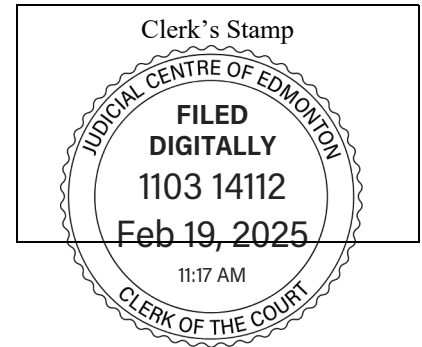


COURT FILE NO. 1103 14112

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 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**”) applies pursuant to Rule 2.10 for intervenor status in the hearing on the matters raised in the application filed by the Trustees of the 1985 Trust on June 28, 2024, which, *inter alia*, seeks to confirm the validity of the 1985 Trust and validate its discriminatory nature (the “**Discrimination Application**”).
2. These submissions are filed with the support of the Affidavit of the Chief of the Sawridge First Nation, Isaac Twinn. The Chief’s affidavit was filed on September 5, 2024 in these proceedings.
3. The Discrimination Application represents a marked departure from the relief and positions previously sought and taken by the Trustees in this litigation.
4. The Trustees, historically, made it clear that the objective of this litigation was to achieve a result. Namely, to change the beneficiaries of the 1985 Trust from the existing class to only those persons who are on the band membership list maintained by SFN due to the fact that the existing beneficiary definition was discriminatory. The Trustees understood that this relief would result in “winners” and “losers” if the Trustees were successful in achieving their litigation goal.<sup>1</sup>
5. The Trustees spent well over a decade seeking to have these litigation goals achieved, but now, will attempt to persuade this Court on the Discrimination Application that the discrimination found within the 1985 Trust, including the discrimination against the SFN members, does not require remedy. The Trustees, to date, have not proffered a basis for this about face in position.
6. SFN is highly concerned by what, it intends to argue, is extensive, vast and unacceptable discrimination against its members.

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<sup>1</sup> Examination of Paul Bujold on Affidavit of Paul Bujold filed February 15, 2017 and undertakings, conducted March 7-10, 2017 and June 20, 2017 (“**2017 Bujold Transcript**”), Page 367, Lines 18-22 and Page 366, Lines 14-15 [**TAB 1**]

7. SFN should be granted intervenor status in the Discrimination Application because it is specifically affected by the issues the Court will consider: some of its members are beneficiaries of the 1985 Trust; the purpose of this litigation was historically to confer beneficiary status on all of SFN's members; and SFN, through its then Chief Walter Twinn (now deceased), was the settlor of the 1985 Trust. SFN has a unique and different perspective concerning the issues raised by the Discrimination Application, as the interests of the membership of the SFN and the settlor of the 1985 Trust are not before the Court and the submissions of the SFN could be useful to the Court in its deliberations.

## **PART 2 RELEVANT FACTS AND EVIDENCE**

### **A. *Litigation history***

8. This litigation was commenced by way of Order of Justice D.R. Thomas issued August 31, 2011 (the "**August 2011 Order**"). The August 2011 Order directed the Trustees of the 1985 Trust to bring an application for advice and direction for the purpose of:
  - a) Seeking direction with respect to the definition of "Beneficiaries" contained in the 1985 Trust, and, if necessary, to vary the 1985 Trust to clarify the definition of "Beneficiaries"; and
  - b) Seeking direction with respect to the transfer of assets to the 1985 Trust.<sup>2</sup>
9. The 1985 Trust was settled by Chief Walter Twinn of SFN on April 15, 1985 for the benefit of its beneficiaries<sup>3</sup>.
10. The current definition of "Beneficiaries" found in the 1985 Trust is as follows<sup>4</sup>:

"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

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<sup>2</sup> Order of Justice Thomas issued August 31, 2011 [**TAB 9**]

<sup>3</sup> Affidavit of Paul Bujold filed September 6, 2011 at para 4. ("**Bujold September 6, 2011 Affidavit**") [**TAB 4**]

<sup>4</sup> *Ibid*, Exhibit B.

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”

11. On August 15, 1986, Chief Walter Twinn settled an additional and separate trust, the 1986 Trust, for the benefit of<sup>5</sup>:

“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”.

12. Effective April 17, 1985, two days after the 1985 Trust was settled, there were meaningful changes made to the *Indian Act*, R.S.C. 1970, c. I-6 as a result of *Bill C-31*, *An Act to amend the Indian Act*, 33-34 Eliz II c.27 (“**Bill C-31**”). The *Bill C-31*

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<sup>5</sup> Bujold September 6, 2011 Affidavit, *Ibid*, Exhibit C.

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.

13. At the time of the *Bill C-31* amendments, their full impact on SFN membership was unknown.<sup>6</sup>
14. Effectively, the 1985 Trust provided for all persons who would qualify for SFN membership pre *Bill C-31* amendments – whether then living or to be born - and the 1986 Trust provides for all SFN members post *Bill C-31* amendments.
15. An Affidavit filed by the Trustees on September 13, 2011 in support of the relief sought in this litigation was deposed by Mr. Bujold and stated that the Trustees were seeking the definition of “beneficiary” in the 1985 Trust be amended such that it is consistent with the definition of “beneficiary” in the 1986 Trust. In other words, change the definition of beneficiaries in the 1985 Trust to members of the SFN as provided for on its membership list.<sup>7</sup>
16. The litigation proceeded on this basis for well over a decade.
17. In 2017, the Court of Appeal issued a decision that directed the Trustees to file a constating application instead of relying on the August 2011 Order as the constating document.<sup>8</sup>
18. On January 9, 2018, the Trustees filed a constating application that sought, *inter alia*;

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<sup>6</sup> Affidavit of Darcy Twin filed September 26, 2019 at para 7. (“**Darcy Twin 2019 Affidavit**”) [TAB 3] (Exhibits not referenced in this brief excluded from the Book of Authorities for concision)

<sup>7</sup> Affidavit of Paul Bujold filed September 13, 2011 at para 33. [TAB 5] (Exhibits excluded from the Book of Authorities for concision)

<sup>8</sup> *Twinn v Twinn*, 2017 ABCA 419 at para 21.

- 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.<sup>9</sup>
19. The parties to the litigation agreed to a Consent Order, which was entered on January 22, 2018, that confirmed the beneficiary definition is discriminatory *in so far as it prohibits SFN members from being beneficiaries of the 1985 Trust* (the “Discrimination Order”).<sup>10</sup>
20. 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.”

**B. *Discrimination against Members of the SFN***

21. To date, the Trustees have not fully determined who qualifies as a beneficiary of the 1985 Trust under the existing definition.<sup>11</sup> Most notably, the Trustees have not filed any evidence in this litigation confirming the list of persons from current SFN membership who are affected by the discrimination found in the beneficiary definition and thus disqualified as beneficiaries by virtue of the discrimination against them contained in the existing beneficiary definition.
22. The only persons from current SFN membership who have been declared by any Court in these proceedings to be beneficiaries of the 1985 Trust are Shelby Twinn and Patrick Twinn.<sup>12</sup> That said, if Shelby Twinn marries a man without Indian status, she will lose her status as a beneficiary pursuant to the operation of the terms of the 1970 *Indian Act*.

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<sup>9</sup> Application for advice and direction, filed January 9, 2018. [TAB 6]

<sup>10</sup> Consent Order of Justice Thomas filed January 22, 2018. [TAB 9]

<sup>11</sup> Affidavit of Isaac Twinn, filed September 5, 2024 at para 9. (“**Isaac Twinn Affidavit 2024**”) [TAB 2]

<sup>12</sup> *Ibid* at para 11.

23. In 2017, the Court of Appeal was required to consider an appeal for party status in these proceedings by Patrick and Shelby Twinn. Their party status was opposed by the Trustees on the basis that they were already beneficiaries of the 1985 Trust and thus the Trustees represented their interests. In its decision, the Court of Appeal held:

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).<sup>13</sup>  
**[Emphasis mine]**

24. In 2024, the Trustees began a trustee recruitment process in order to replace retiring trustees pursuant to their internal succession policy. Chief Twinn indicated his interest in being appointed as a trustee.<sup>14</sup>
25. As part of that process, the Trustees sought information from Chief Twinn regarding his lineage.<sup>15</sup>
26. Chief Twinn advised that his full-blooded brother, Patrick Twinn, had already been determined by the Court of Appeal to be a beneficiary of the 1985 Trust, which would inferentially mean that Chief Twinn was also a beneficiary of the 1985 Trust and thus his lineage information was not necessary.<sup>16</sup>

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<sup>13</sup> *Twinn v Twinn*, 2017 ABCA 419 at para 18.

<sup>14</sup> Isaac Twinn Affidavit 2024 at paras 15-17.

<sup>15</sup> *Ibid* at para 22.

<sup>16</sup> *Ibid* at para 23.

27. In response, the Trustees advised Chief Twinn that despite the existence of Court of Appeal authority confirming Patrick Twinn'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 Trustees.<sup>17</sup>
28. On or about April 19, 2024, the trustee selection process was indefinitely suspended by the Trustees due to "beneficiary identification issues". The particulars of such beneficiary identification issues were not shared with Chief Twinn, despite request.<sup>18</sup>
29. Chief Twinn deposes in his affidavit in support of this application for intervenor status, which affidavit the parties elected not to examine on, "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."<sup>19</sup>

### **PART 3 ISSUES**

30. The issue on this application is whether SFN should be granted intervenor status in the Discrimination Application pursuant to Rule 2.10 of the Alberta Rules of Court and if so, on what terms.

### **PART 4 ARGUMENT**

#### **A. *Intervenor Status – The Law***

31. Rule 2.10 of the Alberta Rules of Court allows a Court to grant intervenor status on any terms and conditions it deems appropriate.

#### **Intervenor status**

2.10 On application, a Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

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<sup>17</sup> *Ibid* at para 26.

<sup>18</sup> *Ibid* at para 28.

<sup>19</sup> *Ibid* at para 5.

32. A two-step process is typically applied by the Court to determine whether intervention status should be granted. That process is:
- a) The Court considers the subject matter of the proceeding;
  - b) The Court determines the proposed intervenor's interest in that subject matter.<sup>20</sup>
33. Courts have commonly held that the intervenor will have an interest in the subject matter when:
- a) The proposed intervenor will be directly and significantly affected by the ultimate decision of the case; or
  - b) The proposed intervenor has special expertise or a unique perspective relating to the subject matter that will assist the Court in its deliberations.<sup>21</sup>
34. Factors that inform these two questions include:
- 1. Will the intervenor be directly affected by the appeal;
  - 2. Is the presence of the intervenor necessary for the Court to properly decide the matter;
  - 3. Might the intervenor's interest in the proceedings not be fully protected by the parties;
  - 4. Will the intervenor's submission be useful and different or bring particular expertise to the subject matter of the appeal;
  - 5. Will the intervention unduly delay the proceedings;
  - 6. Will there possibly be prejudice to the parties if intervention is granted;
  - 7. Will intervention widen the *lis* between the parties; and
  - 8. Will the intervention transform the Court into a political arena?<sup>22</sup>

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<sup>20</sup> *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320 at para 5.

<sup>21</sup> *Wilcox v Her Majesty the Queen in right of Alberta*, 2019 ABCA 385 at para 12.

<sup>22</sup> *R v Vallentgoed*, 2016 ABCA 19 at paras 5.



35. Generally, where there is a constitutional element to the case, courts are more lenient in granting intervener status.<sup>23</sup>

**B. *Intervenor Status – Step 1: Subject Matter of the Application***

36. On the Discrimination Application, the Trustees firstly seek the following relief from the Court;
- a) Confirming the validity of the 1985 Sawridge Trust;
  - b) 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;
37. It is understood that the remainder of the relief sought on the Discrimination Application is subject to change as it may become moot or irrelevant depending on the outcome of the answers to these initial questions.
38. These questions may elicit a positive or a negative response from the Court. The Court is asked to be open to find that the 1985 Trust is **not** valid, or that the discrimination against SFN members, or others, is **not** permissible.
39. In order to be valid, a trust must have three characteristics (or certainties). More particularly:
- a) Certainty of Intention – the settlor must disclose an intention to create a trust
  - b) Certainty of Subject Matter – there must be property vested in the trustee
  - c) Certainty of Objects – it must be possible to ascertain the beneficial owners of the trust<sup>24</sup>

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<sup>23</sup> *R v Papaschase*, 2005 ABCA 320 at para 6.

<sup>24</sup> *Luscar Ltd. v Pembina Resources Limited*, 1994 ABCA 356 at para 98.

40. In addition to determining whether the three certainties are met, the Trustees are asking the Court to determine whether the 1985 Trust is capable of being lawfully administered and distributed to its beneficiaries. *Implicit in this question, is whether the 1985 Trust is contrary to public policy.*
41. This question is, in part, informed by the history of this litigation and the Discrimination Order, which confirms the discriminatory nature of the 1985 Trust, in so far as it prohibits some SFN members from being beneficiaries of the 1985 Trust.<sup>25</sup> The Discrimination Order also confirms that not all forms of discrimination have been considered and the Justice hearing the remaining issues, may consider all forms of discrimination in determining the appropriate relief.
42. It is 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.<sup>26</sup>
43. The provision of the 1985 Trust that is at issue is the beneficiary definition itself and the very group of people for which it was established. Thus, if the beneficiary definition is found to violate public policy, it is open to the Court to void the 1985 Trust.

**C. *Intervenor Status – Step 2: SFN’s Interest in the Subject Matter of the Application***

44. The issues raised on the Discrimination Application are foundational and go to the core of the existence (or continued existence) of the 1985 Trust.
45. As the settlor and representative of the current members of the SFN, the SFN would be directly and significantly impacted by any determination regarding the validity of the 1985 Trust or the appropriateness of the discrimination against its members contained in the beneficiary definition.

