

COURT OF APPEAL FILE NUMBER: 2503 0193AC
 TRIAL COURT FILE NUMBER: 1103 14112
 REGISTRY OFFICE: 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, TRACEY SCARLETT, ROY TWINN,
 JONATHON POTSKIN AND BONNIE BLAKLEY, as Trustees
 for the 1985 Sawridge Trust

STATUS ON APPEAL: Respondent

RESPONDENT: CATHERINE TWINN

STATUS ON APPEAL: Appellant

RESPONDENT OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

STATUS ON APPEAL: Respondent

DOCUMENT: **APPELLANT’S EXTRACTS OF KEY EVIDENCE**

ADDRESS FOR SERVICE
 AND CONTACT
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 PARTY FILING THIS
 DOCUMENT

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SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

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

B E T W E E N :

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

OF THE FIRST PART,

- and -

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

OF THE SECOND PART.

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

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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

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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

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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.

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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

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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.

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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.

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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,

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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

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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

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Alberta.

IN WITNESS WHEREOF the parties hereto have
executed this Deed.

SIGNED, SEALED AND DELIVERED
in the presence of:

Robert J. Thom
NAME

A. Settlor

300 326, Havelock, Alta
ADDRESS

B. Trustees:

Robert J. Thom
NAME

1.

300 326, Havelock, Alta
ADDRESS

Robert J. Thom
NAME

2.

300 326, Havelock, Alta
ADDRESS

Robert J. Thom
NAME

3.

300 326, Havelock, Alta
ADDRESS

Schedule

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

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 AMENDEDIN 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 DOCUMENTReynolds, Mirth, Richards & Farmer LLP
3200 Manulife Place
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Edmonton, AB T5J 3W8Attention: Doris C.E. Bonora
Telephone: (780) 425-9510
Fax: (780) 429-3044
File No: 108511-001-DCEB**AFFIDAVIT OF PAUL BUJOLD****Sworn on September 12, 2011**

I, Paul Bujold, of Edmonton, Alberta swear and say that:

1. I am the Chief Executive Officer of the Sawridge Trusts, which trusts consist of the Sawridge Band Intervivos Settlement created in 1985 (hereinafter referred to as the "1985

Trust”) and the Sawridge Band Trust created in 1986 (hereinafter referred to as the “1986 Trust”), and as such have personal knowledge of the matters hereinafter deposed to unless stated to be based upon information and belief, in which case I verily believe the same to be true.

2. I make this affidavit in support of an application for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Trust.

Issues for this Application

3. At present, there are five trustees of the 1985 Trust: Bertha L’Hirondelle, Clara Midbo, Catherine Twinn, Roland C. Twinn and Walter Felix Twin (hereinafter referred to as the “Trustees”).
4. The Trustees would like to make distributions for the benefit of the beneficiaries of the 1985 Trust. However, concerns have been raised by the Trustees:
 - a. Regarding the definition of “Beneficiaries” contained in the 1985 Trust.
 - b. Regarding the transfer of assets into the 1985 Trust.
5. Accordingly, the Trustees seek the opinion, advice and direction of the Court in regard to these matters.

Background

6. In 1966, Chief Walter Patrick Twinn (hereinafter referred to as “Chief Walter Twinn”) became the Chief of the Sawridge Band No. 454, now known as Sawridge First Nation (hereinafter referred to as the “Sawridge First Nation” or the “Nation”), and remained the Chief until his death on October 30, 1997.

7. I am advised by Ronald Ewoniak, CA, retired engagement partner on behalf of Deloitte & Touche LLP to the Sawridge Trusts, Companies and First Nation, and do verily believe, that Chief Walter Twinn believed that the lives of the members of the Sawridge First Nation could be improved by creating businesses that gave rise to employment opportunities. Chief Walter Twinn believed that investing a portion of the oil and gas royalties received by the Nation would stimulate economic development and create an avenue for self-sufficiency, self-assurance, confidence and financial independence for the members of the Nation.
8. I am advised by Ronald Ewoniak, CA, and do verily believe, that in the early 1970s the Sawridge First Nation began investing some of its oil and gas royalties in land, hotels and other business assets. At the time, it was unclear whether the Nation had statutory ownership powers, and accordingly assets acquired by the Nation were registered to the names of individuals who would hold the property in trust. By 1982, Chief Walter Twinn, George Twin, Walter Felix Twin, Samuel Gilbert Twin and David Fennell held a number of assets in trust for the Sawridge First Nation.

Creation of the 1982 Trust

9. I am advised by Ronald Ewoniak, CA, and do verily believe, that in 1982 the Sawridge First Nation decided to establish a formal trust in respect of the property then held in trust by individuals on behalf of the present and future members of the Nation. The establishment of the formal trust would enable the Nation to provide long-term benefits to the members and their descendents. On April 15, 1982, a declaration of trust establishing the Sawridge Band Trust (hereinafter referred to as the "1982 Trust") was executed. Attached as **Exhibit "A"** to my Affidavit is a copy of the 1982 Trust.
10. In June, 1982, at a meeting of the trustees and the settlor of the 1982 Trust, it was resolved that the necessary documentation be prepared to transfer all property held by Chief Walter Twinn, George Vital Twin and Walter Felix Twin, in trust for the present

and future members of the Nation, to the 1982 Trust. Attached as **Exhibit "B"** to my Affidavit is a copy of the resolution passed at the said meeting dated June, 1982.

11. The 1982 Trust was varied by a Court Order entered on June 17, 2003, whereby paragraph 5 of the 1982 Trust was amended to provide for staggered terms for the trustees. Attached as **Exhibit "C"** to my Affidavit is a copy of the Court Order entered on June 17, 2003 varying the 1982 Trust.
12. On December 19, 1983, a number of properties and shares in various companies which had been held by Chief Walter Twinn, Walter Felix Twin, Samuel Gilbert Twin and David Fennell in trust for the present and future members of the Nation were transferred into the 1982 Trust. Attached as **Exhibit "D"** to my Affidavit is an agreement dated December 19, 1983, transferring certain assets into the 1982 Trust. Attached as **Exhibit "E"** to my Affidavit is a transfer agreement dated December 19, 1983 transferring certain assets from the 1982 Trust to Sawridge Holdings Ltd.

Changes in Legislation – The *Charter of Rights and Freedoms* and *Bill C-31*

13. On April 17, 1982, the *Constitution Act, 1982*, which included the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the "*Charter*"), came into force. Section 15 of the *Charter* did not have effect, however, until April 17, 1985, to enable provincial and federal legislation to be brought into compliance with it.
14. After the *Charter* came into force, the federal government began the process of amending the *Indian Act*, R.S.C. 1970, c. I-6 (hereinafter referred to as the "*1970 Indian Act*"). Following the federal election in 1984, the government introduced *Bill C-31*, a copy of which is attached as **Exhibit "F"** to my Affidavit. *Bill C-31* was introduced to address concerns that certain provisions of the 1970 *Indian Act* relating to membership were discriminatory.

15. It was expected that *Bill C-31* would result in an increase in the number of individuals included on the membership list of the Sawridge First Nation. This led the Nation to settle a new trust, the 1985 Trust, within which assets would be preserved for the Band members as defined by the legislation prior to *Bill C-31*.

Creation of the 1985 Trust

16. Attached as **Exhibit "G"** to my Affidavit is a copy of the 1985 Trust dated April 15, 1985.
17. The 1985 Trust provides that the "Beneficiaries" are:

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

18. The 1985 Trust effectively "froze" the definition of beneficiaries according to the legislation as it existed prior to *Bill C-31*.

19. Attached as **Exhibit "H"** to my Affidavit is a copy of a Resolution of Trustees dated April 15, 1985, whereby the trustees of the 1982 Trust resolved to transfer all of the assets of the 1982 Trust to the 1985 Trust.
20. On April 15, 1985, the Sawridge First Nation approved and ratified the transfer of the assets from the 1982 Trust to the 1985 Trust. Attached as **Exhibit "I"** to my Affidavit is a Sawridge Band Resolution dated April 15, 1985 to this effect.
21. On April 16, 1985 the trustees of the 1982 Trust and the trustees of the 1985 Trust declared:
 - a. that the trustees of the 1985 Trust would hold and continue to hold legal title to the assets described in Schedule "A" of that Declaration; and
 - b. that the trustees of the 1985 Trust had assigned and released to them any and all interest in the Promissory Notes attached as Schedule "B" of that Declaration.

Attached as **Exhibit "J"** to this my Affidavit is the Declaration of Trust made April 16, 1985.
22. Based upon my review of the exhibits attached to this my affidavit and upon the knowledge I have acquired as Chief Executive Officer of the Sawridge Trusts, I believe that all of the property from the 1982 Trust was transferred to the 1985 Trust. Further, there was additional property transferred into the 1985 Trust by the Sawridge First Nation or individuals holding property in trust for the Nation and its members.
23. The transfers were carried out by the trustees of the 1982 Trust under the guidance of accountants and lawyers. The Trustees have been unable to locate all of the necessary documentation in relation to the transfer of the assets from the 1982 Trust to the 1985 Trust or in relation to the transfer of assets from individuals or the Nation to the 1985 Trust.

24. It is clear that the transfers were done but the documentation is not currently available. The Trustees have been operating on the assumption that they were properly guided by their advisors and the asset transfer to the 1985 Trust was done properly.
25. The Trustees seek the Court's direction to declare that the asset transfer was proper and that the assets in the 1985 Trust are held in trust for the benefit of the beneficiaries of the 1985 Trust.
26. The 1985 Trust is the sole shareholder of Sawridge Holdings Ltd. I am advised by Ralph Peterson, Chairman of the Board of Directors of the Sawridge Group of Companies, and do verily believe that an approximate value of the 1985 Trust investment in Sawridge Holdings Ltd. as at December 31, 2010 is \$68,506,815. This represents an approximate value of the net assets of Sawridge Holdings Ltd., assuming all assets could be disposed of at their recorded net book value and all liabilities are settled at the recorded values as at that date, with no consideration for the income tax effect of any disposal transactions.
27. Taking into account the other assets and liabilities of the 1985 Trust, the approximate value of the net assets of the 1985 Trust as at December 31, 2010 is \$70,263,960.
28. To unravel the assets of the 1985 Trust after 26 years would create enormous costs and would likely destroy the trust. Assets would have to be sold to pay the costs and to pay the taxes associated with a reversal of the transfer of assets.

Creation of the 1986 Trust

29. Attached to my affidavit as **Exhibit "K"** is a copy of the 1986 Trust dated August 15, 1986. The beneficiaries of the 1986 Trust included all members of the Sawridge First Nation in the post-*Bill C-31* era.

30. The Sawridge First Nation transferred cash and other assets into the 1986 Trust to further the purposes of the trust. After April 15, 1985 no further funds or assets were put into the 1985 Trust.
31. Effectively, the assets in existence as at April 15, 1985 were preserved for those who qualified as Sawridge members based on the definition of membership that existed at that time. The 1986 Trust was established so that assets coming into existence subsequent to April 15, 1985 could be held in trust for those individuals who qualified as members in accordance with the definition of membership that existed in the post-*Bill C-31* era.

Identification of Beneficiaries Under the 1985 Trust and the 1986 Trust

32. The Trustees have determined that maintaining the definition of "Beneficiaries" contained in the 1985 Trust is potentially discriminatory. The definition of "Beneficiaries" in the 1985 Trust would allow non-members of the Nation to be beneficiaries of the 1985 Trust and would exclude certain members of the Nation (such as those individuals acquiring membership as a result of *Bill C-31*) from being beneficiaries.
33. The Trustees believe that it is fair, equitable and in keeping with the history and purpose of the Sawridge Trusts that the definition of "Beneficiaries" contained in the 1985 Trust be amended such that a beneficiary is defined as a member of the Nation, which is consistent with the definition of "Beneficiaries" in the 1986 Trust.

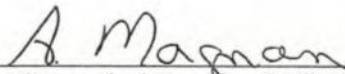
Current Status

34. The Trustees have been administering the Sawridge Trusts for many years. In December of 2008, the Trustees retained the Four Worlds Centre for Development Learning (hereinafter referred to as "Four Worlds") to conduct a consultation process with the beneficiaries of the Sawridge Trusts. Four Worlds prepared a report identifying the types of programs and services that the Sawridge Trusts should offer to the beneficiaries and

the types of payments the Trustees should consider making from the trusts. Attached hereto as **Exhibit "L"** is a summary chart of recommendations taken from the said report.

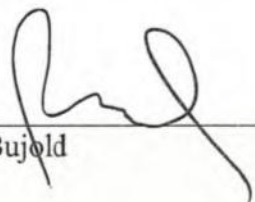
35. Having undertaken the consultation process, the Trustees have a desire to confer more direct benefits on the beneficiaries of the Sawridge Trusts. The Trustees require clarification and amendment of the 1985 Trust such that the definition of "Beneficiaries" in the 1985 Trust is varied to make it consistent with the definition of "Beneficiaries" in the 1986 Trust. In this way the members of the Nation are the beneficiaries of both the 1985 Trust and 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 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

COURT FILE NUMBER
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

1103 14112



EDMONTON

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

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

APPLICANTS

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

DOCUMENT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

AFFIDAVIT OF PAUL BUJOLD

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

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-72764
File No: 551860-1-DCEB

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

I, Paul Bujold, of Edmonton, Alberta, make oath and say that:

1. I am the Chief Executive Officer of the 1985 Sawridge 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 have reviewed the affidavit of Catherine Twinn ("Catherine") filed September 30, 2015 (the "September 30 Affidavit") and wish to provide by this affidavit my response to the

evidence provided in the September 30, affidavit. I also wish to respond to other evidence provided by Catherine in the course of litigation in the 1103 14112 ("1103") and 1403 04885 ("1403") actions.

History of the trusts

3. I have provided the history of the Sawridge 1985 Trust and the 1986 Trusts in my affidavits filed in action 1103. Attached hereto and marked as Exhibit "A" are such affidavits.
4. In both the 1985 Trust Deed and the 1986 Trust Deed, the Trustees are to make decisions by majority. This is set out in paragraph 13 of both Trust Deeds (Exhibit "A").

Code of Conduct

5. A Code of Conduct was instituted by the Trustees to govern both the 1985 and 1986 Trusts. The Code of Conduct sets a procedure for the resolution of disputes and provides guidance for behaviour of the Trustees. The Code of Conduct says that majority decision governs in Schedules A, B1 and B 2. The Code of Conduct is attached hereto at Exhibit "B".
6. Paragraph 5 (f) of the Code of Conduct reads as follows:

Where possible, Trustees should work towards unanimous agreement; where unanimous agreement is not possible, Trustees shall try to come to a consensus; where neither of these is possible Trustees shall reach decisions by simple majority. In all cases, once a decision is made by the Trustees it should be respected and followed by all.

Value of the Trusts

7. In respect of paragraph 3 of the September 30 Affidavit, I disagree with Catherine's assessment of the value of the 1985 and 1986 Trusts. Based on information that I have received from the companies, I believe that the value of the two Trusts was approximately \$140 million in 2015. The Trusts' assets are heavily dependent on the oil and gas industry and have been negatively affected by the present economic downturn

and the reduction in oil and gas activity. The Trusts have few liquid assets that are not earmarked for reinvestment in the Trusts' assets.

Composition of Family Groups

8. In respect of paragraph 5 of the September 30 Affidavit, I agree with the composition of the family groups, however, only one descendant is a minor. The descendants are as follows:

- (a) 32 Twin(n) descendants;
- (b) 8 Potskin descendants; and
- (c) 5 Ward descendants.

Definition of beneficiary

9. In respect of paragraph 6 of the September 30 Affidavit, the Trustees have not determined their position about amending the definition of "beneficiary" of the 1985 Trust because the Trustees have sought the direction of the Court. The Trustees have taken the following steps in resolving this definition:

- (a) They were advised by their legal advisors that the current definition of beneficiary in the 1985 Trust is discriminatory;
- (b) The Trust Deed prohibits amendment of the definition of beneficiaries. Thus it was necessary to seek the direction of the Court on whether the definition is discriminatory and seek the Court's direction on how to remedy the discriminatory provisions;
- (c) It was appealing to the Trustees to request the Court to change the definition to the "members" of the Sawridge First Nation ("SFN") as they understood from many sources that the intention of the settlor of the Trust was that the trust funds were for the benefit of the members. The 1982 Trust defined beneficiaries as members as does the 1986 Trust;

- (d) Some thought was given to having the Trustees determine membership but the Trustees were advised that they have no legal authority to be involved in the determination of the membership of individuals in SFN;
- (e) Catherine makes reference to requiring a process for the determination of the beneficiaries but no process would be necessary to determine the 1985 Trust beneficiaries if the definition is changed to "members".

Elected Officials as Trustees

10. In respect of paragraph 9 of the September 30 Affidavit, there is only one Trustee who is an elected official, the Chief of SFN, Roland Twinn. The Trustees as of January 31, 2017 are:
 - (a) Catherine Twinn ("Catherine")
 - (b) Bertha L'Hirondelle ("Bertha");
 - (c) Roland Twinn (Chief of the Nation) ("Roland");
 - (d) Justin Twin ("Justin"); and
 - (e) Margaret Ward ("Margaret").
11. A review of the history of the Trusts shows that the Chief has always been a Trustee. Catherine was appointed by her husband, Chief Walter Twinn, who was then the Chief and a Trustee. Chief Walter Twinn continued to include elected officials as trustees until his death. Following the death of Chief Walter Twinn, Catherine appointed Bertha as a Trustee when Bertha became Chief and Catherine appointed Roland, a Band Councillor, who later became Chief of SFN. This is a small community and thus, the Chief knows the needs of its members and as the Trusts provide for the members of SFN, it is important for the Chief to be involved in the Trusts as a Trustee.
12. It is useful to have an elected official who can report on the needs of SFN to the Trustees. The Chief being a Trustee is in keeping with the long tradition of the Trusts in which Chief Walter was a Trustee until his death.

