issue on the Threshold Application is whether, as the Trustees urge, this Court should declare that they may make distributions to the beneficiaries even though the definition of "Beneficiary" under the Trust is discriminatory.

PART 4 ARGUMENT

A. *The Discrimination at Issue*

23. In its application to intervene, Sawridge highlighted some of the history of the 1970 *Indian Act* provisions that are used to define the term "beneficiary" and the seriousness of the discrimination they inflict.[22] In particular, it was noted that:

a) the Indian status and band membership provisions of the 1970 *Act* were originally adopted in 1951, and have been described as "an incomparable blend of sexism and racism"[23]

b) courts have commented on the unabashedly sexist nature of the 1970 *Act* on many occasions, noting the "historically lower value placed by Parliament on a woman's

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[20] *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377, para 12.

[21] *Gender Equity in Indian Registration Act*, SC 2010, c 18; *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; *Order Fixing August 15, 2019 as the Day on which Certain Provisions of that Act Come into Force*, SI/2019-85, Canada Gazette, Part II, Vol. 153, No. 17.

[22] Brief of Sawridge First Nation in support of its application for leave to intervene, dated February 14, 2025, para 57-65. **[TAB 7]**

[23] Kathleen Jamieson, *Indian Women and the Law: Citizens Minus* (Ottawa: Minister of Supply and Services) Canada, 1978) p. 57. **[TAB 14]**

Indian identity"[24] and describing the treatment of women and their descendants as "deplorable and shocking";[25]

c) Parliament established a facially neutral registration regime in 1985 to coincide with the coming into force of s. 15 of the *Charter*, but this regime was subsequently found in two binding judgments to violate equality rights,[26] in large part because the 1985 revision had maintained or improved certain acquired rights for the male line under the pre-1985 registration system.

24. The provisions defining status are found at sections 10 to 14 and 109 to 113 of the 1970 *Indian Act*. Section 10 sets the tone, dictating that the Indian status and band membership of a man's wife and his children is simply a function of his own. Under the regime, women are in large part merely an appendage to their husbands or fathers.

25. Some of the examples of this discrimination include that:

a) the sons of Indian men will always have status (subject to the double-mother rule discussed above), regardless of the circumstances of their birth,[27] while daughters of these same men will only have status if their father married their mother;[28] if the daughter is illegitimate, she will not have status, while her brother by the same parents will;

b) an Indigenous woman will have her Indian status and band membership removed if she marries a person who does not have status[29] and can only get it back if she later marries a man with status: even divorce from her non-status husband cannot restore her to her ancestral community (this was the situation of Sandra Lovelace,

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[24] *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555, para 92. See also: *Martin v. Chapman*, [1983] 1 SCR 365.

[25] *Landry c. Procureur général du Canada (Registraire du registre des Indiens)*, 2017 QCCS 433, para 36.

[26] *McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153, and *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555.

[27] 1970 *Indian Act*, paras 11(1)(c) and 11(1)(d); *Martin v. Chapman*, [1983] 1 SCR 365.

[28] 1970 *Indian Act*, para 11(1)(d); *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555, para. 156 and following.

[29] 1970 *Indian Act*, sub-para 12(1)(a)(iii) and sub-sec 109(2).

who famously filed, and won, a case against Canada under the *International Convention on Civil and Political Rights* on the grounds that Canada's denial of her right to reside on her ancestral reserve was an denial of her right to enjoy her culture);[30]

c) at the same time, a non-Indigenous women can acquire Indian status and band membership by marrying a band member,[31] acquiring a right to participate in the life and resources of a community to which she has no ancestral connection;

d) the "illegitimate" children of Indian women can lose their status if it is shown that their father does not have right to status,[32] even if they do not know their father and have no association with him;

e) even if a status woman marries a man with Indian status, should he belong to a different band, she will automatically lose membership in her own band and become a member of her husband's band[33] and therefore so too will her children.

26. In addition, as befitting a statute drafted in 1951 based on Victorian values, the 1970 *Act* makes no allowance for same-sex relationships and it is so patriarchal in its worldview that it is impossible to read the word "wife" as "spouse", since it would undermine the whole male-centric worldview expressed in the registration provisions.[34]

27. Finally, apart from the 1970 *Indian Act*, the 1985 Trust gives the Trustees discretionary powers that aggravate the statutory discrimination by allowing them to deny any benefits "to any illegitimate children of Indian women", even if their status and membership were never contested;[35] benefits for the illegitimate son of a male member, by contrast, would not be affected.

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[30] *Sandra Lovelace v. Canada*, Communication No. 24/1977, U.N. Doc. CCPR/C/OP/1, para. 15 (1984).

[31] 1970 *Indian Act*, para 11(1)(f).

[32] 1970 *Indian Act*, para 11(1)(e) and sub-sec 12(2); *McIvor et al. v. The Registrar, Indian and Northern Affairs Canada et al.*, 2007 BCSC 26, para 22 and following.

[33] 1970 *Indian Act*, section 14.

[34] *Hele c. Attorney General of Canada*, 2020 QCCS 2406, para 154-155.

[35] Bujold September 12, 2011 Affidavit, Exhibit G, para. 16. **[TAB 5]**

28. The 1985 Trust's use of the 1970 *Indian Act* to define "beneficiary" means that, if the Trustees were to distribute from the trust, they would be forced to engage, time and time again, in acts that are so blatant in their sexism, racism, and homophobia, that they would shock ordinary Canadians. For example:

a) in the case of illegitimate children of male beneficiaries, they will deny benefits to a woman simply because she is a woman, while giving them to her brother or her cousin simply because he is a man;

b) they will give benefits to a female beneficiary until she marries, and then deny them after she marries on the grounds that her husband is not of the right "race";

c) they may seek out information on the father of all illegitimate children of female beneficiaries, and remove those children as beneficiaries if their father is not of the right race;

d) they will provide benefits to both a male beneficiary and his wife, but deny benefits to a male beneficiary's husband on the grounds that the Trust does not recognize same-sex marriages as equivalent to opposite-sex marriages.

29. The rules used by the 1985 Trust are structured to delegitimize female ancestry and emphasize racial purity. They have no place in modern Canadian society.

B. ***Validity of the 1985 Trust***

30. In paragraphs 19 through 23 of their submissions, the Trustees argue under the heading "Facts" that the 1985 Trust is a valid trust. Respectfully, these are not facts. The validity of the 1985 Trust was put at issue by the Trustees on the Full Application and awaits determination.

31. The issue of whether the beneficiaries of the 1985 Trust are ascertainable is a live issue because the registration provisions of the 1970 *Act* are part of a broader administrative system that relied on two tools to which the Trustees do not have access: the protest and orders of the Governor in Council. The former registration provisions are not a simple "paint-by-numbers" exercise: they contained significant discretionary elements that cannot

be applied without these tools.

32. Protests were a means by which bands and interested individuals could contest the inclusion or exclusion of names from band lists. They were made to the Indian Registrar, the official in charge of maintaining the Indian Register. Upon the receipt of a protest, the Registrar would cause an investigation to be made, and for this purpose had "all the powers of a commissioner under Part I of the *Inquiries Act*."[36]

33. A practical example of the problem of how to make the required determinations is the situation of illegitimate children of Indian women. The 1970 *Act* provided that they were members of the band (and, therefore, would be beneficiaries) unless a protest was filed against their inclusion within 12 months of their addition to the Band List "and if upon the protest it is decided that the father of the child was not an Indian."[37] It is now impossible for this process to work to determine the beneficiaries of the trust, for at least two reasons: first, there has not been a consistently maintained list to which the addition of the child's name would have started the 12-month clock running; second, the Registrar no longer has the mandate to hear such protests and cannot now be replaced by a private body with what would have to be public investigation powers. As a result, it is impossible to determine whether the illegitimate child of a female beneficiary should be included as a beneficiary.

34. The second missing tool is orders of the Governor in Council, which played an important part in the 1970 *Act*. Such orders were the mechanism by which individuals were "enfranchised."[38] This power disappeared in 1985, along with the concept of enfranchisement. The fact that this power no longer exists makes it impossible to apply the discretionary aspects of the 1970 *Act*'s registration regime to the 1985 Trust.

35. One example of this impossibility is the situation of children who were born before their mother married out (referred to as "enfranchised" or "omitted minors"), shown in

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[36] 1970 *Indian Act*, s. 9.

[37] 1970 *Indian Act*, sub-sec 12(2). See for example: *Sawridge Indian Band v. Ward*, 1985 CanLII 1165 (ABKB); *Sawridge Indian Band v. Potskin*, 1985 CanLII 1210 (ABKB).

[38] 1970 *Indian Act*, s. 109. See for example: *Larkman v. Canada (Attorney General)*, 2013 FC 787, para 33; aff'd. 2014 FCA 299.

Appendix 3. After 1956, the *Act* gave the Governor in Council a discretionary power to decide whether, when ordering the enfranchisement of the mother following her marriage to a non-Indian, it would also order the enfranchisement of her minor children.[39] Because this discretionary power was abolished in 1985, it is now impossible to know whether the children of a woman who married out in the year 2000, for example, are beneficiaries – we cannot wind back the clock to ask the Governor in Council to make a decision that it no longer has the legal authority to make.

36. The mechanics of the registration provisions of the 1970 *Act* were complex – it is impossible to apply them now when the discriminatory concepts they rely on have been removed from the *Act* and the public authorities that were supposed to supervise and ensure the functioning of this system have not had the legal mandate to do so for almost 40 years. The Quebec Superior Court has previously highlighted these difficulties in observing that:

> [34] As a general rule, it is not a common occurrence that a court is asked to examine an oppressive provision found in a generally recognized male centric statute, a principal objective of which is abolished three decades later, and then asked almost seventy years after its enactment to interpret and apply that provision to past and present facts, ensuring in the process that its interpretation is correct and that the application of that interpretation does not lead to absurd or undesired results.[40]

C. *The 1985 Trust in Context*

37. The assets of the Trust have their origin in the oil and gas royalties received by SFN as a result of petroleum exploration and extraction on its lands.[41] As a matter of law, these royalties were collected by the Crown and deposited in the federal government's Consolidated Revenue Fund, pursuant to the combined provisions of the *Indian Act*, the *Indian Oil and Gas Act*, RSC 1985, c I-7 (or prior to 1977, under the *Indian Oil and Gas Regulations* adopted under the *Indian Act*), and the *Financial Administration Act*, RSC 1985, c F-11.[42]

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[39] 1970 *Indian Act*, sub-sec 109(2). See also Jamieson, pp. 61-62.

[40] *Hele c. Attorney General of Canada*, 2020 QCCS 2406, para 34.

[41] Bujold September 12, 2011 Affidavit, para 7-8 **[TAB 5]**. Affidavit of Darcy Twin, September 24, 2019, para 7(f) (citing testimony of Chief Walter Twinn). **[TAB 3]**

[42] *Ermineskin Indian Band and Nation v. Canada*, 2009 SCC 9, para 10-12; Alexander J Black, "Devolution of Oil and Gas Jurisdiction to First Nations in Canada," 2008 45-3 *Alberta Law Review* 537.

38. According to the *Indian Act*, these "Indian moneys" were to be expended "only for the benefit of the Indians or bands for whose **use and benefit in common** the moneys are received or held."[43] In most cases, the consent of the council of the band was required before the Minister could expend such monies.[44] Wealth earned from a First Nation's common lands and resources does not inhere to the individual members of the band but to the band in common, as a communal interest.[45]

39. In this case, the "assets acquired by the [Sawridge First] Nation" using the oil and gas royalties that had been collected by the Crown "were registered to the names of individuals who would hold the property in trust."[46] This method of acquiring property was chosen because the band council at the time "was unclear whether the Nation had statutory ownership powers."[47]

40. This concern was well-founded, as demonstrated by a 1978 decision of the Nova Scotia Supreme Court which had concluded that a band could not acquire or hold real property.[48] As recently as 2003, Justice Canada argued – albeit unsuccessfully – that Sawridge lacked the capacity to sue on its own behalf.[49] Indeed, Canadian courts have struggled to properly characterize the legal capacity of "bands";[50] while "the trend now is to recognize that Bands and Band Councils have legal capacity in a wide range of situations."[51] Canadian courts have also concluded that a band is not a natural person, not a corporation, and not an unincorporated association.[52]

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[43] 1970 *Indian Act*, s 61 (emphasis added).

[44] 1970 *Indian Act*, ss. 64, 66

[45] *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, 2001 FCA 67, para. 16-17.

[46] Bujold September 12, 2011 Affidavit, para 7-8. **[TAB 5]**

[47] *Ibid*.

[48] *Afton Band of Indians et al. v. Attorney-General of Nova Scotia*, 1978 CanLII 2138 (NS SC).

[49] *L'Hirondelle v. Canada*, 2003 FCT 665.

[50] See, for example, the discussion in *Montana Band v. Canada (T.D.)*, *.)* (1997), [1998] 2 FC 3, para 20-26.

[51] Shin Imai, Kate Gunn, Cody O'Neil, *Indigenous Peoples and the Law in Canada: Cases and Commentary* (Toronto: Thomson Reuters, 2024), p 29. **[TAB 15]**

[52] Jack Woodward, *Native Law*, Vol 1 (Toronto: Carswell, 1994) (looseleaf updated December 2024, release no. 6), para 1.520, 1.530, 1.560. **[TAB 1]**

41. Contrary to what earlier judgments held, modern case law holds that bands are not mere creates of statute created by the *Indian Act*, since they find their origins in the groups of Indigenous peoples that were in Canada prior to the arrival of settlors and possess inherent powers of self-governance.[53] All the same, bands and their councils are not simply private concerns, since the possess and exercise public powers derived from public law.[54] In fact, bands are considered "public bodies", for reasons including that they have, through their councils, the power to tax.[55] They can be sued on the basis of the tort of abuse of public authority.[56] The council of the band can be subject to judicial review before the Federal Court as a "federal board" within the meaning of the *Federal Courts Act* and the right of officials to hold office challenged via the writ of *quo warranto*.[57] As affirmed by the Federal Court:

> The band, as an enduring entity with its own government, is a unique type of legal entity under Canadian law. The rights and obligations of the band are quite distinct from the accumulated rights and obligations of the members of the band. In law a band is in a class by itself.[58]

42. One aspect of the "unique legal entity" constituted by the band is that **its membership is in many cases defined by federal law**. That is to say, even though bands pre-existed the exercise of colonial legal powers, those powers have, even since before Confederation, dictated who is and who is not a member of the band. This was the case at the time the 1985 Trust was created and, indeed, is the very reason that the 1985 Trust was created, though SFN's position was modified by *Bill C-31* in 1985, which allowed, for the first time, bands to adopt their own membership codes.

43. Chiefs and councillors on band councils have fiduciary duties to the band by virtue of their office that is owed to the membership as a collective, not individuals;[59] their fiduciary duty

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[53] *Ibid.*, para 1.422; *Pastion v. Dene Tha' First Nation*, 2018 FC 648, para 12.

[54] For some of these powers, see 1970 *Indian Act*, s. 81.

[55] *R v Big River First Nation*, 2019 SKCA 117, para 31 and *Canada (Attorney General) v. Munsee-Delaware Nation*, 2015 FC 366, para 51.

[56] *Horseman v. Horse Lake First Nation*, 2005 ABCA 15, para 29 (in dissent, but not on this point).

[57] *Buffalocalf v. Nekaneet First Nation*, 2024 FCA 127, para 19-23.

[58] *Montana Band v. Canada (T.D.)* (1997), [1998] 2 FC 3, para 21, citing Jack Woodward, *Native Law* (Toronto: Carswell, 1990). **[TAB 1]**

[59] *Webb v. Genaille*, 2023 BCCA 443, para 22, See also: *Assu v Chickite*, 1998 BCSC 3974 at para 33; *Ermineskin*

is "to manage and safeguard the First Nation's assets."[60] More particularly, the case law holds that when a Band Council resolves to distribute band funds on a *per capita* basis, an express trust is created; at that point, Council must carry out the distribution on trust principles, in conformity with the duty to treat all members of a class of beneficiaries equally.[61] In a *per capita* distribution among members, discrimination that is contrary to the *Charter* is unreasonable and illegal.[62]

44. When establishing the 1985 Trust, Walter Twinn was acting in his official capacity as Chief, to which fiduciary duties and public law duties attached, to set up a trust to hold the wealth that had been collected **from the common rights of the band for the common use of the band** (as opposed to its individual members). The band was not a voluntary association – its membership was defined and limited to those people whom **Parliament** had, through the registration provisions of the *Indian* Act, deemed qualified as band members. The explicit purpose in setting up the 1985 Trust was to avoid, insofar as possible, the consequences of Parliament's **public policy decision** to remove the "deplorable and shocking"[63] discrimination against women from the registration provisions of the *Indian Act*.

45. The assets of the 1985 Trust are derived from a transfer of assets from the 1982 Trust through the use of concurrent resolutions, one by the trustees of the 1982 and 1985 Trusts,[64] one by the band council,[65] approving the transfer of assets from the 1982 Trust to the 1985 Trust. The fact that the participants believed a band council resolution was required in addition to the resolution of the two sets of trustees to "approve and ratify" the transfer perfectly encapsulates the mixed public-private nature of the 1985 Trust.

Cree Nation v. Minde, 2010 ABQB 93, para 11-12; Louie v. Louie, 2015 BCCA 247.

[60] *Pelletier v. Delorme*, 2019 FC 1487, para 116.

[61] *Barry v. Garden River Band of Ojibways*, 1997 CanLII 493 (ON CA); *Blueberry Interim Trust (Re)*, 2011 BCSC 769, para 61.

[62] *Medeiros v. Echum*, 2001 FCT 1318; *Shanks v. Salt River First Nation #195*, 2023 FC 690.

[63] *Landry c. Procureur général du Canada (Registraire du registre des Indiens),* 2017 QCCS 433, para 36.

[64] Bujold September 12, 2011 Affidavit, Exhibit H. **[TAB 5]**

[65] Bujold September 12, 2011 Affidavit, Exhibit I. **[TAB 5]**

D. *Ability to Distribute Under a Discriminatory Trust*

1. *Fiduciary Obligations*

46. There is no doubt the Trustees stand in a fiduciary capacity. SFN takes no issue with the general statements of law the Trustees proffer in terms of their obligations as fiduciaries and their reproductions of the *Trustee Act*.

47. The real issue on the Threshold Application is not whether trustees, as a general proposition, are required to distribute the corpus of a trust pursuant to its terms – of course they are. The real issue is whether the unconstitutional discrimination found within the definition of beneficiary in the 1985 Trust, and its reliance on legislation that has been repeatedly found to violate the *Charter*, prohibits distribution.

2. *Effect of Discrimination*

48. In their submissions, the Trustees do not provide a fulsome overview of the current state of the law in Canada as it pertains to the interaction of the principles of public policy with the terms of trusts and state "there are no grounds or authorities of which the Trustees are aware which justify striking a private trust on the grounds that it is discriminatory." Respectfully, the Trustees research is simplifying a complicated issue and is not robustly stating the law in this regard.

49. The purpose of the following submissions is to provide the Court with an overview of existing judicial authority, along with observation and comment on the position advocated by the Trustees, with the objective of ensuring that the Court has a full understanding of the issues at stake and factual matrix prior to making a decision.

E. *Types of Trusts*

50. There are primarily two recognized categories of trusts in Canada, public and private. Under each category there are many subsets (i.e. testamentary, *inter vivos* etc.).

51. A private trust is created for a class of individuals or named individuals, specified by the settlor. When the objects of a trust are specific and ascertainable persons, for example to X for life, remainder to his first son at 21, the trust is said to be a private trust. A trust is

still private when it is in favour of a class of persons.[66]

52. A public trust is created for the benefit of the public at large, or a significantly sizeable section of the public. The underlying theme is that the trust is really for the public benefit rather than a class or group of persons who have a common nexus,[67] for example, a trust created for the poor of Toronto.

53. In Canada, a public trust must be a charitable trust.[68] In order to be a charitable trust there are three requisite elements, namely: (a) the purpose must be included within the law's description of charity; (b) the purpose must be wholly and exclusively charitable; and (c) the purpose must be for the benefit of the public.[69]

54. In Canada, there are four recognized heads of charity, namely: (a) relief of poverty; (b) advancement of education; (c) advancement of religion; (d) miscellaneous activities beneficial to the community.[70]

55. The restrictive effect of these definitions has been noted by Canadian courts with respect to First Nation trusts, as they are clearly not family trusts nor private dispositions of property under a will. Canadian courts have recognized this distinction and have described First Nation trusts as "human beneficiary trusts" or "non-charitable purpose trusts."[71] Non-charitable purpose trusts are generally recognized as unenforceable as they lack a defined set of beneficiaries, but they are permissible so long as their terms can fit within certain criteria.

56. The recent amendments to the *Trustee Act* have addressed the scope of what will constitute a valid non-charitable purpose trust in Alberta. Approved forms of non-charitable purpose trusts in Alberta are currently limited to the following:

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[66] Donovan Waters, Mark Gillen & Lionel Smith, *Law of Trusts in Canada,* 5th ed (Toronto: Carswell, 2021) ("Waters on Trusts") at 28-29. [**TAB 18]**]

[67] *Ibid*. [**TAB 18**]

[68] *Ibid*, footnotes 47 and 48 [**TAB 18**]; see also *Re Killam Estate* (1999), 38 ETR (2d) 50 at para. 62

[69] *Canada Trust Co. v. Ontario (Human Rights Commission)*, 1990 CanLII 6849 (ONCA) at 40 ("*Re Leonard Trust*")

[70] Waters on Trusts at 721-722 [**TAB 18**]

[71] Waters on Trusts at 356. **[TAB 18]**

> 77(1) A person may create a trust that
>
> (a) is for a non-charitable purpose that
>
> (i) is recognised by law as being capable of being a valid object of a trust, or
>
> (ii) is sufficiently certain to allow the trust to be carried out, is not contrary to public policy and is
>
> (A) for the performance of a function of government in Canada, or
>
> (B) a matter specified by regulation,
>
> and
>
> (b) does not create an equitable interest in any person.
>
> (2) A non-charitable purpose trust may exist indefinitely.[72]

57. The meaning of performing "a function of government in Canada", has not yet been interpreted pursuant to its use in the *Trustee Act*. That said, the *Income Tax Act* utilizes similar language and offers insight. The phrase "municipal or public body performing a function of government in Canada" was added to paragraph 149(1)(d.5) of the *Income Tax Act* to exempt income earned by corporate entities owned by local governing bodies. That is, a function of government can be performed by entities that, while not legally municipalities, nevertheless possess attributes of and provide services similar to those provided by municipalities[73] and the case law holds that these include Indian Bands.[74]

58. The late Dr. Waters highlighted the incongruency in the application of the existing body of law to First Nation trusts in his learned text and wrote that the Courts have considered First Nation Trusts to be "non charitable purpose trusts".[75]

59. In the *Keewatin Tribal Council Inc.* decision, the Court held that a trust established for the benefit of various First Nations, which at the time were considered in law to be unincorporated associations, was ultimately for the benefit of the members of those bands who did not have a distinct proprietary interest in the trust property; the result was therefore found to be a non-charitable purpose trust.[76]

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[72] *Trustee Act*, SA 2022, c T-8.1 at s. 7

[73] *Lawyers Professional Indemnity Company v Canada*, 2020 FCA 90 at para 78.

[74] *Otineka Development Corp. v. Canada*, 1994 CanLII 19119 (TCC).

[75] Waters on Trusts at 356 **[TAB 18]**

[76] *Keewatin Tribal Council Inc. v Thompson (City),* 1989 CanLII 7267 (MBKB).

F. *Public Policy Doctrine*

1. *Definition of "Public Policy"*

60. In Canadian law, the "public policy doctrine" refers to the principle that certain provisions of contracts, trusts or other private instruments are considered invalid or unenforceable because they are deemed to be against the public interest or detrimental to the well-being of society. This doctrine has broad application over many areas of law. Each area of law has developed its own application of this doctrine but what they have in common is that the will of the contracting parties, the testator or the settlor is set aside: the enforceability of an individual's rights and powers are outweighed by values that society holds to be more important.[77]

61. Provisions which are discriminatory in that they offend the equality provisions enshrined in the *Charter* or provincial human rights legislation are generally recognized as offensive to public policy.

> In addition, equality rights "without discrimination" are now enshrined in the *Canadian Charter of Rights and Freedoms* at s. 15; the equal rights of men and women are reinforced at s. 28….
>
> Finally, the world community has made anti-discrimination a matter of public policy in specific conventions like the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), G.A. Res. 2106 A (XX), and the *International Convention on the Elimination of All Forms of Discrimination Against Women* (1979), G.A. Res. 34/180, as well as Articles 2, 3, 25 and 26 of the *International Covenant on Civil and Political Rights* (1966), G.A. Res. 2200 A (XXI), all three of which international instruments have been ratified by Canada with the unanimous consent of all the provinces. It would be nonsensical to pursue every one of these domestic and international instruments to see whether the public policy invalidity is restricted to any particular activity or service or facility.[78]

62. This rule is imposed by statute in Alberta because the *Alberta Human Rights Act* explicitly states in its Preamble that equality without regard to race, gender or family status, among other grounds, is recognized "as a matter of public policy." This was also the rule at the time of the 1985 Trust's creation, under the former *Individual's Rights Protection Act*.[79]

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[77] *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, para 115-117.

[78] *Re Leonard Trust* at 48.

[79] *Alberta Human Rights Act*, RSA 2000, c A-25.5; *Individual's Rights Protection Act*, RSA 1980, c I-2.

2. *Public Trusts*

63. The law is settled that the doctrine of public policy is applicable to public trusts. The seminal decision in this regard is that of the Ontario Court of Appeal in *Canada Trust Co. v. Ontario Human Rights Commission* ("***Re Leonard Trust***"). This 1990 decision addressed a testamentary trust established in the early 1900s for the purposes of education and which contained blatantly racist and discriminatory criteria for scholarships.

64. The Ontario Court of Appeal held that:

> The freedom of an owner of property to dispose of his or her property as he or she chooses is an important social interest that has long been recognized in our society and is firmly rooted in our law: *Blathwayt v. Lord Cawley*, [1976] A.C. 397, [1975] 3 All E.R. 625, [1975] 3 W.L.R. 684, 119 Sol. Jo. 795 (H.L.). That interest must, however, be limited in the case of this trust by public policy considerations. In my opinion, the trust is couched in terms so at odds with today's social values as to make its continued operation in its present form inimical to the public interest.[80]

3. *Private Trusts*

65. The law of the application of the public policy doctrine to private trusts is unsettled and judicial consideration primarily arises in the context of personal dispositions through a will or *inter vivos* trust, but not situations that are analogous to a First Nations trust which inherently have public law elements.

66. The Supreme Court of Canada, in a decision from 1938, confirmed that the doctrine of public policy applies to trusts, including private trusts, because "there are cases in which rules of law cannot have their normal operation because the law itself recognizes some paramount consideration of public policy which over-rides the interest and what otherwise would be the rights and powers of the individual."[81]

67. In 2014, the New Brunswick Court of Queen's Bench, affirmed on appeal, considered the issue of a testamentary gift to an organization that promoted neo-Nazi doctrines of hatred. In this decision, there was not a dispute that the organization was utterly repugnant, but a concern that the testator could have lawfully made the same donation during his lifetime.

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[80] *Re Leonard Trust* at 22-23.

[81] *In Re Estate of Charles Millar, Deceased,* [1938] SCR 1 at 4.

Despite the testator having the ability to support such repugnant organizations during his lifetime, the court held the gift was against public policy in death and voided the gift.[82]

68. The lower court in *McCorkill Estate* found it was open to a court to examine whether a trust violates principles of public policy and to void a condition, covenant or the trust itself to correct a breach of public policy.[83] The *McCorkill Estate* decision is not referenced by the Trustees in their submissions.

69. In 2019, the Court of Appeal of Ontario adopted a different approach to that of the Court of Appeal of New Brunswick in the decision in *Spence v BMO Trust Company* ("***Spence***").[84] The case involved a daughter that argued she had been disinherited for discriminatory and racist reasons and her disinheritance should be overturned for offending public policy. Her father's will, on its face, did not state any discriminatory or racist reasons for her disinheritance. The daughter was effectively asking the Court to examine extrinsic evidence in order to determine her father's motivation for disinheriting her.

70. The Ontario Court of Appeal denied the request and found it is not appropriate for a Court to go behind the will to determine whether the testator had discriminatory motives if that intent is not apparent on the face of the will in the form of a discriminatory condition.

71. The Court's findings in *Spence* are grounded in the principles of testamentary freedom, which is not the case for the 1985 Trust, however, the decision offers the following relevant concepts:

a) Courts will intervene to void the offending testamentary conditions on public policy grounds for conditions that require a beneficiary to act in a manner contrary to law or public policy in order to inherit under the will, or oblige the executors or trustees of the will to act in a manner contrary to law or public policy in order to implement the testator's intentions.[85]

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[82] *McCorkill v McCorkill Estate*, 2014 NBQB 148 ("*McCorkill Estate*"); aff'd 2015 NBCA 50.

[83] *Ibid* at para 90.

[84] *Spence v BMO Trust Company*, 2016 ONCA 196 ("*Spence*").

[85] *Ibid* at para 56.

b) The Court of Appeal did not follow *McCorkill Estate* in respect of its review of extrinsic evidence to determine the "worthiness" of the beneficiary because they saw "no support in the established jurisprudence for the acceptance of such an open-ended invitation to enlarge the scope of the public policy doctrine in **estates cases.**"[86] [**Emphasis mine**]

c) Canadian courts will not hesitate to intervene on the grounds of public policy where implementation of a testator's wishes requires a testator's executors or trustees or a named beneficiary to act in a way that collides with public policy.[87]

d) It must be remembered that the bequest at issue is of a private, rather than a public or **quasi-public**, nature. Recall Tarnopolsky J.A.'s caution in Canada Trust, at p. 515, that it was the "public nature of charitable trusts which attracts the requirement that they conform to the public policy against discrimination"[88]. [**Emphasis Mine**]

72. The Trustees are incorrect to assert that there is no precedent for voiding the provisions of a "private" trust on the grounds of public policy, as common law courts having been doing so for centuries. As noted in *Waters' Law of Trusts in Canada*:

> The courts are traditionally loath to stop a person from disposing of property in the way the person thinks best, but in the greater interests of public policy they will not enforce conditions which interfere with husband and wife relations, or meddle in the discharge of parental duties. There is also precedent laying down that conditions whose object or effect is to create racial discrimination are against public policy.[89]

73. For example, courts have no qualms about voiding a trust provision which seeks to impose a general restraint on marriage, because such conditions have "been long regarded as a violation public policy, and as such avoided and frustrated by the law."[90] Even clauses which impose only a partial restraint on marriage (that is, clauses which limit those whom

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86 *Ibid at para 58.*

87 *Ibid* at para 70.

88 *Ibid* at para 73.

89 Waters on Trusts at 335. **[TAB 18]**

90 *Cutter (Re)*, [1916] OJ No 106. **[TAB 10]** See also *Eastern Trust Co. v. McTague et al.*, [1963] PEIJ No. 5. **[TAB 11]**

a person can marry) can be voided for public policy reasons where the provision does not make a clear and specific "gift over" to another beneficiary or group of beneficiaries.[91]

4. *First Nation Trusts*

74. The issue highlighted by the foregoing analysis of existing case law on the doctrine of public policy and its interaction with trust law is that First Nation trusts do not neatly fit into the existing body of case law, all of which focuses on private dispositions of property.

75. The 1985 Trust is not analogous to a family trust or a similar *inter vivos* transfer. Its purpose is arguably more analogous to a governmental action, as it holds wealth derived from the assets of the SFN, transferred with the approval of Chief and Council at the time, and it exists for the benefit of its members, as defined using a historical statutory definition. The Trustees state in their submissions that the envisioned program for distribution of the 1985 Trust is to provide similar benefits as the 1986 Trust, namely, to provide "a social safety net for Beneficiaries and their children who are ill, education funding, and funding for the elderly."[92]

76. The late Dr. Waters highlighted the incongruency in the application of the existing body of law to First Nation trusts in his learned text and wrote that the Courts have considered First Nation Trusts to be "non charitable purpose trusts".[93] In the *Keewatin Tribal Council Inc.* decision, the Court held that a trust established for the benefit of various First Nations, which at the time were considered in law to be unincorporated associations, was ultimately for the benefit of the members of those bands who did not have a distinct proprietary interest in the trust property; the result and was therefore found to be a non-charitable purpose trust.[94]

77. The 1985 Trust was established for the members of the SFN (tantamount to the public of the SFN), as membership was determined at the time of settlement, and for distributive

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[91] *Pashak Estate (Re)*, [1923] AJ No 103 **[TAB 16]**; *Hamilton (Re)*, [1901] OJ No. 3 **[TAB 12]**; *In re Schmidt Estate*, [1949] MJ No. 30.

[92] Brief of the Trustees on the Threshold Question at para 16. **[TAB 8]**

[93] Waters on Trusts at 356. **[TAB 18]**

[94] *Keewatin Tribal Council Inc. v Thompson (City)*, 1989 CanLII 7267 (MBKB).

purposes that generally reflect traditional governmental programs and purposes.

78. The doctrine of public policy applies to a non-charitable purpose trust at common law and pursuant to the legislative provisions in the *Trustee Act*.[95]

79. It is submitted that the 1985 Trust is better considered under the law of non-charitable purpose trusts since its beneficiary pool is defined based on membership as it existed at the time of the 1985 Trust's creation, is for the population of a community, and reflects the performance of a governmental function, namely the management of SFN's assets. By comparison, if a trust was created for all individuals who are citizens of Edmonton and its intended use was for social benefits, there would likely be little debate that it was a non-charitable purpose trust.

80. Even if the 1985 Trust does not fit squarely within the notion of a non-charitable purpose trust, its *sui generis* nature means that the principles of public policy should apply to it, as they would apply to a public or non-charitable purpose trust. Just as a band as a legal entity "is in a class by itself", this Trust is in a class by itself, arising as it does from a unique mix of public and private law and in explicit response to Parliament's decision, in the interests of equality and basic human rights, to redefine who qualifies for band membership. To treat this Trust on the same legal principles as the private disposition of property under a will is to be willfully blind to the legal and historic realities that led to the creation and structure of this Trust.

G. *Breaches of Mandatory Rules*

1. *The Provisions of the 1985 Trust Offend Public Policy*

81. The provisions of the 1985 Trust offend public policy due to its reliance on the provisions of the 1970 *Indian Act* to define beneficiaries and its intention to propagate into the future the racist and discriminatory regime this legislation represents.

82. Courts have commented on the unabashedly sexist nature of the 1970 *Indian Act* on many occasions. The Supreme Court noted that "the one thing which clearly emerges from ss. 11

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[95] *Angus v The Corporation of the Municipality of Port Hope*, 2016 ONSC 4343 at para 97.

and 12 of the Act is that Indian status depends on proof of descent through the Indian male line."[96] The Superior Court of Quebec has found that discrimination against illegitimate daughters "flows from the historically lower value placed by Parliament on a woman's Indian identity,"[97] and has described the treatment of women and their descendants as "deplorable and shocking."[98]

83. By defining the beneficiaries of the 1985 Trust through the application of the now-repealed 1970 *Indian Act* rules on Indian status and band membership, the 1985 Trust continues one of the most notoriously discriminatory legal regimes in Canadian history, a regime that has been described as "an incomparable blend of sexism and racism."[99]

84. The discrimination inherent in the 1985 Trust's definition of beneficiaries is extensive and multifaceted. This is demonstrated through the specific example of the denigration of women and descent through the matrilineal line inherent in the 1970 *Act*.

2. *The Provisions Offend Customary International Law*

85. Unlike the *Canadian Charter of Rights and Freedoms* which binds governments, not relations between private parties (it has vertical effect[100]), the human rights norms in customary international law form part of the common law and, if breached, ground a private cause of action (horizontal effect). In this case, the debate as to whether the *Charter* could apply to the Trust's discrimination is therefore unnecessary: any corresponding breach of the norms of customary international law is contrary to common law.

86. Customary international law (unlike a treaty) is automatically adopted into Canadian domestic law, unless inconsistent with existing statutes or case law; it is enforceable without any need for legislative action and its norms "are law, to be judicially noticed and

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[96] *Martin v. Chapman,* [1983] 1 SCR 365

[97] *Descheneaux c. Canada (Procureur Général),* 2015 QCCS 3555 at para 92.

[98] *Landry c. Procureur général du Canada (Registraire du registre des Indiens)*, 2017 QCCS 433, para 36.

[99] Kathleen Jamieson, *Indian Women and the Law: Citizens Minus* (Ottawa: Minister of Supply and Services Canada, 1978) p. 57. **[TAB 14]**

[100] *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, para 210, *per* Brown and Rowe, dissenting on other grounds.

enforced." The courts "can develop remedies for the part of the common law that is customary international law."[101]

87. The authoritative sources for determining customary international law are: "(a) international conventions…; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations (*jus cogens)*; and (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means…."[102]

88. The prohibition against racial discrimination is recognized as one of the peremptory rules of customary international law (*jus cogens*).[103] But as well, "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights" under international law.[104] The Ontario Court of Appeal reached a similar conclusion with respect to public policy in Canadian law.[105]

89. As a result, many scholars hold that the provisions of the *Universal Declaration of Human Rights* (UDHR) prohibiting discrimination have acquired the status of customary international law,[106] particularly the rule in Article 2 guaranteeing the other rights and freedoms in the UDHR without distinction based on "race, colour, sex, … birth or other status"; those freedoms include the right to marry and to found a family (Article 16) and to property (Article 17).[107]

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[101] *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747, para. 177, 174, 175; aff'd. 2023 ONCA 117.

[102] *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747, para 178.

[103] *Report of the International Law Commission on the Work of Its Seventy-First Session*, UN GAOR, 74th Sess., Supp. No. 10, UN Doc. A/74/10 (2019), p. 147.

[104] United Nations Human Rights Committee, CCPR *General Comment 18, Non-discrimination* (Views adopted by the Committee at its 37th session, 10 November 1989), para. 1.

[105] *Re Leonard Trust* at 48.

[106] Jaime Oraá, "The Universal Declaration of Human Rights", in Felipe Gómez Isa and Koen de Feyter (eds.), *International Human Rights Law in a Global Context* (Bilbao: University of Deusto, 2009), p. 232.

[107] *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, (1948).

90. The 1985 Trust's definition of "Beneficiary" constitutes discrimination against female Sawridge members who marry out based on their husband's race, while the wives of male members may become beneficiaries by marrying in without even being Cree or Indigenous; the result is contrary to an international human rights norm that is part of customary international law and therefore contrary to common law. The definition also excludes the children born out of wedlock to female Sawridge members based on that family status, though not the illegitimate sons of male members. The result violates the rights of female members under the UDHR to marry and found a family and to enjoy beneficial property in the Trus without suffering discrimination based on sex or birth; the resulting racial discrimination is also contrary to customary international law.

3. *The Provisions Offend Private Trust Rules*

91. Further, the 1985 Trust even violates private trust law prohibitions. The 1985 Trust's use of the entitlement to registration and entitlement to band membership provisions of the 1970 Indian Act, when used as they are in the 1985 Trust to determine in real time whether a particular person is a beneficiary of that trust, are conditional bequests of the kind that the courts have consistently confirmed are contrary to public policy.

92. Take, for example, the "married out" provisions. For a woman who by birth is a beneficiary of the 1985 Trust, the "married out" provisions make the trust a conditional gift – the trust is effectively saying 'You shall benefit from the present trust, unless you marry a man who is not a beneficiary, in which case you shall cease to be a beneficiary and lose all rights to partake in the distributions or property of the trust.' This is a condition in restraint of marriage, of the type that courts have found contrary to public policy. Not only is it a condition in restraint of marriage, which in and of itself is contrary to public policy, it is a condition in restraint of marriage on racial grounds: it effectively says to a woman: 'To remain a beneficiary of this trust, you must marry of man of this racial background or not marry at all.' Courts have also refused to enforce stipulations in wills that seek to break up marriages on racial grounds on the grounds of public policy.[108]

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[108] *Re Hurshman, Mindlin v. Hursham et al.*, (1956) 6 DLR (2d) 615 (BC SC). **[TAB 13]**

93. While the discriminatory nature of this condition is apparent on its face, the reality is even worse, for two reasons. First, due to the very small size of the beneficiary class, there will, at any given time, be very few men, and perhaps no men, in the beneficiary class who are: (1) of the age of majority; (2) not already married; (3) not related to the woman in question. In effect, the group of men whom a female beneficiary could marry without losing her beneficiary status is small to non-existent.

94. Second, as demonstrated by the Trustees' failure to create a reliable list or record of persons who are beneficiaries of the trust, it would be very difficult for a woman to even be sure if the man she wishes to marry is in fact a beneficiary of the 1985 Trust. She therefore must make her decisions about marriage without knowing if will cost her a legacy of hundreds of thousands, perhaps millions, of dollars.

95. These two factors taken together mean that the condition imposed by the 1985 Trust is an effective prohibition on marriage, which has always been held by common law courts to be contrary to public policy.

96. The 1985 Trust also imposes conditions in restraint of marriage on some men. The double-mother rule means that the Trust imposes the following condition on men whose mothers were not a member of the beneficiary class by birth as if to say: 'If you marry a non-beneficiary, your children will cease to be beneficiaries at the age of 21.' Through the double-mother rule, combined with the fact that the illegitimate sons of male beneficiaries will always be beneficiaries, the 1985 Trust imposes conditions on men that are powerfully dissuasive of marriage, contrary to the common law's traditional public policy position.

97. The 1985 Trust also imposes conditions that seek to interfere with the parent-child relationship. The 1985 Trust dictates that: "The illegitimate children of female beneficiaries shall be beneficiaries, unless it is shown that their fathers are not beneficiaries." This condition interferes with the relationship that a non-beneficiary father (who, we note, may be of both Indigenous and/or Sawridge Cree ancestry) should have with his child, since it creates a strong incentive for him to not declare his relationship to the child and to avoid his parental responsibilities in order to allow his child to continue to be a beneficiary. This is contrary to the common law's traditional public policy position

that "the rightful place of an infant is with his or her parents,"[109] and for this reason these conditions should not be enforced.

H. *Remedy*

1. *The Provisions of the 1985 Trust Are Contrary to Public Policy*

98. Rather than answering the Threshold Question in the affirmative, this Court should conclude that it cannot endorse distributions from the 1985 Trust because its provisions are contrary to public policy, and direct the parties to a hearing to determine the consequences of this finding.

99. The goal of the 1985 Trust was to avoid the implications of the *Bill C-31* amendments, by which Parliament sought to remedy the denigration of women and their descendants which imbue every aspect of the pre-85 status provisions. It is a matter of public record that these provisions caused immense suffering for Indigenous women, by separating them from their birth communities and nations. It would not be revolutionary or daring in the slightest to say that the court will refuse, as a matter of public policy, to allow distribution under an instrument whose express purpose is to undermine Parliament's attempt to right an egregious historical wrong.

2. *The Problem with this Proceeding: The Cart Before the Horse*

100. These issues demonstrate the fundamental problem with the way that the Trustees have chosen to proceed: they ask the Court to bless distributions from the 1985 Trust without first (or at least concurrently) seeking confirmation of the validity of the Trust (which, of course, is one of the remedies they seek in their application) or addressing the obvious public policy problems found in the terms of the 1985 Trust. This is the very definition of putting the cart before the horse. The danger this approach raises is that, after getting the declaration they seek, based on elementary principles of fiduciary duty, the Trustees decide to take this proceeding in a different direction, or even discontinue it, with the result that the validity or public policy issues are never put before the court; meanwhile, the trust monies are spent, and the problems with ascertainability and public policy become concrete

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[109] Waters on Trusts at 347 **[TAB 18].** See, for example, *Re Thorne*, [1922] OJ No 451 **[TAB 17]**.

when the Trustees cannot determine if, for example, an individual who was a child at the time his mother married out is a beneficiary and the Trustees are forced to continue one of the most discriminatory regimes in Canadian history.

101. Sawridge acknowledges that this Court cannot make a determination on the validity of the 1985 Trust without the question being squarely before it and having been briefed by all parties. But it is trite law that declaratory relief (which is the type of relief sought here by the Trustees) is always discretionary,[110] and this Court should exercise that discretion to refuse to grant the relief sought by the Trustees until the validity issue (which they themselves raise) can also be decided.

PART 5 REMEDY SOUGHT

102. For the reasons above, SFN seeks an Order denying the declaratory relief sought by the Trustees on the Threshold Application and declaring the terms of the 1985 Trust are against public policy.

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

David R. Risling, K.C. and Crista C. Osualdini, McLennan Ross LLP
David Schulze and Nicholas Dodd, Dionne Schulze
Solicitors for Sawridge First Nation

[110] For a description of the type of relief that constitutes declaratory relief see: *Shot Both Sides v. Canada*, 2024 SCC 12, para 65-67.

Appendix 1: The Cousins Issue
(Differential treatment of first cousins whose grandmother lost status due to marriage with a non-Indian before April 17, 1985)

Figure 1a: Maternal line (situation of Stéphane Descheneaux)

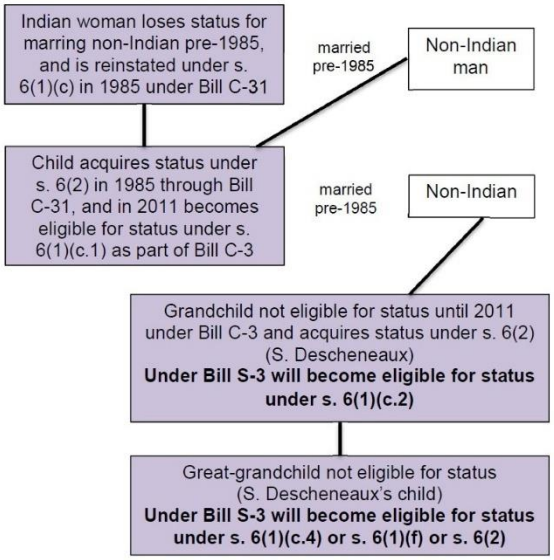
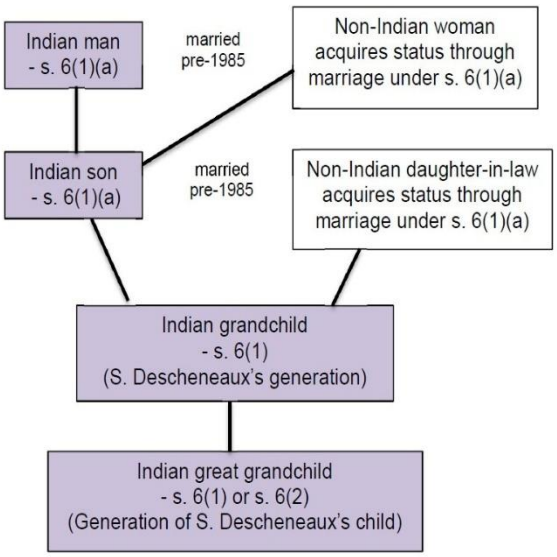


Figure 1b: Paternal line (comparator group)



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Source: Indigenous Services Canada, The Government of Canada's Response to the Descheneaux Decision, date modified 2018-01-31, Annex A: The Cousins Issue

Appendix 2: The Siblings Issue
(Women born out of wedlock to an Indian father and non-Indian mother)

Figure 2a: Female born out of wedlock to an Indian father between 1951 and 1985 (situation of Susan and Tammy Yantha)

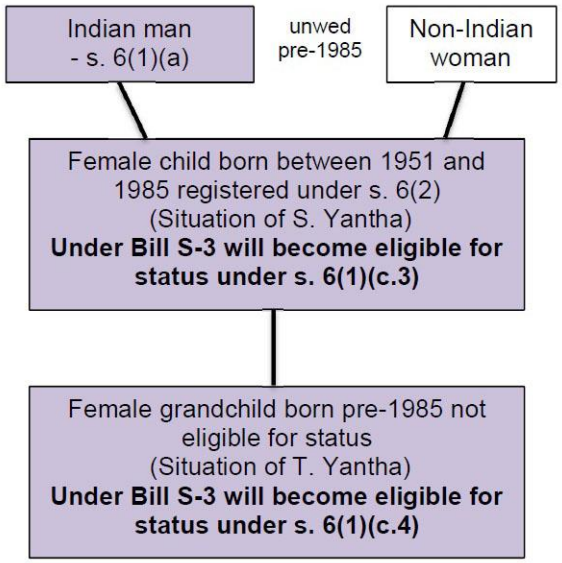
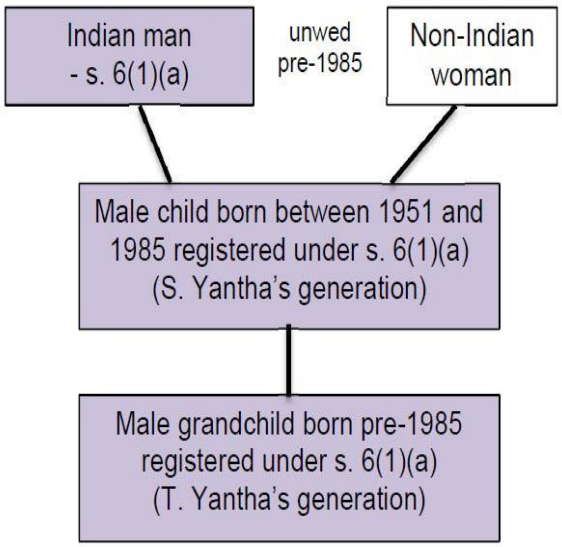


Figure 2b: Paternal line (Comparator group)



Source: Indigenous Services Canada, The Government of Canada's Response to the Descheneaux Decision, date modified 2018-01-31, Annex B: The Siblings Issue (Women Born Out of Wedlock to an Indian Man)

Appendix 3: Omitted Minor Children
(Differential treatment of minor children who were born of Indian parents or of an Indian mother, but could lose entitlement to Indian status, between September 4, 1951, and April 17, 1985, if they were still unmarried minors at the time of their mother's marriage)

Figure 3a: Minor child born of Indian parents loses status following mother's marriage to a non-Indian

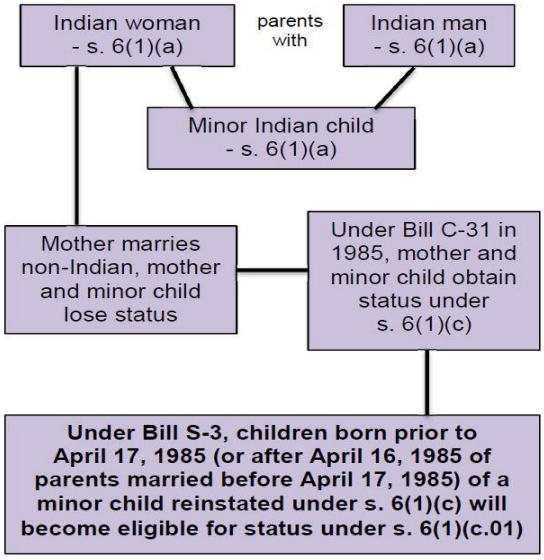
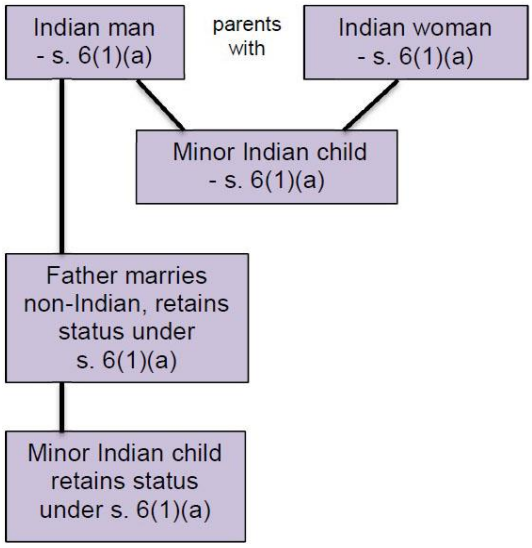


Figure 3b: Child born of Indian parents; father subsequently marries a non-Indian woman prior to April 17, 1985, after the birth of his child; child retains their Indian status (comparator group)



Source: Indigenous Services Canada, The Government of Canada's Response to the Descheneaux Decision, date modified 2018-01-31, Annex C: The Issue of Omitted Minor Children

Appendix 4: Issue of Children Born Out of Wedlock to an Indian Mother and non-Indian Father

Figure 4a: Children born out of wedlock, prior to 1985, of an Indian mother and non-Indian father, but through protest lost Indian status

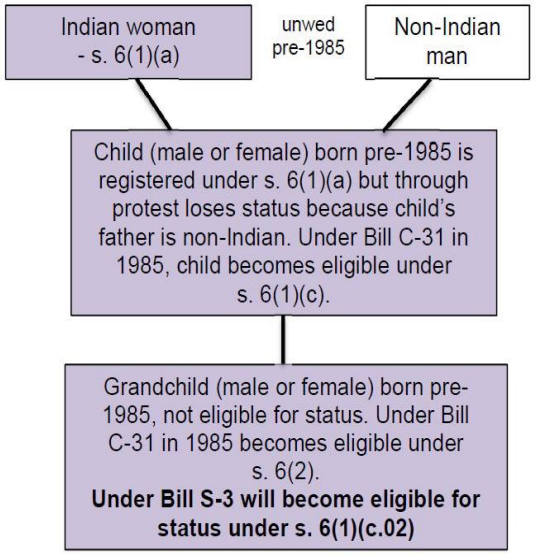
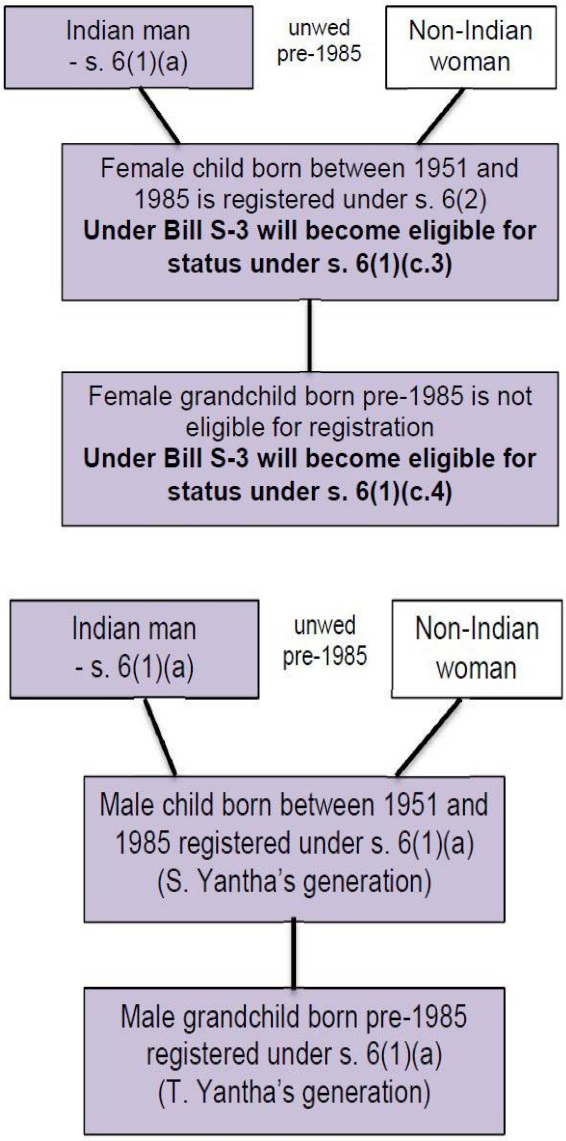
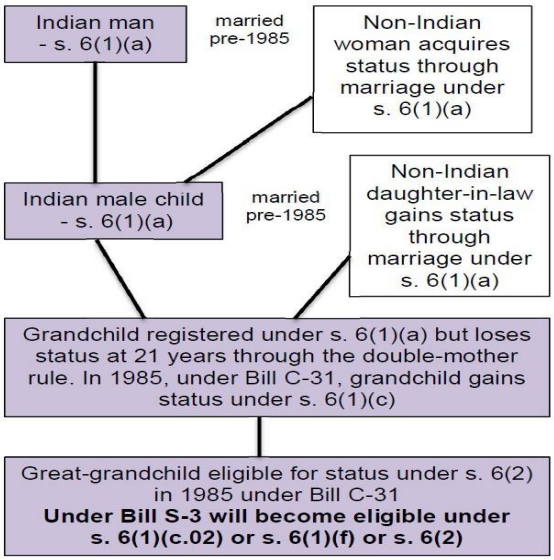
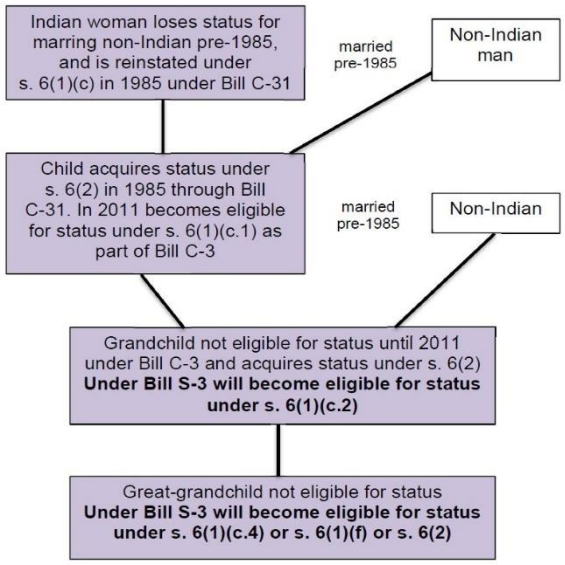


Figure 4b: Children born out of wedlock, prior to 1985, of an Indian father and non-Indian mother (comparator group)



Source: Indigenous Services Canada, The Government of Canada's Response to the Descheneaux Decision, date modified 2018-01-31, Annex D: The Issue of Children Born Out of Wedlock to an Indian Woman

Appendix 5: Issue of Great-Grandchildren Born Pre-1985 of a Parent Affected by the Double-Mother Rule

Figure 5a: Great-grandchildren, born prior to 1985, of a parent affected by the double-mother rule (paternal line)	**Figure 5b: Great-grandchildren, born prior to 1985, of a woman who lost status due to marriage with a non-Indian before April 17, 1985 (comparator group)**
	

Source: Indigenous Services Canada, The Government of Canada's Response to the Descheneaux Decision, date modified 2018-01-31, Annex E: The Issue of Great-Grandchildren Affected by the Double Mother Rule

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Hyperlinks

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JACK WOODWARD, K.C.

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C. DIFFERENT LEGAL POSITION OF ON-RESERVE AND OFF-RESERVE INDIANS

§ 1:22 Generally

[Para. 1.360] *Indian Act* distinction: "ordinarily reside". Different laws apply to an Indian who is a resident of a reserve than to an Indian who does not ordinarily reside on a reserve. This distinction is created in s. 4(3) of the *Indian Act*:

> 4(3) Sections 114 to 117 and, unless the Minister otherwise orders, sections 42 to 52 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province.[1]

[Para. 1.370] Areas of federal jurisdiction not exercised over non-residents. In this provision Parliament has withdrawn the operation of the *Indian Act* in several important areas of jurisdiction. Indians who are not ordinarily resident on a reserve or Crown land are subject to provincial (or territorial) jurisdiction with respect to wills, estates, the property of mentally incompetent Indians, the property of children, and schools.

[Para. 1.380] Non-residents not disqualified from voting. Residency on reserve cannot be used as a requirement for eligibility to vote in band council elections.[2] Regulations have been enacted to provide rules for interpreting the words "ordinarily resident" in connection with eligibility to vote. Section 3 of the Indian Band Election Regulations[3] provides:

> 3. The following rules apply to the interpretation of the words "ordinarily

---

[Section 1:22]

[1]R.S.C., 1985, c. I-5, as am. 2014, c. 38, s. 4.

[2]See *Corbiere v. Canada (Minister of Indian & Northern Affairs)* (1999), 173 D.L.R. (4th) 1 (S.C.C.) [appellants and respondents included members of the Batchewana Indian Band], reconsideration refused (2000), 2000 CarswellNat 393, 2000 CarswellNat 2394 (S.C.C.). The Supreme Court of Canada declared that the words "ordinarily resident on the reserve", found in s. 77(1) of the *Indian Act*, R.S.C. 1985, c. 32, contravened s. 15(1) of the *Charter* as being discriminatory to all aboriginal band members living off-reserve. The Court found that s. 77(1) is unconstitutional, but suspended the implementation of their declaration for 18 months to give Parliament the time necessary to carry out extensive consultations and respond to the needs of the different groups affected. A decision has since implemented the *Corbiere* principle; see *Hall v. Dakota Tipi Indian Band*, [2000] 4 C.N.L.R. 108 (Fed. T.D.) [defendants were the Dakota Tipi Indian Band]. The *Corbiere* decision will likely impact on the application and interpretation of other sections of the *Indian Act* relating to land use decisions by band councils, including s. 20 (allotments to individuals), ss. 38-41 (designations/ surrenders for long-term lease), s. 69 (trust monies) and s. 83 (band by-laws). The reasoning in *Corbiere* has also been applied to find that residency requirements for participation in customary band council elections also violate s. 15 of the *Charter*: *Clifton v. Hartley Bay Indian Band*, 2005 CarswellNat 2059, [2005] 4 C.N.L.R. 161 (F.C.) [applicants were members of the Hartley Bay Indian Band; respondents included the Hartley Bay Indian Band].

[3]C.R.C. 1978, c. 952. Following *Corbiere*, these residency guidelines are now used for determining eligibility to vote in elections with multiple electoral sections.

resident" in respect of the residency of an elector on a reserve consisting of more than one electoral section:

(a) subject to the other provisions of this section, the question as to where a person is or was ordinarily resident at any material time or during any material period shall be determined by reference to all the facts of the case;

(b) the place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereto, when away therefrom, he intends to return and, specifically, where a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where that person sleeps;

(c) a person can have one place of ordinary residence only, and he shall retain such place of ordinary residence until another is acquired;

(d) temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.

[Para. 1.390] Temporary absence from the reserve. Residence on the reserve is not lost as a result of seeking temporary employment off reserve or other "casual migrations outside the reserve".[4] A student who has left the family home for good, however, and taken an apartment in another city with no intention of returning to his or her parents' home will no longer be "ordinarily resident" on reserve.[5]

[Para. 1.400] Indian Band Election Regulation definition of "ordinary residence" applied elsewhere. Section 3 of the Indian Band Election Regulation (see § 1:22 (para. 1.380) above) is not strictly binding in determining the place of ordinary residence within the meaning of s. 4(3) of the *Indian Act*, The Supreme Court of Canada has accepted, however, that the regulation is helpful in determining the meaning of the words "ordinarily resident" for all purposes.[6]

VI. BANDS

A. ORIGIN OF *INDIAN ACT* CONCEPT OF A "BAND"

§ 1:23 Generally

[Para. 1.410] The original self-governing tribes and nations became "bands". The *Indian Act* recognizes and regulates bands. The *Indian Act, 1876*[1] defined "band" to mean any "tribe, band or body of Indians" who have a reserve or an annuity. "Tribe" was not defined, and must have meant one of the then existing Indian nations of Canada. The Royal Proclamation of 1763 also recognized the Indian nations and tribes

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[4] *Canada (Attorney General) v. Canard* (1975), 1975 CarswellMan 32, 52 D.L.R. (3d) 548 (S.C.C.) at 569.

[5] *Vincent v. Canada (Attorney General)* (1986), [1987] 1 F.C. D-24, 1986 CarswellNat 1189 (Fed. T.D.) [applicant was member of Huron Indian Band of Lorette].

[6] *Canada (Attorney General) v. Canard* (1975), 1975 CarswellMan 32, 52 D.L.R. (3d) 548 (S.C.C.) at 569: "On this point, I agree with the Court of Appeal." The decision he agreed with was written by Dickson J.A. (as he then was).

[Section 1:23]

[1] S.C. 1876, c. 18.

of Canada, without defining the words "nation" or "tribe". The Federal Court has held that the phrase "tribe, band or body of Indians" means "an aggregate of individuals or a group regarded as a single entity".[2] The reality that has always faced governments in Canada is that when the settlers came, the land was already occupied by self-governing aboriginal people. Most of the original self-governing groups became a band.

[Para. 1.420] Comparison with U.S. law on the origin of tribes as legal entities. Canadian and American laws are similar in this respect. Just as Canadian bands trace their legal existence to an original self-governing tribe or nation, so the legal existence of American tribes has neither been created nor destroyed by Congress. Although Congress, on a number of occasions, has passed legislation to "terminate" a tribe, Cohen has pointed out that legislative "termination" does not end the constitutional existence of the tribe.

> Express termination by Congress does not terminate the tribe's existence; it terminates only the United States' relationship with the tribe. Thus a terminated tribe remains a tribe ethnologically. Furthermore, a terminated tribe retains all "sovereign authority" not inconsistent with a termination act and may continue to operate as a tribal entity for such purposes as capacity to contract, capacity to receive grants, regulation of tribal hunting and fishing rights, and standing in court. . . .[3]

[Para. 1.421] Whether a band can "cease to exist". The Federal Court of Appeal confirmed that "on or around October 1887 the Bobtail Band ceased to exist"[4] within the meaning of the *Indian Act*, and was no longer capable of holding an interest in Alberta reserve #139. The court did not comment on the question of whether and how a band, tribe or nation could cease to exist as a constitutional entity. The American position may be helpful in this regard (see § 1:23 (para. 1.420) above).

[Para. 1.422] Bands are not normally "created" by statute. An Indian band, as a community with an existence independent of the *Indian Act*, is something more than a "creature of statute".[5] This passage in Native Law was cited with approval by Mr. Justice LeBlanc of the Federal Court:

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[2]*Montana Band v. R.*, [2006] 3 C.N.L.R. 70, 2006 FC 261 (F.C.) at para. 443 [plaintiffs and third parties included members of Montana Indian Band, Samson Cree Nation and Indian Band, and Ermineskin Band], affirmed 2007 CarswellNat 1596, 2007 FCA 218 (F.C.A.). In *Squamish Indian Band v. R.*, 2000 CarswellNat 2346, 207 F.T.R. 1 (Fed. T.D.) [parties includes members of Squamish Indian Band, Burrard Indian Band, and Musqueam Indian Band], with regard to the definition of "tribe", the Court did not give the term a specific meaning, but instead stated that it is common to see the word used broadly to describe a large group of Indians who spoke the same language and narrowly to describe a smaller group of Indians in a single settlement.

[3]Felix S. Cohen, Handbook of Federal Indian Law (1982), at 19.

[4]*Montana Band v. R.*, 2007 FCA 218, 2007 CarswellNat 1596 (F.C.A.) at para. 4, affirming 2006 FC 261, 2006 CarswellNat 465 (F.C.).

[5]Bands have been referred to as "creatures of statute". See *Kinistino School Division No. 55 v. James Smith Indian Band*, 1988 CarswellSask 299, [1988] 5 W.W.R. 404 (Sask. Q.B.) at 413 [defendants included James Smith Indian Band]; *Blueberry River Indian Band v. Canada (Department of Indian Affairs & Northern Development)*,

> Although First Nations do not owe their existence to the *Indian Act* or any other statute and that an Indian Band is more than a creature of statute, they nevertheless constitute entities that, as Bands and Councils, are regulated by the *Indian Act* and exercise powers in accordance with that Act (*Perron v. Canada (Attorney General)*, [2003] 3 C.N.L.R. 198 at para 22; Jack Woodward, Q.C., *Native Law*, vol 1, looseleaf, Toronto, Carswell, 2007 at 1-420).[6]

Similarly, Aboriginal and treaty rights do not depend on the existence of a recognized band to be recognized by a court.[7]

[Para. 1.430] Possibility of American membership in Canadian bands. A unique band is the St. Regis Band, also known as the Mohawks of Akwasasne, which occupies a reserve which straddles the Canada-U.S. border. Even though some members of the St. Regis Tribe live in New York State, there is only one band within the meaning of the *Indian Act*. An American member of the tribe is an Indian within the meaning of the *Indian Act*.[8]

B. MODERN DEFINITION

§ 1:24 Introduction

[Para. 1.440] A band is a "public body" for certain legal purposes. The *Indian Act* defines a "band" in s. 2(1) as "a body of Indians" with certain characteristics. This unique form of "body" is a "public body".[1] As a public body, a band is subject to the $100,000 minimum sentence specified in s. 272(3)(b)(i) of the *Canadian Environmental Protection Act, 1999*.[2] A First Nation is a public body for the purposes of the tort of abuse of public office when it exercises its delegated authority under the *Indian Act* to add names to and delete names from the band

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[2001] 3 C.N.L.R. 72 (Fed. C.A.) at para. 14 [parties included members of the Blueberry River Indian Band, Doig River Indian Band, and Beaver Band of Indians]; *Chief Chipeewayan Band v. R.*, 2002 CarswellNat 1210, *(sub nom.* Kingfisher v. Canada) [2003] 1 C.N.L.R. 54 (Fed. C.A.), affirmed (2003), 2003 CarswellNat 278, 2003 CarswellNat 279 (S.C.C.). When used with reference to Indian bands this phrase cannot mean that the entity owes its existence to the statute, but only that the band is regulated by the statute.

[6] *Canada (Attorney General) v. Munsee-Delaware Nation*, 2015 FC 366, 2015 CarswellNat 634 (F.C.) at para. 51 [respondents included Munsee-Delaware First Nation].

[7] *Orr v. Alook*, 2013 ABQB 86, 2013 CarswellAlta 2948, 557 A.R. 193 (Alta. Q.B.) [defendants included Peerless Trout First Nation], upheld with specific approval of these passages in *Orr v. Alook*, 2015 ABQB 101, 2015 CarswellAlta 216 (Alta. Q.B.). See also § 5:39 (para. 5.1520).

[8] *Jock, Re*, 1980 CarswellOnt 862, [1980] 2 C.N.L.R. 75 (Ont. Co. Ct.) [party was member of Iroquois of St. Regis Band].

[Section 1:24]

[1] *R. v. Big River First Nation*, 2019 SKCA 117, 2019 CarswellSask 586 (Sask. C.A.) at para. 34.

[2] *R. v. Big River First Nation*, 2019 SKCA 117, 2019 CarswellSask 586 (Sask. C.A.) at para. 33.

membership list, which it has in turn delegated to the band council.[3] A First Nation is a public body when it exercises its authority to own property—a power that is expressly recognized in relation to buildings in s. 81(1)(h) and in relation to personal property in s. 87(1) of the *Indian Act*.[4]

[Para. 1.442] "Body": The "public body" interpretation is preferred to "body politic". "Band" is defined in s. 2(1) of the *Indian Act*. To be a band, a particular group of Indians must first constitute a "body". Some courts are settling on the view that the sense in which the word "body" is used in the Indian Act is a reference to a "public body", and not on the sense "body politic". The difference is that "public body" is a more neutral term, whereas "body politic" invokes the prior political and self-governing status of the Indian Nations of Canada. The author's view has been that Parliament must have intended the word "body" to indicate organization or common cause in the affairs of government, in the same sense as in the expression "body politic".[5] However, in *obiter*, the Federal Court and Federal Court of Appeal have disagreed, finding that the word "body" should not be interpreted narrowly, and it does not require a common intention or purpose.[6] In a case in which Justice Dolores Hansen of the Federal Court was called upon to decide whether the "Bobtail Band" continued to exist after 1887, the judge made the following commentaries on the view expressed in *Native Law*:

> [328] With regard to the phrase "body of Indians", the Crown points out that this phrase was not defined in the legislation nor has it been the subject of judicial interpretation. The Crown cites Jack Woodward's text *Native Law*, looseleaf (Toronto: Thomson Carswell, 1994) at page 18 where he states that "[t]o be a band, a particular group of Indians must first constitute a 'body'," and that the use of the word body "indicates organization or common cause in the affairs of government, in the same sense as in the expression 'body politic'.
>
> . . .
>
> [434] Notably, the modern Act does not make reference to any "tribe, band, or body of Indians". Instead, the first part of the definition simply states that a "band" means a "body of Indians". Second, after noting that "body" is not defined in the legislation, Woodward relies on definitions 14, 15, 16, and 17 of "body" found in the *Oxford English Dictionary* to conclude "that the use of the word indicates organization or common cause in the affairs of government, in the same sense as in the expression "body politic"." (Woodward, *supra*, at 18, fn 67). In my view, Woodward's interpretation is

[3]Conrad J.A., in her dissenting judgment in *Horseman v. Horse Lake First Nation*, 2005 ABCA 15, 2005 CarswellAlta 31, 248 D.L.R. (4th) 505 (Alta. C.A.) (but not on this point).

[4]*R. v. Big River First Nation*, 2019 SKCA 117, 2019 CarswellSask 586 (Sask. C.A.) at para. 33.

[5]*Canadian Oxford Dictionary*, 2nd ed., *s.v.* "body", "body politic".

[6]*Montana Band v. R.*, 2006 FC 261, 2006 CarswellNat 465, [2006] 3 C.N.L.R. 70 (F.C.) at para. 440.

not helpful in the context of this case nor does it lend support to the narrow definition of "body" advanced by the Crown.[7]

Justice Hansen holds: "I interpret the *Indian Act* definition of "band" to mean an aggregate of individuals or a group regarded as a single entity who meet the "reserve interest" part of the definition or who share alike in the distribution of any annuities or interest money for which the Government is responsible including treaty annuities."[8] The Federal Court declared that the Montana Band was entitled to the benefit of Alberta Reserve #139, even though that reserve had originally been set apart for the Bobtail Band (who were a different group). The court found that the Bobtail Band "ceased to exist" before the Crown made clear its intention to set apart the same, now vacant, Reserve #139 for the Montana Band. The court said "I do not accept the Crown's argument that a band will cease to exist when there is no longer a community of Indians having a common interest or purpose"[9] saying instead: "a band will cease to exist when there are no longer any band members, that is, when there is no longer an identifiable aggregate of individuals or a group regarded as a single entity."[10] This distinction does not appear to have been essential to the court's decision, because the Bobtail Band had ceased to exist on either view of the facts.

[Para. 1.445] Three different routes to legal recognition as a band. The definition provides for three different ways by which a body of Indians becomes legally recognized as a band. A body of Indians is a band if it has reserve lands, government trust funds, or is the subject of a Cabinet declaration.

2(1) In this Act,

"band" means a body of Indians

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

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

(c) declared by the Governor in Council to be a band for the purpose of this Act.[11]

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[7] *Montana Band v. R.*, 2006 FC 261, 2006 CarswellNat 465, [2006] 3 C.N.L.R. 70 (F.C.) at paras. 328 and 434.

[8] *Montana Band v. R.*, 2006 FC 261, 2006 CarswellNat 465, [2006] 3 C.N.L.R. 70 (F.C.) at paras. 328 and 434.

[9] *Montana Band v. R.*, 2006 FC 261, 2006 CarswellNat 465, [2006] 3 C.N.L.R. 70 (F.C.) at para. 455.

[10] *Montana Band v. R.*, 2006 FC 261, 2006 CarswellNat 465, [2006] 3 C.N.L.R. 70 (F.C.) at para. 456.

[11] The *Indian Act* definition is adopted by reference in other statutes and enactments, *e.g.*, *Fisheries Act*, R.S.C. 1985, c. F-14, s. 2(1) [am. R.S.C. 1985, c. 35 (1st Supp.), ss. 1, 5]; *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 3(1) "band".

A finding that a body of Indians is a "band" under s. 2(1) is a question of fact that must be determined prior to the determination of other matters in a suit.[12]

§ 1:25 Reserve lands qualification

[Para. 1.450] Band defined by reserve holdings. The most common indicator that a body of Indians is a "band" within the meaning of the *Indian Act* is that it has a reserve. If a body of Indians has a reserve it is a "band".

[Para. 1.460] Unusual situations: amalgamated bands, reserves held by several bands. The Act is unclear as to what happens when a band with reserve lands amalgamates with another band. By virtue of s. 2(2) of the *Indian Act*, the band for which the reserve was originally set apart may continue in existence.

§ 1:26 Trust funds qualification

[Para. 1.470] Band defined by Crown trust funds. A body of Indians for whom money is held by the Crown is a "band". In 1977 the Supreme Court of Canada ruled that the Six Nations Indians are a "band" within the meaning of s. 2(1) "band" (*b*), because the federal government holds funds in trust from a pre-Confederation sale of their lands.[1] Two notable examples of bands without reserves, but which are bands by virtue of federal trust funds, are the Lubicon Lake Band of Alberta (see **BL§ 1340**) and the New Westminster Band of British Columbia (see paragraph **BL§ 720**).

§ 1:27 Proclamations

[Para. 1.480] Band defined by Cabinet declaration. The federal Cabinet may declare a body of Indians to be a "band". An example of the use of this power is the Miawpukek Band Order, which established the Miawpukek Band.[1] An order under s. 74 that the council of a band shall be chosen by elections may also serve as a declaration that the body of Indians is a band.[2]

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[12] *Leonard v. Gottfriedson* (1982), 21 B.C.L.R. 326, [1982] 1 C.N.L.R. 60 (B.C. S.C.) [defendant was a councillor of the Kamloops Indian Band].

[Section 1:26]

[1] *Isaac v. Davey* (1977), 77 D.L.R. (3d) 481, 1977 CarswellOnt 476 (S.C.C.) [appellants and respondents were members of the Six Nations Band].

[Section 1:27]

[1] Miawpukek Band Order, SOR/ 89-533, P.C. 1989-2206, 2 November 1989, C. Gaz, 1989.II.4692.

[2] *Isaac v. Davey* (1977), 77 D.L.R. (3d) 481 (S.C.C.) at 486 [appellants and respondents were members of the Six Nations Band].

[Para. 1.482] Qalipu Mi'Kmaq First Nation. The Qalipu Mi'kmaq First Nation was created by Order in Council on September 22, 2011.[3] The Order is unusual because there is a special Act of Parliament which allows the Governor in Council to amend the Order and even add or removed particular names from the band list.[4] There was a protracted process for enrolment in which an Enrolment Committee reviewed and evaluated applications for membership. The decisions of the Enrolment Committee are subject to judicial review and will be set aside if they are procedurally unfair.[5]

C. NATURE OF AN INDIAN BAND AS A LEGAL ENTITY

§ 1:28 Introduction

[Para. 1.490] Band as distinct from its membership. A band has the capacity to function and assume obligations separate and apart from its individual members. A band has the legal status to sue or be sued in its own name.[1]

[Para. 1.500] Band as a "Canadian municipality" under *Income Tax Act*. In certain circumstances, a band may be a Canadian municipality for the purposes of the *Income Tax Act*.[2] Becoming an

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[3]Qalipu Mi'kmaq First Nation Band Order, SOR/2011-180.