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<sup>25</sup> Discrimination Order at para 1. [TAB 7]

<sup>26</sup> *McCorkill v Streed, Executor of the Estate of Harry Robert McCorkill (aka McCorkell), Deceased*, 2014 NBQB 148 at para 90.

46. Sawridge has a unique knowledge of its members circumstances, lineage and how the discrimination contained in the 1985 Trust deed affects them.
47. Sawridge presently has intervenor status on different applications in these proceedings. It is submitted that this Court has already recognized the impact of this litigation on the SFN and SFN's specialized knowledge and perspective on these matters. As such, granting intervenor status to SFN on the Discrimination Application would be keeping with the prior orders of the Court in this litigation.

***1. The intervenor will be directly affected***

48. SFN is the settlor of the 1985 Trust, its assets are derived from the wealth of the SFN and SFN, through its duly elected Chief and Council, represents the members of SFN. As such, SFN is clearly affected by any decisions that go to the validity, existence or any administration of the 1985 Trust that will discriminate against its members.
49. The SFN has a fiduciary duty to their membership to manage and safeguard the SFN's assets<sup>27</sup>.
50. In the event the 1985 Trust is found to be invalid or void, the assets of the 1985 Trust would revert to the SFN for administration. As such, it is necessary for the SFN to be able to make submissions on the Discrimination Application as the SFN has an interest in protecting its members from a discriminatory trust that (it will argue) is contrary to public policy and which negatively affects the interests of SFN members. In the event the 1985 Trust is found to be void, the SFN's presence in these proceedings is necessary in order to address the process and parameters for the assets return to the SFN.

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<sup>27</sup> *Pelletier v. Delorme*, 2019 FC 1487, para 116.

**2. *Is the presence of the intervenor necessary for the court to properly decide the matter?***

51. The issues of validity and discrimination engage questions of whether the beneficiaries of the 1985 Trust can be properly ascertained and whether the discrimination against SFN members is a violation of public policy.
52. The Trustees have not provided the Court with evidence or information regarding:
- a) The full scope of discrimination contained in the beneficiary definition, as same is informed by the discrimination found in the antiquated 1970 *Indian Act*, which has long since been determined to violate the Canadian Charter of Rights and Freedoms, as evidenced by the introduction of *Bill C-31*;
  - b) How this discrimination specifically affects SFN membership and how many members will be excluded from qualifying as a beneficiary of the 1985 Trust.

**3. *Might the intervenor's interest in the proceedings not be fully protected by the other parties?***

53. Unlike the other parties, the SFN is apprised of the lineage circumstances of its members and can speak to how the discrimination contained in the 1985 Trust specifically affects its membership, individually and the community as a whole.
54. None of the parties in the proceedings protect the interests of the settlor of the 1985 Trust and its intention when establishing the 1985 Trust, nor do they speak for the membership of the SFN and how same is affected.
55. The intention of Chief Walter Twinn (the settlor) when establishing the 1985 Trust has been addressed in these proceedings, namely that it was a protective step to address the uncertainty of the impact of *Bill C-31* on membership. Once Chief Twinn understood the

impact, the assets moved into trust would be re-placed,<sup>28</sup> 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"),<sup>29</sup> 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."<sup>30</sup>
- 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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<sup>28</sup> Darcy Twin 2019 Affidavit at para 7.

<sup>29</sup> *Indian Act*, RSC 1970, c I-6 ("1970 Act").

<sup>30</sup> 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.”<sup>31</sup> 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;<sup>32</sup>
  - b) the female child of a male beneficiary is beneficiary only if she is legitimate; if she is illegitimate, she is not beneficiary;<sup>33</sup>

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<sup>31</sup> *Hele c. Attorney General of Canada*, 2020 QCCS 2406, para. 149.

<sup>32</sup> 1970 *Act*, paras 11(1)(c) and 11(1)(d); *Martin v. Chapman*, [1983] 1 SCR 365.

<sup>33</sup> 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);<sup>34</sup>
  - d) a female beneficiary will lose that status (be "enfranchised") if she marries a non-beneficiary,<sup>35</sup> 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);<sup>36</sup>
  - 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);<sup>37</sup> 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<sup>38</sup> (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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<sup>34</sup> 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.

<sup>35</sup> 1970 *Act*, sub-sec 109(2) and sub-para 12(1)(a)(iii).

<sup>36</sup> 1970 *Act*, s 10 and 14.

<sup>37</sup> 1970 *Act*, para 11(1)(f).

<sup>38</sup> 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.<sup>39</sup> 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.”<sup>40</sup> 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,”<sup>41</sup> and has described the treatment of women and their descendants as “deplorable and shocking.”<sup>42</sup>
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.<sup>43</sup> The 1985 Trust thereby takes sex discrimination a step further than the 1970 *Indian Act*.

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<sup>39</sup> 1970 *Act*, para 11(1)(f).

<sup>40</sup> *Martin v. Chapman*

<sup>41</sup> *Descheneaux*, para 92.

<sup>42</sup> *Landry c. Procureur général du Canada (Registraire du registre des Indiens)*, 2017 QCCS 433, para 36.

<sup>43</sup> Declaration of Trust, s. 6.



65. In 1985, in an attempt to remedy these myriad injustices and spurred by the coming into force of s. 15 of the *Canadian Charter*, in 1985,<sup>44</sup> 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,<sup>45</sup> 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

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<sup>44</sup> *Act to Amend the Indian Act*, SC 1985, c 27. [TAB 10]

<sup>45</sup> 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*.

words of the 1857 Act, encouraging “the progress of [c]ivilization” among Aboriginal peoples.<sup>46</sup>

67. As described the 1996 Royal Commission on Aboriginal Peoples, the creation of the enfranchisement process was “one of the most significant events in the evolution of Canadian Indian policy. Its premise was that by eventually removing all legal distinctions between Indians and non-Indians through the process of enfranchisement, it would be possible in time to absorb Indian people fully into colonial society.”<sup>47</sup> At the Supreme Court, Justice L’Heureux-Dubé noted that “[t]he enfranchisement provisions of the *Indian Act* were designed to encourage Aboriginal people to renounce their heritage and identity, and to force them to do so if they wished to take a full part in Canadian society. In order to vote or hold Canadian citizenship, status Indians had to ‘voluntarily’ enfranchise.”<sup>48</sup>
68. Under the 1970 *Indian Act*, an Indian man could apply for voluntary enfranchisement and, if his request was granted, his wife and minor children could be automatically enfranchised.<sup>49</sup> The law was so dismissive in its view of women that unmarried women could not voluntarily enfranchise – this “privilege” belonged only to men.<sup>50</sup> This meant also that women and children had no control over their fate – their husbands or fathers could decide whether they remained members of their ancestral community.
69. There were many reasons that a person may have enfranchised, especially as conveyed in more recent decades: so that they could vote (Indians were only guaranteed the right to vote federally in 1960 and in Alberta in 1965, so a status Indian who wanted to vote

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<sup>46</sup> *Canada (Attorney General) v. Larkman*, 2012 FCA 204; see also *Hele c. Attorney General of Canada*, 2020 QCCS 2406, para. 5, and 52 and following and *Andrews et al. v. Indian and Northern Affairs Canada*, 2013 CHRT 21.

<sup>47</sup> *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Backward*, vol. 1 (Ottawa: Canada Communication Group Publishing, 1996), p. 271. [TAB 13]

<sup>48</sup> *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, para 88.

<sup>49</sup> *1970 Act*, s 109.

<sup>50</sup> *Hele*, para 143 and following.

before this time would have been forced to enfranchise);<sup>51</sup> because they were led to believe they had to have access to Veteran's benefits following the Second World War;<sup>52</sup> or to avoid being forced to send their children to residential schools.<sup>53</sup> While at the time gaining the rights of Canadian citizenship was framed by non-Indigenous legislators as a privilege, the view today is that "enfranchisement is not and was never a right. It was rather an oppressive process that stripped away the status of Indians."<sup>54</sup>

70. The 1985 amendments did away with the process of enfranchisement and restored Indian status to those who had been enfranchised and a first generation of their descendants.<sup>55</sup> The issue of voluntary enfranchisement is currently being debated before the courts and is also the subject of a bill presently before Parliament.<sup>56</sup>
71. The policy of "enfranchisement" is carried on in the 1985 Trust's use of the 1970 Indian Act to define the class of beneficiaries and its specific exclusion, in the definition of "beneficiaries," of those persons of SFN descent who applied to enfranchise and met the Crown's criteria for doing so. Those SFN members that were enfranchised prior to 1985 are now entitled to Indian status, but excluded from being beneficiaries of the 1985 Trust.
72. The above-cited examples are only a partial picture of the complexity of the discrimination inherent in the 1985 Trust. SFN's intervention will ensure that this Court has a full picture of the discrimination that the Trustees are requesting this court condone and make legally enforceable.

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<sup>51</sup> *Royal Commission*, p. 299.

<sup>52</sup> *R. v. Brennan*, 2020 ONCJ 128, para. 47 and following.

<sup>53</sup> 1970 *Act*, s. 116-119. These sections and their predecessors were part of the legal foundation for the residential schools system.

<sup>54</sup> *Hele*, para 194.

<sup>55</sup> *Indian Act*, RSC 1985, c I-5, para. 6(1)(d).

<sup>56</sup> Bill C-38, *An Act to amend the Indian Act (new registration entitlements)* (First Reading – First Session, Forty-fourth Parliament); Government of Canada, "First Nations families and Canada agree to put litigation on hold while working to end the legacy of "enfranchisement" under the *Indian Act*," (March 3, 2022), available online: <https://www.canada.ca/en/indigenous-services-canada/news/2022/03/first-nations-families-and-canada-agree-to-put-litigation-on-hold-while-working-to-end-the-legacy-of-enfranchisement-under-the-indian-act.html> [TAB 11]

73. The scope of discrimination in the 1985 Trust's rules constitutes harm to the SFN as a collective, that the SFN must have standing to address.
74. If granted intervention status, SFN will make submissions on:
- a) Whether the beneficiaries of the 1985 Trust are presently ascertainable given the problematic nature of the archaic legislation on which the definition relies;
  - b) The scope of the discrimination affecting the 1985 Trust;
  - c) The impact of the discrimination on the current SFN membership and how many persons are specifically affected.
75. The submissions to the Court will conclude that the answers to the questions posed by the Trustees on the Discrimination Application are:
- a) The 1985 Trust is invalid for failing to have objects which are ascertainable and therefore its assets must be returned to the settlor for administration;
  - b) Alternatively, the scope of the discrimination is so vast and the 1985 Trust is void on public policy grounds, such that the assets must be returned to the settlor for administration.
76. The SFN will offer a fresh perspective on these matters as, to date, the impact of what has been declared to be a discriminatory trust in the Discrimination Order, has not been fulsomely canvassed by the parties.

***5. Will the intervention unduly delay the proceedings?***

77. SFN has been granted intervenor status in this litigation on different applications and continues to have an active intervenor status on an application pertaining to the jurisdiction of the Court to vary the 1985 Trust (or what has been described in these proceedings as the "Jurisdiction Application").

78. SFN is very much apprised of the issues in this litigation and has appeared at many (if not most) of the Court appearances in the preceding years. SFN's intervention on the Discrimination Application will not delay the proceedings.
79. SFN is seeking permission to lead expert evidence on the application of the existing beneficiary definition to the existing SFN membership, which may require evidence to be led on the individual member's lineage (with appropriate arrangements to protect their privacy). It is submitted that this information is necessary for the Court to properly consider the issues being put forward on the Discrimination Application and to consider the fulsomeness of the discrimination affecting the 1985 Trust, which is in keeping with the terms of the Discrimination Order.
80. By seeking validation of the administration of the Trust and the discrimination against SFN members, the Trustees have put these matters in issue.
81. On the Jurisdiction Application (and prior "Asset Transfer Application"), SFN was granted intervenor status with the ability to put forth evidence. As such, there is a prior history in this litigation of SFN being granted intervenor status with robust rights<sup>57</sup>. Such prior practice, should continue in the Discrimination Application.

***6. Will there possibly be prejudice to the parties if intervention is granted?***

82. The SFN is not aware of any prejudice that would result from its intervention, which is supported by the fact that the SFN has already been granted intervenor status in these proceedings.

***7. Will intervention widen the lis between the parties?***

83. The SFN's intervention will not widen the *lis* between the parties.

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<sup>57</sup> Order of Justice Henderson filed January 13, 2020. [TAB 8]

84. The participation of the SFN will address the questions put before the Court on the Discrimination Application and the necessary outcomes if the questions put forward by the Trustees are answered in the negative by the Court.
85. The issue of whether the 1985 Trust is void or voidable has been at the core of this litigation since inception. This continues to be so on the Discrimination Application, despite such language not having been expressly used by the Trustees.
86. Allowing the SFN's intervention on these issues is practical because it will negate the need for the SFN to initiate separate litigation to have these matters addressed on behalf of its members or seek party status to address same. The vast discrimination against its members and divestiture of its wealth to non-members is of significant concern to the SFN.

**8. *Will the intervention transform the court into a political arena?***

87. The SFN's interest in these proceedings is not political, but rather grounded in trust law and seeking to ensure the Court has the benefit of full disclosure on the impact and effect of the discrimination contained in the 1985 Trust.
88. In fact, without the SFN's participation, the danger is that the debate on the Discrimination Application would be political in the narrowest sense, that is, informed only with the views of the small group formed by the individuals currently serving as Trustees and not by the full membership as represented by their elected Chief and Council.
89. In sum, SFN provides a different perspective on foundational matters which would be useful to the Court in its deliberations. If granted intervenor status, SFN intends to put forth positions which are not positions that have been (or are likely to be) advanced by the parties and which include that:

- a) The application of the 1970 *Indian Act* definition for status is no longer appropriate in modern times and certain sets of facts will not be capable of application under the antiquated legislation due to the changes to Indian status that have occurred since 1985. Consequently, the beneficiaries of the 1985 Trust are not capable of full identification and thus the 1985 Trust is void for lack of certainty of objects;
- b) Upwards of 75% of the membership of SFN does not qualify for beneficiary status under the 1985 Trust due to the extensive discrimination contained in the 1970 *Indian Act*;
- c) The discrimination contained in the 1985 Trust violates principles of public policy and the Court should void the 1985 Trust in order to correct this breach, thus allowing the Trust property to return to the SFN for administration.