13. Catherine suggests that it is a conflict to have elected officials as Trustees. However, it was the settlor of the Trusts who set the provisions in the Trusts in respect of who should be Trustees. The Settlor did not prohibit elected officials as trustees. He set the standard and the practice of having elected officials involved in the Trusts.
14. Further:
- (a) For many years, the Trustees of the 1985 Trusts were: Bertha and Clara (Chief Walter's sisters), Catherine (his widow), Roland (his son) and Walter Felix (his cousin). Catherine would have been involved in appointing all of these individuals. Catherine took no steps to change the long established practice of appointing elected officials as Trustees.
 - (b) The original Trustees of the 1986 Trust were Catherine, Chief Walter Twinn, and his brother George Twin (Trustee until his death 8 August 1997). Catherine did not object. George was also an elected official.
 - (c) The original Trustees of the 1985 Trust were Chief Walter Twinn and his brothers George and Samuel (Trustee until 28 June 1986). George was also an elected official during his time as a Trustee. Catherine was appointed in 1986 after Samuel died. Catherine was appointed along with Chief Walter Twinn's cousins Walter Felix Twin, a Band Councillor (Trustee until 2014) and Chester Twinn (Trustee until his death 22 January 1996). I have not seen any records which would suggest Catherine objected to the elected officials being appointed as Trustees.
 - (d) SFN has a small population. As a result, it is hard to find people to take on roles. Thus, suggesting that those who are elected in any position including the position of elder cannot be a Trustee removes a large number of eligible qualified candidates from acting as Trustees.

Independent Trustees

15. I understand that Catherine now believes that the Trusts should change to have an independent Board of Trustees partially on the basis that such is the current trend in First Nation trusts. It is true that some First Nation trusts have independent trustees.

However, that is not universally true. I have learned that some First Nation leaders and trust experts indicate that complete independence may lead to the needs of the First Nation not being understood or met when the First Nation members are not involved in the Trusts. I attended a conference on First Nations trusts (National Aboriginal Trust Officers Association Conference), during which the speakers emphasized that it was important that the First Nation should not give up control and that the First Nation needed to keep a connection to the Trust. Severing that connection was not recommended.

16. There is no historical support for this position. The initial Trustees were members of SFN. The 1982 Trust had only elected members of SFN and thus the tradition is for members of or people connected with SFN to be appointed as Trustees.
17. I am advised by the Chief that there does not appear to be any support from the community for independent Trustees.
18. In respect of paragraph 11 of the September 30 Affidavit, prior to 1982, some assets were not necessarily held under trust deeds. At various times, assets were held individually in a bare trust by the lawyers for SFN and the Chief and other Band Councillors. This was the case especially when SFN was not considered a legal entity.
19. In respect of paragraph 12 of the September 30 Affidavit, Chief Walter Twinn was the settlor of the Trusts. However, he was not necessarily the settlor of the Trusts due to his position as Chief. As the Chief he would have had a direction from SFN Council on disbursement of funds. Funds from SFN were transferred to Chief Walter Twinn to hold in trust. The Funds were then transferred to the Trusts.
20. To have Trustees who are entirely independent of SFN would require an amendment of the Trust Deeds which requires the agreement of 80% of the beneficiaries. The Trustees believe that the beneficiaries do not want the Trusts to be run by outside Trustees who are not part of the community. As far as I know, Catherine has not undertaken any public attempt to obtain 80% agreement from the beneficiaries for an amendment to the Trusts.

Resignation of Walter Felix Twin ("Walter Felix") and Appointment of Justin Twin

21. In respect of paragraph 15 of the September 30 Affidavit, prior to Walter Felix's resignation, the Trustees were aware that Walter Felix was experiencing health problems and had difficulties continuing in his role as a Trustee. His resignation was expected among the Trustees, including Catherine. Catherine approached Brian Heidecker (the "Chair") and me 6 months before Walter Felix's resignation to ask if we could find a way to get Walter Felix to resign because she had concerns about Walter Felix's health and mental aptitude. She also knew that Walter Felix had had surgery to install a shunt to allow blood to flow to his brain since his carotid arteries were partially blocked.
22. Catherine says that she was not aware that Walter was planning to resign. She asked if we could postpone his resignation so she could bring other names forward as proposed replacement Trustee. She was basically asking to retain an incapable Trustee.
23. Catherine received notice of Walter Felix Twin's resignation at the same time that the other Trustees did. These other Trustees did not ask for extra time to bring forward names.
24. In respect of paragraph 16 of the September 30 Affidavit, documents in relation to the appointment of a new Trustee were sent out in advance to all the Trustees. Attached as Exhibit "C" is my email to Catherine dated January 8, 2014. At the meeting of the Trustees on January 21, 2014, no original motions were prepared in advance. Rather the following occurred:
 - (a) Some preliminary work had been completed by Brian Heidecker (the "Chair"), the other Trustees and me in advance of the meeting to look for a replacement, as Walter Felix had been experiencing difficulty acting as a Trustee. His resignation was imminent and known to everyone. The issue of Trustee succession was a topic that had been discussed at previous Trustee meetings.
 - (b) At the January 21, 2014 meeting the Trustees discussed the resignation and proposed Justin Twinn as a replacement. The Trustees felt that Justin was well qualified as he was considered to be a competent SFN councillor, he lived on the

reserve, was well liked and had business experience. He was enrolled in management training courses.

- (c) At the January 21, 2014 meeting, all of the motions were drafted on a computer with input from all the Trustees in real time. For motions of importance, we use a system in which a draft motion is projected on a screen so that the Trustees can actually see the motion, and make any necessary amendments before voting on it. The motion to accept the resignation of Walter Felix and the motion to appoint a replacement Trustee were typed by me under the direction of the Trustees and displayed on the screen during the meeting. Prior notice is seldom given to the Trustees of motions that may be considered at meetings unless the motion requires specific legal wording and is drafted by the Trusts' lawyers.
- (d) There was some urgency to appoint a replacement for Walter Felix Twin because of a pending commercial transaction involving the 1985 Trust that would have required dealing with the assets of the 1985 Trust. The 1985 Trust requires there to be 5 trustees. This was explained to all the Trustees. Three of the four remaining Trustees understood the need for the immediate appointment of a replacement trustee.
- (e) Catherine was not prepared to vote in favor of Justin. She wanted a drawn-out selection process. The Trustees advised Catherine that they would consider the process in the future but that they needed to appoint someone immediately to have a valid number of 5 Trustees and would work on the process at a later meeting. The other Trustees were prepared to discuss succession and Catherine's proposal but were not prepared to entertain the idea of developing a succession plan at the last minute. Trustees had been working on a succession plan for some time but had not yet agreed on a process. In any event, a Trustee needed to be elected at this meeting.
- (f) Catherine's initial argument opposing the appointment of Justin at the January 21, 2014 Trustee meeting was that he was, at the time, an elected official and that his appointment had not received the unanimous consent of the remaining Trustees.

25. At the February 25, 2014 meeting, Catherine argued that she should be given the opportunity to first meet in private with Justin before giving her consent to his appointment and sign the transfer of asset documents. Because of the urgency, Catherine was given until March 3, 2014 to meet with Justin.
26. Justin has advised me that during his meeting with Catherine, she indicated that she felt that Justin was not a legitimate member of SFN and not a beneficiary to the 1985 Trust and therefore he could not be appointed as a Trustee because the replacement Trustee needed to be a beneficiary of both Trusts. I obtained information from the Band Administrator that Justin was a member of SFN at the time of his birth and was therefore both a member of SFN and a beneficiary of both Trusts. Bertha and Roland, who know Justin and his family very well, both agreed that Justin was a proper member of SFN and also a beneficiary.
27. The Trust Deeds only require majority vote to appoint a new trustee and the Trustees voted by majority vote to appoint Justin. Catherine neither opposed nor abstained from the motion. She refused to sign the motion to appoint Justin and refused to sign the motion to transfer the assets from the current Trustees to the new set of Trustees. The Trustees hold the assets of the Trusts jointly. As a result, when a new Trustee is appointed, the Trust assets must be transferred from the old Trustees to the new Trustees.
28. The Trustees had received an opinion that even if a Trustee voted against a motion, the dissenting Trustee could still sign legal documents relating to the motion to transfer assets. There would be no liability in doing so. Catherine refused to sign the documents to appoint Justin and refused to sign the documents to transfer the assets from the old set of Trustees to the new set of Trustees. As a result, the Trustees were forced to proceed with a Court application to seek an Order to transfer the assets to the new Trustees.
29. Catherine has suggested that she was prepared to sign the transfer of assets but her actions do not suggest that is true. In the first appearance in Court, Catherine asked for the application to be adjourned so that she could seek legal counsel. In the next Court appearance, there was a direction to have the assets transferred. In addition, the

Trustees agreed to allow Catherine to proceed with an action to attempt to set aside the appointment of Justin. All of this could have been agreed to without a Court Application.

30. In respect of this Court application, Catherine was not directed by the Court to sign the transfer. The Court directed the transfer to occur. Attached and marked as Exhibit "D" is the transcript of the hearing, the Application, Affidavit and the Court Order in respect of the hearing.
31. Attached hereto as Exhibit "E" and Exhibit "F" are the Minutes of the January 21, 2014 Trustee meeting and the February 25, 2014 Trustee meeting.
32. Catherine says that she was taken aback by Justin's appointment and taken aback by the legal document to transfer assets. However, the Trustee meeting took place in January 2014 and the Court application took place in April 2014. She had ample time to sign the transfer document. She refused to do so. Finally, when a pending commercial transaction became an emergency, the Trustees were forced to go to Court and even in Court, Catherine would not agree. This Court application was at great cost to the Trusts.
33. Catherine had not, in the past, opposed Justin's membership in SFN nor his being member of SFN Council during the entire time he was on SFN Council. Catherine had the same documents given to all Trustees in advance of the January 21, 2014 meeting. They were not presented for the first time at the meeting as she suggests. Catherine did not call me, the Chair or any of the other Trustees to ask any questions prior to the meeting. She suggests the decision to appoint Justin was predetermined. This is not true.
34. There was a good discussion by the Trustees at the meeting in regards to replacing Walter Felix. In the deed of appointment there was no name inserted. It had to be determined at the January 21, 2014 meeting.
35. Catherine says that in relation to the January 21, 2014 meeting, she was unable to fully participate and Brian tried to compel her to sign. This is not true. The Trustees only needed a majority to appoint Justin. It was the asset transfer that required signatures of all the Trustees. Catherine was uncooperative. She attacked Justin. She attacked his membership which is not an appropriate thing to do in SFN. She failed to abide by the Code of Conduct to respect decisions made by a majority of Trustees.

36. From January to April, 2014, Catherine refused to sign the deed to transfer the assets. In the meeting of April 15, 2014 the business proposal was put forward and the urgency of the asset transfer was again reiterated and still Catherine refused to sign the transfer documents. The following is an extract of the Minutes of the April 15, 2014 meeting:

Extract from the 15 April 2014 meeting:

Company Issues and Chair's Report

Brian presented the Company's proposal to invest in property development and to set up a new partnership to manage this venture along with the Telford Lake developments (See attached Appendices). He pointed out that having the Trustees approve these proposals required that the asset transfer be completed. He asked Catherine if she would be willing to sign the Deeds at this time. Catherine indicated that she was not prepared to sign the Deeds at this time. Brian indicated that there was some time urgency to these proposals and that the question of the asset transfer could not be dragged out into June.

37. Attached hereto and marked as Exhibit "G" are the Minutes of the April 15, 2014 meeting.
38. Catherine has stated that she refused to sign the deed of transfer because she said it had not been done before. However, the Trustees received legal advice that this had to be done but Catherine refused to listen to this advice.

Justin's Eligibility

39. In respect of paragraph 19 of the September 30 Affidavit, Catherine did not raise any concerns regarding Justin Twin's eligibility as a legitimate 1985 Trust beneficiary and as a SFN member, until her private meeting with Justin immediately prior to March 3, 2014. Catherine never raised this question with the Trustees prior to that date. In response to Catherine's concern, the Trustees undertook research in order to ascertain Justin's status. Michael McKinney, Barrister and Solicitor and the Sawridge First Nation's Executive Director, provided a letter outlining Justin's membership status. This letter is attached as Exhibit "H". The following summarizes the information about Justin's status:

- (a) Justin made an inquiry with Indian and Northern Affairs Canada regarding his status in SFN. In response to his inquiry, a letter was received from the Superintendent of Indian Affairs stating that Justin was a legal member of SFN and had been since his birth on September 23, 1982 and that his name had been on the list of members transferred to SFN in October 1985. This letter is attached as Exhibit "I";
 - (b) The information regarding Justin's membership was not the subject of a vote by SFN Council. Justin was put on SFN membership list by Indian and Northern Affairs Canada and there was no protest; and
 - (c) No person has been removed from SFN membership list after being put on the list.
40. In respect of paragraph 20 of the September 30 Affidavit, the Trustees relied on information from Michael McKinney and from Indian and Northern Affairs Canada regarding Justin's membership status and thus his eligibility to be a beneficiary of the 1985 Trust.
41. Catherine did not accept the information provided by Michael McKinney and instead incurred the cost of obtaining her own "expert", Larry Gilbert, on the status of Justin. She is now seeking to have the Trusts pay for those costs. To date, Catherine refuses to provide the underlying evidence relied upon by Mr. Gilbert to form his opinion. The opinion contains a number of flaws.
42. I have the following concerns regarding Exhibit "B" of the September 30 Affidavit, the opinion of Mr. Gilbert:
- (a) Mr. Gilbert states that he was asked to provide a legal opinion without the benefit of any records and thus bases his opinion on speculation.
 - (b) He misinterprets paragraph 6 of the Trust Deed as suggesting that illegitimate children of female members are not entitled to benefits. The Trust Deed states that the Trustees can choose not to give them a benefit, not that they are not entitled to benefits.

- (c) He concludes that Chief and Council decided Justin was entitled to be a beneficiary, declared him a beneficiary and then appointed him as a Trustee. This is incorrect. The Chief and Council do not have the authority to decide if Justin is a beneficiary, nor do they have the authority to appoint him as a Trustee.
- (d) His conclusion that Justin cannot be a Trustee is flawed because Justin could be a Trustee who is either a beneficiary or a non-beneficiary of the Trusts.
- (e) I am advised by Mr. McKinney that Mr. Gilbert's opinion suggests Indian Affairs presumed that the father of an illegitimate child of a female Indian was a non-Indian, and therefore would not register the child without evidence of paternity. Mr. McKinney believes that this assumption is not correct. SFN has several instances in which paternity was not acknowledged and the illegitimate child was registered with SFN. Mr. McKinney states that if there is any uncertainty about Justin's paternity, Justin would be saved by the *Indian Act* of 1985 (after Bill C-31). In Section 11(1)(a) it states that a person is entitled to be on a Band List if the name of that person was entered on the Band List immediately prior to April 17, 1985. SFN took the Band List maintained by the department as the starting point and Justin was on that list. Justin is likely also saved by section 7 and 9 of the previous *Indian Act*. Section 7 gave the Registrar power to add names and Section 9 allowed for an appeal of the added name but within a very short time frame. In one case (involving Samson Cree Nation) the Court disallowed protests that were commenced out of time and declared that the protested persons were entitled to be placed on the Band List despite the fact that they may not have been originally entitled to be placed on the Band List.
- (f) I am advised by Roland that once someone is a member and is on the membership list, SFN accepts them and SFN does not attack its members. The community is viewed as a family. It is hurtful and disrespectful of Catherine to attack the membership rights of a member on the Band List. Roland describes it as suggesting that you could kick someone out of your family.
- (g) Since the 1985 Trust is based on the previous *Indian Act* as at 1982, and the *Indian Act* in 1982 was interpreted in a way that did not permit correction of

alleged errors after the protest period, it is unlikely that a protest or correction now would be permitted.

- (h) Gilbert was of the opinion that Justin would not have qualified as a Trustee of the 1985 Trust since there were already two non-beneficiary Trustees. Gilbert does not address the fact that this situation would have been corrected by the death of Clara Midbo ("Clara") on July 13, 2014, after which Justin would have qualified in any case as a non-beneficiary Trustee.
- (i) Mr. Gilbert does not address the fact that his opinion only relates to the 1985 Trust and not the 1986 Trust, as the 1986 Trust can have more than two non-beneficiaries as Trustees.

- 43. It is clear that Mr. Gilbert was given flawed information in terms of forming his opinion and thus has given a flawed opinion.
- 44. Catherine says that Dentons Canada LLP prepared a letter of opinion on the eligibility of Justin. There is no such letter.

Appointment of Margaret Ward

- 45. In respect of paragraph 22 of the September 30 Affidavit, Catherine suggests that the Trustees had knowledge of Clara's death that they did not share with Catherine. Clara's death was unexpected. Clara was in attendance at the June 10, 2014 Trustee meeting and she did not address her health. She passed away on July 13, 2014, following a brief hospital stay.
- 46. It was a complete surprise to everyone that Clara died. She had advised that she was ill but she did not say that her death was imminent. This is another example of Catherine thinking that "everyone is out to get her" and making Clara's death about her. Clara's death was sudden. The Trustees had to take immediate action to deal with her replacement.
- 47. In respect of paragraph 24 of the September 30 Affidavit, I received an email from Catherine and responded by telephone. I advised Catherine that no candidates had been proposed yet and that that this would be done at the Trustees' August 12, 2014

meeting in the same manner as Justin's appointment. I advised her that names would be put forward at the meeting just as had occurred at Justin's appointment.