[4]*Qalipu Mi'kmaq First Nation Act*, S.C. 2014, c. 18.

[5]*Foster v. Canada (Attorney General)*, 2015 FC 1065, 2015 CarswellNat 4487 (F.C.) [applicant wished to be recognized member of Qalipu Mi'kmaq Band].

[Section 1:28]

[1]This sentence in Native Law was relied upon by Diner J. of the Federal Court of Canada in *Cowessess First Nation no. 73 v. Pelletier*, 2017 FC 692, 2017 CarswellNat 3401 (F.C.) at para. 27. *Clow Darling Ltd. v. Big Trout Lake Band of Indians* (1989), 1989 CarswellOnt 905, [1990] 4 C.N.L.R. 7 (Ont. Dist. Ct.) [defendant was Big Trout Lake Band of Indians]; *Horseman v. Horse Lake First Nation*, 2005 CarswellAlta 31, [2005] 1 C.N.L.R. 96, 2005 ABCA 15 (Alta. C.A.) at para. 47 [plaintiff and defendant band council were members of Horse Lake First Nation], additional reasons 2005 CarswellAlta 798, 2005 ABCA 214 (Alta. C.A.). An early version of this passage in Native Law was referred to and relied upon by Hall J. in *Mechano Construction Ltd. v. Mushuau Innu Band Council*, 2007 NLTD 123, 2007 CarswellNfld 219 (N.L. T.D.) at para. 71. This sentence was relied upon by Barrington-Foote J., in *Cowessess First Nation No. 73 v. Phillips Legal Professional Corp.*, 2018 SKQB 156, 2018 CarswellSask 266 (Sask. Q.B.) at para. 98.

[2]*Otineka Development Corp. Ltd. v. R.*, 1994 CarswellNat 891, [1994] 2 C.N.L.R. 83 (T.C.C.) [appellant numbered company was incorporated by the Pas Indian Band]. Bowman J. defined a municipality as "a community having and exercising the powers of self-government and providing the type of services customarily provided by such a body" and found that the Opaskwayak Cree Nation (formerly the Pas Indian Band), through its chief and council, both in the powers that it exercises under the authority of the *Indian Act* and the services that it provides to its members, is a municipality for the purposes of the *Income Tax Act*. The Opaskwayak Cree Nation has passed by-laws for most of the purposes contemplated by ss. 81 and 85.1 of the *Indian Act*, provides services to the band members in a large number of areas and has a complex and sophisticated structure relating to its governance. In addition, in 1976, the Governor in Council declared, pursuant to s. 83(1) of the *Indian Act*, as it then read, that the Band had reached an advanced state of development.

incorporated local government is not synonymous with becoming a Canadian municipality.[3]

[Para. 1.510] No general rule to define the status of all bands. An Indian band is a body of persons with "unique corporate status".[4] Beyond that, there is no suitable positive definition of a band found in law that applies to all bands. Following is a comparison between bands and some other legal entities.

§ 1:29 Not a "person"

[Para. 1.520] Band not a "natural person" at law. An Indian band is not a "person" capable of having custody of a child.[1] Similarly, the Manitoba County Court has ruled that an Indian band is not a "natural person" and, accordingly, cannot be a postal employee or a postmaster.[2] However, an Indian band may be a "person" for the purposes of particu-

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[3]In *Tawich Development Corp. v. Quebec (Deputy Minister of Revenue)*, [2000] 3 C.N.L.R. 383, 2000 CarswellQue 764 (Que. C.A.) [shares of appellant corporation held by Wemindji Band], leave to appeal allowed 2001 CarswellQue 733, 2001 CarswellQue 734 (S.C.C.) the Court found that while the *Cree-Naskapi (of Quebec) Act*, S.C. 1984, c. 18, established the Wemindji Band as an incorporated local government, the Band did not become a Canadian municipality under the Act.

[4]*Joe v. Findlay*, 1981 CarswellBC 35, [1981] 3 C.N.L.R. 58 (B.C. C.A.) [appellant was member of Squamish Indian Band].

[Section 1:29]

[1]*C., Re* (1982), 1982 CarswellBC 279, [1983] 3 C.N.L.R. 58 (B.C. Prov. Ct.) [mother applying for custody belonged to the Montana Indian Band of Alberta]. Similarly, a band is not a "person" capable of acquiring standing in a child apprehension matter pursuant to s. 12(2)(*d*) of the *Family and Child Service Act*, R.S.B.C. 1980, c. 11, even if the band is viewed by the court as an "appropriate" party: *T. (C.), Re* (1993), 1993 CarswellBC 1292, (*sub nom.* Family & Child Service Act, Re) [1994] 1 C.N.L.R. 89 (B.C. Prov. Ct.) [grandmother, who sought standing, was member of Ahousaht Band; the Ehattesaht band also sought standing]. See also *Ochapowace First Nation v. Araya*, [1995] 1 C.N.L.R. 75, [1995] 3 W.W.R. 32 (Sask. C.A.) [appellants were Ochapowace First Nation, known as Ochapowace Indian Band No. 71], leave to appeal refused (1995), 12 R.F.L. (4th) 169, [1995] 5 W.W.R. lxiii (S.C.C.). There a band applied for custody of two children but was held to have no status under the *Children's Law Act* of the Province. The Court refrained from ruling on whether or not the Band could be a person, but said it would be difficult to find a statutory intention to include such an entity in the definition of "person" under the Act. It also was unclear whether the Band as a statutory body, or the community of approximately 1,000 persons, was making the application, but neither were capable of performing as a custodial parent, and if the Band were successful, it would be *de facto* a grant of custody to the mother in the face of an existing grant of custody to the father. The Court characterized the application as an attempt to ask the Court to delegate to the Band the Court's authority over custody. The Court did, however, say that, although the Band did not have a sufficient interest under the statute, it could apply as a supporting intervener in future cases. In my view, a difficulty with this decision is that the relationship between an aboriginal community and its members as a matter of federal common law is not taken into account. It could be argued that this relationship cannot be disturbed by provincial statute, and indeed is paramount to provincial statute, so a band should not need standing under a provincial statute.

[2]*R. v. Cochrane*, [1977] 3 W.W.R. 660, 1977 CarswellMan 43 (Man. Co. Ct.) [accused was employed to run post office of Fisher River Band].

lar statutes, where interpretation of the relevant statutory provisions so indicates.[3]

[Para. 1.525] Whether a band has anti-discrimination rights under s. 15(1) of the Charter. In 2009 the Samson and Ermineskin bands challenged the constitutional validity of ss. 61 to 68 of the *Indian Act* ("Indian moneys") as being contrary to s. 15(1) of the *Charter*. The Supreme Court of Canada found that the provisions of the *Indian Act* that prohibit investment of the royalties by the Crown do not draw a distinction that perpetuates disadvantage through prejudice or stereotyping, and there is no violation of s. 15(1) of the *Charter*.[4] In so deciding, the Supreme Court did not address the question of whether a band is an entity which can seek the benefit of s. 15(1) in the first place. (See also § 2:33 and 6:12 (paras. 2.995 and 6.530).) Previous case law, including the lower court decisions in *Ermineskin*, held that a band is not an "individual" for the purposes of s. 15 of *the Canadian Charter of Rights and Freedoms* and cannot assert *Charter* rights.[5]

§ 1:30 Not a corporation

[Para. 1.530] A band not a corporation. A band does not have corporate status.[1] Because of this it has been held that a band cannot own real estate under a provincial land title system.[2]

[Para. 1.540] A corporation is not a band. A corporation cannot be considered to be a band.[3] Even if a corporation has its registered office on an Indian reserve and is owned by shareholders, all of whom are

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[3]*Cowessess First Nation No. 73 v. Phillips Legal Professional Corp.*, 2018 SKQB 156, 2018 CarswellSask 265 (Sask. Q.B.). Applying the modern approach to statutory interpretation, Barrington-Foote J. concluded (at para. 104) that an Indian band has the necessary status to be a "person charged with the bill" within the meaning of certain provisions of the *Legal Profession Act, 1990*, S.S. 1990-91, L.10.1.

[4]*Ermineskin Indian Band & Nation v. Canada*, 2009 SCC 9, 2009 CarswellNat 203, [2009] 2 C.N.L.R. 102 (S.C.C.) at para. 202.

[5]*Nechako Lakes School District No. 91 v. Lake Babine Indian Band* (2002), 97 B.C.L.R. (3d) 364, [2002] 3 C.N.L.R. 116 (B.C. S.C.) [parties included members of Lake Babine Band, Broman Lake Band, and Wet'suwet'en First Nation], additional reasons 2002 CarswellBC 733, 2002 BCSC 330 (B.C. S.C.). The s. 15(1) aspect of the *Nechako Lakes* decision was followed in *Ermineskin Indian Band & Nation v. Canada*, 2005 FC 1622, 2006 CarswellNat 3959, [2006] 1 C.N.L.R. 100 (F.C.) at para. 780; *Ermineskin Indian Band & Nation v. Canada*, 2006 FCA 415, 2006 CarswellNat 4511, [2007] 2 C.N.L.R. 51 (F.C.A.) at paras. 130-133; *Ermineskin Indian Band & Nation v. Canada*, 2005 FC 1623, 2005 CarswellNat 3953 (F.C.) at para. 320.

[Section 1:30]

[1]*Afton Band of Indians v. Nova Scotia (Attorney General)* (1978), 1978 CarswellNS 83, 9 C.N.L.C. 8 (N.S. T.D.) [applicant was the Afton Band of Indians]; *Family & Child Service Act, Re* [1994] 1 C.N.L.R. 89 (B.C. Prov. Ct.). Quoted by Mr. Justice Muldoon in *Kostyshyn (Johnson) v. West Region Tribal Council Inc.*, 1992 CarswellNat 672, [1994] 1 C.N.L.R. 94 (Fed. T.D.) at para. 15 and accepted by the court as an "authoritative statement of the law" in para. 16.

[2]*Afton Band of Indians v. Nova Scotia (Attorney General)* (1978), 1978 CarswellNS 83, 9 C.N.L.C. 8 (N.S. T.D.) [applicant was the Afton Band of Indians].

[3]*Kinookimaw Beach Assn. v. Saskatchewan*, 1979 CarswellSask 117, [1979] 4

registered Indians and band members residing on an Indian reserve, the corporation is not a band.[4]

[Para. 1.550] Statutory recognition of aboriginal groups other than bands. There may, however, be statutory recognition of aboriginal associations. For example, for the purposes of access to information, para. 8(2)(k) of the federal *Privacy Act* allows the disclosure of personal information to an association of aboriginal people or a band for the purpose of validating the claims, disputes or grievances of the aboriginal peoples of Canada.[5]

§ 1:31 Not an unincorporated association

[Para. 1.560] No personal liability of individual members. A band is not governed by the body of law that applies to unincorporated associations or clubs.[1] There is no doubt that a band has a separate legal existence from its members and that the obligations of the band do not

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C.N.L.R. 101 (Sask. C.A.), leave to appeal refused (1979), 30 N.R. 267n (S.C.C.).

[4]*Stony Plain Indian Reserve No. 135, Re* (1981), 1981 CarswellAlta 298, [1982] 1 C.N.L.R. 133 (Alta. C.A.) [parties included Louis Bull Band of Indians, Samson Band of Indians, Sarcee Indian Band, Enoch Band of Indians, Peigan Band of Indians, Stony Band of Indians, and Blood Band of Indians]. This section of text was accepted as authoritative in *Kostyshyn (Johnson) v. West Region Tribal Council Inc.* (1992), 1992 CarswellNat 672, [1994] 1 C.N.L.R. 94 (Fed. T.D.) [defendant tribal council represented the following First Nations: Crane River, Ebb and Flow, Gamblers, Pine Creek, Rolling River, Valley River, Waterhen, Waywayseecappo and Keeseekoowenin Nations]. Further, there is no traditional right to incorporate. In *Wasauksing First Nation v. Wasauksink Lands Inc.*, 2002 CarswellOnt 107, [2002] 3 C.N.L.R. 287 (Ont. S.C.J.) [applicants/plaintiffs were members of the Wasauksing First Nation, a.k.a. Ojibways of Parry Island Band], affirmed 2004 CarswellOnt 936, [2004] 2 C.N.L.R. 355 (Ont. C.A.), leave to appeal refused (2004), 2004 CarswellOnt 4834, 2004 CarswellOnt 4835 (S.C.C.) the Court held that the purpose of s. 35(1) of the *Constitution Act, 1982* was to protect aboriginal rights. It did not enable aboriginal peoples to avoid the regulatory regimes and laws of general application that govern modern activities that aboriginals wish to, and do, adopt.

[5]*Sutherland v. Canada*, 1994 CarswellNat 287, [1995] 1 C.N.L.R. 195 (Fed. T.D.) [applicant was member of Peguis Indian Band; Peguis Indian Band was also an intervenor] However, when a member of a band sought to obtain access to information with respect to the financial dealings of his band, his actions as individual were not contemplated by that paragraph. Furthermore, the disclosure of personal information contemplated in the paragraph had to be for the purposes of a claim against Canada, not in relation to disputes internal to the band. Decisions such as this may have ramifications in respect of the application of the *Charter* to self-governing aboriginal communities. Such cases also fail to distinguish between the traditional authority inherent in aboriginal communities and the authority of band councils under the *Indian Act;* and do not satisfactorily address the nature and scope of the fiduciary relationship of the Crown to aboriginal peoples which pre-exists and shapes the meaning of statutory expressions such as are found in the *Privacy Act*, para. 8(2)(k).

[Section 1:31]

[1]Adopted and relied upon by Reed, J., of the Federal Court Trial Division in *Montana Band v. R.*, 1997 CarswellNat 2759, [1998] 2 F.C. 3 (Fed. T.D.) at footnote 10. An early version of this passage in Native Law was referred to and relied upon by Hall J. in *Mechano Construction Ltd. v. Mushuau Innu Band Council*, 2007 NLTD 123, 2007 CarswellNfld 219 (N.L. T.D.) at para. 71.

fall on the shoulders of the band membership, as can happen in unincorporated associations.

§ 1:32 Not a group of tenants in common

[Para. 1.570] Band members are not tenants in common of reserves. Bands collectively hold reserve land, but not as tenants in common.[1] Mere membership confers no present right of possession of band property. Rather, a political act of the band council is required to allocate possession of the land to a member of the band for that member to avoid trespassing on reserve lands.[2]

§ 1:33 Distinguishable from "band community" as used in the Yukon Territory *Liquor Act*

[Para. 1.580] Yukon "band community" distinguished. An Indian band is not synonymous with the term "band community" as used in the Yukon Territory *Liquor Act*[1] and regulations. This is so despite the fact that the *Indian Act* definition of "Indian band" is incorporated into the definition of "band comm- unity". "Band community" is defined in s. 113(11) of the legislation as follows:

> 113(11) In this section
> "band community" means an area prescribed by the Commissioner in Executive Council and occupied primarily by members of an Indian Band;
>
> . . .
>
> "Indian band" has the same meaning as in the Indian Act (Canada). . .

[Para. 1.590] Yukon "band community" legislation does not offend s. 91(24). The Yukon Territory Supreme Court has found that "band community" is a descriptive term defining a geographical area that includes a population of persons who are members of an Indian band, but is not restricted to Indians.[2] Accordingly, the definition of "band community" does not reveal an intention to legislate with regard to "Indians" in the constitutional sense.

§ 1:34 Problems from unclear legal status of bands

[Para. 1.600] Whether a band can be a shareholder. A band wish-

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[Section 1:32]

[1]Adopted and relied upon by Master in Chambers W.S. Schlosser in *Orr v. Alook*, 2013 ABQB 86, 2013 CarswellAlta 2948 (Alta. Q.B.) at para. 31, in which the Master in Chambers was also referring generally to § 1:28 through 1:32 (paras. 1.490 through 1.570). An early version of this passage in Native Law was referred to and relied upon by Hall J. in *Mechano Construction Ltd. v. Mushuau Innu Band Council*, 2007 NLTD 123, 2007 CarswellNfld 219 (N.L. T.D.) at para. 71.

[2]*Joe v. Findlay*, 1981 CarswellBC 35, [1981] 3 C.N.L.R. 58 (B.C. C.A.) [appellant was member of Squamish Indian Band].

[Section 1:33]

[1]*Liquor Act*, R.S.Y. 2002, c. 140.

[2]*Bruce v. Yukon Territory (Commissioner)*, 1993 CarswellYukon 9, [1994] 3 C.N.L.R. 25 (Y.T. S.C.) at para. 27 [defendants were members of Band Community of Old Crow].

ing to hold shares in a company may encounter problems. Under the British Columbia *Business Corporations Act*, for example, a band may not be eligible to be a shareholder.[1] The usual solution to this problem is for trustees to hold shares on behalf of the band.

[Para. 1.610] Tension between individual rights and collective rights within a band. One court has determined that an elected band council has the authority to suspend the collective treaty rights of its members to harvest shellfish by signing a fisheries agreement with the federal government.[2] In the author's opinion, this judgment is fundamentally flawed, and this may be due in part to the unclear legal status of bands. While on the one hand, an elected band council makes decisions on behalf of bands, it does not have the capacity to limit or suspend the constitutional rights held by the collective of the band. A collective right is a right that an individual enjoys by virtue of their membership in a collective. However, it is actually the individuals who enjoy and exercise the rights, not the collective. As such, a band council has no authority to suspend the treaty rights of its members without the consent of its members.[3]

D. RECOGNITION, AMALGAMATION AND DIVISION

§ 1:35 The Governor in Council may recognize new bands

[Para. 1.620] Band created by federal cabinet order—Conne River example. In 1982 a body of Micmac Indians established at Conne River, Newfoundland & Labrador sued the federal Crown for a declaration of their status as Indians.[1] The case was never heard on this point because the Governor in Council issued an Order-in-Council pursuant to s. 2(1) "band" (*c*) of the *Indian Act* declaring the body of Indians to be a band.[2] By virtue of the provisions of the *Indian Act* of the time, as a result of their band membership, the individual members thus were entitled to registration as Indians.

[Section 1:34]

[1]*Business Corporations Act*, S.B.C. 2002, c. 57, s. 1(1), definition of "shareholder". Only a "person" may be a shareholder.

[2]*R. v. Seward*, [2001] 4 C.N.L.R. 274 (B.C. Prov. Ct.) [defendants were members of the Nanaimo First Nations Band].

[3]*See Lac La Ronge Indian Band v. Canada* (1999), [2000] 1 C.N.L.R. 245 (Sask. Q.B.) [plaintiffs included the Lac La Ronge Indian Band], varied, but not on this point [2001] 4 C.N.L.R. 120 (Sask. C.A.), where the trial judge held that a band council did not have the authority to settle or compromise any treaty land entitlement under Treaty 6.

[Section 1:35]

[1]*Joe v. Canada*, [1986] 2 S.C.R. 145 [appellants were members of the Conne River Band], affirming [1984] 1 C.N.L.R. 96 (Fed. C.A.). Reasons of the Supreme Court of Canada and the Federal Court of Appeal cited are on preliminary orders that Newfoundland should be a party, and that the Federal Court does not have jurisdiction.

[2]Miawpukek Band Order, SOR/ 89-533, P.C. 1989-2206, 2 November 1989, C. Gaz, 1989.II.4692.

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

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

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

Clerk's Stamp

APPLICANTS	**ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWIN AND DAVID MAJESKI, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST**
RESPONDENTS	**THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE and CATHERINE TWINN**
DOCUMENT	**AFFIDAVIT OF ISAAC TWINN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**McLennan Ross LLP** **Suite 600** **McLennan Ross Building** **12220 Stony Plain Road** **Edmonton, AB T5N 3Y4**	Lawyers: Telephone: Facsimile. E-mail File No.	D Rising and C. Osualdini (780) 482-9200 (780) 482-9100 cosualdini@mross com 000333

I Isaac Twinn, of the Sawridge Indian Reserve 150 G, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the Chief of the Sawridge First Nation and the son of former Chief Walter Patrick Twinn I am a member of the Sawridge First Nation ("**Sawridge**") and have been so since I was a young child As such, I have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.

2. I am a trained lawyer and hold a Masters Degree in Law from Columbia University.

3. I have been following the decisions and positions taken by the parties in the within proceedings and have a general familiarity with this litigation's history.

4. I was elected Chief of Sawridge in 2023 in an election between myself and the incumbent Roland Twinn. Roland Twinn was the Chief of Sawridge for a number of years and is one of the trustees of the 1985 Sawridge Trust.

5. The Sawridge First Nation presently has 61 members. I am highly concerned that a significant proportion of Sawridge's current members, **upwards of 75% of the membership**, would not qualify as beneficiaries of the 1985 Sawridge Trust. The discrimination contained in the beneficiary definition found in the 1985 Sawridge Trust is likely far more extensive than what has been represented to the Court, to date, in these proceedings. This concern stems from the recent positions taken by the 1985 Sawridge Trustees which will be outlined in this affidavit.

6. There are currently three members of Sawridge First Nation Chief and Council: myself, who is Chief, Councilor Sam Twinn and Councilor Jeanine Potskin. As duly elected Chief and Council, we represent the members of Sawridge.

7. Councilor Sam Twinn and I are brothers and share the same parents, namely former Chief (Senator) Walter Patrick Twinn and Catherine Twinn. We have another brother, Patrick Twinn, with whom we also share the same parents.

8. I am aware that the assets contained in the 1985 Sawridge Trust find their origin in the wealth of Sawridge.

Beneficiaries of the 1985 Sawridge Trust

9. It is my understanding that, to date, the 1985 Sawridge Trustees have not fulsomely identified the beneficiaries of the 1985 Sawridge Trust, nor have they clearly identified the criteria or application of legal principles they will use to apply the definition of "beneficiary" found in the 1985 Sawridge Trust deed. Given the legislative nature of the definition and the changes since 1985 to the manner in which Indian status is determined, it is my concern that the manner in which the definition could be applied to a specific set of lineage facts could vary, be subject to legal debate or be impossible.

10. I am aware that in these proceedings my brother, Patrick Twinn, filed an application seeking party status. In opposition to that application, the 1985 Sawridge Trustees argued that Patrick was a beneficiary of the 1985 Sawridge Trust and thus his interests were already represented by the 1985 Sawridge Trustees. In the determination of that application, Justice Thomas issued a written decision (*1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377) which stated:

> *[31] The Trustees take the position that the interests of Patrick and Shelby Twinn are already represented in the Advice and Direction Application and that their addition would be redundant.*
> *[32] In respect to Patrick Twinn, I agree that it is unnecessary to add him as a party. Patrick Twinn takes the position that he is currently, and will remain a Beneficiary of the 1985 Sawridge Trust. The Trustees confirm this and I accept that is correct and declare him to be a current Beneficiary of the Trust.*

(emphasis mine)

11. The decision of Justice Thomas, in this regard, was affirmed by the Alberta Court of Appeal in *Twinn v Twinn*, 2017 ABCA 419.

> *[18] In this case, it is unclear what interest the individual appellants have that is not represented by the parties already before the court, or what position they would bring to the litigation, necessary to permit the issues to be completely and effectually resolved, that will not be presented by those existing parties. As a matter of law, the Trustees represent the interests of the Beneficiaries, who include Patrick and Shelby Twinn. Catherine Twinn, as dissenting trustee, is separately represented, has taken an opposing view as to the need for amendment of the Trust, and will place that position before the court. The Public Trustee is tasked with representing the interests of all Beneficiaries who were minors when the litigation began, although it is acknowledged that the Public Trustee does not represent the interests of Patrick and Shelby Twinn (notwithstanding a comment made by the case management judge to the contrary).*
>
> (emphasis mine)

12. My lineage facts are identical to those of my brother, Patrick. As such, and from my perspective, the ruling of Justice Thomas would inferentially mean that I am also a beneficiary of the 1985 Sawridge Trust.

Trustee Replacement Process

13. I am aware that the 1985 Sawridge Trust has a succession policy that provides for a maximum of two consecutive three year terms for a trustee. Trustee, Justin Everett Twin, was subject to replacement by spring of 2024 in accordance with the policy.

14 Attached as **Exhibit "A"** is a copy of the current trustee succession policy, as has been made aware to me.

15. In anticipation of Justin Everett Twin's retirement, I engaged in correspondence with the 1985 Sawridge Trustees regarding my interest in being appointed as his successor. Since the inception of the 1985 Sawridge Trust (and save for since my election as Chief), there has never been a time (to my knowledge) when the Chief was not a trustee. I understand this to be a well known historical practice that the trustees have acknowledged and acted upon. Attached as **Exhibit "B"** are copies of correspondence from my office to the 1985 Sawridge Trustees in this regard.

16. In response to my letters, I received a letter dated February 9, 2024 from Tracey Scarlett on behalf of the 1985 Sawridge Trustees which provided information regarding the Trustees' positions on trustee succession. Notably, the letter advised:

(a) "...the Trustees Application before the court for advice and direction regarding the identification of the beneficiaries of the 1985 Trust is currently and involuntarily on hold..."

(b) "...the Trustees have had to find alternate approach to determine who would be eligible to serve as a beneficiary-trustee of the Sawridge Trusts. That determination is currently in process."

Attached as **Exhibit "C"** to my affidavit is a copy of the February 9, 2024 letter.

17. In or around February 28, 2024, I received correspondence from the administrator of the Sawridge Trusts that the 1985 Sawridge Trustees were seeking candidates to fill trustee positions. The notice enclosed an application form. Attached as **Exhibit "D"** to my Affidavit is a copy of the February 28, 2024 email with attachments

18. In response to the application for trusteeship and the February 9th letter from Ms. Scarlett, I wrote again to the trustees seeking information about the trustee replacement process. Attached as **Exhibit "E"** to my Affidavit is my March 5, 2024 letter in this regard.

19. By March 20, 2024 I still had not received a response to my March 5, 2024 letter, despite the 1985 Sawridge Trustees imposed deadline for applications of March 29 2024. Attached as **Exhibit "F"** to my Affidavit is my March 20, 2024 follow up letter to the trustees in this regard.

20. Later in the day on March 20, 2024 I received a reply from the Sawridge Trustees. In their written reply, the 1985 Sawridge Trustees refused to answer my pointed questions regarding the trustee selection process and acknowledged that they would not be identifying the beneficiaries of the 1985 Sawridge Trust in accordance with the terms of the deed until after the subject proceedings are concluded. Attached as **Exhibit "G"** to my Affidavit is the March 20, 2024 letter from the 1985 Sawridge Trustees.

21. Despite having serious concerns regarding the legitimacy of the selection process, I submitted my application for trusteeship by the imposed March 29th deadline.

22. In response to my application, I received a request from the 1985 Sawridge Trustees for further information regarding my lineage, more specifically they were seeking information regarding my mother's, maternal grandmother's and paternal grandmother's:

    (a) Status at birth

    (b) Band Number; and

    (c) First Nation at birth

    Attached as **Exhibit "H"** to my Affidavit is the April 5, 2024 letter from the trustees' administrator in this regard.

23. By way of letter dated April 10, 2024, I wrote to the Sawridge Trustees and stated my objection to the information they were seeking in regards to my application to sit as a trustee. It was not apparent to me how the requested information was relevant to my application for trusteeship or required in order to assess my status as a beneficiary of the 1985 Sawridge Trust as the Court of Queen's Bench had already confirmed my brother Patrick's status as a beneficiary and our lineage is identical Attached as **Exhibit "I"** to my Affidavit is my April 10, 2024 letter in this regard.

24 In response to my objection, I received a letter from Tracey Scarlett dated April 11, 2024, which reiterated that this information was required and was being requested of all applicants, but failed to address why this information was needed in order to assess beneficiary status Attached as **Exhibit "J"** to my Affidavit is the April 11, 2024 letter from Ms. Scarlett in this regard.

25. I immediately sent a response letter to Ms. Scarlett (dated April 12, 2024) that set out in clear terms my concerns with the information being sought by the Sawridge Trustees. Excerpting from my letter:

> It concerns me that the Trustees are reaping sensitive information from the members of the Sawridge First Nation without any regard to the necessity or the propriety of such requests and without providing full disclosure as to how the Trustees intend to utilize and safeguard this sensitive personal information. I am becoming quite concerned that the Trustee selection process that has been employed is arbitrary, abusive, and inconsistent with the Trustees' fiduciary duty to their beneficiaries.

I reiterated to Ms. Scarlett that I required full disclosure as to the purpose for which this personal information had been requested from me and how it related to the trustee selection process

Attached as **Exhibit "K"** to my Affidavit is my April 12, 2024 letter in this regard.

26. By way of letter dated April 18, 2024 I received a response from Ms. Scarlett to my request for disclosure as to how the requested information would be applied. Ms. Scarlett wholly failed to address how this information specifically related to an application of the beneficiary definition in the 1985 Sawridge Trust deed. More alarmingly, Ms. Scarlett advised that despite the existence of Court of Appeal authority confirming my brother Patrick's status as a beneficiary of the 1985 Trust, such authority did **NOT** necessarily mean that all others with identical fact patterns would also be considered beneficiaries by the Sawridge Trustees. My perception formed from this correspondence is the 1985 Sawridge Trustees may have changed their views on what fact patterns qualify an individual as a beneficiary since the time they made representations to the Court of Queen's Bench (as it then was) and the Court of Appeal of this province that my brother, Patrick, qualified as a beneficiary of the 1985 Sawridge Trust.

Attached as **Exhibit "L"** to my Affidavit is the April 18, 2024 letter from Ms. Scarlett in this regard.

27. The day after Ms. Scarlett's letter, an email was sent to me by the administrator of the Sawridge Trusts that the trustee selection process had been suspended due to beneficiary identification issues. Attached as **Exhibit "M"** to my Affidavit is the April 19, 2024 email from Mr. Bujold in this regard.

28. By way of email dated May 22, 2024, I received further information from the administrator of the 1985 Sawridge Trust regarding the trustee selection process. Amongst other matters, the communication confirmed that the trustee selection process was adjourned indefinitely and that:

"The Court has also determined that the 1985 Trust is a "discriminatory trust" in that it discriminates primarily against women who married out or will marry out in the future and discriminates against illegitimate children, **among other discriminatory elements**."

("**emphasis mine**")

Attached as **Exhibit "N"** to my Affidavit is the May 22, 2024 email from Mr. Bujold in this regard.

29. Prior to filing this application for intervenor status, I wrote to the 1985 Sawridge Trustees seeking a list of currently identified beneficiaries. Attached as **Exhibit "O"** to my Affidavit is my July 18, 2024 letter in this regard.

30. By way of letter dated July 24, 2024, I received a response from the 1985 Sawridge Trustees (through counsel) which confirmed that a fulsome list of identified beneficiaries did not exist and no lists, fulsome or not, were provided to me. In addition, I was advised that the 1985 Sawridge Trustees did not see the application of the beneficiary definition as relevant to the application for which intervenor status is sought in relation to. Attached as **Exhibit "P"** to my Affidavit is the July 24, 2024 letter in this regard.

31. I swear this Affidavit in support of an application for an Order granting Sawridge status to intervene in the application filed by the Sawridge Trustees on June 28, 2024.

SWORN BEFORE ME at the)
Town ~~City~~ of Slave Lake)
in the Province of Alberta)
the 14 day of August, 2024)
)
#20367)
A Commissioner for Oaths in and)
for the Province of Alberta)

Derek R. Renzini
Barrister & Solicitor

CHIEF ISAAC TWINN

This is **Exhibit "A"** referred to in the Affidavit of **Isaac Twinn** sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta
Derek R. Renzini
Barrister & Solicitor

C-06 REPLACEMENT OF TRUSTEES POLICY

PROPOSED
2018-03-16

ADOPTED
2018-03-16

REVISED
2024-02-20

Introduction

The Trustees of the Sawridge Band Intervivos Settlement (the "**1985 Trust**") and of the Sawridge Trust (the "**1986 Trust**") (collectively known as the "**Sawridge Trusts**"), desire that each Trust maintains the Trusts knowledge, history, experience, continuity, consistency and wisdom of any Trustees whose Term of appointment expires ("**Trusts' Memory**"), such that it is necessary to stagger the replacement of the Trustees to ensure that the Sawridge Trusts maintain such Trusts' Memory in a realistic and logical fashion and in the best interests of the beneficiaries of the Sawridge Trusts (the "**Beneficiaries**").

Number of Trustees

The 1985 Trust requires a minimum of five (5) Trustees, with no set maximum number of Trustees; three of whom, at any one time, must be beneficiaries of the 1985 Trust. The 1986 Trust requires that there be a minimum of three (3) Trustees, and up to a maximum of seven (7) Trustees; at least two of whom, at any one time, must be beneficiaries of the 1986 Trust.

It is in the best interests of the Trusts and of the Beneficiaries that each Trust have up to seven (7) Trustees, and that there will be only one set of Trustees appointed for both the 1985 Trust and the 1986 Trust. At the time of latest revision of this Policy, there are currently five (5) Trustees. The addition of the two (2) new Trustee positions will allow for the appointment of beneficiaries of the 1986 Trust without requiring those individuals to also be beneficiaries of the 1985 Trust. Increasing the number of Trustees allows the Trustee to fulfill the skills matrix for the Trusts by allowing for the appointment of Trustees who may or may not be Beneficiaries.

The Trustees shall be permitted to consider the staggering of the two (2) new Trustee positions such that the terms reflect the Trustees desire to maintain the Trusts' Memory. Subject to the desire to maintain Trusts' Memory, the term of any Trustee shall be for three (3) years with the possibility of reappointment for a further three (3) year term. The Trustee must agree to such appointment and must agree to sign the contract proposed by the Trustees in respect of the term of appointment and in respect of other duties and responsibilities.

Eligibility Criteria for Board of Trustees

The Trustees will consist of:

a. Three (3) Trustees who must qualify as beneficiaries of the 1985 Trust, whether or not they also qualify as beneficiaries of the 1986 Trust (ie: no requirement to qualify as beneficiaries of the 1986 Trust); and

b. Two (2) Trustees who must qualify as beneficiaries of the 1986 Trust, whether or not they also qualify as beneficiaries of the 1985 Trust (ie: no requirement to qualify as beneficiaries of the 1985 Trust);

c. The remaining Trustee positions may be filled by non-beneficiaries or may be beneficiaries of either or both of the Trusts to bring the total number of Trustees selected to seven (7) provided that at any one time there cannot be any more that two (2) who are not Beneficiaries of the 1986 Trust.

At all times this policy and any amendment to this policy must comply with the restrictions of the Trust Deed.

The Trustees recognize that diversity of age, gender, qualifications, interests, experience, business acumen, trust knowledge, Indigenous knowledge and knowledge of Sawridge First Nation and other characteristics are important qualities and such qualities and other qualities identified by the Trustees as beneficial to the Trusts or which provide value to the Trusts, may best be found in Beneficiaries and non-beneficiaries

In addition to the composition noted above, in order to be eligible for consideration as a Trustee, candidates must meet the following:

a. Be qualified in accordance with some aspects of the Trustee Desired Capacities Matrix which is adopted and approved by the Trustees from time to time, to reflect the comprehensive complement of skills required for effective governance of the Trusts. When selecting new candidates, the Trustees will ensure that the successful candidates match the skills identified as being necessary, important and relevant from the Trustee Desired Capacities Matrix for the replacement of Trustees. In addition, the Trustees will consider the current Strategic Plan and ensure that skills necessary to achieve the strategic objectives are accounted for in the roster of Trustee candidates.

b. Be prepared to sign the contract for Trustees including agreement to the Trustee Code of Conduct in place at such time, and abide by all policies in place applicable to Trustees, as such Code of Conduct and/or policies may be amended from time to time.

c. Where a Trustee has requested to be removed from the office of trustee or been removed on account of violations of the Code of Conduct or any other reason, such individual shall not be eligible for consideration as a Trustee unless and until a time period equal to the remainder of that former Trustee's term expired, plus the Gap Term (defined below). For example, if a Trustee was appointed for a three-year term on January 1, 2020, and was removed from the office of Trustee after 6 months (June 30, 2020), that individual would be ineligible to apply to be a Trustee until after the end of the appointed term (December 31, 2023) plus the 3 year Gap Term, so December 31, 2026. This ineligibility will not apply where a former Trustee was removed for any reason other than violations of the Code of Conduct, such as medical reasons etc. If the Trustee reapplies for appointment, the reasons for their removal shall be taken into account in considering their reappointment.

The Trustees shall consider the replacement of Trustees systematically and methodically, to ensure that there are no gaps within the skillsets of the composition of the Trustees, and no vulnerabilities to the group as a whole as a result of the complete turnover of all or a majority of Trustees at one time. The staggering of term limits and appointments will be carefully considered to ensure appropriate retention of Trusts' Memory and of historical and institutional knowledge and continuity within the group.

Term of Appointment

The terms of the Trustees shall be structured to allow for the orderly appointment and removal of Trustees, taking into consideration the preservation of the Trusts' Memory and also taking into consideration any other issues that would warrant a change in the set terms set out below (**"Term Limit Considerations"**)

Subject to the Term Limit Considerations, each Trustee shall have a three-year term with the possibility of a renewal of appointment for a second consecutive Three (3) year term. The first term is renewable at the option of and upon the agreement of the remaining Trustees. Once a Trustee has served two consecutive three-year terms or has been removed, that Trustee will be only be eligible for reappointment

after a gap of at least one three-year term (the "Gap Term"). Following the Gap Term, a person is eligible to be appointed as a Trustee for a further three-year term with the possibility of renewal of appointment for a second term. The number of terms of office for a Trustee is unlimited, provided they are appointed for only two consecutive terms followed by a Gap Term. A Trustee shall only be permitted to serve as a Trustee after being appointed by the then-currently appointed Trustees and upon signing a contract detailing the term and conditions of such appointment. Such contract is attached hereto as Schedule "A".

This policy shall apply to all Trustees. The Trustees shall ensure that the terms of the Trustees are structured so that at any one time there is replacement of Trustees such that the Trusts' Memory will be preserved. The Trustees shall have the authority to extend the term of any Trustee but only to the extent necessary to allow for the proper transition of Trustees.

In no event shall a Trustee resign from office. In the event that the Trustee believes they are unable or unwilling to carry out their duties or unable to cooperate or communicate with the other Trustees, then in that event the Trustee shall advise the remaining Trustees, who shall remove the Trustee who is unable or unwilling to act as a Trustee, and appoint a replacement Trustee in accordance with this policy.

Selection Process

The current Trustees shall select new or replacement Trustees as soon as possible when a Trustee position becomes vacant or when notice of a vacancy is received and shall undertake a process which is best suited to secure the best qualified Trustees. The Trustees shall consider the replacement of Trustees systematically and methodically, to ensure that there are no gaps within the skillsets of the composition of the Trustees, and no vulnerabilities to the group as a whole as a result of the complete turnover of all or a majority of Trustees at one time. The staggering of term limits and appointments will be carefully considered to ensure appropriate retention of the Trusts' Memory and the historical and institutional knowledge and continuity within the group.

Such a process may include advertising for suitable Trustee candidates, mail-outs to Beneficiaries requesting their assistance or asking them to apply as candidates, or the use of search networks or professionals, and the creation of an application form for potential Trustees to complete. The advertising process utilized for Trustees should be such that it could be reasonably expected to bring the application process to the attention of the Beneficiaries

All Trustees must comply with all provincial laws, including those in the Trustee Act, as they pertain to requisite qualifications to hold the office of trustee.

All potential candidate's connection to First Nations and the extent of their willingness to understand the community, history and needs of First Nations individuals and communities and the history and customs of First Nations, especially of the Sawridge First Nation, should be considered. All Trustees should have an understanding, empathy and compassion for Indigenous people and have an understanding, or a willingness to learn, the history of colonialism and racism for Indigenous peoples and the challenges that are unique to Indigenous communities.

The Trustees shall utilize a formal screening process to ensure that any potential Trustees meet all legal requirements for acting as a Trustee, including satisfying their status as a Beneficiary of the 1985 Trust or 1986 Trust, as the case may be, meet the desired skill matrix established by the Trustees at any given time and whether the circumstances of the proposed Trustee may result in an actual conflict of interest or the perception of a conflict of interest.

Ongoing Responsibilities

Trustees shall complete the National Aboriginal Trust Officers Trustee Basic Training Program, or a similar equivalent, within one year of their appointment.

Chair

The Trustees shall select their own chair on a majority vote, whose responsibilities shall be set by the Trustees but shall include all tasks identified in other policies as being required to be performed by the Chair. The Chair shall run all the meetings, set the agenda for the meetings in consultation with administrator of the Trusts and the other trustees, be the signing authority for the Trusts when authorized by the other Trustees and generally be the spokesperson for the Trusts.

This is **Exhibit** " **B**" referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta

Derek R. Renzini
Barrister & Solicitor

December 20, 2023

Dear Sawridge Trustees:

Re: Upcoming Sawridge Trustee Vacancy

Greetings from the Sawridge First Nation (the "**First Nation**")!

We are writing in furtherance to our consultations with the Board of Trustees of the Sawridge Trusts (the "**Trusts**"). As you know, the First Nation is a small community and, as such, the Chief is intimately aware of the needs of its members. The Trusts have a long tradition of the Chief sitting as a Trustee, which extends back to my father, Chief Walter Twinn, who sat as a Trustee until his death. This tradition exists because the Chief knows the needs of its members and the Trusts largely exist to service the needs of the First Nation membership.

I understand that a vacancy in the Trustee Board will be arising in early 2024 and write to request that this seat be succeeded by myself. As you will appreciate, and as you have recognized in Court materials filed in the longstanding litigation plaguing the 1985 Sawridge Trust, it is important for the Chief to be involved in the Trusts as a Trustee. I refer you to the Affidavit of Paul Bujold filed February 15, 2017 in this regard.

I would also add two further points in regards to the Chief being a Trustee. First, as you will know from the recent AGM of the Trusts, the First Nation membership has expressed a desire that their Chief be a Trustee. Second, per the Trustee and the First Nation Council meeting on September 29, 2023, you remarked how convenient it was for the Trusts to have had the Chief as a Trustee.

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

In addition to being the Chief of the First Nation, my qualifications to act as a Trustee are without reproach. I am a beneficiary of both of the Trusts and thus will satisfy any requirement as to a minimum number of sitting Trustees who are also beneficiaries of the Trusts. Further, I am a trained lawyer with two law degrees. I am confident that my credentials will be an asset to the work of the Trustees.

I look forward to hearing from you and to an orderly transition of the upcoming Trustee vacancy to the Chief of the First Nation.

Thank you for your time with this matter.

Yours truly,
The First Nation Council per:

Chief Isaac Twinn

cc. Paul Bujold

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

Sawridge

February 8, 2024

Dear Sawridge Trustees:

Re: Follow-up from 20 December 2023 Letter

Greetings from the Sawridge First Nation (the **"First Nation"**).

Despite the passage of over a month, we have not received the courtesy of a substantive response to our letter of December 20, 2023. For your reference, please find same enclosed, along with the follow up correspondence from the First Nation office.

Given the history of the Sawridge Trusts (the **"Trusts"**), and the representations of the Sawridge Trustees to the Court, it is my expectation, and the First Nation's expectation, that I will be named as a Trustee and succeed Justin Twin. Can I please receive the Trustees' position on this issue immediately.

If the Trustees intend to resile from their prior representations, can you please confirm the process the Trustees intend to implement for the replacement of Justin Twin. I would ask that you be detailed in this response and confirm how the Trustees intend to advertise the vacancy and the selection criteria for the replacement Trustee.

On a different note, it has come to my attention that the First Nation has not received an accounting of the Trusts since my election as Chief. In fact, I have been unable to locate any accounting of the Trusts in the First Nation's records.

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

I would kindly ask that an accounting be provided to me, of both of the Trusts, by no later than February 29, 2024.

The First Nation looks forward to receiving your timely response.

Yours truly,
The First Nation Council per:

Chief Isaac Twinn

cc. Doris Bonora, Dentons Canada
cc. Paul Bujold, Sawridge Trusts

This is **Exhibit "C"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta

SAWRIDGE TRUSTS

9 February 2024

Derek R. Renzini
Barrister & Solicitor

Chief Isaac Twinn
Sawridge First Nation
P.O. Box 326, Slave Lake, AB T0G 2A0

Dear Chief Twinn,

Thank you for your letters of 20 December 2023 and 8 February 2024 requesting that you be appointed as a Trustee of the Sawridge Trusts to replace outgoing Trustee Justin Twin.

At the outset, we would like to bring to your attention that there is no legal relationship between the two Sawridge Trusts and the Sawridge First Nation. The only connection between the organisations is that they all serve similar groups of persons: for the Sawridge First Nation, the membership of the First Nation and for the Sawridge Trusts, the beneficiaries of the Sawridge Band Intervivos Settlement (1985) and the Sawridge Trust (1986). Some of this group of persons does indeed overlap, but it is not the same group of people. The Trustees and the Directors of the holding company, Sawridge Group Holdings Ltd, have been trying to establish cordial relations between our organisations which is in the best interests of the Trusts and of their beneficiaries.

Secondly, the Trustees wish to point out that the Trust Deeds for each of the aforementioned Trusts clearly gives the Trustees "unfettered/uncontrolled discretion" in the administration of the two Trusts. At no point have the Trustees surrendered their discretion or responsibility for the administration of Trusts affairs. While the Trustees have made arguments around conflicts in respect of one of their Trustees because he was also Chief of the Sawridge First Nation at the time, there is no legal obligation on the Trustees to appoint the Chief of the Sawridge First Nation as a Trustee.

The current Trustees have an obligation to carry out their duties in good faith and with due diligence. Because the Trustees Application before the court for advice and direction regarding the identification of the beneficiaries of the 1985 Trust is currently and involuntarily on hold, the Trustees have had to find alternate approach to determine who would be eligible to serve as a beneficiary-trustee of the Sawridge Trusts. That determination is currently in process. The Trustees are instituting a process for the selection of replacement Trustees, which will be activated as soon as possible. Beneficiaries will be informed of the process at the earliest opportunity. We invite you to apply to be a Trustee as part of a fair and transparent process that is available to all beneficiaries.

P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1
Office: 780-988-7723
Toll Free: 1-888-988-7723
Email: administrator@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

With regard to your request that an accounting of the Trusts be provided to you, as noted above, neither the Trust Deeds nor the Trustee Act, RSA 2022 require that the Trustees provide any external organization with a copy of any accounting for the activities of the Trusts. An accounting is provided annually to the beneficiaries of the Sawridge Trust and a complete 2022 Annual Report and Financial Statement was made available to the beneficiaries attending the Beneficiary AGM held in Slave Lake on 30 September 2023. Since the Sawridge First Nation is not a beneficiary of either Trust, The Trustees can not provide you, as Chief of that organization, with any copies of that accounting.

Cordially,

For the Trustees of the Sawridge Trusts
Tracey Scarlett, Chair

This is **Exhibit "D"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta
Derek R. Renzini
Barrister & Solicitor

Trustee Positions Information

Paul Bujold <paul@sawridgetrusts.ca>

To:Paul Bujold <paul@sawridgetrusts.ca>

Notice to Beneficiaries, 240227.pdf; Beneficiary Trustee Candidate Application Form (fillable).pdf; C-C6 Replacement of Trustees Policy.pdf;

Documents necessary for you to apply for the upcoming Trustee position with Sawridge Trust are attached.

Paul Bujold, BSc, MA
Trusts' Administrator/CEO
Sawridge Trusts
Phone 780-988-7723 **Mobile** 780-270-4209
Web www.sawridgetrusts.ca
Email paul@sawridgetrusts.ca
P.O Box 175, Edmonton Main, Edmonton, AB, T5J 2J1

SAWRIDGE TRUSTS

SAWRIDGE TRUSTS

IMPORTANT
Notice to All Beneficiaries

The Sawridge Trusts are currently seeking candidates for the position of Trustee. If you are interested in applying, please fill out the attached application form and return it by email or by mail to the following addresses:

By Email: administrator@sawridgetrusts.ca

By Postal Mail: P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1

Applications must be received by the Sawridge Trusts Office no later than 29 March 2024 at 4:00 PM.

The Trustee Replacement Policy is also attached for your information, as is the Beneficiary Trustee Application Form which also comprises the Trustee Desired Capabilities Matrix.

27 February 2024

P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1
Office: 780-988-7723
Toll Free: 1-888-988-7723
Email: administrator@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

SAWRIDGE TRUSTS

BENEFICIARY TRUSTEE CANDIDATE APPLICATION FORM

Name: (Last Name, First Name, Middle Initials)	
Mailing Address: (Address, Town, Province, Postal Code)	
Telephone:	**Email:**

Beneficiary Trustee candidates currently need to qualify as beneficiaries of the Sawridge Band Intervivos Settlement (1985) and/or the Sawridge Trust (1986) in order the be part of the candidate selection pool. In order to do a preliminary assessment of your qualification as a beneficiary of the above Trusts, please answer ALL of the following questions which are drawn from either the Indian Act, 1970 or the Trust Deeds of the above Trusts Please note that all of this information will be kept in strict confidence for the protection of privacy of all applicants. This information will be shredded once the application process is complete.

☐ Yes ☐ No Are you recognized by Sawridge First Nation to be a current member of Sawridge First Nation?

☐ Yes ☐ No Are you over the age of 21?

☐ Yes ☐ No Have you ever been involuntarily "enfranchised" under the pre-1985 Indian Act? (for example you married a non-Indigenous person and lost your status and membership as a result)

☐ Yes ☐ No Are you a descendant (child or grandchild or greatgrandchild) of a person who was involuntarily "enfranchised" under the pre-1985 Indian Act?

☐ Yes ☐ No Did you or your parents or grandparents or great-grandparents ever voluntarily "enfranchise" under the pre-1985 Indian Act?

☐ Yes ☐ No Are you a descendant (child or grandchild or greatgrandchild) of a person who voluntarily "enfranchised" under the pre-1985 Indian Act?

☐ Yes ☐ No Did you ever voluntarily surrender your Sawridge First Nation membership (post-1985)?

☐ Yes ☐ No Are you currently recognized formally as a member of a First Nation that is NOT Sawridge First Nation?

☐ Yes ☐ No Are you a descendant (child or grandchild or greatgrandchild) of a person who took scrip (lands or cash/money)?

☐ Yes ☐ No Did your mother "gain status" (she was not already a member of a First Nation and her name was added to the Indian Register Sawridge Band List) before 1985 through marriage to your father?

☐ Yes ☐ No Did your paternal grandmother (your father's mother) "gain status" (she was not already a member of a First Nation and her name was added to the Indian Register Sawridge Band List) before 1985 through marriage to your grandfather?

The Trustee Act, R.S.A 2022 lists certain restrictions for persons being appointed as a trustee. Please check off ALL of the following items that may apply to you.

☐ Yes ☐ No You are an incapacitated person, that is,
- ☐ a represented adult under the Adult Guardianship and Trusteeship Act,
- ☐ an incapacitated person under the Public Trustee Act, or
- ☐ a person who has an attorney acting under the Powers of Attorney Act,

☐ Yes ☐ No You have been convicted of an offence involving dishonest conduct under an Act of Canada or any province or territory of Canada,

☐ Yes ☐ No You are an undischarged bankrupt.

SAWRIDGE TRUSTS

☐ ***Please attach a current copy of your curriculum vitae or résumé detailing your work experience, volunteer experience and education beginning with your high school education and including the highest post-secondary educational qualification that you have achieved and any awards or recognition that you may have received.***

If you were appointed a Beneficiary Trustee of the Sawridge Trusts, would you be willing to sign documents confirming an undertaking guaranteeing the following (select all that apply).

☐ Yes ☐ No A confidentiality agreement agreeing not to disclose to any third-party any of the information, documents, proceedings, plans or activities of the Sawridge Trust except as permitted by policy or law.

☐ Yes ☐ No An undertaking agreeing to abide by the Sawridge Trusts Code of Conduct and policies currently in force

☐ Yes ☐ No An undertaking agreeing to the term limits of your term as a Trustee, including an agreement to accept a decision of the Trustees to remove you before your term is complete should that become necessary.

☐ Yes ☐ No An undertaking agreeing to complete Phase I of the NATOA Trustee Training program during the first year of your appointment.

Review the Trustee Desired Capabilities Matrix on the next page and describe in your own words how you meet these capability requirements to be a Beneficiary Trustee of the Sawridge Trusts.

All of the information given in this application is accurate and I agree to the undertakings outlined in this application. I agree to provide any other information necessary to consider my application. Copies will be provided upon request.

Signature:	**Date:**

SAWRIDGE TRUSTS

TRUSTEE DESIRED CAPABILITIES MATRIX

2024

Core Capabilities

Cultural Competency:	Must have experience having some involvement with First Nations or Indigenous communities.
Trust Law/Indigenous Trusts:	Must complete at least Level 1 of the NATOA Trustee Training program within first year after appointment.
Governance:	Preferred if have prior trustee, board director or elected council experience.
Financial/Business Acumen:	Must have the ability to understand financial statements, investments, and reporting
Communication Skills:	Must be able to communicate effectively with multiple audiences and cultures.

Desired Capabilities

Benefits Administration:	Desire understanding of benefits programs and benefits administration
Investment Portfolio Management:	Desire understanding of investment portfolio management, including risk and value.
Leadership:	Desire prior experience in leadership roles.
Governance of Indigenous-Owned Companies:	Desire specific governance experience in Indigenous companies with First Nations or Indigenous Trusts as shareholders.
Social and Cultural Context:	(Desire)Must be able to understand complex social and cultural contexts.

Diversity of Thought

Indigenous:	Desire a majority of Trustees to be Indigenous (First Nation, Métis, Inuit), ideally members of the Sawridge First Nation.
Beneficiary:	Require that minimum of three beneficiaries, at least three of whom must be beneficiaries of the 1985 Trust and at least two of whom are beneficiaries of the 1986 Trust.
Geographic Location:	Desire a minimum of two Trustees to be located in at Sawridge First Nation or at Slave Lake.

Required Mindset

Open-Minded	Willing to consider the viewpoints of others, willing to consider new ideas and approaches.
Collaborative	Willing to work with others to achieve a joint goal.
Big Picture/Strategic Viewpoint	Looks at long-term implications of actions and willing to work to achieve a long-term goal through gradual steps.
Continuous Improvement/Learning	Willing to work on learning new skills or developing current skills to a higher level.
Team-builders/workers	Willing to abide with majority decisions, willing to follow through on commitments, willing to actively contribute to group solutions, respectful of others.

C-06 REPLACEMENT OF TRUSTEES POLICY

PROPOSED
2018-03-16

ADOPTED
2018-03-16

REVISED
2024-02-20

Introduction

The Trustees of the Sawridge Band Intervivos Settlement (the "**1985 Trust**") and of the Sawridge Trust (the "**1986 Trust**") (collectively known as the "**Sawridge Trusts**"), desire that each Trust maintains the Trusts knowledge, history, experience, continuity, consistency and wisdom of any Trustees whose Term of appointment expires ("**Trusts' Memory**"), such that it is necessary to stagger the replacement of the Trustees to ensure that the Sawridge Trusts maintain such Trusts' Memory in a realistic and logical fashion and in the best interests of the beneficiaries of the Sawridge Trusts (the "**Beneficiaries**").

Number of Trustees

The 1985 Trust requires a minimum of five (5) Trustees, with no set maximum number of Trustees; three of whom, at any one time, must be beneficiaries of the 1985 Trust. The 1986 Trust requires that there be a minimum of three (3) Trustees, and up to a maximum of seven (7) Trustees; at least two of whom, at any one time, must be beneficiaries of the 1986 Trust.

It is in the best interests of the Trusts and of the Beneficiaries that each Trust have up to seven (7) Trustees, and that there will be only one set of Trustees appointed for both the 1985 Trust and the 1986 Trust. At the time of latest revision of this Policy, there are currently five (5) Trustees. The addition of the two (2) new Trustee positions will allow for the appointment of beneficiaries of the 1986 Trust without requiring those individuals to also be beneficiaries of the 1985 Trust. Increasing the number of Trustees allows the Trustee to fulfill the skills matrix for the Trusts by allowing for the appointment of Trustees who may or may not be Beneficiaries.

The Trustees shall be permitted to consider the staggering of the two (2) new Trustee positions such that the terms reflect the Trustees desire to maintain the Trusts' Memory. Subject to the desire to maintain Trusts' Memory, the term of any Trustee shall be for three (3) years with the possibility of reappointment for a further three (3) year term. The Trustee must agree to such appointment and must agree to sign the contract proposed by the Trustees in respect of the term of appointment and in respect of other duties and responsibilities.

Eligibility Criteria for Board of Trustees

The Trustees will consist of:

a. Three (3) Trustees who must qualify as beneficiaries of the 1985 Trust, whether or not they also qualify as beneficiaries of the 1986 Trust (ie: no requirement to qualify as beneficiaries of the 1986 Trust); and

b. Two (2) Trustees who must qualify as beneficiaries of the 1986 Trust, whether or not they also qualify as beneficiaries of the 1985 Trust (ie: no requirement to qualify as beneficiaries of the 1985 Trust);

c. The remaining Trustee positions may be filled by non-beneficiaries or may be beneficiaries of either or both of the Trusts to bring the total number of Trustees selected to seven (7) provided that at any one time there cannot be any more that two (2) who are not Beneficiaries of the 1986 Trust.

At all times this policy and any amendment to this policy must comply with the restrictions of the Trust Deed.

The Trustees recognize that diversity of age, gender, qualifications, interests, experience, business acumen, trust knowledge, Indigenous knowledge and knowledge of Sawridge First Nation and other characteristics are important qualities and such qualities and other qualities identified by the Trustees as beneficial to the Trusts or which provide value to the Trusts, may best be found in Beneficiaries and non-beneficiaries.

In addition to the composition noted above, in order to be eligible for consideration as a Trustee, candidates must meet the following:

a. Be qualified in accordance with some aspects of the Trustee Desired Capacities Matrix which is adopted and approved by the Trustees from time to time, to reflect the comprehensive complement of skills required for effective governance of the Trusts. When selecting new candidates, the Trustees will ensure that the successful candidates match the skills identified as being necessary, important and relevant from the Trustee Desired Capacities Matrix for the replacement of Trustees. In addition, the Trustees will consider the current Strategic Plan and ensure that skills necessary to achieve the strategic objectives are accounted for in the roster of Trustee candidates.

b. Be prepared to sign the contract for Trustees including agreement to the Trustee Code of Conduct in place at such time, and abide by all policies in place applicable to Trustees, as such Code of Conduct and/or policies may be amended from time to time.

c. Where a Trustee has requested to be removed from the office of trustee or been removed on account of violations of the Code of Conduct or any other reason, such individual shall not be eligible for consideration as a Trustee unless and until a time period equal to the remainder of that former Trustee's term expired, plus the Gap Term (defined below). For example, if a Trustee was appointed for a three-year term on January 1, 2020, and was removed from the office of Trustee after 6 months (June 30, 2020), that individual would be ineligible to apply to be a Trustee until after the end of the appointed term (December 31, 2023) plus the 3 year Gap Term, so December 31, 2026. This ineligibility will not apply where a former Trustee was removed for any reason other than violations of the Code of Conduct, such as medical reasons etc. If the Trustee reapplies for appointment, the reasons for their removal shall be taken into account in considering their reappointment.

The Trustees shall consider the replacement of Trustees systematically and methodically, to ensure that there are no gaps within the skillsets of the composition of the Trustees, and no vulnerabilities to the group as a whole as a result of the complete turnover of all or a majority of Trustees at one time. The staggering of term limits and appointments will be carefully considered to ensure appropriate retention of Trusts' Memory and of historical and institutional knowledge and continuity within the group.

Term of Appointment

The terms of the Trustees shall be structured to allow for the orderly appointment and removal of Trustees, taking into consideration the preservation of the Trusts' Memory and also taking into consideration any other issues that would warrant a change in the set terms set out below ("**Term Limit Considerations**")

Subject to the Term Limit Considerations, each Trustee shall have a three-year term with the possibility of a renewal of appointment for a second consecutive Three (3) year term. The first term is renewable at the option of and upon the agreement of the remaining Trustees. Once a Trustee has served two consecutive three-year terms or has been removed, that Trustee will be only be eligible for reappointment

after a gap of at least one three-year term (the "**Gap Term**"). Following the Gap Term, a person is eligible to be appointed as a Trustee for a further three-year term with the possibility of renewal of appointment for a second term. The number of terms of office for a Trustee is unlimited, provided they are appointed for only two consecutive terms followed by a Gap Term. A Trustee shall only be permitted to serve as a Trustee after being appointed by the then-currently appointed Trustees and upon signing a contract detailing the term and conditions of such appointment. Such contract is attached hereto as Schedule "A".

This policy shall apply to all Trustees. The Trustees shall ensure that the terms of the Trustees are structured so that at any one time there is replacement of Trustees such that the Trusts' Memory will be preserved. The Trustees shall have the authority to extend the term of any Trustee but only to the extent necessary to allow for the proper transition of Trustees.

In no event shall a Trustee resign from office. In the event that the Trustee believes they are unable or unwilling to carry out their duties or unable to cooperate or communicate with the other Trustees, then in that event the Trustee shall advise the remaining Trustees, who shall remove the Trustee who is unable or unwilling to act as a Trustee, and appoint a replacement Trustee in accordance with this policy.

Selection Process

The current Trustees shall select new or replacement Trustees as soon as possible when a Trustee position becomes vacant or when notice of a vacancy is received and shall undertake a process which is best suited to secure the best qualified Trustees. The Trustees shall consider the replacement of Trustees systematically and methodically, to ensure that there are no gaps within the skillsets of the composition of the Trustees, and no vulnerabilities to the group as a whole as a result of the complete turnover of all or a majority of Trustees at one time. The staggering of term limits and appointments will be carefully considered to ensure appropriate retention of the Trusts' Memory and the historical and institutional knowledge and continuity within the group.

Such a process may include advertising for suitable Trustee candidates, mail-outs to Beneficiaries requesting their assistance or asking them to apply as candidates, or the use of search networks or professionals, and the creation of an application form for potential Trustees to complete. The advertising process utilized for Trustees should be such that it could be reasonably expected to bring the application process to the attention of the Beneficiaries

All Trustees must comply with all provincial laws, including those in the Trustee Act, as they pertain to requisite qualifications to hold the office of trustee.

All potential candidate's connection to First Nations and the extent of their willingness to understand the community, history and needs of First Nations individuals and communities and the history and customs of First Nations, especially of the Sawridge First Nation, should be considered. All Trustees should have an understanding, empathy and compassion for Indigenous people and have an understanding, or a willingness to learn, the history of colonialism and racism for Indigenous peoples and the challenges that are unique to Indigenous communities.

The Trustees shall utilize a formal screening process to ensure that any potential Trustees meet all legal requirements for acting as a Trustee, including satisfying their status as a Beneficiary of the 1985 Trust or 1986 Trust, as the case may be, meet the desired skill matrix established by the Trustees at any given time and whether the circumstances of the proposed Trustee may result in an actual conflict of interest or the perception of a conflict of interest.

Ongoing Responsibilities

Trustees shall complete the National Aboriginal Trust Officers Trustee Basic Training Program, or a similar equivalent, within one year of their appointment.

Chair

The Trustees shall select their own chair on a majority vote, whose responsibilities shall be set by the Trustees but shall include all tasks identified in other policies as being required to be performed by the Chair. The Chair shall run all the meetings, set the agenda for the meetings in consultation with administrator of the Trusts and the other trustees, be the signing authority for the Trusts when authorized by the other Trustees and generally be the spokesperson for the Trusts.

This is Exhibit "E" referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August 2024

A Commissioner for Oaths in and for the Province of Alberta

Derek R. Renzini
Barrister & Solicitor

March 5, 2024

Dear Sawridge Trustees:

Re: Follow-up from 9 February 2024 Letter

Greetings from the Sawridge First Nation (the "**First Nation**"). We acknowledge receipt of your letter dated February 9, 2024.

As a trained lawyer, I am aware of the terms and legal implications of the Trust Deeds, along with the fiduciary obligation the Trustees owe to their beneficiaries. I am also aware that the First Nation has a special interest in the Sawridge Trusts (the "**Trusts**"), which interest has been acknowledged by both the Courts and the Sawridge Trustees in the proceedings in the extant litigation. This acknowledgment, while not limited to, is evidenced by the historical payment of the First Nation's legal fees by the Trusts in the extant litigation and collaboration with the Trustees on strategy I have personally reviewed Parlee McLaws legal file and am aware of the exchanges between Mr. Ed Moldstad and Ms. Doris Bonora in this regard.

I understand that the Trustees have initiated their process for trustee replacement and I am in receipt of that application. Thank you. I will be applying in due course and in advance of the stated deadline. Prior to submitting my application, I would like further information on the process the Trustees intend to follow, more specifically:

1. The Trustee Replacement Policy states, to paraphrase, that the skillsets of the outgoing trustee are to be replaced such that there are not gaps within the skillset of the composition of the trustee group. What skillsets are the Trustees specifically seeking in relation to this appointment?

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

2. What efforts are being made by the Trustees to advertise to the Trusts' beneficiaries regarding this position?

3. What process, specifically, will be used to evaluate candidates? Will there be in-person interviews?

4. The Trustee Replacement Policy states, that actual and perceived conflicts of interest are to be avoided. What methodology will the Trustees use to make this determination? Please provide examples of matters that would be deemed an actual or perceived conflict of interest.

5. The information from the Trustees, while unclear, is suggestive that the number of Trustees will be increasing from five to seven. Can you please confirm if this is accurate. If so, can you please provide further information as the basis for increasing the number of Trustees.

Finally, the Trustees have refused to provide the First Nation with an accounting of the Trusts on the basis that it is not a beneficiary. This position is intriguing in light of the historical information the Trustees have shared with the First Nation and the recognized special interest the First Nation has in these Trusts. In any event, I am personally a beneficiary of both of the Trusts and I am seeking an accounting for both. As you will be aware, accounting is a core obligation of the fiduciary duty and I am entitled to same.

Please provide the accounting to me by no later than month end.

I look forward to receiving your response.

Yours truly,
The First Nation Council per:

Chief Isaac Twinn

cc. Doris Bonora, Dentons Canada
cc. Paul Bujold, Sawridge Trusts

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

This is **Exhibit "F"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta

AD-367

Derek R. Renzini
Barrister & Solicitor

March 20, 2024

Dear Sawridge Trustees:

Re: Follow-up from 5 March 2024 Letter

Greetings from the Sawridge First Nation.

I am following up from my March 5, 2024 letter wherein I had.

1. posed several questions to the Sawridge Trusts (the "**Trusts**") about the upcoming Trustee recruitment; and
2. requested an accounting from the Trusts by month's end.

I note that the Trusts have not provided me a response. With the Trusts' stipulated March 29, 2024 application deadline to become a Trustee, please provide me a response by this Friday March 22, 2024

Thank you for your time with this matter.

Yours truly,
The First Nation Council per:

Chief Isaac Twinn

cc. Doris Bonora, Dentons Canada
cc. Paul Bujold, Sawridge Trusts

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

This is **Exhibit "G"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta

Derek R. Rennie
Barrister & Solicitor

SAWRIDGE TRUSTS

20 March 2024

Chief Isaac Twinn
P O. Box 326
Slave Lake, AB T0G 2A0 SENT BY EMAIL

Dear Chief,

We write in response to your letter of 5 March 2024

Firstly, you have posed several specific questions regarding the process for trustee replacement. We refer you back to our response of 9 February 2024 and have little to add. We look forward to receipt of your application and will consider it in accordance with our discretion as Trustees and in line with the Trustee Replacement Policy, which has been developed and amended to deal with Trustee replacement. The most recent copy of the Trustee Replacement Policy was provided with the application package. We have nothing to add to that policy and to our previous response at this time. We welcome your application. The Trustees are following policies they have developed and amended to deal with the replacement of Trustees.

Secondly, you have asked for financial information regarding the Trusts and we are accordingly providing the latest Annual Report for your records.

Thirdly, you have asked for an accounting of the Trusts. The Trustees plan on taking the appropriate steps with respect to accounting following the conclusion of the Advice and Direction application. As you know, we are working to conclude that action as expeditiously as possible, but the Court has been delayed in responding to the request of the Office of the Public Trustee and Guardian for the appointment of a new case management justice. As soon as that court action is concluded, we plan on identifying the beneficiaries of the 1985 Trust according to the rules of the Trust Deed and any court direction and will then proceed with a form of passing of accounts for both the 1985 and 1986 Trusts.

Cordially,
The Trustees of the Sawridge Trusts per.

Tracey Scarlett, Chair
Attachments

P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1
Office: 780-988-7723
Toll Free: 1-888-988-7723
Email: administrator@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

This is Exhibit "H" referred to in the Affidavit of Isaac Twinn sworn before me on the 17 day of August, 2024

Dont Lyn #2.367
A Commissioner for Oaths in and for the Province of Alberta

Derek R. Renzini
Barrister & Solicitor

SAWRIDGE TRUSTS

5 April 2024

To all Beneficiary Trustee Applicants

SENT BY EMAIL

In order to determine if you qualify as a beneficiary eligible to be considered for the Trustee position requiring beneficial status in both the Sawridge Band Intervivos Settlement and the Sawridge Trust,

1. Please provide us with the following information:
   M ther
   a. Your mother's name:
   b. Was your mother was born a status Indian:
   c. Of which band was(is) she a member at birth:
   d. What was(is) her band number at birth:

2. Please provide us with the following additional information:
   Maternal Grandm ther
   a. Your grandmother's name:
   b. Was your grandmother was born a status Indian:
   c. Of which band was(is) she a member at birth:
   d. What was(is) her band number at birth:
   Paternal Grandm ther
   e. Your grandmother's name:
   f. Was your grandmother was born a status Indian:
   g. Of which band was(is) she a member at birth:
   h. What was(is) her band number at birth:

This information needs to be provided to the Trusts' Administrator as soon as possible and, in any event, no later than 10 April 2024 at 12:00 Noon.

Thank you for your cooperation.

Cordially,
For the Trustees of the Sawridge Trusts

Paul Bujold, Trusts' Administrator

P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1
Office 780-988-7723
Toll Free: 1-888-988-7723
Email: administrator@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

This is **Exhibit** " **I** " referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta

Derek R. Renzini
Barrister & Solicitor
AB-367

April 10, 2024

To the Sawridge Trustees:

Re: Trustee Application

I am writing in response to your recent request for further information regarding my application to be appointed as a Trustee of the 1985 and 1986 Sawridge Trusts. Your correspondence requested further information regarding my lineage. As per the Trustee Replacement Policy, I understand this request to be seeking to satisfy my status "as a Beneficiary of the 1985 Trust" (see page 3 of the Trustee Replacement Policy).

In this regard, I refer the Trustees to the 2017 decision of Justice Thomas in *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377. In the application giving rise to this decision, the Sawridge Trustees acknowledged and represented to the Court that my brother, Patrick Twinn, was a beneficiary of the 1985 Trust. On this basis, the Court declared Patrick Twinn to be a current beneficiary of the 1985 Trust.

> [31] The Trustees take the position that the interests of Patrick and Shelby Twinn are already represented in the Advice and Direction Application and that their addition would be redundant.
>
> [32] In respect to Patrick Twinn, I agree that it is unnecessary to add him as a party. Patrick Twinn takes the position that he is currently, and will remain a Beneficiary of the 1985 Sawridge Trust. **The Trustees confirm this and I accept that is correct and declare him to be a current Beneficiary of the Trust.** [Emphasis added.]

The decision of Justice Thomas, in this regard, was affirmed by the Alberta Court of Appeal in *Twinn v Twinn*, 2017 ABCA 419.

> [18] In this case, it is unclear what interest the individual appellants have that is not represented by the parties already before the court, or what position they would bring to the litigation, necessary to permit the issues to be completely and effectually resolved, that will not be presented by those existing parties. **As a matter of law, the Trustees represent the interests of the Beneficiaries, who include Patrick and Shelby Twinn.** Catherine Twinn, as dissenting trustee, is separately represented, has taken an opposing view as to the need for amendment of the Trust, and will place that position before the court. The Public Trustee is tasked with representing the interests of all Beneficiaries who were minors when the litigation began, although it is acknowledged that the Public Trustee does not represent the interests of Patrick and Shelby Twinn (notwithstanding a comment made by the case management judge to the contrary). [Emphasis added.]

My lineage and facts in relation thereto are identical to my brother Patrick's. As such, my status as a beneficiary of the 1985 Trust has already been acknowledged by the Trustees and affirmed by the Court of Appeal of this Province. I trust that this authority provides you with the necessary information to confirm my qualification as a beneficiary of the 1985 Trust.

Thank you for your time with this.

Yours truly,

Isaac Twinn

This is **Exhibit "J"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

#20367

A Commissioner for Oaths in and for the Province of Alberta

Derek R. Renzini
Barrister & Solicitor

SAWRIDGE TRUSTS

11 April 2024

Isaac Twinn
P.O. Box 1460
Slave Lake, AB T0G 2A0
SENT BY EMAIL

Dear Isaac,

Thank you for your letter of 10 April 2024 regarding your status as a beneficiary of the Sawridge Band Intervivos Settlement (1985).

You will recall, however, that when you applied for the position of Trustee with the Sawridge Trusts that one of the provisions on the application was that you could be asked for additional information before your application was considered. The information we requested regarding your mother, maternal grandmother and paternal grandmother is information that we require from all applicants.

We are agreeing to give you an extension to provide the information requested by noon, Friday, 12 April 2024.

Cordially,
For the Sawridge Trusts' Trustees

Tracey Scarlett, Chair

P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1
Office: 780-988-7723
Toll Free: 1-888-988-7723
Email: administrator@sawridgetrusts.ca
Web: www.sawridgetrusts.ca

This is **Exhibit "K"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August 2024

A Commissioner for Oaths in and for the Province of Alberta #20367

Derek R. Renzini
Barrister & Solicitor

April 12, 2024

Dear Sawridge Trustees:

Re: Trustee Application Follow-Up

I write in response to your letter of today's date. Your letter wholly fails to address my concerns that the personal information you have requested from me is necessary and causally connected to the Trustee's exercise of discretion in appointing a replacement trustee. To reply that the Trustees are making this request of everyone, does not address my concerns, nor validate the appropriateness of the request. To be clear, my application is not withdrawn and I expect it to be considered.

It concerns me that the Trustees are reaping sensitive information from the members of the Sawridge First Nation without any regard to the necessity or the propriety of such requests and without providing full disclosure as to how the Trustees intend to utilize and safeguard this sensitive personal information. I am becoming quite concerned that the Trustee selection process that has been employed is arbitrary, abusive, and inconsistent with the Trustees' fiduciary duty to their beneficiaries.

I will ask one final time, please advise as to the purpose for which this personal information has been requested from me and how it relates to the trustee selection process. I will consider your response and then determine whether I will provide this information.

Yours truly,

Isaac Twinn

This is Exhibit "L" referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta #2367

Derek R. Renzini
Barrister & Solicitor

SAWRIDGE TRUSTS

18 April 2024

Isaac Twinn
P.O. Box 1460
Slave Lake, AB T0G 2A0
SENT BY EMAIL

Dear Isaac,

We respond to your letter of April 12, 2024.

The deed of the 1985 Sawridge Trust (the "**1985 Deed**") states, with respect to the appointment of new Trustees:

> The power of appointing Trustees to fill any vacancy caused by death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such power shall be exercised so that at all times…there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary

Given this wording in the 1985 Deed, and given the current constitution of the Sawridge Trustees, the impending vacancy requires that the candidate Trustee satisfy the definition of Beneficiary contained in the 1985 Deed.

As you likely know, the definition of Beneficiary in the 1985 Deed requires that a potential beneficiary be a person who qualifies as a member of the Sawridge Indian Band No. 19 pursuant to the provisions of the *Indian Act*, which existed on April 15, 1982 (the "**1982 Indian Act**").

Given these requirements, the Sawridge Trustees must carefully scrutinize whether a candidate meets the definition contained in the 1982 Indian Act. If the Sawridge Trustees are wrong and fill the anticipated vacancy with someone who is not actually a beneficiary, then the decisions of those trustees may be subject to invalidity.

You have pointed us to a court order with respect to the beneficial status of Mr. Patrick Twinn. We presume that you take the position that this court order satisfies the question of whether or not you are a beneficiary of the 1985 Trust. With respect, we are not sure we can agree with your position. The order was made in litigation where the definition of beneficiary was being challenged and without the benefit of all the supporting information pertaining to eligibility to be a member. Regardless, the order was specific to Mr. Patrick Twinn. It is possible that this order could be interpreted as providing similar status to anyone who has a similar lineage to Patrick Twinn but that is not what the court order says and in this litigation, the parties have been very adamant that court orders be interpreted stringently.

Accordingly, the Sawridge Trustees cannot rely on the application of that order to satisfy themselves that you are indeed a beneficiary of the 1985 Sawridge Trust. If you are still uncertain as to why the requested information is relevant to this determination, we invite you to read the definitions set out in the relevant version of the 1982 Indian Act. The 1982 Indian Act definitions are quite archaic and require careful review and scrutiny of a person's lineage. This is the unfortunate position we are in with the current trust deed. Indeed, as you are no doubt aware, the Sawridge Trustees sought advise and direction in respect of the definition and suggested that the definition ought to simply refer to current members of the Sawridge First Nation, in which case we would not need to engage in this analysis.

P.O. Box 175, Edmonton Main
Edmonton, AB T5J 2J1
Office: 780-988-7723
Toll Free: 1-888-988-7723
Email administrator@sawridgetrusts.ca
Web. www.sawridgetrusts.ca

The Trustees agreed as part of negotiated settlement to make the selection of trustee thoughtful, process oriented and transparent. We have embarked on this process and have treated each applicant equally. We cannot make an exception for you.

We are prepared to discuss this further if there are ways that we can help safeguard your personal information to make you more comfortable

Cordially,

For the Sawridge Trusts' Trustees

Tracey Scarlett, Chair

This is Exhibit "M" referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August 2024

A Commissioner for Oaths in and for the Province of Alberta #20367

Suspension of the Trustee Selection Process

Paul Bujold <paul@sawridgetrusts.ca>
Fri 2024-04-19 12:39 PM
To:Paul Bujold <paul@sawridgetrusts.ca>

Dear Applicants,
We are writing to tell you that we are suspending the process of the selection of Trustees for a short time as some complications have arisen in the identification of beneficiaries which the Trustees feel the need to be resolved before a selection is made. We will still consider you an applicant for the position of Trustee when we are ready to proceed with the Trustee selection process, unless you advise that you would not like to be considered. We hope that our suspension will be short and that we will be able to schedule interviews shortly. We will advise you when we are able to resume the process. We thank you for your interest in being a Trustee and apologise for this delay.