## **PART 5 REMEDY SOUGHT**

90. For the reasons above, SFN seeks an Order granting it intervenor status in the Discrimination Application, on terms which would permit SFN to:
- a) Make written and oral submissions on all issues raised in the Discrimination Application;
  - b) Rely on all evidence and transcripts filed in the within litigation, along with any producible records arising from Affidavit of Records filed within;
  - c) Cross examine on any further evidence filed by the parties in relation to the Discrimination Application;
  - d) File additional evidence, including expert evidence, that relates to the impact and effect of the discrimination contained in the 1985 Trust deed on SFN members.

91. SFN seeks the costs of this application if it is opposed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 14<sup>th</sup> day of February, 2025.



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David R. Risling, K.C. and Crista C.  
Osualdini, McLennan Ross LLP

David Schulze and Nicholas Dodd, Dionne  
Schulze

Solicitors for Sawridge First Nation



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<i>An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)</i> , <u>SC 2017, c 25</u>	
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*Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203

*Descheneaux c. Canada (Procureur Général)*, 2015 QCCS 3555

*Gender Equity in Indian Registration Act*, SC 2010, c 18

*Hele c. Attorney General of Canada*, 2020 QCCS 2406,

*Indian Act*, RSC 1970, c I-6

*Indian Act*, RSC 1985, c I-5

*Landry c. Procureur général du Canada (Registraire du registre des Indiens)*, 2017 QCCS 433

*Luscar Ltd. v Pembina Resources Limited*, 1994 ABCA 356

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

*McCorkill v Streed, Executor of the Estate of Harry Robert McCorkill (aka McCorkell), Deceased*, 2014 NBQB 148

*Mclvor et al. v. The Registrar, Indian and Northern Affairs Canada et al.*, 2007 BCSC 26

*Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320

*R. v. Brennan*, 2020 ONCJ 128

*R v Papaschase*, 2005 ABCA 320

*R v Vallentgoed*, 2016 ABCA 19

*Twinn v Twinn*, 2017 ABCA 419

*Wilcox v Her Majesty the Queen in right of Alberta*, 2019 ABCA 385

PAUL BUJOLD - March 7, 8, 9, 10, 2017

Questioned by Ms. Osualdini

1     **COURT FILE NUMBERS:**     1103 14112 and 1403 04885  
 2  
 3     **COURT:**                     COURT OF QUEEN'S BENCH OF ALBERTA  
 4  
 5     **JUDICIAL CENTRE:**       EDMONTON  
 6  
 7                                     IN THE MATTER OF THE TRUSTEE ACT,  
 8                                     R.S.A. 2000, C. T-8, AS AMENDED, and  
 9                                     IN THE MATTER OF THE SAWRIDGE  
 10                                    BAND INTER VIVOS SETTLEMENT  
 11                                    CREATED BY CHIEF WALTER PATRICK  
 12                                    TWINN, OF THE SAWRIDGE INDIAN  
 13                                    BAND, NO.19, now known as  
 14                                    SAWRIDGE FIRST NATION, ON APRIL 15,  
 15                                    1985 (the "1985 Trust"),  
 16  
 17                                    AND  
 18  
 19                                    IN THE MATTER OF THE SAWRIDGE  
 20                                    TRUST CREATED BY CHIEF WALTER  
 21                                    PATRICK TWINN, OF THE SAWRIDGE  
 22                                    INDIAN BAND NO. 19, AUGUST 15,  
 23                                    1986 (the "1986 Trust")  
 24  
 25     **APPLICANT:**             CATHERINE TWINN, as Trustee for  
 26                                    the 1985 Trust and the 1986 Trust  
 27  
 28     **RESPONDENTS:**         ROLAND TWINN, BERTHA  
 29                                    L'HIRONDELLE, EVERETT JUSTIN TWIN  
 30                                    AND MARGARET WARD, as Trustees  
 31                                    for the 1985 Trust and the  
 32                                    1986 Trust

33     -----  
 34     Questioning on Affidavits of **PAUL BUJOLD**,  
 35     sworn the 15th day of February 2017 C.E., held at the  
 36     offices of McLennan Ross LLP, Edmonton, Alberta,  
 37     on the 7th, 8th, 9th, and 10th days of March 2017 C.E.  
 38     -----



## 1 Appearances:

2 Ms. C.C. Osualdini For the Applicant

4 D. Risling, Esq. For the Applicant

5 Ms. N.E. Cumming, Q.C. For the Respondents

7 Ms. K. McLeod, CSR(A), RPR Official Court Reporter

9 [QUESTIONING COMMENCED AT 9:24 A.M., MARCH 7, 2017]

10 PAUL BUJOLD, AFFIRMED, QUESTIONED BY MS. OSUALDINI:

11 Q. MS. OSUALDINI: Good morning, Mr. Bujold. You're  
12 appearing this morning in relation to a  
13 cross-examination on two affidavits, both of which  
14 you swore on February 15th, 2017. One relates to  
15 Court of Queen's Bench Court File Number 1403 04885,  
16 and the other, Court of Queen's Bench File Number  
17 1103 14112.

18           And I understand that both of these affidavits  
19           are identical, save for the fact that they were  
20           sworn in different action numbers?

21 A. That's right.

22 Q. And has your counsel put a copy of the affidavits in  
23 front of you?

24     **A.    Yes.**

25 Q. And can you please state your name for the record.

26     **A.    My name is Paul Bujold.**

27 Q. And you've taken an oath to tell the truth today --



PAUL BUJOLD - March 10, 2017

Questioned by Ms. Osualdini

1 MS. OSUALDINI: Off the record.

2 **[DISCUSSION OFF THE RECORD]**

3 Q. MS OSUALDINI: So my question was why was it of  
4 concern to the trustees whether individuals could  
5 use the definition in the 1985 trust to leverage an  
6 application to become a Sawridge First Nation  
7 member?

8 MS. CUMMING: Oh, it wasn't -- no, he didn't  
9 say it was to leverage for an application.

10 MS. OSUALDINI: I think that's the word --

11 MS. CUMMING: It was used as leverage to argue  
12 that they were members of the SFN.

13 MS. OSUALDINI: Okay.

14 **A. Yeah.**

15 MS. OSUALDINI: Okay. Sorry.

16 MS. CUMMING: -- and wouldn't have to apply for  
17 membership. It would be a shortcut.

18 Q. MS OSUALDINI: Oh, okay. So why was that of  
19 concern to the trustees?

20 **A. Well, the trustees early on decided that they didn't**  
21 **want anyone using their beneficial status in**  
22 **the '85 trust as a way of gaining or using that as a**  
23 **legal argument to obtain membership in the**  
24 **Sawridge First Nation, that they should be required**  
25 **to go through the same process as everyone else.**

26 **And so, you know, basically we followed that --**  
27 **we've been following that policy all along. We try**

09:22



PAUL BUJOLD - March 10, 2017

Questioned by Ms. Osualdini

1 not to create a situation where we're jeopardizing  
2 the inherent right of the Sawridge First Nation to  
3 decide its own membership. And, you know, we're  
4 trying to support them. I mean, we're -- we're a  
5 related agency, and so we -- we're -- we're trying  
6 to work with them.

7 In terms of the -- you know, so any -- any  
8 proposal to grandfather, there was a concern early  
9 on that grandfathering would give persons that --  
10 that notion that maybe if they were grandfathered,  
11 there was some reason for them being grandfathered.  
12 It was explained to the trustees also very early on  
13 that whenever you amend or change a definition of  
14 beneficiaries in a trust, that there are always  
15 winners and losers.

16 And so some persons may, indeed, be affected  
17 negatively by a change in definition of the -- of  
18 the trust. And that is sort of expected trust  
19 practice as far as we were informed, that -- that  
20 persons could -- there -- you know, there are always  
21 winners and losers.

22 We wanted especially, though, not to -- not to  
23 negatively affect children, if we could possibly --  
24 you know, if we could possibly manage to find some  
25 way to positively respond to -- to children, that  
26 that would be important, especially if they were  
27 members of -- or, I mean, especially if their



PAUL BUJOLD - March 10, 2017

Questioned by Ms. Osualdini

1           parents were already members of the First Nation.

2    Q.   What about future generations of children that will  
3           be excluded?

4    A.   Well, a trust can't -- a trust can address only --  
5           you know, Donovan Waters explained this to us also  
6           very early on, that a trust can certainly speak to  
7           future generations, but in terms of the designation  
8           of beneficiaries, that you can't tie a trust to --  
9           you know, to creating some interest for someone who  
10          doesn't exist.

11   Q.   But you would agree with me, though, that if the  
12          existing 1985 beneficiary definition was maintained,  
13          that future children will be affected if it's  
14          changed to Sawridge First Nation membership?

15   A.   Yes. Oh, of course.

16   Q.   Yeah.

17   A.   Yes. Yes.

18   Q.   So have the trustees just accepted that, as part of  
19          any definition change, there's going to be  
20          collateral damage, and that's just the way it is?

21   A.   Yeah. Even if we leave it the way it is currently  
22          defined, there will be collateral damage. So --

23   Q.   How will there be collateral damage?

24   A.   Well, all of the persons -- or all of the persons  
25          who were women who married out and their descendants  
26          are not admissible under the 1985 trust according to  
27          the current definition.



PAUL BUJOLD - March 10, 2017

Questioned by Ms. Osualdini

1 Q. Okay.

2 A. All persons who are illegitimate, the trustees can  
3 choose not to provide them benefits under the  
4 1985 trust.

5 Q. Okay. And could those persons not apply to the  
6 Sawridge First Nation for membership?

7 A. They already have membership.

8 Q. Okay. So they're provided for, then, under the 1986  
9 trust?

09:26

10 A. But they have a right to be provided under the  
11 1985 trust as well.

12 Q. But you agree that they're provided for under the  
13 1986 trust?

14 A. Yes, they are.

15 Q. Okay. So I understand that in relation to the 2011  
16 action, that you are the conduit of information from  
17 the legal team to the trustees?

18 A. Yes.

09:27

19 Q. So how do you communicate information about the  
20 status of the 2011 action to the trustees?

21 A. I provide reports, I provide documents, I -- I mean,  
22 I certainly point them to documents that have been  
23 filed on the website. That's about all I can do.

24 Q. Because I understand that all of the legal documents  
25 that are filed with the Court in the 2011 action are  
26 to be posted on the Sawridge trust website?

27 A. That's correct.





PAUL BUJOLD - March 10, 2017

Questioned by Mr. Risling

1 staying a little bit longer than noon. Thank you.

2 -----

3 PROCEEDINGS ADJOURNED AT 12:08 P.M.

4 SUBJECT TO ABOVE COMMENTS

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1    **Certificate of Transcript**

2

3           I, the undersigned, hereby certify that the  
4           foregoing pages are a complete and accurate  
5           transcript of the proceedings taken down by me in  
6           shorthand and transcribed from my shorthand notes to  
7           the best of my skill and ability.

8

9           Dated at the City of Edmonton, Province of Alberta,  
10          this 22nd day of March 2017 C.E.

11

12

13

*K. McLeod*

---

Ms. Katie McLeod, CSR(A), RPR  
Official Court Reporter



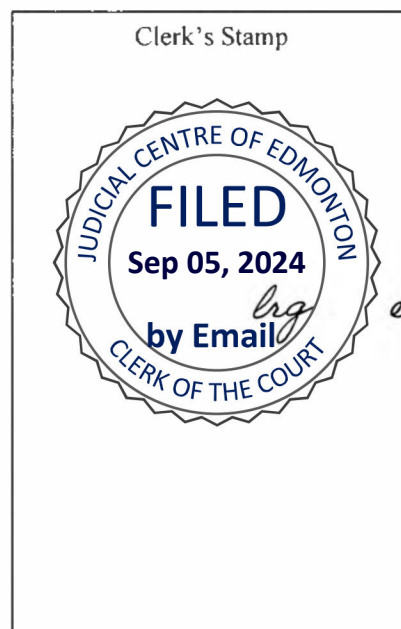
COURT FILE NO. 1103 14112

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"),



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**

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File No. 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 9<sup>th</sup> 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 29<sup>th</sup> 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 birthAttached 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.

Town ~~City~~ of Slave Lake  
in the Province of Alberta  
the 14 day of August, 2024

*Derek R. Renzini* #20387  
A Commissioner for Oaths in and  
for the Province of Alberta

*Isaac Twinn*  
CHIEF ISAAC TWINN

**Derek R. Renzini**  
Barrister & Solicitor



on the 14 day of August, 2024

**C-06 REPLACEMENT OF TRUSTEES POLICY**

**PROPOSED**  
2018-03-16

**ADOPTED**  
2018-03-16

**REVISED**  
2024-02-20

*Sworn* #2-367  
A Commissioner for Oaths in and  
for the Province of Alberta

*Derek R. Renzini*  
Barrister & Solicitor

**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 than two (2) who are not Beneficiaries of the 1986 Trust.

## **C-06 REPLACEMENT OF TRUSTEES POLICY**

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

## **C-06 REPLACEMENT OF TRUSTEES POLICY**

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.

## **C-06 REPLACEMENT OF TRUSTEES POLICY**

### **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

**Sawridge**

*Derek R. Renzini* #00367  
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

000047

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



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

Derek R. Renzini 420367  
A Commissioner for Oaths in and  
for the Province of Alberta

9 February 2024

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

*Derek R. Renzini*  
Barrister & Solicitor

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,

A handwritten signature in black ink, appearing to read 'Tracey Scarlett', written in a cursive style.