48. Given the problems raised by Catherine in respect of the appointment of Justin, I thought that the Trustees may want to consider appointing a beneficiary as a Trustee. Clara was not a beneficiary of the 1985 Trust. Justin's beneficiary status was being challenged by Catherine and thus, if Clara was replaced with a beneficiary, the Trustees would have a Trustee board in which it would not matter whether Justin was a beneficiary or not.
49. On July 22, 2014, I provided a package to the Trustees, in preparation for the August, 2014 Meeting. Attached as Exhibit "J" is the July 22, 2014 email and attachments.
50. At the August 12, 2014 Meeting, the Trustees chose to appoint Margaret Ward ("Margaret"), citing that she had once been a trustee-in-training, and that she was a beneficiary of both the 1985 and 1986 Trusts. Her résumé shows she is very qualified. Her résumé is attached hereto as Exhibit "K".
51. In respect of paragraph 25 of the September 30 Affidavit, at the August 12, 2014 Meeting, Catherine provided a proposal to appoint independent, outside trustees, with no advance warning of such a proposal being provided. At the same time, Catherine also provided the names of two people who she proposed as replacement Trustees. The individuals were not SFN members or beneficiaries of either Trust, did not live in Alberta and of whom she had little knowledge. The following occurred at the August 12, 2014 Meeting:
 - (a) There was a discussion about the need to appoint a replacement for Clara;
 - (b) The Trustees listened to Catherine present her proposal and said that it was difficult to consider because she had not provided her proposal in advance of the meeting. Roland stated that, in his view, the beneficiaries may not be open to outsiders being appointed as Trustees. He mentioned the sale of the Slave Lake Hotel by the Directors as an example of how the members felt betrayed by outside directors. The Trustees offered to consider Catherine's proposal for an independent board of Trustees at the October Trustee meeting;

- (c) I observed that the Trustees were respectful of Catherine and her proposal and wished to have harmony and thus offered to discuss her proposal for succession at a future meeting;
- (d) The Trustees asked Catherine to participate in proceeding with the appointment of a Trustee to replace Clara in order to ensure that five Trustees were appointed as required by the 1985 Trust Deed. Catherine refused to participate in a process to replace Clara unless the Trustees appointed one of the people that Catherine suggested. All of the Trustees knew Margaret Ward. None of the Trustees knew the two people suggested by Catherine, including Catherine;
- (e) The 1985 Trust Deeds do not permit a Board of Trustees with less than five members therefore, failing to elect a Trustee would not allow the Trustees to carry on the business of the 1985 Trust;
- (f) Catherine also refused to sign the necessary transfer of assets from the 'old' group of Trustees to the 'new' group of Trustees. The Chair pleaded with Catherine to sign the transfer of assets to avoid Court costs. Catherine had previously objected to appointing Justin because she thought he was incapable of sitting as a beneficiary Trustee. There was no such impediment to appointing Margaret, as she was undisputedly a beneficiary of both Trusts. Yet Catherine would not approve Margaret as a Trustee, nor would she sign the transfer of assets;
- (g) As a result of Catherine's refusal to sign, the other Trustees were forced to bring another Court application to have the assets transferred. After the application involving Justin was successful, it was difficult to have Catherine once again force the Trustees to take a matter to court. Catherine is a lawyer and would know the value of a Court precedent. This was a waste of Trust resources;
- (h) The Minutes of the August 12, 2014 Meeting are attached as Exhibit "L". The transcript and the resulting Court Order are attached as Exhibit "M". Also attached are the Application and Affidavit filed in support of the application as Exhibit "N".

52. Catherine says that the Trustees and I told Margaret not to speak to Catherine. This is not true. I have spoken to Margaret and she also denies this. I did not tell Margaret not to speak to Catherine. I have asked the Trustees and they did not tell Margaret not to speak to Catherine. Margaret was told about Catherine's meeting with Justin and how that meeting caused confusion in Justin's mind. She was told that the choice was hers to make regarding a meeting with Catherine and that she could bring any questions arising out of any such meeting to the Trustees or the Administrator.
53. Catherine says that she does not know if the Trustees knew Margaret because Catherine's use of the word "know" is different than anyone else's. The Trustees were familiar with Margaret. She has been a SFN member for a long time. She has been involved in the Indigenous community. To a certain extent she was involved in SFN. Her studies and professional practice in Native communities is well known, including by Catherine.
54. When I was first hired, Catherine told me to contact Margaret, as Margaret had done some research on Indigenous education for the Trustees and written a paper. She was aware that Margaret had extensive experience in Indigenous education and that she had a PhD in that field. She was a Trustee-in-Training and therefore sat at the Trustee table with Catherine for two years.
55. In respect of paragraph 28 of the September 30 Affidavit, the Trustees, including Catherine, had learned of Margaret's relevant experience. The Trustees determined her appointment to be in the best interests of the Trusts:
- (a) In 2004 there was a selection process for "Trustees-in-Training" initiated by Catherine and approved by all the Trustees. Four candidates were considered: Justin, David Midbo, Deana Morton and Margaret. After a long selection process, the two chosen candidates were Deana Morton and Margaret.
 - (b) All of the other Trustees were aware of Margaret's background, in addition to the fact that Margaret is also a beneficiary for both the 1985 and 1986 Trusts; and
 - (c) The Trustees considered what Catherine presented and offered to discuss it another day. When Catherine refused to postpone her proposal to a future meeting, the Trustees rejected the proposal. The Trustees also knew that

appointing Margaret fixed any potential problem with Justin as it no longer mattered if he was a beneficiary. Margaret was a beneficiary of both Trusts. Bertha could be the non-beneficiary Trustee of the 1985 Trust. Justin could sit as a beneficiary or non-beneficiary of the 1985 Trust.

Reappointment of Justin and Margaret and Ratification

56. At the December 21, 2016 meeting of the Trustees, the Trustees appointed Justin for a second three-year-term and also appointed Margaret for a second three-year-term. The Trustee board is properly constituted. The Trustees have four beneficiaries of the 1985 Trust as Trustees. Even if it was determined that Justin was not a beneficiary of the 1985 Trust, the Trust would have the required three beneficiaries. In an abundance of caution, the Trustees also ratified all decisions made after Justin was appointed until Margaret was appointed, to ensure that all the decisions were properly made. The Minutes of the December 21, 2016 meeting are attached as Exhibit "O". Catherine voted against the Motions.

Majority Rules Decision Making

57. On August 25, 2005, the Trustees decided that all of their decisions would be by majority rule in conformity with the Trust Deeds. There was no mention of consensus or decisions by unanimous approval, including from Catherine. There were no other discussions about consensus in the August, 2005 Minutes. Attached and marked as Exhibit "P" to this my affidavit are the Minutes from the August 25, 2005 meeting of Trustees. Both Trust Deeds clearly state that decisions will be made by majority vote. See paragraph 13 of the 1985 and 1986 Trust deeds. The Trustees have never had a practice of consensus or unanimity to arrive at decisions.
58. In respect of paragraph 18 and Exhibit "A" of the September 30 Affidavit, Exhibit "A" was a draft of notes for a planning document that was never approved by the Trustees and was instead only a step in the long-term planning process, which included the succession plan mentioned above.
59. Catherine suggests that the tradition for the Trusts is for consensus to be the method by which decisions are made. However, the Trusts were drafted by the Settlor and state

that a majority decision governs. The Code of Conduct says that majority decision governs in Schedules A, B1 and B 2. It seems Catherine accepted this until she started to not get her way. She then created this concept of a tradition of consensus.

60. Maurice Cullity of Davies, Ward and Beck (now Davies Ward Phillips and Vineberg) drafted the 1985 and the 1986 Trust Deeds as well as the 1982 Trust Deed and its 'amendment', the 1983 Trust Deed. He was a well known accomplished trust lawyer.
61. In the September 30, 2014 affidavit, Exhibit "A" to the affidavit is a flip chart. This is just a method of recording discussion. Any decision from this flip chart would have been recorded as a proper motion if it was approved. The flip charts were not approved and really became the agenda of a planning meeting. They were meant to record free flowing information and exchange of ideas.
62. Catherine produced a "consensus document" to the Trustees. Catherine did not give the Trustees a chance to review the document or properly consider it. Catherine is prone to springing ideas or concepts on the Trustees without prior notice and if they do not immediately agree with her, she becomes upset, loses patience, and refuses to give the other Trustees time to consider any concept. She simply refuses to work through things. She expects the Trustees to just agree with her. When she did not bring the consensus document back for reconsideration, the matter was dropped.

Concerns Related to Political Interference

63. In respect of paragraph 29 of the September 30 Affidavit, I believe that Catherine's concerns about political interference are unfounded for the following reasons:
 - (a) Chief Walter Twinn was the settlor of the Trusts and was also the elected Chief. Until his death, he held a Trustee position. During his tenure as a Trustee, he appointed other elected Councillors as Trustees. Catherine was appointed a Trustee in 1986. She was present and approved the appointment of elected officials and did not take any action to suggest there was political interference until her Court action in 2014;

- (b) I have not been aware of any political or personal agendas relating to the Trusts and I am unaware of any payments related to political or personal agendas. Payments have been made from the 1985 Trust for tax purposes;
- (c) Catherine held an appointed position on the membership committee of SFN. As a member of the Committee she could have recommended admission of members, and thus of beneficiaries. She never suggested that this created a conflict with her role as a Trustee of the Trusts. She has been a Trustee longer than any other Trustee. Prior to the present matter, the Trustees advise me that they do not recall Catherine ever discussing any such conflicts or issues of political interference with the Trustees.

Ascertaining the Beneficiaries of the 1985 Trust

64. In respect of paragraph 29(a) of the September 30 Affidavit, the issue of ascertaining the beneficiaries of the 1985 Trust has been an on-going issue faced by the Trustees since at least 2009 when I was hired. The legal advice that the Trustees received on a number of occasions indicated that it would be wise to seek the advice and direction of the Court on the matter, or face possible future lawsuits by those who were not identified as beneficiaries by the Trustees, or face lawsuits on the basis that people were excluded on the basis of the 1985 Trust being discriminatory. The Trustees have been involved in the following steps in ascertaining the beneficiaries of the 1985 Trust:

- (a) In November 2009, I made a presentation to the Trustees respecting the approval of a list of beneficiaries of the 1985 Trust provided to me by Catherine. The Trustees decided that they could not certify the list until further actions were taken. They believed that they should ask anyone who felt they had an interest in the 1985 Trust to come forward. The Trustees embarked on a process involving advertising for potential beneficiaries to come forward. The advertising was placed in all known weekly local newspapers and the major daily newspapers in Alberta, British Columbia, and Northwest Territories, and resulted in approximately 149 responses. Many of the responses came from individuals who would not be beneficiaries as they had enfranchised or were members of a family who had enfranchised;

- (b) Catherine proposed that the Trustees establish a process to determine the beneficiaries of the 1985 Trust and proposed appointing a tribunal to determine the beneficiaries, including dealing with the responses I received from the newspaper advertisements. Initial oral legal advice received by the Trustees was that the Court would first have to approve such a tribunal. Nonetheless, the Trustees approved proceeding with that plan. Later, Catherine proposed that the tribunal also be used by SFN to select members. This latter proposal was rejected by SFN;
- (c) Catherine says no process is in place to determine the beneficiaries of the 1985 Trust. However, the whole application in 1103 concerns beneficiary determination and, in fact, the Minutes show that there were many attempts to determine a list of beneficiaries of the 1985 Trust, and that the Trustees finally decided to first get the 1985 Trust definition settled. The application in 1103 is to get advice and direction on this issue. Catherine wants a tribunal before the Court gives advice and direction.
- (d) There were other processes attempted by the Trustees that proved problematic so they decided to go to Court.
- (e) Catherine says that Roland said he would lose his position if he allowed a tribunal to decide membership in SFN. Roland did not say that in my presence and he denies ever saying that. He said that SFN had fought hard through the Constitutional Challenge of Bill C-31 for control of selecting its own members and that this right would not be given up. I interpreted what he said as meaning that the members of SFN do not want to give up the right to select future SFN members and if he is representing the members of SFN, then he cannot support that position.
- (f) Oral legal advice indicated that, since both Trust Deeds refer to "members of the Sawridge Band" as a qualification for beneficiary status, the Trustees could not themselves select beneficiaries but had to rely on the determination of membership given by SFN or seek the advice and direction of the Court. This information partly resulted in the Trustees' decision to proceed with the 1103 Application.

Membership Process

65. In respect of paragraph 29(b) of the September 30 Affidavit, Catherine criticizes the membership process. However, she was a member of the membership committee for many years and further, as a member of SFN, had a say in the process at least in terms of the election of council and in terms of voting if an appeal of a membership application comes to the electors. Mike McKinney advises that Catherine was instrumental in drafting the SFN membership application along with Moe Litman, Maurice Cullity and Mike McKinney, all of whom are respected lawyers. While she criticizes people for having a dual role in the membership process, Catherine has had a dual role for many years. In addition, I am advised by Mike McKinney, that Catherine was instrumental in drafting the Membership Rules of SFN. The Court has determined that membership will not be addressed in the 1103 action and thus none of these issues should be relevant. However, Catherine has kept these issues in her affidavit and thus they must be addressed.
66. SFN only considers completed applications. I am advised that many applications are submitted with significant deficiencies. In reviewing the transcript of the Questioning of Elizabeth Poitras and in reviewing my responses to undertakings, I believe that many applications are submitted but are incomplete and therefore cannot proceed through the application process.
67. In respect of paragraph 29(c) of the September 30 Affidavit, there have been instances in which applications were not processed. However, I am advised that this occurred largely because the applications were incomplete.
68. In respect of paragraph 29(d) of the September 30 Affidavit, Catherine's allegations are not true. A simple review of the 1103 Application shows that the Trustees have specifically sought the direction of the Court to determine what they should do.
69. The Trustees have not sought to restrict SFN membership. Membership is determined by SFN which must adhere to its Membership Rules.
70. In respect of paragraph 10 of the September 30 Affidavit, elected officials are able to determine membership at the first level of determination of membership. Any rejected applicant has the right to appeal to the whole of the electors of SFN. Catherine was on

the membership committee and had ample opportunity for many years to change the membership process if she thought it was flawed, but she did not do so.

71. If beneficiaries need to be members of SFN, then there is already a process for determining members and there is no reason to create another process.
72. If the Trustees must determine the membership under the 1982 *Indian Act* definition, there are several problems as the 1982 Act has antiquated concepts which no longer are in force. The 1982 Act had the concept of enfranchisement and protesting illegitimate children, which no longer exists. The 1982 Act continues the discrimination against women who did not marry a man who had First Nation status and discriminates against their children. It discriminated against all kinds of people. To determine the beneficiaries under the 1982 *Indian Act* definition, by its nature, requires the Trust to function in a discriminatory manner.
73. In response to paragraph 29(e), of the September 30 Affidavit, while there may be a list of potential beneficiaries, the final determination of the Court is necessary. It may be that the Court determines that the definition should be "members" and thus no further process is necessary.
74. The 1982 Trust defined the beneficiaries as "members" of SFN.
75. My investigation shows that the goal of the Settlor of the 1985 Trust had been to switch back to "members" of SFN as beneficiaries and combine the 1985 and 1986 Trusts once the result of Bill C-31 was known.
76. I do not think that Chief Roland Twinn was the only one not to engage in the process set up by Catherine referred to in Exhibit "D" of the September 30 Affidavit.
77. In respect of paragraph 29(f) of the September 30 Affidavit, membership is the responsibility of SFN as has been the case since SFN took control of its membership in 1985. When the Settlor set up the Trusts, he could have given the Trustees control over who would be beneficiaries but he did not do so.
78. In respect of paragraph 29(g) of the September 30 Affidavit, the Trustees have concluded that SFN membership is the jurisdiction of SFN and not the Trustees. This determination is supported by:

- (a) Justice Thomas in his Reasons for Judgement on December 17, 2015 stated that he was satisfied that the membership process for SFN should not be litigated in the 1103 action, and
- (b) The legal opinion that the Trustees should not interfere in the membership process, even though they have to rely on it to determine beneficiaries of the Trusts.

Payments to Beneficiaries

79. In respect of paragraph 29(g) of the September 30 Affidavit, regarding beneficiaries of the 1985 Trust and discrimination, the decision to extend benefits only to the beneficiaries of the 1986 Trust was made on the advice of legal counsel who noted that the Trustees could not extend benefits to non-beneficiaries or to the potential beneficiaries of the 1985 Trust until a determination of the definition of beneficiaries could be made. There was a concern that payments made from a discriminatory trust may create liability for the Trustees. Thus, the application was made for advice and direction. The Court may decide to make the 1985 Trust beneficiaries and the 1986 Trust beneficiaries the same, in which case additional steps may not be required.

Potential List of Beneficiaries

80. The "potential" list of beneficiaries that I have is based on a list provided to me by Catherine, which has been analyzed by Mike McKinney based on rules for membership in SFN from the *Indian Act*, 1970. It is a larger list than the current membership list. However, the "potential" list is discriminatory because it necessarily excludes women married to non-Indians and their children, among other discriminatory elements.

Catherine's Behavior at Trustee Meetings

81. In respect of paragraph 29(j) of the September 30 Affidavit, I have observed Catherine speak without restraint at a number of Trustee and other meetings. I also have observed that she often monopolizes the meetings and prevents others from speaking. As well, she has been known to filibuster meetings, ignore requests from the Chair to let others speak, and refuse to allow any business to be carried out that is not directed by

her. The Chief has advised me that he denies all allegations that he has threatened reprisals. I have not observed any threats directed towards Catherine at Trustee meetings.

82. Catherine acts in a biased way against SFN. The story of Tracey Poitras Collins relayed in this my affidavit is an example of Catherine trying to paint things done by SFN as bad.
83. Catherine has stated at Trustee Meetings that she thinks the Trustees are incompetent and wants to replace them. She has stated that she thinks that Donovan Waters, who is a well recognized trust scholar and who has provided legal opinions to the Trustees is incompetent. She yelled at him and berated him at a meeting and wanted him replaced. She has expressed repeatedly that she believes that I am incompetent and need to be replaced.
84. She has been very vocal at meetings that the Chair, Brian Heidecker, is biased and cannot do his job and should be replaced. She does not respect his position as Chair. There appears to be no one that meets Catherine's standards. She has stated that only she is good enough to stay on as a Trustee.
85. I am confident that both the Chair and I are qualified for our positions. The résumés of Brian Heidecker and me are attached hereto as Exhibit "Q" and Exhibit "R".
86. Catherine works by intimidation and she thinks it will work with anyone. She intimidates the Trustees in many ways but one of them is by simply staring at them. Even during the Questioning on affidavit, Catherine attempted to intimidate me by staring at me, staring at Brian, and staring at the lawyers. These are long glaring stares that are very uncomfortable.
87. Catherine often gets involved in matters that are not relevant for the Trustees. Catherine says she has a duty to act if SFN is not acting in accordance with the law. The Trustees do not get involved in SFN business and SFN is not to get involved in Trustee business. They are to remain separate. Besides, if SFN is not acting in accordance with the law, Catherine has not done anything about it. She was on the membership committee for 20 years and did nothing to change the membership process. She says that she has an oversight duty towards SFN. I am not sure where this oversight duty comes from but it does not come from the Trusts.