Paul Bujold, BSc, MA
Trusts' Administrator/CEO
Sawridge Trusts
Phone 780-988-7723 **Mobile** 780-270-4209
Web www.sawridgetrusts.ca
Email paul@sawridgetrusts.ca
Address : P.O. Box 175, Edmonton Main, Edmonton, AB, T5J 2J1

Derek R. Renzini
Barrister & Solicitor

This is Exhibit "N" referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

#20367

A Commissioner for Oaths in and for the Province of Alberta

Report to the Beneficiaries on the Trustee Selection Process

Paul Bujold <paul@sawridgetrusts.ca>

To:Burd, Svea <sveamidbo@yahoo.ca>;Cardinal, Kieran <ki.cardinal@icloud.com>;Deana Morton <deana.morton@mnp.ca>;Donald, Gina <gina00120@hotmail.com>;Draney, Frieda <fdraney@outlook.com>;Jaise Potskin (jaiseariel@icloud.com) <jaiseariel@icloud.com>;Justin Twin (Work) <Justin.Twin@FountainTire.com>;Margaret S. Ward (Personal) <peggyward2@yahoo.com>;Midbo, David <davemidbo@live.com>,Midbo, Denise <dmidbo@icloud.com>;Midbo, Kristina <kmidbo@hotmail.com>;Poitras, Elizabeth <liz_poitras@hotmail.com>;Poitras, Heather <heatherpoitras14@gmail com>;Poitras, Nicole <poitras_nicole@yahoo.com>;Poitras-Collins, Tracey <poitras-collins@hotmail com>,Poitras-John, Crystal <crystal_m_john@hotmail.com>;Potskin, Aaron <potskin2@gmail.com>;Potskin, Jeanine <j_po_12@live ca>;Potskin, Jonathon <jpotskin@outlook.com>;Potskin, Lillian <allancbroome@icloud.com>

Report to the Beneficiaries on the Trustee Selection Process
17 May 2024

The Trustees of the Sawridge Trusts encountered some difficulties during the process of recruiting a replacement Trustee to fill a position left vacant by the end of term for Justin Twin, requiring that the Trustees suspend the selection process for the immediate future.
Justin is a Trustee currently holding a position as a beneficiary representative for both the Sawridge Band Intervivos Settlement (1985) and the Sawridge Trust (1986). As such, his replacement must also be, according to the Trust Deeds for the two Trusts, and the Replacement of Trustees Policy of the Sawridge Trusts, a beneficiary of both the 1985 Trust and the 1986 Trust.

While the Trustees amended their Replacement of Trustees Policy to add the possibility of two additional beneficiary Trustees representing only the 1986 Trust, this would not solve the problem of requiring that a certain number of beneficiary Trustees be appointed who represent the 1985 Trust. The Trust Deeds require that at least three of these Trustees be beneficiaries of the 1985 Trust.

The process of identifying qualified beneficiaries of the 1985 Trust is a difficult one. The rules for determining who is a beneficiary of this Trust were set out in the 1985 Trust Deed created by Chief Walter Twinn and thus far the Courts have not permitted an amendment. Basically, the Trust Deed sets out that qualified beneficiaries of this Trust must meet the rules set out in the *Indian Act, 1970* as it existed on 15 April 1982—the "*Indian Act, 1982*". In addition, the Trust Deed adds the following rule:

> "that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band No 19 under the Indian Act R.S. C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement;"

The rules of the *Indian Act, 1982* are quite rigid and complicated. As you probably know, the Trustees have been trying to get the Court to provide advice and direction in respect of the definition but the result has been that the Court has thus far not approved any amendment and thus, at this time, the existing rules must be followed. The Court has also determined that the 1985 Trust is a "discriminatory trust" in that it discriminates primarily against women who married out or will marry out in the future and discriminates against illegitimate children, among other discriminatory elements. The Trustees were advised that they would not be able to distribute under a discriminatory Trust, however, the Trustees are now asking the Court for permission to distribute and operate the Trust under these conditions as amendment does not seem possible. However, it is still possible that an amendment to the Trust will occur, depending on the outcome of the next court application.

To identify who qualifies as a beneficiary under the 1985 Trust, and the problem that the Trustees encountered in the Trustee Selection Process, is that very detailed and personal information must be asked of all beneficiaries who think that they qualify as beneficiaries of the 1985 Trust. While the Trustees do have some basic genealogical information from previous information provided by beneficiaries, genealogical research and Indian Affairs Pay Lists up to 1955, in order to be certain, the Trustees need the applicants to provide additional information that only they can obtain because of privacy laws. Without this information, a beneficiary of the 1985 Trust cannot be identified and, if an error is made, the Trustees could be appointing a Trustee who is not qualified and thus could impact the efficacy of the decisions of the Trustees. During the Trustee Selection Process, the Trustees encountered resistance to providing the necessary information from some of the applicants.

In order to reach a solution to this problem, the Trustees have decided to suspend the Trustee Selection Process and the Replacement of Trustees Policy to determine the best method to move forward. The Trustees are hopeful that the next court application will end the litigation and provide more certainty to the Trustees. Justin Twin's term as Trustee has been extended until this Court process can be completed.

Paul Bujold, BSc, MA
Trusts' Administrator/CEO
Sawridge Trusts
Phone 780-988-7723 **Mobile** 780-270-4209
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Email paul@sawridgetrusts.ca
Address : P.O. Box 175, Edmonton Main, Edmonton, AB, T5J 2J1

This is Exhibit "O" referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A Commissioner for Oaths in and for the Province of Alberta #20367

Derek R. Renzini
Barrister & Solicitor

July 18, 2024

Dear Ms. Bonora:

Re: Application for Intervenor Status

We are in receipt of the Sawridge Trustees' proposed application (sent for filing June 28, 2024).

We understand the Sawridge Trustees are seeking, *inter alia*, the Court's approval to allow what has previously been determined to be a discriminatory trust to be deemed valid.

In order to properly consider the First Nation's position on this request, we first need to understand how the Sawridge Trustees intend to apply the definition of "beneficiary" contained in the 1985 Trust Deed. To date, the First Nation has not been provided with a list of persons the Sawridge Trustees have identified as qualifying as current beneficiaries of the 1985 Trust. Our concern is heightened by the Sawridge Trustees recent correspondence wherein we were advised that replacement trustees could not be selected due to difficulties (or an apparent inability) to apply the existing 1985 beneficiary definition. This is highly troubling to the First Nation.

We would kindly request that the Sawridge Trustees provide the First Nation with a list of all persons presently identified as qualifying as a beneficiary of the 1985 Trust pursuant to the existing definition. In addition, please advise as to what specific difficulties the Sawridge Trustees encountered in attempting to apply the definition in relation to the recent trustee replacement process.

I would ask that this information be provided no later than July 26, 2024 in order to provide the First Nation with sufficient time to consider its position on the proposed intervener application.

Yours truly,

Isaac Twinn
Chief
Sawridge First Nation

cc: Janet Hutchison/Jon Faults, OPGT counsel
cc: Crista Osualdini, Catherine Twinn counsel

PHONE (780) 849-4331 FAX (780) 849-3446
806 CARIBOU TRAIL NE, SAWRIDGE IR 150G, BOX 326, SLAVE LAKE, ALBERTA T0G 2A0

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July 24, 2024

File No. 551660-1

Sent Via E-mail
isaac.twinn@sawridgefirstnation.com

This is **Exhibit "P"** referred to in the Affidavit of Isaac Twinn sworn before me on the 14 day of August, 2024

A2037

A Commissioner for Oaths in and for the Province of Alberta

Derek R. Renzini
Barrister & Solicitor

Chief Isaac Twinn
Sawridge First Nation
806 Caribou Trail NE
Slave Lake, AB T0G 2A0

Dear Chief Twinn

Re: Application for Intervenor Status

Thank you for your letter dated July 18, 2024 that you sent on behalf of the Sawridge First Nation (the "SFN"). We understand that you continue to self represent the SFN and that, as of present, the SFN has not yet appointed independent legal counsel.

Firstly, your letter states that the Sawridge Trustees are seeking "the Court's approval to allow what has previously been determined to be a discriminatory trust to be deemed valid." With respect, this is not entirely accurate. The application itself does not concern the validity of the 1985 Sawridge Trust. The application seeks various relief, including a declaration from the court that a distribution can be made pursuant to a definition of beneficiaries that the court has determined was discriminatory.

Regardless, you have asked for information to "understand how the Sawridge Trustees intend to apply the definition of 'beneficiary' contained in the 1985 Trust Deed." With respect, that information is not relevant for the purpose of determining the application that is before the court. Presumably, the SFN wishes to intervene with specific reference to the following requested Order:

> 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 Sawridge First Nation who qualify as beneficiaries of the 1985 Sawridge Trust. (Emphasis added)

The question of identifying the Beneficiaries is not something that is before the court for the purposes of this application. Rather, the question to the Court is whether or not the Trustees are able to distribute pursuant to a definition that has been determined to be discriminatory.

However, in answer to your question, we advise that the Trustees will take a similar approach to the Trustee selection process in which a potential beneficiary will be asked to provide or confirm personal and genealogical information so that the Trustees may determine their eligibility as a beneficiary

In your letter you have asked that "the Sawridge Trustees provide the SFN with a list of all persons presently identified as qualifying as a beneficiary of the 1985 Trust pursuant to the existing definition." While our clients have worked on various lists including in as part of settlement negotiations with the respondents in the litigation, the Sawridge Trustees have not unilaterally prepared a list of beneficiaries. Consistent with their fiduciary duties, the Sawridge Trustees have an obligation to confirm the information necessary to identify beneficiaries. In addition, the litigation has been ongoing for many years and the definition of beneficiary has been uncertain.

In your letter you note that the SFN was "advised that replacement trustees could not be selected due to difficulties (or an apparent inability) to apply the existing 1985 beneficiary definition." With respect, this is not accurate. As reported by the Trust's administrator in his correspondence of May 22, 2024, the reason for suspending the selection process for a replacement trustee was because certain applicants were unwilling to provide certain information required for the determination of their beneficial status. It was decided that the selection process would resume once there was more certainty over the definition following the end of the court litigation. If you did not receive a copy of this May 22, 2024 correspondence please let us know and we will provide a copy for your records.

We draw your attention to paragraph 2 of the Case Management Order pronounced by Justice Little on June 5, 2024, which reads: "If the [SFN] decides to apply as intervenors, it will do so on or before August 15, 2024." If the SFN does decide to apply as intervenors, we look forward to the receipt of your application and supporting affidavit by August 15, 2024 so that the Parties (including the Sawridge Trustees) can determine what position if any to take on your application.

Yours truly,

Yours truly,

Dentons Canada LLP

DocuSigned by:
9D5F0C882C8F8402

Michael S. Sestito / Doris C. Bonora, K.C.
Partner

MSS/mb

COURT FILE NUMBER	1103 14112
COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	EDMONTON
	IN THE MATTER OF THE *TRUSTEE ACT*, RSA 2000, c T-8, AS AMENDED, and IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Sawridge Trust")
APPLICANTS	ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust ("Sawridge Trustees")
DOCUMENT	**AFFIDAVIT OF DARCY TWIN**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Parlee McLaws LLP Barristers and Solicitors 1700 Enbridge Centre 10175-101 Street Edmonton, AB T5J 0H3 Attention: Edward H. Molstad, Q.C. Telephone: 780-423-8503 Facsimile: 780-423-2870 File No.: 64203-7/EHM

AFFIDAVIT OF DARCY TWIN

Sworn on September 24, 2019

I, DARCY TWIN, of the Sawridge Indian Reserve 150G, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I have been a member of the Sawridge First Nation ("Sawridge") since my birth on August 9, 1977, I have been a Councillor of Sawridge since February 2015, I am a Trustee of the Sawridge Band Trust settled on April 15, 1982 (the "1982 Trust"), I am a beneficiary of the 1982 Trust, and my father, Chester Twin, was a Trustee of the Sawridge Inter Vivos Settlement (the "1985 Trust") from December 18, 1986 to January 22, 1996. As such, I have personal knowledge of the matters set out in this affidavit except where stated to be based upon information and belief, in which case I do verily believe the same to be true.

Sawridge First Nation and Chief and Council

2. Sawridge currently has 45 members, one of whom is a minor. These members are, by definition, the only beneficiaries of the 1982 Trust.

3. There are currently three members of Sawridge Chief and Council: Chief Roland Twinn, Councillor Gina Donald, and me. As duly elected Chief and Council, we represent the members of Sawridge.

4. Roland Twinn, who is also a Trustee of the Sawridge Band Inter Vivos Settlement (the "1985 Trust"), has abstained from involvement in this intervention application on behalf of Sawridge.

The Sawridge Band Trust settled on April 15, 1982 (the "1982 Trust")

5. I am informed by my review of Declaration of Trust for the 1982 Trust, a copy of which is attached hereto and marked as **Exhibit "A"** to this my affidavit, that the beneficiaries of the 1982 Trust are all present and future members of Sawridge and that the Trustees of the 1982 Trust are Chief and Council of Sawridge.

6. The Trustees of the 1982 Trust are, by definition, the current elected Chief and Council of Sawridge, being Chief Roland Twinn, Councillor Gina Donald, and me.

Source of Funds to Purchase the Trust Assets and Purpose of the Trusts

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)

8 In a letter dated December 23, 1993, a copy of which is attached hereto and marked as **Exhibit "C"** to this my affidavit, the Assistant Deputy Minister, Lands and Trust Services, Indian & Northern Affairs Canada, stated that the 1985 Trust held substantial sums which, to a large extent, had been derived from Sawridge capital and revenue moneys previously released by the Minister and that such moneys were expended pursuant to sections 64 and 66 of the *Indian Act*, for the benefit of the members of Sawridge.

The Jurisdiction Applications in the within Action

9. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibit "D" and do verily believe, that on August 24, 2016, the Honourable Mr. Justice D.R.G. Thomas granted a Consent Order (the "August 24, 2016 Consent Order") in the within Action approving the transfer of assets which occurred in 1985 from the

1982 Trust to the 1985 Trust *nunc pro tunc*. Attached hereto and marked as **Exhibit "D"** to this my affidavit is a copy of the August 24, 2016 Consent Order.

10. I am informed by our counsel, Edward H. Molstad, Q.C. and do verily believe, that counsel for Sawridge was in attendance at the August 24, 2016 hearing to speak to a Rule 5.13 Application brought by the Office of the Public Trustee and Guardian of Alberta for document production from Sawridge and, although the Court asked if counsel for Sarwridge had anything to say with regard to the August 24, 2016 Consent Order, Sawridge was not a party to the Consent Order and its counsel declined to make submissions on its behalf in relation to the Consent Order.

11. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits "D", "E", "F" and "G", and do verily believe, that prior to and during the case management hearing in the within action on April 25, 2019 and again during the case management hearing on September 4, 2019, the Honourable Mr. Justice J.T. Henderson raised concerns about the August 24, 2016 Consent Order, and whether the trust assets transferred from the 1982 Trust are held pursuant to the terms of the 1982 Trust or the 1985 Trust. Attached hereto and marked as **Exhibit "E"** to this my affidavit is a copy of the April 25, 2019 email from the Honourable Mr. Justice J.T. Henderson. Attached hereto and marked as **Exhibit "F"** to this my affidavit is a copy of the transcript from the April 25, 2019 proceeding. Attached hereto and marked as **Exhibit "G"** to this my affidavit is a copy of the transcript from the September 4, 2019 proceeding.

12. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits "E", "F" and "G", and do verily believe that the Honourable Mr. Justice J.T. Henderson directed the filing of an application seeking a determination of the effect of the August 24, 2016 Consent Order, returnable November 27, 2019.

13. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibit "H", and do verily believe, that on September 13, 2019, the Trustees of the 1985 Trust filed and served on him an application requesting a determination of the transfer of asset issue raised by the Honourable Mr. Justice J.T. Henderson, and the effect of the August 24, 2016 Consent Order, and a copy of the filed application is attached hereto as **Exhibit "H"** to this my affidavit.

14. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits "H" and "I" and do verily believe, that Sawridge, if granted status to intervene in in the hearing on the Jurisdictional Question ordered by the Honourable Mr. Justice J.T. Henderson pursuant to a Consent Order on December 18, 2018 and in the application filed by the Trustees of the 1985 Sawridge Trust on September 13, 2019 (collectively, the "Jurisdiction Applications"), would be the only participant that represents all members of Sawridge to the exclusion of other persons. Attached hereto and marked as **Exhibit "I"** to this my affidavit is a copy of the December 18, 2018 Consent Order.

15. Sawridge would be specially effected by the outcome of the Jurisdiction Applications as its members are the beneficiaries of the 1982 Trust, Sawridge Chief and Council are the Trustees of the 1982 Trust, and the source of funds used to purchase the assets held in the 1982 Trust are capital and/or revenue expenditures made pursuant to sections 64 and 66 of the *Indian Act*, which must only be used for the benefit of the members of Sawridge.

16. Sawridge has a unique perspective and insight concerning the issues raised by the Jurisdiction Applications, as the interests of the Trustees and the beneficiaries of the 1982 Trust are not currently represented by the parties to the within Action.

Purpose of this Affidavit

17. I swear this affidavit in support of an application for an Order, pursuant to Rule 2.10 of the *Alberta Rules of Court*, Alta Reg 124/2010, granting Sawridge status to intervene in the Jurisdiction Applications, copies of which are attached hereto and marked as Exhibits "H" and "I" to this my affidavit.

SWORN BEFORE ME at the Town of Slave Lake, in the Province of Alberta, this 24th day of September, 2019.

A Commissioner for Oaths in and for the Province of Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

DARCY TWIN

EXHIBIT "A"

This is Exhibit " A " referred to
in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day
of SEPTEMBER , 2019

A Commissioner for Oaths in and for Alberta
MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

This Declaration of Trust made the 15th day of April , A.D. 1982.

BETWEEN:

CHIEF WALTER PATRICK TWINN
of the Sawridge Indian Band
No. 19, Slave Lake, Alberta

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band No. 19 of 5 " respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSETH THAT:

Whereas the Settlor is Chief of the Sawridge Indian Band No. 19, and in that capacity has taken title to certain properties on trust for the present and future members of the Sawridge Indian Band No. 19 (herein called the "Band"); and,

Whereas it is desirable to provide greater detail for both the terms of the trust and the administration thereof; and,

Whereas it is likely that further assets will be acquired on trust for the present and future members of the Band, and it is desirable that the same trust apply to all such assets;

NOW, therefore, in consideration of the premises and mutual promises contained herein, the Settlor and each of the Trustees do hereby covenant and agree as follows:

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.

2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions properly made therefrom by the Trustees.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.

4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.

5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

through 80 inclusive of the Indian Act, R.S.C. 1970, c. I-6, as amended from time to time. Upon ceasing to be an elected Chief or Councillor as aforesaid, a Trustee shall ipso facto cease to be a Trustee hereunder; and shall automatically be replaced by the member of the Band who is elected in his stead and place. In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased, it being the intention that the Chief and all Councillors should be Trustees. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

6. The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of twenty one (21) years after the death of the last decendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and

their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries set out above; and the Trustees may make such payments at such time, and from time to time, and in such manner as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investment authorized for Trustees' investments by The Trustees' Act, being Chapter 373 of the Revised Statutes of Alberta 1970, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or desirable to give effect to the trust purposes set out above.

and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power

a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by Federal, Provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them

by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take with notice of and subject to this clause.

12. A majority of the Trustees shall be required for any action taken on behalf of the Trust. In the event that there is a tie vote of the Trustees voting, the Chief shall have a second and casting vote.

Each of the Trustees, by joining in the execution of this Trust Agreement, signifies his acceptance of the Trust herein. Any Chief or Councillor or any other person who becomes a Trustee under paragraph 5 above shall signify his acceptance of the Trust herein by executing this Trust Agreement or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Trust Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Trust Agreement.

SIGNED, SEALED AND DELIVERED
In the Presence of:

NAME

ADDRESS

A. Settlor:

NAME

ADDRESS

B. Trustees: I.

Heather Hunt
NAME
1100 One Hunter Court
ADDRESS
Heather Hunt
NAME
1100 One Hunter Court
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

2. [signature]

3. Walter F Hunt

4.

5.

6.

7.

8.

EXHIBIT "B"

IN THE FEDERAL COURT OF CANADA TRIAL DIVISION

Court File No T-66-86

BETWEEN:

WALTER PATRICK TWINN, suing on his own behalf and on behalf of all other members of the Sawridge Band,
WAYNE ROAN, suing on his own behalf and on behalf of all other members of the Ermineskin Band,
BRUCE STARLIGHT, suing on his own behalf and on behalf of all other members of the Sarcee Band

Plaintiffs,

-and-

HER MAJESTY THE QUEEN

Defendant

-and-

NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA (ALBERTA), AND NON-STATUS INDIAN ASSOCIATION OF ALBERTA

Interveners

P R O C E E D I N G S

October 26, 1993

Volume 22

Held at the Federal Court of Canada
Edmonton, Alberta
Pages 3324 to 3551

Taken before. The Honourable Mr. Justice F Muldoon

APPEARANCES

M. Henderson, Esq For the Plaintiffs
C. M Twinn, Ms
P. Healey, Esq.
D. D. Akman, Esq For the Defendant
E Meehan, Esq Intervener for the Native Council of Canada

P J. Faulds, Esq. Intervener for the Native
T. K. O'Reilly, Esq. Council of Canada (Alberta)

T P Glancy, Esq. Intervener for the Non-Status Indian Association of Alberta

---

June Rossetto Court Registrar

This is Exhibit " B " referred to in the Affidavit of

DARCY TWIN

Sworn before me this 24TH day of SEPTEMBER, 2019

A Commissioner for Oaths in and for Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

Sandra German, CSR(A), RPR Court Reporter

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THE REGISTRAR. This Court is now resumed

MR. HENDERSON: My Lord, sorry, counsel had asked for a bit more time and that's why we're late this morning I think Mr. Meehan and/or Mr. Glancy may want to address the Court about the comments yesterday

THE COURT: Yes Thank you.

MR. MEEHAN. Good morning, Your Lordship. Mr. Henderson and other counsel had a brief discussion prior to court this morning, and there was a few matters that we would wish to bring to the Court's attention for your consideration.

THE COURT: Yes.

MR. MEEHAN: Yes, until yesterday, Your

have been entered into the band lists They all will be entered into the band lists.

Q These are children born to members who were members before 1985?

A That's right.

Q And those children will all ultimately be entered on the band lists as members?

A That's automatic.

03418-01 Q And in some cases that hasn't happened yet?

A It hasn't happened yet. For no real reason. Difficulty the membership codes probably, whatever We've got a legal opinion. You can't just do that You have to do it in order that everyone has to apply which is not automatic.

Q So the parents of the children would ask you to enter the child and you would simply do that?

A They shouldn't have to ask, but that's when it comes. It's not -- it hadn't been relevant unless they're infants. Not that they would lose anything.

Q Now when you became chief in 1966, did Sawridge have any businesses?

A No

Q Now, you were a member of the Sawridge band in 1967. In fact you were chief in 1967 and had been for one year at that time Now if you had voluntarily enfranchised in 1967, how much money would you have received as your per capita share in 1967?

A No more than $1200 I believe

Q And how do you know that?

A I believe we had about -- if I recall when I was chief we had $40,000 in the capital fund I believe. That's the figure I can remember. And others later on had voluntary -- or enfranchised either by marriage, whatever. That was about the figure I believe. It's

03419-01 never -- the figure was never -- it's difficult. Sometimes it would take us six months to get an accounting of what was in the capital revenue funds

Q But the overall account in 1967 was --

A Was about 40,000.

Q $40,000?

A I'm not saying it's exact. It's about $40,000.

Q So if there were 30 members, say, they would each get 1/30th of $40,000.

A Yes, there was 38 members at '85.

Q I'm just asking a hypothetical question.

A Yes, right. About 1200 I said. No more.

back.

I'm looking at page 2 there on the left-hand side paragraph 5. And just directing your attention to the first paragraph, I gather that treaty 8 and Sawridge welcomed the removal of discrimination on the grounds of sex and welcomed the increase in Indian control of band membership which Bill C-31 provided?

A Yes, to some extent.

Q Yes. Okay. And I gather that the reservation or the concern that you had related to the fact that in return for getting those things, Bill C-31 said that there was a group of people whom you would have to accept back into membership, and that was what you were concerned about?

A Automatic reinstatement of a large group is what we were --

Q Exactly Okay.

A Yeah

Q There's been a lot of discussion about who is automatically reinstated under Bill C-31. I would like you to turn to page 11, paragraph number 22

At the time this brief was made, the treaty 8 bands and the Sawridge band understood that Bill C-31 did not reinstate first generation descendents of people who had lost their status under the act. You understood that the bill did not reinstate children? Is that correct?

A I don't want to be on a document committed to a document that -- on a proposal.

Q No, I'm just saying that at the time that this document was prepared based on whatever form the bill was -- whatever stage the bill was at then, you and your professional advisors understood that bill did not reinstate the first generation descendents or the children of the people who had lost their status? That was understood at that time?

A At that time, that was the negotiating that took place

Q Sure. Okay. And that was -- how you understood the bill was at that time?

A The bill kept changing from time to time. One day we would come home and they had -- there was another category There was all sorts of pressures.

Q Well, Chief Twinn, in any event, we'll just deal with what you understood at the time of this particular brief

business activity? That is what makes it distinct?
A That's right.
Q The Sawridge Band is essentially a business entity?
A The Sawridge Band is a group of people, a band, that we use this for a common purpose. We believe that we have to be strong financially.

To do that, there's a lot of things that people must be. It is not wrong for other people to be strong and to be financially strong All of the other things that make society run, I guess we try to keep up -- not keep up, but try to come to a level, if possible

This Country provides -- in democracy and in free enterprise system, which I believe very much -- opportunities for everyone to earn a living, whatever. And that is the objective for us, is to struggle.

Q Of course
A I don't know what . .
Q Of course And what I'm saying is that when you talk about the Sawridge Band and your concern for its future, what you're really concerned about is the future of the business activities of the Sawridge Band
A If we were told initially by the oil companies an estimate that the oil reserves would only be 20 years, we've went that 20 years -- there is someone speculating -- speculating -- it's going to be 30 years But it is our job that they don't diminish -- 15 million hasn't -- it's been growing

When we hold in common, the band -- and it goes for all bands, I think, in Canada, that these assets -- I think I may be repeating myself I'm sorry, but we cannot will our share We do not -- a child does not inherit. It's all in common.

It is our belief and it is our -- Sawridge -- that those lands that -- left to us by someone else, those people that refuse to volunteer enfranchise went through the hardships

Like I said earlier, the band council before me would not allow all the timber to be cut all at once, as some people like to see. So . . .

Q Yes?
A So, in that respect, we try to save as much as possible, all the capital funds, the revenue funds that are there, and hopefully some day we can be totally self-supporting That is the goal

But, as you know, if you're an Albertan, Alberta Heritage Trust Fund had about $12 billion, and it wasn't very long ago it went down

Whether the membership is large or it's small, it's just as dangerous when it's political

So, you know, I guess that is my explanation for how we do things. No one is suffering, I don't believe If any of these individual members or anyone -- I guess they could be middle income with very slight effort.

Q My point, Chief Twinn, was simply that what you're concerned about -- and perhaps what you've been doing is just confirming this for me -- what you're concerned about is the future of the band's business activities.

A That's not what I said I guess I'm not getting clear

I'm saying to you that we're trying to be self-supporting And to keep using money -- I think I have tried to say to you -- Alberta Heritage Trust Fund had a lot of money. They're broke today It's dangerous, that competitive world If Alberta has some more problems or if Canada has problems, what do these figures mean? What could they mean? Canadian dollar drops, anything could happen

But we, as people, like yourselves, are trying to survive, and if we don't survive -- Sawridge does not survive in a healthy position and somewhat -- a band that's got credibility -- do we discredit all the Indian people in Canada?

You know, that is the reasoning. I don't know what you -- how do you want me to explain it? Just to make money, just businesses. The businesses are a form of survival that is social -- that is a social development also, that restores pride. Unless we're self-supporting -- that is the only way we can walk tall and proud

So I don't know what else you want, why you keep insinuating Sawridge is only interested in businesses. We have to -- you know, if other people have opportunities, we'd be a bunch of lazy bums if we did not utilize it properly and for the future, so . . .

Q Chief Twinn, I'm not suggesting that there is anything wrong with being interested in business.

The reason that I'm suggesting that the Sawridge's main concern is its position in the business world is a letter that you wrote which appears in your own documents. And I'd ask you to look at

Exhibit 26, Document Number 913.
THE COURT: 913, Mr. Faulds?
MR. FAULDS: 913, My Lord
Q MR. FAULDS: It's a letter dated November the 2nd of 1987, directed to the Right Honourable Brian Mulroney, then-Prime Minister of Canada And that was signed by yourself, Chief Twinn?
A Mm-hmm
Q And what I'd ask you to do is look at that letter and in particular look at the second last paragraph.
MR. HENDERSON: I'm sorry. The Senator is talking to me, but I don't think he remembers he has to talk out loud, just to remind him of that
THE COURT Thank you for that disclosure, Mr. Henderson
A Okay, I read it
Q MR. FAULDS If you look at the second last paragraph of that letter, Chief Twinn, in that letter, you say,

> "The Sawridge Indian Band is in business and cannot afford to be jeopardizing its position in the business world, nor the security of its four hundred (400), plus employees by expending huge sums of money and time stick-handling through the Justice Department's delay tactics."

So I take it that the principal activity of the Sawridge Band as a band is business
A In order to survive, probably so But that only confirms what I have said, I think, earlier.
Q And that's really what this case is about. It's not about native rights or culture or tradition or anything like that; it's about the Sawridge Indian Band's business?
A Well, I'd beg to differ
MR FAULDS My Lord?
THE COURT: Yes?
MR FAULDS Mr. Henderson has passed me a note to indicate that he has available some of the documents that he had said that he would look for and that seem to be relevant to this particular area of the cross-examination And I wonder if maybe we could have a break at this point so that we could look at them It's a little bit early, but . . .
THE COURT: All right. I have some questions of Chief Twinn, and I want to pose them while you all

03905:01 documents relating to the trust arrangements involving
02 assets belonging to the members of the band These are
03 the documents containing those trust arrangements that
04 you know of?
05 A That's what I know of, right.
06 Q Okay. We've had the assistance of your counsel in
07 tracking down all of the relevant documents, and this is
08 what has been located.
09 MR HENDERSON: My Lord, I tracked the documents
10 down, and the Senator wasn't involved in the process at
11 all, and I've not discussed the contents of the documents
12 with him because I was worried about -- because the
13 subject has already gone into. So it was me that did it,
14 not the Senator, just so it's clear.
15 MR. FAULDS: Quite properly so.
16 Q MR. FAULDS. The search has been carried out by
17 legal counsel on your behalf?
18 A That's right.
19 Q Now, I'd like to refer you, Chief Twinn, if I could, to
20 Document 92(E), Exhibit 92(E).
21 THE COURT: B as in "baker"?
22 MR FAULDS. E as in "Edward," My Lord. I'm
23 sorry
24 THE COURT: Oh Thank you
25 MR HENDERSON: I might say that the Senator hasn't
26 read these before they were produced, at least not in the
03906:01 last couple days, so . .
02 THE COURT: Yes
03 MR. FAULDS: Well, then we'll see how we do
04 Q MR FAULDS. This is a declaration of trust that
05 is dated the 15th of April, 1985. Correct?
06 A That's right
07 Q And, as I think you're aware, that would be two days
08 before the effective date of Bill C-31. Bill C-31 became
09 effective as of April the 17th, 1985.
10 A That's right.
11 Q Do you recall that this declaration of trust document was
12 created in anticipation of the passage of Bill C-31 and
13 its coming into effect?
14 A That's right.
15 Q And the parties to this document are yourself -- you are
16 called the settlor, if you look at the top of the first
17 page. Correct?
18 A Right.
19 Q And you are the settlor as an individual, not as a
20 trustee on anybody's behalf, according to that

description?
A That's right.
Q And the beneficiaries of the trust are described on page 2 of that document, and I'd ask you to look at the definition there
A Page . . .
03907.01 Q I'm sorry. Page 2, and it's paragraph 2(a) at the bottom. And maybe what I could ask you to do, Chief Twinn, is just read through that definition of "beneficiaries." And it actually goes on to page 4.
A How far do you want me to go?
Q If you could finish where the definition of "trust fund" starts That would be the top of page 4.
Have you had a chance to look that over?
A Yeah
Q As I understand it, the people who are beneficiaries under this settlement are people who would be considered members of the Sawridge Band under the Indian Act as it was in April of 1982
Is that your understanding, too?
A That's right. '82?
Q I think they say -- the date is April -- I don't know what the significance of it is, but if you look at the top of page 3 --
A I just don't know why it wouldn't be '85. That's all That's fine It's a legal document, so . .
Q Sure But, in any event, what it meant was that the people who would be beneficiaries would be people who would be considered members of the band before the passage of Bill C-31?
A That's right.
03908.01 Q The object of that was to exclude people who might become members of the Sawridge Band under Bill C-31 as beneficiaries?
A Yes, to a certain extent, yeah
Q Was it the intention that all of the assets of the band would be covered by that agreement or only some?
A I believe all assets that are -- not including -- I'm going to repeat -- I believe not including the capital -- the funds that are held in Ottawa
Q So all assets other than that capital fund in Ottawa was to be covered by this trust agreement?
A Mm-hmm, or whatever the documents are in there. I can't . .
Q But I just want to know, when this agreement was being

prepared, what your objective was. And your first objective was that people who might become band members under Bill C-31 wouldn't be beneficiaries?
A Mm-hmm.
Q That's correct? That was Objective Number 1?
A Right.
Q And Objective Number 2 was that the trust would cover all of the assets of the Sawridge Band that were under the Sawridge Band's control?
A Yes. What's on there, I believe I don't want to be saying something that --
Q I'm not trying to trick you I'm wondering if that's what your objective was
A That's the objective of those.
Q Sure. So that even if people under the bill became members of the band, they would be excluded from sharing in the assets of the band?
A For -- especially a short purpose, right, for a short while there
Q Until you changed the trust agreement?
A We didn't know what the Bill C-31 was going to bring about
Q So you tried to create a trust arrangement that would prevent Bill C-31 members from having any share in the band's assets?
A That's right, on this one, yeah.
Q Okay. Now, as far as whether or not -- it's a legal question, I suppose, whether or not you succeed in doing what you're trying to do You hire lawyers to try and do things for you, and sometimes they do it, and sometimes they don't. You recognize that?
A I'm not saying the lawyers -- what they try to do or not. But the document, you know -- I need professional help for documents
MR HENDERSON: My Lord, just so it's clear on the record -- I want to make sure it is. Because the Senator has not had a chance to read through all of these documents, I've been giving history to my friend There's an '86 version of the same trust where the definition of "beneficiary" would include anyone, from time to time, becoming a member under the Indian Act or otherwise. And that deals with the circumstance where the bill is now law, and you have to deal with people on that basis So just so it's not misleading, there's a time period for each of these things

June Rossetto Court Registrar
M. Andruniak, CSR(A) Court Reporter

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(PROCEEDINGS RESUMED AT 9 05 A M)

MR. HENDERSON: My Lord, I'm going to ask for your consent to excuse my friends I've got them chugging through the documents again today

THE COURT: That's reasonable, Mr. Henderson. Yes Thank you

MR. FAULDS. And with respect to Mr. Glancy, My Lord, I believe Mr. Meehan is going to .

MR MEEHAN. With your permission, My Lord, may

I act as agent for Mr. Glancy?
THE COURT: Of course. With his consent, of course.
MR MEEHAN: With his consent
MR FAULDS: And at his request.
THE COURT: Mr. Faulds?
MR FAULDS: Thank you, My Lord.
MR TWINN CROSS-EXAMINED FURTHER BY MR. FAULDS:
Q Chief Twinn, when we broke at the end of yesterday, you had in front of you two documents They were Exhibits 92(E), and I believe it was 92(G).
THE COURT: G and E?
MR. FAULDS: E and G.
Q MR. FAULDS: Now, Chief Twinn, just to keep things straight, 92(E), I understand, is -- I'll call it the 1985 trust which did not include the Bill C-31 people as beneficiaries, and 92(G) is the 1986 trust which would include the Bill C-31 people as beneficiaries.
What I was asking you about at the end of the day was, as far as you can recall, were these two trusts supposed to exist side by side? Were there supposed to be two trusts?
A No. The second trust was made after that, after the '85 trust. I think the '86 was made after the '85.
Q Was every asset held by the 1985 trust supposed to be placed into the 1986 trust?
A Probably everything, unless there was some new company that had been -- between '85 and the '86 was made. I don't know that off the top of my head
Q But the intention was that the 1985 trust no longer be effective and that everything be in the 1986 trust?
A That's right.
THE COURT: So it's a substitution.
THE WITNESS: That's right.
Q MR. FAULDS: And it appears that with the exception of the documents that Mr. Henderson pointed out, that is, Document 92(K), which was a trust declaration over Plaza Food Fare Inc , we don't have any records or documents of the assets actually being placed into the 1986 trust. That's correct?
A That could be correct.
Q But that was the intention?
A That's the intention.
Q And if we can look at the back page of Exhibit 92(G), the second last page, page 8, that would be your signature as the settlor under A there?

A That's right.
Q Under the Sawridge Indian Band, again, that is your signature?
A That's right.
Q And the witness to your signature on behalf of the Sawridge Indian Band, I believe, that would be Mr. McKinney's?
A That's the last page?
Q Yeah, on the last page.
A That's right.
Q Yeah. He's the executive director?
A Right
Q I gather from looking at those documents, Chief Twinn, that you sign a variety of legal documents in different capacities
A Right.
Q And your capacities include as chief of the band?
A That's right.
Q As a director of various corporations?
A That's right
Q As a trustee of the trusts that have been created?
A That's right.
Q And I just wanted to be sure that I understood the various points that we talked about yesterday. I wonder if maybe we could just go through a brief summary, and you can tell me if this is correct.
First of all, I gather that the primary source of -- originally, the primary source of income for the Sawridge Band originated with the discovery of oil under the reserve lands.
A I'll call it capital funds.
Q And those capital funds grew with the discovery of oil and the exploration and sale and royalties from that oil?
A Whatever that says with the Indian Act, that is capital funds.
Q So the royalties from the oil are received, and those royalties go into the band's capital account?
A That's right, in Ottawa.
Q That's right. And then funds can be drawn from that capital account by the band on a resolution of the band council?
A Sometimes it takes a membership. Sometimes, you know, it takes a general meeting sometimes, depending on who . .
Q Okay. Is it fair to say that in the majority of cases where funds have been drawn from the capital account, in the last few years that has been done on the basis of a

band council resolution?
A Everything has to be done at least by band council resolution. Sometimes the department, from time to time, requests the majority vote, et cetera
Q Okay. Unless the department asks for something, it's done on band council resolution?
A It always -- it has to be done by band council resolution
Q And band council resolution would involve a resolution which would be passed by -- well, the band council is you and your two close relatives?
A And my two close relatives.
Q Yes. And when funds have been drawn from the capital account, those funds have been invested in various companies that carry on business under the Sawridge name?
A That's right.
Q And those companies are -- you and your two close relatives are the directors and shareholders in those companies?
A Myself and my two close relatives are
Q And the shares in those companies that carry on business under the Sawridge name have then been placed in a trust for which you and your two close relatives are the trustees?
A Sometimes it doesn't go necessarily directly. Sometimes it goes directly to the company, and then the company later on, at a convenient time, will go to the trust, as accounting procedures require, to do audits, whatever A lot of this is done by accountants plus legal people.
Q So I understand you're talking about the financing of the corporations
A Not only financing, even the trust declarations there. It's done with legal and accounting procedures As accountants become aware there is, you know -- they have to be audited, so there is advice from two sources here that we get
THE COURT: Is your question predicated, Mr Faulds, on net revenue from the business operations going into the trust?
MR. FAULDS No. My question related to the shares in the corporation.
And perhaps that's where we're missing each other, Chief Twinn.
Q MR FAULDS: What I was suggesting was that the shares in the Sawridge companies, I believe you've indicated to us, have then been placed in the Sawridge

trust.
A I think generally it comes in directly to the company. If it's a new company, something, say, like the food store, something is coming in, if there is equity put in, it goes into that And generally, after awhile, when that's been set up, on an appropriate time, accounting procedures, whatever, then it's usually placed in a trust
Q Okay So that in the end result -- and I think you've said this was the intention of the trust -- the trust holds the band's assets, and that means the shares of the Sawridge companies?
A Let me put it -- I'll try and put it in simple terms again, I guess
The trust -- the companies go into the Sawridge trust after -- after some time the company is formed, it generally goes into the Sawridge trust.
Q Sure. When you say "the companies go into the Sawridge trust," that means that the shares are held by the trust?
A Right
Q And the trustees of the Sawridge trust --
THE COURT. Could I interrupt, Mr. Faulds?
MR. FAULDS: I'm sorry
THE COURT: The shares are held by the Sawridge trust ultimately, sooner or later
THE WITNESS. That's right.
THE COURT Net revenues of the business operations, what becomes of them?
THE WITNESS The companies run -- the revenues are in there. And when there is an overflow, which isn't often, but, you know, if there is sometimes equities needed for a new business, that plus some more funds could go in. Like, if it's a food fare business or something that's purchased to . .
THE COURT: Do they touch base -- are they placed in the trust and then spent for equities in the new businesses, or do they go directly from the operation of the corporation as net revenues to the equity fund for new businesses?
THE WITNESS. Generally, I think what's done -- the companies are -- itself have the funds separately. The trust -- all the trust is doing, replacing -- in essence, I guess, the band is not a legal entity, and there is from time to time -- I guess it could be difference of legal opinion or accounting opinion. So, to be assured, our advice, that's what we've done. The

trust becomes the band, in essence.
THE COURT: All right. Thank you That's good.
Q MR. FAULDS And the shareholders of trust, again, Chief Twinn, are yourself and two close relatives -- I'm sorry -- the trustees of the trust?
A That's right.
Q And the powers of the trustees under the trust are set out in the trust document?
A That's right
THE COURT: Which is Exhibit . . .
MR FAULDS: That is Exhibit 92-G
THE COURT. It's actually brackets, but that's all right
Q MR FAULDS: In particular, Chief Twinn, if you look at page 4 of 92(G) --
A G?
Q 92(G) as in "George"
A I've got it What page again? Sorry.
Q Page 4 I'm sorry
And we looked at this yesterday, I
03958-01 think, and I just want to be sure At the bottom of the page there, there is a paragraph that doesn't have a number on it, which we looked at yesterday, and I think that you agreed that that was the paragraph which set out the powers of the trustees to deal with the income and capital of the fund.
THE COURT. This is getting rather repetitive, Mr. Faulds
MR. FAULDS: I apologize, My Lord.
Q MR FAULDS. That outline that you have just described of the band council and the corporations -- I'm sorry -- the capital accounts of the band held in Ottawa, the band council, the corporations, and the trust comprise the political and economical structure of the Sawridge Band?
A The band funds in Ottawa would not enter it here necessarily. If there were a change of band council, that would change So the band itself is the bit, if it's always the band council And it's in the Indian Act It's done all across Canada So it's not .
Q Of course. And this structure that we've just been describing, which involves the band council and the corporations, that is the political and economic structure of the Sawridge Band?

Department of Indian Affairs They approve it.
Q What I am saying to you, sir, is, Was there a band vote for that $1,553,000 that the Sawridge Band withdrew?
A I cannot tell you exactly what that is right now -- right here now. I'm telling you -- all I can answer you, the Department approves these upon their requests. Sometimes they'll want the band vote, or sometimes they won't.
Q Is it fair to say that the band takes for face value your band council resolution and acts on it except in very exceptional circumstances where they may ask you to hold a band vote? Is that a fair statement?
THE COURT. The Department takes, not the band.
A The Department of Indian Affairs approves everything, so . . .
Q MR AKMAN. Sir, they take for face value, in good faith and good credit, your band council resolutions requesting payments out of capital account, and in very exceptional circumstances they ask you for a vote Is that correct?
A That's right
Q So that most of the funds that come out of the capital account, go into your companies, which go then into the trusts, are all down on band council resolution?
A One intercompany, they're not done by band council resolution.
Q Hmm?
A They're not done by one intercompany, once it gets from one to . .
THE COURT: I think Mr. Akman was asking, Senator, whether transfers from the band accounts to any of the companies, not intercompany transfers but from the band's funds to the companies, if those are done by band council resolution alone or by a vote That's what he's asking
A At the best of my knowledge, because I don't have -- a band council resolution stresses what it set out to do. In order to get that audited, that has -- an auditor could not at that level. Basically states what the use of that capital fund is going to do, and then it goes in. Then I thought it became legal at that point, when the Minister approved it for that reason. That's what it spent for.
Q MR. AKMAN: That's right So the oil comes out of the ground, it goes into the capital account, it comes out of the capital account through band council resolutions --

A Right.
Q -- it goes into your companies --
A Some of it.
Q -- for economic development?
A Right.
Q And, from the companies, you, as director and shareholder of these companies, put the company assets -- have placed the company assets or intended to place all the company assets in these trusts Is that right?
A Right.
Q So that the undivided interests of the band members is all to be found in these trusts?
A I think they'll all be traceable.
Q And we've already agreed that you have no consent or permission to deal with this property from any band member living off reserve? You have no authority or permission from any of these people to be director or shareholder or settlor or trustee, we've agreed on that, too?
A What sets out from -- I guess consent is voting for chief and council
Q Good
Now, then, I want you to turn to Document 92(G), paragraph 6
THE COURT: I think you said 92(G), did you?
MR. AKMAN: G, yes, My Lord
Q MR AKMAN: 92(G), second paragraph of 6, Clause 6, of page 4
Now, this second paragraph of 6 says,
"During the existence of this trust, the trustees shall have complete and unfettered discretion to pay or to apply all or so much of the net income of the trust fund, if any, or to accumulate the same, or any proportion thereof, and all or so much of the capital trust fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the beneficiaries. The trustees may make such payments at such time from time to time in such manner and such proportions as the trustees in their uncontrolled discretion deem appropriate."
Do you see that?
A I see that.
Q So, according to this trust fund created to promote the

EXHIBIT "C"

Indian and Northern Affairs Canada
Assistant Deputy Minister
Ottawa, Canada
K1A 0H4

Affaires indiennes et du Nord Canada
Sous-ministre adjoint

DEC 23 1993

Chief Walter Twinn
Sawridge Band
P.O. Box 326
SLAVE LAKE AB T0G 2A0

Dear Chief Twinn,

As a result of the proceedings of the Bill C-31 legal action which is now before the courts, I have recently been informed of the existence of trusts which have been established on behalf of the members of the Sawridge Band.

I understand that these trusts hold substantial sums which, to a large extent, have been derived from band capital and revenue moneys previously released by the Minister of the Department of Indian Affairs and Northern Development. The capital and revenue moneys were expended pursuant to sections 64 and 66 of the *Indian Act*, for the benefit of the members of your band.

Along with Ken Kirby and Gregor MacIntosh from this department, I would be pleased to meet with you and your band council or other representatives in Alberta, preferably sometime in January 1994, to discuss these trusts.

I trust you will find this satisfactory. My office will contact you in January 1994, to make the necessary arrangements.

Yours sincerely,

Wendy Porteous

Wendy F. Porteous
Assistant Deputy Minister
Lands and Trust Services

This is Exhibit " C " referred to in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day
of SEPTEMBER 2019
A Commissioner for Oaths in and for Alberta
MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

Canada

EXHIBIT "D"

I hereby certify this to be a true copy of the original.
M. O'Sullivan
for Clerk of the Court

Clerk's Stamp: FILED AUG 25 2016 Court of Queen's Bench

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

This is Exhibit " D " referred to in the Affidavit of DARCY TWIN
Sworn before me this 24TH day of SEPTEMBER, 20 19
A Commissioner for Oaths in and for Alberta
MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

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

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

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

DOCUMENT: **CONSENT ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No. 108511-MSP

DATE ON WHICH ORDER WAS PRONOUNCED: August 24, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, AB

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

CONSENT ORDER

UPON HEARING representations from counsel for the Sawridge Trustees that the Sawridge Trustees have exhausted all reasonable options to obtain a complete documentary record regarding the transfer of assets from the 1982 Trust to the 1985 Trust; AND that the parties to this Consent Order have been given access to all documents regarding the transfer of assets from the 1982 Trust to the 1985 Trust that the Trustees have reviewed; AND that the Trustees are not

seeking an accounting of the assets transferred into the 1982 Trust; AND that the Trustees are not seeking an accounting of the assets transferred into the 1985 Trust, AND UPON noting that assets from the 1982 Trust were transferred into the 1985 Trust; AND UPON noting that little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust

2 Without limiting the generality of the foregoing, the Trustees' application and this Consent Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust.

The Honourable Mr. Justice D R G. Thomas

CONSENTED TO BY:

Dentons Canada LLP

Doris Bonora
Counsel for Sawridge Trustees

Reynolds Mirth Richards & Farmer LLP

Marco S. Poretti
Counsel for Sawridge Trustees

McLennan Ross LLP

Karen Platten, Q.C
Counsel for Catherine Twinn as a Trustee of the 1985 Sawridge Trust

Hutchison Law

Janet Hutchison
Counsel for The Office of the Public Guardian and Trustee

seeking an accounting of the assets transferred into the 1982 Trust; AND that the Trustees are not seeking an accounting of the assets transferred into the 1985 Trust; AND UPON noting that assets from the 1982 Trust were transferred into the 1985 Trust; AND UPON noting that little information is available regarding the transfer of assets from the 1982 Trust to the 1985 Trust;

IT IS HEREBY ORDERED THAT

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.

2. Without limiting the generality of the foregoing, the Trustees' application and this Consent Order cannot be relied upon by the Trustees in the future as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust

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

CONSENTED TO BY:

Dentons Canada LLP

Doris Bonora
Counsel for Sawridge Trustees

Reynolds Mirth Richards & Farmer LLP

Marco S. Poretti
Counsel for Sawridge Trustees

McLennan Ross LLP

Karen Platten, Q.C.
Counsel for Catherine Twinn as a Trustee of the 1985 Sawridge Trust

Hutchison Law

Janet Hutchison
Counsel for The Office of the Public Guardian and Trustee

EXHIBIT "E"

Tracy L. Kaiser

From. Joy Jarvis <Joy.Jarvis@albertacourts.ca>
Sent: April 25, 2019 10 03 AM
To: Bonora, Doris <doris bonora@dentons com>; Sestito, Michael <michael.sestito@dentons.com>, lfaulds@fieldlaw com; jhutchison@jhlaw ca, S twinn@live ca; cosualdini@mross com, kplatten@mross com
Subject. Sawridge Trust matter, Court File No. 1103 14112
Importance: High

Good morning, counsel. Please see below an email from Mr. Justice Henderson:

The application regarding the "Jurisdictional Issue" will be heard this afternoon I have reviewed the briefs which have been filed in relation to the motion and have also reviewed other parts of the file including in particular the Brief of the Trustees in relation to the proceedings which took place on August 24, 2016 before Justice Thomas. I have also reviewed the transcript of those proceedings and the Consent Order which was signed by Justice Thomas on August 24, 2016

In my view it is necessary, as part of the Jurisdictional Issue, to consider the terms of the Consent Order and to fully consider what impact that Order has on the trust terms pursuant to which the trust assets are currently being held. One possibility is that the trust assets are being held for the benefit of the "Beneficiaries" as defined in the 1985 Trust and the 1985 Trust terms govern However, that is not the only possibility The Consent Order says that the transfer of assets is "approved *nunc pro tunc*". But the Order does not address the issue of the terms under which the assets are being held The Consent Order does not appear to be a variation of the 1982 Trust and a variation would likely not be possible without the consent of the beneficiaries (although this clearly looks like what the trustees were attempting to do in 1985). It is possible that the 1985 Trust is a successor trust, but again that does not address the question of the terms on which the trust assets are being held or whether there is an ongoing requirement for the 1985 Trust to account to the 1982 Trust with respect to the trust assets.

I raise these issues so that you will be aware that I am concerned about them. Counsel may have a simple explanation which I have overlooked. In any event this is a foundational issue which needs to be addressed before considering whether the 1985 trust can be varied.

Thank you.

This is Exhibit " E " referred to
in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day
of SEPTEMBER , 20 19

A Commissioner for Oaths in and for Alberta
MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

Joy M. Jarvis
Judicial Assistant
Court of Queen's Bench
Edmonton, AB

EXHIBIT "F"

Action No. 1103-14112
E-File Name: EVQ19TWINNR
Appeal No. _____

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

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

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
April 25, 2019

Transcript Management Services
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Calgary, Alberta T2P 5P7
Phone: (403) 297-7392 Fax: (403) 297-7034

This is Exhibit " F " referred to
in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day
of SEPTEMBER , 20 19

A Commissioner for Oaths in and for Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

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M.S. Sestito	For R. Twinn, M. Ward, B. L'Hirondelle, E. Twinn, and D. Majeski
C. Osualdini	For Catherine Twinn
D.D. Risling	For Catherine Twinn
J.L. Hutchison	For the Office of the Public Trustee
R.J. Faulds, Q.C.	For the Office of the Public Trustee
N. Varevac	Court Clerk

Discussion

THE COURT: Good afternoon, please be seated. Okay.

MS. BONORA: Good afternoon, Sir. Perhaps I'll just start with some introductions.

THE COURT: Sure.

MS. BONORA: So Doris Bonora on behalf of the trustees with my partner Michael Sestito. And then for Catherine Twinn is Crista Osualdini and Dave Risling. And then for the Office of the Public Trustee and Guardian Janet Hutchison and John Faulds.

THE COURT: Okay, good.

MS. BONORA: Sir, you've asked us to address a foundational question --

THE COURT: Yes.

MS. BONORA: -- by email and there have been some discussions

around the issue.

THE COURT: Yes.

MS. BONORA: And I also in my discussions with Ms. Osualdini was reminded that Mr. Molstad was also involved in that matter so I also called him.

I thought I'd just address a couple of points but I will tell you that Ms. Hutchison and Mr. Faulds have advised that they would like time to consider this issue. Mr. Molstad has also asked for some time. And I think all of the parties might benefit from some advice from you in respect of exactly how it collides with the jurisdictional issue.

THE COURT: Sure. Would you like me to speak to that?

MS. BONORA: Sure.

THE COURT: Let me start by saying I've approached this case with a fresh set of eyes. So the way I view it may not be the way you view it or the way other parties have viewed it or the way other judges have viewed it. So I've approached it from a fresh perspective with a view to ensuring that I have sufficient information available to come to a correct decision with respect to the jurisdictional issue that you've properly raised.

So I went back to the original documentation, the 1982 trust deed, and I compared it to the 1985 trust deed, Declaration of Trust, and I guess I was a little surprised to see the close parallels between the two. And I also would premise all of my comments on this: I've not made any decision about anything. I'm raising concerns that I have. I'm sure we've got more than enough capable lawyers here to sort out my concerns. These are my concerns and I can tell you they're genuine, otherwise, I wouldn't be taking your time with them.

So I compared these two trust deeds and I said to myself, my goodness, this isn't really what I expected to see. I saw such close parallels that really the only fundamental difference between 1982 and 1985 from my perspective, other than some flowery language in some portions which is largely irrelevant -- the only difference is the definition of beneficiaries. I did also see a prohibition on -- in the 1982 trust deed, a prohibition on the use or diverting any of the trust assets for any purpose other than for the purposes identified in the trust, i.e. for the benefit of the beneficiaries who are defined to be present and future members of the band.

So I then began to look to see how we transition from 1982 to 1985. Saw very little information but I was able to locate the August 2016 materials and I read your materials. I

saw that there was limited evidence available to provide an explanation for what had transpired. But we do also have other background information of a circumstantial nature that does assist in understanding what went on and we know, at least one can infer -- and I'm happy to hear if you don't accept the inferences or where I'm headed but we do see that the 1985 trust was created for a very specific purpose. That purpose was to ensure that the trust assets were not going to be shared with a group of people who were likely to become members of the band as a result of proposed modifications to the *Indian Act* in 1985, which were imminent, and which would permit women, primarily, to re-join the band as members. And, therefore, if that happened without the trust being changed, they would then become beneficiaries of the trust.

So I confess that I had some concern with respect to what I was seeing. I asked myself how it could possibly be that we had really substantial assets -- I don't know, there's evidence or numbers kicking around 70 million or 220 million or whatever they are -- whatever the number is, it's a lot of money. So I had concerns with respect to how we were seeing a modification of a trust without any judicial approval, without any compliance with section 42, without anything other than simply the creation of a new trust. So I questioned -- and I could totally be wrong about this and I'm more than happy to hear all of you out -- I question the legitimacy of the 1985 trust declaration at all.

I did consider Justice Thomas' order -- a consent order of August 24th, 2016. You may consider that to be the total answer to all of the problems and you could well be right and I'm happy to hear you on that. On the surface I don't accept that but I'm open minded and I'm happy to hear from you. But I can tell you that I have fundamental concerns. So how does that relate to the issue that the parties together have defined for today the jurisdictional issue. I think you are all on board that there are three ways in which a trust can be varied. One is the reservation in the trust declaration. All of you are in agreement that that's not the case here so we put that aside.

Secondly is section 42 of the *Trustee Act*. We all agree that that's properly enforced and must be complied with. There's some disagreement with respect to whether enough effort has been made to try to comply but I would say -- again, without hearing more argument -- that section 42 is definitely available. Whether it is practically available is really the issue and because we have competing interests the likelihood of getting a hundred percent approval is slim to nil and I would think nil is probably closer than slim. So practically speaking, section 42 doesn't look like a way to achieve the result that everyone would like.

Which leads to the ability of the Court at common law through the exercise of discretion to amend the terms of the trust apart from section 42 of the *Trustee Act* And I think it's fair to say that the law in terms of my ability -- any Court's ability to modify the terms of a trust on that basis is quite limited. And to achieve that result through the common law or

through the exercise of my discretion as a result of the inherent powers that the Court may have is limited and I would have to go probably further to achieve that in this case than the law has gone to date, which means that I would need to proceed very cautiously. Not that I wouldn't proceed -- not that I wouldn't proceed cautiously but I would need to proceed cautiously.

If I am going to go down a path where I need to consider whether or not to exercise my discretion to develop the common law in a way that it hasn't quite been developed before, I need to consider as part of that analysis the other alternatives. What other alternatives are available that would make it unnecessary for me to go down the path which would extend the law beyond where it is today. One of the possibilities -- and again, I want to emphasize I've not made any decisions on any of this, I'm at the moment just talking so that you will collectively have an understanding as to what my level of concern is here and what the concern is.

One of the options here that is easily available is this 1985 trust doesn't have anything to do with anything we're talking about here today. The assets, while they may be situated in the 1985 trust -- because Justice Thomas said that they were -- are still subject to the 1982 trust terms. The definition of beneficiaries is members or future members of the band, that's the end of it. There still is some discrimination in the 1982 trust, which we would need to deal with because it -- it does contain identical language to the 1985 trust which deals with illegitimate children. So we would still have that hurdle but I see that as a much smaller hurdle than sort of the broader picture.

So the easiest thing to do here is just to say you haven't satisfied me that this 1985 trust is relevant. I'm not going to exercise my discretion to modify the definition of beneficiaries in the 1985 trust. 1982 is where we're going, that's where we are. Let's deal with illegitimate children. I'm not saying I've come to that conclusion but that -- that is an avenue that is in my mind available subject to counsel telling me that there are roadblocks that prevent that from happening. And I would say that I would not come to that conclusion, if that is my conclusion ultimately -- I would not come to that conclusion lightly because I am conscious of the fact that there are potential consequences that could flow from that and that would obviously be troubling to me. But my primary responsibility is to determine what the facts are and apply the law to those facts. And if that drives me in one direction that none of the parties like, that's an unfortunate consequence.

So my plan is to figure out what the facts are, determine what the law is. I'm not afraid to extend the common law if that's where we need to go. Incrementally all that's probably something more appropriately done in the Court of Appeal or higher courts but I -- I say all of this only to let you know that this is a concern for me. I see that you tried to clean it up in 2016 but to me that isn't the answer. So that's where we are.

MS. BONORA: Sir, given those comments, I think certainly we would like an opportunity to research this issue and come --

THE COURT: Yes, that's --

MS. BONORA: -- back to you.

THE COURT: Yes.

MS. BONORA: I think Mr. Molstad probably does as well, that's what he told me on the phone.

THE COURT: Sure.

MS. BONORA: Certainly we need some instructions from our client. And I feel that, you know, short of making a few more arguments on public policy and quasi-community trusts, you've essentially said my argument on the jurisdictional issue. So I feel that perhaps today we should adjourn so that we can all consider this issue for you and come back. Perhaps we could set -- I'm guessing some written materials would be helpful to you --

THE COURT: Yes, it would.

MS. BONORA: -- and perhaps we could set some dates for those materials and find some time with you.

THE COURT: Sure, yes. And I apologize for sort of raising this issue at the last minute but I can tell you that this has been an evolving process for me --

MS. BONORA: Yes.

THE COURT: -- as I've read your briefs and I chipped away at the ten boxes of materials downstairs that are not well organized. So when I write to you asking for materials, it's not because the materials aren't here, it's just that they're not readily available to me.

MS. BONORA: We are so happy to provide those to you and we thank you very much for your comments today. I mean, obviously, that issue of the transfer between the two trusts was an issue identified. We thought we had solved it but we obviously need to satisfy you better that that is in fact solved and perhaps in our

investigations we'll find some other law that hasn't solved hat issue entirely so …

THE COURT: Well, maybe it has been solved. I don't see it right now but I'm looking with open eyes just to see what I can find. So I'm not sure if any of the other counsel are concerned about the way we've gone but -- is everyone board with simply adjourning the jurisdictional issue so that briefs can be filed to supplement what's currently been filed to address some of the concerns that I've raised today?

UNIDENTIFIED SPEAKER: Yes, My Lord.

THE COURT: The problem that we're going to have, I tell you this right now, is that you are not going to find time with my assistant any time soon. That's -- you're certainly free to tell her that you need time quickly but there's -- the practical reality is that you're going to have a hard time finding something until probably into September.

MS. BONORA: Sir, maybe then we won't take more of the Court's time this afternoon and we'll just speak with your assistant to try and find time.

THE COURT: Sure.

MS. BONORA: We'll speak amongst ourselves in terms of setting times for briefs, I'm sure that we can do that on our own, and perhaps even consider the possibility of just writing to you and seeing if you will make a decision just on bases of written materials. We'll speak amongst ourselves whether that's a possibility as well.

THE COURT: If your written materials cover the waterfront, as much as I'm happy to hear from you I could also deal with it in written form. The one other thing I didn't say that I should say is I know that you presented a consent order to Justice Thomas and he signed it and I know that all of you have agreed that that order should be signed so it was truly a consent order. But you have to ask yourself a couple of questions with respect to that order. One is how solid is that order in the sense that it is ex parte vis-à-vis some potentially interested parties. I would not want to go down the path of spending another year or two or three years of applications and spending money that's ultimately coming out of the trust only to find that we have one individual who pops up and says, well, just hold on a minute now. I was -- I was a band member in 1982, I got married in 1983. I lost my band membership. I was just ready to come back in and lo and behold I had the rug pulled out from underneath me and I didn't hear about this application before Justice Thomas. I want that set aside. And you know what, there's -- there's a good argument to be made that it might be set aside there.

So you could spend a lot of time and effort going down a path which is premised on a consent order which could fall and take you right back. Not wanting to alarm anyone but it did occur to me that you've got people here who -- I mean, one, we've got enough lawyers here to sink a ship but not all of the interests are properly cared for. Not everyone is represented here. And I read someplace and I think it's quite appropriate, this is not a truly adversarial process. This is a problem that we need solved. So it's a problem that needs to be solved collectively but if we try to do that and we leave out one interested party who steps up at the end of the day and says not for me and we have to unwind the whole thing, we haven't advanced the situation very far. So in my mind we need to see if we can't do this correctly the first time.

MS. BONORA: Well, and, Sir, that's why we raised the issue of the transfer because we didn't want to go through this whole process --

THE COURT: Yes.

MS. BONORA: -- only to have somebody suggest that the transfer wasn't proper right from the start.

THE COURT: Well, it looks like Justice Thomas said the transfer is proper but what flows from that I don't know

MS. BONORA: Right.

THE COURT: And I wouldn't, as I said earlier, immediately conclude that what flows from that is that these trust assets are subject to the definition of beneficiary in the 1985 trust.

MS. BONORA: So we'll address the issue of services as well for you and whether it binds all people, certainly. Okay. So we will try and work out a schedule. We'll try and find time before you or agree that it will be in writing, and we thank you very much today. So subject to anything my friends might have to say, I think we're perhaps concluded for today.

THE COURT: Okay.

MS. BONORA: So thank you.

THE COURT: Good. Anything else? No. Any concerns? No, okay. All right. So we'll adjourn then and we will resume when we can.

MS BONORA: Thank you, Sir.

UNIDENTIFIED SPEAKER: Thank you, My Lord.

PROCEEDINGS ADJOURNED

Certificate of Record

I, Natalija Varevac, certify that this recording is the record made of the evidence of the proceedings in Court of Queen's Bench, held in courtroom 517 at Edmonton, Alberta, on the 25th day of April, 2019, and that I was the court official in charge of the sound recording machine during these proceedings.

Certificate of Transcript

I, Su Zaherie, certify that

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

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

TEZZ TRANSCRIPTION, Transcriber
Order Number: AL-JO-1003-0576
Dated: April 26, 2019

EXHIBIT "G"

Action No.: 1103-14112
E-File No.: EVQ19TWINNR
Appeal No.: _____

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

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

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

ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWIN AND DAVID MAJESCKI, as Trustees for the 1985 Sawridge Trust

Applicants

PROCEEDINGS

Edmonton, Alberta
September 4, 2019

Transcript Management Services
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Phone: (403) 297-7392 Fax: (403) 297-7034

This is Exhibit " G " referred to
in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day
of SEPTEMBER , 20 19

A Commissioner for Oaths in and for Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

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M.S. Sestito	For R. Twinn, M Ward, B. L'Hirondelle, E. Twinn and D. Majeski
C. Osualdini	For Catherine Twinn
D.D. Risling	For Catherine Twinn
J.L. Hutchison	For the Office of the Public Trustee
R.J. Faulds, Q.C.	For the Office of the Public Trustee
E.H. Molstad, Esq.	For the Sawridge First Nation
E. Sopko	For the Sawridge First Nation
M O'Sullivan	Court Clerk

Discussion

THE COURT CLERK: Order in court. All rise.

THE COURT: Good morning. Please be seated.

MS. BONORA: Good morning.

MS. OSUALDINI: Good morning, My Lord.

MR FAULDS: Good morning, My Lord.

THE COURT: Good morning.

Submissions by Ms. Bonora

MS. BONORA: Thank you, My Lord, for seeing us today and making the time for us. I'll just do some introductions.

Doris Bonora and Michael Sestito of Dentons on behalf of the Sawridge Trustees. John Faulds and Janet Hutchison are representing the Office of the Public Trustee and

Guardian. Crista Osualdini and Dave Risling are here for Catherine Twinn. And Mr. Molstad, at Molstad, and Ellery Sopko from Parlee are here on behalf of the Sawridge First Nation. And while they're not parties or intervenors, I'll be asking to hear -- or to have you hear them this morning.

In terms, we assume you have some limited time this morning, so we've all agreed that we'd try and limit our submissions to ten minutes, and -- and then you can decide with respect to Mr. Molstad, but he told me to advise you that he would only be ten minutes as well.

THE COURT: Okay.

MS. BONORA: Just a bit of history. We last appeared before you in April. You gave us some directions about something you wanted to hear about which was with respect to your concerns around the transfer of assets from the 1982 Sawridge Trust to the 1985 Sawridge Trust. We suggested, and you agreed to adjourn the application so that we could make further submissions to you on that point, and we also agreed to try and work out a schedule which, unfortunately, we've not been able to do.

We secured the date of November 27th for that application with respect to the transfer. We did prepare a draft litigation plan and exchanged that with the parties. We have not -- really didn't receive a response to the first draft application plan. In late July, the parties advised us -- well, for sure Office of the Public Trustee advised us they had concerns over the procedure and the remedies that were being sought and how we would do the application, and they're going to address that --

THE COURT: Okay.

MS. BONORA: -- for you today, and so then we wrote to secure this date. I think joining in that concern is Catherine Twinn, and they will address that with you today.

We did prepare another draft litigation plan, and I'll just hand that up for reference. We're hoping to get some direction from you today with respect to getting to -- getting us to November 27th and making sure that goes ahead.

The parties have advised that they think that litigation plan is premature, because they need some direction on procedure. We thought your direction was clear, but we certainly understand the other parties' needs to speak to you about that today. And while I think there's been a bit of a leisurely stroll to getting to today and raising some objections about the procedure around November 27th, we're sincerely asking you to now push the parties

to get to November 27th and have that go ahead --

THE COURT: Yeah.

MS. BONORA: -- as you have expressed the last time. This litigation has been dragging on and we -- and your time, of course, is very precious and limited in terms of trying to get in front of you. So we're asking you very sincerely to try and get us to that date so that we can have that application on the transfer of assets.

With respect to Mr. Molstad, I advised you when I was here last that he had some concerns about the application and wanted some time to consider it. He is here today. He will be speaking about becoming an intervenor as -- because, as you know, in the 1982 Trust, the trustees of that Trust are the Sawridge First Nation council, chief and council, and there is no one, despite all of the lawyers here today, it's -- it would only be Mr. Molstad and Ms. Sopko who would be representing chief and council. And so in the event that we've --

THE COURT: Chief and council from --

MS. BONORA: Sawridge --

THE COURT: -- 1982.

MS. BONORA: That's right. Well --

THE COURT: Or today --

MS BONORA: -- it would be --

THE COURT: -- or --

MS. BONORA: Yeah. I think that the Trust would be that it would be the chief and council, the current chief and council.

THE COURT: M-hm.

MS. BONORA: At any given time.

THE COURT: M-hm.

MS. BONORA: That's the way I would read the Trust.

THE COURT: Okay.

MS. BONORA: There was a subsequent order that extended the length of time for any trustee so there was continuity, but I think that's the way I would read the Trust, would be --

THE COURT: Okay.

MS. BONORA: -- current chief and council.

The -- in respect of that intervenor application, just in terms of getting to November 27th, we would ask that if, in fact, there is opposition to that, that it be done in writing. The test for becoming an intervenor is obviously not very onerous. There just needs to be an interest in the outcome. So we're hoping that that might be some consensual matter, but in any event, if that has to be determined by you, then we would ask that it be done in writing so there doesn't need to be yet another court application.

So my last comment, although I'd ask for time to reply if there's anything I need to say, is just that we sincerely ask you to help us with getting to November 27th.

THE COURT: Okay.

MS. BONORA Thank you.

THE COURT: Mr. Faulds?

Submissions by Mr. Faulds

MR. FAULDS: Thank you, My Lord. The genesis of this appearance before you is, of course, the remarks that you made on April the 25th.

THE COURT: Right.

MR. FAULDS: And in the subsequent discussions between the parties it became clear that the implications of what Your Lordship had said were not -- there wasn't necessarily consensus on what those implications were and nor was there agreement on what the procedural way forward was and, as a result of that, we asked our friends if they could arrange this hearing and we're grateful to them for doing so.

THE COURT: M-hm.

MR. FAULDS: Just by way of very brief background, the role of the Office of the Public Guardian and Trustee is, of course, to protect the interests of minor beneficiaries who are beneficiaries under the 1985 Trust and its definition of who its beneficiaries are. A reversion to the kind of definition in the 1982 Trust, as was referred to in our brief for April 25, would result in a number of those individuals losing their status as beneficiaries and having an interest in the Trust, because while they fall under the definition of beneficiaries in 1985 in that they would be members of the band if the 19 -- if the 1982 *Indian Act* was still in effect, they are -- would not be beneficiaries under the current definition.

So the --

THE COURT: Yeah, I'm not -- I'm not sure I follow that or accept it, but you -- you could well be right, but I would have thought that the breadth of the definition in 1982 is broader than 1985. I -- you -- you know more about it than I, so I'm --

MR. FAULDS: In certain respects it is, My Lord.

THE COURT: Yeah.

MR. FAULDS: But remember the 1985 definition is beneficiaries are persons who would be entitled to membership in the band under the provisions of the *Act* as it read on April the 15th, 1982.

THE COURT: Yes?

MR. FAULDS: The way in which membership is determined has changed very dramatically --

THE COURT: Okay.

MR. FAULDS: -- since that day, and persons who would have qualified in 1982 and who are beneficiaries on that basis --

THE COURT: Okay.

MR. FAULDS: -- are no longer beneficiaries if we revert to the 1982 definition which requires actual membership in the band.

THE COURT: So --

MR. FAULDS: So this is --

THE COURT: -- this is -- this is a more complex issue than I would have thought.

MR. FAULDS: Yeah.

THE COURT: Not surprisingly, but --

MR. FAULDS: And that --

THE COURT: So if you have -- if you have the band membership ebbing and flowing at the discretion of what? Council or --

MR. FAULDS: Yes.

THE COURT: -- someone?

MR. FAULDS: Yes.

THE COURT: You can take -- add or remove beneficiaries from the Trust, is that what you're telling me?

MR. FAULDS: Well, what I'm -- what I'm saying is that the 1982 definition requires actual membership in the band.

THE COURT: M-hm.

MR. FAULDS: And that actual membership in the band is currently determined by -- by the band itself.

THE COURT: Okay.

MR. FAULDS: Pursuant -- pursuant to the rules.

THE COURT: So --

MR. FAULDS: So there's a --

THE COURT: -- I -- I accept that there are implications.

MR. FAULDS: Yeah.

THE COURT: And I --

MR. FAULDS: And -- and --

THE COURT: And I knew there would be when I made my comments. And when I was making my comments, as I -- as I tried to make clear, it was -- it was a concern I was expressing, and I wasn't able to work it out on my own and I need to hear from you on that.

MR. FAULDS: Yes, and --

THE COURT: Hear from all of you on that.

MR. FAULDS: Yes.

THE COURT: It's a concern.

MR. FAULDS: And that -- and I -- and I raise that point, My Lord, just to say this is a matter of grave concern --

THE COURT: Sure.

MR. FAULDS: -- to the OPGT because of that.

THE COURT: Okay.

MR. FAULDS: The second thing --

THE COURT: Well, we're -- we're not going to deal with it lightly, I can tell you that.

MR. FAULDS: Yes. The second thing is that -- that there has been, throughout the history of these proceedings, a certain lack of procedural clarity at times which has caused problems, and we are anxious not to replicate that --

THE COURT: Right.

MR. FAULDS: -- in these circumstances.

THE COURT: Yeah.

MR. FAULDS: And therefore when, as my friend correctly points out, we were unable to agree with the litigation plan that was presented, it was because we felt we needed further direction on exactly what we were litigating, and how, and with who.

THE COURT: M-hm.

MR. FAULDS: And that's why again we thought further direction --

THE COURT: M-hm.

MR. FAULDS: -- was required.

So that brings us really to what -- what we're looking for for some further direction on today, and that is this. In Your Lordship's comments on April 25th, you raised questions which -- which concern both the validity of the Consent Order which was entered into in August, of 2016.

THE COURT: Yeah.

MR. FAULDS: And the meaning of that Order.

THE COURT: Well, the consequence, what -- what flows from that Order.

MR. FAULDS: Exactly.

THE COURT: Yeah.

MR. FAULDS: Exactly. And we wanted to note that in the four and a half months since Your Lordship made those observations, no one has -- no party has stepped forward and brought any kind of application to challenge or --

THE COURT: M-hm.

MR. FAULDS: -- you know, to set aside or vary in any way --

THE COURT: Yeah.

MR. FAULDS: -- that order, and no interested or concerned nonparty has done so either and, therefore, it seemed to us that on the face of it, that order stands, and that the issues which are determined by that order are *res judicata* and that we should not be, when we come back in front of you on -- in November, be arguing about the validity of the litigants or rearguing -- or rearguing what led to that Order, because that's been decided.

THE COURT: Sure. But what hasn't been decided is what flows from that.

MR. FAULDS: Right. And so that is -- and we wanted to see if, in fact -- or we wanted to be sure that the parties were proceeding on some sort of common understanding of what was going to happen in November 27th and what was --

THE COURT: Okay.

MR. FAULDS: -- on the table, because, of course --

THE COURT: Right.

MR. FAULDS. -- you know, the proposed litigation plan has opportunities for filing new affidavits and documents and records, all that kind of thing.

THE COURT: M-hm.

MR. FAULDS: And we were concerned that those -- that that not be used to, in effect, relitigate what's already decided.

THE COURT: Well, there wasn't much litigation involved in that 2016 Order. It was a Consent Order.

MR. FAULDS: That --

THE COURT: So we have not wasted a lot of energy on that.

MR. FAULDS: Well, it is true, My Lord, but the order was supported by a brief.

THE COURT: Yeah, I read the brief.

MR. FAULDS: Which -- so it was not -- it was not a bare order, and it was preceded by a great deal of negotiation.

THE COURT: M-hm. Yeah. Okay.

MR. FAULDS: And had a great deal of litigation.

THE COURT: Okay.

MR. FAULDS: So it was not a -- it was not lightly arrived at.

So that's that -- but that's the issue that we're concerned about. What is it exactly that we should be addressing when we come back before you?

THE COURT: M-hm.

MR. FAULDS: And our view is, quite simply, the Order is what it is, says what it says. In our view, it settles two questions. It settles the fact of the transfer, that the assets were, in fact, transferred.

THE COURT:

MR. FAULDS: And it settles the authority of 1982 Trustees to make that transfer.

THE COURT: H-mm.

MR. FAULDS: Under the terms of the -- under the terms of the Trust, because that was the subject of the brief that was presented to --

THE COURT: Okay.

MR. FAULDS: -- to the Court.

THE COURT: Well, okay.

MR. FAULDS: But that -- so we seek that kind of direction from Your Lordship so that we don't go off in very widely divergent directions --

THE COURT: M-hm.