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

*Derek R. Renzini* #20367  
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-06 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](http://www.sawridgetrusts.ca)

Email [Paul@sawridgetrusts.ca](mailto:Paul@sawridgetrusts.ca)

P.O. Box 175, Edmonton Main, Edmonton, AB, T5J 2J1





## **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](mailto: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](mailto:administrator@sawridgetrusts.ca)  
Web: [www.sawridgetrusts.ca](http://www.sawridgetrusts.ca)

## 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 to 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.

☐ 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:**



## TRUSTEE DESIRED CAPABILITIES MATRIX

2024

### Core Capabilities

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

### Desired Capabilities

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

### Diversity of Thought

<b><i>Indigenous:</i></b>	Desire a majority of Trustees to be Indigenous (First Nation, Métis, Inuit), ideally members of the Sawridge First Nation.
<b><i>Beneficiary:</i></b>	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.
<b><i>Geographic Location:</i></b>	Desire a minimum of two Trustees to be located in at Sawridge First Nation or at Slave Lake.

### Required Mindset

<b><i>Open-Minded</i></b>	Willing to consider the viewpoints of others, willing to consider new ideas and approaches.
<b><i>Collaborative</i></b>	Willing to work with others to achieve a joint goal.
<b><i>Big Picture/Strategic Viewpoint</i></b>	Looks at long-term implications of actions and willing to work to achieve a long-term goal through gradual steps.
<b><i>Continuous Improvement/Learning</i></b>	Willing to work on learning new skills or developing current skills to a higher level.
<b><i>Team-builders/workers</i></b>	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.



## **C-06 REPLACEMENT OF TRUSTEES POLICY**

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

## **C-06 REPLACEMENT OF TRUSTEES POLICY**

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.

## **C-06 REPLACEMENT OF TRUSTEES POLICY**

### **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

*Derek R. Renzini*  
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

This is **Exhibit " F "** referred to in the Affidavit of  
**Isaac Twinn** sworn before me

on the 14 day of August, 2024

*Derek R. Renzini*  
A Commissioner for Oaths in and  
for the Province of Alberta

*A20367*

# Sawridge

*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

000064





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

Derek R. Remai #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

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



This is **Exhibit "H"** referred to in the Affidavit of  
**Isaac Twinn**

sworn before me  
on the 17 day of August, 2024

Derek R. Renzini #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

**Derek R. Renzini**  
Barrister & Solicitor

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:

***Maternal***

- 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 Grandmother***

- 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 Grandmother***

- 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  
000066



April 10, 2024

Derek R. Renzini H2-367  
A Commissioner for Oaths in and  
for the Province of Alberta

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,

A handwritten signature in black ink, appearing to read 'Isaac Twinn', written in a cursive style.

Isaac Twinn



This is **Exhibit "J"** referred to in the Affidavit of  
**Isaac Twinn** sworn before me

on the 14 day of August, 2024

Derek R. Renzini #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

*Derek R. Renzini*  
Barrister & Solicitor

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](mailto:administrator@sawridgetrusts.ca)  
Web: [www.sawridgetrusts.ca](http://www.sawridgetrusts.ca)

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

Derek R. Renzini #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

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





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 advice 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.

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

*Derek R. Renzini* #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

*Derek R. Renzini*  
Barrister & Solicitor  
Sister & Solicitor

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

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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

sworn before me  
on the 14 day of August, 2024

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

## 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](http://www.sawridgetrusts.ca)

**Email** [paul@sawridgetrusts.ca](mailto:paul@sawridgetrusts.ca)

**Address** : P.O. Box 175, Edmonton Main, Edmonton, AB, T5J

2J1

*Derek R. Renzini*  
*Barrister & Solicitor*



on the 17 day of August, 2024

## Report to the Beneficiaries on the Trustee Selection Process

Paul Bujold <paul@sawridgetrusts.ca>

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

To: Burd, Svea <sveamidbo@yahoo.ca>; Cardinal, Kieran <ki.cardinal@icloud.com>; Deana Morton <deana.morton@mdp.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 <allanbroome@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

**Web** [www.sawridgetrusts.ca](http://www.sawridgetrusts.ca)

**Email** [paul@sawridgetrusts.ca](mailto: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

**Sawridge**

Derek R. Renzini #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

**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

**DENTONS**

**Michael S Sestito**  
Partner

michael.sestito@dentons.com  
D +1 780 423 7300

Dentons Canada LLP  
2500 Stantec Tower  
10220-103 Avenue NW  
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dentons.com

July 24, 2024

File No.: 551860-1

**Sent Via E-mail**

**Isaac.twinn@sawridgefirstnation.com**

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

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

*Derek R. Renzini* #20367  
A Commissioner for Oaths in and  
for the Province of Alberta

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.

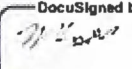
In your letter you note that the SFN was "advised that replacement trustees could not be selected due to difficulties (or an apparent inability) to apply the existing 1985 beneficiary definition." With respect, this is not accurate. As reported by the Trust's administrator in his correspondence of May 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:  
  
9D5F0DB2C8FB482

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 24<sup>th</sup> 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 “B”**



03324:01 IN THE FEDERAL COURT OF CANADA TRIAL DIVISION

02 Court File No. T-66-86

03 BETWEEN:

04 WALTER PATRICK TWINN, suing on his own behalf and on  
05 behalf of all other members of the Sawridge Band,

06 WAYNE ROAN, suing on his own behalf and on behalf of  
07 all other members of the Ermineskin Band,

08 BRUCE STARLIGHT, suing on his own behalf and on behalf  
09 of all other members of the Sarcee Band

10 Plaintiffs,

11 -and-

12 HER MAJESTY THE QUEEN

13 Defendant

14 -and-

15 NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA

16 (ALBERTA), AND NON-STATUS INDIAN ASSOCIATION OF

ALBERTA

17 Interveners

18

19 PROCEEDINGS

20 October 26, 1993

21 Volume 22

22 Held at the Federal Court of Canada

23 Edmonton, Alberta

24 Pages 3324 to 3551

25

26 Taken before: The Honourable Mr. Justice F. Muldoon

03325:01 APPEARANCES

02 M. Henderson, Esq. For the Plaintiffs

03 C. M. Twinn, Ms.

04 P. Healey, Esq.

05 D. D. Akman, Esq. For the Defendant

06 E. Meehan, Esq. Intervener for the

07 Native Council of Canada

08

09 P. J. Faulds, Esq. Intervener for the Native

10 T. K. O'Reilly, Esq. Council of Canada (Alberta)

11

12 T. P. Glancy, Esq. Intervener for the

13 Non-Status Indian

14 Association of Alberta

15

16

17

18 June Rossetto Court Registrar

19

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

DARCY TWIN

Sworn before me this 24<sup>TH</sup> day  
of SEPTEMBER, 2019

A Commissioner for Oaths in and for Alberta

MICHAEL R. MCKINNEY Q.C.  
BARRISTER & SOLICITOR

20 Sandra German, CSR(A), RPR Court Reporter

21

22 \* \* \* \* \*

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03326:01

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03327:01 THE REGISTRAR: This Court is now resumed.

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

06 THE COURT: Yes. Thank you.

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

12 THE COURT: Yes.

13 MR. MEEHAN: Yes, until yesterday, Your

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

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

23 A That's right.

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

26 A That's automatic.

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

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

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

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

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

14 A No.

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

20 A No more than \$1200 I believe.

21 Q And how do you know that?

22 A I believe we had about -- if I recall when I was chief  
 23 we had \$40,000 in the capital fund I believe. That's  
 24 the figure I can remember. And others later on had  
 25 voluntary -- or enfranchised either by marriage,  
 26 whatever. That was about the figure I believe. It's  
 03419:01 never -- the figure was never -- it's difficult.

02 Sometimes it would take us six months to get an  
 03 accounting of what was in the capital revenue funds.

04 Q But the overall account in 1967 was --

05 A Was about 40,000.

06 Q \$40,000?

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

08 Q So if there were 30 members, say, they would each get  
 09 1/30th of \$40,000.

10 A Yes, there was 38 members at '85.

11 Q I'm just asking a hypothetical question.

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



25 back.  
 26 I'm looking at page 2 there on the  
 03761:01 left-hand side paragraph 5. And just directing your  
 02 attention to the first paragraph, I gather that treaty  
 03 8 and Sawridge welcomed the removal of discrimination  
 04 on the grounds of sex and welcomed the increase in  
 05 Indian control of band membership which Bill C-31  
 06 provided?  
 07 A Yes, to some extent.  
 08 Q Yes. Okay. And I gather that the reservation or the  
 09 concern that you had related to the fact that in return  
 10 for getting those things, Bill C-31 said that there was  
 11 a group of people whom you would have to accept back  
 12 into membership, and that was what you were concerned  
 13 about?  
 14 A Automatic reinstatement of a large group is what we  
 15 were --  
 16 Q Exactly. Okay.  
 17 A Yeah.  
 18 Q There's been a lot of discussion about who is  
 19 automatically reinstated under Bill C-31. I would like  
 20 you to turn to page 11, paragraph number 22.  
 21 At the time this brief was made,  
 22 the treaty 8 bands and the Sawridge band understood  
 23 that Bill C-31 did not reinstate first generation  
 24 descendents of people who had lost their status under  
 25 the act. You understood that the bill did not reinstate  
 26 children? Is that correct?  
 03762:01 A I don't want to be on a document committed to a  
 02 document that -- on a proposal.  
 03 Q No, I'm just saying that at the time that this document  
 04 was prepared based on whatever form the bill was --  
 05 whatever stage the bill was at then, you and your  
 06 professional advisors understood that bill did not  
 07 reinstate the first generation descendents or the  
 08 children of the people who had lost their status? That  
 09 was understood at that time?  
 10 A At that time, that was the negotiating that took place.  
 11 Q Sure. Okay. And that was -- how you understood the bill  
 12 was at that time?  
 13 A The bill kept changing from time to time. One day we  
 14 would come home and they had -- there was another  
 15 category. There was all sorts of pressures.  
 16 Q Well, Chief Twinn, in any event, we'll just deal with  
 17 what you understood at the time of this particular  
 18 brief.

21 business activity? That is what makes it distinct?

22 A That's right.

23 Q The Sawridge Band is essentially a business entity?

24 A The Sawridge Band is a group of people, a band, that we  
 25 use this for a common purpose. We believe that we have  
 26 to be strong financially.

03884:01 To do that, there's a lot of things  
 02 that people must be. It is not wrong for other people to  
 03 be strong and to be financially strong. All of the other  
 04 things that make society run, I guess we try to keep  
 05 up -- not keep up, but try to come to a level, if  
 06 possible.

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

12 Q Of course.

13 A I don't know what . . .

14 Q Of course. And what I'm saying is that when you talk  
 15 about the Sawridge Band and your concern for its future,  
 16 what you're really concerned about is the future of the  
 17 business activities of the Sawridge Band.

18 A If we were told initially by the oil companies an  
 19 estimate that the oil reserves would only be 20 years,  
 20 we've went that 20 years -- there is someone  
 21 speculating -- speculating -- it's going to be 30 years.  
 22 But it is our job that they don't diminish -- 15 million  
 23 hasn't -- it's been growing.

24 When we hold in common, the band --  
 25 and it goes for all bands, I think, in Canada, that these  
 26 assets -- I think I may be repeating myself. I'm

03885:01 sorry, but we cannot will our share. We do not -- a  
 02 child does not inherit. It's all in common.

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

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

10 Q Yes?

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



15 But, as you know, if you're an  
 16 Albertan, Alberta Heritage Trust Fund had about  
 17 \$12 billion, and it wasn't very long ago it went down.  
 18 Whether the membership is large or  
 19 it's small, it's just as dangerous when it's political.  
 20 So, you know, I guess that is my  
 21 explanation for how we do things. No one is suffering, I  
 22 don't believe. If any of these individual members or  
 23 anyone -- I guess they could be middle income with very  
 24 slight effort.

25 Q My point, Chief Twinn, was simply that what you're  
 26 concerned about -- and perhaps what you've been doing is  
 03886:01 just confirming this for me -- what you're concerned  
 02 about is the future of the band's business activities.

03 A That's not what I said. I guess I'm not getting clear.  
 04 I'm saying to you that we're trying  
 05 to be self-supporting. And to keep using money -- I  
 06 think I have tried to say to you -- Alberta Heritage  
 07 Trust Fund had a lot of money. They're broke today.  
 08 It's dangerous, that competitive world. If Alberta has  
 09 some more problems or if Canada has problems, what do  
 10 these figures mean? What could they mean? Canadian  
 11 dollar drops, anything could happen.

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

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

24 So I don't know what else you want,  
 25 why you keep insinuating Sawridge is only interested in  
 26 businesses. We have to -- you know, if other people have  
 03887:01 opportunities, we'd be a bunch of lazy bums if we did not  
 02 utilize it properly and for the future, so . . .