88. Catherine suggests that there is conflict and problems at the Trustee table. However, it is Catherine that causes the conflict. There is no other conflict at the Trustee table. The other Trustees respect each other. They do not always agree. They disagree with me and with Brian. But they do not yell. They do not show disrespect. Catherine is disrespectful of almost everyone. She is rude to all Trustees, me, Brian and all advisors.
89. An important skill of a Trustee is to listen. It is important for a Trustee to listen to the other Trustees, listen to the Chair, listen to the advisors, listen to the beneficiaries and listen to the Administrator. Catherine often refuses to listen. She loves to talk but she shows a complete lack of respect for the other Trustees, complete rudeness and outright hostility to the Chair and the Administrator and she has worked to destroy the strategy of the legal team. She actively works against most people involved in the Trusts. The other Trustees try to continue to show her respect. They allow her to speak even when she will filibuster for hours. She does not show any respect to the other Trustees. She actively tries to make them feel as though they are stupid and do not know what they are doing.
90. I believe that Catherine has breached the Code of Conduct in many ways.
91. The letters of complaint filed by the four Trustees in the Code of Conduct proceedings are attached hereto as Exhibits "S", "T", "U", "V" and "W".
92. There are many examples of poor Trustee behaviour on the part of Catherine which I have not cited herein but which will be the subject of the arbitration proceeding under the Code of Conduct.

Document Production

93. Catherine has repeatedly told the Trustees that she has a container of Trust documents. We have asked her to produce them and she has refused. I asked if I could attend at the container to catalogue them and she refused. I asked if I could copy them at the expense of the Trusts and she refused. Catherine knows that the Trusts did not have good administration and document record keeping while her husband was the Trustee and while she was a Trustee, yet she will not release the Trust documents in her possession. I gave an undertaking to ask Catherine about documents during my

Questioning by the Office of the Public Guardian and Trustee and she did not answer this request for documents.

94. In the production of undertakings from the Questioning of Catherine, Catherine produced documents from her records that I have not seen before and thus I am concerned that she may have other records of the Trust that she has not shared to date, despite many requests.
95. In respect of paragraph 29(m) of the September 30 Affidavit, Catherine speaks about a fire that destroyed documents that belonged to the Trusts. An investigation was undertaken to determine what, if any, records were destroyed. It was determined that these records were 'bar chits' from the liquor services at the Sawridge Inn-Slave Lake from the late 1970s and that these had no relevance since the financial information was contained in the Company financial statements for the Trusts. From the time that I was hired, I have worked to gather and catalogue the documents of the Trusts. I have stated that my search is exhausted. SFN has been cooperative throughout the process.
96. Catherine is the longest serving Trustee. She is also a lawyer. However, the administration for the Trusts and documentation for the Trusts was lacking. Before 1997, the Trusts had few administration documents that were generated and maintained by the Trusts.
97. There are several references in the Minutes to dealing with documents in the August 2009, November, 2009 and December, 2009 Minutes. These Minutes are collectively attached as Exhibit "X".
98. In these Minutes there are references to the collection of records. The Chair and I have both had numerous conversations with Catherine and the other Trustees regarding providing copies of any records in their possession to the Trusts' Office. In addition, the Chair offered to send a truck to a container in Camrose that Catherine said contained records of the Trusts. The Trusts' Office offered to pay Catherine's son, Cameron, to help sort through these records. Catherine has never provided access to this container.
99. At several Trustee meetings Catherine was to provide copies of documents. She has never provided any of these documents. The Meeting Minutes read as follows:

1103-004	Catherine will provide a copy of the Court transcript of the evidence presented by Chief Walter Twinn before Justice Muldoon in 1993-94 to Paul who will provide Doris with a copy.
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She did not provide the transcript. Eventually it was provided by Mike McKinney.

1309-002	Catherine will provide Paul with copies of the counselling self-assessments she has collected.
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Never provided.

1309-004	Catherine will provide a draft of suggested changes to the language in Section 8 b) iii) of the Scenarios Plan.
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Never provided.

1309-005	Catherine will provide links to the YouTube videos on the need to separate political and economic spheres, on per capita distributions and on the need to have discussions from the PBLI workshop she attended recently in Vancouver.
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Never provided.

1403-002	Brian requested that Catherine submit her questions on the Application for Advice and Direction on Asset Transfer in writing as soon as possible.
1403-003	Brian asked that Catherine submit in writing notice that she will withdraw her threat of legal action against the Trustees.
1403-004	Brian asked that Catherine submit in writing notice that she will comply to the Code of Conduct.

Never provided.

1410-007	Paul asked that Catherine share her copy of the original manual so that it can be scanned into the Trust Archives.
1410-008	Catherine will undertake some research into different methods of evaluation.

Never provided.

1504-002	Catherine will provide a list of web links with source information on health for the next meeting.
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Never provided.

Conflict of Interest

100. Catherine continues to try and suggest that our legal team is in a conflict. She must know that a change in the legal team would be a huge expense to the Trusts.
101. In respect of paragraph 29(l) of the September 30 Affidavit, Marco Poretti was counsel on the Bill C-31 Constitutional Challenge by SFN. Possible conflicts of interest were examined at the time of Marco Poretti's involvement in the Trusts' 1103 application. No conflict was identified. The Trusts, through its Trustees, are separate entities from SFN.
102. In respect of paragraph 33 of the September 30 Affidavit, Justice Thomas has noted that there is an inherent conflict of interests in a First Nation. Catherine has suggested the current structure of the Trusts results in a conflict of interest. This structure has existed since the Trusts were settled. This structure was established by Chief Walter Twinn who was the Settlor of the Trusts.

Community Centre

103. In respect of paragraph 29(n) of the September 30 Affidavit, the Trustees did not support adding SFN as a beneficiary. They had previously opposed such a move by the Companies' Board of Directors, who had received advice from Davies Ward to have SFN declared a municipal government body to enable it to be declared a beneficiary as a tax saving measure.
104. A proposal was explored to fund a community center:
 - (a) This was part of an attempt to explore other ways that the Trust could benefit the beneficiaries. It was recognized that Trust funds could not be paid to SFN;
 - (b) SFN was proposing to build an office and community center. Since SFN is not a beneficiary, the Trusts could not have provided funding for this project. However, the Chair suggested that perhaps the Companies could find a way to donate the money to SFN for the Community Centre since it would contribute to the community as a whole. One suggestion was that the Companies could pay a franchise fee for the use of the Sawridge name. 25 of 44 members and their families live on or close to the Reserve. Therefore, the Community Center would

have been a benefit to the majority of the beneficiaries. In the end, it was never carried out.

Code of Conduct

105. In respect of paragraph 30 of the September 30 Affidavit, Catherine was involved in drafting the Code of Conduct. On two recent occasions, she herself initiated legal proceedings to prevent the Trustees from invoking the Code of Conduct against actions undertaken by her.
106. Currently, the structure of the Trust is the Trustees will make a policy decision, such as the policies that are attached to the distribution scheme, and then let the Administrator make the actual decisions in terms of payment of funds. Thus, the Trustees can make the decision to pay for recreation and then the Administrator receives the request from a beneficiary and pays out the funds based on the policy. In the last year, Catherine and her family have accessed many of the programs.

Misrepresentation of Trustee Fees

107. By way of the Affidavit sworn September 23, 2015, Catherine deposed that there was a "\$15,000 plus meeting fee" for the Trustees. I have attempted to determine how Catherine came to this figure and I cannot determine how she arrived at this figure. I am in charge of paying the Trustee fees. Her statement is not accurate.
108. Counsel for the Public Trustee, in written submissions made to the Court on September 25, 2015, interpreted the above statement of Catherine as evidence that each Trustee is paid \$15,000 per meeting for a total Trustee fee of \$75,000 per meeting.
109. These submissions are not correct. The Trustees do not receive \$15,000 per meeting. The Trustees receive \$500 per meeting plus a payment of \$4,000 per quarter in the event that the Trustee has attended at least half of the meetings in that quarter.
110. Upon review of the submissions, counsel for the Trusts advised counsel for the Public Trustee that the submission was incorrect. This correspondence was copied to Catherine's lawyers. The Trusts' counsel provided the correct information and requested

that counsel for the Public Trustee to correct their submission to the Court to ensure the Court was not misled in respect of the Trustee fees.

111. Catherine provided no response to the Court.
112. I am concerned that the misinterpretation will be misleading to the Court, and in this Affidavit I am correcting the record on the issue of what the Trustees are paid. This problem was created by Catherine and yet she took no steps to correct this misinformation with the Court. This resulted in additional costs.

William MacDonald and Alfred Potskin

113. Catherine makes an argument with respect to William MacDonald that he has an absolute right to be on SFN membership list. She suggests that his application for membership was not properly reviewed. As I understand it, William MacDonald has a complicated set of facts and he has not supplied sufficient information to determine whether he qualifies as a member. The information has been requested of him, but he has not provided it.
114. Catherine mentions Alfred Potskin as an example of someone who was treated badly in the membership process. However, I am advised that, as with many people who are suggesting that they are SFN members, Alfred Potskin had previously enfranchised (May 28, 1952) and therefore the answer to his membership was quite simple. Alfred Potskin made an application for membership but was rejected on the basis of his enfranchisement. He could have appealed the decision to the electors of SFN but he did not appeal the decision.
115. These are but two examples that show that Membership applications need to be left to SFN.

Binding Resolution Process

116. Catherine makes reference to a binding resolution process. This was discussed on a without prejudice basis as a compromise in the hopes Catherine would agree to approve Justin as a Trustee and to sign the transfer of assets documents. It was urgent to have the transfer of assets proceed because there was a commercial transaction pending for

the Trusts. The entire without prejudice negotiation regarding the binding resolution process broke down because Catherine would not compromise on the process or the selection of mediators and thus it could not proceed. This is often the case. Catherine does not compromise. This was a without prejudice conversation. When negotiations broke down, the Trustees needed to go to Court to get the authority to transfer assets to the new Trustees in order to salvage the commercial transaction. In respect of the Court Order, we did not seek any remedy against Catherine. The Trustees obtained an Order that allowed me to take the steps to complete the transfer. Exhibit D is the transcript in which there is no offer by Catherine to just sign the transfer. The transcript also shows that Counsel offered to allow Catherine to proceed with her claim in respect of Justin. Exhibit D includes the Affidavit, Application and Order filed in support of the motion to transfer assets of the Trust.

117. Catherine says she raised the issue of the “biased and unfair process of membership” at the membership committee. However, she has provided no documentary proof that she did so. I am advised by Bertha that Catherine did not raise such an issue. Bertha further advised me that Catherine often did not attend the Membership meetings and thus quorum did not exist and the Committee could not meet. The list that SFN provided showing Catherine had reasonable attendance is skewed because there were many meetings that did not happen because Catherine did not attend, and therefore the meeting could not happen. It is ironic that Catherine is actually suggesting that the membership approval process is flawed when I am advised by Bertha that Catherine was an active participant in the process as it existed.

Tracey Poitras Collins

118. Catherine says that Tracey Poitras Collins was only admitted to membership because Roland did not have his supporters at the meeting. This is an example of the membership process working successfully. Tracey has been elected to Council and thus it is clear that she has won the support of the community twice, once in her appeal for membership and once in being elected to Council.
119. The story of Tracey Poitras Collins is a good news story of a person being admitted to membership and then getting elected to Council. Catherine does not view this as an example of anything good.

Meeting with Directors and Deloitte

120. When the Companies (that are the assets of the Trusts) were turned over to a Board of Directors, a Transfer Agreement was signed that directed that all Trusts-Companies communications were to occur through the respective Chairs. I have been advised that in breach of that agreement, Catherine has had meetings with the Directors of the Companies to discuss the Trusts and suggested to the Directors that the Trusts and the Trustees are dysfunctional. The Trustees are not supposed to do that. This shows a lack of loyalty to the Trusts.
121. I have been advised that there was one occasion between the appointment of the professional Board of Directors (2006) and my arrival (2009), when the Directors spoke to Catherine about interfering with company management and company business. She was told to halt such activities and it was reiterated that the Transfer Agreement channeled all Trusts-Companies communications through the respective Chairs. I believe that that meeting was held at Deloitte's office.
122. Catherine has breached the agreement that all communication will go through the Trustee Board Chair to the Companies Board Chair. Catherine has been told on a number of occasions not to contact the Directors. This is also in the Code of Conduct in paragraph 3 (Exhibit B).
123. A good working relationship between the Companies and the Trustees is important to the proper functioning of the Trusts. Catherine is undermining the establishment of such relationship.

Constitution

124. Catherine speaks of the Constitution. However, there are only 2 parts of the Constitution that impact the Trusts. The first is the inherent right to govern and the second is the declaration of traditions. The Constitution is attached as Exhibit "Y".

Catherine's Motions are Approved

125. Catherine says that the Trustees reject everything she puts forward but this is not true. There are many motions for which Catherine received support.

126. However, Catherine often acts in her own best interests. She moved to amend the life insurance benefit policy for the 1986 Trust so that she could get the life insurance. The policy had been set such that the Trust would provide for the cost of insurance if the beneficiary was under 55 years of age. Catherine was over 55 and Catherine had cashed her life insurance coverage that she had with SFN. She wanted life insurance coverage and so she put forward a motion to amend the Trust life insurance benefit policy so that the insurance could be obtained up to age 60. This is very expensive insurance. The Trustees supported this motion, which benefitted Catherine. The 1986 Trust is paying for life insurance for Catherine. This is one of many examples of Catherine putting a motion forward and that motion getting approved by the other Trustees

Legal Advice for Trustees and Legal Fees

127. Catherine says she was obstructed from obtaining legal advice. Clearly she was not obstructed, as she has obtained legal advice for herself, for her son, for Debra Serafinchon and for Shelby Twinn. The Trustees have a policy that they are to obtain prior approval for legal advice and prior approval for expenditure of fees. Catherine did not obtain that approval.
128. The Trustees discussed a proposal for legal fees for individual Trustees. The following was discussed:

6.5 Trustee Legal Fund

Trustees discussed a proposal from Catherine to set up a Trustee Legal Fund that would provide \$15,000 per Trustee for a total of \$75,000 per year to permit individual Trustees to obtain legal advice on issues before the Trustees in addition to any advice that the Trustees jointly requested.

In addition, the funds not used by any Trustee could be used by other Trustees.

Brian pointed out that under this Fund, individual Trustees would not need the usual approval of 50% of the Trustees to obtain their own legal advice.

**2013-000 Moved by Catherine, that the Trustees establish a
Trustee Legal Fund. No second, motion failed.**

129. Catherine sought legal advice, despite this motion failing. Despite her suggestion that the Trustees be given \$75,000 per year for legal fees, she has spent over \$700,000 in legal fees and based on her December 2015 affidavit has spent almost \$500,000 in 2016 in legal fees without accounting for the Questioning which took place in 2016.
130. Catherine has not sought prior approval of the Trustees for those legal fees to be paid and in fact has not sought any approval to have her legal fees paid by the Trustees. She has only sought to have her legal fees paid through the Court process.
131. Catherine complains about legal fees but she is part of the reason for legal fees being incurred. She disrupted the 1103 application which sought to impose a settlement on the OPGT by taking an oppositional stance at such Court Application causing the Trustees to withdraw the offer and application. She forced the Trustees to go to Court twice to have the assets transferred when new Trustees were appointed. She went to Court twice to stop Code of Conduct actions against her. She has actively opposed everything the Trustees have approved. In a previous settlement meeting that she attended, she was hostile and basically ended the meeting by yelling about legal fees and releasing privileged information. She is now seeking over \$700,000 in legal fees to be paid to her lawyers from the Trusts.
132. In respect of paragraph 29(k) of the September 30 Affidavit, the Trustees agreed to pay the legal fees of SFN when it became clear that considerable work would have to be done by SFN for the Trusts to complete their 1103 application. The Trusts had no records concerning some of the issues that were being raised about membership. Catherine refused access to records that she claimed to have. Catherine has previously indicated support for paying SFN's costs to assist in the recovery of Trust documents stored by SFN. The Trust Deeds permit payment for services rendered for professional services deemed necessary by the Trustees. The Trustees require the services of SFN to deal with its application. SFN is not wealthy and it cannot afford to pay for legal costs to assist the Trusts. The Chief and Council advised the Trusts that if it needed the help of SFN, then the Trusts would need to pay the legal fees required.

133. The Trustees decided that there should be some control on access to the professionals in order to be able to control information and fees. Thus, the Trustees passed a resolution that the conversations with lawyers would pass through me.

Failure to Proceed with Litigation

134. Catherine has created an issue about Justin's appropriateness as a Trustee and has gone to great lengths to reserve the right to pursue having him removed. She then did nothing in her 1403 action for three years, except seek to have her legal bills paid. If she was really concerned about Justin being an inappropriate Trustee and about reserving the right to pursue the matter, then she should have pursued the matter. Again it is about Catherine and her interests first. It is not about the Trusts' interests. In November 2016, Catherine asked if Justin was going to be reappointed in December 2016 and she was told that his reappointment would be on the Agenda for the December 2016 meeting. She did nothing in the December meeting to bring other names forward to vote in as Trustees. She refused to vote in favour of the motion to reappoint Justin and Margaret as Trustees.
135. In the May 16, 2014 application, Karen Platten advised the Court that Catherine wanted to file an affidavit but that she was unavailable. However, that morning and in the days leading to the Court application she must have been in contact with Karen Platten to give instructions to negotiate the settlement deal that we were working on and must have been available to negotiate the terms of the settlement.