MR. FAULDS: -- in terms of what we're putting in front of you --

THE COURT: M-hm.

MR. FAULDS: -- in November. And then the last point I just simply wanted to make is we -- we understand Mr. Molstad will wish to be heard and will be bringing some kind of application to participate, and we -- and we haven't seen an application from him so we can't say specifically what our view is, but the one thing we do want to say is the Sawridge First Nation was the engineer of the transfer, and if they are to participate in these proceedings and if there are substantive issues which remain to be resolved --

THE COURT: M-hm.

MR. FAULDS: -- we think the terms of such participation should include some kind of obligation, production obligation in relation to those substantive matters. Those are my submissions.

Submissions by Ms. Osualdini

MS. OSUALDINI: Good morning, My Lord. Osualdini, first initial C. As my friend indicated, we act for Catherine Twinn. She's a former trustee of the 1985 Trust. She's continued her party status in this application as though she were a trustee, and carries forward those concerns.

I echo my friend Mr. Faulds' concerns about the implications of a reversion back to the terms of the 1982 Trust deed. We're aware of many individuals who would be adversely affected and then lose their status as a beneficiary. One of those individuals is actually in the courtroom today, Shelby Twinn. She's an example of an individual who currently qualifies as a beneficiary under the 1985 terms, but is not a member of the First Nation. So she is a practical example of someone who would be affected.

Sir, we think it might be helpful to reiterate to the Court the party's understanding of the consent order that was entered into in 2016, or at least our understanding. We agree with Mr. Faulds' submissions in terms of procedural clarity. It's very important to our client, as was reiterated by the Court of Appeal in regards to some of the procedural issues that have plagued this litigation, that there be clarity as to what the parties are arguing and what issues are before the Court in this matter.

So in terms of the 2016 order that Your Lordship has raised query with, your email of April 25th, 2019, that initially flagged this matter for the parties, asked the parties to consider the terms of the consent order and what impact the order has on the Trust. And, Sir, today we can advise the Court that our understanding of the scope of the order is that it approved the irrevocable transfer of assets from the 1982 Trust to the trustees of the 1985 Trust to be held pursuant to the terms of the 1985 Trust, and we have not heard any of the parties to this application suggest otherwise. And we do note that in the affidavit of the trustees, of their representative, Paul Bujold, that was before the Court on that application, it expressly says so at paragraph 25 of that affidavit, that what the trustees were seeking is confirmation that the transferred assets are held in trust for the benefit of the beneficiaries in the 1985 Trust.

So from our perspective, Sir, none of the parties -- or all of the parties appear to be on the same page in terms of what flows, or what the intention of that 2016 Order was.

THE COURT: M-hm. I guess you'd have to look at the express terms of the Order, what does it actually say, and I don't have it here with me today, but -- so I hear you at this time. The best I can do is I hear you.

MS. OSUALDINI: Yeah, but --

THE COURT: I know that's your position.

MS. OSUALDINI: Yeah, and we would just bring that to the Court's attention --

THE COURT: Sure. Yeah.

MS. OSUALDINI: -- which is partly, in part, why we seek procedural clarity --

THE COURT: Yeah.

MS. OSUALDINI: -- as to what the Court is seeking.

THE COURT: Yeah.

MS. OSUALDINI: And we query whether the Court is seeking an application to determine the scope of the 2016 Order before we move forward with other matters.

THE COURT: Well, it seems to me that that is the foundation of what we are going to be doing with these assets, these Trust assets. That's a foundational issue. You need to get that dealt with immediately. You may all agree that it's adequately dealt with and you -- I -- but I need to hear from you on that. I -- as I tried to explain last time, I just look at that 2016 Order and to me it doesn't do it, but I'm totally happy to hear from you. And you may persuade me that that was a stamp of approval of the transfer of the assets and a change of beneficiaries from 1982 to 1985. Maybe you can persuade me of that, and as I tried to indicate last time, every one of you knows much, much more about this than I do. I'm just coming in expressing concerns that I saw when I initially looked at it.

If it was as easy to change the terms of the Trust as to go ahead and do what was done between 1985 and 1985, why don't you just go ahead and do that very same thing again and see how far it gets you. I -- it's -- it strikes me as being a pivotal issue, and we need get that sorted out. Is -- does the -- does the 2016 Order mean that the monies or the assets are transferred from 1982 to 1985 and that those assets are then to be administered under the terms of the 1985 Trust for the benefit of those beneficiaries as described in the 1985, or are the 1985 Trustees holding the assets in some form, and I use the term loosely, so I -- without meaning to ascribe any legal definition to it, are they holding it by way of constructive trust for the beneficiaries as defined in the 1982 Trust? It may be -- it may be that it's completely clear. Mr. Faulds seems to indicate that it is, and he could well be right, but as I look at it superficially, I don't see it, but I intend to look at it in great detail.

So that's where I'm at, and that seems to me to be the core issue that's troubling me at the moment, and it's an issue that we need to sort out before we go any further down the path. This litigation's been going on for a long, long time, and it seems to me that that was an issue that probably should have been dealt with years and years ago, and it may have been dealt with in 2016. It may have been.

So I don't know that I'm saying anything more than I did on April 25th, but I have that concern. It's a foundational concern. If we can't get by that hurdle, we've got a major problem. If we get by it, then we can go ahead and talk about what we can do to potentially amend the 1985 Trust, but it --

MS. OSUALDINI: And, Sir, from a procedural perspective --

THE COURT: Yeah?

MS. OSUALDINI: -- my understanding is none of the parties to this litigation have brought an application challenging the terms upon which the assets are

held. So I think that's an area that we could use procedural clarity on, is what --

THE COURT. Well, you can go ahead and continue with the application that is currently before me, that is whether or not the 1985 Trust terms should be modified so as to change the beneficiary, definition of beneficiaries, but as I tried to explain last time, one of the things that's -- if I can't satisfy this foundational problem, one of the options available to me is to say I'm not going to do anything to modify the definition of beneficiary in the 1985 Trust terms, because there are no Trust assets held for the benefit of the 1985 beneficiaries. They're being held for the benefit of 1982 beneficiaries. That's the Trust terms that we need to be dealing with. That's one of the options that's available. So unless we deal with this foundational issue, I'm not going to be able to carry forward and give you a meaningful answer in relation to the modification of the 1985 Trust terms.

MS OSUALDINI: Sir, I hear you describing what perhaps is a mootness issue, whether the issue is moot, but I would draw the Court's -- the Court's attention that the assets of the 1985 Trust are not only comprised of these transferred assets. Mr. Bujold's affidavit speaks to there being other assets transferred --

THE COURT: Okay.

MS OSUALDINI: -- after the fact. So it's not a mootness issue.

THE COURT: Transferred from where?

MS. OSUALDINI: It doesn't indicate, but it does say that there's other assets. So I guess in terms of procedural clarity, is there an application that needs to occur on this transfer issue prior to getting to the jurisdiction issue?

THE COURT. Well, I -- you know, I'm not sure. We could probably deal with both of them at the same time, but at some point I need that argument and I'm going to -- I'll give you a decision on it.

MS. OSUALDINI: And then some other issues may arise out of this, My Lord, in terms of beneficiary participation, because this has now really changed the complexion of what the jurisdiction application was initially thought to be when those submissions were made, because for individuals like Shelby Twinn --

THE COURT: Yeah.

MS. OSUALDINI: -- this could be a life changing --

THE COURT: Yeah, sure.

MS. OSUALDINI: -- decision for her. Presently the beneficiaries are not represented by counsel, so this may, in terms as -- as we're talking about litigation plans, involve an issue where these beneficiaries require participation and some rights to be heard on this.

And then I guess in term -- you know, in terms of Mr. Molstad's participation, there isn't an application before us, so it would it be very preliminary to comment on his involvement, but there may be other applications that need to flow if the First Nation becomes involved. We do note to the Court that the Chief of the First Nation is also a trustee which will likely create some issues if they're taking an adverse position to the beneficiaries of the 1985 Trust.

THE COURT: Okay. Mr. Molstad?

Submissions by Mr. Molstad

MR. MOLSTAD: Thank you, Mr. Justice Henderson.

We represent the Sawridge First Nation, instructed by council of the Sawridge First Nation as they exist today, and on August 29th of this year we sent a letter to all legal counsel that are before the Court advising that the Sawridge First Nation will be applying to intervene in the jurisdiction application scheduled for November 27th.

We have a copy of that letter and we have not produced it, but we're prepared to produce it. But we advised counsel in that letter that the position that the Sawridge First Nation would be advancing would be that if the Consent Order of August 24th, 2016, stands, the assets in the 1985 Trust must remain subject to the terms of the 1982 Trust which prohibits their use for anyone other than the present and future members of the Sawridge First Nation. We also advised them that, in the alternative, we would be advancing the position that if the Consent Order stands, any jurisdiction to amend the beneficiary definition in the 1985 Trust is restricted to making it consistent with the beneficiary definition in the 1982 Trust which, as you know, is for the members of the Sawridge First Nation. And in the alternative, in the further alternative, we advised that if the Consent Order is not valid and does not bind the Sawridge First Nation, then the Court should order that there was no effective transfer of the assets and that those assets remain in the 1982 Trust.

We would propose that, subject to the Court's direction, that the application to intervene

that we file be heard, be made in writing and be heard on that basis. We've asked counsel if they would be prepared to consent, but in light of the short notice, we understand that they would want to see the application before they provide us with a response.

And I would just add that I know Mr Faulds has advised you of his view in terms of the definition of beneficiary under the 1985 Trust. I can tell you that we don't agree with that, but that's a matter that you'll be addressing in the future in terms of the respective positions of the parties.

So we will be making an application to intervene, and we would appreciate your direction as to whether that application should be dealt with in writing.

THE COURT: Well, Mr. Molstad, what about the issue of conflict that your friend has raised? If it is the case, and I know you may not agree with this, but if it is the case that there are some beneficiaries of the 1985 Trust who would lose their status if the assets are held subject to the terms of the 1982 Trust, do you, acting on behalf of the band, have a conflict with respect to those people, or not?

MR. MOLSTAD: Well, we're talking about people that are or not members, and we're talking about –

THE COURT: Well, I'm hearing Mr. Faulds say, and this is new to me so I'm not --

MR. MOLSTAD: Right.

THE COURT: -- not really totally understanding, but in broad terms he's saying if these assets are held subject to the terms of the 1982 Trust for people who are currently beneficiaries under the definition of the 1985 Trust who will lose that status --

MR. MOLSTAD: And --

THE COURT: -- those people -- those people's rights are being affected by what we're doing here today or what we will likely do in November.

MR. MOLSTAD: Yeah. And what I -- what I can --

THE COURT: You know, do --

MR. MOLSTAD: Yeah.

THE COURT: -- do they need representation and --

MR. MOLSTAD: What I can tell you is that generally speaking, and I'd have to get instructions, the Sawridge First Nation takes the position that there are some who should be grandfathered in terms of continuing to be beneficiaries, but I would have to get specific instructions in terms of who.

THE COURT: Okay.

MR MOLSTAD: And when they would, in fact, qualify for that grandfather, but the Sawridge First Nation does not take the position that the beneficiaries of the 1985 Trust will continue to grow, notwithstanding they're not members of the Sawridge First Nation.

THE COURT: Okay.

MR. MOLSTAD. Thank you, Sir.

THE COURT: Mr. Faulds?

Discussion

MS. BONORA: Sir, I wonder if I might just address the last --

THE COURT: Sure.

MS. BONORA: -- comment? In respect of those beneficiaries that are not -- that may not be beneficiaries under 1982, that's exactly true in terms of what Mr. Faulds has said. I think there's sort of a Venn diagram of people who are members, nonmembers and where they fit in terms of beneficiaries. So there is a group of people who would not be members and, thus, not -- as we read it, potentially not beneficiaries under the 1982 Trust.

In terms of who represents them or who speaks on their behalf, we have always taken the position that as trustees of the 1985 Trust, we represent those people and we are speaking on their behalf. You've obviously heard Ms. Osualdini speak eloquently about the fact that she's very concerned about Shelby Twinn. The OPGT has concerns about those people. So I think all of those beneficiaries --

THE COURT: Okay.

MS. BONORA: -- who might be left behind, are -- have a voice --

THE COURT: Someone is speaking for them.

MS. BONORA: -- at this table. In addition, in the litigation plan, to address another concern of Ms. Osualdini's, number 9 has the participation of beneficiaries or potential beneficiaries to file written submissions not to exceed five pages in respect of any position they want to put forward, and we have had that in litigation plans before and they have filed materials. So there is an opportunity --

THE COURT: Yeah.

MS. BONORA: -- for their participation in respect of that.

The other issue on the conflict, my understanding is the Chief has been very concerned about his role as Chief and as Trustee, has sought counsel in respect of when he should act and has been very careful not to be involved in the issue on both sides of that table. That's my understanding.

So then finally I guess in reply, we're asking that you approve our litigation plan so that we can move forward, and use your comments that you made on April 25th and today in respect of the issues that are before the Court.

THE COURT: I guess that step 1 is to determine whether or not Mr. Molstad's application can be made in writing. Does anyone have any issue with respect to that? Can that be dealt with in writing, or do we need a hearing on that?

MR. FAULDS: I think the -- from the -- from the position of the OPGT, the primary issue is what are the terms of that going to be?

THE COURT: You want some disclosure.

MR. FAULDS: Yeah, exactly.

THE COURT: Disclosure vis-a-vis what?

MR. FAULDS: Disclosure vis-a-vis whatever the issues are that are --

THE COURT: Okay. Well, we're going to come around to, I think, clearly defining what issue we're going to be dealing with --

MR. FAULDS: Right.

THE COURT: -- on --

MR. FAULDS: Yes.

THE COURT: -- November 27th, or whatever day has been booked.

MR. FAULDS: Just --

THE COURT: November 27th.

MR. FAULDS: Just so Your Lordship understands, the Consent Order of 2016 was preceded by an enormous amount of argument concerning potential production by the First Nation. That got short circuited when the parties all con -- agreed to --

THE COURT: Okay. All right.

MR. FAULDS: -- consent to the terms of that order, and we never finished that -- finished that up. So that's been kind a kind of an issue that's been under the surface for quite a while.

MS. BONORA: Sorry, Mr. Faulds, I -- I appreciate you haven't been involved, but there was an extensive application on production of records, so it wasn't short circuited by this order. That application was made by the Public Trustee, so --

MS. HUTCHISON: With respect, Sir, the 513 application about assets was withdrawn on the basis of this consent order being negotiated.

MR. FAULDS: That's what I meant by short circuited.

MS. BONORA: That is not my recollection, but in any event, I'm just going to hand you the Consent Order in case you want to take a look. I mean, the -- I think it's important to know that, certainly I agree with Mr. Faulds, that an extensive amount of negotiation in respect of that order, especially with respect to --

MR. FAULDS: Yeah.

MS. BONORA: -- leaving open certain issues. So if you see the whole issue around the accounting with respect to the assets being transferred in, so there's no question we were trying to get an approval of the transfer, but I think it's important that the Court is aware in looking exactly at that order, that it wasn't just a simple order saying the transfer is done; that the parties were very concerned about leaving open the whole question around accounting, and that, of course, can leave open many issues. So I just want to make sure that that was -- that everyone was aware of that. In any event, those are my submissions.

MR. FAULDS. And, My Lord, if I -- if I might just conclude the remark I was making, and I appreciate Mr. Bonora's comment. The other thing relating to Mr. Molstad's application is this. He indicated when he set out the various kind of suite of possible arguments or positions that would be advanced, one of them, as I heard him describe it, was that the transfer of assets from the 1982 to the 1985 Trust be, in effect, I don't know if he used the word vacated or not to -- to be null or something of that sort, as I -- as I understood it, that would fly in the face of the order which has been consented to and which stands and would involve an application of a nature that's, you know --

THE COURT: Well, I think -- I mean, I heard Mr. Molstad, but the practical reality is we have an Order of the court which has not been subject to appeal. No one has applied to set it aside. The Order is there and there's nothing I can do about it other than look at the Order and try to determine what consequences flow from it. When the Order says that the transfer of assets from 1985 to 1982 is approved, it's approved, so the assets are here to there. On what terms are those assets then being held?

MR. FAULDS: Right.

THE COURT: Are they being held subject to 1985 or subject to 1982? That's the issue for me.

MR. FAULDS: And I appreciate Your Lordship's setting that out clearly. My concern was that if Mr. Molstad seeks the kind of relief to which he referred, that might actually involve an application to set a side the Order.

THE COURT: Well, when -- if there's an application, I will deal with it. Right now there's no application.

MR. FAULDS: Right, and --

THE COURT: He's, as I understand it, seeking status to intervene on the jurisdictional issue which has, as part of it, the issue I raise that -- and that that relates to the transfer of assets from 1982 to 1985.

MR. FAULDS: In the circumstances, My Lord, I think the OPGT would prefer not to commit itself to any particular approach until we've seen Mr. Molstad's intervention --

THE COURT: Okay.

MR. FAULDS: -- application and know its scope.

THE COURT: Okay. Well, listen. That -- when can you file your application, Mr. Molstad?

MR. MOLSTAD: The -- I believe the litigation plan provides for it to be filed by September 27th.

THE COURT: And is that with a brief?

MR. MOLSTAD: Well, that would be with a motion and an affidavit in support.

THE COURT: Okay. Well, I think Mr. Faulds needs to have something more substantial from you to explain why you think you're entitled to intervene.

MR. MOLSTAD: Well, we can -- we can include the brief at that time.

THE COURT: That wouldn't be a very lengthy brief, it seems to me.

MR MOLSTAD: Sure.

THE COURT: And then he would be able to tell you whether he -- we need a hearing --

MR. MOLSTAD: Right.

THE COURT: -- on the issue.

MR. MOLSTAD: We'll file the motion, the affidavit and the briefs --

THE COURT: Okay.

MR. MOLSTAD: -- on the 27th.

THE COURT: Good. And then say a week later any of the parties can let me know whether or not you need an oral hearing on that, and if you need an oral hearing, we'll deal one -- deal with it in mid-October some time. It's -- it will be a short hearing, I'm thinking. So you can contact my assistant and say you need a time at 8:45 one morning, knowing that I will be gone by 10. So the 15th or 16th or 17th or 18th of October, if need be, but if you all agree that we can deal with it in writing, I'll just give you a response. Okay?

MR. FAULDS: That would certainly be agreeable.

THE COURT: Good. So that the second major issue that we've got to deal with today is defining with precision what it is we're going to do on November 27th, and really there are two options. One is whether we're going to deal with a whole suite of issues relating to the jurisdictional question, or whether we're going to target this one issue. Those are -- those are the two options.

So the first option is to deal with it narrowly. The question that would be put, presumably someone would file a motion, and I don't know, the Trustees perhaps would file a motion to have the issue of the meaning and consequences that flow from Justice Thomas' order of August 24th, 2016, specifically with respect to whether or not after the transfer of assets to the 1985 Trust, those assets are being held subject to the terms of the 1985 Trust, or whether they're being held subject to the terms of the 1982 Trust.

MS. BONORA: Sir, we'll take that on to file a motion in respect of those questions to be answered.

THE COURT: So that's the first option. The second option is we try to deal with that, as well as everything else that we had originally planned to deal with, and then if -- now, I can tell you this before you make submissions on that. If you were to phone down today to book a time, January and February and March, the calender hasn't been set for that, so you could jump the cue by booking a date in January. So you could -- you -- we could deal with a narrow issue on November 27th, and you could come

back fairly quickly to deal with the jurisdictional issue once I've given a decision with respect to what I would describe as the fundamental problem I've been having.

MR. FAULDS: Might I -- might I suggest, My Lord, that dealing with the -- with the narrow issues you've described with the motion which my friends will file, it would seem to be perhaps more logical since, depending on the outcome of that motion, the jurisdiction -- what we are arguing about on jurisdiction may or may not be there. And so I -- I'd submit that doing it sequentially, and hopefully in short order, would be the -- would be the preferable course.

THE COURT: Well, as I say, we're -- the timing is good, because the spring schedule hasn't been set. So if you -- if you were to book a day in the next few days, there would be no problem getting a quick -- and you could book a full day.

MS. BONORA: We agree to the sequential, as well. We think that's the appropriate way to deal with things.

THE COURT: Mr. Molstad? Yeah, I know you're not a party to this --

MR. MOLSTAD: We -- yeah, we're not a party.

THE COURT: -- just yet, but --

MR. MOLSTAD: But we would agree with that too, Sir.

MS. OSUALDINI: And, Sir, we also agree with it being dealt with sequentially.

THE COURT: Okay.

MS. OSUALDINI: I should also draw to the Court's attention, now that we have more clarity in terms of what we're arguing in November is that we potentially have a relevant witness, Maurice Cullity, who was the lawyer behind the drafting who might be available to give *viva voce* evidence on the matter, because if the Court's looking at --

THE COURT: Well, I'm just wondering how that evidence would be relevant in terms of the issue that I'm trying to deal with.

MS. OSUALDINI: Well, my understanding, sir, of the direction is that first we'll be analyzing whether the issue was dealt with by the 2016 order.

THE COURT: Right.

MS. OSUALDINI: And if it's not dealt with by the two-six -- the 2016 order, then -- then how are the assets being held? So the architect of the transfer, the lawyer behind it may have additional information as to the intention and how the matter was structured.

THE COURT: Yeah, he might have some information. Whether that's admissible or not I guess is another question, but --

MS. OSUALDINI: But we just draw that -- for now we just draw that to the Court's attention, that there may be an application for *viva voce* evidence.

THE COURT: Do we have a full day booked for November 27th?

MS. BONORA: No, just an afternoon, Sir.

THE COURT: Okay.

MS. BONORA: I wonder if it has to be *viva voce*? I mean, then we have to have some kind of -- we can't just have a surprise witness with not knowing what he's going to say. I wonder if that's absolutely necessary and relevant, whether it can be done by affidavit so that we can have questioning before? And it can be done -- most of the evidence in this whole matter has been done by affidavit evidence. I'm not sure why it would be necessary. It's not going to be a credibility issue, I'm guessing. So if it's informational, it could be done by affidavit.

THE COURT: Well, we are not going to be having time for *viva voce* evidence if we have half a day booked for November 27th. That just isn't feasible. Is there a problem doing it by way of affidavit?

MS. OSUALDINI: Sir, the problem is is Mr. Cullity is likely the Trustee's witness, because he was an advisor to the Trustees. So I imagine he'd probably have confidentiality or privilege concerns with providing an affidavit to an -- at this point in time, a non-Trustee. So perhaps the only way for my client to be able to obtain his evidence is to have him directed to give *viva voce* evidence, because the Trustees are certainly able to talk with him and gain information from him. We could perhaps deal

with it by way of affidavit if we had consent of the Trustees to allow him to speak freely to our client about -- about what occurred on the transfer.

THE COURT: Mr. Molstad?

MR. MOLSTAD. Oh, I don't -- I'm sorry. I was just speaking to my friend --

THE COURT: M-hm.

MR. MOLSTAD: -- that the Trustees may want to speak to Mr. Cullity.

THE COURT: Yeah.

MS. BONORA: Yeah, this is surprise to us. We're -- I -- so I don't have -- I really can't say. I don't know that the *viva voce* evidence releases him from his obligations to solicitor-client privilege. So I'm not sure what the difference would be, but I certainly can't you give you my decision on that now. I don't think he's a relevant witness to the issue you've addressed at this point, but I can certainly consider it and speak to my friend in terms of what she thinks would be important for him to testify to.

THE COURT: Well, listen. Why don't -- why don't I leave that issue with you and if you can't sort it out, get right back to me.

MS. BONORA: Thank you, Sir.

THE COURT: And we'll find time to see you.

MS. BONORA: Thank you, Sir.

MR. FAULDS: In a way, My Lord, the question is whether the -- whether evidence about what the parties thought they were doing in 1985 is now relevant to the interpretation of the order that approved what they did in 1985.

THE COURT: M-hm. Yeah. I -- yeah, and I hear you, yeah, but if someone wants to put forward evidence, they're entitled to make submissions as to whether or not they should do that, and I'll make a ruling as to whether or not that evidence is admissible.

But so the best we can do on that is to leave that in the air. If you can sort it out in the

next week or two, good. If you can't sort it out, come back and see me at 8:45 one morning and we'll deal with that discrete issue, but in the -- in the interim, we will then deal on November 27th with the single narrow issue and that is what flows from the order of Justice Thomas on August 24th, 2016, and whether, as a result of that order, the Trust assets are held subject to the terms of the 1985 Trust, whether the beneficiaries as described in the 1985 Trust are actually the beneficiaries of these Trust assets, and whether that took away the Trust obligation that existed in the 1982 Trust.

MS. BONORA: Sir, and I wonder if the -- with respect to the balance of the litigation plan, subject to Mr. Cullity, although he might fit in the litigation plan if he files an affidavit, I wonder if the rest of the litigation plan can, in fact, be dealt with just so we have a plan to get to November 27th, and we know that if parties are going to be failing any other materials, then we have a date for that and a plan to get to November 27th.

THE COURT: Okay. So are there concerns here? The problem is we don't know if Mr. Molstad is going to be participating and we won't know that probably until some time in early to mid-October. That's the problem.

MS. HUTCHISON: My Lord, we would suggest the most efficient process would be to get Mr. Molstad's application, to get the Trustee's application that you directed the morning.

THE COURT: M-hm.

MS. HUTCHISON: The parties will evaluate that and then prepare an appropriate litigation plan to submit to you.

THE COURT: So if we look at this narrow issue that we're going to deal with on November 27th, I mean, I can't see that there's going to be more affidavit evidence on that issue. It's a question of looking at what has previously been filed that went before Justice Thomas, and trying to interpret the terms of his order. So I can't see any additional evidence being required here. Am I wrong about that?

MS. HUTCHISON: My Lord, I think that's unclear, and certainly until we see Sawridge First Nation's affidavit, the Court will be unaware, of course, of the 513 application the OPGT had brought on assets, but there was a desire, there was an identified need at that point in time to seek additional evidence around what had occurred in the transfer. It became unnecessary once the matter was dealt with by consent. So I -- I'm not confident in being able to say to you today that there is no other evidence, and I don't think we'll know that until we see affidavits.

THE COURT: Okay. And we -- and we won't see that then until October 4th which is the Trustee's deadline for filing the application. Okay?

MS. BONORA: So we'll --

THE COURT: And we still -- we still don't know what's going on with Mr. Molstad on October 4th, in all likelihood.

MS. BONORA: Correct. We'd like an opportunity to just get the transcript from today before we file the application so we can incorporate --

THE COURT: Sure.

MS BONORA: -- some of the language --

THE COURT: Yeah.

MS. BONORA: -- which I think is possible in a week. So if we have ten days to file our application, we'll do that in ten days.

THE COURT: Okay. So that would take us to mid-September some time?

MS. BONORA: Correct, yeah. The 13th of September, m-hm.

THE COURT: Okay. So then we need a time for response which I think is what Ms. Hutchison is concerned about. So --

MR. FAULDS: It would seem, My Lord, that if we have the Trustee's application by mid-September and we have Mr. Molstad's application by September 27th, then we will know the parameters of what is being sought to be done and whether are not, in the views of the other parties, other evidence may or may not be required. So it would seem after September 27th we'll be in a position to evaluate.

THE COURT: So just so that we -- there's no risk of this thing going off the rails for November 27th, if Mr. Molstad files his application and if I deal with it in written form and give a decision, say, for example, I approved his participation as an intervenor, for the November 27th application, would you be seeking disclosure for that narrow application? And, if so, can you tell Mr. Molstad what it is you want?

MR. FAULDS: No, I don't think we'd be seeking disclosure for that.

THE COURT: Okay. So --

MR. FAULDS: I think it's disclosure --

THE COURT: -- that would be for --

MR. FAULDS: -- flowing from whatever terms of interventions he's granted.

THE COURT: Okay.

MR FAULDS: Yes.

THE COURT: So we -- if we follow that path, we would -- we would lead to November 27th without any real difficulty.

MS. HUTCHISON: And, Sir, just to reiterate, as you had said, all the parties will notify you one week after September 27th in respect of the intervenor status of Sawridge First Nation.

MR. FAULDS: My Lord, I may have misheard the dates. What I intended to convey was we're not seeking disclosure of anything from Mr. Molstad prior to his September 27th intervention application.

THE COURT: Oh, I thought -- I thought November 27th. That was my question.

MR. FAULDS: Right. Right, yes. We are seeking -- depending upon what he seeks by way of intervention, we may be seeking disclosure obligations from him for the purpose of the November 27th hearing, but that depends on what he -- on the scope of his intervention application, what it is he's seeking to do and what positions he wants to advance and whether or not those trigger the need for further disclosure. So we won't know whether or not we need to seek disclosure from him until we see his intervention application.

THE COURT: I -- that's fine, but what you're -- what you're telling me is that November 27th is looking like it's in risk.

MR. FAULDS: I'm not sure, My Lord, that that -- that that necessarily knows depending upon -- we would see if, in our view, his intervention application triggers a need for disclosure for the purposes of the ultimate hearing, that would be part of our response to his intervention application which would be ruled upon by Your Lordship, and then whatever disclosure would happen in the run-up to the hearing. That -- that's how -- that's all we're trying to -- trying to suggest.

MS. BONORA: Sir, just with respect to disclosure, Mr. Faulds has said a couple of things this morning that I think are important to clarify. Mr. Faulds said Sawridge First Nation was the engineer of the transfer, but that -- we have to remember that Sawridge First Nation is a different entity. It was the 1982 Trustees that engineered the transfer, and the 1985 Trustees received that transfer of assets. So it's in the Trust concept and construct that this transfer occurred, and it would be Trust documents which we believe have all been produced, because we produced not only significant affidavits, but an Affidavit of Records in respect of this. And so I caution -- I just want it on record that we are cautioning the parties about going behind the Trust to the Sawridge First Nation, because this is a Trust issue.

MS. HUTCHISON: My Lord, with respect, and clearly this morning is not to argue about production and scope of production, but the evidence that did become very clear in the last discussion around asset -- asset transfer and production of documents is that the former solicitor for the Trust, Mr. Fennell, put his entire file in the hands of the Sawridge First Nation, the Sawridge companies, not the Trust. And so we've really -- the OPGT is very hopeful, in fact, that we're not about to reopen discovery, but the reality is we've put production and discovery of the asset transfer issue to bed with the consent order, without fully exploring it, and so I simply have to disagree a bit with our friend.

We also know that Sawridge First Nation was very involved in that 1982 to 1985 Trust transfer. It's not quite as simple as it just being a Trust process, Sir.

MR. FAULDS: May I just add, My Lord, that we heard and appreciate your comment that this may well be an issue for which evidence is not relevant, and the -- and or not required, and so we understand that. If, for example, the Sawridge First Nation were to bring forward an intervention application in which it sought, say, to set aside the consent order, then -- then, you know, new -- that that may trigger, you know, requirements for further evidence, disclosure and so forth. If, on the other hand, they seek simply to add additional argument or argue from their perspective on the interpretation consequences of the consent order, that's a -- that's a very different thing. That's why I -- that's why I simply kind of wanted to reserve the position that depending on what we see in their intervention application, you know, it may be that there

-- that there's some kind of disclosure required.

THE COURT: Okay. Well, when Mr. Molstad files his materials, we will know, but -- so, Mr. Molstad, it looks to me like when you file your materials, you're going to need to apply for intervention status and explain in a little more detail exactly what it is you are seeking, particularly --

MR. MOLSTAD. Absolutely. Yeah, we will be doing that, Sir.

THE COURT: Particularly, I'm hearing Mr. Faulds say, do you have any intention of attempting to set aside the order of Justice Thomas? So if you -- if that's your intention, say so clearly so that Mr. Faulds can then respond.

MR. MOLSTAD. We will do that, Sir.

THE COURT: Okay, good. Good. So do we know -- now know we're going leading to November 27th? I would really like to keep that date and do something to move this thing along. It's time. This action is now ripe and needs to -- needs to get forward.

MS. BONORA: Sir, I think we have a number of dates from you and I think the parties have said they'd like some time to consider the applications. So perhaps if -- with your indulgence, if we have trouble scheduling, we can come back at 8:45 again.

THE COURT: Okay. Yeah, just --

MS. BONORA. After we have -- deal with these first dates that you've set.

THE COURT: Please do that, yeah. We will --

MS. BONORA: Thank you.

THE COURT: We will make time for you sometime someplace somewhere.

MS BONORA: Thank you so much, Sir.

THE COURT: Okay.

MS. BONORA: Thank you for hearing us this morning.

THE COURT: Nothing else? No? Okay. Thank you very much.

THE COURT CLERK: Order in court.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Morag O'Sullivan, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench held in courtroom 315 at Edmonton, Alberta, on the 4th day of September, 2019; that I, Morag O'Sullivan, was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Deborah Jane Brower, certify that

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

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

Deborah Jane Brower, Transcriber.
Order Number: AL-JO-1003-9075
Dated: September 5, 2019

EXHIBIT "H"

Form 27
Rule 6.3

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

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

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

APPLICANT	ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWIN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust ("Sawridge Trustees")
DOCUMENT	**APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP 2500 Stantec Tower 10230 – 103 Avenue Edmonton, AB T5J 0K4 Attention: Doris C E. Bonora and Michael S Sestito Telephone: (780) 423-7100 Fax: (780) 423-7276 File No: 551860-001-DCEB

Clerk's Stamp: JUDICIAL CENTRE OF EDMONTON FILED SEP 13 2019 Clerk of the Court

This is Exhibit " H " referred to in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day of SEPTEMBER, 20 19
A Commissioner for Oaths in and for Alberta
MICHAEL R McKINNEY Q.C.
BARRISTER & SOLICITOR

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below

Date	**Wednesday, November 27, 2019**
Time	**10:00 a.m.**
Where	**Law Courts, 1A Sir Winston Churchill Square, Edmonton, Alberta T5J 0R2**
Before Whom	**The Honourable Mr. Justice J.T. Henderson**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1 Determination and direction of the affect of the consent order made by Mr Justice D.R.G. Thomas pronounced on August 24, 2016 (the "**2016 Order**") respecting the transfer of assets from the Sawridge Band Trust dated April 15, 1982 (the "**1982 Trust**") to the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the "**1985 Trust**"), more particularly described below

2. Determination of the sufficiency of service of the 2016 Order.

3. Alternatively, the determination of the ability to perform a subsequent trust to trust transfer, similar to what was approved by the 2016 Order.

Grounds for making this application:

4. In 1982, the Sawridge Band decided to establish a formal trust in respect of property held in trust by individuals on behalf of the present and future members of the Sawridge band On April 15, 1982, a declaration of trust establishing the 1982 Trust was executed

5. On April 15, 1985, the trustees of the 1982 Trust resolved to transfer the assets of the 1982 Trust to the 1985 Trust (the "**1985 Transfer**").

6. In 2016, the Sawridge Trustees, the Office of the Public Guardian and Trustee and Catherine Twinn (collectively, the "**Parties**") agreed to the terms of the 2016 Consent Order respecting the 1985 Transfer.

7. On April 25, 2019, the Parties appeared before His Lordship Mr. Justice Henderson who advised of some concerns with respect to the 1985 Transfer, the consequences of the 2016 Order and the service of the 2016 Order

8 On September 4, 2019, His Lordship Mr. Justice Henderson invited a party to draft and file an application to determine: "what flows from the 2016 Order, and whether, as a result of that order, the Trust assets are held subject to the terms of the 1985 Trust, whether the beneficiaries as described in the 1985 Trust are actually the beneficiaries of these Trust assets, and whether that took away the Trust obligation that existed in the 1982 Trust " (Transcript of Proceedings – September 4, 2019 26 3-8)

9 His Lordship also commented "If it was as easy to change the terms of the Trust as to go ahead and do what was done between 1985 [sic] and 1985, why don't you just go ahead and do that very same thing again and see how far it gets you." (Transcript of Proceedings – September 4, 2019 13 13-15)

10. The Sawridge Trustees have volunteered to file the within application, consistent with The Court's invitation

Material or evidence to be relied on:

11. Affidavits previously filed in this action;
12 Questionings filed in this action;
13 Undertakings filed in this action;
14 Affidavits of records and supplemental affidavits of records in this action;
15 Such further material as counsel may further advise and this Honourable Court may permit

Applicable rules:

16 *Alberta Rules of Court*, Alta Reg 124/2010, Rules 4 11, 4.14, 6 3,
17. Such further and other rules as counsel may advise and this Honourable Court may permit

Applicable Acts, regulations and Orders:

18 *Trustee Act*, RSA 2000, c T-8, as amended;
19. Various procedural orders made in the within action,
20 Such further and other acts, regulations, and orders as counsel may advise and this Honourable Court may permit

Any irregularity complained of or objection relied on:

21 None

How the application is proposed to be heard or considered:

22 In person before the Case Management Justice

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence You will be bound by any order that the Court makes If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered

EXHIBIT "I"

Clerk's stamp

JUDICIAL CENTRE OF EDMONTON
FILED
DEC 19 2018
Clerk of the Court

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

This is Exhibit " I " referred to in the Affidavit of
DARCY TWIN
Sworn before me this 24TH day of SEPTEMBER, 20 19
A Commissioner for Oaths in and for Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

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

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

APPLICANT

ROLAND TWINN, MARGARET WARD, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Trust ("Sawridge Trustees")

DOCUMENT	CONSENT ORDER (Hearing of Jurisdictional Question)
DATE ORDER PRONOUNCED	December 18, 2018
LOCATION WHERE ORDER PRONOUNCED	Edmonton, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER	Honourable Justice J.T. Henderson

I hereby certify this to be a true copy of the original.
for Clerk of the Court

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Dentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton AB T5J 3V5

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

UPON the Application by the Sawridge Trustees for advice and direction in respect of the Sawridge Band Inter Vivos Settlement ("1985 Trust") ("Application");

AND WHEREAS the Sawridge Trustees seek direction respecting the source and nature of the jurisdiction of this Court to make changes to the definition of "Beneficiary" as set out in the 1985 Trust,

AND WHEREAS a Case Management Justice has authority under Rule 4.14 of the *Alberta Rules of Court* to make interlocutory orders;

AND WHEREAS the Sawridge Trustees, the OPGT and Catherine Twinn consent to this Order;

IT IS HEREBY ORDERED AND DECLARED:

1. A hearing on a directed issue will be held, prior to trial, and the issues to be determined (the "Jurisdictional Question") will be as follows

   (a) Does the Court have jurisdiction to amend the beneficiary definition contained in the 1985 Trust (the "Definition"), on the basis of public policy, its inherent jurisdiction or any other common law plenary power?

   (b) If the answer to question (a) is yes, what is the scope of the Court's jurisdiction to amend the Definition, including can the Court

      (i) Add words to the 1985 Trust deed;

      (ii) Delete words contained in the 1985 Trust deed, or

      (iii) Engage in a combination of addition and deletion of words to the 1985 Trust deed?

   (c) If the answer to question (a) is no, is the Court's jurisdiction limited to what is permitted by s. 42 of the *Trustee Act*? If so, what evidence would be required by the Court to amend the Definition using s. 42 of the *Trustee Act*?

   (d) If the Court does not have jurisdiction under any of the methods set out in paragraphs (a), (b) or (c) above, do the Sawridge Trustees have jurisdiction under the existing terms of the Trust Deed of the 1985 Trust to amend the Definition?

   (e) If the Court proceeds pursuant to paragraph 1(c) or 1(d) above, is the Court's jurisdiction in this application affected by the Minors Property Act, and specifically, does the Court require evidence of consent to the application for a beneficiary definition change from minor beneficiaries who are over the age of 14?

2. This Jurisdictional Question will be heard and determined by the Case Management Justice.

The Honourable Justice J.T. Henderson

CONSENTED TO BY:
MCLENNAN ROSS LLP

Crista Osualdini
Counsel for Catherine Twinn

HUTCHISON LAW

Janet Hutchison
Counsel for the OPGT

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

CONSENTED TO BY:

MCLENNAN ROSS LLP

Crista Osualdini
Counsel for Catherine Twinn

HUTCHISON LAW

Janet Hutchison
Counsel for the OPGT

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

	Clerk's stamp: 1103 14112
COURT FILE NUMBER	
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge Trust")
APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
DOCUMENT	**Affidavit of Paul Bujold for Procedural Order**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Doris C.E. Bonora Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-DCEB

JUDICIAL CENTRE OF EDMONTON FILED SEP 06 2011 Clerk of the Court of Queen's Bench

AFFIDAVIT OF PAUL BUJOLD

Sworn on August 30, 2011

I, **Paul Bujold**, of Edmonton, Alberta swear and say that:

1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985 Trust") and the Sawridge Band Trust created in 1986 (hereinafter referred to as the "1986 Trust"), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for setting the procedure for seeking the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust.

3. On April 15, 1982, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "A" to this my affidavit ("1982 Trust").

4. On April 15, 1985, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "B" to this my affidavit ("1985 Trust").

5. On August 15, 1986, Chief Walter Patrick Twinn, who is now deceased, executed a Deed of Settlement a copy of which is attached hereto as Exhibit "C" to this my affidavit ("1986 Trust").

6. The Trustees of the 1985 Trust have been managing substantial assets, some of which were transferred from the 1982 Trust, and wish to make some distributions to the Beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees of the 1985 Trust with respect to the following:

   a. Determining the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary varying the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".

   b. Seeking direction with respect to the transfer of assets to the 1985 Sawridge Trust.

7. In order to determine the beneficiaries of the 1985 Trust, the Trustees of the 1985 Trust directed me to place a series of advertisements in newspapers in Alberta, Saskatchewan, Manitoba and British Columbia to collect the names of those individuals who may be beneficiaries of the 1985 Trust.

8. As a result of these advertisements I have received notification from a number of individuals who may be beneficiaries of the 1985 Trust.

9. I have corresponded with the potential beneficiaries of the 1985 Trust and such correspondence is attached hereto as Exhibit "D".

10. I have compiled a list of the following persons who I believe may have an interest in the application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust:

    a. Sawridge First Nation;

b. All of the registered members of the Sawridge First Nation;

c. All persons known to be beneficiaries of the 1985 Sawridge Trust and all former members of the Sawridge First Nation who are known to be excluded by the definition of "Beneficiaries" in the 1986 Sawridge Trust, but who would now qualify to apply to be members of the Sawridge First Nation;

d. All persons known to have been beneficiaries of the Sawridge Band Trust dated April 15, 1982 (hereinafter referred to as the "1982 Sawridge Trust"), including any person who would have qualified as a beneficiary subsequent to April 15, 1985;

e. All of the individuals who have applied for membership in the Sawridge First Nation;

f. All of the individuals who have responded to the newspaper advertisements placed by the Applicants claiming to be a beneficiary of the 1985 Sawridge Trust;

g. Any other individuals who the Applicants may have reason to believe are potential beneficiaries of the 1985 Sawridge Trust;

h. The Office of the Public Trustee of Alberta (hereinafter referred to as the "Public Trustee") in respect of any minor beneficiaries or potential minor beneficiaries;

(those persons mentioned in Paragraph 10 (a) – (h) are hereinafter collectively referred to as the "Beneficiaries and Potential Beneficiaries"); and

i. Those persons who regained their status as Indians pursuant to the provisions of *Bill C-31* (An Act to amend the *Indian Act,* assented to June 28, 1985) and who have been deemed to be affiliated with the Sawridge First Nation by the Minister of Aboriginal Affairs and Northern Development Canada (hereinafter referred to as the "Minister").

11. The list of Beneficiaries and Potential Beneficiaries consists of 194 persons. I have been able to determine the mailing address of 190 of those persons. Of the four individuals for whom I have been unable to determine a mailing address, one is a person who applied for membership in the Sawridge First Nation but neglected to provide a mailing address when submitting her application. The other three individuals are persons for whom I have reason to believe are potential beneficiaries of the 1985 Trust and whose mother is a current member of the Sawridge First Nation.

12. With respect to those individuals who regained their status as Indians pursuant to the provisions of *Bill C-31* and who have been deemed to be affiliated with the Sawridge First Nation by the Minister, the Minister will not provide us with the current list of these individuals nor their addresses, citing privacy concerns. These individuals are not members of the Sawridge First Nation but may be potential beneficiaries of the 1985 Trust due to their possible affiliation with the Sawridge First Nation.

13. A website has been created and is located at www.sawridgetrust.ca (hereinafter referred to as the "Website"). The Beneficiaries and Potential Beneficiaries and the Minister have

access to the Website and it can be used to provide notice to the Beneficiaries and Potential Beneficiaries and the Minister and to make information available to them.

14. The Trustees seek this Court's direction in setting the procedure for seeking the opinion, advice and direction of the Court in regard to:

    a. Determining the Beneficiaries of the 1985 Trust.

    b. Reviewing and providing direction with respect to the transfer of the assets to the 1985 trust.

    c. Making any necessary variations to the 1985 Trust or any other Order it deems just in the circumstances.

SWORN OR AFFIRMED BY THE DEPONENT BEFORE A COMMISSIONER FOR OATHS AT EDMONTON, ALBERTA ON AUGUST 30, 2011.

PAUL BUJOLD

Commissioner's Name:
Appointment Expiry Date:
MARCO S. PORETTI
Barrister / Solicitor

810070, August 29, 2011
810070, August 30, 2011

This is Exhibit " A " referred to in the Affidavit of Paul Buyold

Sworn before me this 20 day of August A.D., 20 11

A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

MARCO S. PORETTI

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

This Declaration of Trust made the 15th day of April, A.D. 1982.

BETWEEN:

CHIEF WALTER PATRICK TWINN
of the Sawridge Indian Band
No. 19, Slave Lake, Alberta

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band No. 150 A & B respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

Whereas the Settlor is Chief of the Sawridge Indian Band No. 19, and in that capacity has taken title to certain properties on trust for the present and future members of the Sawridge Indian Band No. 19 (herein called the "Band"); and,

Whereas it is desirable to provide greater detail for both the terms of the trust and the administration thereof; and,

Whereas it is likely that further assets will be acquired on trust for the present and future members of the Band, and it is desirable that the same trust apply to all such assets;

NOW, therefore, in consideration of the premises and mutual promises contained herein, the Settlor and each of the Trustees do hereby covenant and agree as follows:

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.

2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions properly made therefrom by the Trustees.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.

4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.

5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

through 80 inclusive of the Indian Act, R.S.C. 1970, c. I-6, as amended from time to time. Upon ceasing to be an elected Chief or Councillor as aforesaid, a Trustee shall ipso facto cease to be a Trustee hereunder; and shall automatically be replaced by the member of the Band who is elected in his stead and place. In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased, it being the intention that the Chief and all Councillors should be Trustees. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

6. The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of twenty one (21) years after the death of the last decendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and

their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries set out above; and the Trustees may make such payments at such time, and from time to time, and in such manner as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investment authorized for Trustees' investments by The Trustees' Act, being Chapter 373 of the Revised Statutes of Alberta 1970, as amended from time to time, but the Trustees are not restricted to such Trustee investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or desirable to give effect to the trust purposes set out above,

and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power

a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by Federal, Provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them

by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take with notice of and subject to this clause.

12. A majority of the Trustees shall be required for any action taken on behalf of the Trust. In the event that there is a tie vote of the Trustees voting, the Chief shall have a second and casting vote.

Each of the Trustees, by joining in the execution of this Trust Agreement, signifies his acceptance of the Trust herein. Any Chief or Councillor or any other person who becomes a Trustee under paragraph 5 above shall signify his acceptance of the Trust herein by executing this Trust Agreement or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Trust Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Trust Agreement.

SIGNED, SEALED AND DELIVERED
In the Presence of:

Heather Lyle
NAME

1100 One Thornton Court
ADDRESS

A. Settlor: Walter P. [redacted]

Heather Lyle
NAME

1100 One Thornton Court
ADDRESS

B. Trustees: I. Walter P. [redacted]

Heather York
NAME

1100 One Thornton Court
ADDRESS

Heather i York
NAME

1100 One Thornton Court
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

2. [signature]

3. Walter F Irvin

4. _____

5. _____

6. _____

7. _____

8. _____

This is Exhibit " B " referred to in the Affidavit of Paul Bigold Sworn before me this 30 day of August A.D., 20 11

A Notary Public A Commissioner for Oaths in and for the Province of Alberta

MARCO S. PORETTI

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

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

B E T W E E N :

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

OF THE FIRST PART,

- and -

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

OF THE SECOND PART.

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

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

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

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

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

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

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

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

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

(b) "Trust Fund" shall mean:

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

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

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

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

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

A. Settlor [redacted]

B. Trustees:

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

1. [redacted]

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

2. [redacted]

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

3. [redacted]

Schedule

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit " C " referred to in the Affidavit of Paul Bujold
Sworn before me this 30 day of August A.D., 20 11
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
MARCO S. PORETTI

THE SAWRIDGE TRUST

DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

BETWEEN:

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

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached hereto;

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

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

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

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

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada;

(b) "Trust Fund" shall mean:

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

(B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed;

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

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

(E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell, lease or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed.

4. The name of the Trust Fund shall be "The Sawridge Trust" and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, the Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner or to any extent detracted from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with this Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of this Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provision of this Deed may be amended from time to time by a resolution of the Trustees that received the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

15. Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Trust shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

NAME

#1 - 12123 Stony Plain Road, Edm.
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor
CHIEF WALTER P. TWINN

B. Trustees:

1.
CHIEF WALTER P. TWINN

2.
CATHERINE TWINN

3.
GEORGE TWIN

860647-1/6

SCHEDULE

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit "D" referred to in the Affidavit of Paul Boyold sworn before me this 30 day of August A.D., 20 11
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
MARCO S. PORETTI

SAWRIDGE TRUSTS

24 November 2009

Dear Sawridge Trusts Potential Beneficiary,

During the consultations carried out by Four World Centre for Development Learning (Four Worlds), some of those consulted raised some questions regarding either the Sawridge Band Inter-Vivos Settlement (1985 Trust) or the Sawridge Trust (1986 Trust) or both (Trusts). The Trustees of the Trusts are pleased to try to answer your questions to the best of our ability based on information available at this time The questions asked were:

- *Who are the trustees and how are they appointed?*
- *Are the children of individuals who became eligible under Bill C-31 also eligible as beneficiaries?*
- *What about the children of those individuals who are now deceased?*
- *What is the process whereby decisions are made about who is or is not a beneficiary?*
- *How do we get to the place where we can operate the Trusts without being forced into boxes originated with the Indian Act and that continue to cause disunity?*
- *If I am a beneficiary under a Trust and I receive benefits, am I taking something from someone else's table?*
- *Do "new" beneficiaries get the same benefits as those who have been eligible for their whole lives?*
- *Can benefits to seniors be structured to avoid tax consequences and not impact old age benefits?*
- *How can we ensure equity for all beneficiaries when the Band only serves those individuals who live on the Reserve?*
- *What happens to the Trust programs if the trustees change and new trustees have a different set of ideas?*

Attached to this letter is a copy of each of the deeds setting out the terms of each of the Trusts. These are the basic governing documents which, along with generally applicable principles and the rules of trust law, determine how the Trusts are operated.

Currently, the trustees of the two Trusts are the same, namely, Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland (Guy) Twinn and Walter Felix Twin. The trustees can be reached through the Trusts' office located in Edmonton, Alberta. The address, telephone number, fax number and email address for the Trusts is listed below on the letterhead. According to the trust deeds, the existing trustees select new trustees as trustees leave. The number of possible trustees for each trust is slightly different but the trustees have chosen to appoint five trustees for both trusts and have appointed the same trustees to each trust so that the two trusts can operate together

Paragraph 6 of the deeds applying to each of the Trusts provides that the trustees have power to distribute income or capital of the Trusts "as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the trustees may make such payment at such time and from time to time, in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate."

Although this provision refers to the Trustees' discretion as "unfettered", it is in fact controlled by the requirements of trust law These requirements, which have been laid down in case law and are expressed in fairly general terms, can be summarized as follows:

- Trustees must give their active consideration to the exercise of their discretionary powers.
- Trustees must act in good faith, in the sense that they must take account of relevant factors and must not take account of irrelevant factors

Whatever is relevant for these purposes depends on the circumstances of each particular case. However, the basic idea is that trustees should take account of factors relevant to the purposes of the Trusts.

The trustees have recently hired a Trust Administrator and Program Manager, Paul Bujold, to administer the benefits, develop the programs and run the office of the Trusts. Paul can be reached at the address and telephone/fax numbers below, by email at paul@sawridgetrusts.ca or on his cell at (780) 270-4209

Sawridge Trusts are developing a web site that will be accessible to all beneficiaries Certain parts of the site will contain documents that are of interest to all beneficiaries while other parts will only be accessible to the particular beneficiary as it will contain private information about that person The Web site will also list the programs currently available through the Trusts and how to access them and will provide useful links to other sites that can provide information or support programs to the beneficiaries.

Each of the Trusts owns all the shares in a separate holding company. In the case of the 1985 Trust, that company is Sawridge Holdings Ltd. and in the case of the 1986 Trust it is 352736 Alberta Ltd. Through these companies, the Trusts have invested in a number of businesses The assets of Sawridge Holdings Ltd. and 352736 Alberta Ltd are listed on the attached flow chart. The Directors of the holding companies and their subsidiaries, called the Sawridge Group of Companies, are independent individuals who have been chosen for their skills and experience in overseeing business enterprises such as those owned by the companies.

The Trusts were established to provide on-going benefits to the beneficiaries from the revenue generated by the Trusts' investments. This revenue fluctuates with the economic climate. The success of the businesses vary, accordingly. The resources of each Trust are limited and any system of programs has to be based on views about equitable and appropriate use of the resources available.

It is for the trustees to consider the weight to be given to particular factors They may consider the length of time a person has been a beneficiary as one relevant factor if this is appropriate to the nature of the particular program or benefit being provided

Another factor the trustees may consider is the impact of taxation, both generally and in the circumstances of particular beneficiaries The trustees may be able to attempt to structure distributions in a way that will be as tax-efficient as reasonably possible. It is possible, however, that a particular distribution from the Trusts may have an impact on a person's entitlement to other programs such as Old Age Security. In considering the appropriate programs, the trustees may consider it relevant that certain programs and other benefits are only available to beneficiaries who live on the Reserve and other programs may only be available to beneficiaries living off the Reserve

As trustees of discretionary trusts, the trustees have a broad discretion to develop those benefits through the Trusts that they feel would, from time to time, assist the individual beneficiaries and the Sawridge Band community grow and develop to better meet their own needs, the costs of which are consistent with the revenues available to the Trusts Following the Four Worlds report, the trustees adopted a list of potential benefits suggested by the beneficiaries and Four Worlds These benefits will be put in place gradually as more work is done on planning the financial impact of the programs on the Trusts and as the programs are matched with other programs already existing through the Regional Council, the Alberta Government, the Canadian Government or other agencies

The trustees are responsible for exercising their discretion in respect of the programs while they are trustees They will be responsible for evaluating the success of the programs on an on-going basis and therefore would be expected to make changes when they determine that changes are required. They also have the power to make changes based on their having, as phrased in the question asked by a beneficiary, "a different set of ideas". However, in order to make any such change they would need to consider whether replacing an already existing program would be reasonable in all the circumstances. The trustees may also, from time to time, have to take into consideration the cost of a program in relation to the amount of revenue available to the Trusts

The rules for eligibility as a beneficiary are presently being worked out for each of the trusts. According to the trust deeds, the persons who qualify as beneficiaries are to some extent different for the 1985 Trust and for the 1986 Trust. In the 1985 Trust (paragraph 2(a) of the Deed), 'beneficiaries' are defined as persons who are also qualified to be Band members in accordance with the criteria provided in the Indian Act as at 15 April 1982. In the 1986 Trust (paragraph 2(a) of the Deed), 'beneficiaries' are defined as "all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada.".

The trustees are presently in the process of having some research carried out by experts in Canadian law and First Nations and Cree traditional law to develop a clear list of criteria. This

will help in the process of determining who is an eligible beneficiary, especially under the 1985 Trust where the rules are more complex

As part of this process, the trustees will post a notice in newspapers in British Columbia, Alberta and Saskatchewan asking anyone who thinks that they may be a beneficiary under either trust to provide the Trusts with information about why they feel they are eligible. Based on the facts determined and the legal advice received, the Trusts will then develop a list of qualified beneficiaries. Where it is still not clear after this process whether someone is or is not a beneficiary, the Trusts will apply to the Alberta Court for its advice on the matter.

We hope that this information answers most people's questions As more information becomes available we will keep the beneficiaries informed, either by newsletter or through the web site. If you have any questions, please do not hesitate to contact our office and the Trusts Administrator will try to assist you.

Cordially

Paul Bujold,

Interim Chair

Sawridge Trusts Board of Trustees

Attachments

Clerk's stamp.

COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S A. 2000, c. T-8, AS AMENDED IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge Trust")
APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
DOCUMENT	**AFFIDAVIT OF PAUL BUJOLD on advice and direction in the 1985 trust**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Attention: Doris C.E. Bonora Telephone: (780) 425-9510 Fax. (780) 429-3044 File No: 108511-001-DCEB

AFFIDAVIT OF PAUL BUJOLD

Sworn on September 12, 2011

I, Paul Bujold, of Edmonton, Alberta swear and say that:

1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985

Trust") and the Sawridge Band Trust created in 1986 (hereinafter referred to as the "1986 Trust"), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust

Issues for this Application

3. At present, there are five trustees of the 1985 Trust: Bertha L'Hirondelle, Clara Midbo, Catherine Twinn, Roland C. Twinn and Walter Felix Twin (hereinafter referred to as the "Trustees").

4. The Trustees would like to make distributions for the benefit of the beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees:

   a. Regarding the definition of "Beneficiaries" contained in the 1985 Trust.

   b. Regarding the transfer of assets into the 1985 Trust.

5. Accordingly, the Trustees seek the opinion, advice and direction of the Court in regard to these matters.

Background

6. In 1966, Chief Walter Patrick Twinn (hereinafter referred to as "Chief Walter Twinn") became the Chief of the Sawridge Band No. 454, now known as Sawridge First Nation (hereinafter referred to as the "Sawridge First Nation" or the "Nation"), and remained the Chief until his death on October 30, 1997.

7. I am advised by Ronald Ewoniak, CA, retired engagement partner on behalf of Deloitte & Touche LLP to the Sawridge Trusts, Companies and First Nation, and do verily believe, that Chief Walter Twinn believed that the lives of the members of the Sawridge First Nation could be improved by creating businesses that gave rise to employment opportunities Chief Walter Twinn believed that investing a portion of the oil and gas royalties received by the Nation would stimulate economic development and create an avenue for self-sufficiency, self-assurance, confidence and financial independence for the members of the Nation.

8. I am advised by Ronald Ewoniak, CA, and do verily believe, that in the early 1970s the Sawridge First Nation began investing some of its oil and gas royalties in land, hotels and other business assets. At the time, it was unclear whether the Nation had statutory ownership powers, and accordingly assets acquired by the Nation were registered to the names of individuals who would hold the property in trust. By 1982, Chief Walter Twinn, George Twin, Walter Felix Twin, Samuel Gilbert Twin and David Fennell held a number of assets in trust for the Sawridge First Nation.

Creation of the 1982 Trust

9. I am advised by Ronald Ewoniak, CA, and do verily believe, that in 1982 the Sawridge First Nation decided to establish a formal trust in respect of the property then held in trust by individuals on behalf of the present and future members of the Nation. The establishment of the formal trust would enable the Nation to provide long-term benefits to the members and their descendents. On April 15, 1982, a declaration of trust establishing the Sawridge Band Trust (hereinafter referred to as the "1982 Trust") was executed. Attached as **Exhibit "A"** to my Affidavit is a copy of the 1982 Trust.

10. In June, 1982, at a meeting of the trustees and the settlor of the 1982 Trust, it was resolved that the necessary documentation be prepared to transfer all property held by Chief Walter Twinn, George Vital Twin and Walter Felix Twin, in trust for the present

and future members of the Nation, to the 1982 Trust. Attached as **Exhibit "B"** to my Affidavit is a copy of the resolution passed at the said meeting dated June, 1982.

11. The 1982 Trust was varied by a Court Order entered on June 17, 2003, whereby paragraph 5 of the 1982 Trust was amended to provide for staggered terms for the trustees. Attached as **Exhibit "C"** to my Affidavit is a copy of the Court Order entered on June 17, 2003 varying the 1982 Trust.

12. On December 19, 1983, a number of properties and shares in various companies which had been held by Chief Walter Twinn, Walter Felix Twin, Samuel Gilbert Twin and David Fennell in trust for the present and future members of the Nation were transferred into the 1982 Trust. Attached as **Exhibit "D"** to my Affidavit is an agreement dated December 19, 1983, transferring certain assets into the 1982 Trust. Attached as **Exhibit "E"** to my Affidavit is a transfer agreement dated December 19, 1983 transferring certain assets from the 1982 Trust to Sawridge Holdings Ltd.

Changes in Legislation – The *Charter of Rights and Freedoms* and *Bill C-31*

13. On April 17, 1982, the *Constitution Act, 1982*, which included the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the "*Charter*"), came into force. Section 15 of the *Charter* did not have effect, however, until April 17, 1985, to enable provincial and federal legislation to be brought into compliance with it.

14 After the *Charter* came into force, the federal government began the process of amending the *Indian Act*, R.S.C. 1970, c. I-6 (hereinafter referred to as the "1970 *Indian Act*"). Following the federal election in 1984, the government introduced *Bill C-31*, a copy of which is attached as **Exhibit "F"** to my Affidavit. *Bill C-31* was introduced to address concerns that certain provisions of the 1970 *Indian Act* relating to membership were discriminatory.

15. It was expected that *Bill C-31* would result in an increase in the number of individuals included on the membership list of the Sawridge First Nation. This led the Nation to settle a new trust, the 1985 Trust, within which assets would be preserved for the Band members as defined by the legislation prior to *Bill C-31*.

Creation of the 1985 Trust

16 Attached as **Exhibit "G"** to my Affidavit is a copy of the 1985 Trust dated April 15, 1985.

17. The 1985 Trust provides that the "Beneficiaries" are.

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

18. The 1985 Trust effectively "froze" the definition of beneficiaries according to the legislation as it existed prior to *Bill C-31*.

19. Attached as **Exhibit "H"** to my Affidavit is a copy of a Resolution of Trustees dated April 15, 1985, whereby the trustees of the 1982 Trust resolved to transfer all of the assets of the 1982 Trust to the 1985 Trust.

20. On April 15, 1985, the Sawridge First Nation approved and ratified the transfer of the assets from the 1982 Trust to the 1985 Trust. Attached as **Exhibit "I"** to my Affidavit is a Sawridge Band Resolution dated April 15, 1985 to this effect.

21. On April 16, 1985 the trustees of the 1982 Trust and the trustees of the 1985 Trust declared:

    a. that the trustees of the 1985 Trust would hold and continue to hold legal title to the assets described in Schedule "A" of that Declaration; and

    b. that the trustees of the 1985 Trust had assigned and released to them any and all interest in the Promissory Notes attached as Schedule "B" of that Declaration.

    Attached as **Exhibit "J"** to this my Affidavit is the Declaration of Trust made April 16, 1985.

22. Based upon my review of the exhibits attached to this my affidavit and upon the knowledge I have acquired as Chief Executive Officer of the Sawridge Trusts, I believe that all of the property from the 1982 Trust was transferred to the 1985 Trust. Further, there was additional property transferred into the 1985 Trust by the Sawridge First Nation or individuals holding property in trust for the Nation and its members

23. The transfers were carried out by the trustees of the 1982 Trust under the guidance of accountants and lawyers The Trustees have been unable to locate all of the necessary documentation in relation to the transfer of the assets from the 1982 Trust to the 1985 Trust or in relation to the transfer of assets from individuals or the Nation to the 1985 Trust.

24. It is clear that the transfers were done but the documentation is not currently available. The Trustees have been operating on the assumption that they were properly guided by their advisors and the asset transfer to the 1985 Trust was done properly

25. The Trustees seek the Court's direction to declare that the asset transfer was proper and that the assets in the 1985 Trust are held in trust for the benefit of the beneficiaries of the 1985 Trust.

26. The 1985 Trust is the sole shareholder of Sawridge Holdings Ltd. I am advised by Ralph Peterson, Chairman of the Board of Directors of the Sawridge Group of Companies, and do verily believe that an approximate value of the 1985 Trust investment in Sawridge Holdings Ltd. as at December 31, 2010 is $68,506,815 This represents an approximate value of the net assets of Sawridge Holdings Ltd., assuming all assets could be disposed of at their recorded net book value and all liabilities are settled at the recorded values as at that date, with no consideration for the income tax effect of any disposal transactions.

27. Taking into account the other assets and liabilities of the 1985 Trust, the approximate value of the net assets of the 1985 Trust as at December 31, 2010 is $70,263,960.

28. To unravel the assets of the 1985 Trust after 26 years would create enormous costs and would likely destroy the trust. Assets would have to be sold to pay the costs and to pay the taxes associated with a reversal of the transfer of assets.

Creation of the 1986 Trust

29. Attached to my affidavit as **Exhibit "K"** is a copy of the 1986 Trust dated August 15, 1986. The beneficiaries of the 1986 Trust included all members of the Sawridge First Nation in the post-*Bill C-31* era.

30. The Sawridge First Nation transferred cash and other assets into the 1986 Trust to further the purposes of the trust. After April 15, 1985 no further funds or assets were put into the 1985 Trust.

31. Effectively, the assets in existence as at April 15, 1985 were preserved for those who qualified as Sawridge members based on the definition of membership that existed at that time. The 1986 Trust was established so that assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed in the post-*Bill C-31* era.

Identification of Beneficiaries Under the 1985 Trust and the 1986 Trust

32. The Trustees have determined that maintaining the definition of "Beneficiaries" contained in the 1985 Trust is potentially discriminatory. The definition of "Beneficiaries" in the 1985 Trust would allow non-members of the Nation to be beneficiaries of the 1985 Trust and would exclude certain members of the Nation (such as those individuals acquiring membership as a result of *Bill C-31*) from being beneficiaries.

33. The Trustees believe that it is fair, equitable and in keeping with the history and purpose of the Sawridge Trusts that the definition of "Beneficiaries" contained in the 1985 Trust be amended such that a beneficiary is defined as a member of the Nation, which is consistent with the definition of "Beneficiaries" in the 1986 Trust.

Current Status

34 The Trustees have been administering the Sawridge Trusts for many years. In December of 2008, the Trustees retained the Four Worlds Centre for Development Learning (hereinafter referred to as "Four Worlds") to conduct a consultation process with the beneficiaries of the Sawridge Trusts Four Worlds prepared a report identifying the types of programs and services that the Sawridge Trusts should offer to the beneficiaries and

the types of payments the Trustees should consider making from the trusts. Attached hereto as **Exhibit "L"** is a summary chart of recommendations taken from the said report.

35. Having undertaken the consultation process, the Trustees have a desire to confer more direct benefits on the beneficiaries of the Sawridge Trusts. The Trustees require clarification and amendment of the 1985 Trust such that the definition of "Beneficiaries" in the 1985 Trust is varied to make it consistent with the definition of "Beneficiaries" in the 1986 Trust. In this way the members of the Nation are the beneficiaries of both the 1985 Trust and the1986 Trust and the assets that once belonged to the Nation can be distributed through the trusts to the members of the Nation.

SWORN before me at Edmonton
in the Province of Alberta,
on the 12 day of September, 2011.

A Magnan
A Commissioner for Oaths in and for
the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 20 12

Paul Bujold

809051_2,September 12, 2011

This is Exhibit " A " referred to in the Affidavit of Paul Ruiold
Sworn before me this 12 day of September A.D., 2012
A. Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 2012

DECLARATION OF TRUST

SAWRIDGE BAND TRUST

This Declaration of Trust made the 15th day of April, A.D. 1982.

BETWEEN:

CHIEF WALTER PATRICK TWINN
of the Sawridge Indian Band
No. 19, Slave Lake, Alberta

(hereinafter called the "Settlor")

of the First Part

AND:

CHIEF WALTER PATRICK TWINN,
WALTER FELIX TWINN and GEORGE TWINN
Chief and Councillors of the
Sawridge Indian Band No. 150 A & B respectively

(hereinafter collectively called the "Trustees")

of the Second Part

AND WITNESSES THAT:

Whereas the Settlor is Chief of the Sawridge Indian Band No. 19, and in that capacity has taken title to certain properties on trust for the present and future members of the Sawridge Indian Band No. 19 (herein called the "Band"); and,

whereas it is desirable to provide greater detail for both the terms of the trust and the administration thereof; and,

Whereas it is likely that further assets will be acquired on trust for the present and future members of the Band, and it is desirable that the same trust apply to all such assets;

NOW, therefore, in consideration of the premises and mutual promises contained herein, the Settlor and each of the Trustees do hereby covenant and agree as follows:

1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.

2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean: a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefor and b) all income received and capital gains made thereon, less c) all expenses incurred and capital losses sustained thereon and less d) distributions properly made therefrom by the Trustees.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.

4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration office located on the Sawridge Band Reserve.

5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Band, for the time being, as duly elected pursuant to Sections 74

through 80 inclusive of the Indian Act, R.S.C. 1970, c. I-6, as amended from time to time. Upon ceasing to be an elected Chief or Councillor as aforesaid, a Trustee shall ipso facto cease to be a Trustee hereunder; and shall automatically be replaced by the member of the Band who is elected in his stead and place. In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased, it being the intention that the Chief and all Councillors should be Trustees. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

6. The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of twenty one (21) years after the death of the last decendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and

their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any member of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries set out above; and the Trustees may make such payments at such time, and from time to time, and in such manner as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investment authorized for Trustees' investments by The Trustees' Act, being Chapter 373 of the Revised Statutes of Alberta 1970, as amended from time to time, but the Trustees are not restricted to such Trustee investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or desirable to give effect to the trust purposes set out above,

and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power

a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by Federal, Provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them

by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take with notice of and subject to this clause.

12. A majority of the Trustees shall be required for any action taken on behalf of the Trust. In the event that there is a tie vote of the Trustees voting, the Chief shall have a second and casting vote.

Each of the Trustees, by joining in the execution of this Trust Agreement, signifies his acceptance of the Trust herein. Any Chief or Councillor or any other person who becomes a Trustee under paragraph 5 above shall signify his acceptance of the Trust herein by executing this Trust Agreement or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Trust Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Trust Agreement.

SIGNED, SEALED AND DELIVERED
In the Presence of:

Heather Lyle
NAME
1100 One Thornton Court
ADDRESS

A. Settlor: Walter P. [illegible]

Heather Lyle
NAME
1100 One Thornton Court
ADDRESS

B. Trustees: I. Walter P. [illegible]

Heather York
NAME

1100 One Hounton Court
ADDRESS

Heather York
NAME

1100 One Hounton Court
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

2. [redacted]

3. Walter F. [redacted]

4. _____

5. _____

6. _____

7. _____

8. _____

Meeting of the Trustees and Settlors of the
SAWRIDGE BAND TRUST
June, 1982, held at Sawridge Band Office
Sawridge Reserve, Slave Lake, Alberta

IN ATTENDANCE

WALTER P. TWINN
GEORGE TWIN
WALTER FELIX TWIN

All the Trustees and Settlors being present, formal notice calling the meeting was dispensed with and the meeting declared to be regularly called. Walter P. Twinn acted as Chairman, and called the meeting to order. George Twinn acted as secretary.

IT IS HEREBY RESOLVED.

1. THAT the Solicitors and David A. Fennell and David Jones and the Accountants, Ron Ewoniak of Deloitte, Haskins & Sells presented to the Settlors a Trust Settlement document which settled certain of the assets of the Band on the Trust.

2. THAT this document was reviewed by the Settlors and approved unanimously.

3. THAT the Trustees then instructed the Solicitors to prepare the necessary documentation to transfer all property presently held by themselves to the Trust and to present the documentation for review and approval.

There being no further business, the meeting then adjourned.

WALTER P. TWINN

GEORGE TWINN

WALTER FELIX TWINN

This is Exhibit " B " referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day
of September A.D., 2011
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 2012

This is Exhibit " C " referred to in the Affidavit of
Paul Bujold
Sworn before me this 12 day of September A.D., 2011
A. Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires January 29, 2012

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

IN THE MATTER OF THE SAWRIDGE BAND TRUST:

BETWEEN:

WALTER P. TWINN, GEORGE TWINN AND SAMUEL TWINN

APPLICANTS

AND:

WALTER P. TWINN (as representative of the beneficiaries)

RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE D. H. BOWEN IN CHAMBERS LAW COURTS, EDMONTON) ON WEDNESDAY, THE 15TH DAY OF JUNE, A.D. 1983.

ORDER

UPON HEARING THE APPLICATION of the Applicant in the matter of the variation of the Sawridge Band Trust to amend paragraph 5 of the original trust deed made on the 15th day of April, 1982 (a copy of which is attached) pursuant to the Alberta Trustee Act, R.S.A. 1980 c. T-10, s.42(1);

IT IS ORDERED that the Sawridge Band Trust be amended to allow the increase of the terms of office of the Trustees to 6 years for the Chief, 4 years for the Councillor (a), 2 years for Councillor (b) and that the Trustees complete their terms before they are replaced.

Clerk of the Court

Filed this 17 day June A.D. 83

No. 8303 15827 A.D. 1983

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE SAWRIDGE BAND TRUST:

BETWEEN:

WALTER P. TWINN, GEORGE TWINN
AND SAMUEL TWINN

APPLICANTS

AND:

WALTER P. TWINN (as representative
of the beneficiaries)

RESPONDENT

ORDER

David A Fennell
Professional Corporation
910, 10310 Jasper Avenue
Edmonton, Alberta

THIS AGREEMENT made with effect from the 14th day of December A.D. 1983.

This is Exhibit "D" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D. 20 11
A Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 20 12

BETWEEN:

WALTER PATRICK TWINN, WALTER FELIX TWINN, SAM TWINN, and DAVID A. FENNELL (each being Trustees of certain properties for the Sawridge Indian Band, herein referred to as the "Old Trustees")

OF THE FIRST PART

and:

WALTER PATRICK TWINN, SAM TWINN and GEORGE TWINN (together being the current Trustees of the Sawridge Band Trust, herein referred to as the "New Trustees")

OF THE SECOND PART

WHEREAS:

1. Each of the Old Trustees individually or together with one or more or the other Old Trustees holds one or more of those certain properties listed in Appendix A attached hereto in trust for the present and future members of the Sawridge Indian Band;

2. The Sawridge Band Trust has been established to provide a more formal vehicle to hold property for the benefit of present and future members of the Sawridge Indian Band; and

.../2

3. It is desirable to consolidate all of the properties under the Sawridge Band Trust, by having the Old Trustees transfer the said properties listed in Appendix A to the New Trustees.

NOW THEREFORE, THIS AGREEMENT WITNESS AS FOLLOWS:

1. Each of the Old Trustees hereby transfers all of his legal interest in each of the properties listed in Appendix A attached hereto to the New Trustees as joint tenants, to be held by the New Trustees on the terms and conditions set out in the Sawridge Band Trust, and as part of the said Trust.

2. The Old Trustees agree to convey their said legal interests in the properties referred to above in the New Trustees, or to their order, forthwith upon being directed to do so by the New Trustees, and in the meantime hold their interests in the said properties as agents of the New Trustees and subject to the direction of the New Trustees.

3. The New Trustees hereby undertake to indemnify and save harmless each and every one of the Old Trustees with respect to any claim or action arising after the date of this Agreement with respect to the said properties herein transferred to the New Trustees.

IN WITNESS WHEREOF each of the parties hereto has signed on the respective dates indicated below:

Witness

Walter Patrick Twinn

Dec 19/83

Date

Witness

Walter F. Twinn

Walter Felix Twinn

Dec 19/83

Date

.../3

Witness

Sam Twinn

Dec 19/53

Date

Witness

David A. Fennell

Dec 19/53

Date

Witness

Walter Patrick Twinn

Dec 19/53

Date

Witness

Sam Twinn

Dec 19/53

Date

Witness

George Twinn

Dec 19/53

Date

SCHEDULE "A"

Description	Adjusted Cost Base	Consideration
A. The Zeidler Property All that portion of the Northeast quarter of Section 36, Township 72, Range 6. West of the 5th Meridian which lies between the North limit of the Road as shown on Road Plan 946 E.O. and the Southwest limit of the right-of-way of the Edmonton Dunevegan and British Columbia Railway on shown on Railway Plan 4961 B. O. containing 28.1 Hectare (69.40 acres) more or less excepting thereout: (a) 22.6 Hectares (55.73 acres) more or less described in Certificate of Title No. 227-V-136; (b) 0.158 Hectares (1.28 acres) more or less as shown on Road Plan 469 L.Z.	$100,000.00	Primissory Note in the amount of $100,000.00 1 Common share in Sawridge Holdings Ltd.
B. The Planer Mill Plan 2580 T.R., Lot Four (4), containing 7.60 Hectares (18.79 acres) more or less (P.T. SECS. 29 and 30-72-4-W5TH, Mitsue Lake Industrial Park) excepting thereout all mines and minerals.	Land $ 64,633.00 Equipment $135,687.00	Promissory Note in the amount of $200,320.00 1 Common Share in Sawridge Holdings L

Description	Adjusted Cost Base	Consideration
C. Mitsue Property		
Plan 2580 T.R. Lot Eight (8) containing 6.54 Hectares more or less (part of Sections 29 and 30-72-4-W5TH, Mitsue Lake Industrial Park) excepting thereout all mines and minerals and the right to work the same.	Land $ 55,616.00 Building $364,325.00	Promissory Note in the amount of $419,941.00 1 Common Share in Sawridge Holdings Lt.
D. The Residences		
Lot 3, Block 7, Plan 1915 H.W. (305-1st St. N.E.)	Land $ 24,602.00 House $ 30,463.00	Promissory Note in the amount of $40,000.00 1 Common Share in Sawridge Holdings Lt.
Lot 18, Block 35, Plan 5928 R.S. (301-7th St. S.E.)	$ 20,184.00	Promissory Note in the amount of $4,620.00 Mortgage assumed $15,564 1 Common Share in Sawridge Holdings Lt
Lot 17, Block 35, Plan 5928 R.S. (303-7th St. S.E.)	$ 20,181.00	Promissory Note in the amount of $4,564.00 Mortgage assumed $15,617.00 1 Common Share in Sawridge Holdings Lt

Description	Consideration
E. Shares in Companies	
1. Sawridge Holdings Ltd.	
Walter Patrick Twinn - 20 Class "A" common	
George Twinn - 2 Class "A" common	
Walter Felix Twinn - 10 Class "A" common	
2. Sawridge Enterprises Ltd.	
Walter P. Twinn - 1 share	1 commmon share in Sawridge Holdings Ltd.
G. Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
George Twinn - 1 share	1 common share in Sawridge Holdings Ltd.
3. Sawridge Development Co. (1977) Ltd.	
Walter P. Twinn - 8 common	1 common share in Sawridge Holdings Ltd.
Sam Twinn - 1 common	1 common share in Sawridge Holdings Ltd.
Walter Felix Twinn - 1 common	1 common share in Sawridge Holdings Ltd.