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

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

09 Exhibit 26, Document Number 913.  
10 THE COURT: 913, Mr. Faulds?  
11 MR. FAULDS: 913, My Lord.  
12 Q MR. FAULDS: It's a letter dated  
13 November the 2nd of 1987, directed to the Right  
14 Honourable Brian Mulroney, then-Prime Minister of  
15 Canada. And that was signed by yourself, Chief Twinn?  
16 A Mm-hmm.  
17 Q And what I'd ask you to do is look at that letter and in  
18 particular look at the second last paragraph.  
19 MR. HENDERSON: I'm sorry. The Senator is talking  
20 to me, but I don't think he remembers he has to talk out  
21 loud, just to remind him of that.  
22 THE COURT: Thank you for that disclosure,  
23 Mr. Henderson.  
24 A Okay, I read it.  
25 Q MR. FAULDS: If you look at the second last  
26 paragraph of that letter, Chief Twinn, in that letter,  
03888:01 you say,  
02 "The Sawridge Indian Band is in business and  
03 cannot afford to be jeopardizing its position  
04 in the business world, nor the security of its  
05 four hundred (400), plus employees by  
06 expending huge sums of money and time  
07 stick-handling through the Justice  
08 Department's delay tactics."  
09 So I take it that the principal  
10 activity of the Sawridge Band as a band is business.  
11 A In order to survive, probably so. But that only confirms  
12 what I have said, I think, earlier.  
13 Q And that's really what this case is about. It's not  
14 about native rights or culture or tradition or anything  
15 like that; it's about the Sawridge Indian Band's  
16 business?  
17 A Well, I'd beg to differ.  
18 MR. FAULDS: My Lord?  
19 THE COURT: Yes?  
20 MR. FAULDS: Mr. Henderson has passed me a note  
21 to indicate that he has available some of the documents  
22 that he had said that he would look for and that seem to  
23 be relevant to this particular area of the  
24 cross-examination. And I wonder if maybe we could have a  
25 break at this point so that we could look at them. It's  
26 a little bit early, but . . .  
03889:01 THE COURT: All right. I have some questions  
02 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



21 description?  
22 A That's right.  
23 Q And the beneficiaries of the trust are described on  
24 page 2 of that document, and I'd ask you to look at the  
25 definition there.  
26 A Page . . .  
03907:01 Q I'm sorry. Page 2, and it's paragraph 2(a) at the  
02 bottom. And maybe what I could ask you to do,  
03 Chief Twinn, is just read through that definition of  
04 "beneficiaries." And it actually goes on to page 4.  
05 A How far do you want me to go?  
06 Q If you could finish where the definition of "trust fund"  
07 starts. That would be the top of page 4.  
08 Have you had a chance to look that  
09 over?  
10 A Yeah.  
11 Q As I understand it, the people who are beneficiaries  
12 under this settlement are people who would be considered  
13 members of the Sawridge Band under the Indian Act as it  
14 was in April of 1982.  
15 Is that your understanding, too?  
16 A That's right. '82?  
17 Q I think they say -- the date is April -- I don't know  
18 what the significance of it is, but if you look at the  
19 top of page 3 --  
20 A I just don't know why it wouldn't be '85. That's all.  
21 That's fine. It's a legal document, so . . .  
22 Q Sure. But, in any event, what it meant was that the  
23 people who would be beneficiaries would be people who  
24 would be considered members of the band before the  
25 passage of Bill C-31?  
26 A That's right.  
03908:01 Q The object of that was to exclude people who might become  
02 members of the Sawridge Band under Bill C-31 as  
03 beneficiaries?  
04 A Yes, to a certain extent, yeah.  
05 Q Was it the intention that all of the assets of the band  
06 would be covered by that agreement or only some?  
07 A I believe all assets that are -- not including -- I'm  
08 going to repeat -- I believe not including the capital --  
09 the funds that are held in Ottawa.  
10 Q So all assets other than that capital fund in Ottawa was  
11 to be covered by this trust agreement?  
12 A Mm-hmm, or whatever the documents are in there.  
13 I can't . . .  
14 Q But I just want to know, when this agreement was being

15 prepared, what your objective was. And your first  
 16 objective was that people who might become band members  
 17 under Bill C-31 wouldn't be beneficiaries?

18 A Mm-hmm.

19 Q That's correct? That was Objective Number 1?

20 A Right.

21 Q And Objective Number 2 was that the trust would cover all  
 22 of the assets of the Sawridge Band that were under the  
 23 Sawridge Band's control?

24 A Yes. What's on there, I believe. I don't want to be  
 25 saying something that --

26 Q I'm not trying to trick you. I'm wondering if that's  
 03909:01 what your objective was.

02 A That's the objective of those.

03 Q Sure. So that even if people under the bill became  
 04 members of the band, they would be excluded from sharing  
 05 in the assets of the band?

06 A For -- especially a short purpose, right, for a short  
 07 while there.

08 Q Until you changed the trust agreement?

09 A We didn't know what the Bill C-31 was going to bring  
 10 about.

11 Q So you tried to create a trust arrangement that would  
 12 prevent Bill C-31 members from having any share in the  
 13 band's assets?

14 A That's right, on this one, yeah.

15 Q Okay. Now, as far as whether or not -- it's a legal  
 16 question, I suppose, whether or not you succeed in doing  
 17 what you're trying to do. You hire lawyers to try and do  
 18 things for you, and sometimes they do it, and sometimes  
 19 they don't. You recognize that?

20 A I'm not saying the lawyers -- what they try to do or not.  
 21 But the document, you know -- I need professional help  
 22 for documents.

23 MR. HENDERSON: My Lord, just so it's clear on the  
 24 record -- I want to make sure it is. Because the Senator  
 25 has not had a chance to read through all of these  
 26 documents, I've been giving history to my friend.

03910:01 There's an '86 version of the same  
 02 trust where the definition of "beneficiary" would include  
 03 anyone, from time to time, becoming a member under the  
 04 Indian Act or otherwise. And that deals with the  
 05 circumstance where the bill is now law, and you have to  
 06 deal with people on that basis.

07 So just so it's not misleading,  
 08 there's a time period for each of these things.

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

18  
19 \* \* \* \* \*

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03948:01 (PROCEEDINGS RESUMED AT 9:05 A.M.)

02 MR. HENDERSON: My Lord, I'm going to ask for your  
03 consent to excuse my friends. I've got them chugging  
04 through the documents again today.  
05 THE COURT: That's reasonable, Mr. Henderson.  
06 Yes. Thank you.  
07 MR. FAULDS: And with respect to Mr. Glancy,  
08 My Lord, I believe Mr. Meehan is going to . . .  
09 MR. MEEHAN: With your permission, My Lord, may



10 I act as agent for Mr. Glancy?  
11 THE COURT: Of course. With his consent, of  
12 course.  
13 MR. MEEHAN: With his consent.  
14 MR. FAULDS: And at his request.  
15 THE COURT: Mr. Faulds?  
16 MR. FAULDS: Thank you, My Lord.  
17 MR. TWINN CROSS-EXAMINED FURTHER BY MR. FAULDS:  
18 Q Chief Twinn, when we broke at the end of yesterday, you  
19 had in front of you two documents. They were  
20 Exhibits 92(E), and I believe it was 92(G).  
21 THE COURT: G and E?  
22 MR. FAULDS: E and G.  
23 Q MR. FAULDS: Now, Chief Twinn, just to keep  
24 things straight, 92(E), I understand, is -- I'll call it  
25 the 1985 trust which did not include the Bill C-31 people  
26 as beneficiaries, and 92(G) is the 1986 trust which would  
03949:01 include the Bill C-31 people as beneficiaries.  
02 What I was asking you about at the  
03 end of the day was, as far as you can recall, were these  
04 two trusts supposed to exist side by side? Were there  
05 supposed to be two trusts?  
06 A No. The second trust was made after that, after the '85  
07 trust. I think the '86 was made after the '85.  
08 Q Was every asset held by the 1985 trust supposed to be  
09 placed into the 1986 trust?  
10 A Probably everything, unless there was some new company  
11 that had been -- between '85 and the '86 was made. I  
12 don't know that off the top of my head.  
13 Q But the intention was that the 1985 trust no longer be  
14 effective and that everything be in the 1986 trust?  
15 A That's right.  
16 THE COURT: So it's a substitution.  
17 THE WITNESS: That's right.  
18 Q MR. FAULDS: And it appears that with the  
19 exception of the documents that Mr. Henderson pointed  
20 out, that is, Document 92(K), which was a trust  
21 declaration over Plaza Food Fare Inc., we don't have any  
22 records or documents of the assets actually being placed  
23 into the 1986 trust. That's correct?  
24 A That could be correct.  
25 Q But that was the intention?  
26 A That's the intention.  
03950:01 Q And if we can look at the back page of Exhibit 92(G), the  
02 second last page, page 8, that would be your signature as  
03 the settlor under A there?

24 A That's right.

25 Q Under the Sawridge Indian Band, again, that is your  
26 signature?

03952:01 A That's right.

02 Q And the witness to your signature on behalf of the  
03 Sawridge Indian Band, I believe, that would be  
04 Mr. McKinney's?

05 A That's the last page?

06 Q Yeah, on the last page.

07 A That's right.

08 Q Yeah. He's the executive director?

09 A Right.

10 Q I gather from looking at those documents, Chief Twinn,  
11 that you sign a variety of legal documents in different  
12 capacities.

13 A Right.

14 Q And your capacities include as chief of the band?

15 A That's right.

16 Q As a director of various corporations?

17 A That's right.

18 Q As a trustee of the trusts that have been created?

19 A That's right.

20 Q And I just wanted to be sure that I understood the  
21 various points that we talked about yesterday. I wonder  
22 if maybe we could just go through a brief summary, and  
23 you can tell me if this is correct.

24 First of all, I gather that the  
25 primary source of -- originally, the primary source of  
26 income for the Sawridge Band originated with the  
03953:01 discovery of oil under the reserve lands.

02 A I'll call it capital funds.

03 Q And those capital funds grew with the discovery of oil  
04 and the exploration and sale and royalties from that oil?

05 A Whatever that says with the Indian Act, that is capital  
06 funds.

07 Q So the royalties from the oil are received, and those  
08 royalties go into the band's capital account?

09 A That's right, in Ottawa.

10 Q That's right. And then funds can be drawn from that  
11 capital account by the band on a resolution of the band  
12 council?

13 A Sometimes it takes a membership. Sometimes, you know, it  
14 takes a general meeting sometimes, depending on who . . .

15 Q Okay. Is it fair to say that in the majority of cases  
16 where funds have been drawn from the capital account, in  
17 the last few years that has been done on the basis of a



18 band council resolution?

19 A Everything has to be done at least by band council  
 20 resolution. Sometimes the department, from time to time,  
 21 requests the majority vote, et cetera.

22 Q Okay. Unless the department asks for something, it's  
 23 done on band council resolution?

24 A It always -- it has to be done by band council  
 25 resolution.

26 Q And band council resolution would involve a resolution  
 03954:01 which would be passed by -- well, the band council is you  
 02 and your two close relatives?

03 A And my two close relatives.

04 Q Yes. And when funds have been drawn from the capital  
 05 account, those funds have been invested in various  
 06 companies that carry on business under the Sawridge name?

07 A That's right.

08 Q And those companies are -- you and your two close  
 09 relatives are the directors and shareholders in those  
 10 companies?

11 A Myself and my two close relatives are.

12 Q And the shares in those companies that carry on business  
 13 under the Sawridge name have then been placed in a trust  
 14 for which you and your two close relatives are the  
 15 trustees?

16 A Sometimes it doesn't go necessarily directly. Sometimes  
 17 it goes directly to the company, and then the company  
 18 later on, at a convenient time, will go to the trust, as  
 19 accounting procedures require, to do audits, whatever. A  
 20 lot of this is done by accountants plus legal people.

21 Q So I understand you're talking about the financing of the  
 22 corporations.

23 A Not only financing, even the trust declarations there.  
 24 It's done with legal and accounting procedures. As  
 25 accountants become aware there is, you know -- they have  
 26 to be audited, so there is advice from two sources here  
 03955:01 that we get.

02 THE COURT: Is your question predicated,  
 03 Mr. Faulds, on net revenue from the business operations  
 04 going into the trust?

05 MR. FAULDS: No. My question related to the  
 06 shares in the corporation.

07 And perhaps that's where we're  
 08 missing each other, Chief Twinn.

09 Q MR. FAULDS: What I was suggesting was that the  
 10 shares in the Sawridge companies, I believe you've  
 11 indicated to us, have then been placed in the Sawridge

12 trust.

13 A I think generally it comes in directly to the company.

14 If it's a new company, something, say, like the food

15 store, something is coming in, if there is equity put in,

16 it goes into that. And generally, after awhile, when

17 that's been set up, on an appropriate time, accounting

18 procedures, whatever, then it's usually placed in a

19 trust.

20 Q Okay. So that in the end result -- and I think you've

21 said this was the intention of the trust -- the trust

22 holds the band's assets, and that means the shares of the

23 Sawridge companies?

24 A Let me put it -- I'll try and put it in simple terms

25 again, I guess.

26 The trust -- the companies go into

03956:01 the Sawridge trust after -- after some time the company

02 is formed, it generally goes into the Sawridge trust.

03 Q Sure. When you say "the companies go into the Sawridge

04 trust," that means that the shares are held by the trust?

05 A Right.

06 Q And the trustees of the Sawridge trust --

07 THE COURT: Could I interrupt, Mr. Faulds?

08 MR. FAULDS: I'm sorry.

09 THE COURT: The shares are held by the Sawridge

10 trust ultimately, sooner or later.

11 THE WITNESS: That's right.

12 THE COURT: Net revenues of the business

13 operations, what becomes of them?

14 THE WITNESS: The companies run -- the revenues

15 are in there. And when there is an overflow, which isn't

16 often, but, you know, if there is sometimes equities

17 needed for a new business, that plus some more funds

18 could go in. Like, if it's a food fare business or

19 something that's purchased to . . .

20 THE COURT: Do they touch base -- are they

21 placed in the trust and then spent for equities in the

22 new businesses, or do they go directly from the operation

23 of the corporation as net revenues to the equity fund for

24 new businesses?

25 THE WITNESS: Generally, I think what's done --

26 the companies are -- itself have the funds separately.

03957:01 The trust -- all the trust is doing, replacing -- in

02 essence, I guess, the band is not a legal entity, and

03 there is from time to time -- I guess it could be

04 difference of legal opinion or accounting opinion. So,

05 to be assured, our advice, that's what we've done. The

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



06 Department of Indian Affairs. They approve it.

07 Q What I am saying to you, sir, is, Was there a band vote

08 for that \$1,553,000 that the Sawridge Band withdrew?

09 A I cannot tell you exactly what that is right now -- right

10 here now. I'm telling you -- all I can answer you, the

11 Department approves these upon their requests. Sometimes

12 they'll want the band vote, or sometimes they won't.

13 Q Is it fair to say that the band takes for face value your

14 band council resolution and acts on it except in very

15 exceptional circumstances where they may ask you to hold

16 a band vote? Is that a fair statement?