Trustee Evaluation Process

136. There is a trustee evaluation process in place but Catherine has not completed any evaluations and has not participated in the process.
137. Catherine has long criticized the other Trustees. In December 2009, I received a letter from then Trustee, Walter Felix Twin, indicating that the Trustees saw the issues raised in Catherine's letter as a way of getting rid of the other Trustees who she considered "dead weight". He wrote the following letter to me:

December 3, 2009

Dear Paul Bujold, Trust Administrator:

At the last Trustee meeting, it was suggested that a re-evaluation of the Trustees be performed. I felt that you got the impression that this was a good idea. I wanted to share an incident with you regarding this matter but wasn't able to as we ran out of time.

The incident was a conversation between Catherine Twinn and David Ward. During this conversation, it was said that they wanted to get rid of three of us Trustees because we were "dead weight". I felt they said this because of our age as three of us are "elders". I was very offended to the term used to describe myself, Bertha and Clara. Although they were offended, they reacted humbly and did not bring it up at the last meeting. This is discrimination and should be addressed.

Also, I heard that Catherine and David Ward hired a Trust lawyer regarding this evaluation and the lawyer stated that he had no say in the matter, this was an issue that needed to be dealt with internally, can you confirm this for me? Thank you for your time.

Sincerely,

Walter F. Twin

138. Catherine mentions a January 19, 2009 letter to David Ward that is basically Catherine's view of the state of affairs with the Trustees. It does not reflect the views of the other Trustees.
139. Catherine has repeatedly stated that she bore most of the "shoveling-up" responsibilities and that the other Trustees did nothing. My observation is that this is not correct. The Trustees create policy and I implement the policy. In fact, Catherine creates a lot of unnecessary work for the Trustees and Administrator of the Trusts.

Customary Laws

140. Catherine produced a letter from David Ward suggesting that the Trustees would be in breach of their duties if they did not follow the customary laws of SFN. The Trust Deed states that these customary laws have to have been incorporated into Canadian law. I

am not aware of any body of customary law recognized by Canadian law as required by the Trust Deed. In addition, following the customary laws will still leave us with a discriminatory Trust as the custom is for females to leave SFN if they marry a non-member.

Attack on Chief Roland Twinn

141. Catherine suggests that Roland has received substance abuse treatment and that makes him an inappropriate Trustee. My observation is that Roland is a careful and participatory Trustee who takes an active interest in the Trusts and the beneficiaries of the Trusts. If he has received treatment that is a personal matter that should not be used against him or even mentioned at the Trustee table unless it affects his performance. This personal attack is indicative of how Catherine treats the other Trustees.
142. In respect of paragraph 29(i) of the September 30 Affidavit respecting the Power of the Chief, I believe that this information is basically incorrect. I do not believe that Chief Roland Twinn feels he has this power to exert. Of the 44 members of SFN, a small fraction is employed by Sawridge Resources. The Chief may have some influence over employment but he denies that he uses it as a threat or for blackmail as Catherine suggests. He is the Chief and this is a company owned by SFN not the Trusts. In respect of other influence of the Chief, he has no influence over hiring in respect of the assets of the Trust.
143. In respect of paragraph 34 of the September 30 Affidavit, Chief Roland Twinn does not unduly influence Trustee decisions. He participates in the meetings. He voices his opinion but he is very clear that he is not a Chief at the Trustee meetings and he tries very hard to separate SFN issues from Trusts issues. He does, however, believe that he represents the concerns of the members of SFN as a Chief traditionally does and brings those concerns to the Trusts if they involve Trusts business. I believe that Catherine tries to influence the Trustees. They have advised me that they fear reprisals from her. Although Catherine states that she finds it difficult to vote against the Chief, she regularly does so.

Procedural Orders

144. Catherine would have been aware of the filing requirements in the Procedural Orders obtained in 2011. She did not file an affidavit according to the Procedural Orders in 2011 and instead waited until 2014 before she took an active adversarial role against the Trustees. She did so without warning and only served a Brief taking an adversarial role the night before an application on the settlement. This delayed the application at additional cost to the Trusts.
145. Catherine says that if people's rights are affected then they should get notice. The Procedural Orders sought the Court's direction on giving notice and the Court determined how to give notice. The Procedural Orders regarding service were followed. Catherine was involved in those early applications. She approved the process and received notice of the Procedural Orders. She now takes a contrary position years after those Procedural Orders were put in place suggesting that proper notice was not given.

Meeting Minutes

146. At every Trustee meeting, the Minutes from the previous meeting are reviewed and approved. Catherine objects to the Minutes being approved but usually does not suggest changes. She does not state the reason for her objection except to occasionally say that she thinks the Minutes are flawed and will not vote for them. She has been taking this approach since March 18, 2014. This protest is obstructionist. She is not being a willing and active Trustee.
147. In 2010 she was approving Minutes or taking an active role in amending the Minutes. During her recent Questioning, she refused to acknowledge any of the Minutes as being the proper Minutes for the meeting. Attached and marked as Exhibit "Z" are all the Minutes of meetings referred to during the Questioning of Catherine and marked only as "Exhibits for Identification". These Minutes reflect what occurred at the meetings as I was present at the meetings. Brian Heidecker, the Chair, and the other Trustees confirm that these Minutes reflect what occurred at the meetings. The Questioning of Catherine was made longer and more expensive because Catherine would not acknowledge any of the Minutes as being the Minutes of the meetings.

148. At the October 15, 2013 meeting, Catherine proposed changes to the September 17, 2013 Minutes. These proposed amendments would have completely changed what the other Trustees felt had happened. Catherine moved to table discussion of these Minutes and the motion passed with Catherine voting in favour and 4 abstentions from the other Trustees. The September 17, 2013 Minutes were approved as originally drafted at the January 21, 2014 meeting with Catherine opposed.
149. At the February 25, 2014 meeting, Catherine proposed changes to the January 21, 2014 Minutes so approval of these Minutes was tabled until the Trustees could review Catherine's proposed changes. At the March 18, 2014 meeting, both the January 21, 2014 and the February 25, 2014 Minutes were again tabled since Catherine was proposing changes to both sets of Minutes.
150. On April 15, 2014, a majority of the Trustees approved both the January 21, 2014 and the February 25, 2014 Minutes as originally drafted, Catherine opposed.
151. Catherine has opposed approving the Minutes since that date stating that I am biased in taking Minutes and that there should be another person taking Minutes for the Trustee meetings. No other Trustee feels this way.
152. I have reviewed the Minutes and compiled the information about Catherine's voting record into the chart below:

Year	Opposed	Abstain	Oppose/Abstain	Absent	Total Decisions	Percent Oppose/Abstain
2016	15			4	31	48.4
2015	12	3			43	34.9
2014	18		5		49	46.9
2013	2	2			39	10.3
2012	1	1		1	54	3.7
2011					52	0
2010		1			78	1.3

Trusts to Merge

153. At an October 18, 2011 meeting, Catherine referenced a part of the transcript from Chief Walter Twinn's testimony in the constitutional challenge litigation involving SFN suggesting that the two Trusts were not to co-exist; the 1985 Trust was not going to be effective and the 1986 Trust would survive. Catherine is now challenging that concept and suggesting that the Chief Walter Twinn always wanted two Trusts with two sets of beneficiaries.
154. In addition, in 2009, the Companies were lobbying the Trustees to merge the Trusts since the two-trust-situation was impeding business. Donovan Waters even drew up a Trust Deed in 2010 envisioning this merger of the Trusts if the beneficiary definition was changed to be the same in both Trusts. Catherine was involved in this process and approved it.
155. It is clear from the transcript of Chief Walter Twinn that the Trusts were to be merged. I also learned that from a phone call with Maurice Cullity. The relevant portion of the transcript is attached hereto as Exhibit "AA"

December 16, 2015 affidavit of Catherine Twinn

156. Catherine also deposed a further affidavit and filed such affidavit on December 16, 2015 ("December Affidavit"). Much of the evidence in the December Affidavit is a repetition of the evidence in the September 30 Affidavit and thus I will only address my concerns, and contrary evidence, about those matters which are not a repetition.
157. In several of the paragraphs of the December Affidavit, Catherine addresses the need for the Trustees to become involved in the SFN membership process. I believe that the decision of Justice Thomas in December 2015 has determined that it is not appropriate to address membership in the 1103 action. Further, membership is not relevant to the 1403 action. Thus, while I have contrary evidence to the issues as Catherine has raised them in the December Affidavit, I will not set out that evidence in detail as I believe it has now become irrelevant. Specifically, references to SFN membership in paragraphs 4, 6, 7, 10, 11 and 12 of the December Affidavit will not be specifically addressed.
158. Catherine suggests that the Trusts need independent representation so that the management of the assets is not affected by "improper motivations". The Trusts' assets

are managed by an independent Board of Directors.

159. In paragraph 7 of the December Affidavit, Catherine suggests that she was prepared to resign but this is not true. She proposed that she and Clara would stay on as Trustees and that the other three Trustees resign. Clara and Catherine would carry on to put a process in place to appoint Trustees. The Trustees rejected this proposal.
160. In paragraph 11 of the December Affidavit, Catherine mentions a "hurriedly brought forward proposal". This proposal was not hurriedly put together. A great deal of work went into an analysis of proposals to try and settle the 1103 action because the costs of litigation were high and the Trustees thought they should try and settle. I tried to answer all of Catherine's questions. There was no refusal to answer questions. Catherine was simply refusing to participate and became abusive and upset. She yelled at everyone and left the meeting. The meeting carried on since the meeting still had a quorum and Catherine was informed by the Chair that the meeting would continue despite her absence and then she was astounded that the Trustees came to a decision. At the next meeting, she suggested to the Chair that the meeting should have stopped once she left.
161. In response to paragraph 12 of the December Affidavit, Catherine suggests that there was a refusal to disclose the basis for the proposal. This is not true. Catherine suggests that it was clear that ascertainment and inclusion of all beneficiaries would not occur. This is simply not true as the application before the Court seeks exactly that direction.
162. Catherine mentions the affiliates in paragraph 12 of the December Affidavit. The affiliates are people who have been given Indian status and the Federal department has assigned them a number for a First Nation to which they are most closely aligned. These assignments are not done with any precision and in doing a small investigation I am advised that many are incorrect. Thus, the reference to affiliates is largely inflammatory but in an abundance of caution all of the affiliates were served with notice of the 1103 application and thus they have not been excluded.
163. In respect of paragraphs 14-18 of the December Affidavit, most of this has been addressed with my evidence above in relation to the appointment of Justin and Margaret. However, there are a few matters that needs to be refuted. No action was sought against Catherine as alleged in paragraph 15. The application was drafted seeking a transfer of assets. No relief was sought against Catherine personally.

164. In respect of paragraph 15 of the December Affidavit, it was not that Dentons rejected the proposal. The negotiations broke down and no settlement could be reached and thus it was necessary to proceed with a Court Application.
165. Catherine suggests that Dentons is representing the majority of the Trustees. Dentons is acting on behalf of the Trusts based on the decisions of the majority of the Trustees.
166. In respect of providing dates for Questioning, now that Catherine is represented by Counsel, I have responded to her requests for information or we have sent the answers to her lawyer.
167. In respect of paragraph 22 of the December Affidavit, the issue of conflict has been addressed. An application was filed in an abundance of caution as a place holder application. After much consideration, we have determined that no application is necessary.
168. In respect of paragraphs 23 and 24 of the December Affidavit, the Court ultimately agreed that extensive document production was not necessary and thus the Trustees have been able to save considerable costs by the success of that application.
169. In December of 2015 Catherine incurred \$170,000 in legal costs. She now advises that her costs are in excess of \$700,000. Thus she has incurred a further \$450,000 in 2016. She says that only 20% of the fees relate to the 1403 action. I am unable to determine the accuracy of that statement as Catherine has refused to produce unredacted legal bills.
170. The information relayed in paragraph 30 of the December Affidavit in respect of legal fees is wrong, but we maintain solicitor client privilege over the information on the amount spent so it cannot be released.
171. Catherine suggests that the 1970 *Indian Act* is still used and interpreted every day by the Federal Government. I am advised by Mike McKinney that they would occasionally refer to the 1970 *Indian Act* to interpret some of the provisions in the current *Indian Act*. However, the 1970 *Indian Act* membership provisions regarding membership would not be applied as they are not in force.

Conversations with the legal team

172. The Trustees decided that, given the amount of legal fees being spent, there had to be control implemented. Thus, the Trustees passed a resolution that the conversations with lawyers would pass through me. Catherine voted for that resolution. The Trustees also passed a resolution that a Trustee had to get prior approval before they could have legal fees funded.
173. It is only the Trusts' Administrator who can contact the lawyers. The text of that resolution reads:

2012-036	12-09-18	<p>Moved by Roland, seconded by Walter that the Trustees reconfirm their policy that all contact with lawyers, consultants and other advisors be initiated only through the Trusts' Administrator for all work relating to the Trusts for which the Trusts are expected to pay and that all actions with lawyers, consultants and other advisors on behalf of the Trusts first be approved by a majority of the Trustees before being initiated. Paul will send out a letter to the various lawyers, consultants and advisors concerned.</p> <p>Carried, Unanimously.</p>
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174. **Undertaking #8 and 56**

Catherine says that the deed of appointment and transfer of assets were only presented at the January 2014 meeting. That is true, but all of the other Trustees were able to read them and agree to sign them. Catherine was asked to sign the documents at subsequent meetings and the Trustees did not proceed to Court until April 2014. It is hard for her to suggest that she did not have proper time to read these documents in the four months between January – April 2014.

The complete facts in relation to the appointment of Justin are relayed above in my Affidavit. In respect of this issue of separating out the transfer of assets, if Catherine only signs the transfer she is indirectly confirming Justin as a Trustee because only the

Trustees can be the owners of the Assets of the Trusts. It was simply obstructionist to suggest that she would not sign the deed because it involved his appointment.

175. **Undertaking #10**

The letter attached as an Answer to Undertaking #10 written by Catherine contains a number of misleading statements and misinterpretations of Justice Thomas' decision. Catherine tries to use her misinterpretations to get her way against the other Trustees by saying that she is the lawyer and therefore they must listen to her. In addition, she threatens to bring a Court application to have them all removed as Trustees. She suggests that the Trustees may be personally liable for the failure to address issues such as Trustee succession.

176. **Undertaking #12**

These notes produced by Catherine in answer to Undertaking #12 are not accurate as reviewed by the Chair, the other Trustees and me. Catherine has really reinvented history.

There is a note on page 167 of the notes that Catherine felt unsafe, disrespected and abused. None of the Trustees, the Chair, nor me noticed any disrespect to Catherine. She was not abused. My observation is that she was very overpowering and abusive to others. All of her notes appear to be intended to paint herself in a better light.

177. **Undertaking #13**

Catherine provides a letter of March 19, 2014 as an answer to this undertaking. Catherine sent the letter of March 19, 2014 to the Chair and he tried to answer all of her questions. Catherine did not accept the answers. I am advised by Doris Bonora that she was not asked by Karen Platten, Catherine's lawyer, to split the deed so that Catherine could just sign the transfer of assets. If one reviews the transcript from the Court application, Catherine's lawyer suggests that the asset transfer be done by majority vote and thus Catherine would not need to sign. The transcript is attached as Exhibit D.

178. **Undertaking #14**

In Undertaking 14, Catherine was to answer whether she made any motions at the January 21, 2014 Trustee meeting. There is a long answer produced in which Catherine again reiterates that she was abused, which is not true, and reinvents what occurred at the Meeting. She then records one motion that she made on which the Chair asked for a seconder and no one seconded the motion.

179. **Undertaking #19**

Catherine produces notes of the Meetings that are cryptic and difficult to read. There is a reason that Minutes are produced. The reason is that such Minutes are the official record of the meeting as determined by the majority of the Trustees. The Chair and I also agree with the contents of the official Minutes. Catherine has a perception of what occurs at meetings that is not always shared by the other Trustees.

180. **Undertaking #24**

The answer to this undertaking is not responsive at all. Catherine was to provide communication regarding the replacement of Clara between Clara's death and the meeting to replace Clara. Catherine produced a number of emails in which she asks for information that is not related to a replacement for Clara and then provides the information that she produced only at the meeting and not before the meeting.

In fact, many of the answers to undertakings are unresponsive to the undertaking given.

181. **Undertaking #35**

The answer to the undertaking #35 shows that Catherine does not respect the members of SFN. She suggests that Tracy Poitras Collins was only made a member because not enough supporters of Roland Twinn showed up. She does not respect the decision of the electors. Even her answer that suggests the Council belongs to Roland shows her lack of respect for the Council of SFN.

182. **Undertaking #36**

Catherine questions who gave direction for advertising for potential beneficiaries. I confirm that the Trustees gave me direction to advertise across Western Canada in a motion moved by Catherine on November 17, 2009 and carried by the Trustees.

183. **Undertaking #37**

Catherine suggests that there is a group of people that she spoke to and then suggests that there are a number of people who have an absolute right to be members of SFN. Catherine was a member of the membership committee for many years and did nothing about this. Further, in taking on this task of speaking to these people she has ignored the direct warning of legal counsel who advised the Trustees that they were not to get involved in SFN Membership.

184. **Undertaking #43**

Catherine continues to be contradictory on the issue of determining beneficiaries. She has produced a list. Then she produces categories of members. She continues to suggest that people have automatic rights to be members yet she did not help them to become members. Presumably people like William MacDonald, who she says had an automatic right to be on the list, would have had such a right when she was on the membership committee and her husband was the Chief. Yet Mr. MacDonald was not made a member during that time.