Description	Adjusted Cost Base	Consideration
Sawridge Hotels Ltd.		
Walter P. Twinn, 1059	$8,138.00	Promissory Note from Sawridge Holdings Ltd. $8,138.00 1 Common Share in Sawridge Holdings Ltd.
David A. Fennell, 1	$ 1.00	1 Common Share in Sawridge Holdings Ltd.
5. Slave Lake Developments Ltd.		
Band holds 22,000 shares	$ 44,000	Promissory Note from Sawridge Holdings Ltd. in the amount of $44,000 1 common share in Sawridge Holdings Ltd.
Walter Twinn holds 250 shares	$ 250.	1 common shares in Sawridge Holdings Ltd.

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT ($293,178.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

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DATED at the City of Edmonton, in the Province of Alberta, this 19th day of November, A.D. 1983.

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Per: _____

Per: _____

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PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of EIGHT THOUSAND, ONE HUNDRED AND THIRTY EIGHT ($8,138.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: Walter Twinn

Per: [signature]

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of FORTY FOUR THOUSAND, ($44,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 15 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED FIFTY ONE THOUSAND THREE HUNDRED ($251,300.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

THIS AGREEMENT made with effect from the day of September A.D. 1983.

This is Exhibit "E" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 20 11
A Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 20 12

TRANSFER AGREEMENT

BETWEEN:

WALTER PATRICK TWINN, SAM TWINN, and GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, herein referred to as the "New Trustees")

OF THE FIRST PART

and:

SAWRIDGE HOLDINGS LTD. (a federally incorporated Company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, Province of Alberta, hereinafter referred to as the "Purchaser")

OF THE SECOND PART

WHEREAS:

1. The New Trustees are the legal owners of certain assets (herein referred to as the "property") described in Schedule "A" annexed to this Agreement, and hold the property in trust for the members of the Sawridge Indian Band.

2. The New Trustees have agreed to transfer to the Purchaser all of their right, title and interest in and to the property and the Purchaser has agreed to purchase the property upon and subject to the terms set forth herein;

.../2

3. The New Trustees and the Purchaser have agreed to file jointly an Election under subsection 85(1) of the Federal Income Tax Act in respect of the property and the amount to be elected in respect of the property as set forth in Schedule "A" to this Agreement, the said Election and amounts having been made and agreed to only for tax purposes of the parties hereto;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT:

1. For good and valuable consideration as more particularly set forth in Schedule "A" hereto, now paid by the Purchaser to the New Trustees (the receipt and sufficiency of which is hereby acknowledged) and being fair market value of the property described and referred to in the said Schedule "A", the New Trustees hereby grant, bargain, sell, assign, transfer, convey and set over unto the Purchaser, its successors and assigns, the property owned by the New Trustees as described and referred to in Schedule "A" hereto annexed.

2. The purchase price for the property shall be paid as follows:

(a) by promissory note or notes drawn by the Purchaser in favour of the New Trustees equal in value to the aggregate of the adjusted cost bases to the New Trustees of all items of the said property;

(b) by the issuing by the Purchaser to the New Trustees of one or more Common Shares of the Purchaser.

.../3

3. The new Trustees hereby covenant, promise and agree with the purchaser that the New Trustees are or are entitled to be now rightfully possessed of and entitled to the property hereby sold, assigned and transferred to the purchaser, and that the New Trustees have covenant good right, title and authority to sell, assign and transfer the same unto the Purchaser, its successors and assigns, according to the true intent and meaning of these presents; and the Purchaser shall immediately after the execution and delivery hereof have possession and may from time to time and at all times hereafter peaceably and quietly have, hold, possess and enjoy the same and every part thereof to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by the New Trustees or any person whomsoever; and the Purchaser shall have good and marketable title thereto, free and clear and absolutely released and discharged from and against all former and other bargains, sales, gifts, grants, mortgages, pledges, security interests, adverse claims, liens, charges and encumbrances of any nature or kind whatever (except as specifically agreed to between the parties).

4. For the purposes hereof:

(i) "fair market value" of the property

(a) shall mean the fair market value thereof on the effective date of this Agreement,

(b) subject to (c) below, the fair market value of the property which is being mutually agreed upon by the New Trustees and the Purchaser is listed and as described in Schedule A attached hereto;

(b) in the event that the Minister of National Revenue or any other competent authority at any time finally determines that the fair market value of the property referred to in (a) above differs from the mutually agreed upon value in (b) above, the fair market value of the property shall for all purposes of this Agreement be deemed always to have been equal to the value finally determined by the said Minister or other competent authority.

.../4

(ii) "tax cost" of the property shall mean the cost amount of the property for income tax purposes, as of the effective date of this Agreement.

(iii) The "purchase price" for the property shall be the fair market value thereof as determined under (i) above.

5. The New Trustees and the Purchaser shall jointly complete and file Form T2057 (Election on Disposition of Property to a Canadian Corporatin, herein referred to as "Election") required under subsection 85(1) of The Federal Income Tax Act in respect of the property with the Edmonton district offices of Revenue Canada - Taxation on or before such dates as may be required by the said Income Tax Act.

6. The Purchaser shall, upon execution of this Agreement, cause to be issued and allotted to the New Trustees the shares set out in Schedule A hereto.

7. The New Trustees covenant and agree with the Purchaser, its successor and assigns, that they will from time to time and at all times hereafter, upon every reasonable request of the Purchaser, its successors and assigns, make, do and execute or cause and procure to be made, done and executed all such further acts, deeds or assurances as may be reasonably required by the Purchaser, its successors and assigns, for more effectually and completely vesting in the Purchaser, its successors and assigns, the property hereby sold, assigned and transfered in accordance with the terms hereof, and the Purchaser makes the same undertaking in favour of the New Trustees.

.../5

IN WITNESS WHEREOF this Agreement has been executed on the dates indicated by the New Trustees and the Purchaser effective as of the date first above written.

Dec 19/83
Date

Walter Patrick Twinn

J.J. Cappuccitti
Witness

Dec 19/83
Date

Sam Twinn

J.J. Cappuccitti
Witness

Dec 19/83
Date

George Twinn

J.J. Cappuccitti
Witness

Dec 19/83
Date

Sawridge Holdings Ltd.

Witness (c/s)

APPENDIX "A"

THIS is Appendix "A" to an Agreement made with effect from the [illegible] day of [illegible], A.D. 1983.

BETWEEN:

WALTER PATRICK TWINN, WALTER FELIX TWINN, SAM TWINN, and DAVID A. FENNELL (the "Old Trustees")

and:

WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (the "New Trustees")

The properties referred to in that Agreement are:

	Description	Old Trustee(s)
A.	The Zeidler Property	
	All that portion of the Northeast quarter of Section 36, Township 72, Range 6, West of the 5th Meridian which lies between the North limit of the Road as shown on Road Plan 946 E.O. and the Southwest limit of the right-of-way of the Edmonton Dunevegan and British Columbia Railway as shown on Railway Plan 4961 B.O. containing 28.1 Hectares (69.40 acres) more or less	Walter P. Twinn
	excepting thereout:	
	(a) 22.6 Hectares (55.73 acres) more or less described in Certificate of Title No. 227-V-136;	
	(b) 0.158 Hectares (1.28 acres) more or less as shown on Road Plan 469 L.Z.	

.../7

	Description	Old Trustee(s)
B.	The Planer Mill Plan 2580 T.R., Lot Four (4), containing 7.60 Hectares (18.79 acres) more or less, (P.T. SECS. 29 and 30-72-4-W5TH, Mitsu Lake Industrial Park) excepting thereout all mines and minerals.	Walter P. Twinn
C.	Mitsue Property Plan 2580 T.R. Lot Eight (8) containing 6.54 Hectares more or less (part of Sections 29 and 30-72-4-W5TH, Mitsu Lake Industrial Park) excepting thereout all mines and minerals and the right to work the same.	
D.	The Residences Lot 3, Block 7, Plan 1915 H.W. (305-1st St. N.E.) Lot 18, Block 35, Plan 5928 R.S. (301-7th St. S.E.) Lot 17, Block 35, Plan 5928 R.S. (303-7th St. S.E.)	Walter P. Twinn

D. Shares in Companies

1. Sawridge Holdings Ltd.

Walter Patrick Twinn -
20 Class "A" common

George Twinn -
2 Class "A" common

Walter Felix Twinn -
10 Class "A" common

Description	Trustee(s)

2. Sawridge Enterprises Ltd.

Walter P. Twinn -
1 share

Samuel G. Twinn -
1 share

George Twinn -
1 share

3. Sawridge Development Co. (1977) Ltd.

Walter P. Twinn -
8 common

Sam Twinn -
1 common

Walter Felix Twinn -
1 common

4. Sawridge Hotels Ltd.

Walter P. Twinn, 1059

David A. Fennell, 1

5. Slave Lake Developments Ltd.

Band holds 22,000 shares

Walter Twinn holds 250 shares

Acts of the Parliament of Canada

Lois du Parlement du Canada

Passed in the year
1985

adoptées en
1985

During the thirty-third
and thirty-fourth years
of the Reign of Her Majesty
QUEEN ELIZABETH II

pendant les trente-troisième et
trente-quatrième années
du règne de Sa Majesté
LA REINE ELIZABETH II

These Acts were passed during
that portion of the First
Session of the Thirty-Third
Parliament that included
the 1985 calendar year

au cours de la période 1985 de la
première session de la
trente-troisième législature

Her Excellency the Right Honourable
JEANNE SAUVÉ
Governor General

Son Excellence la très honorable
JEANNE SAUVÉ
Gouverneur général

CHAPTER 27

An Act to amend the Indian Act

[*Assented to 28th June 1985*]

R.S., c. I-6, c. 10 (2nd Supp.); 1974-75-76, c. 48, 1978-79, c. 11, 1980-81-82-83, cc. 47, 110, 1984 c. 4

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows

1. (1) The definitions "child", "elector" and "Registrar" in subsection 2(1) of the *Indian Act* are repealed and the following substituted therefor in alphabetical order within the subsection:

"child" *«enfant»*

" "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom;

"elector" *«électeur»*

"elector" means a person who

(*a*) is registered on a Band List,

(*b*) is of the full age of eighteen years, and

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

"Registrar" *«registraire»*

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department,"

(2) Subsection 2(1) of the said Act is further amended by adding thereto, in alphabetical order within the subsection, the following definitions

"Band List" *«liste »*

" "Band List" means a list of persons that is maintained under section 8 by a band or in the Department,

CHAPITRE 27

Loi modifiant la Loi sur les Indiens

[*Sanctionnée le 28 juin 1985*]

S.R., c. I-6; ch. 10 (2e suppl.), 1974-75-76, ch. 48, 1978-79, ch. 11, 1980-81-82-83, ch. 47, 110; 1984, ch. 4

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, décrète

1. (1) Les définitions de «électeur», «enfant» et «registraire», au paragraphe 2(1) de la *Loi sur les Indiens*, sont abrogées et respectivement remplacées par ce qui suit

«électeur» *"elector"*

«électeur» signifie une personne qui

a) est inscrite sur une liste de bande,

b) a dix-huit ans révolus, et

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

«enfant» *"child"*

«enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté, ainsi qu'un enfant adopté selon la coutume indienne,

«registraire» *"Registrar"*

«registraire» désigne le fonctionnaire du ministère responsable du registre des Indiens et des listes de bande tenus au ministère;»

(2) Le paragraphe 2(1) de la même loi est modifié par insertion, suivant l'ordre alphabétique, de ce qui suit

«liste de bande» *"Band List"*

«liste de bande» signifie une liste de personnes tenue en vertu de l'article 8 par une bande ou au ministère,»

«registre des Indiens» *"Indian Register"*

«registre des Indiens» signifie le registre de personnes tenu en vertu de l'article 5,»

"Indian Register" means the register of persons that is maintained under section 5,"

"Indian Register" *«registre»*

2. Section 4 of the said Act is amended by striking out subsection (2) and substituting the following therefor

2. L'article 4 de la même loi est modifié par retranchement du paragraphe (2) et son remplacement par ce qui suit :

Act may be declared inapplicable

"(2) The Governor in Council may by proclamation declare that this Act or any portion thereof, except sections 5 to 14.3 or sections 37 to 41, shall not apply to

(*a*) any Indians or any group or band of Indians, or

(*b*) any reserve or any surrendered lands or any part thereof,

and may by proclamation revoke any such declaration

«(2) Le gouverneur en conseil peut, par proclamation, déclarer que la présente loi, ou toute partie de celle-ci, sauf les articles 5 à 14.3 et 37 à 41, ne s'applique pas

a) à des Indiens ou à un groupe ou une bande d'Indiens, ou

b) à une réserve ou à des terres cédées, ou à une partie y afférente,

et peut par proclamation révoquer toute semblable déclaration

Pouvoir de déclarer la loi inapplicable

Authority confirmed for certain cases

(2.1) For greater certainty, and without restricting the generality of subsection (2), the Governor in Council shall be deemed to have had the authority to make any declaration under subsection (2) that he has made in respect of section 11, 12 or 14, or any provision thereof, as each section or provision read immediately prior to April 17, 1985."

(2.1) Sans qu'en soit limitée la portée générale du paragraphe (2), il demeure entendu que le gouverneur en conseil est réputé avoir eu le pouvoir de faire en vertu du paragraphe (2) toute déclaration qu'il a faite à l'égard des articles 11, 12 ou 14 ou d'une de leurs dispositions, dans leur version précédant immédiatement le 17 avril 1985.»

Confirmation de la validité de certaines déclarations

3. The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section

3. La même loi est modifiée par insertion, après l'article 4, de ce qui suit :

Application of certain provisions to all band members

"**4.1** A reference to an Indian in the definitions "band", "Indian moneys" and "mentally incompetent Indian" in section 2 or a reference to an Indian in subsection 4(2) or (3), subsection 18(2), section 20, sections 22 to 25, subsection 31(1) or (3), subsection 35(4), section 51, section 52, subsection 58(3), subsection 61(1), section 63, section 65, subsection 66(2), subsection 70(1) or (4), section 71, paragraph 73(*g*) or (*h*), subsection 74(4), section 84, paragraph 87(*a*), section 88, subsection 89(1) or paragraph 107(*b*) shall be deemed to include a reference to any person who is entitled to have his name entered in a Band List and whose name has been entered therein"

«**4.1** La mention d'un Indien dans les définitions de «bande», «deniers des Indiens» ou «Indien mentalement incapable» à l'article 2 et cette mention aux paragraphes 4(2) ou (3), au paragraphe 18(2), à l'article 20, aux articles 22 à 25, aux paragraphes 31(1) ou (3), au paragraphe 35(4), à l'article 51, à l'article 52, au paragraphe 58(3), au paragraphe 61(1), à l'article 63, à l'article 65, au paragraphe 66(2), aux paragraphes 70(1) ou (4), à l'article 71, aux alinéas 73*g*) ou *h*), au paragraphe 74(4), à l'article 84, à l'alinéa 87*a*), à l'article 88, au paragraphe 89(1) ou à l'alinéa 107*b*) sont réputées comprendre la mention de toute personne qui a droit à ce que son nom soit consigné dans une liste de bande et dont le nom y a effectivement été consigné »

Application de certaines dispositions à tous les membres d'une bande

1974-75-76, c. 48, s. 25; 1978-79, c. 11, s. 10

4. Sections 5 to 14 of the said Act are repealed and the following substituted therefor:

"*Indian Register*

Indian Register

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

Existing Indian Register

(2) The names in the Indian Register immediately prior to April 17, 1985 shall constitute the Indian Register on April 17, 1985

Deletions and additions

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

Date of change

(4) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom

Application for registration

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

Persons entitled to be registered

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

(*a*) that person was registered or entitled to be registered immediately prior to April 17, 1985;

(*b*) that person is a member of a body of persons that has been declared by the Governor in Council on or after April 17, 1985 to be a band for the purposes of this Act,

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

4. Les articles 5 à 14 de la même loi sont abrogés et remplacés par ce qui suit :

1974-75-76, ch. 48, art. 25; 1978-79, ch. 11, art. 10

«*Registre des Indiens*

Tenue du registre

5. (1) Est tenu au ministère un registre des Indiens où est consigné le nom de chaque personne ayant droit d'être inscrite comme Indien en vertu de la présente loi.

Registre des Indiens existant

(2) Les noms figurant au registre des Indiens immédiatement avant le 17 avril 1985 constituent le registre des Indiens au 17 avril 1985

Additions et retranchements

(3) Le registraire peut ajouter au registre des Indiens, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans ce registre

Date du changement

(4) Le registre des Indiens indique la date où chaque nom y a été ajouté ou en a été retranché

Demande

(5) Il n'est pas requis que le nom d'une personne qui a droit d'être inscrite soit consigné dans le registre des Indiens, à moins qu'une demande à cette effet soit présentée au registraire.

Personnes ayant droit à l'inscription

6. (1) Sous réserve de l'article 7, une personne a droit d'être inscrite si elle remplit une des conditions suivantes

a) elle était inscrite ou avait droit de l'être immédiatement avant le 17 avril 1985,

b) elle est membre d'un groupe de personnes déclaré par le gouverneur en conseil après le 16 avril 1985 être une bande pour l'application de la présente loi,

c) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande, en vertu du sous-alinéa 12(1)*a*)(iv), de l'alinéa 12(1)*b*) ou du paragraphe 12(2) ou en vertu du sous-alinéa 12(1)*a*)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(2), dans leur version précédant immédiatement

relating to the same subject-matter as any of those provisions,

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

(*e*) the name of that person was omitted or deleted from the Indian Register, or from a band list prior to September 4, 1951,

(i) under section 13, as it read immediately prior to September 4, 1951, or under any former provision of this Act relating to the same subject-matter as that section, or

(ii) under section 111, as it read immediately prior to July 1, 1920, or under any former provision of this Act relating to the same subject-matter as that section, or

(*f*) that person is a person both of whose parents are or, if no longer living, were at the time of death entitled to be registered under this section

le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions,

d) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande en vertu du sous-alinéa 12(1)*a*)(iii) conformément à une ordonnance prise en vertu du paragraphe 109(1), dans leur version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui d'une de ces dispositions,

e) son nom a été omis ou retranché du registre des Indiens ou, avant le 4 septembre 1951, d'une liste de bande :

(i) soit en vertu de l'article 13, dans sa version précédant immédiatement le 4 septembre 1951, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

(ii) soit en vertu de l'article 111, dans sa version précédant immédiatement le 1er juillet 1920, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet article,

f) ses parents ont tous deux droit d'être inscrits en vertu du présent article ou, s'ils sont décédés, avaient ce droit à la date de leur décès

Idem

(2) Subject to section 7, a person is entitled to be registered if that person is a person one of whose parents is or, if no longer living, was at the time of death entitled to be registered under subsection (1)

Idem

(2) Sous réserve de l'article 7, une personne a droit d'être inscrite si l'un de ses parents a droit d'être inscrit en vertu du paragraphe (1) ou, s'il est décédé, avait ce droit à la date de son décès

Deeming provision

(3) For the purposes of paragraph (1)(*f*) and subsection (2),

(*a*) a person who was no longer living immediately prior to April 17, 1985 but who was at the time of death entitled to be registered shall be deemed to be entitled to be registered under paragraph (1)(*a*); and

Présomption

(3) Pour l'application de l'alinéa (1)*f*) et du paragraphe (2) :

a) la personne qui est décédée avant le 17 avril 1985 mais qui avait droit d'être inscrite à la date de son décès est réputée avoir droit d'être inscrite en vertu de l'alinéa (1)*a*),

b) la personne visée aux alinéas (1)*c*), *d*) ou *e*) qui est décédée avant le 17 avril

(*b*) 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 be registered under that paragraph

1985 est reputée avoir droit d'être inscrite en vertu de ces alinéas

Persons not entitled to be registered

7. (1) The following persons are not entitled to be registered

(*a*) a person who was registered under paragraph 11(1)(*f*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and whose name was subsequently omitted or deleted from the Indian Register under this Act, or

(*b*) a person who is the child of a person who was registered or entitled to be registered under paragraph 11(1)(*f*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, and is also the child of a person who is not entitled to be registered

7. (1) Les personnes suivantes n'ont pas droit d'être inscrites :

a) celles qui étaient inscrites en vertu de l'alinéa 11(1)*f*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et dont le nom a ultérieurement été omis ou retranché du registre des Indiens en vertu de la présente loi;

b) celles qui sont les enfants d'une personne qui était inscrite ou avait droit de l'être en vertu de l'alinéa 11(1)*f*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, et qui sont également les enfants d'une personne qui n'a pas droit d'être inscrite

Personnes n'ayant pas droit à l'inscription

Exception

(2) Paragraph (1)(*a*) does not apply in respect of a female person who was, at any time prior to being registered under paragraph 11(1)(*f*), entitled to be registered under any other provision of this Act

(2) L'alinéa (1)*a*) ne s'applique pas à une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)*f*), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi

Exception

Idem

(3) Paragraph (1)(*b*) does not apply in respect of the child of a female person who was, at any time prior to being registered under paragraph 11(1)(*f*), entitled to be registered under any other provision of this Act

(3) L'alinéa (1)*b*) ne s'applique pas à l'enfant d'une personne de sexe féminin qui, avant qu'elle ne soit inscrite en vertu de l'alinéa 11(1)*f*), avait droit d'être inscrite en vertu de toute autre disposition de la présente loi

Idem

Band Lists

Listes de bande

Band Lists

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

8. Est tenue conformément à la présente loi la liste de chaque bande où est consigné le nom de chaque personne qui en est membre

Tenue de la liste

Band Lists maintained in Department

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

9. (1) Jusqu'à ce que la bande assume la responsabilité de sa liste, celle-ci est tenue au ministère par le registraire

Liste de bande tenue au ministère

Existing Band Lists

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

Listes de bande existantes

(2) Les noms figurant à une liste d'une bande immédiatement avant le 17 avril 1985 constituent la liste de cette bande au 17 avril 1985

Deletions and additions

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

Additions et retranchements

(3) Le registraire peut ajouter à une liste de bande tenue au ministère, ou en retrancher, le nom de la personne qui, aux termes de la présente loi, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans cette liste

Date of change

(4) A Band List maintained in the Department shall indicate the date on which each name was added thereto or deleted therefrom

Date du changement

(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché

Application for entry

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

Demande

(5) Il n'est pas requis que le nom d'une personne qui a droit à ce que celui-ci soit consigné dans une liste de bande tenue au ministère y soit consigné à moins qu'une demande à cet effet soit présentée au registraire

Band control of membership

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

Pouvoir de décision

10. (1) La bande peut décider de l'appartenance à ses effectifs si elle en fixe les règles par écrit conformément au présent article et si, après qu'elle a donné un avis convenable de son intention de décider de cette appartenance, elle y est autorisée par la majorité de ses électeurs.

Membership rules

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

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

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

Règles d'appartenance

(2) La bande peut, avec l'autorisation de la majorité de ses électeurs

a) après avoir donné un avis convenable de son intention de ce faire, fixer les règles d'appartenance à ses effectifs,

b) prévoir une procédure de révision des décisions portant sur l'appartenance à ses effectifs

Exception relating to consent

(3) Where the council of a band makes a by-law under paragraph 81(1)(*p* 4) bringing this subsection into effect in respect of the band, the consents required under subsections (1) and (2) shall be given by a majority of the members of the band who are of the full age of eighteen years

Statut administratif sur l'autorisation requise

(3) Lorsque le conseil d'une bande établit un statut administratif en vertu de l'alinéa 81(1)*p* 4) mettant en vigueur le présent paragraphe à l'égard d'une bande, l'autorisation requise en vertu des paragraphes (1) et (2) doit être donnée par la majorité des membres de la bande qui ont dix-huit ans révolus

Acquired rights

(4) Membership rules established by a band under this section may not deprive any person who had the right to have his

Droits acquis

(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce

name entered in the Band List for that band, immediately prior to the time the rules were established, of the right to have his name so entered by reason only of a situation that existed or an action that was taken before the rules came into force

que son nom soit consigné dans la liste de bande immédiatement avant la fixation des règles du droit à ce que son nom y soit consigné en raison uniquement d'un fait ou d'une mesure antérieurs à leur prise d'effet

Idem

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

Idem

(5) Il demeure entendu que le paragraphe (4) s'applique à la personne qui avait droit à ce que son nom soit consigné dans la liste de bande en vertu de l'alinéa 11(1)*c*) immédiatement avant que celle-ci n'assume la responsabilité de la tenue de sa liste si elle ne cesse pas ultérieurement d'avoir droit à ce que son nom y soit consigné

Notice to the Minister

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

Avis au Ministre

(6) Une fois remplies les conditions du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre du fait que celle-ci décide désormais de l'appartenance à ses effectifs et lui transmet le texte des règles d'appartenance.

Notice to band and copy of Band List

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

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

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

Transmission de la liste

(7) Sur réception de l'avis du conseil de bande prévu au paragraphe (6), le Ministre, sans délai, s'il constate que les conditions prévues au paragraphe (1) sont remplies

a) avise la bande qu'elle décide désormais de l'appartenance à ses effectifs,

b) ordonne au registraire de transmettre à la bande une copie de la liste de bande tenue au ministère.

Effective date of band's membership rules

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

Date d'entrée en vigueur des règles d'appartenance

(8) Lorsque la bande décide de l'appartenance à ses effectifs en vertu du présent article, les règles d'appartenance fixées par celle-ci entrent en vigueur à compter de la date où l'avis au Ministre a été donné en vertu du paragraphe (6); les additions ou retranchements de la liste de la bande effectués par le registraire après cette date ne sont valides que s'ils ont été effectués conformément aux règles d'appartenance fixées par la bande

Band to maintain Band List

(9) A band shall maintain its own Band List from the date on which a copy of the Band List is received by the band under paragraph (7)(*b*), and, subject to section

Transfert de responsabilité

(9) À compter de la réception de l'avis prévu à l'alinéa (7)*b*), la bande est responsable de la tenue de sa liste. Sous réserve de l'article 13.2, le ministère, à compter de

13 2, the Department shall have no further responsibility with respect to that Band List from that date

cette date, est dégagé de toute responsabilité à l'egard de cette liste

Deletions and additions

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

(10) La bande peut ajouter à la liste de bande tenue par elle, ou en retrancher, le nom de la personne qui, aux termes des règles d'appartenance de la bande, a ou n'a pas droit, selon le cas, à l'inclusion de son nom dans la liste

Additions retranchem

Date of change

(11) A Band List maintained by a band shall indicate the date on which each name was added thereto or deleted therefrom.

(11) La liste de bande tenue par celle-ci indique la date où chaque nom y a été ajouté ou en a été retranché

Date du changemen

Membership rules for Departmental Band List

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

(*a*) the name of that person was entered in the Band List for that band, or that person was entitled to have his name entered in the Band List for that band, immediately prior to April 17, 1985;

(*b*) that person is entitled to be registered under paragraph 6(1)(*b*) as a member of that band,

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

(*d*) that person was born on or after April 17, 1985 and is entitled to be registered under paragraph 6(1)(*f*) and both parents of that person are entitled to have their names entered in the Band List or, if no longer living, were at the time of death entitled to have their names entered in the Band List

11. (1) A compter du 17 avril 1985, une personne a droit à ce que son nom soit consigné dans une liste de bande tenue pour cette dernière au ministère si elle remplit une des conditions suivantes :

a) son nom a été consigné dans cette liste, ou elle avait droit à ce qu'il le soit immédiatement avant le 17 avril 1985,

b) elle a droit d'être inscrite en vertu de l'alinéa 6(1)*b*) comme membre de cette bande,

c) elle a droit d'être inscrite en vertu de l'alinéa 6(1)*c*) et a cessé d'être un membre de cette bande en raison des circonstances prévues à cet alinéa

d) elle est née après le 16 avril 1985 et a droit d'être inscrite en vertu de l'alinéa 6(1)*f*) et ses parents ont tous deux droit à ce que leur nom soit consigné dans la liste de bande ou, s'ils sont décédés, avaient ce droit à la date de leur décès

Regles d'appartena tenue au ministère

Additional membership rules for Departmental Band List

(2) Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13 1, where a band does not have control of its Band List under this Act, a person is entitled to have his name entered in a Band List maintained in the Department for the band

(2) A compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13 1, lorsque la bande n'a pas la responsabilité de la tenue de sa liste prévue à la présente loi, une personne a droit à ce que son nom soit consigné dans la liste de bande tenue au ministère pour cette dernière

Regles d'appartena supplement pour les list tenues au ministère

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

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

a) soit si elle a droit d'être inscrite en vertu des alinéas 6(1)*d*) ou *e*) et qu'elle a cessé d'être un membre de la bande en raison des circonstances prévues à l'un de ces alinéas,

b) soit si elle a droit d'être inscrite en vertu de l'alinéa 6(1)*f*) ou du paragraphe 6(2) et qu'un de ses parents visés à l'une de ces dispositions a droit à ce que son nom soit consigné dans la liste de bande ou, s'il est décédé, avait ce droit à la date de son décès

Deeming provision

(3) For the purposes of paragraph (1)(*d*) and subsection (2), a person whose name was omitted or deleted from the Indian Register or a band list in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) who was no longer living on the first day on which he would otherwise be entitled to have his name entered in the Band List of the band of which he ceased to be a member shall be deemed to be entitled to have his name so entered

Présomption

(3) Pour l'application de l'alinéa (1)*d*) et du paragraphe (2), la personne dont le nom a été omis ou retranché du registre des Indiens ou d'une liste de bande dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) et qui est décédée avant le premier jour où elle a acquis le droit à ce que son nom soit consigné dans la liste de bande dont elle a cessé d'être membre est réputée avoir droit à ce que son nom y soit consigné

Where band amalgamates or is divided

(4) Where a band amalgamates with another band or is divided so as to constitute new bands, any person who would otherwise have been entitled to have his name entered in the Band List of that band under this section is entitled to have his name entered in the Band List of the amalgamated band or the new band to which he has the closest family ties, as the case may be

Fusion ou division de bandes

(4) Lorsqu'une bande fusionne avec une autre ou qu'elle est divisée pour former de nouvelles bandes, toute personne qui aurait par ailleurs eu droit à ce que son nom soit consigné dans la liste de la bande en vertu du présent article a droit à ce que son nom soit consigné dans la liste de la bande issue de la fusion ou de celle de la nouvelle bande à l'égard de laquelle ses liens familiaux sont les plus étroits

Entitlement with consent of band

12. Commencing on the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, or on such earlier day as may be agreed to under section 13.1, any person who

(*a*) is entitled to be registered under section 6, but is not entitled to have his name entered in the Band List maintained in the Department under section 11, or

(*b*) is a member of another band,

is entitled to have his name entered in the Band List maintained in the Department

Inscription sujette au consentement du conseil

12. À compter du jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale ou de la date antérieure choisie en vertu de l'article 13.1, la personne qui

a) soit a droit d'être inscrite en vertu de l'article 6 sans avoir droit à ce que son nom soit consigné dans une liste de bande tenue au ministère en vertu de l'article 11,

b) soit est membre d'une autre bande,

a droit à ce que son nom soit consigné dans la liste d'une bande tenue au ministère

for a band if the council of the admitting band consents.

Limitation to one Band List

13. Notwithstanding sections 11 and 12, no person is entitled to have his name entered at the same time in more than one Band List maintained in the Department.

Decision to leave Band List control with Department

13.1 (1) A band may, at any time prior to the day that is two years after the day that an Act entitled *An Act to amend the Indian Act*, introduced in the House of Commons on February 28, 1985, is assented to, decide to leave the control of its Band List with the Department if a majority of the electors of the band gives its consent to that decision.

Notice to the Minister

(2) Where a band decides to leave the control of its Band List with the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect

Subsequent band control of membership

(3) Notwithstanding a decision under subsection (1), a band may, at any time after that decision is taken, assume control of its Band List under section 10

Return of control to Department

13.2 (1) A band may, at any time after assuming control of its Band List under section 10, decide to return control of the Band List to the Department if a majority of the electors of the band gives its consent to that decision.

Notice to the Minister and copy of membership rules

(2) Where a band decides to return control of its Band List to the Department under subsection (1), the council of the band shall forthwith give notice to the Minister in writing to that effect and shall provide the Minister with a copy of the Band List and a copy of all the membership rules that were established by the band under subsection 10(2) while the band maintained its own Band List

Transfer of responsibility to Department

(3) Where a notice is given under subsection (2) in respect of a Band List, the maintenance of that Band List shall be the responsibility of the Department from the date on which the notice is received and from that time the Band List shall be maintained in accordance with the membership rules set out in section 11.

pour cette dernière si le conseil de la bande qui l'admet en son sein y consent

Nom consigné dans une seule liste

13. Par dérogation aux articles 11 et 12, nul n'a droit à ce que son nom soit consigné en même temps dans plus d'une liste de bande tenue au ministère

Première décision

13.1 (1) Une bande peut, avant le jour qui suit de deux ans le jour où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, décider de laisser la responsabilité de la tenue de sa liste au ministère à condition d'y être autorisée par la majorité de ses électeurs

Avis au Ministre

(2) Si la bande décide de laisser la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision

Seconde décision

(3) Malgré la décision visée au paragraphe (1), la bande peut, en tout temps après cette décision, assumer la responsabilité de la tenue de sa liste en vertu de l'article 10

Transfert de responsabilités au ministère

13.2 (1) La bande peut, en tout temps après avoir assumé la responsabilité de la tenue de sa liste en vertu de l'article 10, décider d'en remettre la responsabilité au ministère à condition d'y être autorisée par la majorité de ses électeurs

Avis au Ministre et texte des règles

(2) Lorsque la bande décide de remettre la responsabilité de la tenue de sa liste au ministère en vertu du paragraphe (1), le conseil de la bande, sans délai, avise par écrit le Ministre de la décision et lui transmet une copie de la liste et le texte des règles d'appartenance fixées par la bande conformément au paragraphe 10(2) pendant qu'elle assumait la responsabilité de la tenue de sa liste

Transfert de responsabilités au ministère

(3) Lorsqu'est donné l'avis prévu au paragraphe (2) à l'égard d'une liste de bande, la tenue de cette dernière devient la responsabilité du ministère à compter de la date de réception de l'avis. Elle est tenue, à compter de cette date, conformément aux règles d'appartenance prévues à l'article 11

Entitlement retained

13.3 A person is entitled to have his name entered in a Band List maintained in the Department pursuant to section 13.2 if that person was entitled to have his name entered, and his name was entered, in the Band List immediately before a copy of it was provided to the Minister under subsection 13.2(2), whether or not that person is also entitled to have his name entered in the Band List under section 11

Maintien du droit d'être consigné dans la liste

13.3 Une personne a droit à ce que son nom soit consigné dans une liste de bande tenue par le ministère en vertu de l'article 13.2 si elle avait droit à ce que son nom soit consigné dans cette liste, et qu'il y a effectivement été consigné, immédiatement avant qu'une copie en soit transmise au Ministre en vertu du paragraphe 13.2(2), que cette personne ait ou non droit à ce que son nom soit consigné dans cette liste en vertu de l'article 11

Notice of Band Lists

Affichage des listes de bande

Copy of Band List provided to band council

14. (1) Within one month after the day an Act entitled *An Act to amend the Indian Act* introduced in the House of Commons on February 28, 1985, is assented to, the Registrar shall provide the council of each band with a copy of the Band List for the band as it stood immediately prior to that day

Copie de la liste de bande transmise au conseil de bande

14. (1) Au plus tard un mois après la date où la loi intitulée *Loi modifiant la Loi sur les Indiens*, déposée à la Chambre des communes le 28 février 1985, a reçu la sanction royale, le registraire transmet au conseil de chaque bande une copie de la liste de la bande dans son état précédant immédiatement cette date

List of additions and deletions

(2) Where a Band List is maintained by the Department, the Registrar shall, at least once every two months after a copy of the Band List is provided to the council of a band under subsection (1), provide the council of the band with a list of the additions to or deletions from the Band List not included in a list previously provided under this subsection.

Listes des additions et des retranchements

(2) Si la liste de bande est tenue au ministère, le registraire, au moins une fois tous les deux mois après la transmission prévue au paragraphe (1) d'une copie de la liste au conseil de la bande, transmet à ce dernier une liste des additions à la liste et des retranchements de celle-ci non compris dans une liste antérieure transmise en vertu du présent paragraphe

Lists to be posted

(3) The council of each band shall, forthwith on receiving a copy of the Band List under subsection (1), or a list of additions to and deletions from its Band List under subsection (2), post the copy or the list, as the case may be, in a conspicuous place on the reserve of the band

Affichage de la liste

(3) Le conseil de chaque bande, dès qu'il reçoit copie de la liste de bande prévue au paragraphe (1) ou la liste des additions et des retranchements prévue au paragraphe (2), affiche la copie ou la liste, selon le cas, en un lieu bien en évidence dans la réserve de la bande.

Inquiries

Demandes

Inquiries relating to Indian Register or Band Lists

14.1 The Registrar shall, on inquiry from any person who believes that he or any person he represents is entitled to have his name included in the Indian Register or a Band List maintained in the Department, indicate to the person making the inquiry whether or not that name is included therein

Demandes relatives au registre des Indiens ou aux listes de bande

14.1 Le registraire, à la demande de toute personne qui croit qu'elle-même ou que la personne qu'elle représente a droit à l'inclusion de son nom dans le registre des Indiens ou une liste de bande tenue au ministère, indique sans délai à l'auteur de la demande si ce nom y est inclus ou non.

Protests *Protestations*

Protests

14.2 (1) A protest may be made in respect of the inclusion or addition of the name of a person in, or the omission or deletion of the name of a person from, the Indian Register, or a Band List maintained in the Department, within three years after the inclusion or addition, or omission or deletion, as the case may be, by notice in writing to the Registrar, containing a brief statement of the grounds therefor

Protestations

14.2 (1) Une protestation peut être formulée, par avis écrit au registraire renfermant un bref exposé des motifs invoqués, contre l'inclusion ou l'addition du nom d'une personne dans le registre des Indiens ou une liste de bande tenue au ministère ou contre l'omission ou le retranchement de son nom de ce registre ou d'une telle liste dans les trois ans suivant soit l'inclusion ou l'addition, soit l'omission ou le retranchement

Protest in respect of Band List

(2) A protest may be made under this section in respect of the Band List of a band by the council of the band, any member of the band or the person in respect of whose name the protest is made or his representative

Protestation relative à la liste de bande

(2) Une protestation peut être formulée en vertu du présent article à l'égard d'une liste de bande par le conseil de cette bande, un membre de celle-ci ou la personne dont le nom fait l'objet de la protestation ou son représentant

Protest in respect of Indian Register

(3) A protest may be made under this section in respect of the Indian Register by the person in respect of whose name the protest is made or his representative

Protestation relative au registre des Indiens

(3) Une protestation peut être formulée en vertu du présent article à l'égard du registre des Indiens par la personne dont le nom fait l'objet de la protestation ou son représentant

Onus of proof

(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest.

Charge de la preuve

(4) La personne qui formule la protestation prévue au présent article a la charge d'en prouver le bien-fondé

Registrar to cause investigation

(5) Where a protest is made to the Registrar under this section, he shall cause an investigation to be made into the matter and render a decision

Le registraire fait tenir une enquête

(5) Lorsqu'une protestation lui est adressée en vertu du présent article, le registraire fait tenir une enquête sur la question et rend une décision

Evidence

(6) For the purposes of this section, the Registrar may receive such evidence on oath, on affidavit or in any other manner, whether or not admissible in a court of law, as in his discretion he sees fit or deems just

Preuve

(6) Pour l'application du présent article, le registraire peut recevoir toute preuve présentée sous serment, sous déclaration sous serment ou autrement, si celui-ci, à son appréciation, l'estime indiquée ou équitable, que cette preuve soit ou non admissible devant les tribunaux

Decision final

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive

Decision finale

(7) Sous réserve de l'article 14.3 la décision du registraire visée au paragraphe (5) est finale et péremptoire

Appeal

14.3 (1) Within six months after the Registrar renders a decision on a protest under section 14.2,

(*a*) in the case of a protest in respect of the Band List of a band, the council of the band, the person by whom the protest was made, or the person in respect

Appel

14.3 (1) Dans les six mois suivant la date de la décision du registraire sur une protestation prévue à l'article 14.2

a) soit, s'il s'agit d'une protestation formulée à l'égard d'une liste de bande, le conseil de la bande, la personne qui a formulé la protestation ou la personne

of whose name the protest was made or his representative, or

(*b*) in the case of a protest in respect of the Indian Register, the person in respect of whose name the protest was made or his representative,

may, by notice in writing, appeal the decision to a court referred to in subsection (5).

dont le nom fait l'objet de la protestation ou son représentant,

b) soit, s'il s'agit d'une protestation formulée à l'égard du registre des Indiens la personne dont le nom a fait l'objet de la protestation ou son représentant,

peuvent, par avis écrit, interjeter appel de la décision à la cour visée au paragraphe (5).

Copy of notice of appeal to the Registrar

(2) Where an appeal is taken under this section, the person who takes the appeal shall forthwith provide the Registrar with a copy of the notice of appeal

(2) Lorsqu'il est interjeté appel en vertu du présent article, l'appelant transmet sans délai au registraire une copie de l'avis d'appel

Copie de l'avis d'appel au registraire

Material to be filed with the court by Registrar

(3) On receipt of a copy of a notice of appeal under subsection (2), the Registrar shall forthwith file with the court a copy of the decision being appealed together with all documentary evidence considered in arriving at that decision and any recording or transcript of any oral proceedings related thereto that were held before the Registrar

(3) Sur réception de la copie de l'avis d'appel prévu au paragraphe (2), le registraire dépose sans délai à la cour une copie de la décision en appel, toute la preuve documentaire prise en compte pour la décision, ainsi que l'enregistrement ou la transcription des débats devant le registraire

Documents à déposer à la cour par le registraire

Decision

(4) The court may, after hearing an appeal under this section,

(*a*) affirm, vary or reverse the decision of the Registrar; or

(*b*) refer the subject-matter of the appeal back to the Registrar for reconsideration or further investigation

(4) La cour peut, à l'issue de l'audition de l'appel prévu au présent article :

a) soit confirmer, modifier ou renverser la décision du registraire,

b) soit renvoyer la question en appel au registraire pour réexamen ou nouvelle enquête.

Décision

Court

(5) An appeal may be heard under this section

(*a*) in the Province of Prince Edward Island, the Yukon Territory or the Northwest Territories, before the Supreme Court,

(*b*) in the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, before the Court of Queen's Bench;

(*c*) in the Province of Quebec, before the Superior Court for the district in which the band is situated or in which the person who made the protest resides, or for such other district as the Minister may designate; or

(*d*) in any other province, before the county or district court of the county or district in which the band is situated or in which the person who made the pro-

(5) L'appel prévu au présent article peut être entendu

a) dans la province de l'Île du Prince-Édouard, le territoire du Yukon et les territoires du Nord-Ouest, par la Cour suprême,

b) dans la province du Nouveau-Brunswick, du Manitoba, de la Saskatchewan ou d'Alberta, par la Cour du Banc de la Reine;

c) dans la province de Québec, par la Cour supérieure du district où la bande est située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre district désigné par le Ministre;

d) dans les autres provinces, par un juge de la cour de comté ou de district du comté ou du district où la bande est

Cour

test resides, or of such other county or district as the Minister may designate "

située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre comté ou district désigné par le Ministre.»

5. Subsections 15(1) to (4) of the said Act are repealed and the following substituted therefor

5. Les paragraphes 15(1) à (4) de la même loi sont abrogés et remplacés par ce qui suit .

"Payments in Respect of Persons Ceasing to be Band Members"

«Paiements aux personnes qui cessent d'être membres d'une bande»

6. (1) Subsection 16(1) of the said Act is repealed

6. (1) Le paragraphe 16(1) de la même loi est abrogé.

(2) Subsection 16(3) of the said Act is repealed

(2) Le paragraphe 16(3) de la même loi est abrogé

7. (1) Subsection 17(1) of the said Act is repealed and the following substituted therefor

7. (1) Le paragraphe 17(1) de la même loi est abrogé et remplacé par ce qui suit

"New Bands

«Nouvelles bandes

Minister may constitute new bands

17. (1) The Minister may, whenever he considers it desirable,

(*a*) amalgamate bands that, by a vote of a majority of their electors, request to be amalgamated, and

(*b*) constitute new bands and establish Band Lists with respect thereto from existing Band Lists, or from the Indian Register, if requested to do so by persons proposing to form the new bands "

Constitution de nouvelles bandes par le Ministre

17. (1) Le Ministre peut, lorsqu'il l'estime à propos :

a) fusionner les bandes qui, par un vote majoritaire de leurs électeurs, demandent la fusion;

b) constituer de nouvelles bandes et établir à leur égard des listes de bande à partir des listes de bande existantes, ou du registre des Indiens, s'il lui en est fait la demande par des personnes proposant la constitution de nouvelles bandes »

(2) Subsection 17(3) of the said Act is repealed and the following substituted therefor:

(2) Le paragraphe 17(3) de la même loi est abrogé et remplacé par ce qui suit :

No protest

"(3) No protest may be made under section 14 2 in respect of the deletion from or the addition to a Band List consequent on the exercise by the Minister of any of his powers under subsection (1) "

Aucune protestation

«(3) Aucune protestation ne peut être formulée en vertu de l'article 14 2 à l'égard d'un retranchement d'une liste de bande ou d'une addition à celle-ci qui découle de l'exercice par le Ministre de l'un de ses pouvoirs prévus au paragraphe (1).»

8. The said Act is further amended by adding thereto, immediately after section 18 thereof, the following section.

8. La même loi est modifiée par insertion, après l'article 18, de ce qui suit

Children of band members

"**18.1** A member of a band who resides on the reserve of the band may reside there with his dependent children or any children of whom he has custody "

Enfants des membres d'une bande

«**18.1** Le membre d'une bande qui réside sur la réserve de cette dernière peut y résider avec ses enfants à charge ou tout enfant dont il a la garde »

9. (1) Subsections 48(13) and (14) of the said Act are repealed.

(2) Subsection 48(16) of the said Act is repealed and the following substituted therefor

Definition of "child"

"(16) In this section, "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom "

10. (1) Section 64 of the said Act is renumbered as subsection 64(1)

(2) Section 64 of the said Act is further amended by adding thereto the following subsection:

Expenditure of capital moneys in accordance with by-laws

"(2) The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(*p* 3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys "

11. The said Act is further amended by adding thereto, immediately after section 64 thereof, the following section

Limitation in respect of paragraphs 6(1)(c) (*d*) and (*e*)

"64.1 (1) A person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(*a*), as it read immediately prior to 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 a band in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) is not entitled to receive an amount under paragraph 64(1)(*a*) until such time as the aggregate of all amounts that he would, but for this subsection, have received under paragraph 64(1)(*a*) is equal to the amount by which the amount that he received under paragraph 15(1)(*a*), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that

9. (1) Les paragraphes 48(13) et (14) de la même loi sont abrogés.

(2) Le paragraphe 48(16) de la même loi est abrogé et remplacé par ce qui suit

Définition de «enfant»

«(16) Au présent article, «enfant» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté et un enfant adopté conformément aux coutumes indiennes »

10. (1) Le numéro d'article 64 de la même loi est remplacé par le numéro de paragraphe 64(1)

(2) L'article 64 de la même loi est modifié par adjonction de ce qui suit

Dépenses sur les deniers au compte de capital

«(2) Le Ministre peut effectuer des dépenses sur les deniers au compte de capital d'une bande conformément aux statuts administratifs établis en vertu de l'alinéa 81(1)*p* 3) en vue de faire des paiements à toute personne dont le nom a été retranché de la liste de la bande pour un montant n'excédant pas une part per capita des deniers au compte de capital »

11. La même loi est modifiée par insertion, après l'article 64, de ce qui suit :

Réserve relative aux alinéas 6(1)*c*), *d*) ou *e*)

«64.1 (1) Une personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)*a*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, du fait qu'elle a cessé d'être membre d'une bande dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) n'a pas droit de recevoir de montant en vertu de l'alinéa 64(1)*a*) jusqu'à ce que le total de tous les montants qu'elle aurait reçus en vertu de l'alinéa 64(1)*a*), n'eût été le présent paragraphe, égale la part du montant qu'elle a reçu en vertu de l'alinéa 15(1)*a*), dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute disposition antérieure de la présente loi portant sur le même sujet que

paragraph, exceeds one thousand dollars, together with any interest thereon

Additional limitation

(2) Where 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 one thousand dollars under paragraph 15(1)(*a*), as it read immediately prior to 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)(*c*), (*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 one thousand dollars, together with any interest thereon, has been repaid to the band.

Regulations

(3) The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of subsections (1) and (2)"

12. Section 66 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

Idem

"(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(*p* 3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys"

13. Section 68 of the said Act is repealed and the following substituted therefor

Maintenance of dependants

"**68.** Where the Minister is satisfied that an Indian

(*a*) has deserted his spouse or family without sufficient cause,

(*b*) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or

celui de ce paragraphe, en excédant de mille dollars, y compris les intérêts

Réserve additionnelle

(2) Lorsque le conseil d'une bande établit des statuts administratifs en vertu de l'alinéa 81(1)*p* 4) mettant en vigueur le présent paragraphe, la personne qui a reçu un montant supérieur à mille dollars en vertu de l'alinéa 15(1)*a*) dans sa version précédant immédiatement le 17 avril 1985, ou en vertu de toute autre disposition antérieure de la présente loi portant sur le même sujet que celui de cet alinéa, parce qu'elle a cessé d'être membre de la bande dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) n'a droit de recevoir aucun des avantages offerts aux membres de la bande à titre individuel résultant de la dépense de deniers des Indiens au titre des alinéas 64(1)*b*) à *k*), du paragraphe 66(1) ou du paragraphe 69(1) jusqu'à ce que l'excédent du montant ainsi reçu sur mille dollars, y compris l'intérêt sur celui-ci, ait été remboursé à la bande

Règlements

(3) Le gouverneur en conseil peut prendre des règlements prévoyant la façon de déterminer les intérêts pour l'application des paragraphes (1) et (2) »

12. L'article 66 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit

Idem

«(2.1) Le Ministre peut effectuer des dépenses sur les derniers de revenu de la bande conformément aux statuts administratifs visés à l'alinéa 81(1)*p* 3) en vue d'effectuer des paiements à une personne dont le nom a été retranché de la liste de bande jusqu'à concurrence d'un montant n'excédant pas une part *per capita* des fonds de revenu »

13. L'article 68 de la même loi est abrogé et remplacé par ce qui suit

Entretien des personnes à charge

«**68.** Lorsque le Ministre est convaincu qu'un Indien

a) a abandonné son conjoint ou sa famille sans raison suffisante,

b) s'est conduit de façon à justifier le refus de son conjoint ou de sa famille de vivre avec lui, ou

(*c*) has been separated by imprisonment from his spouse and family,

the Minister may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of the spouse or family or both the spouse and family of that Indian."

14. Subsections 77(1) and (2) of the said Act are repealed and the following substituted therefor

Eligibility of voters for chief

"**77.** (1) A member of a band who has attained the age of eighteen years and is ordinarily resident on the reserve is qualified to vote for a person nominated to be chief of the band and, where the reserve for voting purposes consists of one section, to vote for persons nominated as councillors

Councillor

(2) A member of a band who is of the full age of eighteen years and is ordinarily resident in a section that has been established for voting purposes is qualified to vote for a person nominated to be councillor to represent that section."

15. Section 81 of the said Act is amended by adding thereto, immediately after paragraph (*p*) thereof, the following paragraphs

"(*p* 1) the residence of band members and other persons on the reserve,

(*p*.2) to provide for the rights of spouses and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band,

(*p* 3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band,

(*p* 4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band,"

15.1 (1) Paragraph 81(*r*) of the said Act is repealed and the following substituted therefor.

c) a été séparé de son conjoint et de sa famille par emprisonnement,

il peut ordonner que les paiements de rentes ou d'intérêts auxquels cet Indien a droit soient appliqués au soutien du conjoint ou de la famille ou du conjoint et de la famille de ce dernier.»

14. Les paragraphes 77(1) et (2) de la même loi sont abrogés et remplacés par ce qui suit :

Qualités exigées des électeurs au poste de chef

«**77.** (1) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans la réserve, a qualité pour voter en faveur d'une personne présentée comme candidat au poste de chef de la bande et, lorsque la réserve, aux fins d'élection, ne comprend qu'une section, pour voter en faveur de personnes présentées aux postes de conseillers

Conseiller

(2) Un membre d'une bande, qui a dix-huit ans révolus et réside ordinairement dans une section établie aux fins de votation, a qualité pour voter en faveur d'une personne présentée au poste de conseiller pour représenter cette section.»

15. L'article 81 de la même loi est modifié par insertion, après l'alinéa *p*), de ce qui suit

«*p* 1) la résidence des membres de la bande ou des autres personnes sur la réserve,

p 2) l'adoption de mesures relatives aux droits des conjoints ou des enfants qui résident avec des membres de la bande dans une réserve pour toute matière au sujet de laquelle le conseil peut établir des statuts administratifs à l'égard des membres de la bande,

p 3) l'autorisation du Ministre à effectuer des paiements sur des deniers au compte de capital ou des deniers de revenu aux personnes dont les noms ont été retranchés de la liste de la bande,

p 4) la mise en vigueur des paragraphes 10(3) ou 64.1(2) à l'égard de la bande.»

15.1 (1) L'alinéa 81*r*) de la même loi est abrogé et remplacé par ce qui suit :

"(*r*) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under this section "

«*r*) l'imposition, sur déclaration sommaire de culpabilité, d'une amende n'excédant pas mille dollars ou d'un emprisonnement d'au plus trente jours, ou de l'amende et de l'emprisonnement à la fois, pour violation d'un statut administratif établi aux termes du présent article.»

(2) Section 81 of the said Act is renumbered as subsection 81(1)

(2) L'article 81 de la même loi devient le paragraphe 81(1)

(3) Section 81 of the said Act is further amended by adding thereto the following subsections

(3) L'article 81 de la même loi est modifié par adjonction de ce qui suit :

Power to restrain by order where conviction entered

"(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted

Pouvoir de prendre une ordonnance

«(2) Lorsqu'un statut administratif d'une bande est violé et qu'une déclaration de culpabilité est prononcée, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, le tribunal dans lequel a été prononcée la déclaration de culpabilité, et tout tribunal compétent par la suite, peut rendre une ordonnance interdisant la continuation ou la répétition de l'infraction par la personne déclarée coupable

Power to restrain by court action

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council "

Pouvoir d'intenter une action en justice

(3) Lorsqu'un statut administratif d'une bande est violé, en plus de tout autre remède et de toute pénalité imposée par le statut administratif, cette violation peut être refrenée par une action en justice à la demande du conseil de bande »

16. The said Act is further amended by adding thereto, immediately after section 85 thereof, the following section

16. La même loi est modifiée par insertion, après l'article 85, de ce qui suit

By-laws relating to intoxicants

"**85.1** (1) Subject to subsection (2), the council of a band may make by-laws

(*a*) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band,

(*b*) prohibiting any person from being intoxicated on the reserve;

(*c*) prohibiting any person from having intoxicants in his possession on the reserve; and

(*d*) providing for exceptions to any of the prohibitions established pursuant to paragraph (*b*) or (*c*).

Statuts administratifs sur les spiritueux

«**85.1** (1) Sous réserve du paragraphe (2), le conseil d'une bande peut établir des statuts administratifs :

a) interdisant de vendre, de faire le troc, de fournir ou de fabriquer des spiritueux sur la réserve de la bande;

b) interdisant à toute personne d'être en état d'ivresse sur la réserve;

c) interdisant à toute personne d'avoir en sa possession des spiritueux sur la réserve,

d) prévoyant des exceptions aux interdictions établies en vertu des alinéas *b*) ou *c*)

Consent of electors

(2) A by-law may not be made under this section unless it is first assented to by a majority of the electors of the band who voted at a special meeting of the band called by the council of the band for the purpose of considering the by-law

Consentement des électeurs

(2) Les statuts administratifs prévus au présent article ne peuvent être établis qu'avec le consentement préalable de la majorité des électeurs de la bande ayant voté à l'assemblée spéciale de la bande convoquée par le conseil de cette dernière pour l'étude de ces statuts

Copies of by laws to be sent to Minister

(3) A copy of every by-law made under this section shall be sent by mail to the Minister by the chief or a member of the council of the band within four days after it is made

Copie des statuts administratifs au Ministre

(3) Le chef ou un membre du conseil de la bande doit envoyer par courrier au Ministre une copie de chaque statut administratif prévu au présent article dans les quatre jours suivant son établissement

Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction

(*a*) in the case of a by-law made under paragraph (1)(*a*), to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months or to both, and

(*b*) in the case of a by-law made under paragraph (1)(*b*) or (*c*), to a fine of not more than one hundred dollars or to imprisonment for a term not exceeding three months or to both."

Infraction

(4) Toute personne qui enfreint un statut administratif établi en vertu du présent article commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire

a) dans le cas d'un statut administratif établi en vertu de l'alinéa (1)*a*), une amende maximale de mille dollars et un emprisonnement maximal de six mois, ou une de ces peines,

b) dans le cas d'un statut administratif établi en vertu des alinéas (1)*b*) ou *c*), une amende maximale de cent dollars et un emprisonnement maximal de trois mois, ou l'une de ces peines.»

17. Sections 94 to 100 of the said Act are repealed and the following substituted therefor

17. Les articles 94 à 100 de la même loi sont abrogés et remplacés par ce qui suit :

"OFFENCES"

«PEINES»

18. Subsection 103(1) of the said Act is repealed and the following substituted therefor

18. Le paragraphe 103(1) de la même loi est abrogé et remplacé par ce qui suit

Seizure of goods

"**103.** (1) Whenever a peace officer, a superintendent or a person authorized by the Minister believes on reasonable grounds that an offence against section 33, 85.1, 90 or 93 has been committed, he may seize all goods and chattels by means of or in relation to which he believes on reasonable grounds the offence was committed"

Saisie des marchandises

«**103.** (1) Chaque fois qu'un agent de la paix, un surintendant ou une autre personne autorisée par le Ministre a des motifs raisonnables de croire qu'une infraction aux articles 33, 85.1, 90 ou 93 a été commise, il peut saisir toutes les marchandises et tous les biens meubles au moyen ou à l'égard desquels il a des motifs raisonnables de croire que l'infraction a été commise.»

19. Sections 109 to 113 of the said Act are repealed.

19. Les articles 109 à 113 de la même loi sont abrogés

20. (1) All that portion of subsection 119(2) of the said Act preceding paragraph (*a*) thereof is repealed and the following substituted therefor

Powers

"(2) Without restricting the generality of subsection (1), a truant officer may, subject to subsection (2.1),"

(2) Section 119 of the said Act is further amended by adding thereto, immediately after subsection (2) thereof, the following subsections

Warrant required to enter dwelling house

"(2.1) Where any place referred to in paragraph (2)(*a*) is a dwelling-house, a truant officer may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (2.2)

Authority to issue warrant

(2.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

(*a*) that the conditions for entry described in paragraph (2)(*a*) exist in relation to a dwelling-house,

(*b*) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(*c*) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

he may issue a warrant under his hand authorizing the truant officer named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

Use of force

(2.3) In executing a warrant issued under subsection (2.2), the truant officer named therein shall not use force unless he is accompanied by a peace officer and the use of force has been specifically authorized in the warrant."

Saving from liability

21. For greater certainty, no claim lies against Her Majesty in right of Canada, the Minister, any band, council of a band or member of a band or any other person or body in relation to the omission or deletion of

20. (1) Le passage du paragraphe 119(2) de la même loi qui précède l'alinéa *a*) est abrogé et remplacé par ce qui suit :

Pouvoirs

«(2) Sans qu'en soit restreinte la portée générale du paragraphe (1), un agent de surveillance peut, sous réserve du paragraphe (2.1) »

(2) L'article 119 de la même loi est modifié par insertion, après le paragraphe (2), de ce qui suit

Mandat maison d'habitation

«(2.1) Lorsque l'endroit visé à l'alinéa (2)*a*) est une maison d'habitation, l'agent de surveillance ne peut y pénétrer sans l'autorisation de l'occupant qu'en vertu du mandat prévu au paragraphe (2.2).

Pouvoir de délivrer un mandat

(2.2) Sur demande *ex parte*, le juge de paix peut délivrer sous son seing un mandat autorisant l'agent de surveillance qui y est nommé, sous réserve des conditions éventuellement fixées dans le mandat, à pénétrer dans une maison d'habitation s'il est convaincu, d'après une dénonciation sous serment, de ce qui suit :

a) les circonstances prévues à l'alinéa (2)*a*) dans lesquelles un agent peut y pénétrer existent,

b) il est nécessaire d'y pénétrer pour l'application de la présente loi;

c) un refus d'y pénétrer a été opposé ou il y a des motifs raisonnables de croire qu'un tel refus sera opposé

Usage de la force

(2.3) L'agent de surveillance nommé dans le mandat prévu au paragraphe (2.2) ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix »

Aucune réclamation

21. Il demeure entendu qu'il ne peut être présenté aucune réclamation contre Sa Majesté du chef du Canada, le Ministre, une bande, un conseil de bande, un membre d'une bande ou autre personne ou organisme

the name of a person from the Indian Register in the circumstances set out in paragraph 6(1)(*c*), (*d*) or (*e*) of the *Indian Act*

relativement à l'omission ou au retranchement du nom d'une personne du registre des Indiens dans les circonstances prévues aux alinéas 6(1)*c*), *d*) ou *e*) de la *Loi sur les Indiens*

Report of Minister to Parliament

22. (1) The Minister shall cause to be laid before each House of Parliament, not later than two years after this Act is assented to, a report on the implementation of the amendments to the *Indian Act*, as enacted by this Act, which report shall include detailed information on

(*a*) the number of people who have been registered under section 6 of the *Indian Act*, and the number entered on each Band List under subsection 11(1) of that Act, since April 17, 1985,

(*b*) the names and number of bands that have assumed control of their own membership under section 10 of the *Indian Act*, and

(*c*) the impact of the amendments on the lands and resources of Indian bands.

Rapport du Ministre au Parlement

22. (1) Au plus tard deux ans après la sanction royale de la présente loi, le Ministre fait déposer devant chaque chambre du Parlement un rapport sur l'application des modifications de la *Loi sur les Indiens* prévues dans la présente loi Le rapport contient des renseignements détaillés sur :

a) le nombre de personnes inscrites en vertu de l'article 6 de la *Loi sur les Indiens* et le nombre de personnes dont le nom a été consigné dans une liste de bande en vertu du paragraphe 11(1) de cette loi, depuis le 17 avril 1985,

b) les noms et le nombre des bandes qui décident de l'appartenance à leurs effectifs en vertu de l'article 10 de la *Loi sur les Indiens*;

c) l'effet des modifications sur les terres et les ressources des bandes d'Indiens

Review by Parliamentary committee

(2) Such committee of Parliament as may be designated or established for the purposes of this subsection shall, forthwith after the report of the Minister is tabled under subsection (1), review that report and may, in the course of that review, undertake a review of any provision of the *Indian Act* enacted by this Act.

Examen par un comité parlementaire

(2) Le Comité du Parlement que ce dernier peut désigner ou établir pour l'application du présent paragraphe doit examiner sans délai après son dépôt par le Ministre le rapport visé au paragraphe (1) Le comité peut, dans le cadre de cet examen, procéder à la révision de toute disposition de la *Loi sur les Indiens* prévue à la présente loi

Commencement

23. (1) Subject to subsection (2), this Act shall come into force or be deemed to have come into force on April 17, 1985.

Entrée en vigueur

Idem

(2) Sections 17 and 18 shall come into force six months after this Act is assented to.

Idem

(2) Les articles 17 et 18 entrent en vigueur six mois après que la présente loi a reçu la sanction royale

QUEEN'S PRINTER FOR CANADA © IMPRIMEUR DE LA REINE POUR LE CANADA
OTTAWA 1985

This is Exhibit "G" referred to in the Affidavit of Paul Bujold Sworn before me this 12 day of September A.D., 20 11

A. Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 2012

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

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

B E T W E E N :

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

OF THE FIRST PART,

- and -

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

OF THE SECOND PART.

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

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

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

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

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

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

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

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

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

(b) "Trust Fund" shall mean:

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

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

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

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

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8. The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Dead.

SIGNED, SEALED AND DELIVERED
in the presence of:

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

A. Settlor

B. Trustees:

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

1.

Bruce G Thom
NAME

Box 326, Slave Lake Alta
ADDRESS

2.

Bruce G Thom
NAME

Box 326, Slave Lake, Alta
ADDRESS

3.

Schedule

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit " H " referred to in the Affidavit of Paul Bujold

Sworn before me this 12 day of September A.D., 20 11

A. Magnan
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 20 12

SAWRIDGE BAND TRUST

RESOLUTION OF TRUSTEES

WHEREAS the undersigned are the Trustees of an inter vivos settlement (the "Sawridge Band Trust") made the 15th day of April, 1982 between Chief Walter Patrick Twinn, as Settlor, and Chief Walter Patrick G. Twinn, Walter Felix Twin and George V. Twin, as Trustees;

AND WHEREAS the beneficiaries of the Sawridge Band Trust are the members, present and future, of the Sawridge Indian Band (the "Band"), a band for the purposes of the Indian Act R.S.C., Chapter 149;

AND WHEREAS amendments introduced into the House of Commons on the 28th day of February, 1985 may, if enacted, extend membership in the Band to certain classes of persons who did not qualify for such membership on the 15th day of April, 1982;

AND WHEREAS pursuant to paragraph 6 of the instrument (the "Trust Instrument") establishing the Trust the undersigned have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries of the Trust;

AND WHEREAS for the purpose of precluding future uncertainty as to the identity of the beneficiaries of the Trust the Trustees desire to exercise the said power by resettling the assets of the Trust for the benefit of only those persons (the "Beneficiaries") who qualify, or would in the future qualify, for membership in the Band under the provisions of the Act in force on the 15th day of April, 1982;

AND WHEREAS by deed executed the 15th day of ~~March~~ APRIL, 1985 between Chief Walter Patrick Twinn, as Settlor, and the undersigned as Trustees, an inter vivos settlement (the "Sawridge Band Inter Vivos Settlement") has been constituted for the benefit of the Beneficiaries;

NOW THEREFORE BE IT RESOLVED THAT

1. the power conferred upon the undersigned in their capacities as Trustees of the Trust pursuant to paragraph 6 of the Trust Instrument be and the same is hereby exercised by transferring all of the assets of the Trust to the

undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement; and

2. Chief Walter Patrick Twinn is hereby authorized to execute all share transfer forms and other instruments in writing and to do all other acts and things necessary or expedient for the purpose of completing the transfer of the said assets of the Trust to the Sawridge Band Inter Vivos Settlement in accordance with all applicable legal formalities and other legal requirements.

DATED the 15th day of ~~March~~ April, 1985.

Chief Walter Patrick Twinn

Samuel G. Twin

George V. Twin

ACCEPTANCE BY TRUSTEES

The undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement hereby declare that they accept the transfer of all of the assets of the Trust and that they will hold the said assets and deal with the same hereafter for the benefit of the Beneficiaries in all respects in accordance with the terms and provisions of the Sawridge Band Inter Vivos Settlement.

DATED the 15th day of ~~March~~ April, 1985.

Chief Walter Patrick Twinn

Samuel G. Twin

George V. Twin

21902 Trust Docs
Docs

SAWRIDGE BAND RESOLUTION

WHEREAS the Trustees of a certain trust dated the 15th day of April, 1982, have authorized the transfer of the trust assets to the Trustees of the attached trust dated the 15th day of April, A.D., 1985.

AND WHEREAS the assets have actually been transferred this 15th day of April, A.D. 1985.

THEREFORE BE IT RESOLVED at this duly convened and constituted meeting of the Sawridge Indian Band at the Band Office in Slave Lake, Alberta, this 15th day of April, A.D. 1985, that the said transfer be and the same is hereby approved and ratified.

WITNESS

As to all signatures

Bruce E Thom

Walter F Twin

Debbie L. Twin

Christy Twin

Jean Potskin

Catherine Twinn

This is Exhibit "I" referred to in the Affidavit of

Paul Bujold

Sworn before me this 12 day of September A.D., 2011

A. Magnan

A ~~Notary Public,~~ A Commissioner for Oaths in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 2012

DECLARATION OF TRUST MADE THIS 16TH DAY OF APRIL, 1985.

This is Exhibit "J" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 2011
A. Magnan
Notary Public, A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 20 12

BETWEEN:

WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWIN
(hereinafter referred to collectively as the "Old Trustees")

OF THE FIRST PART

AND:

WALTER PATRICK TWINN, SAM TWIN AND GEORGE TWIN
(hereinafter referred to collectively as the "New Trustees")
OF THE SAWRIDGE INTER VIVOS SETTLEMENT

OF THE SECOND PART

WHEREAS the "Old Trustees" of the Sawridge Band Trust (hereinafter referred to as the "trust") hold legal title to the assets described in Schedule "A" and settlor Walter P. Twinn by Deed in writing dated the 15th day of April, 1985 created the Sawridge Inter Vivos Settlement (hereinafter referred to as the "settlement").

AND WHEREAS the settlement was ratified and approved at a general meeting of the Sawridge Indian Band held in the Band Office at Slave Lake, Alberta on April 15th, A.D. 1985.

NOW THEREFORE this Deed witnesseth as follows:

The undersigned hereby declare that as new trustees they now hold and will continue to hold legal title to the assets described in Schedule "A" for the benefit of the settlement, in accordance with the terms thereof.

Further, each old trustee does hereby assign and release to the new trustees any and all interest in one or more of the promissory notes attached hereto as Schedule "B".

WITNESS:

OLD TRUSTEES

NEW TRUSTEES

SCHEDULE "A"

SAWRIDGE HOLDINGS LTD. --- SHARES

WALTER PATRICK TWINN	30 CLASS "A" COMMON
GEORGE TWIN	4 CLASS "A" COMMON
SAM TWIN	12 CLASS "A" COMMON

SAWRIDGE ENERGY LTD. ---- SHARES

WALTER PATRICK TWINN	100 CLASS "A" COMMON

SCHEDULE 'B'

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT ($293,178.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19th day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives disputes of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate than in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of SIXTY THOUSAND ($60,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December , A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

PROMISSORY NOTE

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY FOUR THOUSAND, SIX HUNDRED AND TWO ($24,602.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: _____

Per: _____

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DATED at the City of Edmonton, in the Province of Alberta, this [illegible] day of [illegible], A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: [signature]

Per: [signature]

This is Exhibit "K" referred to in the Affidavit of Paul Bujold
Sworn before me this 12 day of September A.D., 20 17
A. Magnan
A Notary Public A Commissioner for Oaths in and for the Province of Alberta
Catherine A. Magnan
My Commission Expires January 29, 2018

THE SAWRIDGE TRUST

DECLARATION OF TRUST

THIS TRUST DEED made in duplicate as of the 15th day of August, A.D. 1986.

BETWEEN:

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

OF THE FIRST PART,

- and -

CHIEF WALTER P. TWINN, CATHERINE TWINN and GEORGE TWIN,
(hereinafter collectively called the "Trustees")

OF THE SECOND PART,

WHEREAS the Settlor desires to create an inter vivos trust for the benefit of the members of the Sawridge Indian Band, a band within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, and for that purpose has transferred to the Trustees the property described in the Schedule attached hereto;

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

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

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

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

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including, without restricting the generality of the foregoing, the membership rules and customary laws of the Sawridge Indian Band as the same may exist from time to time to the extent that such membership rules and customary laws are incorporated into, or recognized by, the laws of Canada;

(b) "Trust Fund" shall mean:

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

(B) any further, substituted or additional property, including any property, beneficial interests or rights referred to in paragraph 3 of this Deed and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed;

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

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

(E) "Trust" means the trust relationship established between the Trustees and the Beneficiaries pursuant to the provisions of this Deed.

3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell, lease or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Deed.

4. The name of the Trust Fund shall be "The Sawridge Trust" and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5. The Trustees who are the original signatories hereto, shall in their discretion and at such time as they determine, appoint additional Trustees to act hereunder. Any Trustee may at any time resign from the office of Trustee of this Trust on giving not less than thirty (30) days notice addressed to the

other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee and the power of appointing additional Trustees to increase the number of Trustees to any number allowed by law shall be vested in the continuing Trustees or Trustee of this Trust and such power shall be exercised so that at all times (except for the period pending any such appointment) there shall be a minimum of Three (3) Trustees of this Trust and a maximum of Seven (7) Trustees of this Trust and no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there are more than Two (2) Trustees who are not then Beneficiaries.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the expiration of twenty-one (21) years after the death of the last survivor of the beneficiaries alive at the date of the execution of this Deed, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then alive.

During the existence of this Trust, the Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for trustees' investments by the Trustee's Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Saving Bank Act applies.

8. The Trustees are authorized and empowered to do all acts that are not prohibited under any applicable laws of Canada or of any other jurisdiction and that are necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Trust for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner or to any extent detracted from the generality of the foregoing, the power

(a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;

(b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and

(c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9. Administration costs and expenses of or in connection with this Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of this Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provision of this Deed may be amended from time to time by a resolution of the Trustees that received the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years and, for greater certainty, any such amendment may provide for a commingling of the assets, and a consolidation of the administration, of this Trust with the assets and administration of any other trust established for the benefit of all or any of the Beneficiaries.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and shall be subject to this clause.

13. Any decision of the Trustees may be made by a majority of the Trustees holding office as such at the time of such decision and no dissenting or abstaining Trustee who acts in good faith shall be personally liable for any loss or claim whatsoever arising out of any acts or omissions which result from the exercise of any such discretion or power, regardless whether such Trustee assists in the implementation of the decision.

14. All documents and papers of every kind whatsoever, including without restricting the generality of the foregoing, cheques, notes, drafts, bills of exchange, assignments, stock transfer powers and other transfers, notices, declarations, directions, receipts, contracts, agreements, deeds, legal papers, forms and authorities required for the purpose of opening or operating any account with any bank, or other financial institution, stock broker or investment dealer and other instruments made or purported to be made by or on behalf of this Trust shall be signed and executed by any two (2) Trustees or by any person (including any of the Trustees) or persons designated for such purpose by a decision of the Trustees.

15. Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Trust shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

16. This Deed and the Trust created hereunder shall be governed by, and shall be construed in accordance with, the laws of the Province of Alberta.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor
CHIEF WALTER P. TWINN

B. Trustees:

1. CHIEF WALTER P. TWINN

2. CATHERINE TWINN

3. GEORGE TWIN

860647-1/6

SCHEDULE

One Hundred Dollars ($100.00) in Canadian Currency.