17 THE COURT: The Department takes, not the band.

18 A The Department of Indian Affairs approves everything,

19 so . . .

20 Q MR. AKMAN: Sir, they take for face value, in

21 good faith and good credit, your band council resolutions

22 requesting payments out of capital account, and in very

23 exceptional circumstances they ask you for a vote. Is

24 that correct?

25 A That's right.

26 Q So that most of the funds that come out of the capital

04004:01 account, go into your companies, which go then into the

02 trusts, are all down on band council resolution?

03 A One intercompany, they're not done by band council

04 resolution.

05 Q Hmm?

06 A They're not done by one intercompany, once it gets from

07 one to . . .

08 THE COURT: I think Mr. Akman was asking,

09 Senator, whether transfers from the band accounts to any

10 of the companies, not intercompany transfers but from the

11 band's funds to the companies, if those are done by band

12 council resolution alone or by a vote. That's what he's

13 asking.

14 A At the best of my knowledge, because I don't have -- a

15 band council resolution stresses what it set out to do.

16 In order to get that audited, that has -- an auditor

17 could not at that level. Basically states what the use

18 of that capital fund is going to do, and then it goes

19 in. Then I thought it became legal at that point, when

20 the Minister approved it for that reason. That's what it

21 spent for.

22 Q MR. AKMAN: That's right. So the oil comes out

23 of the ground; it goes into the capital account; it comes

24 out of the capital account through band council

25 resolutions --

26 A Right.

04005:01 Q -- it goes into your companies --

02 A Some of it.

03 Q -- for economic development?

04 A Right.

05 Q And, from the companies, you, as director and shareholder

06 of these companies, put the company assets -- have placed

07 the company assets or intended to place all the company

08 assets in these trusts. Is that right?

09 A Right.

10 Q So that the undivided interests of the band members is

11 all to be found in these trusts?

12 A I think they'll all be traceable.

13 Q And we've already agreed that you have no consent or

14 permission to deal with this property from any band

15 member living off reserve? You have no authority or

16 permission from any of these people to be director or

17 shareholder or settlor or trustee; we've agreed on that,

18 too?

19 A What sets out from -- I guess consent is voting for chief

20 and council.

21 Q Good.

22 Now, then, I want you to turn to

23 Document 92(G), paragraph 6.

24 THE COURT: I think you said 92(G), did you?

25 MR. AKMAN: G, yes, My Lord.

26 Q MR. AKMAN: 92(G), second paragraph of 6,

04006:01 Clause 6, of page 4.

02 Now, this second paragraph of 6

03 says,

04 "During the existence of this trust, the

05 trustees shall have complete and unfettered

06 discretion to pay or to apply all or so much

07 of the net income of the trust fund, if any,

08 or to accumulate the same, or any proportion

09 thereof, and all or so much of the capital

10 trust fund as they in their unfettered

11 discretion from time to time deem appropriate

12 for any one or more of the beneficiaries. The

13 trustees may make such payments at such time

14 from time to time in such manner and such

15 proportions as the trustees in their

16 uncontrolled discretion deem appropriate."

17 Do you see that?

18 A I see that.

19 Q So, according to this trust fund created to promote the

COURT FILE NUMBER

Clerk's stamp:

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 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

**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](http://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**

810070; August 29, 2011  
810070; August 30, 2011



Commissioner's Name:  
Appointment Expiry Date:  
**MARCO S. PORETTI**  
*Barrister / Solicitor*

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

Paul Bjeld

Sworn before me this 30 day  
of August A.D., 20 11

M. Poretti  
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. 19 N.S.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 descendant 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:

Deather Spk  
NAME

1100 One Thornton Court  
ADDRESS

Deather Spk  
NAME

1100 One Thornton Court  
ADDRESS

A. Settlor:

Walter P. J.

B. Trustees: 1.

Walter P. J.

Weather sport  
NAME

1100 One Thonston Court  
ADDRESS

Weather sport  
NAME

1100 One Thonston Court  
ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

2. G. V. [Signature]

3. Walter F. [Signature]

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

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

Paul Bugold

Sworn before me this 30 day  
of August A.D., 2011

M. Poretti  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

SAWRIDGE BAND INTER VIVOS SETTLEMENT

MARCO S. PORETTI

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15<sup>th</sup>  
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 E Thom  
NAME

Box 326, Slave Lake, Alta  
ADDRESS

A. Settlor

Walter 2

Bruce E Thom  
NAME

Box 326, Slave Lake, Alta  
ADDRESS

B. Trustees:

1.

Walter 2

Bruce E Thom  
NAME

Box 326, Slave Lake, Alta  
ADDRESS

2.

G/K

Bruce E Thom  
NAME

Box 326, Slave Lake, Alta  
ADDRESS

3.

Same 2

Schedule

One Hundred Dollars (\$100.00) in Canadian Currency.

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

Paul Boyold

Sworn before me this 30 day

of August A.D., 20 11

THE SAWRIDGE TRUST

DECLARATION OF TRUST

A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

**MARCO S. PORETTI**

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;



- 3 -

- (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



- 4 -

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.

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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



- 6 -

(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.

- 7 -

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.

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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  
#1-12220 Strong Road, 14th.

NAME

ADDRESS

NAME

ADDRESS

NAME

ADDRESS

A. Settlor

CHIEF WALTER P. TWINN

B. Trustees:

1.

CHIEF WALTER P. TWINN

2.

CATHERINE TWINN

3.

GEORGE TWINN



- 9 -

SCHEDULE

One Hundred Dollars (\$100.00) in Canadian Currency.



# SAWRIDGE TRUSTS

24 November 2009

Dear Sawridge Trusts Potential Beneficiary,

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

Paul Boyold  
Sworn before me this 30 day  
of August A.D., 2011

Marco S. Poretti  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

MARCO S. PORETTI

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.

## **Letter to Beneficiaries, 24 November, 2009**

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](mailto: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

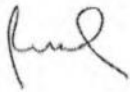
**Letter to Beneficiaries, 24 November, 2009**

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 15<sup>th</sup> 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 15<sup>th</sup> 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 the 1986 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, 2012

809051\_2; September 12, 2011

} Paul Bujold



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

Dentons Canada LLP  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V5  
Counsel for the Sawridge Trustees

Attention: Doris C.E. Bonora  
Telephone: (780) 423-7188  
Fax: (780) 423-7276  
File No: 551860-001-DCEB



**Respondents:**

Hutchison Law  
#190 Broadway Business Square  
130 Broadway Boulevard  
Sherwood Park AB T8H 2A3  
Attention: Janet L. Hutchison

Counsel for the Office of the Public  
Guardian and Trustee

McLennan Ross LLP  
600 McLennan Ross Building  
12220 Stony Plain Road  
Edmonton AB T5N 3Y4  
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, <b>Edmonton</b>
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	

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")

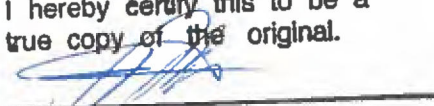
DOCUMENT CONSENT ORDER (ISSUE OF DISCRIMINATION)

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Dentons Canada LLP  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V5

*JUSTICE: DR. B. THORNTON  
DATE: JAN 19, 2018  
LOCATION: EDMONTON*

I hereby certify this to be a  
true copy of the original.

  
for Clerk of the Court

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"), 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 the 1985 Trust should be dissolved.~~  
*a ground upon which* *could.*
5. The provisions in paragraph 4, above, will not prevent reliance on this Consent Order for any purpose in the within proceedings.

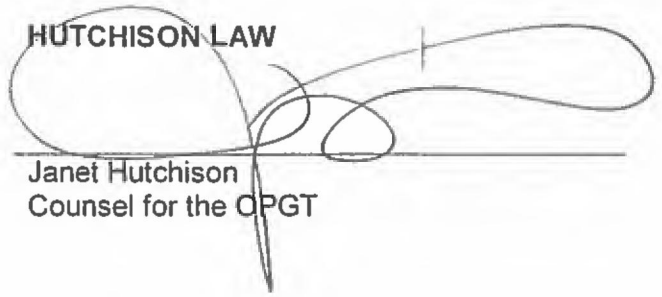
  
The Honourable D/R. G. Thomas  
*Thomas J*

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 May 30, 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 <i>April 30</i>
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 <i>June 15</i>
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



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 Sawridge Trust")

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

DOCUMENT ORDER (SAWRIDGE FIRST NATION AND SHELBY TWINN  
APPLICATIONS FOR INTERVENOR STATUS IN THE  
JURISDICTIONAL ISSUE AND ASSET TRANSFER ISSUE  
APPLICATIONS)

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: 780-423-8506  
Facsimile: 780-423-2870  
File No.: 64203-7/EHM

I hereby certify this to be a  
true copy of the original.

*[Signature]*  
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: October 31, 2019

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice J.T. Henderson

UPON hearing the Application by the Sawridge First Nation ("Sawridge") filed September 26, 2019 and the Application by Shelby Twinn filed October 16, 2019 seeking status to intervene 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 (the "Jurisdictional Issue") and in the application filed by the Trustees of the 1985 Sawridge Trust on September 13, 2019 (the "Asset Transfer Issue") pursuant to Rule 2.10;

AND UPON reading the Affidavit of Darcy Twinn sworn September 24, 2019 in support of Sawridge's Application;

AND UPON reading the transcript from the questioning on affidavit of Darcy Twinn which took place on October 18, 2019;

AND UPON read the Affidavit of Shelby Twinn sworn and filed October 23, 2019 in support of her Application;

AND UPON reading the written submissions of counsel for Sawridge, counsel for the Sawridge Trustees, counsel for the Office of the Public Guardian and Trustee of Alberta (the "OPGT"), and Shelby Twinn;

AND UPON hearing oral submissions from counsel for Sawridge, counsel for the Sawridge Trustees, counsel for the OPGT, counsel for Catherine Twinn, and Shelby Twinn on October 30, 2019;

IT IS HEREBY ORDERED:

1. Sawridge is granted status to intervene in both the Jurisdictional Issue and Asset Transfer Issue applications, pursuant to Rule 2.10 of the *Alberta Rules of Court*, Alta Reg 124/2010, with the following rights and privileges:
  - (a) Sawridge may file written briefs of law in the Jurisdictional Issue and Asset Transfer Issue applications;
  - (b) Sawridge may put forth evidence in the Jurisdictional Issue and Asset Transfer Issue applications; and
  - (c) Sawridge may make oral submissions in the Jurisdictional Issue and Asset Transfer Issue applications.
2. Subject to further order of the Court, Sawridge has no obligation with respect to production of documents in relation to the Jurisdictional Issue and the Asset Transfer Issue applications as a condition of leave to intervene.
3. Shelby Twinn is granted status to intervene in the Asset Transfer Issue application only, pursuant to Rule 2.10 of the *Alberta Rules of Court*, Alta Reg 124/2010, with the following rights and privileges:
  - (a) Shelby Twinn may file a written brief of law in the Asset Transfer Issue application;
  - (b) Shelby Twinn may put forth evidence in the Asset Transfer Issue application; and
  - (c) Shelby Twinn may make oral submissions in the Asset Transfer Issue application.

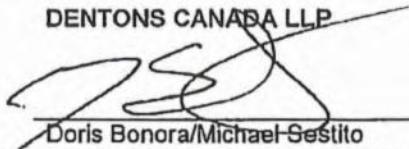


4. Shelby Twinn's request for advance costs is denied.

  
The Honourable Mr. Justice J.T. Henderson

APPROVED AS TO FORM AND CONTENT:

DENTONS CANADA LLP

  
Doris Bonora/Michael Sestito  
Counsel for the Sawridge Trustees

McLENNAN ROSS LLP

Crista Osualdini/David Risling  
Counsel for Catherine Twinn as Trustee for  
the 1985 Trust

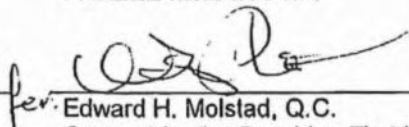
SHELBY TWINN

\_\_\_\_\_  
Shelby Twinn  
Self-Represented


HUTCHISON LAW

\_\_\_\_\_  
Janet Hutchison/P. Jonathan Faulds, Q.C.  
Counsel for the OPGT

PARLEE McLAWS LLP

  
Edward H. Molstad, Q.C.  
Counsel for the Sawridge First Nation



	Clerk's stamp:
COURT FILE NUMBER	1103-14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	<p>IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED</p> <p>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")</p>
APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
DOCUMENT	<b>Order</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<p>Attention: Doris C.E. Bonora Reynolds, Mirth, Richards &amp; Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8</p> <p>Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-DCEB</p>

Date on which Order Pronounced: August 31, 2011

Name of Justice who made this Order: D. R. G. Thomas

UPON the application of the Trustees of the 1985 Sawridge Trust (the "Applicants" or the "Trustees"); AND UPON hearing read the Affidavit of Paul Bujold, IT IS HEREBY ORDERED AND DECLARED as follows:

### **Application**

1. An application shall be brought by the Trustees of the 1985 Sawridge Trust for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Sawridge Trust (hereinafter referred to as the "Advice and Direction Application"). The Advice and Direction Application shall be brought:
  - a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".
  - b. To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust.

### **Notice**

2. The Trustees shall send notice of the Advice and Direction Application to the following persons, in the manner set forth in this Order:
  - a. The 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 Sawridge Trust created on August 15, 1986, 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 created on 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; and
  - i. The Minister of Aboriginal Affairs and Northern Development Canada (hereinafter referred to as the "Minister") in respect, *inter alia*, of all those

persons who are Status Indians and who are deemed to be affiliated with the Sawridge First Nation by the Minister.