185. **Undertaking #49**

The four other Trustees, Bertha, Roland, Justin and Margaret, are functional and competent and healthy. They feel that they ask tough questions and manage the Trusts without political interference. If Catherine did not create so much hostility and if the Trusts could get through the legal process then they could just do their job of helping the beneficiaries. During this litigation many beneficiaries of the 1986 Trust have been helped. Good work is being done.

Catherine suggests that "the process of Peggy Ward's appointment was improper and in contravention of the very principles we agreed would govern and measure our decision

making". No part of this sentence is true. The appointment of Peggy Ward was made according to the Trust Deeds. It is not in contravention of any principles agreed upon.

Ultimately the undertaking is not answered.

186. **Undertaking #52**

The notes produced are again biased and are not reflective of what the other Trustees agree occurred at the Meeting. On page 31 of the notes, it says "Brian instantly pushed asking Bertha to move. She did" and "CT opposed. No one asked her for reasons". Once a vote is called then no more discussion would take place. It is clear from the notes that a discussion took place. It is interesting that the notes refer to Catherine in the third person as though she were not making the notes. The notes are difficult to read and decipher and therefore difficult to fully comment upon. I was at the meeting and the Chair did not "push" Bertha for a motion.

187. **Undertaking #53**

The answer to the undertaking is not as I remember it. The litigation is costing a lot of money and we are trying to settle the litigation and thus proposals were put forward to give directions for settlement. Bertha, Roland, Justin and Margaret (and Clara when she was alive) were/are interested in settling the litigation and wish to look at proposals. Catherine has been very difficult on the settlement issues and it is my impression that she does not wish to settle the litigation.

188. **Answers to Written Interrogatories**

The answers to the written interrogatories are mostly unresponsive or at least partially unresponsive and contain many insults to individuals. The answers are attached hereto as Exhibit "BB".

Of particular concern are responses as follows:

Questions	Answers
2 Does she have documents other than those provided in these undertakings that relate to the 1985 trust?	Overly broad, unreasonable
1. The undertaking was to produce Minutes, if your client has them, please produce them	Answer "your Client Roland Twinn can produce the Minutes"
12 Who prepared the transcript? Was the transcript edited by Ms. Twinn	not answered at all
15 asking for documentation on a motion	"Typical of the chair, there was no discussion or information provided"
16 Produce background materials previously referenced	Unable to locate any materials
28 produce communications with proposed trustee	Communications will not be produced
30 question to produce entire documents and attachments of documents previously produced	No - irrelevant
47 Catherine says the Chief exerts improper influence because he can hire people in Sawridge resources. She was asked to provide the names of people affected	Irrelevant to these proceedings
49 Catherine suggests that Peggy Ward's appointment is improper and she was asked how it was improper	Not answered at all
51 asked about notes to a meeting	See answer to interrogatory Question 9. There is no question 9
54 Asked to explain her response	Refuses to provide any other explanation
62 asked to identify the documents that respond to the question other than to refer to all the documents produced so far	Refuses to provide any other response

64-66 asked for more information on accounts that are being asked to be paid	Will not provide
67 asked for supporting document expert relied upon	"not reconsidered"
69 provide source documents of expert	"irrelevant"

190. I make this Affidavit in response to the evidence provided by Catherine Twinn.

SWORN OR AFFIRMED BY THE DEPONENT BEFORE A COMMISSIONER FOR OATHS AT EDMONTON ALBERTA ON February 15, 2017.

Paul Bujold

Commissioner for Oaths in and for the
Province of Alberta

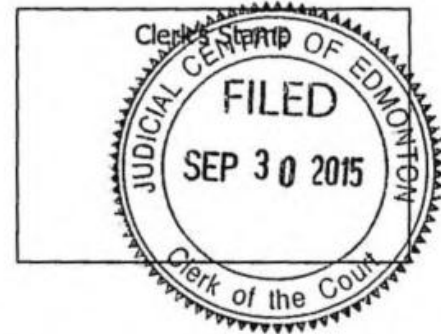
Taylor Watts
Student-at-Law

Appointment Expiry Date

COURT FILE NO. 1103 14112

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE SAWRIDGE BAND INTER
VIVOS SETTLEMENT, APRIL 15, 1985 (the "1985
Trust") and THE SAWRIDGE TRUST, AUGUST 15,
1986 (the "1986 Trust")

APPLICANT CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986 Trust

RESPONDENTS ROLAND TWINN, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN and MARGARET
WARD as Trustees for the 1985 Trust and the 1986 TrustDOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

McLENNAN ROSS LLP
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File No.: 281946

AFFIDAVIT OF CATHERINE TWINN**SWORN ON THE 23rd DAY OF SEPTEMBER, 2015**

I, Catherine Twinn, of the Sawridge Indian Reserve 150 G and the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a trustee of the Sawridge Band Inter Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the "Trusts"), and, as such, have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. I was appointed as trustee of the 1985 Trust on December 18, 1986 and of the 1986 Trust on August 15, 1986. I have continuously maintained my position as a trustee since these appointments.
3. It is my understanding that the Trusts will have a collective asset value of approximately \$213 million dollars by 2015.

BACKGROUND

4. My late husband was Walter Patrick Twinn. He passed away on October 30, 1997. My husband was the Chief of the Sawridge Indian Band (the "Band") from 1966 until his death.
5. The Band is comprised of three family groups, the Twin(n)s, the Potskins and the Wards. The majority of the Band membership of approximately 44 members is comprised of the Twin(n) family. Only 3 of the 44 Band members are minor children.
6. The trustees of the Trusts have taken the position that membership in the Band, as determined by Band Council, is definitive of beneficiary status under the 1986 Trust. There has not been an independent legal determination of the beneficiaries of the 1985 Trust or a process put into place to make this determination.
7. Paul Bujold has been the Administrator of the Trusts since September 9, 2009. This is a salaried position that is contracted for by the Trusts. Mr. Bujold is not a trustee of the Trusts and has no voting power. His position is at the discretion of the trustees.
8. Brian Heidecker has been the Chair of the Trusts since May 10, 2010 (the "Chair"). This is also a position that receives financial compensation. Mr. Heidecker is not a trustee of the Trusts and has no voting power. His position is at the discretion of the trustees.
9. The current trustees of the Trusts are:
 - (a) Myself;
 - (b) Bertha L'Hirondelle (also a paid elected elder of the Band);
 - (c) Roland C. Twinn (also the elected Chief of the Band);
 - (d) E. Justin Twin (also an elected Band Councillor), appointed January 21, 2014; and
 - (e) Peggy Ward, appointed August 12, 2014.
10. As 3 out of the 5 trustees are also elected officials of the Band, these individuals are duly responsible for administering and managing the Trusts, but also have the ability to determine or influence Band membership and thus who is a beneficiary under the 1986 Trust.

HISTORY OF TRUSTS

11. Prior to the subject Trusts, various assets of the Band were held under prior trust deeds starting in 1982. Prior to 1982, the assets of the Band were held in a bare trust by the Band Council for the benefit of the Band.
12. As my late husband was the Chief of the Band in the 1980s, he was the settlor of the Trusts.
13. It is my understanding that under prior trust deeds, elected officials of the Band were automatically designated as Trustees. The terms of the subject Trusts were a marked departure from this practice, as they do not provide for the automatic appointment of elected officials as trustees of the Trusts. The deeds of settlement for each of the subject Trusts provide that a maximum of two of the trustees may be non-beneficiaries of the Trusts and a minimum of three trustees must qualify as beneficiaries under each Trust.

14. My late husband and I had many conversations regarding this change in practice. My late husband expressed concerns about having trustees of the Trusts who were also elected officials of the Band and was attempting to move away from such a practice.

Recent Appointments to Trusts

Justin Everret Twin-McCoy ("Justin")

15. In or around January 8, 2014, I was notified by Mr. Bujold that Walter Felix Twin intended to resign as a trustee of the Trusts.
16. At the next trustee meeting on January 21, 2014, six motions were presented, without prior notice to me, that accepted Walter Felix Twin's resignation and appointed Justin Everret Twin-McCoy in his place and sought to make a transfer of the Trusts' assets to the new trustees. These motions were approved by Bertha Twin-L'Hirondelle, Clara Twin-Midbo and Roland Twinn. I did not consent to this appointment and instead raised questions, including the need for a proper succession planning process and whether Justin was a beneficiary under the 1985 Trust, which was a requirement as Walter Felix Twin was a beneficiary trustee.
17. Bertha Twin-L'Hirondelle and Clara Twin-Midbo were Roland Twinn and Justin's aunts. I am Chief Roland Twinn's step mother and Justin's aunt. Bertha and Clara do not qualify as beneficiaries under the 1985 Trust. Under the 1985 Trust, Band membership is not synonymous with beneficiary status as it is under the 1986 Trust.
18. While the deeds of the Trusts do not require unanimous approval, to my knowledge, in all past trustee votes to appoint a successor trustee, it was a practice and policy that the decision be unanimous. Attached as **Exhibit "A"** to my Affidavit is a draft document tendered by the Chair at the September 17, 2013 trustee meeting that speaks to this issue at paragraph 7(b)(ii)(2) wherein it states "Gives each Trustee a veto regarding Trustee succession" (the "September Chair Agenda").
19. At the time of and following Justin's appointment, I raised concerns with the other trustees, the Chair and Mr. Bujold regarding whether Justin was an eligible beneficiary under the 1985 Trust. Approximately two months after Justin's appointment, I received a letter from Mike McKinney dated March 5, 2014 that stated that Justin qualified as a beneficiary under the 1985 Trust. Mike McKinney is a lawyer employed in house by the Sawridge First Nation. His employment is determined by the Chief and Council of which, Roland Twinn is the Chief and Justin is a Council member. Roland Twinn and Justin constitute a majority of the three person Band Council.
20. I relayed my concerns to the Chair that it was essential that an independent legal opinion was obtained. I proceeded to obtain the opinion of Larry Gilbert, who is a lawyer and was the former Registrar of Indian Status and Band membership for Indian and Northern Affairs Canada. The opinion of Mr. Gilbert dated July 2, 2014 concluded that Justin did not qualify as a beneficiary under the 1985 Trust, despite Justin being a Band member. Attached as **Exhibit "B"** to my Affidavit is a copy of Mr. Gilbert's opinion.
21. To date, from my perspective, the issue of whether Justin is a beneficiary under the 1985 Trust has not been resolved and his appointment to replace Walter Felix Twin is a violation of the terms of the 1985 Trust deed.

Clara Midbo ("Clara")

22. On July 13, 2014, Clara Midbo passed away from cancer. I was not aware that she was terminally ill and no prior disclosure or discussion on this matter had occurred at any trustee meetings I was present at, including the June 10, 2014 meeting where trustee succession was an agenda item.
23. As a result of her death, Mr. Bujold called an emergency trustee meeting for August 12, 2014 for the stated purpose of appointing a replacement trustee for Clara.
24. On August 6, 2014, I emailed Mr. Bujold, the Chair and the three other trustees, asking who was being proposed as a replacement trustee. I did not receive a response.
25. On August 12, 2014, I proposed that an independent outside professional trustee be appointed to fill the vacancy. This proposal was met with criticism by Justin and Roland Twinn. Roland Twinn stated that the Trusts' beneficiaries were unhappy with having outside directors for the corporations held by the Trusts and the sale of the Slave Lake hotel and further, the beneficiaries would not be supportive of having independent professional individuals appointed as trustees for the Trusts. This concerns me because a trustee ought not to fetter their discretion.
26. By way of background, in 2003 the control of the Sawridge Group of Companies was transferred to outside management from Band Council management because the Sawridge Group of Companies were in financial distress. Since the Sawridge Group of Companies were transferred to the control of outside management (2003) and directors (2006), they have financially recovered and avoided bankruptcy.
27. Despite my objections and proposal that an independent professional trustee be appointed who met a skills matrix I tabled, Peggy Ward, a Band member and a beneficiary of the 1985 Trust, was appointed by the other trustees as Clara's successor.
28. At the time of Peggy Ward's appointment, I was not aware of her past business, board, investment, financial and trust experience and what skill set and qualities she would bring as a trustee of the Trusts. I am deeply troubled with how and the circumstances in which this appointment was conducted, that an individual would be elected as a trustee of the Trusts without a resume being presented in support of her nomination, without regard to the need for independent, professional, expertise to modernize the Trusts and without due regard to other highly qualified and independent candidates whose resumes were tabled.

Interaction between Political Interests and Trust Management

29. For some time, I have been very concerned that the elected Band Council members and elders, who are also trustees of the Trusts, are allowing their political and/or personal agenda to influence their decision making as trustees. My concern is that elected Band Council members, with elected elder support, are approving Band members who are then beneficiaries of the 1986 Trust. This process does not appear to be fair, timely, unbiased or transparent, in addition, I am concerned that it is not Charter compliant. When my concerns are expressed to the other trustees, the Chair and Mr. Bujold, I am either ignored or met with varying degrees of ridicule, denial, reprisal and/or contempt. The following are various examples of why I am concerned:
 - (a) Ascertaining the Trusts beneficiaries in a fair, timely and unbiased process has been an ongoing issue and subject to an interlocutory decision by Justice D. Thomas on June 12, 2012. Attached as **Exhibit "C"** to my Affidavit is a copy of Justice Thomas' decision. I have observed examples of where family members of the elected Band Council, including

Chief Roland Twinn, were quickly added to the Band membership list, while membership applications of non-Twin(n) family members have remained unprocessed or denied.

- (b) It concerns me that individuals who are responsible for managing, growing and distributing the Trusts' wealth, are demonstrating bias in their capacity as members of Council in determining who is entitled to the Trusts' wealth. One particularly disturbing example of this behavior was when Chief Roland Twinn and Bertha Twin-L'Hirondelle voted against Alfred Potskin's membership application at a membership committee meeting after Chief Roland Twinn's sister, Arlene Twinn, told a story wherein a Potskin woman had allegedly been rude to their mother many years ago. Arlene Twinn finished the story with the statement "this is payback time". Immediately thereafter, Chief Roland Twinn and Bertha Twin-L'Hirondelle voted to not recommend Alfred Potskin's membership application. This recommendation and the application, then goes to Chief and Council who make the decision. As of August 10, 2014, Albert Potskin's name is not on the Band list. I note that Chief Roland Twinn is placed in the dual role of recommending and deciding upon membership applications. I was present during this event. I also note that with the exception of only a few individuals, only the children of former and currently elected Band officials have been granted Band membership by Chief and Council, while other children have been discounted and/or discouraged from applying.
- (c) There have been instances where a ruling on Band membership has not been made in a timely manner, including one applicant who waited 28 years for a decision.
- (d) I have concluded that, based on information received from persons who may be entitled to beneficiary status under 1985 Trust rules, they will not be granted that beneficiary status as the trustees have never gone through a process of independently determining who qualifies as beneficiaries. Thus the eligible pool of candidates to be trustees who qualify as beneficiaries of both Trusts is greatly limited as a direct result of the decisions made by those trustees who are also elected officials of the Band and decide and restrict Band membership.
- (e) At the August 12, 2014 and September 14, 2014 trustee meetings, Chief Roland Twinn stated "we don't know who they are". This statement referred to the beneficiaries of the 1985 Trust. I advised him that those who qualify under the 1985 Trust rules can be ascertained, but the trustees have repeatedly failed to provide an independent process for such. The separate issue of whether those rules are valid is before Justice Thomas. This is just one example of the trustees refusal to make meaningful attempts to even discuss how to determine the proper beneficiaries of the 1985 Trust. At present, despite my insistence, the beneficiaries of the 1985 Trust have not been properly ascertained. The September Chair Agenda is a further example of how these issues have been tabled at trustee meetings for years however, despite the passage of time, no resolution to these issues has been reached. A further example of the trustees unwillingness to address these issues is shown in a January 19, 2009 letter to David Ward, Q.C. of Davies Ward Phillips & Vineberg LLP which is attached as **Exhibit "D"** to my Affidavit and was copied to the other trustees. In this correspondence, I raise the issue of trustee composition. Robert Roth from Fraser Milner Casgrain (as it was then known) had been retained to develop and deliver a process however Chief Roland Twinn failed to engage and the process terminated.

- (f) It has been made clear to me by the Chair, Mr. Bujold and the trustees who are also elected Band officials, that how membership is determined is not the concern of the trustees. I see two very separate issues that this statement raises, authority to determine membership and the trustee's confidence in the determination of the beneficiaries of the 1986 Trust.
- (g) As a trustee I have expressed concern about the Band membership lists, as this list determines the 1986 Trust beneficiaries, to date, this difficult issue has not been properly discussed and resolved by the trustees.
- (h) Benefits from the Trusts have only been extended to the 1986 Trust beneficiaries, which group, at present, only amounts to 44 individuals. This has been to the detriment of the 1985 Trust beneficiaries who can be ascertained under the 1985 Trust rules and who the settlor expressly intended to include and benefit. I believe that the 1985 Trust beneficiaries is much larger than the Band membership group who comprise the 1986 Trust beneficiaries.
- (i) Chief Roland Twinn and Band Council are the directors of Sawridge Resource Development. The Band is the shareholder and presumably, it is the Chief and Council who appoint directors. Chief Roland Twinn is also the CEO. As a result, Chief Roland Twinn directly controls the employment and monetary income of Band members employed by Sawridge Resource Development because he has the power to terminate or otherwise control their employment. As a result, he influences Band membership, employment and beneficiary status, amongst other things.
- (j) I am afraid that if I speak out at trustee meetings, that I will be faced with reprisal from or because of Chief Roland Twinn. I base this concern on the fact that Chief Roland Twinn has threatened to take my home on the Band reserve from me, without compensation, which could further result in my Band membership being revoked by the Chief and Council as a non-resident member. This is only one example of the many reprisals I have experienced from Chief Roland Twinn.
- (k) Despite my objections, a majority of the trustees authorized payment of the Band's legal fees in relation to the Band's participation in the matter before Justice Thomas regarding Band membership, despite the fact that such a payment is not allowed pursuant to the deeds of settlement.
- (l) I am concerned that the former counsel for the Band, Marco Poretti, is now acting as counsel for the Trusts at his new law firm, Reynolds Mirth Richards & Farmer.
- (m) It took years from 2003 when the Band Council's management contract was terminated to transfer and gather records relating to the Trusts' assets from Band Council (which was previously responsible for the management of the Trusts' assets). While efforts were still being made to obtain these records, Chief Roland Twinn and Bertha L'Hirondelle advised at a trustee meeting that some records had been burned.
- (n) Many of the trustees who were or are elected officials of the Band supported adding the Band as a beneficiary of the Trusts and developing "an innovative approach that will enable the construction of a new office and community center complex on the Sawridge First Nation". The September Chair Agenda attached as **Exhibit "A"** documents this request for a community center. I did not support this initiative for a number of reasons, including, the fact that a majority of the beneficiaries of the Trusts do not live on the

Sawridge reserve and this may not be the best use of Trust funds to benefit the beneficiaries. I am concerned that the community center initiative is an example of the elected officials political agendas interfering with their decision making as a trustee.