This is Exhibit " L " referred to in the Affidavit of

Paul Bujold

Sworn before me this 12 day

of September A.D., 20 11

A. Magnan

~~A Notary Public~~ A Commissioner for Oaths
in and for the Province of Alberta

Catherine A. Magnan
My Commission Expires
January 29, 20 12

SAWRIDGE BENEFICIARIES PROPOSED PROGRAM SUMMARY

START-UP RECOMMENDATIONS

	Program Description	Estimated Cost
1. ***Establish a Trust Program Office***	▪ Develop a job description for this position (which will combine two functions: overseeing the implementation of beneficiary programmes and providing administrative support to the Trustees) ▪ Hire and orient preferred candidate ▪ Establish primary office in Edmonton and an extension office in Slave Lake	$120 000 annually for salary, benefits, transportation allowance and office costs (provided that affordable office space can be secured through collaboration with other Sawridge entities
2. ***Establish and Make Public a Clear Process for Determining Beneficiary Eligibility***	▪ Retain legal counsel with the requisite expertise ▪ Make public beneficiary criteria and the application process ▪ Gather pertinent information to support the process of accessing applications ▪ Strike an eligibility committee (with representation from each of the community's extended families) to screen applications ▪ Provide the community with regular updates on progress toward this goal	An reliable estimate can be projected once legal counsel has been retained
3. ***A One-Time "Good Faith" Cash Disbursement***	▪ A one-time cash disbursement in recognition of the challenges the beneficiary program has had in getting off the ground	$2,500/beneficiary over the age of 18 (or who are younger but have an independent household) for a total of approximately $105,000
4. ***Transparent & Accountable Communication Channels***	▪ Quarterly newsletter ▪ Beneficiary Manual ▪ Website	$10,000 one-time for website $10,000 one-time for manual $3,000 annually for newsletter & keeping manual up to date
5. ***Adopt a Phased Approach***	▪ Begin with programme offerings about which there is already strong consensus and which can be implemented within the next year or so (see suggestions for phase I programming on the next page) • In year 2, phase in the remainder of the programs as more viable implementation options have been created (primarily by the Trust Administrator/Program Manager) and in consultation with beneficiary working groups as appropriate	No specific costs associated with this recommendation Rather, this approach will help manage costs
Total Estimated Costs for the Start-up Recommendations *Note: The figures presented here represent the cost of instigating and maintaining the Beneficiary Program. They do not include the costs of establishing beneficiary eligibility under the two Trusts Depending on the legal costs, this figure could be substantial.*		**$248,000 for first year** **$123,000 annually for subsequent yrs**

PHASE I PROGRAMMING		
Category of Benefit	**Program Description**	**Estimated Cost**
6. Insurance ▪ Health ▪ Dental ▪ Long-term disability ▪ Basic life ▪ AD&D	▪ JT Moland will offer a package that provides health and dental insurance benefits that top up those provided under the uninsured benefits program ($30/single, $60/family monthly) ▪ As well, a quote for life, disability and AD&D insurance has been received (between $150 and $590 monthly depending on age, gender and smoking habits) The Program Administrator will investigate options for a life insurance package with a higher payout value	▪ Rough estimate is $20,000 annually for health & dental, $200,000 for life, disability and AD & D insurance (@ $25,000 coverage)
7. Death of Immediate Family Members and Compassionate Care Support	▪ Funeral and other costs, on a receipted basis not to exceed $12,000 per event (limited to immediate family members (spouse, dependent child, parent, sibling) ▪ Compassionate care support support provided to beneficiaries to assist them to care for a ill family member or for a family member to care for a beneficiary who is ill (e g to support living costs while a family member is hospitalized out of their home community)	▪ If two such deaths occur within the families of Sawridge beneficiaries, the annual cost would be $24,000 annually ▪ Compassionate care fund will be administered by the Trustees on a case-by-case basis (estimated costs could be up to $20,000/year)
8. Seniors Support	▪ "No-strings" monthly assured income pension ▪ "Special needs" support for home care, transportation ▪ Care taken to ensure that these benefits do not negatively impact the senior's other pension benefits or tax situation	▪ On the basis of 8 seniors, monthly pension $144,000 annually ▪ Special needs fund up to $60,000 annually
9. Child & Youth Development	▪ Monthly or quarterly benefit to support recreational/artistic/ cultural pursuits ▪ Professional services and/or equipment for children and youth with special needs	▪ $2,500 annually for each dependent for an estimated total of $120,000 annually ▪ Fund of up to $20,000 for special needs annually
10. Educational Support	▪ Post-secondary (top-ups plus students not covered under Regional Council) ▪ Special employment-related courses	▪ $50,000 for top-up and additional post secondary ▪ $10,000 for employment-related training costs annually
11. Phase I Community Strengthening	▪ Two community gatherings in the first year to celebrate achievements, honour those who have worked so hard to create prosperity and wellbeing for the community, play, consult about current community realities and needs and create opportunities for reconciliation ▪ Set up community working group	▪ Community events could cost up to $75,000/ea for an annual total of $150,000
Total Estimated Costs for the Phase I Recommendations		**$818,000.00**

PHASE II PROGRAMMING		
Category of Benefit	**Program Description**	**Estimated Cost**
12. Quality of Life Support Program	▪ Universal annual cash disbursement of $1,000 for beneficiaries over the age of 18 annually ▪ Matching savings program (either 3:1 or 5:1 depending on the positive life goal chosen to a maximum of $9,000 annually per beneficiary)	▪ $450,000 for each year after the first year
13. Financial Planning & Management	▪ Designated contact person within one or more financial institutions that have branches in both Edmonton and Slave Lake to provide estate planning, personal taxation advice, investment education & advice, budgeting & money management ▪ Resource list of programs offering financial management programs locally (e.g. as part of life skills programs)	▪ No financial cost at this time
14. Employment, entrepreneurship & Worthwhile Pursuits	▪ Life and career counseling through the Alberta Government Service Centres ▪ Job search & preparation services through existing not-for-profit programming ▪ Volunteer mentors (from Sawridge businesses) vet business plans and provide ongoing mentoring ▪ Matching funds at 5:1 up to a total of $9,000 for business start-up (see Recommendation #12 above) ▪ Support to prepare competitive resumes and service contract bids for job openings and contract opportunities with Sawridge companies ▪ Matching funds at 5:1 up to a one-time total of $9,000 for artistic and humanitarian projects (see Recommendation #12 above)	▪ Covered under Recommendation #12 above
15. Vacations in Sawridge Properties	▪ One week annually per family for a maximum of two rooms plus meals	Estimated at $112,000 annually
16. Housing	▪ Matching funds at 10:1 up to a one-time total of $20,000 for first-time home buyers (for the purpose of the down payment) ▪ Support beneficiaries to take full advantage of all government programs to support home ownership and renovation ▪ Matching 5:1 funds to support existing home owners and those living on reserve to complete renovations/repairs up to a total of $20,000 within a ten-year period	The suggestions listed here would project an annual cost of about $600,000
17. Personal Development	▪ Expanded services will be available under the health insurance program (see #6 above) ▪ Counseling and other therapies recommended by an independent health practitioner could be covered under a special fund of up to $20,000 annually ▪ Personal development activities eligible for 3:1 matching funds under recommendation #12 above	$100,000 fund for counseling/therapies recommended by independent practitioner

	▪ Encourage partnerships with the Band to access services available under targeted government programs (e.g the common-experience counseling funds)	
18. Phase II Community Strengthening	▪ The creation of a Community Wellness Committee to help plan community gatherings and to work with consultant to develop and community wellness plan ▪ The sponsoring of bi-annual community gatherings ▪ Contract services focused on healing community relationships & developing community strengths ▪ Contract technical support for the development of a community wellness plan ▪ Arbitration and mediation training for Sawridge beneficiaries & the establishment of a administrative tribunal	▪ Cost of developing a wellness plan $60,000 ▪ Gatherings estimated at $150,000 annually ▪ Contracted services related to healing and reconciliation could be capped at $50,000 annually ▪ The Alberta Arbitration Society charges $350 for each two-day workshop If two beneficiaries were interested in this program and committed to 3 courses annually, the cost would be about $5,000 for course fees as well as related costs such as accommodation, materials (courses are held in Calgary and Red Deer)
Total Estimated Costs for the Phase II Recommendations		**1,527,000.00**
Estimated Cost of Year One		Start-up 248,000.00 Phase I 818,000.00 **Total 1,066,000.00**
Estimated Cost of Year Two		Start-up 123,000.00 Phase I 643,000 00 Phase II .1,527,000 00 **Total 2,293,000.00**
Estimated Cost of Subsequent Years		Start up 123,000 00 Phase I 643,000.00 Phase II 1,467,000.00 **Total 2,233,000.00**

Clerk's stamp:

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

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

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

APPLICANTS	ROLAND TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, CLARA MIDBO, and CATHERINE TWINN, as trustees for the 1985 Sawridge Trust ("Sawridge Trustees")
DOCUMENT	**Application by the Sawridge Trustees for Advice and Direction (Directed Trial of Issue)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Respondents:

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Attention: Karen A. Platten, Q.C.

Counsel for Catherine Twinn as a Trustee of the 1985 Sawridge Trust

NOTICE TO RESPONDENT(S)

This application is made against you You are a respondent.

You have the right to state your side of this matter before the Case Management Justice.

To do so, you must be in Court when the application is heard as shown below:

Date	January 19, 2018
Time	1:00 PM
Where	Law Courts, 1 A Sir Winston Churchill Square, Edmonton
Before Whom	Case Management Justice D.R.G. Thomas

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought:

1. The Sawridge Trustees request that the Court find that all parties have admitted that the definition of Beneficiary in the Trust Deed is discriminatory and thus declare that the definition of Beneficiary is discriminatory

2. In the alternative, the Sawridge Trustees request that this Court grant an order for a question or issue to be determined, pursuant to Rule 7.1 of the *Alberta Rules of Court* ("**Directed Issue Hearing**"), with respect to the following issue:

   (a) Is the definition of "Beneficiary" in the Trust Deed of the Sawridge Band Inter Vivos Settlement ("1985 Trust") discriminatory?

3. If the Directed Issue Hearing is ordered, the Sawridge Trustees further request that a timetable in respect of that Hearing be set according to Schedule "A" Litigation Plan attached.

4 The Sawridge Trustees also seek direction from this Court as to the method by which beneficiaries and/or potential beneficiaries may participate in the Trust litigation. The Court of Appeal, in paragraphs 21 and 22 of *Twinn v Twinn*, 2017 ABCA 419, recommended that further direction and clarification be sought with respect to the method of permitted participation by non-parties who are beneficiaries or potential beneficiaries of the 1985 Trust.

Grounds for making this application:

Directed Issue Hearing

5 The Trustees believe all the parties have admitted that the definition of "Beneficiary" in the Trust Deed is discriminatory and thus submit that, within the jurisdiction granted to a case management justice in Rule 4 14 of the *Alberta Rules of Court* to identify, simplify and clarify the real issues in dispute, the Court may determine that the 1985 Trust's definition of "Beneficiary" is discriminatory.

6. If the Court cannot determine this issue, the Trustees submit that the resolution of this question or issue meets the objectives in Subrule 7 1(1):

(a) Determining whether the definition of "Beneficiary" is discriminatory may dispose of the rest of the claim. If it is found that the definition is not discriminatory, that will likely make determination of the balance of the Application unnecessary, as the Sawridge Trustees will not seek a change to the definition of "Beneficiary" if it is not discriminatory.

(b) The Directed Issue Hearing will be a short hearing, and will not require much time before it is ready to be heard by the Court. The Directed Issue Hearing will substantially shorten the required final determination application or trial, as this narrow question will require far less evidence than the balance of the Application. It is likely that the determination can be made with only affidavit evidence or very little evidence as the argument will involve legal arguments on the statute

(c) It will save expense, as a determination that the definition is not discriminatory would save the need for the more expansive and expensive trial that may be required for the balance of the Application

7. If the definition of "Beneficiary" is found to be discriminatory, the parties can then focus on a hearing respecting the appropriate remedy. That remedy may involve striking the discriminatory language, amending the trust using the amending provisions of the 1985 Trust, or proceeding under section 42 of the *Trustee Act*

8 The Sawridge Trustees submit that the 1985 Trust should be amended by striking language. Other parties have suggested that section 42 of the *Trustee Act* applies and thus all the beneficiaries would have to be identified and there would need to be 100% approval from the beneficiaries The Court would have to consider the fact that the Trust Deed prohibits amendment. The Sawridge Trustees suggest that if the 1985 Trust needs to be amended, it may be amended under the provisions of the Trust Deed requiring only 80% approval of the beneficiaries Which of these approaches is appropriate must be determined by the Court.

9. The Sawridge Trustees submit that the issue of the appropriate remedy is a discrete issue from the question of whether the 1985 Trust is discriminatory. There is little or no overlap between the evidence that will be required for the Directed Issue Hearing, which requires the interpretation of

a document and a statute and the evidence that will be required to determine the appropriate remedy. Further, if the definition is not discriminatory, it may be unnecessary to determine a remedy.

Method of Non-Party Beneficiary Participation

10. The Sawridge Trustees submit that it is their position that participation in writing only by any person who is a beneficiary and/or potential beneficiary will be the most effective and efficient method of participation in the Trust litigation. The Sawridge Trustees propose that the participation be limited to one submission per individual at each stage of the hearing of issues. (So, if this Court agrees to the Directed Issue Hearing, one submission could be made at that time, and one at the time of the final hearing with respect to remedy.)

11. There are many people who claim to be potential beneficiaries of whom the Trustees are aware. Given the number of such potential beneficiaries, the Sawridge Trustees further submit that a page limit of **5 pages per written submission** (including attachments) would provide an appropriate balance between the interests of the beneficiary/potential beneficiary in making a submission in respect of his or her interests, with the need to maintain proportionality and efficiency in the proceedings. The submissions are not to be duplicative of arguments already made. Any duplication could be subject to costs awards.

12. If the beneficiary or potential beneficiary wishes to file an affidavit, it can only do so to raise evidence that is unique and distinct to that evidence that has already been filed by the parties. If a beneficiary or potential beneficiary filed duplicative evidence, the issue of the duplicative nature of the evidence will be addressed in a costs application and there may be costs consequences for duplication of evidence.

13. If participation in this manner is directed, the Sawridge Trustees suggest that a deadline for beneficiary submissions in respect of the Directed Issue Hearing be incorporated into the proposed timetable, as shown in the proposed timetable attached as Schedule A. The Sawridge Trustees propose that notice be provided by way of case management order, which would be published on the website for this proceeding.

14. Further, the timeline for affidavit evidence can be incorporated in to the deadlines set out above so that the parties may know the evidence filed and then determine if they need to file further evidence. The Sawridge Trustees propose that non-party potential beneficiaries must file affidavit evidence for the Directed Issue Hearing by **February 15, 2018** and that notice of the same be provided by way of case management order, which would be published on the website for this proceeding.

Material or evidence to be relied on:

15. Proposed timetable for Directed Issue Hearing, attached as Schedule A.

16. Evidence already filed and posted on the website on the issue of discrimination.

Applicable Rules:

17. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 1.2, 4.14, 7.1.

How the Application is proposed to be heard or considered:

18. The Sawridge Trustees propose that this application proceed in the manner set out by the Court on January 5, 2018, in an oral hearing in Court on January 19, 2018.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

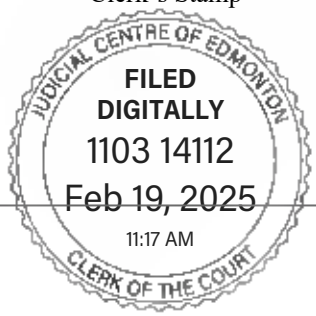
Schedule A – Proposed Litigation Timetable

NO.	ACTION	DEADLINE	PROPOSED DIRECTION
1.	All affidavits filed on issue of whether the trust beneficiary definition is discriminatory (Directed Issue Hearing)	By January 30, 2018	Parties shall advise of affidavits which are previously filed upon which they intend to rely. All documents intended to be relied upon shall be included in affidavits. Parties will be directed to be focussed on the issue of discrimination alone, with cost consequences possible if parties file irrelevant materials in an affidavit.
2.	All questioning on affidavits filed for Directed Issue Hearing	By February 28, 2018	
3	All undertakings answered	By March 30, 2018	
4	All expert will say statements filed	By March 30, 2018	If any party wishes to call an expert witness for the Directed Issue Hearing, a procedure will be implemented to determine the relevance. The purpose of this procedure is to ensure that the Hearing remains focused on the discrimination issue, and not on matters that will be more properly heard with the application to resolve the discrimination. Any party wishing to rely on the evidence of an expert witness for the directed Hearing must serve a "will say" statement outlining the evidence that would be put forward by the expert witness and signed by the expert witness. The "will say" statements must be served on all other parties, and filed with the Court

5	Any rebuttal expert will say statements filed	BY April 30, 2018	
6	An application with respect to objections to experts based on relevance	By May 15, 2018	
7	File written submissions on expert reports relevance	By May 31, 2018	If objections have been filed, or upon the initiative of the Court if it has concerns about relevance, the admissibility of such party's proposed expert evidence will be determined by the Case Management Justice by written submissions submitted by May 31, 2018.
8	File expert reports	30 days following the filing of the will say or 30 days filing a written decision by the case management Justice on relevance	
9	Non-party potential beneficiaries file non repetitive affidavits	By February 15, 2018	
10	All submissions on the Directed Issue Hearing for parties	Will be made according to the practice Direction for special chambers applications or as directed by the court.	
11	All submissions on the Directed Issue Hearing for non-parties and will be limited to 5 pages including attachments	Will be made one week following the applicant's and respondents' submissions	
12	Determination of Directed Issue Hearing	Fall 2018	

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

Clerk's Stamp



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

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

APPLICANT	**ROLAND TWINN, EVERETT JUSTIN TWIN, MARGARET WARD, TRACEY SCARLETT and DAVID MAJESKI, as Trustees for the 1985 Trust ("Sawridge Trustees")**
RESPONDENTS	**THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE and CATHERINE TWINN**
DOCUMENT	**WRITTEN BRIEF OF SAWRIDGE FIRST NATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No.: 20243395

SOLICITORS FOR: SAWRIDGE FIRST NATION

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File No.: 20243395

SOLICITORS FOR: SAWRIDGE FIRST NATION

impact, the assets moved into trust would be re-placed,[28] as was within his discretion, pursuant to the terms of the 1985 Trust.

56. Given that the Trustees have put the validity of the 1985 Trust at issue, it would be inappropriate for the settlor to not have an opportunity to address same. It is submitted that had this question been brought as an Originating Application, as the settlor, the SFN would have been a named party.

4. *Will the intervenor's submission be useful and different or bring particular expertise to the subject matter of the appeal? i.e. will the intervenor bring a "fresh perspective" on the subject matter?*

57. To date, the Trustees have not informed the Court or led evidence on the full scope of the discrimination affecting the 1985 Trust, nor identified how many members of the SFN this discrimination affects. SFN intends to address this through its submissions. More particularly:

a) By defining the beneficiaries of the 1985 Trust through the application of the now-repealed 1970 *Indian Act* ("1970 Act"),[29] rules on Indian status and band membership, the 1985 Trust continues one of the most notoriously discriminatory legal regimes in Canadian history, a regime that has been described as "an incomparable blend of sexism and racism."[30]

b) The discrimination inherent in the 1985 Trust's definition of beneficiaries is extensive and multifaceted. This is demonstrated through two specific examples: first, the denigration of women and descent through the matrilineal line inherent in the 1970 *Act*, and, second, the 1985 Trust's continued reliance on the racist and colonial policy of "enfranchisement" to determine beneficiary status.

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[28] Darcy Twin 2019 Affidavit at para 7.

[29] *Indian Act*, RSC 1970, c I-6 ("1970 *Act*").

[30] Kathleen Jamieson, *Indian Women and the Law: Citizens Minus* (Ottawa: Minister of Supply and Services Canada, 1978) p. 57. **[TAB 12]**

A. *The 1970 Act's Denigration of Women and Matrilineal Descent*

58. To date, the only discrimination that has been highlighted to the Court by the Trustees is the issue of "C-31 women" (that is, female band members who married non-Indians or non-members prior to the amendments to the law in 1985 and, in doing so, lost either their Indian status or only their band membership) as well as their descendants. Unfortunately, this is not the only discrimination: the Indian status and band membership regime imposed by the 1970 *Indian Act* discriminated against women and some children in multiple ways and sends a clear message that women and some children are less deserving of recognition and respect than men.

59. The status and membership provisions in the 1970 *Act* were first established during the wholesale revision of the *Indian Act* in 1951. In the 1951 overhaul, Parliament "adopted a particularly Victorian approach to dealing with women, the net effect of which was to return Canadian Indian law to what it was in 1876."[31] While some minor amendments to these provisions were subsequently made, the *Act* in 1970 was largely identical to what had been adopted in 1951.

60. In practice, when the status and membership provisions are applied to the determination of the beneficiaries of the 1985 Trust, what they mean is that:

a) the male child of male beneficiary is always a beneficiary, whether the boy is legitimate or illegitimate;[32]

b) the female child of a male beneficiary is beneficiary only if she is legitimate; if she is illegitimate, she is not beneficiary;[33]

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[31] *Hele c. Attorney General of Canada*, 2020 QCCS 2406, para. 149.

[32] 1970 *Act*, paras 11(1)(c) and 11(1)(d); *Martin v. Chapman*, [1983] 1 SCR 365.

[33] 1970 *Act*, para 11(1)(d); *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555, para. 156 and following.

c) the illegitimate child (male or female) of a female beneficiary is a beneficiary, unless a protest is filed against the child's status within one year of their registration and it is found that the child's father was not an Indian (and therefore a beneficiary);[34]

d) a female beneficiary will lose that status (be "enfranchised") if she marries a non-beneficiary,[35] and if she marries an Indian from a different band she will lose membership in her own band and become a member of her husband's band (this is the "married out" rule);[36]

e) a female non-beneficiary becomes a beneficiary if she marries a male beneficiary, regardless of her ethnicity or citizenship status (this is the "married in" rule);[37] and,

f) a beneficiary whose grandmother and mother were not beneficiaries at birth loses their status at the age of 21, but only if his or her parents were married to one another[38] (this is known as the "double mother rule"). – a son born out of wedlock to the same parents would not cease to be a beneficiary.

61. The anti-female bias of these provisions is obvious on its face, but can be further driven home through an example. Say a male beneficiary has two children with his common-law spouse, who is a non-beneficiary: a daughter, born in the year 2000, and a son, born in the year 2002. The daughter is not a beneficiary because she is "illegitimate"; the son, on the other hand, is a beneficiary despite the fact that he is also illegitimate. The daughter is barred from beneficiary status for the simple fact that she is female, while her brother,

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[34] 1970 *Act*, para 11(1)(e) and sub-sec 12(2); *McIvor et al. v. The Registrar, Indian and Northern Affairs Canada et al.*, 2007 BCSC 26, para 22 and following.

[35] 1970 *Act*, sub-sec 109(2) and sub-para 12(1)(a)(iii).

[36] 1970 *Act*, s 10 and 14.

[37] 1970 *Act*, para 11(1)(f).

[38] 1970 *Act*, sub-para 12(1)(a)(iv).

born of the same parents in the same matrimonial situation, is a beneficiary for the simple fact that he is male.

62. But it gets worse: let us say that, after finishing high school, the son goes travelling and, during his travels, falls in love with and marries a woman from another country. His new wife, who has no ethnic links with the Sawridge band, is not a citizen of Canada, and may not have ever set foot in this country, is now a beneficiary of the 1985 Trust.[39] The son's sister, meanwhile, remains excluded from the wealth of her ancestors – unless of course she finds a male beneficiary to marry, who through his own status would allow her to "reintegrate" into her home community.

63. Courts have commented on the unabashedly sexist nature of the 1970 *Indian Act* on many occasions. The Supreme Court noted that "the one thing which clearly emerges from ss. 11 and 12 of the Act is that Indian status depends on proof of descent through the Indian male line."[40] The Superior Court of Quebec has found that discrimination against illegitimate daughters "flows from the historically lower value placed by Parliament on a woman's Indian identity,"[41] and has described the treatment of women and their descendants as "deplorable and shocking."[42]

64. Amazingly, the 1985 Trust finds a way to compound the extensive sex discrimination already present in the *Act* by allowing the Trustees to exclude the illegitimate children of female beneficiaries even where a protest was not filed within one year of the registration of the child.[43] The 1985 Trust thereby takes sex discrimination a step further than the 1970 *Indian Act*.

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[39] 1970 *Act*, para 11(1)(f).

[40] *Martin v. Chapman*

[41] *Descheneaux*, para 92.

[42] *Landry c. Procureur général du Canada (Registraire du registre des Indiens)*, 2017 QCCS 433, para 36.

[43] Declaration of Trust, s. 6.

65. In 1985, in an attempt to remedy these myriad injustices and spurned by the coming into force of s. 15 of the *Canadian Charter*, in 1985,[44] Parliament amended the *Act*'s status and band membership provisions. The goal was to put into place a facially neutral registration regime that appeared to no longer take into account the factors of marriage and legitimacy, and which did away with the "married out" and "married in" rules. As we now know, however, this work was incomplete, in large part because the new status regime was built on the structure of the old, as was explored in two decisions (*McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153 and *Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555) that found the post-1985 regime discriminatory as a result of its continued reliance on the 1970 rules. These judgments led in turn to two acts of Parliament that amended the post-1985 status rules in an attempt to finally remedy the discriminatory legacy of the 1970 *Act* and its predecessors,[45] though whether all the discrimination has now been remedied remains an open question.

B. *Continuing the Discriminatory Policy of Enfranchisement*

66. From 1857 until the amendments of the *Indian Act* in 1985, the *Act* and its predecessors contained a process known as "enfranchisement". As noted by the Federal Court of Appeal:

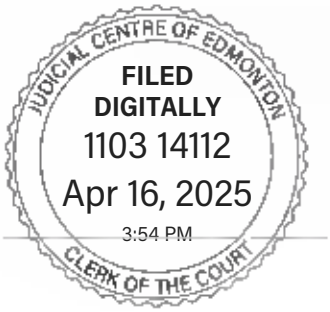
> [10] "Enfranchisement" is a euphemism for one of the most oppressive policies adopted by the Canadian government in its history of dealings with Aboriginal peoples: *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Backward,* vol. 1 (Ottawa: Canada Communication Group Publishing, 1996) at page 271.
>
> [11] Beginning in 1857 and evolving into different forms until 1985, "enfranchisement" was aimed at assimilating Aboriginal peoples and eradicating their culture or, in the

[44] *Act to Amend the Indian Act*, SC 1985, c 27. **[TAB 10]**

[45] The *Gender Equity in Indian Registration Act*, SC 2010, c 18, was adopted following the judgment in *McIvor*, and the *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, was, as the title suggests, adopted following the Superior Court judgment in *Deschesneaux*.

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	BRIEF OF THE TRUSTEES FOR THE 1985 SAWRIDGE TRUST ON THE THRESHOLD QUESTION

Clerk's Stamp



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> 4. Nothing in this order may be construed to be a determination that the 1985 Trust is void or otherwise invalid. This Consent Order cannot be used in an application for dissolution as a ground upon which the 1985 Trust could be dissolved.[10]

13. This Order focused on the members of the SFN, but the same discrimination would affect women and illegitimate children who are not members of the First Nation.

14. The 1985 Trust Deed confers broad discretionary powers upon the Trustees of the 1985 Trust to distribute assets to its Beneficiaries:

> The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for anyone or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.[11]

> The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the fore-going, the power … (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor;…[12]

iii. *The 1986 Trust*

15. On August 15, 1986 an additional Trust was established: the 1986 Sawridge Trust (the **"1986 Trust"**). The Beneficiaries under the 1986 Trust included all members of the SFN following the amendments to the Old *Indian Act*. It is functionally similar to the 1982 Trust. The SFN transferred cash and other assets into the 1986 Trust to further the purposes of the 1986 Trust. The 1986 Trust was established so that the assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed following amendments pursuant to Bill C-31.[13]

16. The members of the Sawridge community face multiple challenges and the 1986 Trust provides benefits to help address many of these hardships. It currently provides, *inter alia*, a social safety net for Beneficiaries and their children who are ill, education funding, and funding for the elderly. At this time, it is the intention of the Trustees to provide similar benefits to the Beneficiaries of the 1985 Trust as those of the 1986 Trust. The Trustees will need to consult with the Beneficiaries of the 1985 Trust to confirm this approach once the issues in this litigation have been addressed.[14]

17. While the focus of this application is the 1985 Trust, which provides for members and non-members who qualify under the Old *Indian Act*, it is still important to note that the 1986 Trust provides benefits for members of the SFN who are discriminated against in the 1985 Trust.

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[10] Consent Order (Issue of Discrimination) granted by Thomas, J, January 19, 2018 [**Appendix - TAB E**]

[11] 1985 Trust Deed, *supra* note 4 at para 6. [**Appendix - TAB D**]

[12] *Ibid,* para 7. [**Appendix - TAB D**]

[13] Declaration of Trust dated August 15, 1986. ("1986 Trust Deed") [**Appendix - TAB F**]

[14] Distribution Proposal, Order of Thomas, J, filed December 17, 2015 at para 7. [**Appendix - TAB G**]

Clerk's stamp:

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

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

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

APPLICANT	ROLAND TWINN, CATHERINE TWINN, BERTHA L'HIRONDELLE, CLARA MIDBO AND WALTER FELIX TWIN, as Trustees for the 1985 Trust and the 1986 Trust ("Sawridge Trustees")
DOCUMENT	**CONSENT ORDER (ISSUE OF DISCRIMINATION)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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File No: 551860-001-DCEB

JUSTICE: D.R.G. THOMAS
DATE: JAN 19, 2018
LOCATION: EDMONTON

I hereby certify this to be a true copy of the original.

for Clerk of the Court

UPON the Application by the Sawridge Trustees for advice and direction in respect of the Sawridge Band Inter Vivos Settlement ("1985 Trust"), for which an Application for Advice and Direction was filed January 9th, 2018;

AND WHEREAS the first question in the Application by the Sawridge Trustees on which direction is sought is whether the definition of "Beneficiary" in the 1985 Trust is discriminatory, which definition reads:

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

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

AND UPON being advised that the parties have agreed to resolve this specific question on the terms herein, and no other issue or question is raised before the Court at this time, including any question of the validity of the 1985 Trust,

AND UPON being advised the Parties remain committed to finding a remedy that will protect the existence of the 1985 Trust and the interests of the beneficiaries;

AND UPON there being a number of other issues in the Application that remain to be resolved, including the appropriate relief, and upon being advised that the parties wish to reserve and adjourn the determination of the nature of the relief with respect to the discrimination,

AND UPON this Court having the authority to facilitate such resolution of some of the issues raised in the Application prior to the determination of the balance of the Application,

AND UPON noting the consent of the Sawridge Trustees, consent of The Office of the Public Trustee and Guardian of Alberta ("OPGT") and the consent of Catherine Twinn,

IT IS HEREBY ORDERED AND DECLARED;

1. The definition of "Beneficiary" in the 1985 Trust is declared to be discriminatory insofar as it prohibits persons who are members of the Sawridge Indian Band No. 19 pursuant to the amendments to the *Indian Act* made after April 15, 1982 from being beneficiaries of the 1985 Trust.

2 The remaining issues in the Application, including the determination of any remedy in respect of this discriminatory definition, are to be the subject of a separate hearing The timeline for this hearing will be as set out in Schedule "A" hereto and may be further determined at a future Case Management Meeting

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

4. Nothing in this order may be construed to be a determination that the 1985 Trust is void or otherwise invalid. This Consent Order cannot be used in an application for dissolution as ~~the sole determinative factor that~~ a ground upon which the 1985 Trust ~~should~~ could be dissolved.

5. ~~The provisions in paragraph 4, above, will not prevent reliance on this Consent Order for any purpose in the within proceedings.~~

The Honourable D.R. G. Thomas

CONSENTED TO BY:

MCLENNAN ROSS LLP

Karen Platten, Q.C.
Counsel for Catherine Twinn as Trustee for the 1985 Trust

HUTCHISON LAW

Janet Hutchison
Counsel for the OPGT

DENTONS CANADA LLP

Doris Bonora
Counsel for the Sawridge Trustees

SCHEDULE "A"

Clerk's stamp.

COURT FILE NUMBER	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, c. T-8, AS AMENDED, and IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Trust") and the SAWRIDGE TRUST ("Sawridge Trust")
APPLICANT	ROLAND TWINN, CATHERINE TWINN, BERTHA L'HIRONDELLE, CLARA MIDBO AND WALTER FELIX TWIN, as Trustees for the 1985 Trust and the 1986 Trust ("Sawridge Trustees")
DOCUMENT	**Litigation Plan January 19, 2018**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5 Attention: Doris C.E. Bonora Telephone: (780) 423-7100 Fax: (780) 423-7276 File No: 551860-001-DCEB

1 The remaining steps and procedures are to be completed on or before the dates specified below

NO	ACTION	DEADLINE
1	Case Management Meeting to address Trustee's application for an Order on the Discrimination Issue	January 19 2018
2	Settlement meeting of all counsel for the Parties to continue to discuss remedies.	February 14, 15 or 16, 2018
3	Interim payment on accounts made to OPGT from the Trustees	January 31, 2018 and February 28, 2018
4	Agreed Statement of Facts to be circulated to all Parties, by the Trustees on the issue of the determination of the definition of beneficiary and grandfathering (if any)	By February 28, 2018
5	Further Settlement meeting of all counsel for the Parties to continue to discuss remedies and draft Agreed Statement of Facts	By March 30, 2018
6	Responses from the Trustees to the OPGT regarding all outstanding issues on accounts to the end of 2017	March 30, 2018
7	All Parties to provide preliminary comments on the Trustee's first draft of an Agreed Statement of Facts	By May30, 2018
8	Concurrently with the preparation of the agreed statement of facts, all Parties to advise on whether they have any documents on which they respectively intend to rely on the issue of the remedies If they have documents they will file an Affidavit of Records	By ~~February 28~~, 2018 April 30
9	Concurrently with the preparation of the agreed statement of facts all non-parties may provide records on which they intend to rely to all Parties who will determine if they are duplicates and if not, non party may file an Affidavit of Records	By February 28, 2018
10	Third 2018 Settlement Meeting of all counsel to continue to discuss remedies and draft Agreed Statement of Facts	By April 30, 2018
11	Questioning on new documents only in Affidavits of Records filed, if required	By ~~May 30~~, 2018 June 15
12	Non-party potential beneficiaries provide all Parties with any facts they wish to insert in the Agreed Statement of Facts	By April 30, 2018

13.	Final Response by OPGT and any other recognized party on Agreed Statement of Facts	By June 30, 2018
14.	Agreed Statement of Facts filed, if agreement reached	By July 15, 2018
15	Parties to submit Consent Order proposing revised Litigation Plan including a procedure for the remainder of the application including remedy for striking language or amending the trust under section 42 of the Trustee Act or amending the trust according to the trust deed Alternatively, Trustees to file application re same.	By July 15, 2018
16	All other steps to be determined in a case management hearing	As and when necessary

Cutter (Re)

Ontario Judgments

Ontario Supreme Court - High Court Division

Toronto Weekly Court

Boyd C.

April 27, 1916

[1916] O.J. No. 106 | 37 O.L.R. 42 | 31 D.L.R. 382

Case Summary

Will — Construction — Real and Personal Estate Given to Executors upon Trust — Residuary Gilt in Favour of Sister — Gift over of "Unused or Unexpended Balance — Absolute Interest Cut down to Life Interest — Condition in Restraint of Marriage — Invalidity — Mixed Fund — "Revert" — Encroachment upon Capital for Maintenance of Sister — Enjoyment of Money and other Things in Specie — Insurance Moneys.

The testator by his will gave all his estate, which consisted of both realty and personalty and was valued at about $19,000, to his executors in trust (first) to pay debts and two pecuniary legacies and to hand over certain specific chattels to named persons. Then followed this clause "To my sister," naming her, "I leave all the residue of my estate. On the decease of my sister ... the unused or unexpended balance shall revert to the Odd Fellows Home ... In the event of the marriage of my sister all the residue hereinbefore bequeathed to her shall go to the Odd Fellows Home ..." In an earlier clause, the testator desired that big sister should repay to an Odd Fellows Lodge of which he was a member "all sick benefits said Lodge has paid to me, in case my sister feels able so to do:"

Held, that the weight of authority and the manifest intention of the testator to benefit the Odd Fellows, as, well as his sister led to the conclusion that the apparently absolute gift to the sister should be cut down to a life estate.

Review of the authorities.

Constable v. Bull (1849), 3 DeG. & S. 411 and Philson v. Stevenson (1903), 37 Ir. L.T.R. 104, 225, specially referred to.

Held, also, that the condition as to marriage, being in general restraint of marriage, was void; and the rule applies to mixed funds and to real and personal estate given together.

Lloyd v. Lloyd (1852), 2 Sim. N.S. 255, 263, Bellairs v. Bellairs (1874), L.R. 18 Eq. 510, 516, and Duddy v. Gresham (1878), 2 L.R. Ir. 442, 465, followed.

The different operation of rules of construction and rules of law pointed out. "Revert" is a flexible term, and in this will might be read as meaning "turn back."

Held, also, upon consideration of the words "the unused or unexpended balance," that the capital might and should be encroached upon for the purpose of the sister's proper maintenance--she not being resident in Ontario, where were the testator's domicile and estate--but for no other purpose.

Re Johnson *(1912), 27 O.L.R. 472*, and In re Thomson's Estate (1880), 14 Ch.D. 263, followed.

The sister was entitled in specie to the money and other articles quoe ipso usu consumuntur forming part of the estate.

In re Tuck *(1905), 10 O.L.R. 309*, followed.

The proceeds of a life insurance policy should be treated as money.

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1 MOTION by the executors and trustees appointed by the will of George W. Cutter, deceased, for an order declaring the true construction of the will in regard to certain questions arising upon the gifts, devises, and bequests therein.

2 The testator died on the 3rd October, 1915, at the city of Mishawaka, in the State of Indiana, having a fixed place of abode in Ontario.

3 The will was as follows:

> "This is the last will and testament of me, Col. George W. Cutter, presently residing at Mishawaka, county of St. Joseph, State of Indiana. I, hereby revoking all former wills at any time made by me, and being desirous of settling my affairs, in the event of my decease, and having full confidence in the persons after-named as trustees and executors, do hereby give, grant, assign, dispose, convey and make over to and in favour of John Donogh John T. Hornibrook, Joseph Oliver, and William Brooks, all of the city of Toronto, Ontario, and the survivor of them, as trustees and in trust for the purposes after-mentioned, the whole estate and effects, heritable and movable, real and personal, presently belonging to me and that shall belong to me at the time of my decease, together with the whole writs and vouchers thereof; and I nominate and appoint the said John Donogh, John T. Hornibrook, Joseph Oliver, and William Brooks, all of the city of Toronto, Ontario, and the survivor of them, to be my sole executors and trustees of this my will, but declaring that these presents are granted in trust always for the purpose after-mentioned, viz.: (First) I direct my executors and trustees to first pay my just debts, funeral and testamentary expenses. (Second) I give devise and bequeath unto my dear friend Charles F. Foster (of the Bank of Montreal), Toronto, Ontario, one thousand dollars and to his wife Mrs. Foster my wife's watch, chain, locket and wedding-ring in the event of my sister dying previously. To Max Thompson (barber) for his kindness to myself & wife three hundred dollars. All my Odd Fellows jewels to Covenant Lodge No. 52 of Toronto, Ontario. I desire that my name Col. George W. Cutter be inscribed on my tombstone. I desire John Edward Cook (barrister) to have my Masonic jewels, Knight Templar cloak and charm and two cushions after my sister's death. I desire William Brooks to have my big diamond ring and his wife my wife's diamond ring after my sister's death. I desire that my gold watch and chain be given to the oldest son of William Brooks in case he joins Covenant Lodge No. 52 I.O.O.F. I desire that my sister Rose repay to Covenant Lodge No. 52 I.O.O.F. of Toronto, Ontario, all sick benefits said Lodge has paid to me, in case my sister feels able so to do.
>
> "To my sister Rose A. Cutter I leave all the residue of my estate. On the decease of my sister Rose A. Cutter the unused or unexpended balance shall revert to the Odd Fellows Home of Toronto, Ontario. In the event of the marriage of my sister Rose, all the residue hereinbefore bequeathed to her shall go to the Odd Fellows Home of Toronto, Ontario.
>
> "And I reserve my life rent, and full power to alter, innovate, or revoke these presents in whole or in part. And I dispense with the delivery hereof. And I consent to the registration hereof for preservation."

4 The following questions were submitted by the applicants:

> (1) The testator in his will states: "To my sister Rose A. Cutter I leave all the residue of my estate. On the decease of my sister Rose A. Cutter the unused or unexpended balance shall revert to the Odd Fellows Home of Toronto." Having regard to what follows the above quotation, should or should not the word "revert" be taken as used by the testator not in its literal sense, but introduced by mistake or ignorance as

to the meaning of the same, and, in place of the word "revert," words such as "shall go to" or "I devise and bequeath to" the Odd Fellows Home of Toronto, Ontario, be substituted therefor?

(2) Having regard to the last mentioned quotation from the will, which states that "the unused or unexpended balance shall revert to the Odd Fellows Home of Toronto," if it be held that the word "revert" should be rejected and other words substituted shewing a devise and bequest to the Odd Fellows Home, has the said Rose A. Cutter any power to mortgage, sell, or convey the real estate left by the testator, free from the control of the executors and trustees, or of the residuary devisee and legatee, the Odd Fellows Home of Toronto?

(3) Following the last mentioned devise and bequest, the will reads: "In the event of the marriage of my sister Rose, all the residue hereinbefore bequeathed to her shall go to the Odd Fellows Home of Toronto, Ontario." As this is a mixed fund--(1) Are the executors and trustees bound to transfer to the said Rose A. Cutter, absolutely, all the residue and remainder of the personal property of the testator, forthwith after the payment of all just debts, funeral and testamentary expenses of the deceased, and expenses of the administration of the estate of the testator that may come to their hands? Or (2) must they hold the real and personal property in their possession until the death or marriage of the said Rose A. Cutter, whichever may first happen, for the purpose of distribution of the "unused or unexpended balance" of the estate, and does the word "balance" apply to the real property as well as the personal property left by the deceased?

(4) If the said Rose A. Cutter is entitled to the residue of the personal property, to what extent?

5 April 20. The motion was heard by BOYD, C., in the Weekly Court at Toronto.

April 27. Boyd C.

6 The testator, Colonel Cutter, had a fixed place of abode in Ontario, at Toronto, where, I suppose, he made the estate which he left in his will, which is all in this Province. He died while on a visit to his sister at Mishawaka, in the State of Indiana, U.S., where she, his chief beneficiary, is resident. The will is dated the 15th April, 1915, and his death was on the 3rd October, 1915, while he was yet in Indiana. He left no wife or children.

7 One reading the will as a whole cannot fail to see that he set great store by his connection with the Odd Fellows association, in which he was insured for $1,000. The whole estate is given to trustees for the different legatees. He gives his Odd Fellows jewels to a Toronto Lodge, and his Masonic jewels, cloak, and charm, to one named; and he desires his sister Rose to repay the Toronto Lodge all sick benefits the Lodge has paid to him, in case she feels able to do so. He is solicitous also for the well-being of his sister, and the clause which occasions the difficulty in this will relates to her in the following terms: "To my sister Rose A. Cutter I leave all the residue of my estate. On the decease of my sister Rose A. Cutter the unused or unexpended balance shall revert to the Odd Fellows Home of Toronto, Ontario. In the event of the marriage of my sister Rose all the residue hereinbefore bequeathed to her shall go to the Odd Fellows Home of Toronto, Ontario."

8 His estate was made up of debentures aggregating about $4,500; cash in banks and in savings accounts in all about $10,000; furniture, pictures, and jewellery, estimated at about $700; the life policy already mentioned of $1,000; and a parcel of land in Toronto, valued at $4,000: total, about $19,000. No estimate is given of debts, etc., to be first paid; but the pecuniary legacies will reduce the money by $1,300.

9 Apart from the interpretation of other wills and decisions thereon, the testator's intention appears to be to benefit both his sister and the Odd Fellows Home. He is minded to benefit her so long as she keeps her name and unwedded state; but the husband she chooses (if she does marry) must be one who can keep her, and not one who will depend on her means, derived from the testator.

10 The last sentence of this clause under consideration throws some light on the first part of it. He says, if the sister marries, "alt the residue hereinbefore bequeathed to her shall go to the Odd Fellows Home." This contemplates a substantial residue, diminished, it may be, by her using and spending, but not exhausted. This last part, using the words "shall go to," throws that same meaning to the word earlier used, "revert" to the Odd Fellows Home. The first

part is the difficult one, and I confess that I have not found the solution an easy one, and it may well be that other judicial minds might come to a different conclusion.

11 My first impression on the argument was, that these first words gave her an absolute estate; but Mr. Lewis's vigorous argument induced consideration. I think that in an earlier state of the law it would have been hold that the gift was of the whole residue and that the direction as to the unused and unexpended balance was an expression of intention which would fail of effect on account of its uncertainties: see per Sir W. Grant in Bull v. Kingston (1816), 1 Mer. 314. The earlier view would be, that in seeking to deal with "the balance"--i.e., so much of his estate as remained after its diminution by means of his sister's user and expenditure during her life--that sister, to whom he had given an absolute interest, would retain it. He first gives an absolute interest in his residuary estate, and then cuts it down or seeks to do so by a gift over of what is not spent by his sister during her life. On this reading of the will, the gift over would be void and inoperative, on the double ground of uncertainty and repugnancy.

12 But there is a later trend of decision, making for supporting such testamentary dispositions, though there are still many fluctuating opinions and divergent decisions in cases hardly distinguishable in language from each other. And all the Judges justify themselves on the ground that they are seeking to carry out the expressed or fairly inferential intentions of the testator. No doubt, the intention of the testator is the key to unlock difficulties, unless he has so expressed himself that to give effect to his words would violate a rule of law. Rules of construction may be modified so as to give effect to the real meaning and purpose of the testator.

13 The antinomy of judicial decision is well and briefly summarised in the last (1910) edition of Jarman, vol. 2, p. 1208: "In several cases a gift to A., with a direction that at A.'s death 'the residue' or 'whatever remains' of the property shall go to B., has been held to give A. a life interest only, while in other cases somewhat similar words have been held to give A. an absolute interest, or a life interest with a power of appointment or disposition." He cites cases of which among the first and perhaps the leading case is by Knight Bruce, V.-C., in 1849, Constable v. Bull, 3 DeG. & S. 411. In that case the testator directed his debts, etc., to be paid, and gave all his estate to his wife and at the decease of his wife whatever remained of his estate was to be equally divided between persons named. The Vice-Chancellor said: "The gift to the wife is universal in the first instance, and then follow the ulterior gifts, with the words, 'whatever remains of.' The only question seems to be, whether these three words have the effect of preventing the gift to the widow from being construed as a gift of a life interest; for, without these words, the subsequent bequests would have the effect of so reducing the interest given to the widow. There are several meanings capable of being rationally attributed to these words, which would be inconsistent with the construction giving to the widow the power of disposing of the property; and, as at present advised, I think that the other legatees have a substantial interest, and that such of them as survived the widow are entitled." On the last day of the Term, His Honour said that he remained of the opinion he had given; and a decree was made for administration.

14 The decision was followed in 1879 by Hall, V.-C., in Bibbens v. Potter, 10 Ch. D. 733, 735, and by Kay, J., in Re Sheldon and Kemble (1885), 53 L.T.R. 527, in which the language is similar to that of the will in hand. See In the Estate of Lupton, *[1905] P. 321*.

15 A strong decision in the Irish Court of Philson v. Stevenson, decided in 1903, is notable because the Judge below declined to follow Constable v. Bull, and was reversed by the Court of Appeal--FitzGibbon, Walker, and Holmes, L.JJ. The testator gave all he possessed to his wife, and at her death 50 pounds to be paid his sister, and "if any balance" to go to his brother. Porter, M.R., held that the widow had an absolute estate, and held the subsequent provision inconsistent with such estate: Philson v. Stevenson, 37 In L.T.R. 104--the appeal at p. 225. The Judge in Chief followed Constable v. Bull, and said: "The fair construction of this will is that the testator intended his wife to take and enjoy his property. That when she died 50 pounds" (of the testator's money) "should go to his sister, and the rest" (i.e., "the balance" of his assets after paying the 50 pounds) "to his brother." Walker, L.J., said that the respondent's construction would create a repugnancy, and this construction will not be given unless the Court is coerced to do so, and there was a plain construction of that will which did not create a repugnancy; and Holmes, L.J., concurred.

16 A like variation in a similar case is found in our Courts, but not so markedly expressed as in the Irish case cited. I refer to Roman Catholic Episcopal Corporation of Toronto v. O'Connor *(1907), 14 O.L.R. 666*: the words were: "I give ... all my estate to my sister ... and after the death of my said sister, I desire the remainder of my estate, if any, to be equally divided," etc. Mabee, J., held that the sister took the whole absolutely; in the Divisional Court, without deciding definitely, the Court found difficulty in following the learned Judge, and were not satisfied that the words could be successfully distinguished from those in the wills in such cases as, among others, Constable v. Bull, 3 De G. & S. 411.

17 The like diversity of opinion has extended to the Courts of Australasia: compare In re Carless (1911), 11 St. R.N.S.W. 388, in which Simpson, C.J. in Eq., adheres to and follows Constable v. Bull; and a later decision, in 1913, of A'Beckett, J., in Wright v. Wright, [1913] Vict. L.R. 358, in which he speaks of Constable v. Bull as an unsatisfactory decision, and, managing to distinguish it, gives it the go-by.

18 I think the weight of authority and the manifest intention of the testator to benefit the Odd Fellows, as well as his sister, lead to the conclusion that the apparently absolute gift should be cut down to a life estate.

19 There is, of course, the other contingency, of her marriage, to be taken into account, whereby the testator intends that her life estate may be curtailed and go over, upon her marriage, to the Odd Fellows. The validity of this condition was not discussed before me, but the point was taken and cases handed in to shew that it is void. So it appears to me, as at present advised.

20 In Lloyd v. Lloyd (1852), 2 Sim. N.S. 255, 263, Kindersley, V.-C., said: "And with regard either to his wife or to any other woman, a testator may make a gift so long as she shall remain single; but if he first gives a life estate to a single woman, a stranger to him, and then annexes a condition that in case she marries at all, it shall go over, that, being in general restraint of marriage, is not a good condition." This rule applies to mixed funds: Bellairs v. Bellairs (1874), L.R. 18 Eq. 510, 516; and to real and personal estate given together: Duddy v. Gresham (1878), 2 L.R. In 442, per Christian, L.J., at p. 465. The view of Christian, L.J., was accepted and followed by Byrne, J., in In re Pettifer, [1900] W.N. 182.

21 This case exemplifies the different operation of rules of construction and rules of law. By the former, the Court is able to give effect to the intention of the testator and avoid repugnancy by making all the parts as far as possible effective; by the latter the rule of law displaces the clear intention of the testator where directions are given which would involve a condition in general restraint of marriage (with a gift over), which has been long regarded as a violation of public policy, and as such is avoided and frustrated by the law. This term of forfeiture must be, therefore, taken out of the will, and it leaves the sister, as I conceive, with an estate for life. See Re Coward (1887), 57 L.T.R. 285, 287, 291; Allen v. Jackson (1875), 1 Ch. D. 399.

22 There is no difficulty in the import of the direction that on the death of the sister the "balance shall revert to the Odd Fellows." "Revert" is a flexible term, and in wills frequently takes colour and import from the context. In Jardine v. Wilson *(1872), 32 U.C.R. 498*, 502, it was taken to mean "follow." As used in the will under discussion in O'Mahoney v. Burdett (1874), L.R. 7 H.L. 388, 393, and in the phrase that if the niece should die unmarried the 1,000 pounds should "revert to the nephew," it was taken to indicate that the legacy was to come back or come away from the niece after she had the enjoyment of it. The same word was so read (quoting O'Mahoney v. Burdett) by Strong, C.J., in Cowan v. Allen *(1896), 26 S.C.R. 292*, and he said (p. 312) that it certainly implied a gift over. One of its dictionary meanings is "turn back," and that fits in very well here--"the balance shall turn back to the Odd Fellows."

23 Holding then that the testator gave a life estate in all his property to his sister, he would appreciate the mixed nature of his property, and that she was likely to live out of the jurisdiction of Ontario. He meant her to be well provided for out of the estate up to the date of her marriage (if she married) and, if she did not marry, till the time of her death.

24 The trustees desire direction as to how they shall deal with the estate in view of the life-tenant being non-resident. There is no small difficulty in seeking to get some definite rule from the cases on the extent of the claims of the life- tenant who has special claims of near relationship on the testator. This sister, said to be about 54 years of age, is, as I understand, his only relation--the only one, at all events, whom he has recognised in the disposal of his estate. The authorities were pretty well explored in Re Johnson *(1912), 27 O.L.R. 472*, and stress was there laid on the opinion expressed by James, L.J., in In re Thomson's Estate (1880), 14 Ch. D. 263. He thought that the widow took an estate for life with full power of enjoying the property in specie so that if there was ready money it need not be invested, but she might spend it, and she might use the furniture and enjoy the leaseholds in specie.

25 I incline to think that the language of this will would justify a little more liberality, which the charitable institution getting what is left should not complain about. He gives her all the residue of his estate and at her death the unused or unexpended balance to go over. He contemplates that she shall use and shall expend what is bestowed; to what extent? I think the whole residue may be employed so far as required for her comfortable maintenance suitable to her state in life. In other words, if necessary the capital may and should be encroached upon for the purpose of her proper maintenance, but for no other purposes.

26 I may refer to Re Fox (1890), 62 L.T.R. 762, not cited in Re Johnson, *27 O.L.R. 472*, and also to In re Ryder, [1914] 1 Ch. 865, in which In re Thomson's Estate is commented on.

27 I have no doubt that the sister is entitled in specie to the money and other articles quoe ipso usu consumuntur: see In re Tuck *(1905), 10 O.L.R. 309*, 311, 312.

28 As to the insurance, if that goes to the trustees under the trusts of the will, I think it should be regarded as money. She will be entitled as of course to the corpus from the debentures and the usufruct of the land.

29 If any difficulty arises, there will be a reference to ascertain to what she is entitled as a yearly allowance for maintenance, payable monthly or quarterly as she may wish.

30 But I trust this may be avoided. The charitable beneficiaries, through their counsel, manifested a liberal attitude towards the sister; and I hope an amicable arrangement will be arrived at by which she will be satisfied and amounts fixed which may be presently paid to her and to the charity. The costs of all parties out of the estate.
R. G. Smythe, for the applicants.

D. Inglis Grant, for Rose A. Cutter.

O. L. Lewis, K.C., for the Odd Fellows Home.

EASTERN TRUST CO. v. McTAGUE et al.

Prince Edward Island Judgments

Prince Edward Island Supreme Court

Campbell, C.J., MacGuigan, Bell, JJ.

Judgment: March 25, 1963

[1963] P.E.I.J. No. 5 | ***39 D.L.R. (2d) 743***

(53 paras.)

Counsel

M. A. Farmer, Q.C., for appellants, Quinn and Blanchard.

L. P. O'Donnell, and *K. M. Martin*, Q.C., for respondents, Eastern Trust Co. and Clarice McTague.

CAMPBELL, C.J. (dissenting)

1 The background of this litigation is fully set forth in the opinion of Tweedy, V.-C., from whose decision this appeal is taken (*(1962), 34 D.L.R. (2d) 363*).

2 After the appeal had been set down for hearing, counsel for the respondents moved in Chambers to set aside the notice of appeal on the ground that it was intituled in, and contemplated an appeal to, the Court of Appeal in Equity, which has not existed since the proclamation of s. 11 of the *Judicature Act* on August 6, 1960.

3 The disposition of that application, and the consequent amendment, and terms, are set out in the unanimous decision of the presiding Judges pronounced on July 5, 1962.

4 The logical order of the questions involved in the appeal is indicated by Kay, J., in *Re Moore* (1887), 39 Ch. D. 116 at p. 119, where he is discussing the rules applicable to limitations and conditions: "Before applying rules of law to a provision of this kind it is proper to determine, independently of any such rule, what is the construction of this bequest." *Cf.* p. 125: "... the construction for the purpose is independent of and must precede the application of the rule." And in *Bellairs v. Bellairs* (1874), 43 L.J. Ch. 669 at p. 672, Jessel, M.R., refers to the "preliminary question of construction, viz., what is the construction of this gift, is it or not a condition which comes within the rule stated"?

5 The first question of construction is the general intention of the testator. It is no doubt true that if a testator, in conferring a benefit on a married woman already living apart from her husband is actuated solely by the desire to make an adequate provision for her maintenance until she returns to live with her husband or remarry, there may be nothing contrary to the policy of the law in such a provision: *Per* P. O. Lawrence, J., in *Re Lovett*, [1920] 1 Ch. 122 at pp. 126, 129.

6 Lawrence, J., finds the above feature to constitute the "essential distinction" between the *Lovell* case and *Re Moore, supra*, where a provision was made in contemplation of a future separation. He also draws, however, a distinction between *Re Lovell* and a third class of cases at pp. 127-8:

> If indeed the Court were to arrive at the conclusion from the evidence in any particular case that the real purpose of making the provision was to induce the wife contrary to her duty to continue in a state of separation and not to provide maintenance for her whilst in that state, it may well be that it would be held that such a provision was contra bonos mores and void.

7 In the present case, the learned Vice-Chancellor finds (p. 366) that the provisoes for cessation of benefits, "If at any time she returns to her husband ..." and "if she is seen in his company at any time or place" are "void", -- obviously as being contrary to the policy of the law. There is not only ample material to support that opinion, but in view of the injunction against being seen in her husband's company, I cannot see that the provisoes are capable of any construction other than a design to discourage reconciliation between wife and husband, and to perpetuate her living apart from him.

8 Reference is made in 96 C.J.S., pp. 476-7 to a Missouri appeal, *Witherspoon v. Brokaw*, 85 Mo. App. 169, in which it was held that a testamentary condition is void as against public policy and good morals if its object is to make an existing separation final and prevent a resumption of the marriage relation. The note goes on to say that to offend in this respect the provision of the will must be calculated to promote separation, and that a provision is not to be invalidated by an idle intention of the testator.

9 In the present case the provisoes of the will are obviously calculated to promote a continuance of the separation and I therefore fully agree with the Vice-Chancellor's opinion that those provisoes are contrary to the policy of the law, and therefore void and invalid. I do not, however, consider that they should, as the appellants now contend, be classified as invoking *malum in se*.

10 At a later stage I shall discuss the learned Vice-Chancellor's concurrent finding that the provisoes in question are merely conditions subsequent, and that therefore their invalidity leaves the devises valid and absolute. In fact, the next question in logical order is whether the provisoes attaching to Clarice McTague's benefits should be construed as (a) a limitation; or (b) a condition precedent; or (c) a condition subsequent. A limitation may, of course, be conditional in its expression and nature, but it differs from a mere condition in being an essential measure of the duration of an estate or benefit; if the limitation be void the gift or benefit fails. A condition attached to a gift, on the other hand, may, in certain circumstances, be rejected as void, leaving the gift or benefit to stand "simple and pure".

11 Conditions, in turn, may be classified as precedent or subsequent. A condition precedent is the *sine qua non* of the commencement of an estate or benefit, and until the condition is fulfilled no gift is intended. A condition subsequent is one upon whose performance or happening an existing estate or benefit is terminated -- what Knight Bruce, L.J., calls in *Cartwright v. Cartwright* (1853), 3 De G. M. & G. 982 at p. 988, 43 E.R. 385, "a condition destructive of the particular estate".

12 The distinctions between limitations and conditions are exceedingly refined. In many cases presenting features partly similar to our instant situation, the provisoes have been regarded as limitations: *Re Moore, supra; Re Lovell, supra; Re Hope Johnstone*, [1904] 1 Ch. 470. In others, such as *Cartwright v. Cartwright, supra*, and *Brown v. Peck* (1758), 1 Eden 140, 28 E.R. 637, construction as a condition has been favoured.

13 It must be noted, however, that in the *Cartwright* case (the typical and logical example of an illegal condition subsequent designed to destroy a validly subsisting estate) the proviso in dispute was in substance the exact opposite of that here concerned. There, by an ante-nuptial settlement, the intended wife was to receive certain benefits during the perfectly lawful and commendable continuance of her living with her husband, whereas she was to lose those benefits upon the happening of an event contrary to the policy of the law, namely separation from her husband; here, under Dr. Blanchard's will, the respondent McTague is to receive the benefits while, contrary to the policy of the law, she is encouraged to live apart from her husband, but lose the greater part of them if she lawfully returns to his bed and board.

14 The language of Knight Bruce, L.J., in the *Cartwright* case at p. 988 indicates that, even in a period when the rules governing conditions and limitations were very technically applied, the distinction was not always simple, clear

cut, or mutually exclusive. He refers to the proviso in that case as being a "limitation in favour of the husband", and yet he concludes that it was "in the nature of a condition destructive of the particular estate, and not a limitation to await its natural termination". He goes on to refer to "the limitation by way of condition destructive of the particular estate". It was held that the condition subsequent or destructive was void but that the benefits to the wife subsisted notwithstanding separation.

15 Difficult to distinguish is *Re Hope Johnstone, supra*, where an annuity was provided for a wife if and so long as she continued to cohabit with her husband. Kekewich, J., says at p. 474:

> It is a conditional gift in that a condition is attached to it, but it is a limitation and not a gift defeasible on the performance or non-performance of a condition precedent or subsequent .... (p. 479) there is no condition which can be rejected because not allowed by law, and the limitation must be taken as a whole as it stands.

16 It was held that, as the wife was not cohabiting with her husband, she could not insist on the gift limited to endure only during cohabitation.

17 The only fundamental distinction between the *Cartwright* and *Johnstone* cases would appear to be the intervening analysis by Kay, J., and by the Court of Appeal in 1887, in *Re Moore, supra*, an analysis which apparently started a more modern trend towards construction as limitation. This trend is indicated by the *Lovell and Johnstone* cases.

18 The language of the proviso is sometimes helpful in arriving at its construction. In *Bellairs v. Bellairs, supra*, Jessel, M.R., remarks that the use of "until" shows that the testator knew the difference between a limitation and a condition. In the *Moore* case, *supra*, the words used were "during" and "whilst". In our case it might be argued that the repeated use of the word "if" would seem to indicate construction as conditions rather than as limitation. The actual words used are, however, far from conclusive. In the *Johnstone* case the introductory conjunction is "if". And in *Heath v. Lewis* (1853), 3 De G. M. & G. 954, 43 E.R. 374, Knight Bruce and Turner, L.JJ., both regarded "if" as being comprised in the technical and proper language of limitation as distinguished from condition.

19 Limitations are very frequently conditional in their nature and intent, and the conjunction "if" may be an appropriate introduction of a limitation, especially when it is associated, either in language or necessary implication, with words denoting time, such as "when", "so long as", "until", "during". In the present case the first "if" obviously refers to the time of the testator's death; it is coupled in expression with "still" and in necessary implication with "at that time". The second and third "ifs" are associated in language with "at any time", which clearly means at any time later than the death of the testator. The period of time intervening between the two sets of "ifs" was obviously intended to measure the duration of Clarice McTague's enjoyment of, at least, the Pownal Street property and the annuity.

20 On an overall consideration of the problem, I am inclined to apply the test used by Kay, J., in the *Moore* case at p. 119 (unanimously upheld by a very strong Court of Appeal, Cotton, Bowen and Fry, L.JJ.):

> As a matter of construction it is impossible to hold that any of these payments are given to her while living with her husband. The living apart from her husband is of the essence of the gift in this sense -- that it is the measure of the duration of these payments.
>
> The duration of these payments is a limitation, not a condition; and to give them any longer or other duration than that prescribed by the will cannot be done by treating them like a legacy of a sum of money given subject to a condition which may be discharged. To treat this gift in that manner would be making an entirely new and essentially different bequest.

21 Under the Blanchard will the living apart from her husband is of the essence of the gifts to Mrs. McTague -- it is the measure of the intended duration of her tenure of the Pownal Street property and of her allowances from the residuary trust fund.

22 Still more convincing is the analogy of *Re Lovell, supra*. There counsel opposing the annuity had raised two

main contentions: (a) that the bequest was a limitation and not a bequest upon a condition; (b) that its object was to induce M.S. to continue to live apart from her husband and it was therefore void as contrary to the policy of the law. I have already intimated that Lawrence, J., found in favour of the annuity against the second contention (b). It is interesting to note that both the main annuity and its reduction in the case of return or remarriage were consequently valid.

23 As to the first contention (a), it is pertinent to outline the terms of the bequest, very similar in that respect to those of the Blanchard will. The trustees were directed to pay to M.S. (providing she was living with the testator at the time of his death) "during her life" by equal quarterly payments [pounds]750 a year provided and so long as she should not return to her husband and provided and so long as she should not remarry ... If she remarried or returned to her husband, the annuity was to be reduced to [pounds]250. Notwithstanding the use of the expression "during her life" Lawrence, J., says at p. 125:

> In my opinion the first of these contentions is right. Upon the true construction of the will I think that the effect of the bequest is to limit the annuity of 750l. during such a period as Mabel Southall should live apart from her husband or should not remarry and not to give the annuity to her for life subject to a condition that it should cease if she should return to her husband or remarry.

24 So far as the distinction between limitations and conditions is concerned, the instant case is directly analogous to *Re Lovell*. For the foregoing reasons, and on the more recent of the authorities cited, I hold that the proviso against Clarice McTague's returning to live with her husband is a limitation, and not a mere condition.

25 To summarize: The proviso for continued living apart from her husband is an essential limitation of the enjoyment by Clarice McTague of the Pownal Street property and of allowances from the residuary trust fund. That limitation is, in the circumstances, of the present case, contrary to the policy of the law, but it does not contemplate invoking *malum in se*.

26 I fully agree with the opinion of the learned Vice-Chancellor, p. 367, that the provisoes against returning to her husband or being seen in his company are "clearly ... against public policy" (or, to use the expression preferred by some authorities, contrary to the policy of the law) and "therefore void"; but for the reasons foregoing I am respectfully unable to agree with his conclusion that those provisoes are merely a condition subsequent. From the latter conclusion His Lordship goes on to apply a principle adopted by English Courts of Equity from the civil law to the effect that in cases of condition subsequent, and in some cases of condition precedent, if a condition be found void that condition may be rejected and the estate or benefit be established as absolute, or stand simple and pure, *i.e.*, discharged from the condition.

27 The application of that doctrine was in some cases rather technical, and sometimes appeared to create an entirely new bequest or benefit different from that intended by the testator or settlor. Of a proposition leading to such a result Knight Bruce, L.J., says in *Heath v. Lewis, supra*, p. 956, that it is perhaps truly the state of English law on the subject, but that it is perhaps not creditable to the English law.

28 Kay, J., in *Re Moore, supra*, p. 122, in discussing the principle of rejecting a condition and establishing the legacy discharged from it, says that undoubtedly our law has adopted some doctrines of the civil law which do great violence to wills and which seem much less satisfactory than the rules of the common law which we apply in the case of devises of real estate. At p. 124 he finds it difficult to understand the two decisions of *Brown v. Peck* (1758), 1 Eden 140, 28 E.R. 637, and *Wren v. Bradley* (1848), 2 De G. & Sm. 49, 64 E.R. 23. As to *Brown v. Peck* he adds: "I should have had great difficulty in so construing it." As to *Wren v. Bradley* he says: "With all respect, I think this construction doubtful."

29 Rather than attempt, as a Court of first instance, to overrule a line of decisions with which he apparently felt some measure of disagreement, Kay, J., sought to indicate distinctions arising in individual cases. He pointed out that the civil law doctrine respecting conditions as introduced into English equity was not a principle of universal application, and should not be extended beyond its proper limits. It did not, for instance, apply to conditions precedent in cases of real estate, where the common law of England laid down another, and more satisfactory, rule

-- pp. 120, 122. *Cf.* (by analogy) *Re Turton*, [1926] 1 Ch. 96, where Astbury, J., held that there was an absolute gift to residue as the conditional specific gift had become impossible by an act of the testator. Nor did the doctrine extend, either in civil or common law, to a condition precedent which was illegal as involving *malum in se* -- p. 122.

30 But it was on the essential difference between mere conditions and limitations that Kay, J., based his decision, holding that the civil law doctrine of establishing as absolute a bequest freed from a void condition did not extend in English law to the case of a limitation. He accordingly held that the bequest of payments, to be made within certain limits which the law did not allow, was wholly invalid and void. On this point, also, the conclusion of Kay, J., was unanimously approved by the Court of Appeal. Cotton, L.J., at p. 130 says: "... in my opinion Mr. Justice *Kay* came to the correct conclusion. The gift here is not a gift of an annuity subject to a condition, but a limited gift, the commencement and duration of which are fixed in a way which the law does not allow." And Bowen, L.J., at p. 132: "The cases therefore do not support the view that the doctrine of the Civil Law is to be extended to limitations, and in my opinion the Judge below came to a right conclusion."

31 Finding, as I have done on the authority of *Re Moore* and more recent cases, that the provisoes against Clarice McTague's return to, or being seen with, her husband are an essential limitation of the duration of her estate or interest in the Pownal Street property and the residuary trust fund; and finding that limitation to be fixed in a way that is contrary to the policy of the law and is therefore not allowed; I hold that the devise and bequest of those items of property to Clarice McTague are entirely void.

32 The bequest of the furniture (with exceptions) and motor car is on a different footing. It is not expressed to be subject to the illegal limitation. It comes into effect on the happening of a condition precedent which does not involve *malum in se*, namely "if (at the time of my death) she is still living away from Joseph McTague, her husband". I hold that the gift of these items to Clarice McTague is absolute and is not affected by the illegal limitation attached to some of the other property.

33 The question of the "cottage at Stanhope Beach along with land" is a little more difficult. The condition precedent is the same as in the case of furniture and motor car and there is no express relation to the illegal limitation. But, this property being presumably real estate, the devise would be void if the condition precedent were invalid as being contrary to the policy of the law, whether it involved *malum in se* or not. The question is therefore whether that condition is referable only to the expressed stipulation that C.M. is still living away from her husband at the testator's death, or whether it is tainted by the testator's obvious design to discourage a reconciliation. On careful consideration, I am of the opinion that the condition precedent as to this item is merely intended to provide for the devisee on account of an existing separation, and is therefore not unlawful -- *Re Lovell, supra*. The devise of the testator's estate in this property is therefore absolute.

34 MACGUIGAN, J., concurs with BELL, J.

BELL, J.

35 This is an appeal from the judgment of Tweedy, V.-C., delivered on May 16, 1962 (*(1962), 34 D.L.R. (2d) 363*). The ground for appeal is "that the Judgment and Order thereon rendered and given is contrary to law".

36 The case came before the Chancery Court by way of a bill of complaint at the instance of one of the executors, the Eastern Trust Company, who asked that the estate be administered under the direction of the Court and for a declaration as to whether the gifts to Clarice McTague are valid or have any effect in law. No evidence was taken before the trial Judge but apparently it was agreed that Clarice McTague was married to Joseph McTague in 1940; that two children were born to the marriage in 1942 and 1944; that the said Clarice McTague and Joseph McTague separated and that the said Clarice McTague and her two children went in 1945 to live with deceased and continued to reside with him up to the time of his death in 1960, and separate from the husband and father. The deceased's will was made in 1950 and was a "form" one, partly typed and partly written (see *Re Blanchard (1962), 30 D.L.R. (2d) 666*). Under the will the deceased divided up his substantial estate of realty and personalty between his adult daughters living in Ireland and South Africa and Clarice McTague. The bequests to C.M. are as follows:

> To pay or convey ... to Clarice McT, housekeeper, my property 240, 242 Pownal St., furniture therein (except furniture stored for Phyllis) also (Buick) car, my cottage at Stanhope Beach along with land (if she is still living away from Joseph McTague, her husband). My bonds, insurance policy and cash and remainder of property I divide into 3 equal parts to each of them. Clarice McTague share to be held in Trust, and she receive monthly allowances for twenty years. If at any time she returns to her husband Joseph McTague all allowance and shares in my Estate are to cease also property at 240, 242 to be sold and divided between my daughters Phyllis and Florence, if she is seen in his company at any time or place the above hold good. My share of 1/3 of land belonging to Estate of Clement B. is also divided into 3 shares.

37 Counsel for the two daughters contended that the words qualifying the gift to C.M. are words of limitation or in the alternative the words are a condition precedent and as the limitation or condition precedent are against the policy of the law, the gifts are void. Counsel for Clarice McTague claims that the provisions are not a limitation or a condition precedent but an impolitic condition subsequent and as the conditions are void as against public policy, the gifts are fully effective.

38 From the circumstances available and from the form and drafting of the will, the deceased had written the will himself, without legal advice or any experience in such matters. It appears to me that he was dividing up his estate to a class deserving of his bounty and to include his housekeeper who had remained with him after her separation from her husband for some 15 years.

39 If the deceased had provided for C.M. by devising certain property to her and adding merely the words "if she is still living apart from her husband", as he actually did in reference to the real estate at Pownal Street and Stanhope, I would not have much difficulty and I would agree with the Vice-Chancellor that the bequest was a valid one, but he went further in his bequest to her of a share in his personalty by adding a condition, definitely against the policy of the law, and making the condition to govern the realty previously bequeathed.

40 This takes us into the realm of limitations and conditions precedent and conditions subsequent, and wherein the distinction is very refined and the resulting decision of very important effect. In dealing with conditions 39 Hals., 3rd ed., pp. 914-16 has this to say:

> 1386. A testator may by his will freely attach conditions to his gifts, provided that they do not conflict with certain recognised restrictions and are not inconsistent with other provisions of the will.
>
> A condition must not be unlawful; it must not be contrary to public policy; it must not be uncertain; ...

41 And para. 1387 is as follows:

> 1387. A condition, according to the construction of the will, is either a condition precedent, that is to say such that there is no gift intended at all unless and until the condition is fulfilled, or a condition subsequent, that is to say, such that non-compliance with the condition is intended to put an end to the gift. Subject to the terms of the will, the date at which a condition precedent must be fulfilled is the date at which the interest, if any, vests in possession. Where it is doubtful whether a condition is precedent or subsequent, the court prima facie treats it as subsequent, for there is a presumption in favour of early vesting. Words expressing a condition may be treated as being words of limitation, and a gift expressed in the form of a limitation may be effective, although as a condition subsequent it would be void. In particular, words providing for divesting of an interest on marriage may be susceptible of construction as words of limitation. Words which import a condition may also be construed as merely creating a trust or charge, or even simply a personal obligation.

42 Again at para. 1121, s. 1655 it is stated:

> 1655. The presumption in favour of early vesting may assist in determining whether a condition is to be construed as precedent or subsequent. On the construction of the particular will it may be plain that a condition is or is not a condition precedent; the same condition may in one case be precedent and in another be subsequent. In the first instance the context of the whole will must be considered; but, if on

> construction it is doubtful whether the condition is precedent or subsequent, then the presumption in favour of early vesting applies, and the condition is treated as subsequent.

43 In dealing with the distinction between conditions precedent and subsequent, vol. 30, Am. & Eng. Enc. of Law has this to say at p. 800:

> A condition precedent is one which must be performed before the interest affected by it can vest. A condition subsequent is one by which an interest already vested may be divested, or a contingent interest defeated before vesting ....
>
> Whether a condition is precedent or subsequent is a question of construction, in regard to which very little help can be derived from decided cases.

44 And at p. 802:

> ... in order to save, if possible, the vested estate or interest, and if such condition proves illegal as against good morals, or is impossible under any circumstances, or is rendered impossible in a particular case and under existing circumstances, the gift, whether of real or personal property, relieved of the condition, becomes absolute in effect.

45 In 69 C.J., p. 673, it is stated that an illegal or void condition subsequent annexed to a devise of realty or a bequest of personalty will be disregarded and the estate or interest given will be considered as vested, absolute and relieved of the condition, citing the English authorities of *Re Moore* (1887), 39 Ch.D. 116; *Wren v. Bradley* (1848), 2 De G. & Sm. 49, 64 E.R. 23, and *Egerton v. Brownlow* (1853), 4 H.L.C. 1, 10 E.R. 359. Section 1783, vol. 69 C.J., p. 675 is as follows:

> Conditions in a will may be precedent or subsequent. A condition precedent is one which must happen or be fulfilled or performed before the estate or interest can vest, while a condition subsequent is one whose happening, fulfillment, failure, nonperformance, or breach, according to the form of the condition, will determine, defeat, divest, curtail, or abridge an estate or interest already vested, and the test of the difference between the two is whether the act or event on which the estate depends is to be done or happen before or after the estate is to vest. There are no particular or technical words which indicate the difference between conditions precedent and subsequent; the question is always one of the testator's intention which is to be gathered from the whole will, construed in the light of applicable principles.

46 In the case of *Jordan et al. v. Dunn et al.* *(1887), 13 O.R. 267*, the appeal Court found both conditions precedent and subsequent involved and Wilson, C.J., quotes with approval at p. 282: "In *Acherley v. Vernon*, Willes, at p. 156, the Chief Justice said, 'I know of no words in a will or deed which necessarily make a condition precedent or subsequent; that is determined according to the nature of the thing and the interest of the parties'."

47 After perusal of the many authorities cited, in view of the above set forth citations from Halsbury and other works and on a full consideration of the will and the circumstances surrounding the bequests, I am of the opinion that the conditions set out by the deceased are conditions subsequent and being against public policy are void leaving the gifts in full effect.

48 There does not appear to be any reported case just similar to the present and most of the cases cited and many others that I have read are distinguishable and the facts and circumstances altogether are somewhat different. I place strong emphasis on the circumstances surrounding these bequests and go along fully with the statement that whether a condition is precedent or subsequent is a question of construction in regard to which very little help can be derived from decided cases and the question is always one of the testator's intention which is to be gathered from the whole will. Here we have the case of a testator, drawing his own will, and providing for those he should provide for and actually vesting in them certain property. In the case of C.M. he adds a condition contrary to public policy being one of the classes set out in Halsbury as being void, and of this class, the commonest are those calculated to produce a future separation of husband and wife.

49 There are several more or less recent cases that were not cited but are of considerable interest herein. In the

case of *Re Thompson*, [1939] 1 All E.R. 681, the testator's will contained a clause to the effect that his daughter, if still married to her present husband, should be entitled to no more than an annuity of [pounds]300 but would get the income from the whole estate if she should be the widow of her present husband or married to someone else or divorced from her husband. It was contended that such a provision was contrary to public policy and void. It was held that provision was not contrary to public policy on the particular facts disclosed in the case (see judgment of Simonds, J., in *Re Caborne*, [1943] 1 Ch. 224 at p. 231).

50 In *Re Caborne*, a testatrix provided that the residue of her property was to go to her son but provided that if his present wife should still be alive and married to him, the absolute gift to him should be modified in such a manner that he should have an interest for life only ... but so that if at any time during the life of son, the said wife should die or the marriage otherwise be terminated, the absolute gift to take effect. It was held that the provision tended to encourage an invasion of the sanctity of the marriage bond and was void as being against public policy. The cases of *Cartwright v. Cartwright, Re Thompson, Re Moore, Re Lovell*, and *Re Hope Johnstone* were referred to. Simonds, J., at p. 232, says:

> I conclude, then, that the condition attaching to the absolute gift in favour of W. R. Caborne is invalid, and I so declare. It was argued on behalf of the specific legatees of the scheduled articles that a different result might be reached in their case, on the ground that, on the true construction of the will, there was not a gift over on condition, but a series of limitations. This contention is not, in my judgment, well founded. I must read the clause as a whole, and, so read, it appears to me to be clearly an absolute gift to W. R. Caborne of residue including the articles in question, followed by a proviso which is in the nature of a condition. I must, therefore, declare that, in regard to these articles also, the gift over is invalid and that they belong to W. R. Caborne absolutely. I will declare that the proviso is absolutely void.

51 There is also the case of *Sifton v. Sifton*, [1938] 3 D.L.R. 577, [1938] A.C. 656, *[1938] O.R. 529*, [1938] 3 All E.R. 436, which went to the Privy Council. It was held that the condition was void for uncertainty. The testator devised his property to his trustees to pay the income to his daughter, the payments to the daughter to be made only so long as the daughter continued to reside in Canada. Lord Romer delivered the opinion. I quote from pp. 588-9 D.L.R., p. 676 A.C.:

> It only remains to consider whether the words in question are a condition subsequent. As to this their Lordships feel no doubt. Henderson, J.A., was of opinion that the words constituted a condition subsequent and in this as in other respects their Lordships agree both with his conclusions and the reasons he gave for them. Where it is doubtful whether a condition be precedent or subsequent the Court *prima facie*, treats it as being subsequent. For there is a presumption in favour of early vesting.

52 The case of *Re Nurse* *(1921), 20 O.W.N. 428* and the case of *Re Thome* *(1922), 22 O.W.N. 28*, being judgments of Middleton, J., and Rose, J., seem to me to be applicable to the present one and to support my opinion as expressed herein. In the *Nurse* case there was a bequest outright to a daughter subject to conditions that if she supported or aided her husband or lived with him, she would lose the benefit of the bequest at the discretion of the executors. Middleton, J., held that this condition subsequent was void, citing *Wilkinson v. Wilkinson* (1871), L.R. 12 Eq. 604.