(those persons mentioned in Paragraph 2 (a) – (i) shall collectively be referred to as the “Beneficiaries and Potential Beneficiaries”)

3. Notice of the Advice and Direction Application on any person shall not be used by that person to show any connection or entitlement to rights under the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to entitle a person to being held to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to determine or help to determine that a person should be admitted as a member of the Sawridge First Nation. Notice of the Advice and Direction Application is deemed only to be notice that a person may have a right to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust and that the person must determine his or her own entitlement and pursue such entitlement.

#### **Dates and Timelines for Advice and Direction Application**

4. The Trustees shall, within 10 business days of the day this Order is made, provide notice of the Advice and Direction Application to the Beneficiaries and Potential Beneficiaries in the following manner:
  - a. Make this Order available by posting this Order on the website located at [www.sawridgetrusts.ca](http://www.sawridgetrusts.ca) (hereinafter referred to as the “Website”);
  - b. Send a letter by registered mail to the Beneficiaries and Potential Beneficiaries for which the Applicants have a mailing address and by email to the Beneficiaries and Potential Beneficiaries for which the Applicants have an email address, advising them of the Advice and Direction Application and advising them of this Order and of the ability to access this Order on the Website (hereinafter referred to as the “Notice Letter”). The Notice Letter shall also provide information on how to access court documents on the Website;
  - c. Take out an advertisement in the local newspapers published in the Town of Slave Lake and the Town of High Prairie, setting out the same information that is contained in the Notice Letter; and
  - d. Make a copy of the Notice Letter available by posting it on the Website.
5. The Trustees shall send the Notice Letter by registered mail and email no later than September 7, 2011.
6. Any person who is interested in participating in the Advice and Direction Application shall file any affidavit upon which they intend to rely no later than September 30, 2011.
7. Any questioning on affidavits filed with respect to the Advice and Direction Application shall be completed no later than October 21, 2011.
8. The legal argument of the Applicants shall be filed no later than November 11, 2011.



9. The legal argument of any other person shall be filed no later than December 2, 2011.
10. Any replies by the Applicant shall be filed no later than December 16, 2011.
11. The Advice and Direction Application shall be heard January 12, 2012 in Special Chambers.

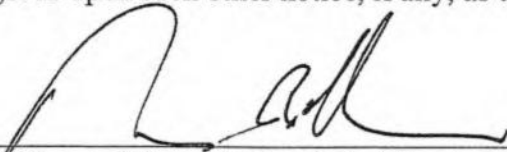
**Further Notice and Service Provisions**

12. Except as otherwise provided for in this Order, the Beneficiaries and Potential Beneficiaries need not be served with any document filed with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument.
13. The Applicants shall post any document that they file with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument, on the Website within 5 business days after the day on which the document is filed.
14. The Beneficiaries and Potential Beneficiaries shall serve the Applicants with any document that they file with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument, which service shall be completed by the relevant filing deadline, if any, contained in this Order.
15. The Applicants shall post all of the documents the Applicants are served with in this matter on the Website within 5 business days after the day on which they were served.
16. The Applicants shall make all written communications to the Beneficiaries and Potential Beneficiaries publicly available by posting all such communications on the Website within 5 business days after the day on which the communication is sent.
17. The Beneficiaries and Potential Beneficiaries are entitled to download any documents posted on the Website by the Applicants pursuant to the terms of this Order.
18. Notwithstanding any other provision in this Order, the following persons shall be served with all documents filed with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument:
  - a. Legal counsel for the Applicants;
  - b. Legal counsel for any individual Trustee;
  - c. Legal counsel for any Beneficiaries and Potential Beneficiaries;
  - d. The Sawridge First Nation;
  - e. The Public Trustee; and

f. The Minister.

**Variation or Amendment of this Order**

19. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order on not less than 7 days' notice to those persons identified in paragraph 17 of this Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_  
Justice of the Court of Queen's Bench in Alberta  
Thomas J

809772; August 31, 2011



## 33-34 ELIZABETH II

### CHAPTER 27

#### An Act to amend the Indian Act

[Assented to 28th June, 1985]

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;

## 33-34 ELIZABETH II

### CHAPITRE 27

#### Loi modifiant la Loi sur les Indiens

[Sanctionnée le 28 juin 1985]

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» 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» comprend un enfant né du mariage ou hors mariage, un enfant légalement adopté, ainsi qu'un enfant adopté selon la coutume indienne;

«registraire» désigne le fonctionnaire du ministère responsable du registre des Indiens et des listes de bande tenus au ministère;»

S.R., c. I-6; ch. 10 (2<sup>e</sup> suppl.); 1974-75-76, c. 48; 1978-79, ch. 11; 1980-81-82-83, ch. 47, 110; 1984, ch. 4

«électeur»  
"elector"

«enfant»  
"child"

«registraire»  
"Registrar"

(2) Le paragraphe 2(1) de la même loi est modifié par insertion, suivant l'ordre alphabétique, de ce qui suit :

«liste de bande» signifie une liste de personnes tenue en vertu de l'article 8 par une bande ou au ministère;»

«registre des Indiens» signifie le registre de personnes tenu en vertu de l'article 5;»

«liste de bande»  
"Band List"

«registre des Indiens»  
"Indian Register"

"Indian Register"  
«registre...»

"Indian Register" means the register of persons that is maintained under section 5;"

2. Section 4 of the said Act is amended by striking out subsection (2) and substituting the following therefor:

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.

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."

3. The said Act is further amended by adding thereto, immediately after section 4 thereof, the following section:

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."

2. L'article 4 de la même loi est modifié par retranchement du paragraphe (2) et son remplacement par ce qui suit :

«(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

(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. La même loi est modifiée par insertion, après l'article 4, de ce qui suit :

«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 73g) ou h), au paragraphe 74(4), à l'article 84, à l'alinéa 87a), à l'article 88, au paragraphe 89(1) ou à l'alinéa 107b) 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 :

*«Registre des Indiens*

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.

(2) Les noms figurant au registre des Indiens immédiatement avant le 17 avril 1985 constituent le registre des Indiens au 17 avril 1985.

(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.

(4) Le registre des Indiens indique la date où chaque nom y a été ajouté ou en a été retranché.

(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.

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

1974-75-76, ch.  
48, art. 25;  
1978-79, ch. 11,  
art. 10

Tenue du  
registre

Registre des  
Indiens existant

Additions et  
retranchements

Date du  
changement

Demande

Personnes ayant  
droit à  
l'inscription

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 1<sup>er</sup> 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).

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

(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.

Idem

(3) Pour l'application de l'alinéa (1)f) et du paragraphe (2) :

Présomption

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.

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.

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.

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.

#### *Band Lists*

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.

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.

1985 est réputée avoir droit d'être inscrite en vertu de ces alinéas.

7. (1) Les personnes suivantes n'ont pas droit d'être inscrites :

Personnes  
n'ayant pas  
droit à  
l'inscription

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.

Exception

(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.

Idem

(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.

#### *Listes de bande*

Tenue de la  
liste

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.

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.	(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.	Listes de bande existantes
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.	(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.	Additions et retranchements
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.	(4) La liste de bande tenue au ministère indique la date où chaque nom y a été ajouté ou en a été retranché.	Date du changement
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.	(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.	Demande
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.	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.	Pouvoir de décision
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.	(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.	Règles d'appartenance
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.	(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.	Statut administratif sur l'autorisation requise
Acquired rights	(4) Membership rules established by a band under this section may not deprive any person who had the right to have his	(4) Les règles d'appartenance fixées par une bande en vertu du présent article ne peuvent priver quiconque avait droit à ce	Droits acquis

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.

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.

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.

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.

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.

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

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) 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.

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.

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.

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.

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'égard 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 et retranchements

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 changement

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

11. (1) À 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 :

Règles d'appartenance pour une liste tenue au ministère

(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;

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) that person is entitled to be registered under paragraph 6(1)(b) as a member of that band;

b) elle a droit d'être inscrite en vertu de l'alinéa 6(1)b) comme membre de cette bande;

(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

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) 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.

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.

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) 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, 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 :

Règles d'appartenance supplémentaires pour les listes 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.

(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.

(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.

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

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.

(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.

(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.

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

Deeming provision

Présomption

Where band amalgamates or is divided

Fusion ou division de bandes

Entitlement with consent of band

Inscription sujette au consentement du conseil

for a band if the council of the admitting band consents.

pour cette dernière si le conseil de la bande qui l'admet en son sein y consent.

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.

**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.

Nom consigné dans une seule liste

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.

**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.

Première décision

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.

(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.

Avis au Ministre

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.

(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.

Seconde décision

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.

**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.

Transfert de responsabilités au ministère

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.

(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.

Avis au Ministre et texte des règles

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.

(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.

Transfert de responsabilités au ministère



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.

**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.

Maintien du  
droit d'être  
consigné dans  
la liste

#### *Notice of Band Lists*

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.

#### *Affichage des listes 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.

Copie de la liste  
de bande  
transmise au  
conseil de  
bande

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.

**(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.

Listes des  
additions et des  
retranchements

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.

**(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.

Affichage de la  
liste

#### *Inquiries*

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*

**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.

Demandes  
relatives au  
registre des  
Indiens ou aux  
listes de bande

*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.

## 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.

## 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.

## Onus of proof

(4) The onus of establishing the grounds of a protest under this section lies on the person making the protest.

## 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.

## 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.

## Decision final

(7) Subject to section 14.3, the decision of the Registrar under subsection (5) is final and conclusive.

## 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

## 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.

(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.

(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.

(4) La personne qui formule la protestation prévue au présent article a la charge d'en prouver le bien-fondé.

(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.

(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.

(7) Sous réserve de l'article 14.3 la décision du registraire visée au paragraphe (5) est finale et péremptoire.

**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

## Protestation relative à la liste de bande

## Protestation relative au registre des Indiens

## Charge de la preuve

## Le registraire fait tenir une enquête

## Preuve

## Décision finale

## Appel

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).

(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.

(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.

(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.

(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-

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).

(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.

(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.

(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.

(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

Copy of notice of appeal to the Registrar

Material to be filed with the court by Registrar

Decision

Court

Copie de l'avis d'appel au registraire

Documents à déposer à la cour par le registraire

Décision

Cour

test resides, or of such other county or district as the Minister may designate.”

5. Subsections 15(1) to (4) of the said Act are repealed and the following substituted therefor:

*“Payments in Respect of Persons Ceasing to be Band Members”*

6. (1) Subsection 16(1) of the said Act is repealed.

(2) Subsection 16(3) of the said Act is repealed.

7. (1) Subsection 17(1) of the said Act is repealed and the following substituted therefor:

*“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.”

(2) Subsection 17(3) of the said Act is repealed and the following substituted therefor:

“(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).”

8. The said Act is further amended by adding thereto, immediately after section 18 thereof, the following section:

“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.”

située ou dans lequel réside la personne qui a formulé la protestation, ou de tel autre comté ou district désigné par le Ministre.»

5. Les paragraphes 15(1) à (4) de la même loi sont abrogés et remplacés par ce qui suit :

*« Paiements aux personnes qui cessent d'être membres d'une bande »*

6. (1) Le paragraphe 16(1) de la même loi est abrogé.

(2) Le paragraphe 16(3) de la même loi est abrogé.

7. (1) Le paragraphe 17(1) de la même loi est abrogé et remplacé par ce qui suit :

*« Nouvelles bandes*

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) Le paragraphe 17(3) de la même loi est abrogé et remplacé par ce qui suit :

«(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. La même loi est modifiée par insertion, après l'article 18, de ce qui suit :

«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.»

Minister may  
constitute new  
bands

No protest

Children of  
band members

Constitution de  
nouvelles  
bandes par le  
Ministre

Aucune  
protestation

Enfants des  
membres d'une  
bande

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 d'«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.

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.

Regulations

(3) The Governor in Council may make regulations prescribing the manner of determining interest for the purpose of subsections (1) and (2)."

(3) Le gouverneur en conseil peut prendre des règlements prévoyant la façon de déterminer les intérêts pour l'application des paragraphes (1) et (2)."

Règlements

12. Section 66 of the said Act is amended by adding thereto, immediately after subsection (2) thereof, the following subsection:

12. L'article 66 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

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."

"(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."

Idem

13. Section 68 of the said Act is repealed and the following substituted therefor:

13. L'article 68 de la même loi est abrogé et remplacé par ce qui suit :

Maintenance of  
dependants

"68. Where the Minister is satisfied that an Indian

"68. Lorsque le Ministre est convaincu qu'un Indien :

Entretien des  
personnes à  
charge

(a) has deserted his spouse or family without sufficient cause,

a) a abandonné son conjoint ou sa famille sans raison suffisante,

(b) has conducted himself in such a manner as to justify the refusal of his spouse or family to live with him, or

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 :

«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.

Qualités exigées des électeurs au poste de chef

(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.»

Conseiller

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 81r) 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.”

(2) Section 81 of the said Act is renumbered as subsection 81(1).

(3) Section 81 of the said Act is further amended by adding thereto the following subsections:

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.

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.”

16. The said Act is further amended by adding thereto, immediately after section 85 thereof, the following section:

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).

«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) L'article 81 de la même loi devient le paragraphe 81(1).

(3) L'article 81 de la même loi est modifié par adjonction de ce qui suit :

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.

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 refrénée par une action en justice à la demande du conseil de bande.»

16. La même loi est modifiée par insertion, après l'article 85, de ce qui suit :

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.

(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.

Consentement  
des élections

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.

(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.

Copie des  
statuts  
administratifs  
au Ministre

Offence

(4) Every person who contravenes a by-law made under this section is guilty of an offence and is liable on summary conviction

(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 :

Infraction

(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

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) 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."

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."

«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.»

Saisie des  
marchandises

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.

**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.

Rapport du  
Ministre au  
Parlement

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.

(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.

Examen par un  
comité  
parlementaire

Commence-  
ment

**23.** (1) Subject to subsection (2), this Act shall come into force or be deemed to have come into force on April 17, 1985.

**23.** (1) Sous réserve du paragraphe (2), la présente loi entre en vigueur ou est réputée être entrée en vigueur le 17 avril 1985.