30. On or about January 12, 2009, the trustees of the Trusts executed a Code of Conduct for Trustees ("Code"). Attached as **Exhibit "E"** is a copy of the executed Code. I am concerned that the instances of conflict and breach of duty that are described in my Affidavit, violate the Code.

ROLE OF BAND COUNCIL

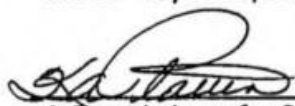
31. The elected members of Band Council and the Chief have a myriad of duties, powers and responsibilities. They deal with a wide range of issues that include political, social, legal, financial, economic, governmental, and personal issues relating to band members. Resources, including their allocation, are a challenge, along with overcoming many complex challenges and historical legacies.
32. First Nations groups are unique in the sense that members of each Nation are related to each other and have long histories as clans and families. As a result of these long histories, conflict amongst members often results.
33. Given the often competing interests already facing elected members of Council and the Chief, I am concerned that it is an inherent conflict of interest for elected members of Band Council or the Chief to also hold the office of a trustee of the Trusts. As members of Council, individuals are called to act in the best interest in the community, while as trustees, individuals are called to act in the best interests of the beneficiaries of the Trusts – these two interests have the potential to conflict. In addition, given that the elected officials have the ability to seriously impact an individual's livelihood, reputation, residency, membership and security in the reserve community and beyond, it makes it difficult for non-elected official trustees to take positions that are contrary to the majority, even if the trustee believes that taking the position is in the best interests of the beneficiaries. This is especially so when one of the elected officials is the Chief of the Band.
34. The enmeshment of elected officials of the Band acting as trustees of the Trusts creates the opportunity for and causes me to be fearful of reprisal if I question how beneficiaries are being determined or why persons who appear qualified and entitled are being excluded as beneficiaries. I have found it very stressful to voice concerns about my lack of confidence in the systems ascertaining beneficiary status. The trustees who are elected officials of the Band have an undue influence at the trustee table both by the fact they are a majority of the trustees and control decision making and also because of the deference shown to them by others and the difficulty in separating political interests from trustee decision making. Undue influence and conflict of interest are compelling reasons to employ the separation rule that elected Band officials and their employees and agents cannot be trustees. I find it hard as a non-elected trustee to cast a vote against the Chief and other elected Band officials who are trustees for fear of political, legal, financial and other repercussions. While all trustees should be considered equal, the Chief remains the Chief and in most cases is the primary influencer of decisions at trustee meetings.

35. It is my understanding and I do verily believe that many other First Nations in Alberta and Canada structure their trusts, or are in the process or restructuring their trusts, so that elected officials and their employees and agents, cannot sit as trustees or if so, are ex officio or a minority. Examples of this include:

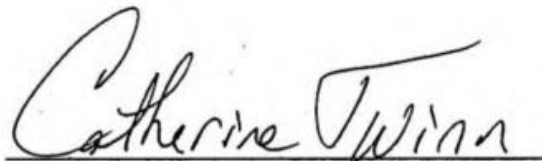
- (a) Samson Cree Nation;
- (b) Ermineskin First Nation;
- (c) Onion Lake Cree Nation;
- (d) Stoney Nakoda;
- (e) Mikisew Cree Nation; and
- (f) Saddle Lake Cree Nation.

36. I swear this as evidence for the Court and for no improper purpose.

SWORN BEFORE ME at the
City of Edmonton,
in the Province of Alberta
the 23rd day of September, 2015



A Commissioner for Oaths in and
for the Province of Alberta



This is Exhibit - A - referred to in the
Affidavit of
Catherine Twinn
Sworn before me this 23 day
of September, A.D., 2015
[Signature]
A Commissioner for Oaths in and for the
Province of Alberta

SAWRIDGE TRUSTS

KAREN A. PLATTEN, Q.C.
BARRISTER & SOLICITOR
A COMMISSIONER FOR OATHS
IN AND FOR ALBERTA

A VISION OF OUR FUTURE

2024 & 2038

“Kootsapatamik”

‘Something we hope to see in the future’

‘Our hopes, dreams, aspirations for the future’

September 16, 2013

Draft #4

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1. Introduction

"This strategic plan has been developed by the Trustees of the Sawridge in order to...."

To demonstrate that we understand that the status quo is not an option

To consolidate and modernize our efforts

To prepare for our reporting to the beneficiaries

Etc

2. Our Community in 2024 and in 2038

A clear description of what we aspire to be

Fairly lofty but inspirational

"It's for the kids and the Grandkids"

Failure is not an option

3. Our History

A brief over of our history and our evolution

4. Our Governance and Board

The Trusts Deeds set out the powers and responsibilities. Etc etc

5. Our Stakeholders

- a. The beneficiaries
- b. The Sawridge Group of Companies
- c. The Sawridge Trusts
- d. The Sawridge Trustees
- e. The Sawridge First Nation
- f. The communities in which we live, work and do business
- g. Lesser Slave Lake Regional Council

6. Our organizational tenets

a. Our Vision

(As approved by the Trustees 01-05-15)

"A healthy and harmonious community of beneficiaries united by relationships based on mutuality, reciprocity, respect, love, kindness, common interest and common good.

A community in which individuals seek to secure the good of others, and thereby secure their own.

A community which works together and supports the unique gifts and abilities of each member of the community thereby raising the community as a whole.

A community based on respect and affection.

A community based on the recognition that we are all spiritual beings

Seven phases of life and seven gifts: Love, Honesty, Humility, Respect, Truth, Patience, Wisdom.

Make our houses strong. Everything that lives"

b. Our Mission

(As approved by the Trustees 01-05-15)

"The Trustees recognize that wealth is a concept that encompasses much more than financial prosperity. Our mission is to preserve and increase the wealth of our community in all respects -physically, socially and spiritually - in a balanced and sustainable way that respects the human and natural world. The Trustees will manage the trust funds to achieve this end for the benefit of the existing beneficiary group and future generations of beneficiaries."

c. Our Ethos

The disposition, character, or fundamental values particular to a specific person, people, culture, or movement.

- i. We firmly believe that our mandate is to avoid activities that may lead to entitlement and dependency attitudes

- ii. We believe that the capital of the Trusts should be preserved for future generations
- iii.

d. Our Values

Values define who we are and who we want to be, both individually and as a group.

The highlighted portions of the Preamble to the Constitution of the SFN describe the existing values and aspirations of our Beneficiary group.

Constitution of the Sawridge First Nation

Preamble

We the Cree People of the Sawridge First Nation, having the inherent responsibilities, rights and powers to govern ourselves and the lands to which we belong, from time immemorial granted to us by the Creator for as long as the grass grows, the wind blows and the water flows, HEREBY DECLARE THE FOLLOWING TO BE OUR TRUTHS:

1. Family is the foundation of our Community. We value Community, Relationships, Cultural Survival, the Cree Language, and our Ancestors and will strive for the protection of these values.
2. We continue to live in family-based communities in the territory which we have occupied since time immemorial.
3. We have the obligation and responsibility to preserve our culture and language and to pass on our language, our cultural practices and our history to our descendants.
4. Our Land, waters, and natural resources are sacred and essential to the survival of our community.
5. As with all peoples, we have the inalienable right to the pursuit of happiness.
6. We will govern ourselves as a community which is safe, supportive, prosperous, friendly, and caring, and which will always be here for our grandchildren and descendants.

7. Our ancestors occupied these lands and utilized our waters and resources since time immemorial, living by the Natural Law which is encompassed by the traditional values of Love, Honesty, Kindness, Humility, Respect, Truth, Patience, Contribution, Responsibility, Self-Reliance, Independence, Accountability, and Wisdom.
8. Our inherent right to govern ourselves was recognized in Treaty #8 which was entered into between our ancestors and the Crown as original signatories.
9. Since the signing of Treaty #8, this inherent right has been distorted by the imposition of forced dependency, attitudes of superiority, systems of control, which, through this Constitution we disavow, denounce, and discard.
10. To ensure the preservation and advancement of the Sawridge First Nation we herein record the traditions, customs and practices of the Sawridge First Nation, formerly called the Sawridge Indian Band, in this, the Constitution of the Sawridge First Nation.
11. The Sawridge First Nation shall, in accordance with its customs and traditions, have an effective governing body which is transparent and accountable to the members of the Sawridge First Nation, which respects and preserves the rights of those members, and manages the property, resources, programs and services of the First Nation, and which is mandated to defend and protect our lands, waters, resources, air space, rights and Treaty relationship.
12. Reflecting an integral part of our tradition, our wish is that our governance be guided by Elders who have the respect and trust of the First Nation; who are known for their wisdom and good judgment; who demonstrate a significant commitment to and knowledge of the history, customs, traditions, cultural and communal life of the First Nation, and who are known for a character and lifestyle that does not cause detriment to the future welfare or advancement of our First Nation.

7. Our current realities

a. Facts and Truisms

- i. This generation must initiate and practice new approaches
- ii. intergenerational trauma must be identified and accepted/acknowledged
- iii. Granddaughter said "Why am I so sad?"
- iv. Very strong sense of duty and obligation to kids
- v. Problems must be acknowledged before they can be fixed
- vi. First Nation culture based on very long term view "7 generations"
- vii. Unique blend of European religion and First Nation's spirituality

b. Reality check

- i. Very complex web of issues and challenges
- ii. Trust deeds act as a "Poison Pill"
 - 1. Precludes a hostile takeover
 - 2. Gives each Trustee a veto regarding Trustee succession
- iii. Stuck on fundamental issues
- iv. Not a harmonious group
 - 1. We basically have a Mexican Standoff
 - 2. Nobody can "win", therefore everybody "loses"
- v. How do we get to unanimity?
- vi.

c. Outstanding Issues

- i. Settling Catherine's accounts
- ii. Trustee evaluation process
- iii. Trustee succession
- iv. Identifying our beneficiaries
- v. Reporting to our beneficiaries
- vi. Understanding the costs of benefits into the future
- vii. Societal issues
 - 1. Lateral violence
 - 2. Addictions and their consequences
 - 3. Intergenerational trauma
- viii. Honouring Walter Twinn
- ix.

d. Risks and Challenges

- i. How to assure continuation of services and support for our people?
- ii. Racism and stereotyping
- iii. Restore and maintain pride and dignity
- iv. Loss of control of trusts
- v. Dispersal of trust funds = poor legacy
- vi. Attainment of self-determination on wide scale
- vii. Dispel the bogeyman
- viii. Maintaining critical mass
- ix. What if our report to beneficiaries is not acceptable to the majority?
- x. Status-quo is not sustainable, we have to change

e. Risks

- i. Are we in compliance with trust standards?
- ii. If not, are trustees liable?
- iii. Inherent "questions" regarding conflict of interest
- iv. Unrest among beneficiaries
- v. Dissipation of trust assets
- vi. Desirability/practicality of continuing current culture
- vii. Protracted litigation
- viii. Court removal
- ix.

f.

8. SWOT analysis

a. Strengths

- i. Our financial capacity
- ii. Our Trust deeds
- iii. Companies are doing very well
- iv. Good benefits program
- v. Trusts office is functioning well
- vi.
- vii.

b. Weaknesses

- i. Very complex and long standing web of issues & challenges
- ii. Difficulty in coming to decisions
 - 1. Not a harmonious group
 - 2. Mexican stand-off, nobody can win, so everybody loses
- iii. Lack of clarity re beneficiaries of 1985 Trust
- iv. Unrest amongst beneficiaries
- v.
- vi.

c. Opportunities

- i. Capitalizing on a buoyant Alberta market
- ii. Capitalizing on the excellent public image of the SGC
- iii. Capitalizing on the positive public perception of the SFN/Sawridge Trusts business structure and strategies
- iv. Providing indirect benefits to the beneficiaries at the community level
- v. Court application to clarify beneficiaries
- vi. Developing and providing a report to our beneficiaries
- vii.
- viii.

d. Threats

- i. Maintaining critical mass

- ii. Racism and profiling
- iii. Intergenerational trauma
- iv.
- v.

9. Our Desired Outcomes

- a. Clearly defined beneficiaries of the 1985 and 1986 trusts
- b. Membership process based on principles of administrative law
- c. Profitable, well managed companies able to pay sustainable dividends
- d. Understand and mitigate the Impact of an influx of beneficiaries
- e. Maintain separation of economic and political activities
- f. Provide a thoughtful suite of benefits that mitigate against entitlement or dependency attitudes
- g. Being respectful of 114 years of Sawridge tradition
- h. Maintaining our long-term endowment mindset
- i. Strip of gray
- j. Families raised in a community with positive relational abundance
 - i. Community and family matter!!
 - ii. "communal system"
- k. Must be aware of the 4 pillars of our environment
 - i. Physical
 - ii. Mental
 - iii. Emotional
 - iv. Spiritual
- l.

10. Our Strategic objectives

- a. Critical Long Term Investment-Capacity Building
 - i. Education
 - ii. Training
 - iii. Skills upgrading
 - iv. Leadership development
 - v. Mentors
 - vi. Heroes
 - vii. Role models
 - viii.
- b. Risk Mitigation to protect our investments and ensure our legacy
 - i. Addictions treatment programs
 - ii. Address intergenerational issues
 - 1. Identification
 - 2. Acknowledgement

- 3. Remedial action
- iii. Maintain critical mass
 - 1. A fair and effective membership application process
 - 2. Clarification of definition of beneficiary
 - 3.
- iv.
- c. Acknowledging our success – saying “Congratulations”
 - i. Why? To acknowledge the wisdom and perseverance of forgoing immediate cash payments in favour of developing a long term Trust Fund that will pay benefits for generations to come
 - ii. To whom?
 - 1. Our seniors
 - 2. Our elders
 - 3. Our champions
 - 4. Our heroes
 - 5. Our “average” members
 - 6. Our neighbours
 - 7. Our friends
 - 8. Our families
 - iii. Acknowledging and celebrating our history
 - iv.

11. Our Goals and Actions

- a. Critical Long Term Investment-Capacity Building
 - i. Continue our investment into education and skills upgrading
 - ii. Develop plans for leadership development
 - iii. Identify individuals who can act as mentors, heroes and role models
 - iv.
- b. Risk Mitigation to protect our investments and ensure our legacy
 - i. Continue funding our addiction programs
 - ii. Develop long range avoidance strategies
 - iii. Obtain clarification of who are beneficiaries are
 - iv. Critical to have a quality membership approval process
 - v. Maintaining the separation of political and economic functions
 - vi. Report to our beneficiaries
 - vii. Develop and implement a Trustee succession plan
 - viii. Resolve our outstanding issues
 - ix.
- c. Acknowledging our success – saying “Congratulations”
 - i. Fund some generic projects that appeal to “average” members

1. Develop an innovative approach that will enable the construction of a new office and community centre complex on the SFN
2. A key collaboration of the SGC, SFN and the Sawridge Trusts
- 3.
- 4.
- ii. Identify locations to display and highlight SFN history and successes
 1. The new Sawridge Community Centre
 2. Work with the designer to maximize and optimize the spaces that could be used to describe Sawridge history and its achievements
 3. Identify honorific naming opportunities
 - a. The Building
 - b. Rooms and internal areas
 - c. Chairs
 - d. Wall spaces
 4. Develop modules/displays of Sawridge history
 5. Develop modules/displays of Sawridge achievements
 - 6.
 - 7.
- iii. Identify key messages for each target audience
- iv.
- d.

12. Evaluation –how will we measure success?

- a. Key success indicators
- b. How have our FN peers fared?
- c. How does SFN compare to Albertans?
- d.

13. Appendix

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

Catherine Twinn

Sworn before me this 23 day

of September A.D., 2015

[Signature]

A Commissioner for Oaths in and for the
Province of Alberta

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July 2, 2014

KAREN A. PLATTEN, Q.C.
BARRISTER & SOLICITOR
A COMMISSIONER FOR OATHS
IN AND FOR ALBERTA

Dear Ms. Twinn:

**RE: OPINION REGARDING JUSTIN TWIN-McCOY AS A BENEFICIARY AND AS A
TRUSTEE FOR THE APRIL 15, 1985 SAWRIDGE INDIAN BAND TRUST FUND**

You have asked me to answer a number of questions:

1. Under sections 11 and 12 of the Indian Act, R.S.C. 1970, c. I-6 ("the rules") as these rules existed prior to April 17, 1982, does Justin McCoy-Twin qualify to be registered as an Indian and listed on the Sawridge Band List maintained by the Department?
 - a) In particular, based on the facts and "the rules", is Justin McCoy-Twin, the son of Vera Twin and Jody McCoy, entitled to be registered as an Indian under those rules, firstly because at birth he was the illegitimate child of an Indian woman and non-Indian man?
 - b) Secondly, what is the effect of the marriage of his parents, Vera Twin and Jody McCoy, as the marriage deems Justin McCoy-Twin the legitimate child of the marriage effective from the date of his date of birth.
 - c) What effect does the language of the April 15, 1982 Sawridge Band Trust, antecedent to the 1985 Trust, have on Justin McCoy-Twin's eligibility? Does the Settlor's clear 1982 intention to exclude the illegitimate children of Indian women carry forward to the 1985 Trust vis a vis Justin Twin McCoy's eligibility as a beneficiary of the 1985 Trust?
2. What effect does the Chapman v. Martin, [1983] 1 SCR 356 case have to these facts? As I understand the case, the illegitimate children – male or female – of a male Indian are entitled to registration.
3. Do the actions or inactions of the Sawridge Band impact the eligibility of Justin McCoy-Twin under those rules? If so, how?