53 In my opinion the appeal should be dismissed and the judgment of Tweedy, V.-C. be confirmed. In view of the dissenting judgment of the Chief Justice herein, I am of the opinion that sufficient merits for the appeal have been disclosed and that costs of the appellant and of each respondent in this appeal be paid out of the estate.

Hamilton (Re)

Ontario Judgments

Ontario High Court of Justice

Boyd C.

January 21, 1901.

[1901] O.J. No. 3 | 1 O.L.R. 10

(10 paras.)

Case Summary

Will — Gift of Income to Child — Condition as to Marriage — Consent of Executors — Invalidity — Mixed or Massed Fund.

Testator died on 1st May, 1900, leaving a will dated 14th March, 1898, in which he gave to his son out of and from the annual income and profits of the investment and rents of his real and personal estate $300 per year while unmarried, "but, if he marries to the satisfaction of and with the consent of the executors, then he is to receive the whole annual income of the estate during his life." There was no bequest over in case the son married without consent, nor any subsequent disposal of the estate affecting these assets. The son married without consent:

Held, nevertheless, that he was entitled to the whole income.

With regard to personalty the Court of Chancery long ago adopted the rule of the civil and ecclesiastical law by which such a condition is void or regarded as merely in terrorem; and according to modern rules a mixed or massed fund is to be treated in the same way as personalty.

Review of English authorities.

Counsel

Clute, Q.C., for the applicant. F.W. Harcourt, for infants interested. Denmark, for the executors and for certain beneficiaries under the will.

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1 AN application by John D, Hamilton, a son of James Hamilton, deceased, upon the return of an originating notice under Rule 938, for an order declaring the true construction of the will of James Hamilton. The facts are stated in the judgment.

2 The motion was heard by BOYD, C., in Chambers, on the 11th January, 1901.

January 21. BOYD C.

3 The testator died 1st May, 1900, leaving a will dated 14th March, 1898, in which he gave to his son, J. D. H., out of and from the annual income and profits of the investment and rents of his real and personal estate, $300 per year while unmarried, but if he marries to the satisfaction of and with the consent of the executors, then he is to receive the whole annual income of the estate during his life.

4 The son, who is over thirty years of age, and was out of the country, had notice of the contents of the will, and married, without asking the consent of the executors, on the 14th May, 1900. The person to whom he was married appears to be respectable and suitable, so that the executors might express their satisfaction, even if it is too late to give their consent. But they do neither, and the son asks the direction of the Court as to the interest he takes under this will.

5 There is no bequest over attached to the estate in case the son marries without consent; nor is there any subsequent disposal of the estate affecting these assets.

6 The law has long been settled that if a man gives a legacy to his son in case he marries with consent of executor, and he marry without, yet he shall have the legacy in the Court of Chancery, and the reason given was, that the Court adopted the rule of the civil and ecclesiastical law by which such a condition was void or regarded as merely in terrorem. One of the first cases was Rightson v. Overton (1677), 2 Freeman 20. To same effect Shipton v. Hampson (1674), Finch R. 145. In Semphill v. Bayly (1721), Prec. Ch. 562, it was said that this sort of restriction could hold no longer than till the party came of age. The rule was treated as firmly established by the great authority of Lord Chancellor Hardwicke in many cases such as Wheeler v. Bingham (1746), 1 Wils. 135, and Pulling v. Reddy (1743), 1 Wils. 21, where he said: "If a legacy be given to A.B. upon this condition that she marry with the consent of a third person, and there be no devise over in case she marry without such consent, this is only to be considered in terrorem ... This rule is taken from the civil law, as this Court (Chancery) has a concurrent jurisdiction as to legacies." The like is held by Sir F. Plumer in Malcolm v. O'Callaghan (1817), 2 Madd. 349, 353.

7 Again in Reynish v. Martin (1746), 3 Atk. 330, Lord Hardwicke held that "it is an established rule in the civil law, and has long been the doctrine of this Court, that where a personal legacy is given to a child on condition of marrying with consent, that this is not looked on as a condition annext to the legacy, but as a declaration of the testator in terrorem:" S. C., 1 Wils. 130. The authority of this case, Reynish v. Martin, stands unimpeached to the present day, and it has lately been noted as a landmark of the law for this, "that conditions precedent as well as conditions subsequent which are against the policy of the law are treated as void in cases of personal estate, and that the legacy 'stands pure and simple:" Kay, L.J., in Re Moore (1888), 39 Ch. D. at pp. 122, 123; and Re Nourse, [1899] 1 Ch. 63, per Stirling, J., a great master of equity, at p. 69. The whole matter is elaborately discussed and decided with the same result in Keily v. Monck (1795), 3 Ridgw. P.C. 205 and 246.

8 The conclusion, therefore, as to the personal estate seems clear, that it is to be enjoyed by the legatee though he has married without consent. But this will gives him not only the income of the personal, but also of the real, estate in a united fund for the term of his natural life. It is clear that, had the testator directed conversion of the realty so as to form a mixed fund, the whole would be treated as personalty and enure to the benefit of the son, though he had married without consent, there being no bequest over and no other benefit given to him. For that see Bellairs v. Bellairs (1874), L.R. 18 Eq. 510, as recognized by Kay, J, in Re Moore, ubi supra. But I think, further, upon the weight of authorities, that the same construction is to be given to a fund not mixed, but, as here, massed in one bequest. The modern rule appears to be settled that if testator has mixed or massed the proceeds of realty and personalty, it is to be inferred that one and the same rule of construction and disposition shall operate as to both, and that is the rule which obtains as to personalty. That result is to be deduced as applicable to this bequest from Genery v. Fitzgerald (1822), Jac. 468.; Bellairs v. Bellairs, L.R. 18 Eq. 510; Duddy v. Gresham (1878), L.R. 2 Ir. at pp. 465, 466, per Christian, L.J.; and Re Dumble (1883), 23 Ch. D. 360. (And see per Comyns, C.B., in Harvy v. Aston (1740), Com. R. at pp. 729, 730).

9 I come to the conclusion that the son is entitled to all the benefits given by the will, though he has not married with consent of the executors.

10 Costs will be borne by the estate.

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1956 CarswellBC 235
British Columbia Supreme Court

Hurshman, Mindlin v. Hurshman, Re

1956 CarswellBC 235, 6 D.L.R. (2d) 615

Re Hurshman, Mindlin v. Hurshman et al.

McInnes J.

Judgment: December 14, 1956
Docket: None given.

Counsel: *D. L. Silvers*, for the applicant
W. L. Warner, for Mary Elizabeth Hurshman
R. J. Hawthorne, for The Children's Hospital
H. C. McKay, for The Loyal Protestant Home for Children

Subject: Estates and Trusts
Related Abridgment Classifications
Estates and trusts
I Estates
I.6 Legacies and devises
I.6.d Conditional gifts
I.6.d.iii Grounds for invalidity
I.6.d.iii.B Public policy grounds
I.6.d.iii.B.1 Promotion of marriage breakdown

***McInnes J.*:**

1 This is an application by way of originating summons brought on behalf of Georgia Wood Mindlin, daughter of the deceased Alfred Hurshman. The questions for determination are:

1. Whether the condition italicized below appearing in the gift to the applicant is a valid condition:

'If my said wife shall have predeceased me, or having survived me, upon her death, one-half of the Trust Fund and of any of my property and estate not then converted shall be given to my daughter GEORGIA WOOD HURSHMAN *provided she is not at that time the wife of a Jew, but if she is such at that time, the share which she would otherwise have taken and all income accruing thereon, shall be held in trust by my said Trustee until my said daughter has ceased to be the wife of a Jew, at which time her share shall be given to her. If my said daughter shall be the wife of a Jew at the time of her death, the share which she would otherwise have taken shall be added to what is to be held in trust for the charitable organization referred to in Sub-Paragraph* (c) *of this my Will.'*

2. If the answer to question 1 is in the negative, does the gift pass to the applicant free of such condition?

3. If the answer to question 2 is in the negative, then how is this gift to pass?

4. Such other directions as the Court may deem necessary to interpret and give effect to this clause.

2 The material facts in connection with the application are set out in the statement of facts filed by counsel on the application. Briefly they are as follows:

3 The deceased died at Vancouver on January 7, 1955, leaving surviving him his widow, Mary Elizabeth Hurshman, who is still living and one daughter Georgia Wood Mindlin, the applicant herein. The deceased had no other children who predeceased him.

4 The deceased made his last will and testament on July 3, 1952, and the same was admitted to probate on July 8, 1955. The applicant married one Ivan Mindlin on June 3, 1952, and is still married to Mr. Mindlin. It is perhaps significant to note that the will of the deceased was made one month to the day after the marriage of his daughter to Mindlin. By the statement of facts filed it is stipulated that the said Ivan Mindlin is by lay definition a Jew.

5 The disputed portion of the will which involves the applicant has been quoted in the questions for determination, *supra*. It should however be mentioned that in the event that the daughter is the wife of a Jew at the time of her death there is a gift over of the share which she would otherwise have taken.

6 It must be noted that it is not upon the occasion of her father's death but that of her mother which is the determining date insofar as the gift to the daughter is concerned. If at the date of her mother's death she is still married to Mindlin, which of course is a matter of uncertainty because many things may happen between now and that event, then she being married to Mindlin who by lay definition is a Jew it could be said that as it is impossible on the authorities to determine who is a Jew that the condition was uncertain and the law is that if the condition is a condition precedent to her taking and that condition is uncertain then the condition is void and the gift falls with it. See *Re Wolffe's Will Trusts*, [1953] 2 All E.R. 697 and *Clayton v. Ramsden*, [1943] 1 All E.R. 16. The provision with respect to the daughter however, does not stop there but goes on to provide that notwithstanding that she may be married to a Jew at the time of her mother's death nevertheless the gift is not forfeited but the payment thereof merely suspended until as the will says "my said daughter has ceased to be the wife of a Jew at which time her share shall be given to her". In short, if Mindlin is alive at the time of the mother's death and is still married to the daughter then in order for the daughter to inherit she must divest herself of her husband. In my view this is a condition which is directly contrary to public policy. The decision of Romer J. in the case of *Re Piper, Dodd v. Piper*, [1946] 2 All E.R. 503, is in my view directly in point. The headnote reads as follows:

> By his will the testator gave a part of his residuary estate to be held as to both capital and income on trust for such of the four D. children 'as attain the age of 30 years and do not before attaining such age reside with' their father. The children's father had been divorced by their mother before the date of the will: —
>
> Held: on the construction of the will, the condition as to non-residence was a condition precedent which, being calculated to bring about the separation of parent and child, was *malum prohibitum* and void as being against public policy, and the gift would take effect free from it.

7 At p. 505 the learned Judge quotes from Jarman on Wills 7th ed., vol. 2, pp. 1443-4, the following words:

> '... the civil law, which in this respect has been adopted by courts of equity, differs in some respects from the common law in its treatment of conditions precedent; the rule of the civil law being that where a condition precedent is originally impossible, or is illegal as involving *malum prohibitum*, the bequest is absolute, just as if the condition had been subsequent. But where the performance of the condition is the sole motive of the bequest, or its impossibility was unknown to the testator, or the condition which was possible in its creation has since become impossible by the act of God, or where it is illegal as involving *malum in se*, in these cases the civil agrees with the common law in holding both gifts and condition void.'

8 Then in his own words he goes on to say:

9 That statement (as contained in Jarman on Wills, 4th edn., vol. 2, p. 12), was considered in *Re Moore* by Cotton, L.J. ((1888), 39 Ch. D. 116, at pp. 128, 129).

10 Counsel for the D. children suggested that the condition as to residence was bad, as being against the policy of the law. In that he is correct, and the fact that the husband and wife had been divorced before the date of the will does not affect the

matter. The condition is expressed in terms which are calculated to bring about the separation of parent and child, and it has been recognized many times that such a condition will not be enforced. The difference between *malum prohibitum* and *malum in se* has never been very precisely defined or considered. Assistance was given, however, by *Re Hope Johnstone* where Kekewich, J., said ([1904] 1 Ch. 470, at p. 479):

> 'What is meant by a provision being void as against the policy of the law? The phrase means no more than that the provision is not enforceable by anyone or in any court.'

11 And cite:

> In the absence of direct authority I am not prepared to hold that a gift, the object of which is to keep a child away from its parent, is *malum in se*. I am quite satisfied that it is not, but, on the other hand, it is *malum prohibitum*. The position in the present case is, therefore, precisely within the statement of the law in Jarman on Wills, which I accept as accurate, with the result that the gift takes effect freed and discharged from the void condition. ...
>
> The condition is void as against public policy, the gift takes effect free from it, and each of the D. children is entitled to a share on attaining the age of 30 years.

12 I accordingly hold in the present case that the condition is void as being against public policy and that the daughter takes the gift free of the condition.

13 The words of Lord Atkin in the case of *Clayton v. Ramsden*, [1943] 1 All E.R. 16 at p. 17, where he says: "For my own part I view with disfavour the power of testators to control from their grave the choice in marriage of their beneficiaries, and should not be dismayed if the power were to disappear", are most appropriate in the circumstances here and with great respect I subscribe wholeheartedly to the sentiment expressed by that very learned Judge. I might add that any propensity toward racial discrimination has no place in this country and while it may be open to a testator to lay down the conditions upon which his children may or may not share in his bounty, yet insofar as those conditions involve racial discrimination, his language must be precise and explicit and clearly within the law if he expects the Courts to assist him in the fulfilment of his aims.

14 The costs of all parties will be payable out of the estate.

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Indian Women and the Law in Canada: Citizens Minus

by
Kathleen Jamieson

April 1978

Contents

Chapter 1

The Status of Indian Women — Moral Dilemma or Political Expediency?

For one hundred and nine years Indian women in Canada have been subject to a law which discriminates against them on the grounds of race, sex and marital status. The Indian Act, which regulates the position of Indians in Canada, provides that an Indian woman who marries a non-Indian man ceases to be an Indian within the meaning of any statute or law in Canada.[1]

The consequences for the Indian woman of the application of section 12(1)(b) of the Indian Act extend from marriage to the grave — and even beyond that. The woman, on marriage, must leave her parents' home and her reserve. She may not own property on the reserve and must dispose of any property she does hold. She may be prevented from inheriting property left to her by her parents. She cannot take any further part in band business. Her children are not recognized as Indian and are therefore denied access to cultural and social amenities of the Indian community. And, most punitive of all, she may be prevented from returning to live with her family on the reserve, even if she is in dire need, very ill, a widow, divorced or separated. Finally, her body may not be buried on the reserve with those of her forebears.[2]

The deleterious effects of this oppressive legislation on the Indian woman and her children materially, culturally and psychologically can be very grave indeed.

No such restrictions are provided in the Indian Act for Indian men, who may marry whom they please without penalty and indeed by so doing confer on their non-Indian spouses and children full Indian rights and status.

Other Canadian women do not face such severe penalties on marriage. They may return if and when they wish to their parents' home, they are not subject to restrictions on inheritance of property, and even if married to a citizen of a foreign country they are able to confer Canadian citizenship on their children.[3]

The Indian Act is now being revised through a process of consultation between the government and the National Indian Brotherhood, but Indian women who have lost their status have been denied a voice in

these negotiations. This study, undertaken at the request of the National Committee of Indian Rights for Indian Women, is intended to document the legislation which deprives women of their Indian status, to analyze the development of this policy, and to determine the consequences for Indian women and their children. In this way it is hoped to support their efforts to regain the full equality of status with Indian men to which their Indian birth entitles them.

The particular focus of this study is derived from an examination of the present impasse between government and Indian leaders on this issue. Both sides admit that the discrimination against Indian women is manifestly unjust, but neither the government nor the Indian leaders have yet been able to agree on how this question might be resolved.

The consultative process, by way of a joint committee of the Cabinet and the National Indian Brotherhood (NIB) has been going on since 1975. But until December 1977, when the topic of band membership was briefly broached, Indian women's loss of status had not even been mentioned and had been regarded, as if by tacit and mutual consent of all concerned, as too "delicate" to discuss.[4]

Such attitudes undoubtedly had their origin in the Lavell case, which established for both sides the inviolateness of the Indian Act. The case, which became a political vehicle for both the government and the Indians, came before the Supreme Court of Canada in 1973, when Jeannette Lavell contested her loss of Indian Status under section 12(1)(b) of the Indian Act. The basis of the case (which is discussed in detail in Chapter 14) was that the discriminatory provisions of this section of the Indian Act were contrary to the Canadian Bill of Rights.

The government had just published a "White Paper" proposing that the Indian Act should be phased out.[5] But a strong Indian political front was emerging, apparently determined to wring from the government redress for past injustices. Insistence on the retention of the Indian Act was regarded as a crucial part of this strategy by the Indian leaders. As Harold Cardinal put it, "We do not want the Indian Act retained because it is a good piece of legislation, it isn't. It is discriminatory from start to finish. But it is a lever in our hands and an embarrassment to the government, as it should be. . . . We would rather continue to live in bondage under the *Indian Act* than surrender our sacred rights."[6] The Indian Act was thus transformed from the legal instrument of oppression which it had been since its inception into a repository of sacred rights for Indians. The opposition of Indian leaders to the claim of Lavell became a matter of policy to be pursued at all cost by government and Indians together because it endangered the Indian Act.

Jeannette Lavell lost her case, but the consequences were far-reaching. The issue of Indian women's status under section 12(1)(b) acquired, for many people, the dimensions of a moral dilemma — the rights of all Indians against the rights of a minority of Indians, i.e. Indian women. The case created a united Indian front on the "untouchable" nature of the Indian Act. And finally, the federal government's

eagerness to support the major Indian political associations (most of which seem to have almost exclusively male executives and memberships) against Lavell established a basis for continued government-Indian interaction, which had been in deadlock since the conflict over the government "White Paper" of 1969. The rapport generated during the Lavell case was, after a short period of gestation, to give birth in 1975 to a joint NIB-Cabinet consultative committee to revise the Indian Act.

The government gave an undertaking to the NIB that no part of the Indian Act would be changed until revision of the whole Act is complete, after full process of consultation. The result of this gentlemen's agreement has been that until very recently, a powerful blanket of silence was imposed on discussion of the status of Indian women and the topic began to assume an extra dimension. It became taboo and unwise in certain circles even to mention the subject. Despite the fact that the Indian Act continues to discriminate against them on the basis of race, sex and marital status, and is contrary to the most fundamental principles of human rights, Indian women who have dared to speak out against it have been seen by many as somehow threatening the "human rights" of Indians as a whole.

The fact that Indian women in Canada who have lost their status are expected to accept this oppression compounds and perpetuates the injustice and has clear parallels in other societies where discriminatory practices and legislation permit the victimization of one group by another.

"The concept of 'Victimization'," according to St. Clair Drake, "implies that some people are used as a means to other people's ends — without their consent — and that the social system is so structured that it can be deliberately manipulated to the disadvantage of some groups by the clever, the vicious and the cynical as well as by the powerful. The callous and the indifferent unconsciously and unintentionally reinforce the system by their inaction or inertia. The 'victims', their autonomy curtailed and their self-esteem weakened by the operation of the caste-class system, are confronted with identity problems; their social condition is essentially one of powerlessness."[7] It is also typical that in such a system any attempt by the victim to alleviate oppression is seen as an attempt to subvert the system.

The concept of "victimization" articulated above, although developed in U.S. contexts, has clear application to the historical position of Indians in Canadian society and most certainly to the position of Indian women in Canada today. Indian women have not only been historically "victimized" but they are subject to psychological pressure from both government and Indian leaders to keep silent and to accept their position as "martyrs for a cause", in fact apotheosizing their own oppression until the whole Indian Act is revised.

Each side claims that it is faced with a moral dilemma. The government insists that it would like to change the law, but that this would be contrary to the wishes of the Indian people. It has therefore

deliberately excluded the Indian Act from the provisions of the new Human Rights Act, which came into force on March 1st, 1978, thus preventing any possibility of appeal against discrimination in the Indian Act by Indian women.[8]

The Indian leaders, on the other hand, claim that their mistrust of government's intentions is so great that they cannot agree to any section of the Indian Act being changed or even temporarily suspended until the whole Act is completely revised.[9]

A curious twist to the issue has now developed. Despite the fact that section 12(1)(b) is part of an Indian Act which was developed by previous federal governments without consultation with the Indian people, and despite the fact that this kind of discrimination against Indian women was never part of Indian cultural tradition, as later chapters of this study will show, the government is now placing the onus for the continuing existence of this discrimination squarely on the shoulders of the Indians and their representatives, the NIB.

Thus we find in a nationally-read newspaper the recent headline: "Indians' leaders warned to halt discrimination against women." The article then begins, "Justice Minister Ronald Basford has warned Indian leaders that Parliament is not going to tolerate 'for too long' the discrimination against women contained in the Indian Act."[10]

The Honourable Marc Lalonde, the Minister responsible for the Status of Women, in February 1978, informed a meeting of women delegates from across Canada that the issue of discrimination against Indian women is complicated and that "Discrimination against women is a scandal but imposing the cultural standards of white society on native society would be another scandal."[11]

This "two scandals" argument is another version of the "moral dilemma", but this time discrimination against women is argued as being Indian custom and for the government to impose other values prohibiting discrimination would be scandalous.

Of the many and varied arguments that have been used to justify the continued existence of this legislation, this product of the 1970s is the most insidious.

For the Indians themselves this is now a very divisive issue. To arrive at any consensus of opinion in the near future which will be acceptable to Indians across Canada seems an almost hopeless task. Yet the longer this law remains, the more divisive and the more difficult to resolve it becomes.

Recent statements by Noel Starblanket, President of the National Indian Brotherhood, indicate a change of heart on his part, though not necessarily of the NIB. Starblanket has stated quite unequivocably that the Indian Act unfairly discriminates against women and that he does not want to see the issue buried but researched and clarified so that an equitable solution might be found.[12]

Dimensions of the Problem

In order to explain adequately the evolution of the legislation for Indian women this study takes a historical and sociological approach to the problem.

The emphasis is on the complex and changing attitudes to Indian women. The laws controlling intermarriage between Indian women and white men are put in a context of broader historical trends. By so doing it is hoped to arrive at a better understanding of the perceptions and prejudices that generated different laws for Indians and whites and Indian men and Indian women in the past, as well as their retention today.

Implicit in the analysis in this study is a more general conceptual framework in which the 1869 legislation, which first introduced a section penalizing Indian women who married non-Indians, is seen as having arisen not as a function of the reserve system and necessity to protect reserve land, but as part of the government policy of assimilation. And this is seen here as part of what may be described as a developing caste/class system in which society became more and more stratified and inequality on the basis of race and social class had become an organizing principle. The extra dimension of institutionalized sexual inequality ensured for Indian women in the mid-nineteenth century a very special place right at the bottom of this hierarchical structure.

Restrictions on marriages between races are a manifestation of a complex blend of notions based on race, class and sexual inequality. There are variations on the theme but the basic elements remain the same today as in 1869. This is most clearly demonstrated in the United States, where in many states inter-racial marriages were illegal until 1967. Even when the climate of public opinion seemed in favour of racial equality inter-racial marriage was still viewed negatively.[13]

Though (unlike the U.S. then and South Africa today) Canadian legislation has provided sanctions only for the Indian woman in the event of inter-racial marriage, the expressed views of the majority of the Canadian Supreme Court in the Lavell case indicate a similarly cautious, conservative approach to this whole question of race and sex and the deep prejudice these topics trigger in the Canadian public. It is the resultant "inaction or inertia" on the part of the Canadian public which permits the continued "victimization" of Indian women described earlier.

Each dimension of this problem — race, class and sexual inequality — is as powerful and deeply entrenched a force in Canadian society today as in the nineteenth century. The historical approach is thus implicitly intended to show also how these dimensions varied with each other over time to create specific government policies and legislation at given periods.

This approach indicates a threefold focus of inquiry:

1) Government legislation, policy and attitudes towards intermarriage between white men and Indian women,
2) Government legislation and policy for all Indians,
3) Indian tradition and Indian reaction to government policy and administration.

All of these are very broad topics and single aspects of each of them have been the subject of lengthy treatises. Nevertheless it does not seem possible to view any of these three elements in isolation and to arrive at a meaningful interpretation of the evolution of the legislation of 1869 or its subsequent elaborations. The broad approach, however, makes it possible to demonstrate that attitudes towards intermarriage and Indian women and the restrictive laws were indeed part of a much broader development in ethnic, sex and class relations in nineteenth century Canada, and it provides a basis for unravelling and refuting the arguments for the continuing oppression of Indian women today.

Chapter 2

The Indian Act View of Women

Section 11 of the amended 1951 Indian Act, which is the Act in force today, defines who is an Indian for the purposes of the Act in the following terms:

> "11. (1) Subject to section 12, a person is entitled to be registered if that person
>
> (a) on the 26th day of May 1874 was, for the purposes of An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
>
> (b) is a member of a band
>
> (i) for whose use and benefit, in common, lands have been set apart or since the 26th of May 1874, have been agreed by treaty to be set apart, or
>
> (ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;
>
> (c) is a *male** person who is a direct descendant in the *male* line of a *male* person described in paragraph (a) or (b);
>
> (d) is the legitimate child of
>
> (i) *a male* person described in paragraph (a) or (b), or
>
> (ii) a person described in paragraph (c);
>
> (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or
>
> (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e)."[1]

When the male bias in this section is then read in conjunction with section 12, which defines who is not entitled to be registered as an Indian, it becomes evident that the Act is designed to discriminate between Indian men and Indian women and that Indian women are not entitled to enjoy the same Indian rights as Indian men.

*Emphasis added.

This is most clearly set out in section 12(1)(b) of the Act which states:

> "12.(1) The following persons are not entitled to be registered, namely... (b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11."[2]

The "person who is not an Indian" means any man who is not considered to have Indian status for the purposes of the Indian Act. The woman who marries such a person is automatically deprived of her Indian status and her band rights from the date of her marriage. In addition, an Indian woman who marries a member of another band is transferred to the band of her husband regardless of her wishes. If she moves from a prosperous band to a poor band, she may find herself deprived of monies in the form of revenues which she feels are her birthright. She also loses other rights which adhere to membership of the band into which she was born. Even if a woman does not marry, any child she may have may be deprived of Indian status if upon protest to the Registrar it is determined that the father of the child was not an Indian.[3]

Early legislation for Indians did not make such invidious distinctions between male and female Indians. The earliest Indian Acts dating from the middle of the nineteenth century were enacted to deal with Indians on reserves.[4] These reserves were created usually, though not always, as the result of treaties made with the Indians in which they ceded their lands for settlement to the British government (the Crown) in return for a portion of land — the reserve — and certain other benefits. It eventually became necessary to enact legislation detailing who was entitled to these benefits and to live on the reserves. But it was not until after Confederation, in the Indian Act of 1869, that the forerunners of the present sections 11 and 12(1)(b) setting out a separate legal regime for Indian women were incorporated in the legislation.[5] Since then, the provisions of the Indian Act relating to Indian women have become increasingly restrictive in content and more punitive in tone.

The 1869 legislation was created primarily on the basis of the Dominion Government experience with the Iroquois and Algonquin groups of Ontario and Quebec. It was only *after* the framework and much of the substance of the Indian Act were in place that it was extended uniformly across Canada in the Act of 1874 and in later Acts to include all Indians as the various provinces came into Confederation.[6] The great diversity of lifestyles and forms of social organization of the Indians west of Ontario were not considered an important factor in law-making in 1869.

The key question then remains: to what extent did the provisions of the law which related to women accord with the customary position of married women among Iroquois and Algonquian Indians for whom the law was made?

Iroquois traditional culture seems to have been fairly homogeneous and fortunately has been well documented in the contemporary accounts

of travellers and missionaries as well as by many ethnographers who have drawn on Indian as well as European sources.

To what extent this tradition could indeed be said to be that which was still strong in 1869 is more complex. Certainly the Iroquois at the Caughnawaga Reserve in Quebec, which had been set up and controlled by Jesuit missionaries in the mid-seventeenth century and since then had attracted refugees and Christian converts from many different Indian groups,[7] could be expected to have evolved a rather different kind of society from the Iroquois of the Six Nations in southern Ontario, who had their own complex and chequered history of migrations in the eighteenth century and of prolonged contact with both Protestant missionaries and the military.[8]

Nevertheless many authorities seem to agree that for many centuries before the nineteenth century and possibly for a part of that century also Iroquois society was matrifocal, descent was traced matrilineally (i.e. through women) and post-marital residence was matrilocal (i.e., after marriage the husband went to live with his wife's family). Each dwelling, traditionally a longhouse,[9] was owned by a senior woman, and in it lived her spouse, their daughters and spouses and their children. If a woman did not want her husband to continue living in her house she simply "tossed his personal effects out of the door of the longhouse" and so divorced him. The children remained with the mother. Subsistence was obtained from the practice of horticulture. Corn, beans and squash were the main crops, with the women organizing, jointly owning and working the gardens and also distributing the produce. Fishing rights also were held by the women. The men hunted, engaged in constant warfare (in historical times at least) and were usually away for long periods of time.[10]

In the political sphere the senior matrons elected and deposed the elders of the Council, the highest ruling body of the league of the Iroquois (traditionally founded in 1570). Hereditary eligibility to this Council was through the female. Goldenweiser in 1912 described the role of the women in the selection of a new chief when a chief had died thus:

> "When a chief died, the women of his tribe and clan held a meeting at which a candidate for the vacant place was decided upon. A woman delegate carried the news to the chiefs of the clans which belonged to the 'side' of the deceased chief's clan. They had the power to veto the selection, in which case another women's meeting was called and another candidate selected . . ."[11]

According to Schoolcraft the matrons also had veto powers in questions of war and peace.[12]

In 1724, Lafitau, basing his statements on personal experience and the "Jesuit Relations", made this unequivocal comment on the position of women: "Nothing, however, is more real than this superiority of the women. It is of them that the nation really consists; and it is through them that the nobility of the blood, the genealogical tree and the families

are perpetuated. All real authority is vested in them. The land, the fields and their harvest all belong to them . . . the children are their domain and it is through their blood that the order of succession is transmitted."[13]

Much of the literature relating to Iroquois women has been summarized by Judith Brown in a paper entitled "Iroquois Women: An Ethnohistoric Note". Brown's thesis is that Iroquois women's economic contribution and their control of the distribution of all food, even that procured by men, was the key to their powerful role in politics and religion.[14]

European social organization was clearly quite different from this in many fundamental respects. Though women did in fact contribute substantially to subsistence through paid labour they had little or no personal or political autonomy.[15] For most of the nineteenth century a married woman's wages and property belonged to her husband. The

unmarried minor female came under the aegis of her father or male guardian. The older unmarried females — spinsters and widows — were despised social anomalies. But if propertied they had some civil though not political rights.[16]

But what of the other major Indian group to whom the 1869 legislation applied — the Algonquians? Unlike the Iroquois they are not a homogeneous group and so it is not possible to generalize much. Theye were usually, however, hunting and gathering people, nomadic and nucleated into small independent groups with, usually, little formal political or social organization. Post-marital residence patterns and descent reckoning were very varied, it is now generally agreed. But it should be noted that until a decade ago anthropologists writing on hunters and gatherers such as the Algonquians have assumed that patrilineal descent and patrilocal residence were the most prevalent type of small community or band organization among virtually all North American hunters and gatherers prior to contact.[17]

Influential theorists who have developed typologies based on this assumption, such as Julian Steward, one of the fathers of American anthropology, and his pupil Elman Service, had grounded their theories on supposed bioeconomic premises — 1) that male dominance is innate, and 2) the greater economic importance of the male in a hunting and gathering society.[18] This was substantiated by data from the early theoretical writings on Australian Aborigines of the "father of British social anthropology", Radcliffe-Brown,[19] who worked from similar assumptions. Recent research however has shown that in most pedestrian hunting and gathering economies, including that of the Australian Aborigines and those found in Canada, gathering contributes more to subsistence than hunting.[20] In fact, in most hunting and gathering societies women contribute between 60% and 80% of subsistence.[21] Only in arctic and sub-arctic areas were the textbook examples of mammal hunters found and early typologies of forms of social organization were not based on studies of these groups.

However, even where hunting is the primary subsistence base, an anthropologist, Eleanor Leacock, writing on the Montagnais Naskapi on the basis of her own field work and information in the "Jesuit Relations" has found a strong case for matrilocal residence.[22]

Bioeconomics are thus seen to be a very shaky basis for inferring social organization.

More recently researchers have agreed that there can be no consensus on which kind of kinship or post-marital residence pattern prevailed among Algonquian hunters and gatherers pre-contact. The impact of the fur trade and European settlement on nomadic groups remains incalculable. Ethnographic consideration of social organization is therefore limited by the fact that, whatever the findings, they are most likely nothing more than, according to anthropologist Kay Markin, "a pot-pourri of adaptations to rapidly changing ecological

circumstances"[23] — territorial displacement and severe reduction in the availability of animal and vegetable resources.

Only in the 1970s, however, have social scientists begun to realize what profound implications such findings on patterns of social organization and the role of woman in subsistence have for the study of human relations. Paul Samuelson of the Massachusetts Institute of Technology has summarized very neatly the importance of this for economic analysis, for example, as well as their general acceptance in an introductory economics text.

> "From the dawn of recorded history, we find that women have played an important role in producing the G.N.P. Among human societies, as among animal species, there have been many alternative patterns of specialization with respect to foraging, herding, planting and sowing. Only in the art of warfare have men shown any unique talent — and that claim could be disputed. Indeed in many societies that anthropologists have studied, it has been women who have produced virtually all of the G.N.P., men filling at best the role of an attractive nuisance. Particularly in self sufficient agriculture, whether of Old World peasantry or New World frontier, it has been quite impossible to differentiate between the cooperative roles of men and women in producing the G.N.P. Patterns of dominance, as between patriarchal and matriarchal systems, have shown no close relation to economic organization and performance."[24]

This final sentence should be qualified, perhaps, since some recent studies have, as Judith Brown suggested in her paper, shown a correlation between the so-called 'matriarchal' systems and economic organization.[25]

In mid-Victorian Canada such notions concerning the role of women would have been given short shrift by most legislators. (These men were not likely to be impressed by Bachofen, Morgan or Engels, then writing on matriarchal societies.)[26] They had no doubts at all about "the natural order of things" and their beliefs were firmly grounded in a patriarchal system in which the ideal woman, "the lady", was a delicate, swooning ornament totally dependent on and subservient to the male, who alone was capable of working outside the home. This, of course, made the vast majority of women, the working poor in factories, in the fields, in mines and in domestic service, something less than the ideal woman, and also devalued the worth of their contribution in their own eyes as well as in the eyes of the rest of society.[27]

Thus reports in 1845 and 1880 that Indian women did much of the work and provided for their families in Upper and Lower Canada were met with surprise and generated criticism of the Indian male, who declined to take over what he saw as the woman's role but because of the effect of European settlement was unable to carry on his traditional role of hunting or warring.[28]

Those who formulated legislation for Indians in the nineteenth century were not, it would seem, given to much soul-searching about what was the custom. Indeed this was not even relevant since they

were quite convinced of the natural superiority of European culture and the decadence of most Indian traditions.

European cultural values, which served as a model for the development of the early laws relating to Indians, were based primarily on the needs of an agricultural society. The notions of private rights in land inherited through the male were an indispensible component of this system, which had as its corollary control and repression of the sexuality of the female. Only thus could it be assumed that property was inherited by the correct heir. The threat that women's autonomy posed to this system resulted in the development of a body of common law emphasizing the importance of legitimacy and the legal ownership by a husband of a wife's generative capacity. The wife was in common law the property of her husband. Work (labour for pay) and the accumulation of goods were seen as an end in themselves.[29] Christianity was held to endorse and reinforce these principles in Scripture. The Indian married woman was thus seen as an appendage to her husband whether he was Indian or white.

But these European cultural precepts of the importance of private property and inheritance through the male, along with repression of female sexuality and "work" as an end in itself — and incidentally as a male prerogative — were not customary for the Indians of Eastern Canada, for whom this legislation was devised, nor did it represent the wishes of the Indians concerned.

Indians have never been a party to formulating any section of the Indian Act. They were not consulted in 1869 nor have they ever, until now, been concerned in the drafting of legislation for Indians. As to the particular section penalizing women who "marry out", historical documents cited later in this paper show that from the beginning, Indians in the East, and then in the West as the treaties were being made, were strongly opposed to legal discrimination against Indian women and their children, who married non-Indians.

The 1869 legislation which introduced this discrimination was intended as a measure to reduce the number of Indians and halfbreeds on reserves as part of the government's stated policy of doing away with reserves and of assimilating all native people into the Euro-Canadian culture. Indeed, the whole of nineteenth century legislation for Indians was based on the assumption that Indians were to be gradually "civilized", to be assimilated by this superior culture, and that in the meantime special laws were required to regulate their transition from barbarism to this state of grace.

Assimilation meant the phasing out of separate Indian status and the gradual absorption of all Indians into the Euro-Canadian population. This was to be accomplished through a process of accustoming Indians to European lifestyles, customs, beliefs and values. The culmination of this process was the act of enfranchising. Enfranchisement meant that an Indian was no longer an Indian in law, had become civilized and was entitled to all the rights and responsibilities of other

Canadian citizens. (It was indeed not possible until 1956 to remain an Indian and be a Canadian citizen.) Euro-Canadian culture was clearly considered by Euro-Canadians in the nineteenth century, at least, infinitely superior to Indian. Indians however did not want to relinquish their own cultures and resisted assimilation as best they could.[30]

Chapter 3

Changing Attitudes to Intermarriage

In order to see how the policy of assimilation was first developed, it is necessary to go back in time to the period of early European contact with the Indians.

The two colonial powers in North America, the French and British, differed in their policies towards Indians in this early time. The French from the very beginning envisaged assimilation of the Indians as the ultimate goal.[1] The British, on the other hand, had no such objectives prior to the nineteenth century.[2] But the policy of assimilation for both the French and later the British was essentially the same and meant christianizing and "civilizing" to European cultural ideals.

Assimilation for the French, however, also included an official policy of intermarrying with the Indians to alleviate the shortage of French women and expand the new French population. Champlain in his "Voyages" of 1613 says he "promised" the Huron Indians that the French would intermarry with them.[3]

The Indians, however, didn't think this was necessarily such a good idea — Cornelius Jaenen quotes an Indian chief, Tadoussac, who replied to charges that his people were not intermarrying because they disliked the French by saying, ". . . What more do you want? I believe that some of these days you'll be asking for our wives. You are continually asking us for our children but you do not give us yours; I do not know any family among us which keeps a Frenchman with it."[4] In other words, Tadoussac didn't care very much for this one-way exchange.

A practice was then adopted of giving dowries to Indian girls to encourage stable marriages with Frenchmen, and this "Présent du Roi" had the blessing of Louis XIV.[5] But despite these efforts the policy wasn't very successful in creating more Frenchmen. Instead, children of these marriages and of more casual encounters with Indian women (which were more frequent) were usually absorbed into the mother's group.[6]

The Jesuits, a strong and influential presence in New France from the early days, had always disapproved of this policy. Their first priority was conversion to Christianity, and they did not associate it

with assimilation. The French government was aware of this and Colbert in 1668 is recorded as having warned the Intendant, Bouterone, to beware of the Jesuits' preference for racial segregation.[7] Indeed there seemed to have developed some conflict between the priorities of the State and those of the Church. The two policies nevertheless were two sides of the same coin. When government-promoted intermarriage didn't result in assimilation and Jesuit education of the children failed to gain lasting conversions to Christianity there was unanimous agreement that the Indians' way of life must change and that they should be encouraged to give up their nomadic lifestyle and become sedentary farmers before any real change could be effected. Segregation on reservations, which the Jesuits had already been experimenting with in South America, was then advocated as the most effective device for achieving this end.[8]

Thus was created the first Indian reserve — a laboratory with a missionary-controlled environment in which the desired changes in the Indians could be effected. The reservation at Sillery planned in 1635 by Jean le Jeune became the first of a long line of experiments aimed at changing the ways of the North American Indians. Other reserves soon followed at St. Maurice River near Trois-Rivières, Lorette and Sault St. Louis (Caughnawaga).[9]

The basis of the early economy of New France was the fur trade with the Indians and until 1660 the French had a virtual monopoly, controlling access to the territories in the American North and West. In 1660 this monopoly ended when the Company of Adventurers of Hudson's Bay was founded by the Royal Charter of King Charles II. The British then entered the Hudson's Bay area, built trading posts, and began to compete with the French for the trade with the Indians. After 1714, following on the defeat of the French in Europe and the Treaty of Utrecht, the British had a monopoly of the fur trade in Hudson's Bay.[10]

The policy of the Hudson's Bay Company towards Indians was quite explicitly articulated at the very beginning. Strict segregation was enjoined and neither colonization nor assimilation nor Christianization was of the least interest to the directors of the Company. They had only one motive — to make a profit. Paramilitary trading posts were seen as the most efficient way to achieve this, and men only were recruited in Britain and shipped out to serve for periods of a few years at a time at the posts.[11]

But despite all regulations to the contrary, liaisons between these men and Indian women became very frequent. During the eighteenth century there developed a recognized form of marriage "à la façon du pays" which was adapted from a blend of Indian and European custom and which might last only as long as the trader was in "Indian Country" or for a lifetime if he chose to stay.[12] And more of the men did choose to stay on as the century progressed. The children of these marriages, according to anthropologist Jennifer Brown, were defined

as Indian when they were assimilated among the Indians around the post and "English" when they had received an English education.[13]

By the turn of the century such unions were still not officially recognized by the London Committee of the Hudson's Bay Company, and in 1802 a Fort York committee wrote to the London Committee requesting it to reconsider its objection to Indian women at the Fort, emphasizing at some length their economic contribution. It was evident from this letter that intermarriage "à la façon du pays" was already well established.[14]

Indeed Indian women possessed a number of skills which made their economic contribution considerable and presence indispensable around the fort as well as on journeys. Most important were the making of snowshoes and skin clothing, the cleaning and dressing of hides and the preservation of meat — all vital to survival in the Canadian winter and skills unlikely to be part of the repertoire of the average Hudson's Bay servant.[15] Indian women also acted as interpreters, guides and ambassadors to other Indian groups.[16]

To insist on categorizing these relationships as being primarily based on the sexual exploitation of Indian women does not accord with documented facts. This view is clearly based on the old double standard of what was appropriate sexual behaviour for males and females, as well as its Victorian corollary which ascribed for women a purely sexual identity and three possible roles in life: virgin, mother or whore.

Extensive evidence concerning these unions is documented in the report of the famous case of Johnstone v. Connolly of 1869.[17] This case established the legal validity of such marriages and indeed was held as a precedent for establishing the validity of all customary marriages until 1951.[18]

Most interesting in this case was that the "customary" marriage of John Connolly to an Indian woman was upheld as valid over a second marriage to a wealthy Montreal woman, Julia Woolrich, which was contracted in 1832 in a church, with all legal formalities carefully observed, but while Suzanne, the Indian wife by a customary marriage of 1803, was still alive. What was crucial in winning this case was the existence of several witnesses, fur traders mainly, who gave testimony, documenting and describing from their own experience that customary marriages were usually monogamous, undertaken freely by both parties and of long duration.[19]

About 1830, however, it was clear that such unions were being rejected by "men of station" such as Governor Simpson and his friend McTavish and the man in the case, John Connolly.[20]

Unfortunately, history has until very recently concerned itself almost exclusively with the lives and opinions of famous men and it is therefore the bleak views of Governor Simpson expressed in his influential writings which have prevailed and have created a stereotype of the

Indian woman as the exploited concubine of the white man or as a pawn of Indian men handed over to cement trading alliances with white men.

Sylvia Van Kirk, writing on fur trade women, quotes a letter written in 1825 in which Simpson demonstrated his disapproval while recognizing that customary marriage was universally accepted in fur trade society. It should be understood "in the outset that nearly all the Gentlemen & Servants have families altho' Marriage ceremonies are unknown in this Country and that it would be all in vain to attempt breaking through this uncivilized custom".[21]

He was very surprised ("appalled" according to Van Kirk) at the degree of control that the Indian and Métis women had over their white husbands. Writing in his journal of 1824-25 he made this clear: "It is not surprising that the Columbia Department is unprofitable . . . but . . . with the necessary spirit of enterprise and a disregard to little domestic comforts it may be a most productive branch of the Company's trade . . . it must be understood that to effect this change we have no petty coat politicians, that is, that Chief Facters (sic) and Chief Traders do not allow themselves to be influenced by the Sapient Councils of their *Squaws* (the emphasis is Simpson's) or neglect their business merely to administer to the comforts and guard against the indiscretions which these frail brown ones are so apt to indulge in."[22] Other epithets applied to Indian women by Simpson were "copper cold-mate", "my article" or "my Japan help-mate" (in reference to an earlier native wife, Betsey).[23] Simpson, it would seem then, not only introduced a strong emphasis on social class but a distinct note of racial prejudice which became increasingly the hallmark of Anglo-colonial relations everywhere as the nineteenth century progressed.[24]

Simpson nevertheless was in fact expressing sentiments that were to become more and more prevalent in eastern Canada as time went on. In the 1830s fur traders with social aspirations and in constant contact with a new wealthy quasi-aristocracy in Montreal society began to feel the pressure to conform. Governor Simpson, however, shocked Red River society when he returned with an upper class English bride to Red River in 1830. He had not bothered to inform either his colleagues or his Indian wife, who had borne him a child while he was away.[25]

A few other leading traders who had close contacts with eastern society soon followed his lead. But for the great majority of the men and women at the posts in the interior life carried on very much as before for quite a long time to come, though as communication improved and missionaries from the mid-1820s on began to insist on a Christian marriage ceremony the norms of eastern society slowly percolated west and through the ranks.[26]

Although it appears that the rejection of their Indian wives by such "men of station" as Connolly, Simpson and McTavish in the 1830s may be attributed as much to the character of the individuals

involved as their social aspirations, this behaviour also revealed the growing importance of adherence to contemporary European norms in Canadian society and the emergence of a complexly stratified society based both on class and ethnic group.

The same qualitative change in attitudes to intermarriage in the West noted in the mid 1820s and encouraged by Simpson and the missionaries — which, it is suggested here, paralleled profound social change in eastern Canada and Britain — was also accompanied by a fundamental change in government policy towards Indians in Upper and Lower Canada.

For most of the eighteenth century Indians in general had been treated with the cautious respect accorded allies in war and partners in trade. After 1812, however, Indians ceased to be regarded as useful allies. In eastern Canada the fur trade was gradually being replaced by agriculture as the main base of the ceremony.[27]

The Indian Department had been a military responsibility since first established in 1755[28] but in 1830 the Upper Canada administration became a civil agency.[29] As Surtees and others have pointed out, this represented an important change in policy, but the personnel in the administration remained the same. Ex-officers and veterans continued to form a large part of the administration.

The administration of the Indian Affairs Department was at first composed entirely of officers appointed as commissioners. As early as 1775, however, an elaborate structure had been put into place with a hierarchy of superintendents, deputy superintendents, agents, interpreters and missionaries. Indian bands were invited to select a spokesman, "a beloved man" to act as their intermediary with the government and important provisions relating to Indian lands, enunciated in the Royal Proclamation of 1763, were amplified. One of these was "that proper measures be taken with the consent and concurrence of the Indians to ascertain and define the precise and exact boundary and limits of the lands which it may be proper to restore to them and where no settlement whatever shall be allowed."[30]

Maintaining the boundaries on Indian lands was by this time an integral part of policy. Also reiterated were the strictures that only the Crown could buy land from Indians and that when purchases were made by the Crown they should be made at "some general meeting at which the principal chiefs of each Tribe claiming a property in such lands are present . . ." The basic formula for treaty-making with Indians was thus established very early on.

Superintendents were given power to "transact all affairs relative to Indians", thus postponing for some time the necessity for legislation for Indians.[31]

Between 1812 and 1830 the change in attitudes appears to have accelerated. Sir George Murray, who took over the Department in 1830, illustrated this change when he commented in a report: "It appears to me that the course which has hitherto been taken in

dealing with these people has had reference to the advantages which might be derived from their friendship in time of war rather than to any settled purpose of gradually reclaiming them from a state of barbarism, and of introducing amongst them industrious and peaceful habits of civilized life."[32] This "settled purpose" and all that is implied were to be the basis of future policy for Indians.

In Britain in the early nineteenth century there was a growing interest in social reform in general, the spread of evangelism, and a continuing debate over the abolition of slavery. As a logical extension of these activities a keen interest was also taken in the aboriginal inhabitants of the British colonies. Philanthropic societies, such as the Aborigines Protection Society, consequently produced several reports for their members on the state of the Indians in the North American colonies and continually lobbied the government for better treatment of Indians.[33]

Other reports, triggered by such criticisms, testify to the lack of interest in Indians in the Indian Department in Upper Canada up to 1830. The report, for example, of General Darling stated that Indians were being tricked out of their lands and possessions, that they were destitute and, as an aside, warned that they would soon turn to the Americans if the government didn't help them.[34]

The solution advocated was always the same: a Christian education, permanent settlements and agriculture were the means for bringing the Indians into a state of "civilization" when they would be on a par with other citizens. In the meantime Indians would have to be protected by the Department. But there was then a divergence of opinion on how to proceed. The Indians, it was felt, could be either isolated and then "civilized" or the same objective could be achieved by close interaction with whites of good character. Both approaches were to be experimented with.[35]

Chapter 5

Acts for Indians 1850-1867

The report of the Commission of Inquiry in 1847 prompted two Acts for Indians — one in Lower Canada, another in Upper Canada. Indians in Lower Canada (Quebec) had not been allocated reserves in the same way as those of Upper Canada (Ontario). Fixed lands had been granted to the Jesuits for reserves under their aegis by the Ancien Régime. In 1851, 230,000 additional acres of land were therefore allotted to Indians in Lower Canada "from motives of compassion".[1]

In 1850, reflecting perhaps the problem this land grant was meant to solve, a mechanism was set in place to determine who should have the right to live on Indian lands in Lower Canada.

This Act included the first statutory definition of who was an Indian — "An Act for the better protection of the Lands and Property of the Indians in Lower Canada". The relevant section of the Act reads:

> "V. And for the purpose of determining any right of property, possession or occupation in or to any lands . . . the following classes of persons are and shall be considered as Indians . . .
>
> First — All persons of Indian Blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants.
> Secondly — All persons intermarried with such Indians and residing amongst them, and the descendants of all such persons.
>
> Thirdly — All 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
>
> Fourthly — All persons adopted in infancy by any such Indians, etc."[2]

This very broad definition was amended one year later and made slightly more restrictive. The second section — "all persons intermarried with such Indians" — was deleted, as was the section on adoption. A new section was added, permitting women who married non-Indians and their descendants to be considered Indians but excluding the non-Indian spouses of Indian women from this privilege. Indian status thus depended on Indian descent or marriage to a male Indian.[3]

In Upper Canada, on the other hand, a companion act of 1850

was entitled "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". The definition of an Indian in this Act consisted only of the statement that the Act applied to "Indians, and those who may be inter-married with Indians".[4]

A number of provisions in this Act had the consequence of making an Indian a minor at law — for example, the inability to be bonded or held responsible "for any contract whatsoever". Among other noteworthy provisions were the exception from taxation, and punishment for trespass on reserves for all "except Indians and those who may be inter-married with Indians". Presents and annuities were to be continued, though this had long been a controversial issue and efforts were continually being made to reduce the costs of the Indian Department. Indeed, in 1854, Oliphant, Superintendent of Indian Affairs, in a report to Lord Elgin recommended the reduction of the Indian Department.[5] His successor, Viscount Bury, wrote to Sir Edmund Head one year later rejecting Oliphant's scheme, pointing out the "burdens which the withdrawal of all primary assistance would entail upon the Indians".[6]

Sir Edmund Head, (a relative of Sir Edmund Bond Head) Governor of Canada after Elgin, summed up the inherent contradiction in the situation in a letter to Labouchère in the Colonial Office: "I approach the whole subject with pain and misgiving because I never feel quite confident of reconciling the perfect good faith of England towards the Aborigines with the national wish of the Queen's Government to effect the abolition of all charge on the Imperial revenue; a course which I know to be in the abstract, right and desirable in every way."[7]

Labouchère, however, made the limited extent of Department sympathy quite clear in his reply: "It has long been settled that the general presents to the Indian tribes which are in progress of annual reduction shall cease in 1858 . . . This decision will therefore remain unaltered."[8]

Attitudes in Canada were hardening in proportion to the increasing pressures of European settlement. The problems of the Indians were beginning to be viewed more and more as the result not of depredations on their land by Europeans but of Indian improvidence and lack of "progress".

In 1857 "an Act to encourage the gradual Civilization of the Indian Tribes in the Province, and to amend the Laws respecting Indians"[9] was made applicable to both Canadas. The title clearly expresses its intent to expedite the process of "civilizing" the Indians through offering incentives to them to enfranchise. Enfranchisement was seen as a mechanism "to facilitate the acquisition of property and of rights accompanying it, by such Individual Members of the said Tribes as shall be found to deserve such encouragement and to have deserved it."[10] Ownership of property was the prerequisite for civil rights and responsibilities which were by definition indivisible from civilization.

Thus enfranchisement, that "quaint piece of legal Canadiana" as one writer has called it, first appeared in legislation, offering as inducements land in fee simple and a lump sum payment of a share of annuities and band funds.[11] Only males could be enfranchised, dependents being enfranchised with the male.

The definition of Indian in this Act for both Upper and Lower Canada was not that of the earlier Lower Canada Act, but the more inclusive designation of the Upper Canada Act: Indians or persons of "Indian blood or intermarried with Indians."[12]

At the same time, yet another Commission of Inquiry was established with very similar terms of reference to those which had been given the commissioners ten years earlier. They were to recommend:

> "1st As to the best means of securing the future progress and civilization of the Indian Tribes in Canada.
>
> 2nd As to the best mode of so managing the Indian property as to receive its full benefits to the Indians."[13]

In other words, it was accepted that the settlement of the country could only be accomplished by taking over Indian lands. The question was how best to manage this so as to protect the interests of all concerned. In addition, a positive secular programme emphasizing the benefits of civilizaton was to be initiated, encouraging Indians to give up their ties to their bands and accept in recompense property in fee simple, the sine qua non of citizenship.

Civilizing and good management then were still primary, but the report acknowledged that earlier experiments had been unsuccessful. The Commissioners concluded, "We consider that it may be fairly assumed to be established that there is no inherent defect in the

organization of the Indians, which disqualifies them from being reclaimed from their savage state". But civilization for the Indians was still "but a glimmering and distant spark".[14]

Their report of 1858 contained two recommendations of interest here and which give some further insight into the mood of the times. The first relates to Indian lands, which the Commissioners believed were too large for the number of Indians occupying them. They therefore recommended that legislation be enacted obliging Indians in future, when reserves were being designated, to accept a lot of a maximum of 25 acres per family.[15]

In addition, "the gradual destruction of the tribal organization" was recommended and its substitution with a municipal form of government.[16]

However, subsequent legislation prior to Confederation did not contain these or any substantially new provisions. But these recommendations were not forgotten, and it will be seen that virtually all subsequent legislation for Indians had three main functions:

1) "Civilizing" the Indians — that is, assimilating them (and their lands) into the Euro-Canadian citizenry;
2) While accomplishing this, the ever more efficient "better management" of Indians and their lands was always a goal to be striven for and, following on this, an important element in better management was controlling expenditure and resources;
3) To accomplish this efficiently it became important to define who was an Indian and who was not.

Yet the British North America Act (B.N.A. Act) of 1867, "an Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith", contains only seven words relating to Indians. In section 91, which gives exclusive legislative authority to Parliament for some 29 items, "Indians, and lands reserved for the Indians" is number 24 in the list, between "Copyrights" and "Naturalization and Aliens".[17]

A great deal depends on the interpretation of these seven words and the argument has been made by Kenneth Lysyk and Cumming and Mickenberg (among others) that the Indian Act "cannot affect a person's status as an Indian under the the terms of the B.N.A. Act" and that aboriginal rights cannot be affected by exclusion from the Indian Act (Inuit for example are excluded from the Indian Act) since "these rights flow from an individual's status as a 'native person' and his connection with a particular tribe (in the case of Indians) rather than from any provision of the Indian Act".[18] By this argument an Indian woman who has been subject to involuntary enfranchisement remains an Indian in law.

There is as yet, however, no definition of who is a "native person" in Canadian law who might therefore also be an "Indian" by aboriginal right under the B.N.A. Act.

Chapter 6

Better Management, 1868-1869

One year after Confederation, in 1868, "An Act providing for the organization of the Department of Secretary of State of Canada, and for the management of Indian and Ordinance Lands" consolidated previous legislation and retained virtually unchanged in section 15 the broad 1851 Lower Canada provisions regarding who was an Indian for the purposes of the legislation.[1]

One year later, in 1869, however, another Act unambiguously aimed at "better management" and tighter controls contained far-reaching changes. It was entitled "An Act for the gradual enfranchisement of Indians, the better management of Indian Affairs and to extend the provisions of Act 31st Victoria Chapter 42" (i.e., the 1868 Act).[2] The Superintendent General of Indian Affairs (or his agent) was given very wide powers. He had the right to determine who could use Indian lands and there was a concomitant emphasis put on the holding of a licence or location ticket which indicated the right to hold a particular plot of land. He had the power to stop or divert Indian funds and annuities. Less than one-quarter Indian blood was to be a disqualification for "annuity interest or rent". Those "intermarried with Indians settling on these lands . . . without licence" were liable to be "summarily ejected". Prison terms were to be levied as well as the fines prescribed in the previous Acts for supplying liquor to Indians.

On the death of an Indian his "goods and chattels" and land rights were to be passed to his children. The wife was excluded, her maintenance being the responsibility of the children.

A council was to be elected by the "male members of each Indian Settlement of the full age of twenty-one years at such time and place and in such manner as the Superintendent General may direct." They might, however, be removed by the Governor for "dishonesty, intemperance or immorality."

If an Indian was enfranchised his wife and minor children were also automatically enfranchised.

Most significant in this paper, however, is the following amendment in section 6 concerning Indian women marrying non-Indians or Indians from other bands. "Provided always that any Indian woman marrying

any other than an Indian shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such a marriage be considered as Indians within the meaning of this Act." On marrying an Indian from another tribe, band or body, she and their children "belong to their father's tribe only."

The Indian woman was here for the first time given fewer rights in law than an Indian man. She could not vote in band elections. She could not inherit from her husband. She could not marry out of her band without penalty. Particularly punitive was the introduction of the proviso that she and her children would lose forever their Indian rights if she married a non-Indian and the possibility that she might then be obliged to leave the reserve since her husband could be "summarily ejected" at the order of the superintendent.

Section 4, however, seemed to allow a loophole allowing such women and children annuities in that it stated only that less than one-quarter Indian blood was a disentitlement to annuities. Since the Act also stated that the Indian woman marrying out "ceased to be an Indian" this was clearly ambiguous.

Section 6 of the 1869 Act, which decreed that female Indians were no longer Indians on "marrying out", was subsequently much elaborated upon. It proved to be a source of great bitterness and divisiveness among Indians and extremely difficult to administer. Nevertheless, it has not only remained firmly embedded in the Act right down to the present day but, with its numerous refinements and embellishments, it is far more restrictive than was ever envisaged even in its Victorian heyday. It therefore seems crucial here to attempt to determine if possible the rationale behind the introduction of Section 6 into the 1869 Act.

In the Lavell case of 1973, for example, the argument was advanced that this legislative enactment was devised to protect Indians and their lands, and it would seem that this argument is believed by many to carry some weight. However, there is very little in previous legislation or in such documents as the reports of special commissions to indicate that this was ever more than a very limited and qualified intention, even then the protection which was envisaged was based on assumptions (such as those embodied in the Commission of 1858 recommendations) which consciously set out to eliminate those things which Indians most prized — their communally held lands and 'tribal' way of life.

The Indians themselves objected strenuously to penalties being imposed on Indian women but were ignored. In 1872 the Grand Council of Ontario and Quebec Indians (founded in 1870) sent a strong letter to the Minister at Ottawa protesting among other things section 6 of the 1869 Act in the following unmistakable terms: "They [the members of the Grand Council] also desire amendments to Section 6 of the Act of 1869 so that Indian women may have the privilege of marrying when and whom they please; without subjecting themselves to exclusion or expulsion from their tribes and the consequent loss of

property and the rights they may have by virtue of their being members of any particular tribe."[3] The Indians' request went unheeded.

The legislation can only be understood in the social and political context of the time.

In the new Dominion of Canada only two years after Confederation there could be no blueprint for the future, but there were three clear goals, none of which could be accomplished without first displacing Indians or Métis. First, to create a united Canada coast to coast, to settle the West as quickly as possible with loyal citizens, and to both accomplish and consolidate this by means of a fast and efficient trans-Canada railway system. The ever present threat of American expansion north made this obligatory, according to historian Morris Zaslow, who comments:

> "The American westward movement, particularly after 1850 . . . made it imperative for British North Americans to match this advance by expanding west into the territories of the British Crown. Not to do so would expose those lands to the danger of being overwhelmed by the United States and would condemn the people of Canada to their present narrow limits and to a lower standard of living than their neighbours. Expansion became a national duty for Canada, a commitment with destiny."[4]

Hector Langevin, the Minister responsible for Indian Affairs in 1869, introduced the Bill in the House of Commons and stressed that its aim was to make enfranchisement less difficult, that an Indian "by his education, good conduct and intelligence would be granted a lot on a reserve which would be held by him and then his children in fee simple. This was another attempt in the direction of civilizing the Indians, and the government should try as much as possible to protect them in the first entrance," he said.[5]

Very important here though is the rationale relating to the introduction of section 6 which stated that Indian women marrying non-Indians ceased to be Indians. To get the full flavour it is necessary to quote this portion of his speech in full.

> "Again, it was found that in many tribes there was a want of proper discrimination between those who belonged to the tribe and those who came on the reserve from some other quarter. Many came in on the plea of being Indians and divided the revenues of the tribe, which, of course, impoverished them and deprived them of the means of maintaining their families. This Bill provided that, when an Indian woman married a white, as regarded her rights to the reserve, her children would not be considered Indians, but would assume the position of the father. So also an Indian woman of one tribe marrying a member of another tribe became a member of her husband's tribe. Again it has been found with reference to reserves that a good many Indians took advantage of the weakness of others and took possession of more land than they had the right to have . . . By this Bill it was provided that no Indian would be recognized as having a right to any land unless he received a location from the Superintendent of Indian Affairs. Again, the complaint was often brought against the

Indians that they did not keep up their roads, bridges, fences and ditches. In this Bill authority was given to compel the chiefs to have their roads, etc., kept in proper order. If they failed to do so the Superintendent would provide for the work being done at the cost of the tribe."[6]

The intent of the Act is here abundantly clear — more control over Indians, more efficient and thus more economical management of Indian affairs during the transition to civilization and eventual assimilation. In the meantime Indians had to be taught "proper discrimination" of who could come on their reserves. Sharing with visiting or indigent Indians was unwise and would lead to want for all and must be discouraged. Significantly, few words are spared to explain Section 6, which deprives the Indian woman of her status. But this and the succeeding sentence, stating that an Indian woman marrying an Indian from another tribe becomes a member of her husband's tribe, follow immediately on the previous one emphasizing "proper discrimination" and the necessity for alleviating financial burdens on the reserve. Making half-Indian children no longer Indians was part of this same logic.

Indians as problems — not problems of Indians — is the tenor of the proposed Act and this is further clarified in the questions posed in the subsequent debate.

The first question in the debate came from Mr. Holton who, after describing the general provisions as "well considered", went on: "We understood the honourable gentleman to say that a white man married to an Indian would be expelled from the reserve. This could cause great hardship if applied retroactively." He asked what special provisions had been made for such cases. He made these remarks, he said, "with special reference to the Caughnawaga Reserve, in which people of the County (Chateauguay) he had the honour to represent took a very warm interest."[7]

Hector Langevin replied it was the wish of the Government to apply the rule referred to by the member for Chateauguay "only to the case of white men as misbehaved for selling liquor, or robbing the Indians of their timber . . . As regards those who were married to Indian women, and there was nothing alleged against their conduct, they received a licence to remain."[8]

This exchange, though rather confused, does indicate that the intent was not to penalize the white man who could continue to live on the reserve with his Indian wife. The expressed intent was to prevent their children, "half-breeds", from having any rights to live on the reserve.

Another member of the House, Mr. Dorion, said that he thought it was the duty of the government to try to encourage intermarriage between whites and Indians, not to discourage it. He believed it would tend to raise the character of the whole tribe. Ordinary tribunals, he believed, could deal with white men who sold liquor, etc. Mr. Langevin answered this by saying that he had been misunderstood. The govern-

ment would not and could not discourage marriage between Indians and whites and, he said, "As soon as the title of land was given to the Indians they would be in the same position on it as whites."[9]

It was other Indians who were mentioned as taking lands from Indians, and the effect on the Indian woman of section 6 was not even mentioned — "As regards her rights to the reserve her children would not be considered Indians."[10] Also, as Langevin implied in his answer to Dorion, it was envisaged that the reserves would eventually be broken up into lots held in fee simple as all Indians were enfranchised and thus assimilated. As Langevin explained, it would make no difference in the long run. Section 6 was clearly not meant as a mechanism for protecting Indians from whites.

Judging from these remarks in the House, section 6 was nothing more than a muddled attempt to achieve the greater efficiency and the easier management of budgets that it was hoped would occur when the number of Indians to be dealt with didn't keep fluctuating. There is no "malice aforethought" — in fact not too much forethought about

possible side effects at all. Was it then, like much of the legislation for Indians, nothing more than a piece of ill-considered "adhoc-ery"?[11] Were Langevin and his administrators unaware of the injurious effects of this legislation on Indian women?

More conclusive evidence on this is contained in an important paper prepared by an anthropologist, Sally Weaver, for the opposition to Lavell and Bedard in the Lavell case. Weaver's conclusion is that "If the question is asked — 'Why did the Canadian Government in 1869 legislate against the Indian woman retaining her status as Indian if she married a whiteman?' — the answer is clearly — to protect Indian land from both the occupation and use of it by whitemen married to Indian women."[12] But Langevin denied this in the House and white men continued to live on the reserves with the protection of the Department.

The documents cited by Professor Weaver in fact lend support to what are somewhat different conclusions. It is necessary however to examine these documents in some detail before this can become clear.

First of all Weaver's data show that Indians themselves were not necessarily interested or willing parties to striking women off the band registers. It would appear also that the Superintendent of Indian Affairs, Hector Langevin, the Deputy Superintendent of Indian Affairs, William Sprague, and Jasper Gilkinson, the Visiting Superintendent to the Six Nations (the main emphasis of Weaver's research was with reference to the Six Nations) had clearly had the final if not the first word in controlling band business. Also when it came to penalizing Indian females on intermarriage (and it becomes clear that such a policy was being pursued) they went so far as to assure the doubting Indians on every possible occasion that such behaviour was "customary". A letter from Hector Langevin in 1867 (two years before the legislation was even enacted) to the Chippewa Indian woman Sahga-mah-qua and her daughters illustrates this point:

> "In replying to your petition, applying for land with the Chippewas of Muncey Town in the Township of Caradoc, these remarks are made for your guidance and information. The rule appears to have been followed, and I think correctly among Indian Bands, that upon any Indian Woman marrying out from her people, she ceases to belong to them, and if her husband belonged to another Indian Band, she became a member of his Band. The same principle should prevail if she married a White Man — but as she in such a case could not elsewhere be put upon a pay list for Interest and annuity money, she should continue to receive her usual portion and her Children would likewise be entitled to shares — As to land the case is different. The Father being a White Man could have no right to Indian land, and Indian Women have only such right in land belonging to their Tribes, as they enjoy jointly with their Husbands."[13]

The 1868 Act nevertheless did not take away the Indian women's rights to hold property on the reserve but it is evident from this letter that such a policy was being pursued up to the enactment of the

legislation in 1869 which did take away land rights for the first time from women who "married out."

The vital role played by the Superintendent in explaining the "custom" as well as the drive for more control is again emphasized in this rather different item from the minutes of February 7th, 1871.

> "The Supt, said, this was just a case where he had to exercise his opinion, and for the reasons, that it would be a departure from the rule and usage so long respected and recognized. In this instance, was the fact, that Martin had some years ago sold out his possessions and bid good bye to his people, and went away to the Saugeen, and now, he does not say he will return, only desires they may be again added to the roll of the Six Nations. Therefore, he could not consent to place him or his family on the list."[14]

Weaver, in an appendix, notes that the influence of the Superintendent David Thorburn was "frequently obvious" in 1858 when decisions were being arrived at on annuities. For example if a family was away for a long time and wished to have their names re-entered on the pay list he suggested that they should first have to prove themselves of "good character and worth, to be members".[15]

Superintendent Thorburn's perception of his role as instructor on not only custom but morals is quite clear in this excerpt from Weaver's report:

> "A year later, David Thorburn in writing to R. L. Pennefather, Superintendent General of Indian Affairs (1856-1861) provides the following information on what appear to be Departmental principles which have themselves of "good character and worth, to be members."[15]
>
> "It's a definite rule for striking off absent members of a Band or Tribe. The practice is, and has been, when any member absents him or herself voluntarily, whether to a distance or to a foreign country without the Consent or Knowledge of the Band or Tribe, they are not entitled to the benefits that resident individuals are, because they share no part of the Common burdens, such as road labor, or aiding in clearing up the lands in the Settlement again. Besides we know not what their behavior may have been while so absent. There is also a practice any convicted of Crime in the Penitentiary, no allowance while so confined, or for extreme bad behaviour by setting a bad example by bringing the Tribes into discredit by word or deed. If absent in a foreign country, we can have no knowledge what they have been doing or even a distance in the Province they not infrequently join other bands and with them participate of the common benefits of the Band — the Foregoing principles have been inculcated from time to time from the head of the Department, and acted on by me. If you approve of the points laid down, or some other, it would be well to embody them into a Circular for a guide."[16]

Again citing from notes from Six Nations Band Records Weaver writes:

> "In the Council Minutes of January 20, 1870 a difference of opinion between the chiefs and the Superintendent reflects the council's opinion of the 1869 Act.
>
> "The Speaker rose and said, they did not concur in erasing this

young woman, as they had not been consulted in framing the Act passed in Parliament, and they refused to recognize it, and therefore, would retain the young woman on the list. They intended to represent their views. The Supt. pointed out, that whatever might be their objections to the Act, it was clear the clause 6 is based upon the usage and customs of the Indian tribes, and often, had the Council denounced the admission of Whitemen upon their lands, and called upon him, The Supt. to expel them."[17]

It is quite clear from this that the Indians of the Six Nations of Ontario differentiated between the depredations of undesirable white men on the reserve and penalizing Indian women.

That the Indians in Caughnawaga in Quebec were concerned and puzzled is again evident in the following letter from Hector Langevin to Sawatis Anionkui, Peter Karenho and other Iroquois Indians at Caughnawaga.

> "With reference to your Memorial of the 4th May last I have to inform you that the Act regarding Indian Affairs passed in the Year 1868 continues in force and the Act passed during the last Session of Parliament of which a Copy is enclosed does not change the Act of 1868 in any way injurious to the interest of the Indians but on the contrary by Section No. 6 it provides for excluding in future any Woman of Indian Blood who marries after the passing of this Act a man of other origin or of another Tribe or Band from continuing a Member of that Tribe or Band to which she originally belonged. Thus preventing men not of Indian Blood having by marrying Indian women either through their Wives or Children any pretext for Settling on Indian lands."[18]

The fact that Indian women were being injured was just not germane to the issue.

The documents cited in Weaver's report also underline the moral judgements which underlay decisions and how they would be applied differently to males and females. Consider for example the following remark about an Indian woman Lucinda Scott in a letter from Hector Langevin to Gilkison of August 1869, "as it appears that some two or three years since she became married to the white man George Scott and thus made the best amends in her power for her past misconduct, etc. . . ."[19]

William Sprague, Deputy Superintendent of Indian Affairs, in the Annual Report of 1870 explains the legislation of 1868 as, among other things, part of a concerted effort to guide Indians into realizing the value of holding private property. As indicated by Hector Langevin the necessity was to restrain *Indians* from "trafficking one with another" so that one or two do not end up with "two or three times as much as the proper quota".[20] Sprague also lamented the lack of laws restraining Indians from letting their lands to others to farm, which he believed "has induced the tendency to indolence and its concomitant misfortunes observable among so many of Indian blood."[21] Much the same sentiment was expressed twenty years before by the 1844-45 Report of the Investigative Commission.

Sprague seems also to be concerned on another score; that of categorizing Indians according to blood or colour and keeping the race "pure". "But it is becoming more and more perceptable that the Law should define the point beyond which persons of mixed Indian and white blood should not be regarded as Indians. I think that in justice to the Indian people with more than one fourth white blood should not be regarded as Indians but as belonging to the race giving them their predominating color."[22] This would mean presumably that the children of anyone male or female who married out would lose Indian status and that the "blood" of both Indians and whites would become more "pure" with time.

What is most evident, in summary, is that there was little consistency in the administration of Indian Affairs in Upper Canada and Lower Canada and a great deal of latitude allowed for individual officials to implement their own moral convictions and that this had been the case for quite a long time. According to a memo of 1872 from Sprague to Joseph Howe, Langevin's successor, women from the Mississaugas of Alnwick who "married out" had been excluded from the paylist, i.e., had not received annuities for 40 years (since 1832).[23] And Indians then had also protested furiously.

In 1860, according to the transactions of the Aborigines Protection Society, Mrs. Catherine Sutton, Nah-ne-Bah-Nee-Quay, an Indian woman, was so outraged at being refused her annuity that she went to London to complain and obtained an audience with Queen Victoria at Buckingham Palace. As a result she was permitted to purchase the land on which she and her family had been living.[24]

Communications between the Indians and Ottawa were usually channelled through the Agent — a department employee. If the Agent did not give his approval and assistance Indians were clearly at a disadvantage in registering complaints with Ottawa. It was thus rather difficult for Indians who perceived legal injustices to make their complaints heard and also keep abreast of the changes in the law when they had to depend on the government Agent for all information. The Agent was also in a difficult position since he was in a conflict of interest and unable to represent fairly the interests of his clients, the Indians, in complaints against his employer, the government.

As well, agents themselves were often unclear as to specific government policies and even less able to understand their rationale. In June 1869 for example George Cherrier, the agent from Caughnawaga, sent a letter to Ottawa requesting instruction on the new legislation and including a list of all the white men on Caughnawaga, twenty-eight names in all. The reply was quite brusque in tone stating that: "White men married to Indian women prior to the passing of the Act V32-33C6 (S.6) are privileged to reside on Reserves and Indian widows have received permission to allow white men to work their farms, etc." In fact all but two of the men named had a licence to live on the reserve. Many of the names have Indian names pencilled beside them (Indian

wives' names possibly). The two men without licences were Giroux, the tavern keeper, and Hébert, "a good blacksmith".[25]

On the effects of section 6 Agent Cherrier commented in 1872, "the practical effect is to promote immorality . . . An Indian widow with property cohabited with a white and the only bar to their marriage was the fact that the moment she married she would cease to be a member of the band and consequently lose her rights as an Indian and be subject to immediate eviction from the property left her by her husband." Cherrier advised the government to accede to the request of 1872 of the Indian Council "in order to allay suspicions or apprehensions . . . as to the intentions of the Government with respect to them."[26]

It is evident that even if the Indians of Ontario and Quebec did not like white men on the reserves they certainly did not approve of the government remedy and that they saw this as an attack not only on female Indians but on all Indians.

In conclusion it is clear that although Langevin was himself rather inconsistent, he shared with Sprague and their colleagues three deeply held convictions and that the statutes of 1869 and section 6 in particular embodied these principles:

1) Indians and their lands were to be assimilated. The number of Indians was to be gradually reduced. This was the final solution envisaged by everyone except the Indians and long term protection of Indian lands was logically inconsistent with this view.
2) Indians were not capable of making rational decisions for their own welfare and this had to be done by the Department on their behalf. Though Indians believed their welfare depended on their retaining as much of their lands as possible, the attainment of government goals depended on alienating Indian lands.
3) Indian women should be subject to their husbands as were other women. Their children were his children alone in law. It was inconceivable that an Indian woman should be able to own and transmit property and rights to her children.

Chapter 10

Pangs of Conscience — The Forties

In the wake of the Second World War a wave of humanism washed briefly over North America. This humanism and a revulsion from the recent revelations of man's inhumanity to man were articulated in the preamble to the 1948 United Nations Declaration of Human Rights: "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people".[1]

In Canada the condition of Indians was causing some concern and in 1946 a special Joint Committee of the Senate and the House of Commons which sat till 1948 was set up with broad terms of reference: to look at Indian Affairs and the Indian Act with a view to its amendment.[2]

On the practical side, the new Family Allowance Act of 1944 and welfare legislation increased the need for more complete and careful lists of the Indians who were eligible for benefits.

The Joint Committee had not contemplated accepting representations from Indians. But they soon found themselves under pressure to engage an Indian lawyer to act as intermediary for the Indians from the Six Nations.[3]

Of the 33 M.P.s and Senators on this committee, only one was a woman, Iva Fallis. The Chairman's first remark at the very beginning of the proceedings is rather interesting and addressed to her: "I think we shall have it understood that whenever the masculine term is used it will indicate both masculine and feminine. I hope our lady member will agree to that."[4] It seems rather curious that he should have felt such a remark was even necessary. But whether or not the confusion inherent in the Indian Act as well as in its interpretation which arose as a result of this English semantic convention had been a topic of dissent is not known. This decision however was not in the interests of clarity or precision since a separate legal regime did exist for Indian women from Indian men — not only with respect to marriage and illegitimate children, but on, for example, exclusion from right to vote

in band elections and so partake in band business, rights to inherit and for a widow to administer her husband's estate.

Many of the legal disabilities for women existed as much by omission as by explicit statement in the Act, though, as has been noted throughout this paper, the latter were not lacking. The consequences of this insistence on the use of only the masculine term were unfortunate; as in the past it had led to confusion in the interpretation of the Act so also it did in the 1951 Act, which followed on the recommendations of this Joint Committee. Indeed, there is still today a strongly held belief on some reserves that women are not entitled to hold a certificate of possession, formerly called a location ticket, to land on a reserve.[5]

It is also important to note that in common law the word "man" or words of the masculine gender did not include women, as was established by a court case just after the failure of an attempt by the reformer J. S. Mill to have the word "person" substituted for the word "man" in the 1867 Reform Act.[6]

After the Joint Committee it was Senator Iva Fallis who at the very beginning of the proceedings brought up the question of Indian women losing their status through marrying non-Indians.