Entrée en  
vigueur

Idem

(2) Sections 17 and 18 shall come into force six months after this Act is assented to.

(2) Les articles 17 et 18 entrent en vigueur six mois après que la présente loi a reçu la sanction royale.

Idem



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# First Nations families and Canada agree to put litigation on hold while working to end the legacy of “enfranchisement” under the *Indian Act*

From: [Indigenous Services Canada](#)

## News release

March 3, 2022 — OTTAWA, Algonquin Territory, Ontario —  
Indigenous Services Canada

In June 2021, on behalf of several First Nations families, 16 individual plaintiffs launched a constitutional challenge

000190

seeking to end the inequities and exclusion faced by families who were "enfranchised" under earlier versions of the *Indian Act*.

Today, the Honourable Patty Hajdu, Minister of Indigenous Services and Juristes Power Law, who represent the plaintiffs in the *Nicholas v Canada (Attorney General)*, are pleased to announce that they have reached a mutual agreement to put the litigation on hold while working to pursue a legislative solution to end the ongoing impact of enfranchisement under the Act today.

Minister Hajdu has committed to work towards introducing legislation in the House of Commons by summer to make the necessary amendments to the registration provisions of the *Indian Act*.

"Enfranchisement" was a process whereby members of First Nations lost eligibility to registration and membership in their home communities. In return, they gained basic entitlements, such as, Canadian citizenship, the right to vote in Canadian elections, the right to hold land in fee simple, and freedom from compulsory residential school

attendance for their children.

While the enfranchisement process was removed from the *Indian Act* in 1985, the fact of historical enfranchisement continues to play a role in determining entitlement to registration today.

## Quotes

“Today’s announcement is a crucial step forward on the path to reconciliation with Indigenous Peoples in Canada. The government of Canada is committed to working with First Nations, and other impacted partners, to address inequities in the registration provisions in the Indian Act relating to enfranchisement to ensure family histories of enfranchisement no longer affect entitlement to registration under the Act.”

The Honourable Patty Hajdu  
Minister of Indigenous Services

“As the Supreme Court of Canada has emphasized, enfranchisement was a discriminatory policy aimed at eradicating Indigenous culture and assimilating Indigenous peoples. Minister Hajdu’s commitment to introduce legislative changes in a timely manner is a promising step towards finally ending the inequities flowing from the oppressive legacy of enfranchisement in Canada.”

Ryan Beaton

Lawyer, Juristes Power Law

## Quick facts

- In 1985, with the passage of Bill C-31, the enfranchisement process was removed from the *Indian Act*. Many people who had lost entitlement to registration chose to apply and be registered.
- In the cases of *McIvor v Canada*, decided by the British Columbia Court of Appeal in 2009, and *Descheneaux v Canada*, decided by the Quebec Superior Court in 2015, the courts urged Parliament to remedy all remaining



forms of unconstitutional discrimination in the registration provisions.

- In 2019, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*, Bill S-3, came into full effect, eliminating various sex-based inequities in the registration provisions of the *Indian Act*.
- In 2020 the Final Report to Parliament on the Review of S-3 acknowledged that residual inequities remain. These include the ongoing impacts of a family history of enfranchisement on entitlement to registration today. Descendants of individuals and families who were enfranchised are, in many cases, currently not entitled to registration in the same way as descendants of those who were not enfranchised.

## Associated links

- [Indigenous Services Canada – Indian Status](#)
- [An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada \(Procureur général\), Bill S-3](#)

- [ISC – Final Report to Parliament on the Review of S-3](#)
- [Juristes Power Law](#)

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**Canada** 



**Indian Women and the Law in Canada:  
Citizens Minus**

by  
Kathleen Jamieson

April 1978

## 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".<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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."<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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."<sup>10</sup>

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."<sup>11</sup>

This echoes almost exactly the recommendation of the Committee of 1844-45: "their further progress requires more enlarged measures, and more active interference."<sup>12</sup>

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".<sup>13</sup>

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.<sup>14</sup>

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."<sup>15</sup>

"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.<sup>16</sup>



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VOLUME

1

LOOKING FORWARD,  
LOOKING BACK

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REPORT  
OF THE ROYAL COMMISSION  
ON ABORIGINAL PEOPLES



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Royal Commission on  
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Commission royale sur  
les peuples autochtones

To His Excellency  
the Governor General in Council

May It Please Your Excellency

We have the honour to submit to you, pursuant to paragraph 10 of Order in Council  
P.C. 1991-1597, dated 26 August 1991, the Report of the Royal Commission on  
Aboriginal Peoples.

Respectfully submitted,

René Dussault, j.c.a.  
Co-Chair

Georges Erasmus  
Co-Chair

Paul L.A.H. Chartrand  
Commissioner

J. Peter Meekison  
Commissioner

Viola Robinson  
Commissioner

Mary Sillett  
Commissioner

Bertha Wilson  
Commissioner

October 1996  
Ottawa, Canada



1850 land protection acts defined the term 'Indian', for purposes of residency on the protected reserve land base, for the first time in Canadian history, introducing the notion of race as the determining factor. Only a person of Indian blood or someone married to a person of Indian blood would be considered an Indian.

In response to Indian concerns, that definition was narrowed in amendments to the Lower Canada legislation one year later, specifically to exclude from the definition all non-Aboriginal men married to Indian women.<sup>31</sup> However, non-Aboriginal women married to Indian men were still considered Indian in law. Thus, for the first time Indian status and residency rights began to be associated with the male line. Subsequent versions of the definition of 'Indian' went back and forth on the question of whether non-Indian men could acquire Indian status through marriage. By the time the first comprehensive *Indian Act* was enacted in 1876, it had become accepted policy that non-Indian men could not acquire Indian status through marriage.<sup>32</sup>

The next important official inquiry into the conditions of Indians in the colonies was that of the Pennefather Commission in 1858.<sup>33</sup> Established in response to the continuing emphasis on financial retrenchment by imperial authorities, its mandate was to report upon "the best means of securing the future progress and civilization of the Indian tribes" and "the best mode of so managing the Indian property as to secure its full benefit to the Indians, without impeding the settlement of the country."<sup>34</sup>

Commissioners found generally that the relationship between the Crown and Indian nations had changed a great deal over the past few years as a result of the civilization policy, with Indians slowly being weaned from dependence on the Crown. Although commissioners were optimistic about the possibility that Indians might be "reclaimed from their savage state" over time, they felt themselves forced to "confess that any hopes of raising the Indians as a body to the social or political level of their white neighbours, is yet but a glimmer and distant spark."<sup>35</sup> Slow progress in the civilizing program was attributed to the "apathy" and "unsettled habits" of Indians rather than to any shortcomings in the civilization policy or its administration.<sup>36</sup>

Ultimately, the Pennefather Commission recommended moves toward a policy of complete assimilation of Indians into colonial society. It called, for example, for direct allotment of lands to individual Indians instead of creating communally held reserves. This policy was carried out later in Manitoba in the case of the Métis people, where individual plots of land were awarded instead of collective Métis lands.<sup>37</sup> The commission also proposed collecting smaller bands in a single reserve, consolidating the various pieces of Indian legislation, legislating the dismantling of tribal structures, and eventually abolishing the Indian department once the civilizing efforts had borne fruit. As we will see, these recommendations were acted upon in one way or another over the years.

## 5. THE GRADUAL CIVILIZATION ACT: ASSIMILATING CIVILIZED INDIANS

Before the final report of the Pennefather Commission was published, the *Gradual Civilization Act* was passed in 1857.<sup>38</sup> It applied to both Canadas and was one of the most significant events in the evolution of Canadian Indian policy. Its premise was that by eventually removing all legal distinctions between Indians and non-Indians through the process of enfranchisement, it would be possible in time to absorb Indian people fully into colonial society.

Enfranchisement, which meant freedom from the protected status associated with being an Indian, was seen as a privilege. There was thus a penalty of six months' imprisonment for any Indian falsely representing himself as enfranchised. Only Indian men could seek enfranchisement. They had to be over 21, able to read and write either English or French, be reasonably well educated, free of debt, and of good moral character as determined by a commission of non-Indian examiners. For those unable to meet these criteria, a three-year qualifying period was allowed to permit them to acquire these attributes. As an encouragement to abandon Indian status, an enfranchised Indian would receive individual possession of up to 50 acres of land within the reserve and his per capita share in the principal of the treaty annuities and other band moneys.

An enfranchised man did not own the 50 acres of land allotted to him, however. He would hold the land as a life estate only and it would pass to his children in fee simple ownership upon his death. This meant that it was inalienable by him, but could be disposed of by his children once they had received it following his death. If he died without children, his wife would have a life estate in the land but upon her death it would revert to the Crown – not to the band. Thus, it would no longer be reserve land, thereby reducing the overall amount of protected land for the exclusive use and occupation of the reserve community. Where an enfranchised man died leaving children, his wife did not inherit the land. She would have a life estate like his and it would pass to the children of the marriage once she died.

Enfranchisement was to be fully voluntary for the man seeking it. However, an enfranchised man's wife and children would automatically be enfranchised with him regardless of their wishes, and would equally receive their shares of band annuities and moneys. They could not receive a share of reserve lands.

The provisions for voluntary enfranchisement remained virtually unchanged through successive acts and amendments, although some elements were modified over the years. Other developments in enfranchisement policy in subsequent legislation, such as making enfranchisement involuntary, will be described later in the discussion of the *Indian Act*.

The voluntary enfranchisement policy was a failure. Only one Indian, Elias Hill, was enfranchised between 1857 and the passage of the *Indian Act* in 1876.



His story was told in Chapter 6. Indians protested the provisions of the *Gradual Civilization Act* and petitioned for its repeal. In addition, Indian bands individually refused to fund schools whose goals were assimilative, refused to participate in the annual band census conducted by colonial officials, and even refused to permit their reserves to be surveyed for purposes of the 50-acre allotment that was to be the incentive for enfranchisement.

The passage of the *Gradual Civilization Act* marked a watershed in the long history of Indian policy making in Canada. In many ways, the act and the response it generated were precursors of the 1969 white paper termination policy in terms of souring Indian/government relations and engendering mutual suspicion. The impact of this legislation was profoundly negative in many ways.

The new policy created an immediate political crisis in colonial/Indian relations in Canada. The formerly progressive and co-operative relationship between band councils and missionaries and humanitarian Indian agents broke down in acrimony and political action by Indians to see the act repealed. Indian people's refusal to comply and the government's refusal to rescind the policy showed that the nation-to-nation approach had been abandoned almost completely on the Crown side. Although it was reflected in subsequently negotiated treaties and land claims agreements, the Crown would not formally acknowledge the nation-to-nation relationship as an explicit policy goal again until the 1980s.

By virtually abandoning the Crown promise, implied by the *Royal Proclamation of 1763* and the treaty process, to respect tribal political autonomy, the *Gradual Civilization Act* marked a clear change in Indian policy, since civilization in this context really meant the piecemeal eradication of Indian communities through enfranchisement. In the same way, it departed from the related principle of Crown protection of the reserve land base. Reserve lands could be reduced in size gradually without a public and formal surrender to which the band as a whole had to agree. No longer would reserve land be controlled exclusively by tribal governments.

The *Gradual Civilization Act* was also a further step in the direction of government control of the process of deciding who was or was not an Indian. While the 1850 Lower Canada land act had begun this process by defining 'Indians' for reserve residency purposes, this new legislation set in motion the enfranchisement mechanism, through which additional persons of Indian descent and culture could be removed from Indian status and band membership. In these two laws, therefore, can be seen the beginning of the process of replacing the natural, community-based and self-identification approach to determining group membership with a purely legal approach controlled by non-Aboriginal government officials.

Moreover, the *Gradual Civilization Act* continued and reinforced the sexism of the definition of Indian in the Lower Canada land act, since enfranchisement of a man automatically enfranchised his wife and children. The

consequences for the wife could be devastating, since she not only lost her connection to her community, but also lost the right to regain it except by marrying another man with Indian status.

Finally, the tone and goals of the *Gradual Civilization Act*, especially the enfranchisement provisions, which asserted the superiority of colonial culture and values, also set in motion a process of devaluing and undermining Indian cultural identity. Only Indians who renounced their communities, cultures and languages could gain the respect of colonial and later Canadian society. In this respect it was the beginning of a psychological assault on Indian identity that would be escalated by the later *Indian Act* prohibitions on other cultural practices such as traditional dances and costumes and by the residential school policy.

## 6. END OF THE TRIPARTITE IMPERIAL SYSTEM

Between the passage of the *Gradual Civilization Act* and Confederation several events and legislative measures cemented the change in imperial Indian policy. They included the ending of treaty presents to bands (the symbols of the alliance between the Crown and Indian nations) in 1858 and the passage of the *Indian Lands Act* in 1860. Although this legislation formalized the procedure for surrendering Indian land in terms reflective of the procedure set out in the *Royal Proclamation of 1763*, it also transferred authority for Indians and Indian lands to an official responsible to the colonial legislature, thus breaking the direct tie between Indian nations and the British Crown upon which the nation-to-nation relationship rested.

This was a clear departure from the Crown/colony/Aboriginal tripartite system described earlier. The *Indian Lands Act* legislation replaced it with another model of direct colonial/Aboriginal relations. The withdrawal of the British Crown as the impartial arbiter and mediator between the weakened tribal nations and the ascendant and land-hungry colonies was a step that would have important consequences for Indians in the future. Indians in the Canadas who were aware of the transfer of responsibility for Indian affairs from the imperial Crown to the Province of Canada generally opposed it, preferring to manage their own affairs than to be managed by the colonial government, which they distrusted and feared:

The Imperial Govt. is unwilling to find us officers as Formerly and withdraw wholly its protection we deem that there is a sufficient intelligence in our midst to manage our own affairs.<sup>39</sup>

The British parliamentary select committee looking into Aboriginal issues had warned in its 1837 report against entrusting the management of Aboriginal relations to the local legislatures in the British colonies, fearing a conflict of