Her questions were put during the evidence of the first witness, Robert Hoey, Director of Indian Affairs. Hoey began by asking a crucial question: "Is it possible that in the past we have given too much thought to what might be termed the machinery of administration and not enough thought perhaps to the task for which this administrative machinery was created?"

Hoey, it is evident from his statements, subscribed to the assimilation ethic, but emphasized the merits of gentle persuasion rather than force and also the "rights" of the Indian not as applying to property rights alone, but "as a human being living in a free country".

However he criticized the definition of "Indian", which he thought was being used "somewhat loosely".

From Hoey's evidence it would seem that he saw the Indian Act as an Act which deprived people of their human rights. Nevertheless he believed that, given the existence of such discrimination, discrimination should be based on blood quantum, since, as he pointed out, an Indian could have a white mother and a white grandmother, and still be legally an Indian. This question had "disturbed" him, he said, "since entering the Department". He questioned "the moral authority of parliament . . . to deprive persons with 50 per cent or more white blood of the full rights of Canadian citizenship". He believed that a fair definition would be "An Indian is a person with 50 per cent or more native or Indian blood". It is evident that he believed that given the choice no-one would want to remain an Indian who could become a Canadian citizen.

On an Indian woman losing her status through marrying out, Hoey stated that a problem occurred when she returned to the reserve

"having been deserted by her husband or immediately following her husband's death. She is no longer an Indian in a statutory sense nor is she the responsibility of the Indian Affairs Branch. Indeed it can be said that the money voted for by Parliament is voted on the distinct understanding that it is for the welfare of Indians and cannot be spent for the relief of white citizens". Hoey evidently was inconsistent in his application of "blood" since he here makes an Indian woman white, or perhaps he thought that only in the male was the genetic composition important.

In the same vein, a short time later when revisions to the Act were being discussed in 1955, it was seriously considered whether there might not be special provisions made giving Indian status to the illegitimate male child but not female child of an Indian man and white woman.[7] This incomparable blend of racism and sexism was both a function and a product of the Indian Act.

Iva Fallis put the question about Indian women after Hoey's statements on "white" Indian women: "Am I correct in understanding from what you said a moment ago that if an Indian woman marries a white man she ceases to be an Indian yet she is not a white woman? If her husband deserts her, or dies, she is left destitute and there is no-one to look after her? That does not apply in the case where an Indian marries a white woman. It seems unjust to the Indian woman who marries a white man because neither the white people nor the Indians want her." The Chairman interrupted to say that this would be considered by the committee. Hoey said, "It is an awkward problem" and went on to other matters. The question of membership was postponed till 1947 and then to 1948. Hoey's remarks, or at least the notions on which they are premised, were incorporated in the 1951 Act, which is still in force today, in the changed wording of the definition of an Indian.

A number of representatives from bands and associations submitted briefs and gave testimony to the Joint Committee in 1946 and 1947. Most of these groups emphasized that decisions as to membership of the band should be the decision of the band and that involuntary enfranchisement should be abolished. The North American Indian Brotherhood, the Indian Association of Alberta, the Native Brotherhood of British Columbia, and the Union of Saskatchewan Indians all made strong statements on this. This was considered a major breakthrough. Indians after all had not been consulted before as to their wishes.

Some groups, the Caughnawaga Indians and the St. Regis Indians for example, called for the complete abolition of the Act.[8]

The Native Brotherhood of B.C. stated that women who had lost their status through marriage and who were deserted or widowed should be allowed to rejoin their band with their children.[9]

But very different sentiments were being expressed by the Indian Affairs Department in this memo prepared for the Committee: "It

might be contended that by the alteration of the definition of Indian by the Statute of 1876 the Dominion very substantially reduced the number of people for whose welfare it was responsible and by that action passed the responsibility on to the provinces for thousands of people, who, but for the statute of 1876, would have been a federal responsibility for all time."[10]

T. L. R. MacInnes, the Secretary of Indian Affairs, in similar vein, in a series of talks entitled "Canada's Indian Problem" worried about the cost of services to Indians and asked, "When will they [the Indians] be able to stand on their own feet? In my opinion not for a long time . . . Indeed if we are to make these people self-supporting at all, it is clear to me that we must increase rather than relax our supervision."[11]

This echoes almost exactly the recommendation of the Committee of 1844-45: "their further progress requires more enlarged measures, and more active interference."[12]

The one hundred years later Committee of 1946-48 in its final report found that the Indian Act was replete with "anachronisms, anomalies, contradictions and divergencies", and recommended "that, with few exceptions, all sections of the Act be either repealed or amended".[13]

The first recommendations were concerned with treaty rights and recognized the need for a thorough investigation of Indians' claims through a Claims Commission, the right to vote at Federal elections, improved integrated educational facilities, old age pensions, advisory boards, better cooperation with provinces where overlapping jurisdiction was a problem, and the handling of related affairs all by one Ministry.[14]

The recommendation on band membership, however, is not so enlightened in tone, and the Indians' recommendations were ignored. It reads:

> "To replace the definition of Indian which has been statutory since 1876, there must be a new definition more in accord with present conditions. Parliament annually votes moneys to promote the welfare of Indians. This money should not be spent for the benefit of persons who are not legally members of an Indian Band. Your Committee believes that a new definition of 'Indian' and amendment of those sections of the Act which deal with band membership will obviate many problems.[15]
>
> "Your Committee recommends that in the meantime the Indian Affairs Branch should undertake the revision of existing Band membership lists."

They also recommended a clarification in the "rules and regulations" of both voluntary and involuntary enfranchisement. Outside of their terms of reference they also recommended that Indian women over 21 be given the right to vote in band elections which men had had since 1869 and that the offence and penalties sections of the Act (concerning liquor among other things) be brought into conformity with the penalties imposed on other Canadians in the Criminal Code.[16]

Chapter 11

The Indian Act of 1951

It might be expected, given the interest in human rights and the lengthy deliberations of the Joint Committee, that some major changes would ensue in this the first revision of the Indian Act since 1927 but when Bill 267 was presented for first reading in the House there was a storm of protest. It was characterized as a "shamefully inadequate piece of legislation", "inept" and "a vast disappointment to friends of Indians".[1] M. P. John Diefenbaker saw it as a licence to give even more power to administrative officials than ever before, putting "shackles" on approximately 125,000 Indian people, making of the Indian "a second-class citizen under the law". "For three years", he said, "that committee sat. Now the mountain brings forth a mouse".[2]

There were some hurried three-day consultations with Indians. A Special Committee was set up and a new bill was produced. The content remained the same however, though there were some changes in wording and the Special Committee recommended that "further consideration be given to the Indian Act in two years". This Bill 79 was passed on 17 May 1951. With some amendments, this mighty "mouse" is the Act in force today, twenty-seven years later.[3]

The discretionary powers of the Minister or Governor-in-Council were once more amplified. On the other hand the more blatant discrepancies between the Criminal Code and the Indian Act were removed. There was an easing of laws on intoxicants, the prohibition on Indian ceremonies and dances was removed, the requirements of obtaining permission from the agent to travel or sell produce were also omitted. Indian women were for the first time given the right to vote in band elections.

The enfranchisement section and the membership section were greatly elaborated upon and altered. Both increased the disadvantages for Indian women who "married out". The sections dealing with estates and inheritance were also amended and adversely affect the same women.[4]

The consequences for Indian women and their children of these sections regarding membership, enfranchisement and inheritance are far-reaching, and they are completely interwoven with the effects on other Indians that such an invitation to injustice and discrimination

constitutes. The results thus affect the whole development of human relationships in Indian communities.

The membership section, in becoming vastly more elaborate, spelled out at length not only who was entitled to be registered as an Indian but also who was not. The mention of "Indian blood" was removed and the male line of descent was further emphasized as the major criterion for inclusion. The first part of this section (section 11) has already been cited here (in Chapter 2).

Further changes in section 12 which decreed who was not entitled to be inscribed in the band lists have their own strange logic and are written in the bureaucratic vernacular. This, together with Hoey's concern with "blood", is evident in the formulation of the "double mother" rule which stipulates that among those not entitled to be registered is "a person who . . . is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), or (d) or entitled to be registered by virtue of paragraph (e) of section eleven unless, being a woman, that person is the wife or widow of a person described in section 11, and (b) a woman who married a person who is not an Indian", "unless, [a 1956 amendment added] that woman is subsequently the wife or widow of a person described in section 11".

What this means is that a child of a white or non-registered Indian mother and grandmother, who therefore has only one-quarter Indian Act "blood", is to be deprived of Indian status on reaching the age of 21. This section would apply to children whose maternal grandmothers were voluntarily or involuntarily enfranchised Indians, or Indians who were left off band lists or lived in the U.S. for over five years, or Métis who might have three Indian grandparents, as much as the children of white women. This has in fact clearly nothing to do with biology or Indian "blood" but everything to do with the Indian Act.

Though this part of the legislation has never been enforced,[5] another opportunity for divisiveness exists. It also serves to draw attention to the awesome confusion in the minds of legislators and the failure or unwillingness to accept the reality that the definition of "Indian" in the Act was primarily a creation of the Act itself, and that Victorian notions based implicitly on male "blood" as the criterion for membership were biologically unsound and historically inaccurate. Justice Bora Laskin found it necessary to emphasize this point in his dissenting opinion in the Lavell case some twenty-two years later.[6]

In a similar vein are sections concerning descendants of those who had been allotted half-breed lands or scrip, who were not to be entitled to be registered. The result of this enactment was that attempts were made by the Department to deprive whole clans of their Indian status on the basis that their forebears had taken half-breed scrip. This was so disastrous that public opinion forced it to a halt and

this was amended in 1958 allowing those at that date registered as Indians to remain so.[7]

The major change for an Indian woman who "married out" was that until this time she had to some extent had a dual status as an Indian and an ordinary Canadian citizen. Until 1951 she had usually retained the right to go on collecting annuities and band monies if she did not choose to accept a lump sum "commutation", and thus continue to be on the band list. As a result she continued to enjoy some band benefits as well as treaty rights (if her band had taken treaty), though she was no longer an "Indian Act" Indian.

Some Indian agencies had issued prior to 1951 an identity card called a "Red Ticket" to such women which identified them as Indians for the purposes of sharing in treaty and band monies.[8] Neither they nor any other Indian women were entitled to vote in band elections prior to 1951. The major disabilities therefore on loss of status prior to 1951 for Indian women who married non-Indians were that they were deprived of their legal rights to hold land on the reserve and that their children would not have Indian status. As if this were not grim enough, they were now to be subject to involuntary enfranchisement.

Involuntary enfranchisement for men, introduced first in 1920, withdrawn and then re-introduced in the 1933 legislation, was omitted from this Act of 1951 though voluntary enfranchisement for men and bands was retained.

But new clauses were now inserted in the enfranchisement section of the Act affecting Indian women who married non-Indians though the provisos that the Indian who chose to enfranchise be "capable of supporting himself and his dependents" and "capable of assuming the duties and responsibilities of citizenship" as well as the necessity of obtaining the consent of the band are conveniently set aside in the woman's case.[9] Enfranchisement for women who lose their status thus differs substantially from voluntary enfranchisement.

The Indian woman who married a non-Indian now was automatically deprived of her Indian status and her band rights from the date of her marriage. "On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor-in-Council may by order declare that the woman is enfranchised as of the date of her marriage."[10] Her prior children were not mentioned in this 1951 Act but they were erroneously enfranchised with her until 1956, when the section was amended to read "and on the recommendation of the Minister [the Governor-in-Council] may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify".[11] A Parliamentary Committee considering the revision to the Act in 1955 had noted that the enfranchisement section would have to be altered to include children, i.e. bring the law into line with practice "By taking no action the Governor in Council might permit some children to remain Indian

forever. It is doubtful whether this was the intention".[12] In 1967, after many complaints had been laid, those children who were erroneously enfranchised with their mothers between 1951 and 1956 were re-instated when they could be traced.[13]

It was the same committee which pondered whether the illegitimate male child of an Indian and non-Indian should have status but reached no decision. They also started off their discussions by resolving "to preserve what was done in the past".[14]

The effect of this 1956 amendment was that Indian children who lived with their mother and their non-Indian step-father after her marriage off a reserve were also enfranchised but the Minister, at his discretion, could permit those children who continued to live on the reserve to retain their status. (The Minister in the main relies on Department officials for the resolution of such matters, but what exactly the word "may" means in the legislation when referring to ministerial discretion is difficult to assess and does seem to have varied over time.)

Another amendment of 1956 to section 12 stated that the illegitimate child of a female Indian could be protested and excluded from the band within twelve months of the addition of its name to the Band List if "it is decided that the father of the child was not an Indian".[15]

What all these provisions meant in practice was that a large number of Indian children both of whose parents were Indian were also enfranchised after 1951, their sole transgression being that some of them were born illegitimate.

The many anomalies and injustices which were thus visited on the children further augmented the difficult lot of women who "married out".

The other important effects of a woman's loss of status are on the Indian woman's ability to own or inherit property on the reserve.

Many women who married before the 1951 Act chose not to accept commutation and to retain their "Red Ticket" status. This administrative inconsistency was changed by an amendment of 1956 to section 15 of the Act. "Red Ticket" women were paid a lump sum of ten times the average annual amount of all payments which they had been paid over the preceding ten years and so brought into line with the rest.[16]

All Indian women who "married out" after this date became subject to the enfranchisement procedure which occurs after an Order-in-Council has been made. This is usually declared to take effect on the date of her marriage. She is then deemed according to section 110 "not to be an Indian within the meaning of this Act or any other statute or law". On the issuing of the order of enfranchisement any property which she holds on the reserve must be sold or otherwise disposed of in thirty days. In exchange she is given twenty years of treaty money (if the band took treaty) plus "one per capita share of the capital and revenue moneys held by Her Majesty on behalf of the band".[17]

Since she is not entitled to live on a reserve and any property she inherits there is subject to be sold by the Superintendent to the highest bidder, the issuing of the order of enfranchisement is the last step before property must be disposed of.

Enfranchisement is a term which has always had a very different meaning for Indians from whites. Even the meaning given gy government has also varied somewhat over time. In general however the same ethos underlay enactments on enfranchisement — that assimilation to Euro-Canadian culture should be the ultimate goal for Indians. This goal was perceived as a privilege only to be conferred by the superior society on the Indians when they had achieved certain standards of civilized behaviour. Maintaining the Indian in a state of "wardship" without legal rights until he or she had "progressed" sufficiently to be made a full citizen (i.e., enfranchised) was considered an onerous though necessary duty.

However, most Indians unobligingly perceived enfranchisement as something to be avoided. They preferred to retain their Indian identity, culture and values despite all inducements, and, apart from the compulsory enfranchisement of professionals, very few Indians chose to become enfranchised in the nineteenth century.

The same situation persisted into the twentieth century, although the existence of compulsory enfranchisements between 1920-24 and 1933-1951 (i.e., before women "marrying out" were subject to enfranchisement) makes it rather difficult to assess this statistically. Since 1951 very few Indians have chosen to become enfranchised. Should they wish to do so, however, they are still obliged to prove their worthiness and ability to survive outside the reserve; i.e., that they no longer need to be "protected".

Indian women, on the other hand, who lose their status through marriage are not required to demonstrate that they can be self-supporting in order to be enfranchised and enfranchisement is irreversible (except if the woman is widowed or divorced and then remarries a registered Indian).

Many members of the public feel that the word "enfranchisement" today must connote some benefit for Indian women. Nevertheless they suffer as Indians because they lack educational opportunities and have to face job and other forms of discrimination to which all Indians off the reserve are subject.[18] In fact the whole idea of enfranchisement was a patent anachronism by 1951, but the term is now perpetuated as a polite fiction which disguises the blatant discrimination towards Indian women in the Act. Prior to 1951 there was no pretence that such women were "enfranchised". Department of Indian Affairs officials also seem to cherish the ability to claim that "enfranchisement refers to men too". Statistics show otherwise.[19]

If we examine Table II below we see that 5,035 women and children were subject to enfranchisement between 1965 and 1975 following on the application of section 12(1)(b). This compares with a total of 228 voluntary enfranchisements of both men and women.

That is, only 5% of enfranchisements are voluntary and 95% of enfranchisements have been of women who had no choice.

From 1973 to 1976 however the difference is even greater. There have been only 11 voluntary adult enfranchisements (3 in 1976) and 1,335 involuntary adult enfranchisements plus, in 1976, 273 women who were not enfranchised but lost their status, totalling 1,608 for 1973 to 1976.[20] The percentage of voluntary enfranchisements of women and men for these years is 0.68%. Or, to put it another way, enforced enfranchisement of women accounted for 99.32% of all enfranchisements between 1973 and 1976. Moreover, the figure for voluntary enfranchisement appears to be diminishing, going from 7 persons in 1972-73 to 3 in 1975-76.

Out of a total Indian population of some 280,000 then, four people in the past two years have chosen enfranchisement. These figures are, I believe, sufficient comment on the merits of enfranchisement as they are perceived by Indians. (See Tables I, II and III.)

TABLE I

Enfranchisements — 1955-65

Period	Adult Indians enfranchised upon application together with their minor unmarried children		Indian women enfranchised following marriage to non-Indians together with their minor unmarried children		Total number of Indians enfranchised
	Adults	Children	Women	Children	
1955-56	192	130	337	97	756
1956-57	192	145	389	113	839
1957-58	169	149	305	50	673
1958-59	138	52	612	—	802
1959-60	221	248	433	221	1123
1960-61	125	70	592	167	954
1961-62	94	47	435	140	716
1962-63	90	50	404	109	653
1963-64	40	38	287	102	473
1964-65	46	34	480	176	736
TOTAL	1313	963	4274	1175	7725

TABLE II

Enfranchisements — 1965-75

1965-66	38	18	435	147	638
1966-67	31	22	457	148	658
1967-68	62	28	470	56	616
1968-69	37	20	531	197	785
1969-70	41	19	547	107	714
1970-71	25	12	517	98	652
1971-72	14	4	[illegible]	19	304
1972-73	7	—	—*	—	7
1973-74	7	4	449	—	460
1974-75	1	—	590	—	591
TOTAL	263	127	4263	772	5425

Note: Since 1974, the enfranchisement of children has ceased.
*Enfranchisements were suspended in 1972-73 while the Lavell case was before the courts.

TABLE III
Accumulated Enfranchisements

1876 to 1918	102
1918 to 1948	4,000
Fiscal 1948 to 1968	13,670
Fiscal 1968 to 1969	785
Fiscal 1969 to 1970	714
Fiscal 1970 to 1971	652
Fiscal 1971 to 1972	304
Fiscal 1972 to 1973	7
Fiscal 1973 to 1974	460
TOTAL	20,694

All statistics obtained from D.I.A.N.D.

Since 1975, however, there have been no Orders-in-Council forcing women to enfranchise. (Remember that loss of status, which involves being struck off the register, and enfranchisement are separate procedures.) The reasons for this are unclear, but there would appear to be a developing distaste for the issuance of Orders-in-Council relating to Indians.[21] It would appear therefore that section 110, which states that "a person with respect to whom an order for enfranchisement is made . . . shall . . . be deemed not to be an Indian", and section 111 requiring the selling of property on a reserve by those who are "enfranchised" can no longer legally be enforced. Yet Indian women who marry non-Indians are still being struck off band lists and being "paid off" for their loss of Indian status.

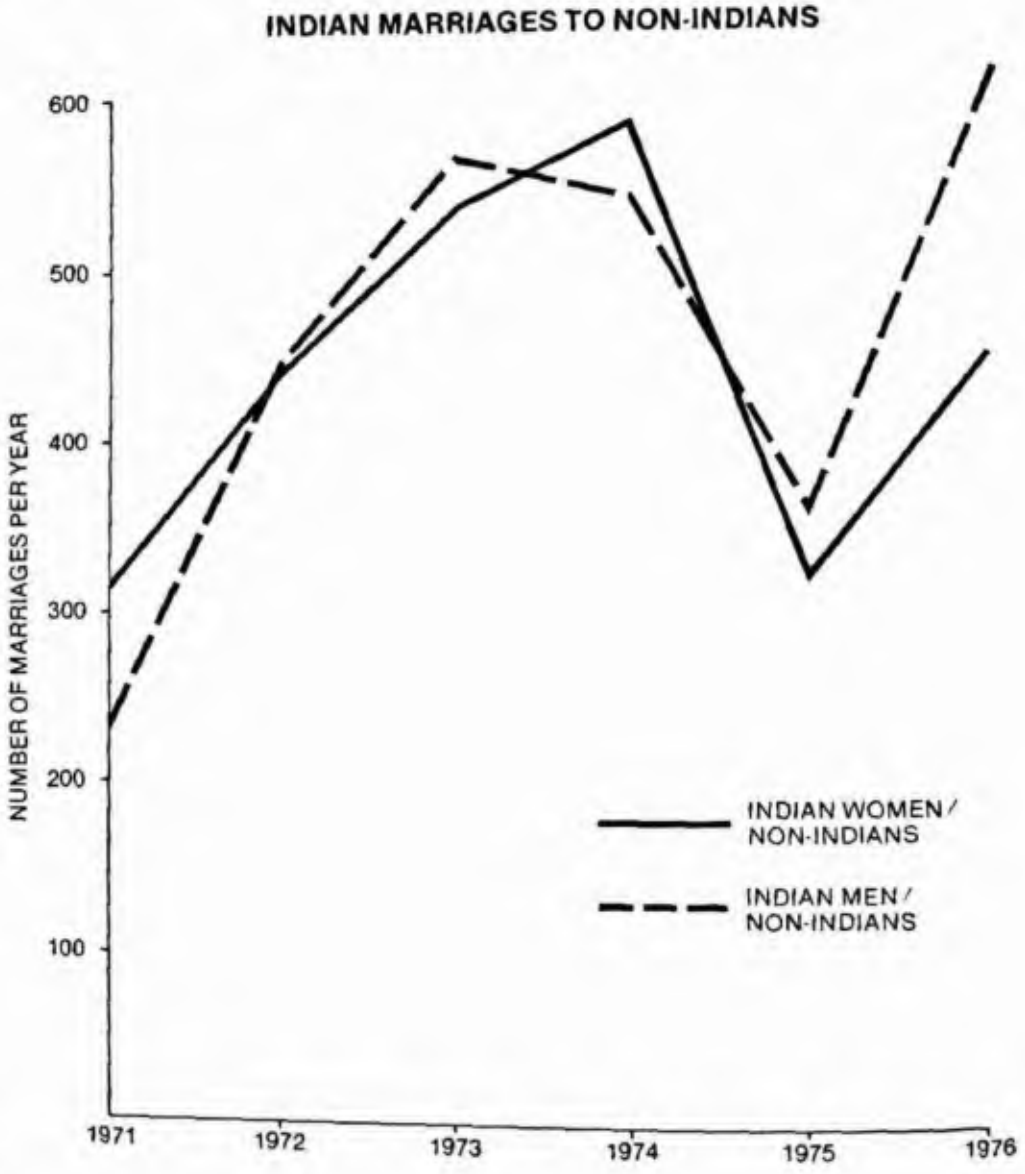
Interestingly, the number of marriages of Indian men to non-Indian women seems to be increasing and for the years 1973 to 1976 inclusive has exceeded the number of women marrying non-Indians by 9.7%. (See graph and Table IV.)

The conclusion to be drawn from all this is once more that there is one law for men and another for women and that men do not hesitate to take advantage of the double standard. Should Indian women however believe, as some do, that it is possible to conceal the fact of their marriage to a non-Indian through marriage in the city, they are not likely to be successful since the Department of Indian Affairs apparently has an arrangement with Statistics Canada and most if not all marriages of Indians are eventually reported.[22]

TABLE IV

Indian women who married non-Indians	Indian men who married non-Indians
1965 – 450	1965 – 258
1966 – 523	1966 – 273
1967 – 524	1967 – 300
1968 – 520	1968 – 341
1969 – 580	1969 – 388
1970 – 597	1970 – 414
1971 – 306	1971 – 231
1972 – 440	1972 – 442
1973 – 538	1973 – 564
1974 – 585	1974 – 544
1975 – 323	1975 – 362
1976 – 451	1976 – 611

Statistics obtained from D.I.A.N.D.



Chapter 12

The Consequences of Loss of Status

Compensation

One of the arguments that Indian women who have lost their status most frequently encounter is that they have been financially recompensed for whatever they have lost.

No sum of money can ever compensate for their loss and that of their children of their culture and identity. But the fact is that in all areas save Alberta the amount they are paid on enfranchisement as their share of band funds is often negligible or nothing at all.

According to section 15 of the Indian Act, an Indian woman who is enfranchised or "otherwise ceases to be a member of a band" is entitled to receive one per capita share of band capital and revenue. If the band to which the woman belonged had also taken treaty, she is paid a sum equivalent to twenty years' treaty money — a total of between $80 (20 x $4) and $100 (20 x $5).[1]

The total amount paid out to both women and men (4,470 women through marriage — i.e. involuntary enfranchisement — and 225 women and men through voluntary enfranchisement, according to calculations which are based on D.I.A.N.D. figures), between 1966 and 1977 was $1,229,117.37. This is an average of $261.80 per person. However, averages are rather meaningless here.[2]

An Indian woman who marries an Indian from another band and thus, according to the Indian Act, becomes a member of her husband's band, is paid the difference between the per capita share of her former band and that of her new band if the share of her former band is greater.

Many of these Indian women who change bands and those who lose their status through marriage believe that even the scanty compensation allotted to them on marrying either a non-Indian or an Indian from another band is rendered still smaller than it should be by accounting procedures which do not include all band assets and investments when their share is being computed. In addition, in Alberta they believe that they are entitled to compensation for loss of royalties from the present exploitation of natural resources — gas or oil, for

example — as well as for the loss of the right to share in profits from future royalties gained from gas, oil, coal, timber, etc.[3]

These women have no way of ascertaining whether or not their suspicions that they are not being fairly treated in this are justified, since they are not permitted access to the band accounts nor are they allowed to receive any information whatsoever from the section of the Department of Indian Affairs in Ottawa which has these figures. Neither does there appear to be any appeal or investigative procedure to which the women may have recourse on this matter.

The share of band funds to which they are entitled is supposedly calculated by dividing the total band assets by the number of persons in the band. But capital investment by the band in business ventures such as a hotel, lodge or factory, or in some other assets such as farm machinery, buildings or animals on a ranch, for example, is not included. In practice then, only what is actually shown in the band's bank balance on the day the woman is enfranchised is used as the basis for the calculation of her share.[4]

The consequence of this is that even a woman from a very rich band where oil royalties may average millions of dollars per year receives a relatively small sum.[5]

Many women get nothing or only the annuity payment, which is a maximum of $100. Such is the case with many of the bands in the Mackenzie district, such as the Arctic Red River Band, which pays only an annuity of $100 and no band share. The Attawapiskat in May 1975 managed to pay out 7¢ and the annuity of $80. The Fitz Smith Band paid 1¢. Fort Franklin and the Dog Rib Rae paid nothing. In Prince Edward Island the Abegweit in December 1975 paid $4.06. In Nova Scotia in February 1967 the Eskasoni Band paid $22.40. In Quebec the Montagnais of Escoumains paid $4.45 in 1965 and in Ontario the Albany Band paid 32¢ as the per capita share.

In the middle range the Shammon Band in B.C. paid $985.95 in 1974 and $251.08 in 1976. The Spallumcheen in B.C. paid $102.12 in May 1975 and $425.22 in February 1976.[6]

These are indeed not munificent sums. One might expect a difference in Alberta, where some bands get millions of dollars in oil and gas revenues. But relative to the amount of royalties the bands may expect to have, the compensation women are paid is not excessive, though it seems large in comparison with the very small sums that women in other provinces receive. The top amount paid out in Alberta was $12,297.48 on March 1, 1976. In April, June and August of 1976 the Sampson Band paid out an average of about $12,000. The Louis Bull Band in June 1975 paid $9,190.98, but ten years before paid only $1,113.50 and in 1955 paid $419.89. The Sampson Band in 1956 paid $1,000.22. Both these bands are on the Hobbema Reserve.

Clearly the women and their children from these bands who were enfranchised ten or twenty years ago have lost a great deal in terms

of potential income for which they have not been compensated. The same may be said to be true of those who are being "paid off" today in 1978.

If we assume that, as in any other transaction in which a person is selling his or her share of an estate or business, all assets should be included, then the Indian women are being very inadequately compensated. If, in addition, unexploited rich natural resources are considered a part of these assets, compensation would also be computed based on the potential revenue which would accrue from the exploitation of these resources.

This kind of calculation is made quite frequently by energy economists such as Pedro Van Meurs, who specializes in oil and gas supply and demand evaluation and analyses.

Van Meurs has explained for the purpose of this study how a formula for compensating for loss of oil royalties might be calculated, using as a reference R. G. McCrossan's "The Future Petroleum Provinces of Canada".[7] In reserves, for example, in that region of Alberta called the Craton Margin, which stretches from Peace River to the Saskatchewan border and which in the central area covers the whole province, potential oil and gas is estimated at 121,000 barrels and 580 million cubic feet per square mile. Two-thirds of these are proven. A band should, at a conservative estimate, obtain about one-third of the gross revenue from the oil and gas in royalties, as does the Province of Alberta. A rough calculation of the oil and gas royalties based on an area roughly the size of the Hobbema Reserve near Edmonton (160 square miles) gives an average potential 19.3 million barrels of oil and 92 billion cubic feet of gas. Royalties (a possible one-third of gross value) are estimated therefore at $10 per barrel of oil and $1 per 1,000 cubic feet of gas. To estimate the share of each person, the total sum expected in royalties is then divided by the number of persons on the reserve. In this case, Van Meurs assumed a band size of 3,000. Each person might therefore expect $31,000. Converting this into a once-and-for-all cash payment at 11% discount rate in current dollars and including 6% inflation gives $15,000 per person.

Given a higher rate of inflation than 6%, this sum could be substantially higher. (See Appendix for method of calculation.)

This is only one area in which compensation is clearly inadequate. Alberta is also rich in coal and the same kind of calculations could be made based on potential royalties from this resource. Other provinces similarly could have their mineral and forest resource potential computed so that the women who are in effect forced to "sell out" are treated as fairly as possible in the circumstances.

Social and Cultural Losses

Apart from financial losses, one of the more important benefits which are lost to enfranchised women and their children is in the field of

education. In recent years the bilingual and bicultural programmes available on reserves open the door to a heritage of Indian culture to which the child of an enfranchised Indian mother does not have access.[8] About 65% of Canada's native people over thirty speak a native language so at least half of the mothers of these children speak a native language and will not have this opportunity to have their children educated in their language or culture.[9]

Indian school children are also entitled to receive all school supplies, a noon lunch supplement, sports equipment, art supplies, shop supplies, money for tours and interschool activities, as well as the payment of expenses where attendance at a special school is necessary.

Free daycare facilities and nursery schools are provided on some reserves for pre-school children.[10]

In post-secondary education there is an even greater disparity in opportunity. A status Indian, his spouse and children are entitled to post-secondary educational allowances covering tuition, books, living expenses, travel and clothing.[11] The Indian woman who has lost her status does not have this opportunity to upgrade her education and so obtain reparation for past government deficiencies in this respect nor, of course, do her children.

In the provision of housing, Indians living off reserves can qualify for a repayable first mortgage from C.H.M.C. and a forgivable second mortgage from the Department of Indian Affairs.[12]

A new Indian reserve housing policy was announced on November 18, 1976. This policy included a "front-end" subsidy of up to $12,000 per unit based on income, and other special facilities enabling Indian families, particularly in low income groups, to purchase their own homes.[13]

This programme and some of the education and other programmes have evolved fairly recently as a result of government-Indian working committees set up after the joint NIB/Cabinet committee was established in 1975.[14]

An interesting aside to this, considering that special problems exist with regard to housing for female-headed single parent families,[15] is that these decisions on housing are not seen as requiring input from women's organizations. A recent Departmental paper makes it clear that housing has been viewed as a male concern. The paper is entitled "The Indian Housing Programme and the Role of the Indian Woman" and is designed to involve Indian women in the housing programme. It states: "As a member of an on-reserve Indian community, you can play a very constructive role in housing. You may wonder how! Normally we associate building houses as a role for men."[16]

Enfranchised Indian women who are widowed or divorced may not partake of these benefits. The white widow or divorced white spouse of a status Indian male can.[17]

Other benefits from which they are excluded include: loans and grants from the Indian Economic Development Fund to start a business; exemption from taxation while living on the reserve; exemption from provincial sales tax on goods delivered to a reserve in Quebec, Ontario, Saskatchewan, Nova Scotia, New Brunswick and Manitoba (Alberta has no sales tax); free medicines to which the members of some bands — for example the Treaty Six Bands of Saskatchewan and Alberta — are entitled; hunting, fishing, animal grazing and trapping rights on and (under certain conditions) off a reserve; cash distributions derived from the sale of band assets of monies surplus to band needs. Canadian Indians may also be employed in the U.S. without a visa and have certain border crossing privileges under the United States Immigration and Naturalization Act.[18]

Psychological Effects

There are losses, however, which can never be computed and which are a consequence of the social and cultural alienation which occurs as a result of enfranchisement. These losses have not been documented.

But life histories such as the biography of Verna Patronella Johnston, "I am Nokomis, too",[19] and the autobiography of Maria Campbell, "Half-breed",[20] though not directly related to women's loss of status, do provide a good deal of information on the psychological magnitude of the problem. The enfranchised Indian woman and her children find themselves with identity problems, culturally different and often

socially rejected by white society, yet they may not participate with family and relatives in the life of their former communities.

The threat and harassment associated with eviction from the reserve have caused at least one heart attack and sudden death and severe psychological and health problems in women and children.[21] The long term effects on the traditionally close Indian family on the reserve, the disruption and misery caused where sister may turn against sister and an invidious distinction is made between brother and sister, are profound and impossible to measure.[22]

The whole process of forcible enfranchisement is one of retribution, not restitution. The extent of the penalties and the lack of compensation for the losses suffered as a result of 12 (1) (b) make this quite evident. It is, in Justice Bora Laskin's words, "statutory banishment" which is compounded by the enfranchisement order, "an additional legal instrument of separation from her native society and from her kin, a separation to which no Indian man who marries a non-Indian is exposed."[23]

Inheritance of Property and Evictions

The question of inheritance of property and the right to live on the reserve is one that has provided more opportunities for victimization than most.[24]

The Department of Indian Affairs, following mainly on the legislation of 1869, has insisted for more than one hundred years that Indian women who married non-Indians should not be allowed to remain on or return to the reserve even when widowed or separated since they are now "white".

It is clearly advantageous to have as few band members to share in band monies and resources as possible, and a temptation to the needy as well as the unscrupulous. The eviction of widowed or separated women who return to the reserve often with several small children to live in a family home has thus become common practice on a few reserves. Since these women are usually very poor, obtaining legal advice is an enormous problem.[25] They are quite clearly in an extremely disadvantaged position.

Indeed, in attempting to use property bequeathed to her in a will, as for example in the case of Yvonne Bedard or in the recent case of Cecilia Pronovost, an Indian woman may find that she has taken on not only the Band Council but the whole Department of Indian Affairs and the Department of Justice as well, the latter Department having the responsibility of advising Indian Affairs on such matters.

The case of Cecilia Pronovost is not straightforward. Perhaps for that very reason however it is particularly illuminating to study the immense problem which is faced by an Indian woman who has lost her status and has to deal with a hostile Band Council and a vast bureaucracy in Ottawa. Indeed the complexity of the case is further compounded by government departments.

Cecilia Pronovost, a separated mother of six, was born a status Indian at Caughnawaga Reserve near Montreal. She was adopted according to Indian custom and brought up by her granduncle John Charlie and his wife in their home with the daughter of John Charlie and the biological son of Mr. and Mrs. Charlie. John Charlie made a will bequeathing his property and money to his two adopted daughters and cutting off his natural son with $1 "for reasons well known to him." The will also stated that his wife should "have the right of occupancy as long as she lives."[26]

John Charlie died on July 3, 1974, and the will was approved by the Department of Indian Affairs on April 5, 1975.[27] The Department then transferred the property to the wife, Margaret Charlie, on May 7, 1975, a step which does not seem to be in accordance with the terms of the will.[28]

Margaret Charlie was at that time in a hospital which she did not leave until she died one and a half years later on December 28, 1976, without leaving a will.[29]

Cecilia Pronovost, who had been deserted by her husband, who is not an Indian, went with her six children to live in the house which was then claimed by the natural son, John. His stand was supported by the Band Council, who ordered her to vacate the house and leave the reserve.[30] The water supply for the house was cut off. The Department of Indian Affairs on advice from the Justice Department advised the band that following on a 1948 ruling of a Justice Department official, Deputy Minister Varcoe, Cecilia Pronovost could be declared not to be a beneficiary of John Charlie's estate, the house going to the wife and then the son. A request from Mrs. Pronovost's lawyer to the Department of Justice for information on this vital decision produced this response on August 15, 1977: "It is general departmental policy that legal opinions provided from Department of Justice are for department use only."[31]

Immediately after this, although the case was going through the courts, the Department of Indian Affairs transferred the property to the son, John Charlie, on September 1, 1977.[32]

The Band Council wrote to Mrs. Pronovost stating that this was a family matter and advised Mrs. Pronovost not to make the affair public.[33] The Department of Indian Affairs and the Department of Justice solemnly affirm that the fact that Mrs. Pronovost is an Indian woman who has lost her status through marriage has nothing to do with the case.[34] If one asks the question however, "What would be her position with respect to her inheritance if she had not married or had married a member of the band?", the case takes on a very different complexion. Would the Band Council and the government departments have been able to give the same unqualified support and advice to one registered Indian who is male over another who is female? Would they have considered or applied Varcoe's ruling?

Even if the validated will were declared invalid,[35] would she not

be entitled to inherit from her mother as an adopted child according to section 48 (4), which states that the property of an Indian dying intestate "shall be distributed subject to the rights of the widow, if any, *per stirpes* among such issue", i.e. among his or her children.

Section 48 (16) also states: "In this section 'child' includes a legally adopted child and a child adopted in accordance with Indian custom." These few facts alone suggest that this ignoring of the rights of Cecilia Pronovost has a lot to do with her loss of Indian status and also demonstrates the complex web of oppression in which such women are caught.

CARSWELL

INDIGENOUS PEOPLES AND THE LAW IN CANADA: CASES AND COMMENTARY

2024

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STATUTES OF CANADA ANNOTATED

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Preface

We are pleased to share the 2024 edition of *Indigenous Peoples and the Law in Canada: Cases and Commentary*.

Acknowledgments

Indigenous Peoples and the Law in Canada is a team effort.

We extend our thanks to our colleagues Nico McKay, Nisha Sikka and Tumia Knott, spalel at First Peoples Law for their contributions to this year's First Peoples Law Commentary section, to Carlie Kane for her valuable assistance in researching and preparing case summaries, and to Geneva Lloyd for leading the team through the planning and publication process.

We are fortunate to continue working with photographer Melody Charlie for this year's cover image and are thankful for the use of her beautiful photograph, "Huyaałah — I dance"

As always, we appreciate the work of Shin Imai who spent over 20 years building the foundation of this book

We remain grateful to Indigenous Peoples across Canada whose lands and lived experiences underlie the cases described in this book

Changes and Updates

First Peoples Law is committed to public legal education and advocacy on issues related to Indigenous Peoples and the law As part of this commitment, we strive to provide content that is relevant and accessible to a wide range of audiences To this end, we have implemented changes to the book over the years in an effort to simplify its organization and ensure its content adapts to an evolving field of law

This year, we removed the "Selected Supreme Court of Canada Case Summaries" section You will now find the summaries from this section under their respective legal topics throughout the book.

We welcome your feedback and ideas on how we can improve the book for our readers. We hope you find it useful.

An Act respecting Indians

R.S.C. 1985, c. I-5, as am. R.S.C. 1985, c. 27 (1st Supp.), s. 203; R.S.C. 1985, c. 32 (1st Supp.); R.S.C. 1985, c. 27 (2nd Supp.), ss. 10 (Sched., item 13), 11; R.S.C. 1985, c. 17 (4th Supp.); R.S.C. 1985, c. 43 (4th Supp.); R.S.C. 1985, c. 48 (4th Supp.); S.C. 1990, c. 16, ss. 14, 24(1); 1990, c. 17, ss. 25, 45(1); 1992, c. 1, s. 144 (Fr.); 1992, c. 51, ss. 54, 67(1); 1993, c. 28, s. 78 (Sched. III, items 73, 74) [item 73 repealed 1999, c. 3, s. 12 (Sched., item 16).]; 1996, c. 23, s. 187; 1998, c. 30, ss. 10, 14; 1999, c. 3, s. 69; 2000, c. 12, ss. 148–152; 2002, c. 7, ss. 183, 184; 2002, c. 8, s. 182(1)(u); 2005, c. 9, ss. 150, 151; 2010, c. 18, ss. 2(1) (Fr.), (2)–(4), 3; 2012, c. 19, ss. 677, 678; 2012, c. 31, ss. 206–208; 2014, c. 5, s. 43; 2014, c. 38, ss. 3–18; 2015, c. 3, s. 118; 2017, c. 25; 2019, c. 29, ss. 357, 358, 372(1)(a), 375(1)(a)

SHORT TITLE

1 Short title
This Act may be cited as the *Indian Act*.

INTERPRETATION

2 Definitions
(1) In this Act,

"band" means a body of Indians

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

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

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

§ 2:1 Commentary: "band"

The Band is established under the *Indian Act*. Because the Act is silent on the legal capacity of the Band, there had been some question of the Band's ability to commence legal proceedings, and some question about the appropriate style of cause. The trend now is to recognize that Bands and Band Councils have legal capacity in a wide range of situations. Reed J. provides a useful overview of the current state of the law in *Montana Band v. Canada* (1998). Although some cases do not clearly distinguish between the legal capacity of a "Band" and a "Band Council" the distinction could be important in some contexts For other cases on legal capacity see under "Council of the Band." For cases on the exercise of powers by the Band Council see cases under s. 2(3).

Case Law

(also see "Legal Capacity of a Band Council" under *Indian Act*, s. 2(1) "Council of the Band")

§ 2:2 Case Law: "band"—Definition of Band

Isaac v. Davey (1977), 77 D.L.R (3d) 481, 16 N R. 29, 1977 CarswellOnt 476F, 9 C.N.L.C. 134, [1977] 2 S.C.R. 897, 1977 CarswellOnt 476 (S.C.C.)

Governor Simcoe gave a patent to the Grand River lands to the Six Nations on January 14, 1793. Until 1924, Six Nations was governed by a traditional council of hereditary Chiefs. In 1924, the federal government declared by Order in Council,

Pashak Estate (Re)

Alberta Judgments

Alberta Supreme Court

Simmons J.

February 23, 1923.

[1923] A.J. No. 103 | ***[1923] 1 W.W.R. 873*** | ***[1923] 1 D.L.R. 1130*** | ***1923 CLB 725***

Between ***Re*** ***Estate*** of ***Frank*** ***Pashak***

(11 paras.)

Counsel

W.T.D. Lathwell, for the trustee.

SIMMONS J.

1 The deceased made his will naming therein trustees and executors and devising his ***estate*** to them in trust for the carrying out of the provisions contained in the will. Then followed the testamentary disposition in the following words.

> "I direct my executors and trustees to first pay my just debts, personal and testamentary expenses. I give, devise and bequeath unto my beloved wife Catherine ***Pashak*** as her own absolute property all my real and personal property and effects as long as she remains my widow."

2 In dealing with limitations in a will which were a restraint upon marriage the Courts of Equity conformed to the decisions in the Ecclesiastical Courts which had concurrent jurisdiction over personal property. The canon law held that a condition imposed by a testator upon his widow restraining her from marrying again unaccompanied by a gift over upon default would be deemed merely *in terrorem*, and would be treated as an absolute devise.

3 *Duddy v. Gresham* (1878), L.R. 2 Ir. 442, at p. 457.

4 As the Ecclesiastical Courts had no concern with real property, the principle was not applied to realty.

5 The principle was, however, extended to a mixed fund of personalty and realty. *Genery v. Fitzgerald* (1822), Jac. 468, 37 E.R. 927, 23 R.R. 121.

6 Where real and personal ***estate*** are dealt with in common in the same way, the Courts generally incline to hold an intention that both should follow the rule applied to personalty. *Bellairs v. Bellairs* (1874), L.R. 18 Eq. 510.

7 In this case Jessel, M.R., observed, at p. 513:

> "It is no part of my duty to make new laws simply because I think the old law unreasonable, that is the province of the Legislature and not of a Judge. ... In the present case the law is settled thus far, that a general condition prohibiting marriage, by which a legacy is cut down, is void. I consider that to be the law

> of the Courts of Equity. It is equally the law of these Courts that a charge on land does not follow the same rule, it follows the rule of the common law, as it is called, as distinguished from the rule of equity. In this particular case the gift is not of property strictly within either definition. It is a gift of the proceeds of the sale of realty directed to be sold."

8 The use of the term "as her own absolute property" indicates an intention to deal with the whole ***estate*** as one undivided property and if the term imposing the condition were not superimposed the widow would be entitled to the whole interest in the property with the right to convert, alienate or otherwise deal with it.

9 For this reason I think the case comes within the rule in *Bellairs v. Bellairs, supra*, and law as to personalty would apply.

10 There is no doubt that this may defeat the plain intention of the testator who evidently may have intended only to provide for his widow in a suitable way while she had no other means of support than that provided in the will.

11 In the result I hold that the widow takes the whole ***estate*** absolutely.

Re Thorne

Ontario Judgments

Ontario Supreme Court - High Court Division

Rose J.

March 7, 1922.

[1922] O.J. No. 451 | 22 O.W.N. 28

(12 paras.)

Case Summary

Will — Legacy to Infant — Condition — Election — Invalidity — Condition Subsequent — Failure of, without Affecting Legacy — Legacy Payable at Majority or upon Marriage — Executors — Infant's Receipt for Legacy — Payment into Court.

1 Motion on behalf of Isabella M. Wilson, by her next friend Sarah E. Ewing, for an order determining a question arising in the administration of the estate of Thomas Stephen Thorne, deceased, as to the meaning and effect of his will.

2 The motion was heard in the Weekly Court, Toronto.

3 J. M. Ferguson, K.C., for the applicant.

4 H. L. Steele, for C. E. Thorne and Walter Thorne, executors of the will.

5 F. W. Harcourt, K.C., Official Guardian, for Florence Thorne, an infant, and for others (except the executors) in the same interest.

6 ROSE J., in a written judgment, said that the question was as to the effect of certain clauses in the will purporting to direct that, in the event of the applicant, a legatee under the will and an infant, leaving the home of her uncle W. A. Thorne, and going to live with her mother, the legacy should revert to the estate of the testator. Some of the affidavits filed raised issues as to the circumstances in which she left her uncle's home. These issues were not relevant upon this motion, and the costs were not to be increased by reason of the affidavits having been filed.

7 By clause 7 of the will, $800 was bequeathed to the applicant, the granddaughter of the testator, to be paid to her at the time of her marriage or upon her attaining her majority, whichever event should first happen - "This however is in case that she does not go to live with her mother Edith Porter, in which case the sum ... shall revert and fall in as part of my estate." By clause 9, so long as the legatee lived with her named uncle the income of the $800 was to be payable to him until she came of age or married; and, by clause 10, in the event of the legatee, after reaching the age of 15, wishing to make her permanent home with her mother "and entirely abandoning to live with her uncle;" the $800 should revert to the estate of the testator.

8 The condition that the legatee should make her home with her uncle was invalid: it called upon an infant to make an election, and it was intended to compel her to refuse to live with her mother, which she had no legal right to do: Clarke v. Darraugh *(1883), 5 O.R. 140*; Wilkinson v. Wilkinson (1871), L.R. 12 Eq. 604; Partridge v. Partridge, [1894] 1 Ch. 351. The only question, therefore, was, whether the condition was precedent, in which case the

disposition dependent on it would fail with it: In re Wallace, [1920] 2 Ch. 274, 286; or a condition subsequent, which would fail without affecting the legacy.

9 The learned Judge was of opinion that it was a condition subsequent. The gift was an immediate gift - what was postponed being the time of payment. Pending the payment of the principal, the interest went to the uncle if the legatee continued to live with him; but, if she elected not to live with him, the payment of interest stopped and the corpus reverted to the estate. The payment of the interest to the uncle was on the footing that the corpus belonged to the legatee, and it was impossible to regard the legacy as other than a vested one, or to read the condition otherwise than as a condition that the vested interest should be divested upon the happening of the stated contingency.

10 There should be a declaration that, notwithstanding the condition stated in the will, the legacy was payable on the applicant attaining the age of 21 years or marrying, whichever should first happen, whether or not, prior to the time of payment, she had lived with William Arthur Thorne or with her mother.

11 No case was cited which seemed to warrant a decision that from the words of this will there should be implied an authority to the legatee, though still a minor, to give to the executors a good receipt for the amount of the legacy; and such a declaration ought not to be made: see Halsbury's Laws of England, vol. 28, p. 541. If the executors desired it, the order might, however, contain a clause authorising them to pay the money into Court.

12 The costs of all parties should be paid out of the estate.

WATERS' LAW OF TRUSTS IN CANADA

Fifth Edition

By
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III. COMPLETELY AND INCOMPLETELY CONSTITUTED TRUSTS

Executed and executory trusts are completely constituted when the intention to create a trust is ascertained, the trust property is clearly defined and in the trustees' hands, and the trust "objects"[41] are clear. A trust is incompletely constituted on the other hand when every trust element is clear and precise but the settlor has not transferred the property to the trustees. If neither the trustees nor the trust beneficiaries are able to compel the settlor or his or her representatives to transfer the property, the trust must fail since there is nothing for its terms to operate upon. A trust which is completely constituted not only has clarity and precision of language, property and objects, but the property is vested in the trustees, and the trust is therefore operative.[42]

IV. LAWFUL AND UNLAWFUL TRUSTS

Any transaction or act which contravenes public policy, the common law or statute of the realm, is unlawful. The same principle applies to trusts. A trust is unlawful if its object is some such end as the encouragement of immoral behaviour which is contrary to public policy, if its terms contravene a common law rule, such as the rule against perpetuities,[43] or if it violates a statute, such as a *Fraudulent Conveyances Act* or the *Bankruptcy and Insolvency Act*.[44] If a trust is unlawful, it is void either *in toto* or as to that part which is contrary to law: for example, its entire object is the funding of a terrorist organization, or out of a number of successive interests there may be one limitation contravening the perpetuity rule.

V. PRIVATE AND PUBLIC TRUSTS

When the objects of a trust are specific and ascertainable persons, for example, to X for life, "remainder to his first son at 21", the trust is said to be a private trust. A trust is still private when it is in favour of a class, such as "the children of A at 21 equally and absolutely". The connection or nexus here is with a specific person, A. But settlors often wish to benefit persons at large, or persons living within a defined area, being motivated by a desire to achieve some benefit to that section of the public. Such a trust is known as a public or charitable trust. The essence of a public trust is that the trust objects, or those who will benefit from the trust, are the public at large or a significantly sizeable

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[41] I.e., the beneficiaries of the trust, or the purpose or purposes to be carried out by the trustees. Clarity of objects will exist if, though clarity is lacking in detail, the trust fund is dedicated to exclusively charitable purposes.

[42] A trust is *created* or *set-up*, a verb often used in speech, when there is an intention to create a trust, certainty of property, certainty of objects and the property is vested in the trustees. An incompletely constituted trust, when the settlor cannot be compelled to transfer the property to the intended trustees, is therefore created only at the moment when the gift is completed (assuming an intention to make an immediate gift), that is, when the property is effectively transferred to the trustees. See further chapter 5, Part I, chapter 6, Part I, and *Scott and Ascher*, §§5.2.1 and 5.2.2.

[43] Chapter 8, Part IV B.

[44] Chapter 8, Part III.

section of the public. Questions often arise as to whether the beneficiaries of a particular would-be charitable trust have a common nexus or relationship with an individual, or whether the trust is really for the public benefit as a public or charitable trust.[45]

A charitable trust may be for a class of the public, such as the poor of Toronto or immigrant visible minority women in Vancouver; on the other hand it may have as its object the carrying out of a purpose The settlor may transfer funds to trustees "for the building of a recreation hall for the Boy Scouts of Windsor," or "for the advancement of education in Canadian schools." Such is a charitable purpose trust. A settlor may also wish to promote a purpose which is not charitable, for example, the erection by a municipality of a suitable memorial to his parents, this would be a non-charitable purpose trust.[46]

VI. STATUTORY TRUSTS

Trusts created by statute, both federal and provincial, are, of course, familiar in Canada One of the most familiar of these trusts is that which gives the Crown, either federally or provincially, the consequent status of a secured creditor in the bankruptcy of a person who is under the statutory duty to remit to the Crown moneys collected from third parties Such moneys may represent, for instance, deductions by the employer from an employee's salary or wages as the employee's statutorily required contribution to the Canada Pension Plan, payments under the federal employment insurance scheme, or for income taxes.[47] Moneys are due to the Crown by right of a province, for example, when the vendor of goods or services, as he or she is required to do, collects for the Crown a tax on the sale Statute has also enabled the Crown, in some situations, to claim by way of a "deemed trust" when the holder of the fund is bankrupt, and is found to have dissipated the funds in question [48]

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[45] But not everything that is for the benefit of the public is necessarily charitable, and if the trust object is not charitable then it will not be a public trust The word "charitable" is, in fact, dominant, the usual reference is to "a charitable (or public) trust" An example a bequest for the education of the Canadian public in the principles and policies of the Liberal Party is not within the legal definition of charity Therefore, such a bequest does not create a valid 'charitable (or public) trust"

[46] Not being charitable, the trust is not public either There are two elements in a charitable trust. (a) the purpose is included within the law's description of charity, and (b) it is for the benefit of the public

[47] See, e g , *KRA Restaurants Ltd v. Toronto Dominion Bank* (1977), 25 N S R (2d) 605, 74 D L R (3d) 272 (N S T D), *Dauphin Plains Credit Union Ltd v Xyloid Industries Ltd* , [1980] 1 S C.R 1182, 108 D L R (3d) 257 (S C C), *Royal Bank v. Sparrow Electric Corp* (1997), 143 D L R (4th) 385 (S C.C), and *Ministre du Revenu national c Caisse Populaire du bon Conseil*, 2009 CarswellNat 1569, [2009] 2 S C R 94, (sub nom *Caisse populaire Desjardins de l Est de Drummond v R*) 2009 D T.C 5106, [2009] 4 C T.C 330, 309 D L R (4th) 323 (S C C) In terms of the effect of these trusts, H MacDonald J in *Canada (Attorney General) v Thorne Riddell Inc.*, [1982] 6 W W R 572, 140 D.L R (3d) 740 (Alta Q B) at 575[W W R], expressed the view that it did not matter whether they are categorized as "statutory trusts", "express trusts" or "constructive trusts " The effect is the same

[48] The scope of prior Crown claims on the assets of a bankrupt by way of a "deemed trust" was reduced by a 1992 amendment to the *Bankruptcy and Insolvency Act* (am S C 1992, c. 27, s 33) Section 67(2) now provides that,

> [S]ubject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(*a*) unless it would be so regarded in the absence of that statutory provision

J 's guidelines constitute an accepted and useful starting point in identifying the existence of a fiduciary relationship.

More recently, however, McLachlin C.C., in a unanimous decision in *Elder Advocates of Alberta Society v Alberta*,[14] said that,

> for an *ad hoc* fiduciary duty to arise, the claimant must show, in addition to the vulnerability arising from the relationship as described by Wilson J in *Frame*: (1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary or beneficiaries, (2) a defined person or class of persons vulnerable to a fiduciary's control (the beneficiary or beneficiaries), and (3) a legal or substantial practical interest of the beneficiary or beneficiaries that stands to be adversely affected by the alleged fiduciary's exercise of discretion or control [15]

D. Trusts and Other Fiduciary Relationships Compared

As indicated above, the trust shares common features with other fiduciary relationships in terms of the duty of a fiduciary to act in good faith in the interests of the person to whom the fiduciary obligation is due. There are, however, important differences. The requirements for establishing a fiduciary relationship, as suggested above, are quite different from, for instance, the three certainties (discussed in Chapter 5) required for existence of an express trust. Further, a trust, whether express, resulting or constructive, involves property A fiduciary relationship does not necessarily involve property While a constructive trust may arise in the context of a fiduciary relationship, and may serve as a remedy for a breach of a fiduciary obligation, it does not necessarily arise. Further, the potential remedy for breach of a fiduciary obligation is not limited to a constructive trust.[16]

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161 (S C C); *Cadbury Schweppes Inc v FBI Foods Ltd* , [1999] 1 S C R 142 (S C C.) at 164, and see *Perez v Galambos*, (sub nom *Galambos v Perez*) [2009] 3 S.C R 247 (S C C.) See the discussion in Leonard I Rotman, "The Vulnerability Position of Fiduciary Doctrine in the Supreme Court of Canada" (1996) 24 Man L.J 60

The numerous pronouncements in the Supreme Court of Canada on fiduciary obligation in the 1990s and 1990s produced a substantial volume of commentary See, e g , John D. McCamus, "The Evolving Role of Fiduciary Obligation" (1998-99) Meredith Memorial Lectures 171, John D. McCamus, "Prometheus Unbound Fiduciary Obligation in the Supreme Court of Canada" (1997) 28 Can Bus L J 106, Timothy G Youdan, "Liability for Breach of Fiduciary Obligation" in Special Lectures of the Law Society of Upper Canada, 1996 *Estates Planning, Administration and Litigation* (Toronto Carswell, 1996) I, Special Lectures of the Law Society of Upper Canada, 1990, *Fiduciary Duties* (Toronto: DeBoo, 1990); Donovan W M Waters "The Development of Fiduciary Obligations", in R Johnson, J P McEvoy, T Kuttner, H Wade MacLauchlan, eds , *Gerard V La Forest at the Supreme Court of Canada 1985-1997* (University of Manitoba, 2000), 'Fiduciary Law in Canada Since *Guerin*" in James I Reynolds, *A Breach of Duty Fiduciary Obligations and Aboriginal Peoples* (Saskatoon, Sask Purich, 2005) at 127-44 Anthony Duggan, "Fiduciary Obligations in the Supreme Court of Canada A Retrospective" (2011) 50 Can Bus L J 453, and Peter D Maddaugh, "The Centrality of Undertaking in Identifying Fiduciary Relationships *Glamabos v Perez*" (2011) 26 Banking & Finance L R 315

14 *Elder Advocates of Alberta Society v Alberta* [2011] 2 SCR 261, 2011 SCC 24 (S C C)

15 *Ibid* at para 36

16 The subject of fiduciary law other than in the context of trusts, falls outside the scope of this work However, it is examined further in connection with "Constructive Trusts", see *supra*, note 1.

II. TRUST AND THE ADMINISTRATION OF DECEASEDS' ESTATES

A. Roles of Trustees and Personal Representatives Compared

1. The Role of the Personal Representative

How far, if at all, is the person who winds up the estate of a deceased person a trustee? The task of the personal representative of the deceased is to gather in the assets of the deceased, to discharge funeral and testamentary expenses and debts, and to distribute the remaining assets among the persons entitled. The personal representative may be an executor — that is, one appointed by the deceased in his or her will — or the representative may be appointed an administrator by the court.[17] In the latter circumstance, the representative may be appointed with the will annexed, there being no executor appointed by the will or an executor able and willing to act, or he or she may be appointed to act as on an intestacy.[18] If there is a will, that document lays down how the assets are to be distributed, if there is not a will, or the will does not dispose of all the deceased's assets, statute in each jurisdiction determines who is to take the unappropriated assets.

2. Similarity to the Role of the Trustee

It is evident at once that the personal representative has a role very like the trustee. The representative steps into the shoes of the deceased, title in both personal and real property vests in him or her,[19] and the representative's duties

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[17] Personal representative is a term embracing both executor and administrator.

[18] If the will is an invalid document the appointment of the executor is invalid, and an administrator would be appointed. An administrator in this position is similarly situated to the administrator appointed on an intestacy, both distribute the estate remaining after the payment of debts, etc., to the statutory next-of kin.

[19] However, during the period of administration no Equitable interests exist in favour of testamentary beneficiaries of residuary estate or of intestate heirs. They have a right of action to compel the representatives to perform their task, but during this time all legal and Equitable interests in the property under administration are vested in the representatives. *Commissioner of Stamp Duties (Queensland) v. Livingston* (1964), [1965] A.C. 694, [1964] 3 All E.R. 692 (Australia P.C.), followed in several cases in Canada — see, e.g., *Ogilvie-Five Roses Sales Ltd. v. Hawkins* (1979), 9 Alta. L.R. (2d) 271, 4 E.T.R. 163 (Alta. T.D.), *Leonhardt Estate v. Minister of National Revenue* (1989), 90 1034 [1990] 1 C.T.C. 2198 (T.C.C.); *Mugford v. Mugford* (1992), 103 Nfld. & P.E.I.R. 136, 49 E.T.R. 229 (Nfld. C.A.). English authorities establish that this rule does not apply to specific bequests or devises, but, if the reason for the rule is correct, it is difficult to explain why specific testamentary gifts are exempt. See (1974) 48 A.L.J. 36 (R.A.S.). *Sed quaere* how far the Privy Council decision is compatible with the trust created by s. 2(1) of the *Estates Administration Act*, R.S.O. 1990, E.22. *Cf.* the "trusteeship" of guardians *Re Creelman* (1973), (sub nom. *Re Creelman Estate*) 40 (3d) 306 (N.S. T.D.), *Wood v. British Columbia (Public Trustee)* (1986), 70 B.C.L.R. 373, 25 (4th) 356 (B.C.C.A.) at 382 [B.C.L.R.], at 366 [D.L.R.], *Canada Permanent Trust Co. v. British Columbia (Public Trustee)* (1984), 53 B.C.L.R. 222, 9 D.L.R. (4th) 468 (B.C.C.A.) at 224 [B.C.L.R.], at 470 [D.L.R.], *Seeds v. Seeds Estate* (1988), (sub nom. *Seeds v. Canada Trust Co.*) 93 N.B.R. (2d) 385 (N.B.Q.B.), affirmed (1989), (sub nom. *Seeds v. Can. Trust Co.*) 243 A.P.R. 177 (N.B.C.A.) at 389 [N.B.R.]. As to the trustee duties of administrators, see, *infra*, note 41. For the moment of entitlement of a beneficiary under an estate see *Ogilvie-Five Roses Sales Ltd. v. Hawkins (ibid.)*, *Borrie v. Beck*, [1974] 5 W.W.R. 554, 46 D.L.R. (3d) 758 (B.C.S.C.), *Caplan Estate v. Alberta (Public Trustee)* (April 10, 1984), Moore

estate remained to be distributed among the testator's children, and fourteen years later, when the distribution was not yet complete, one of the executors without the knowledge of the other pledged certain silver items forming part of the residuary estate with the appellant pawnbrokers, who also had no knowledge that the pledgor was anyone other than absolute owner of the plate.[45] After the pledgor's death his misdeed came to light, and the remaining executor together with a new co-trustee sought to recover the plate from the appellants. If the defaulting son was acting as a personal representative when he made the pledge then title passed and the estate was bound; if he was, in fact, a trustee at that time then he had no power to act alone and no title passed.

The House of Lords came to the conclusion that the matter must be approached from the angle of what the defaulting son had purported to do. It is true that an executor remains an executor for life, but in this case he had purported, acting alone, to convey title in certain estate property. Was he able to do this? That depended on whether he had title as an executor. The House held he did not. As soon as the executors have assented to the dispositions of the will taking effect, they no longer have title; on that assent it passes to the beneficiaries. In this case, assent could be inferred from the passing of the accounts, and the subsequent passage of fourteen years during which no administration was considered necessary by the executors.

The problems that stem from this case are due to the difficulty of determining on each set of facts whether administration is complete. The representatives' assent can be informal, and not only are their acts shortly after the testator's death relevant, but "the inference is strengthened",[46] as it was in *Solomon v. Attenborough & Son*, by such factors as the lapse of fourteen years during which the executors proved to be inactive.[47] The rights of the third party should surely not depend on such an uncertain moment for the transition of title; his or her position is intolerable when faced with a rogue. In England prior to 1925, the assent of the personal representative to the devolution of the estate in the manner set out by the testator could be informal whether the property concerned was realty or personalty, and it is even arguable that where the personal representatives were to continue holding the property, for example themselves as beneficiaries or trustees, no assent at all was called for — an automatic passing took place when administration was complete.[48]

D. The Present Position and Reform

What is the position in common law Canada on this problem?[49] Looking now at the whole equivalence of personal representation on the one hand and

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[45] The pledging executor had expended the proceeds for his own purposes.

[46] *Solomon v Attenborough & Son* (1912), [1913] A.C. 76 (U.K. H.L.) at 83.

[47] In *Re Claremont*, [1923] 2 K.B. 718, Rowlatt J. said there was a rebuttable presumption that executorship has come to a close when the residuary account is brought in.

[48] See J.F. Garner (1964) 28 The Conveyancer 298, *Re Yerburgh*, [1928] W.N. 208, *Re King's Will Trusts*, [1964] Ch. 542, [1964] 1 All E.R. 833. If executors appointed only as such become trustees of the estate which they hold after discharging debts, paying legatees, and conveying to devisees (see *infra*, note 51), can the *Attenborough v. Solomon* problem arise with any estate?

C. Dispositions of Property Subject to Conditions

1. Generally

(a) Conditions Contrary to Public Policy

A gift may be made subject to a condition whether or not the giving is by way of trust. However, since most gifts of this kind do take the form of a trust interest, conditions must be discussed here

Conditions may be imposed by a donor for a variety of purposes, but those with which we are here concerned involve questions of public policy. It is, of course, self-evident that no condition will be enforced whose object is to secure the performance of some illegal act or the furthering of illegality. Over and beyond such conditions are those whose object or effect is to interfere with the decisions persons make affecting their private lives. The courts are traditionally loath to stop a person from disposing of property in the way the person thinks best, but in the greater interests of public policy[52] they will not enforce conditions which interfere with husband and wife relations, or meddle in the discharge of parental duties.[53] There is also precedent laying down that conditions whose object or effect is to create racial discrimination are against public policy. However, the common law has not regarded restraint upon freedom of religion as being contrary to public policy, though if the condition also involves interference with husband and wife relations,[54] or with the discharge of parental duties,[55] it will contravene that policy.

(b) Conditions Precedent and Subsequent

What effect has the unenforceability of the condition upon the gift? The first thing to notice is that a condition which contravenes public policy is not only unenforceable, it is void. The effect of the voidity depends upon the type of condition in question. Conditions are either precedent or subsequent.[56] A condition is precedent when it must be fulfilled before the gift takes effect. For example: "I leave $5,000 to George on his attaining 25 years, provided he is a baptised member of the Episcopal Church at that time." The intention of the

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[52] Testamentary freedom of disposition has itself been described as a principle emanating from public policy *Blathwayt v. Cawley* (1975), [1976] A C 397, [1975] 3 All E R 625 (U K H L), an opinion expressly or impliedly supported by each of the five Law Lords *Blathwayt v. Cawley* had been referred to in Canada for this point — see, e g , *Canada Trust Co v Ontario (Human Rights Commission)*, 1990 CarswellOnt 486, 69 D.L R (4th) 321, 38 E T R. 1 (Ont C A.), and *University of Victoria Foundation v British Columbia (Attorney General)*, 2000 CarswellBC 529, 73 B C L R. (3d) 375, (sub nom *University of Victoria v. British Columbia (Ministry of the Attorney General)*) 185 D.L R. (4th) 182 (B C. S C. [In Chambers]) Below, Part II C 5 a

[53] It is probable that conditions restraining would-be donees or legatees from marriage belong to a bygone era, while interference in the relations of persons in common law marriage or same-sex marriage is today contrary to public policy

[54] See *Church Property of Diocese of Newcastle (Trustees of) v Ebbeck* (1960), 104 C.L.R 394 (Australia H C), a powerfully argued decision of the High Court of Australia Below, Part II C 5 c.

[55] *Re Sandbrook*, [1912] 2 Ch 471 (Eng Ch Div); *Re Borwick*, [1933] Ch. 657 (Eng Ch Div) The notion is that the parent may be deflected from making the best decision when a condition as to religious belief is imposed on the infant or minor The validity of this public policy principle was challenged in *Blathwayt v. Cawley*, *supra*, note 52 See further, below, Part II C 5 c

[56] As to the requirement of certainty in a condition, see below, Part II C 1 e

jurisdictions will be changing the legal landscape. Until then, though there are many issues on which this treatise might reason as to what is or may be the law, the existing case law, so far as it is not amended or abolished by the legislatures, is the base line from which the courts will proceed to harness the "unruly horse" of public policy at a time of ongoing change and the sensitivity of current society to the dignity of individual rights.

4. Conditions Interfering with the Discharge of Parental Duties

The view taken by the courts is that the rightful place of an infant is with his or her parents, and that in regard to the child's upbringing the parents should think only of what is best for the child's welfare.

The difficulty arises in these cases, however, when there has been a *de facto* or legal separation between the parents during the settlor's[122] lifetime, and the settlor is attempting by the gift to prevent the infant living, normally after the settlor's death, with a parent whose influence the settlor considered deleterious. Just such a situation occurred in *Clarke v. Darraugh*[123] where the testator left his entire estate on trust for an infant at twenty-one, but added, "should the said [G.H.] at any time before coming of age go to live with his father, [W.H.], he is to be disinherited of the whole or any portion of my estate." Ferguson J. held the condition to be subsequent, and to be void on the grounds that the father had a legal right to have his son with him, and the son a corresponding duty. The trial judge also thought fit to note that nothing immoral was proved against the father, that nothing had been left to the father by the testator, and that no provision was made by the testator for the custody and education of the child. One is therefore impelled to ask what the situation would have been had the father been immoral, and the testator had made provision for custody and education. Do these factors mean that the interfering condition is void unless the court agrees with the settlor's assessment of the parent or parents, and the settlor has provided for the child which is to live away from his or her parents?

In *Re Gross*[124] there had been a chequered history of unhappiness. The testator's son was unhappily married during the testator's lifetime, and the son's wife had secured alimony against him. By court order the custody of the child of the marriage was then given to the testator and his wife, with limited access rights granted to the parents. After the testator's death a further court order was sought, the parents agreeing that the child's mother should have custody. The mother then divorced her husband on grounds of adultery, and later the husband died. The child remained a minor throughout these events, and after the husband's death the court made an order embodying the parents' agreement as to custody of the child. The problem with the testator's will was that he had left a considerable sum to the child payable at twenty-one, and to

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[122] The gift may be direct, of course, and not by way of trust.

[123] *Clarke v. Darraugh* (1884), 5 O.R. 140. *Wilkinson v. Wilkinson*, *supra*, note 117, was followed.

[124] *Re Gross*, [1937] O.W.N. 88 (Ont. C.A.).

"Public" trusts, it was said by the judge, referring to charitable trusts, have to conform to public policy concerns, but "private" trusts are not subject to the public policy doctrine. Distinguishing a number of post-*Leonard* court decisions that appeared to adhere to no such distinction, the appellate *Spence* court adopted Tarnopolsky J.A.'s distinction. But problems with the scope of each of "private" and "public" are at once apparent. For instance, is a trust in favour of a First Nations community, funded also by government out of taxpayer-sourced moneys, a "public" or a "private" trust? Such trusts are certainly not family trusts, like that challenged in the *Spence* case. First Nation trusts have been described by Canadian courts as human beneficiary trusts, following *Re Denley's Trust Deed*[168] and alternatively as "non-charitable purpose trusts".[169] Is a testamentary disposition to other than a *McCorkill* organization, being absolute or by way of a trust, that expressly challenges the *Charter* on discrimination, beyond the reach of public policy as a "private" disposition? Or does the express challenge make the disposition "public"?

D. Discrimination and Public Policy

Today the *Charter of Rights and Freedoms*, and, where they exist, provincial Human Rights Codes, represent a modern societal judgment in favour of equal treatment on the part of governments and private individuals towards each person, whoever that person be. But whether judges ought to be active today to strike down dispositions or the terms of dispositions because they contravene principles against discrimination or of public policy hitherto not raised by the case authorities is a matter upon which reasonable and informed persons can differ. The bases on which the courts might rule was recently considered at length by a first instance court in *Re Esther G. Castanera Scholarship Fund*.[170] A testatrix, who had spent a career in the sciences, endowed by her will the creation of scholarships in the physical sciences at the University of Manitoba, but expressly for women students. One question that arose was whether this constituted discrimination against male students. Considering and applying the distinction between a donor who seeks as a viewpoint to advance discrimination, as in the *Leonard's Foundation* case, and on the other hand a donor who intends to assist those needing support, such as women in the hitherto male-dominated physical sciences, the court approved a *cy-près* scheme which retained language stipulating women appointees. However, the court was of the opinion that there are no general rules governing these cases. Each fact situation must be examined by the court, or other decision agency concerned, in order to determine the donor's motivation, and to assess the impression the reasonable individual may draw from the

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[167] *Supra*, note 157.

[168] *Re Denley's Trust Deed* (1968), [1969] 1 Ch. 373, [1968] 3 All E.R. 65 (Eng. Ch. Div.).

[169] See chapter 14, Part II.C — Part II.D.

[170] *Re Esther G. Castanera Scholarship Fund*, 2015 MBQB 28, [2015] 7 W.W.R. 191 (Man. Q.B.). See also *University of Victoria Foundation v. British Columbia (Attorney General)*, 2000 BCSC 445 (B.C. S.C. [In Chambers]), which was discussed, and its reasoning on this matter adopted, by the Manitoba court.

eddy, constantly being seen in a new light as the currents cross, re-cross and intermingle. The gift to such an association is therefore an excellent means of demonstrating the significance of the exemption which charitable trusts enjoy from each of these principles.

In the first place, a clear distinction has to be drawn between a gift by way of trust and a gift by way of an immediate, absolute transfer. The latter is sometimes called the out-and-out gift. An immediate, absolute gift can of course be made to a legal person, whether a human being or a corporation, but it can also be made to an unincorporated association. Such an association is not a legal person, but an aggregate of legal persons, and the donor is free to make his or her gift to that aggregate of persons, describing them by the group name under which they associate.[74] For example, a testamentary gift of $2,000 "to the West End Golf Club" may be intended by the donor as a reference to all those persons who are members of the Club at the date of the deceased's death. The donor does not intend a trust, but merely wishes to donate $2,000 to the general funds of the Club for the members at his or her death to spend, both as to capital as well as to income, as and when they please.

In the second place, a similarly clear distinction has to be made between a purpose trust and a trust for human beings. If the donor intended his or her gift to be held on trust for the work or purposes of the association, and he or she may have done this merely by making it clear he or she is referring to the association itself as opposed to its members, then he or she has created a purpose trust. On the other hand the donor may have intended to give for the individuals in the association rather than for the continuing work or purposes of the association, and then he or she will have created a trust for persons, either the individuals who make up the membership when his or her instrument of gift takes effect, or the members of the association both present and future.

It is difficult to understand why a donor would intend to create a trust for the individuals who are members when the testator dies or the *inter vivos* instrument takes effect because it is no more than a bare trust, and therefore equivalent in effect to the immediate, absolute gift. It is also difficult to understand how there can be an intention to create a trust for present and future members of the association, which is not equally an intention to create a trust for the work or purposes of the association. Nevertheless, the courts have felt themselves able to draw these distinctions.

Prior to the decision of the Privy Council in *Leahy v. Attorney General for New South Wales*,[75] it was thought that a gift on trust for the work or purposes of a non-charitable association was possibly another anomalously valid non-charitable purpose trust, provided there was no uncertainty of purpose and no contravention of the perpetuity rule. As we have said, this may have been because the enforceability principle of *Morice v. Bishop of Durham*[76] appeared

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[74] See, e.g., the result in *Cocks v. Manners* (1871), L.R. 12 Eq. 574 (Eng. V.-C.), and *Re Smith*, [1914] 1 Ch. 937.

[75] *Supra*, note 21.

[76] *Supra*, note 7.

to be less important than it had been, but it was also due to the somewhat ambiguous way in which the courts were solving the problems of these gifts. Whether the donor made his or her gift to the association simply by its name, or by way of a trust for the association, the crucial test in those days was whether the association could expend immediately both capital and income. In determining whether such an expenditure could be carried out, reference was made both to the terms of the instrument creating the gift, and, if this language did not prevent an immediate expenditure, then to the rules of the association. Sometimes the courts referred to the nature of the association or its purpose, taking together in this way evidence both of its rules and of its character. The character of a dining club, for instance, is an organization that could easily be terminated at any time, but the character of a cloistered religious order is of a continuing dedication to a certain way of life. Whether they referred to the donor's language or to such objective evidence as the rules and character of the association in question, the courts were in pursuit of the intention of the donor. As Lord Campbell L.C. said in *Carne v. Long*,[77] the donor must be presumed to have known what the rules of the association were.

In almost all cases the character of the association to which the donor is giving, when that character is clearly discernible, will give a ready clue to the rules. A dining club may well have rules which permit the expenditure of capital at any time, or the division of the club's assets between the members at a time of their choosing. A cloistered religious order is likely to have rules requiring the holding of capital as an endowment, thus reflecting the continuing nature of the association.

Leahy v. Attorney General for New South Wales gave a new slant to these authorities. A gift for a purpose must be clearly distinguished from a gift for persons, said the Privy Council. The non-charitable purpose trust remains subject to, and is invalidated by, the principle of enforceability in *Morice v. Bishop of Durham*, whose importance the court now chose to revive. As to a gift for persons, the court considered that it is not really a question whether the capital as well as the income of a gift can be expended by the members at any time, but whether the gift is to the members existing when the instrument of gift takes effect, or both to those members and to future members. Three propositions therefore arose from the decision in this case:

(i) If the gift is for a purpose (necessarily a trust), then, the purpose being non-charitable, the gift is void. The principle of *Morice v. Bishop of Durham* continues to be "the guiding principle". The anomalous cases of specific graves and animals remain anomalous.

(ii) If the gift is to the present members of the association, and they can expend capital as well as income when they will, this is an absolute and immediate gift to persons, and is valid. It is most unlikely, though possible, that a gift to such persons and with such a result could take effect by way of a trust. Such a trust was construed to be present in *Re Drummond*,[78] but the Privy Council had reservations

[77] *Supra*, note 67.
[78] *Supra*, note 70.