I have been asked to render this legal opinion based on a number of assumptions regarding Justin McCoy-Twin's birth and his family without access to the records that

may or may not confirm those assumptions. I am prepared to revisit this legal opinion if any of those assumptions are proven to be incorrect.

Sections 11 and 12 of the Indian Act, R.S.C. 1970, c. I-6 provide the following:

11. (1) Subject to section 12, a person is entitled to be registered if that person

- (a) on the 26th day of May, 1874 was, for the purposes of an Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands, being chapter 42 of the Statutes of Canada, 1868, as amended by section 6 of chapter 6 of the Statutes of Canada, 1869, and section 8 of chapter 21 of the Statutes of Canada, 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada;
- (b) is a member of a band
 - (i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May 1874, have been agreed by treaty to be set apart, or
 - (ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;
- (c) is a male person who is a direct descendent in the male line of a male person described in paragraph (a) or (b);
- (d) is the legitimate child of
 - (i) a male person described in paragraph (a) or (b),
 - or
 - (ii) a person described in paragraph (c);
- (e) is the illegitimate child of a female person described in paragraph (a), (b) or (d); or
- (f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

(2) Paragraph (1) (e) applies only to persons born after the 13th day of August 1956.

12. (1) The following persons are not entitled to be registered, namely,

- (a) a person who
 - (i) has received or has been allotted half-breed lands or money scrip,
 - (ii) is a descendent of a person described in sub-paragraph (i),
 - (iii) is enfranchised, or
 - (iv) is a person born of a marriage entered into after the 4th day of September 1951 and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph 11(1)(a), (b) or (d) or entitled to be registered by virtue of paragraph 11(1)(e),

unless, being a woman, that person is the wife or widow of a person described in section 11, and

(b) a woman who married a person who is not an Indian, unless that woman is subsequently the wife or widow of a person described in section 11.

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

(3) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect.

(4) Subparagraphs 1 (a)(i) and (ii) do not apply to a person who
(a) pursuant to this Act is registered as an Indian on the 13th day of August 1958, or
(b) is a descendent of a person described in paragraph (a) of this subsection.

(5) Subsection (2) applies only to persons born after the 13th day of August 1956.

Justin McCoy-Twin was born on September 23, 1982. His mother is Vera Irene Twin, born on December 15, 1956 who has been on the Sawridge Paylist since birth. His father is Jody McCoy, a non-Indian. On September 23, 1982, Justin McCoy-Twin's parents were not married. Justin McCoy-Twin was registered as an Indian as the illegitimate child of an Indian woman. I am informed that his paternity must not have been disclosed to the Department. This is important because the Indian Act, 1970 determined Indian status and Band Membership strictly and in accordance with the paternal line. As noted above, section 11(1)(c) refers to the male line:

11(1) Subject to section 12, a person is entitled to be registered if that person

(c) is a male person who is a direct descendent in the male line of a male person described in paragraph (a) or (b).

Contrast that provision with paragraphs 11(1)(e) and 12(2), both dealing with the illegitimate child of an Indian woman:

11(1) Subject to section 12, a person is entitled to be registered if that person

(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d).

12.(1) The following persons are not entitled to be registered, namely,

(2) The addition to a Band List of the name of an illegitimate child described in paragraph 11(1)(e) may be protested at any time within twelve months after the addition, and if upon the protest it is decided that the father of the child was not an Indian, the child is not entitled to be registered under that paragraph.

Accordingly, the policy of the Department at the time was to deny registration for an illegitimate child because the father was presumed to be a non-Indian. However, the Band or the person submitting the birth record to the Department can and often did overcome that presumption by providing evidence that the father was an Indian such as in a sworn statement from the Indian father. Indeed, even today, the policy is to presume that the father of an illegitimate child is a non-Indian unless the mother and/or the Band proves otherwise.

Although Justin McCoy-Twin was registered as an Indian, he was not entitled to be registered because his father was a non-Indian.

I conclude therefore that Justin McCoy-Twin was not entitled to be registered as an Indian under the Indian Act, 1970. In addition, he was not entitled under that Act to be added to the Band List of the Sawridge Indian Band as that List was maintained by the Department.

Turning now to the Sawridge Band Inter Vivos Settlement and Declaration of Trust dated April 15, 1985. The question asked is whether Justin McCoy-Twin is eligible to be a Beneficiary of that Trust and whether Justin McCoy-Twin is eligible to be a Trustee of that Trust. These questions arise because recently Justin McCoy-Twin was made a Beneficiary and appointed as a Trustee of that Trust by Chief and Council of the Sawridge Indian Band.

Paragraph 2(a) of the Trust describes who may be a Beneficiary:

- (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.

Based on the above-quoted statement about "Beneficiaries", I conclude that it is the Settlor's intention that

- (i) those persons whose names appeared on the Band List maintained by the Department under the authority of the Indian Act, 1970, on April 15, 1982 shall be considered to be Beneficiaries of this Trust and that
- (ii) no person who would not qualify to have his or her name on the Band List maintained by the Department under the authority of the Indian Act, on April 15, 1982 shall be considered to be a Beneficiary of this Trust and that
- (iii) no person whose entitlement to membership in the Sawridge Indian Band that flows only from an amended Indian Act shall be considered to be a Beneficiary of this Trust.

As noted above, Justin McCoy-Twin was born on September 23, 1982. Accordingly, he could not have his name entered on the Band List maintained by the Department under the authority of the Indian Act, 1970, on April 15, 1982 because he was not yet born. On that basis alone Justin McCoy-Twin is not qualified to be a Beneficiary of the Trust. Furthermore, as noted above, Justin McCoy-Twin is not qualified to be a Beneficiary because he was never entitled to be registered as an Indian in accordance with the Indian Act, 1970, and he was never entitled to have his name entered on the Band List maintained by the Department under the authority of the Indian Act, 1970, on April 15, 1982 or even on the date of his birth, September 23, 1982 because of his status as an illegitimate child.

In the Declaration of Trust, Sawridge Band Trust dated April 15, 1982, the Settlor wrote at paragraph 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.)

By virtue of paragraph 6 of the Declaration of Trust, Sawridge Band Trust dated April 15, 1982, I believe it was the intention of the Settlor of the 1985 Trust Fund to exclude illegitimate children from being Beneficiaries of the Trust. As Justin McCoy-Twin was born the illegitimate child of his Indian mother and although his name was added to the Indian Register and the addition of his name to the Registry was not protested, paragraph 6 provides that Justin McCoy-Twin is nevertheless not entitled to be a Beneficiary of the Trust.

I am informed that sometime after the Indian Act, 1970 was amended in 1985, Justin McCoy-Twin became the legitimate child of his parents when they were legally married. With that legal marriage occurring after the Indian Act was amended, the illegitimacy of the child was no longer used as a basis to add or delete a name to or from the Indian Registry. Accordingly, Justin McCoy-Twin's status under the Indian Act, 1970, was unchanged by his parent's legal marriage. Justin-McCoy Twin would however be entitled to be registered under the amended Indian Act, R.S.C. 1985, c. I-5 as a person with one Indian parent, namely, his mother.

According to the instructions I received in preparation for this legal opinion, immediately prior to his appointment as a Trustee, there were already two (2) Trustees of this Settlement who are not Beneficiaries. Guidance on this issue is found in paragraph 5 of the Sawridge Band Inter Vivos Settlement and Declaration of Trust dated April 15, 1985. Paragraph 5 deals with who may be appointed as a Trustee:

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.

As there are already two (2) Trustees of this Settlement who are not Beneficiaries and as Justin McCoy-Twin is not a Beneficiary, it follows therefore that Justin McCoy-Twin cannot and should not have been appointed as a Trustee of this Settlement.

I was asked to comment on whether the Supreme Court of Canada decision in Martin v. Chapman, [1983] 1 SCR 356 has any impact on the facts of this case. This is the case of an illegitimate child of an Indian man being denied registration as an Indian because according to the Registrar in the Department, the Federal Court of Canada and the Federal Court of Appeal all decided that paragraph 11(1) (c):

11(1) Subject to section 12, a person is entitled to be registered if that person

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);

means that only legitimate descendants in the male line are entitled to be registered. The Supreme Court of Canada said no; paragraph 11(1)(c) applies equally to an illegitimate or legitimate male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b). As Justin McCoy-Twin was the illegitimate child of an Indian woman, paragraph 11(1)(c) has no application to his case and the decision of Martin v. Chapman has no relevance to these facts.

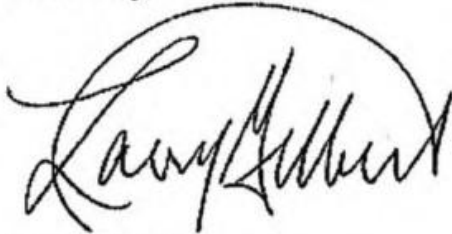
Finally, the question is whether the actions or inactions of the Sawridge Band impacts the eligibility of Justin McCoy-Twin under those rules? If so, how? I conclude that the Sawridge Band and the mother of Justin McCoy-Twin were responsible for Justin McCoy-Twin being registered as an Indian when he was born on September 23, 1982 notwithstanding the fact that he was never entitled to be registered as an Indian in accordance with the Indian Act, 1970.

I also conclude that it was the Chief and Council of the Sawridge Indian Band who decided Justin McCoy-Twin is entitled to be a Beneficiary of this Trust and declared him a Beneficiary and then appointed him as a Trustee of this Trust. As noted above, Justin McCoy-Twin is not entitled to be a Beneficiary and should never have been granted that status. Furthermore, Justin McCoy-Twin is not qualified but is specifically disqualified from being appointed as a Trustee of this Trust.

June 9, 2015

Please do not hesitate to call or write if you have any questions or concerns regarding this legal opinion.

Yours truly,

A handwritten signature in cursive script, reading "Larry Gilbert". The signature is written in dark ink and is positioned above the printed name and title.

Larry Gilbert
Barrister & Solicitor

Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365

This is Exhibit "C" referred to in the

Affidavit of

Catherine Twinn

Sworn before me this 23 day

of September A.D., 2015

Karen A. Platten

A Commissioner for Oaths in and for the

Province of Alberta in the Matter of the *Trustee Act*, R.S.A. 2000, c. T-8, as amended; and

Date: 20120612

KAREN A. PLATTEN, Q.C. Docket: 1103 14112

BARRISTER & SOLICITOR

A COMMISSIONER FOR OATHS

IN AND FOR ALBERTA

Registry: Edmonton

In the Matter of The Sawridge Band *Inter Vivos* Settlement Created by
Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known as
the Sawridge Indian Band, on April 15, 1985 (the "1985 Sawridge Trust")

Between:

**Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle, and
Clara Midbo, As Trustees for the 1985 Sawridge Trust**

Respondent

- and -

Public Trustee of Alberta

Applicant

Reasons for Judgment
of the
Honourable Mr. Justice D.R.G. Thomas

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I. Introduction

[1] On April 15, 1985 the Sawridge Indian Band, No. 19, now known as the Sawridge First Nation [the "Band" or "Sawridge Band"] set up the 1985 Sawridge Trust [sometimes referred to as the "Trust" or the "Sawridge Trust"] to hold some Band property on behalf of its then members. The 1985 Sawridge Trust and other related trusts were created in the expectation that persons who had been excluded from Band membership by gender (or the gender of their parents) would be entitled to join the Band as a consequence of amendments to the *Indian Act*, R.S.C. 1985, c. I-5 which were being proposed to make that legislation compliant with the *Canadian Charter of Rights and Freedoms*, Part 1, *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 [the "Charter"].

[2] The 1985 Sawridge Trust is administered by the Trustees named as Respondents in this application [the "Sawridge Trustees" or the "Trustees"] who now seek the advice and direction of this Court in respect to proposed amendments to the definition of the term "Beneficiaries" in the 1985 Sawridge Trust and confirmation of the transfer of assets into that Trust. One consequence of these proposed amendments to the 1985 Sawridge Trust would be that the entitlement of certain dependent children to share in Trust assets would be affected. There is some question as to the exact nature of the effects, although it seems to be accepted by all of those involved on this application that certain children who are presently entitled to a share in the benefits of the 1985 Sawridge Trust would be excluded if the proposed changes are approved and implemented. Another concern is that the proposed revisions would mean that certain dependent children of proposed members of the Trust would become beneficiaries and entitled to shares in the Trust, while other dependent children would be excluded.

[3] At the time of confirming the scope of notices to be given in respect to the application for advice and directions, it was observed that children who might be affected by variations to the 1985 Sawridge Trust were not represented by counsel. In my Order of August 31, 2011 [the "August 31 Order"] I directed that the Office of the Public Trustee of Alberta [the "Public Trustee"] be notified of the proceedings and invited to comment on whether it should act in respect of any existing or potential minor beneficiaries of the Sawridge Trust.

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[4] On February 14, 2012 the Public Trustee applied to be appointed as the litigation representative of minors interested in the proceedings, for the payment of advance costs on a solicitor and own client basis and exemption from liability for the costs of others. The Public Trustee also applied, for the purposes of questioning on affidavits which might be filed in this proceeding, for an advance ruling that information and evidence relating to the membership criteria and processes of the Sawridge Band is relevant material.

[5] On April 5, 2012 I heard submissions on the application by the Public Trustee which was opposed by the Sawridge Trustees and the Chief and Council of the Sawridge Band. The Trustees and the Band, through their Chief and Council, argue that the guardians of the potentially affected children will serve as adequate representatives of the interests of any minors.

[6] Ultimately in this application I conclude that it is appropriate that the Public Trustee represent potentially affected minors, that all costs of such representation be borne by the Sawridge Trust and that the Public Trustee may make inquiries into the membership and application processes and practices of the Sawridge Band.

II. The History of the 1985 Sawridge Trust

[7] An overview of the history of the 1985 Sawridge Trust provides a context for examining the potential role of the Public Trustee in these proceedings. The relevant facts are not in dispute and are found primarily in the evidence contained in the affidavits of Paul Bujold (August 30, 2011, September 12, 2011, September 30, 2011), and of Elizabeth Poitras (December 7, 2011).

[8] In 1982 various assets purchased with funds of the Sawridge Band were placed in a formal trust for the members of the Sawridge Band. In 1985 those assets were transferred into the 1985 Sawridge Trust. At the present time the value of assets held by the 1985 Sawridge Trust is approximately \$70 million. As previously noted, the beneficiaries of the Sawridge Trust are restricted to persons who were members of the Band prior to the adoption by Parliament of the *Charter* compliant definition of Indian status.

[9] In 1985 the Sawridge Band also took on the administration of its membership list. It then attempted (unsuccessfully) to deny membership to Indian women who married non-aboriginal persons: *Sawridge Band v. Canada*, 2009 FCA 123, 391 N.R. 375, leave denied [2009] S.C.C.A. No. 248. At least 11 women were ordered to be added as members of the Band as a consequence of this litigation: *Sawridge Band v. Canada*, 2003 FCT 347, [2003] 4 F.C. 748, affirmed 2004 FCA 16, [2004] 3 F.C.R. 274. Other litigation continues to the present in relation to disputed Band memberships: *Poitras v. Sawridge Band*, 2012 FCA 47, 428 N.R. 282, leave sought [2012] S.C.C.A. No. 152.

[10] At the time of argument in April 2012, the Band had 41 adult members, and 31 minors. The Sawridge Trustees report that 23 of those minors currently qualify as beneficiaries of the 1985 Sawridge Trust; the other eight minors do not.

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[11] At least four of the five Sawridge Trustees are beneficiaries of the Sawridge Trust. There is overlap between the Sawridge Trustees and the Sawridge Band Chief and Council. Trustee Bertha L'Hirondelle has acted as Chief; Walter Felix Twinn is a former Band Councillor. Trustee Roland Twinn is currently the Chief of the Sawridge Band.

[12] The Sawridge Trustees have now concluded that the definition of "Beneficiaries" contained in the 1985 Sawridge Trust is "potentially discriminatory". They seek to redefine the class of beneficiaries as the present members of the Sawridge Band, which is consistent with the definition of "Beneficiaries" in another trust known as the 1986 Trust.

[13] This proposed revision to the definition of the defined term "Beneficiaries" is a precursor to a proposed distribution of the assets of the 1985 Sawridge Trust. The Sawridge Trustees indicate that they have retained a consultant to identify social and health programs and services to be provided by the Sawridge Trust to the beneficiaries and their minor children. Effectively they say that whether a minor is or is not a Band member will not matter: see the Trustee's written brief at para. 26. The Trustees report that they have taken steps to notify current and potential beneficiaries of the 1985 Sawridge Trust and I accept that they have been diligent in implementing that part of my August 31 Order.

III. Application by the Public Trustee

[14] In its application the Public Trustee asks to be named as the litigation representative for minors whose interests are potentially affected by the application for advice and directions being made by the Sawridge Trustees. In summary, the Public Trustee asks the Court:

1. to determine which minors should be represented by it;
2. to order that the costs of legal representation by the Public Trustee be paid from the 1985 Sawridge Trust and that the Public Trustee be shielded from any liability for costs arising; and
3. to order that the Public Trustee be authorized to make inquiries through questioning into the Sawridge Band membership criteria and application processes.

The Public Trustee is firm in stating that it will only represent some or all of the potentially affected minors if the costs of its representation are paid from the 1985 Sawridge Trust and that it must be shielded from liability for any costs arising in this proceeding.

[15] The Sawridge Trustees and the Band both argue that the Public Trustee is not a necessary or appropriate litigation representative for the minors, that the costs of the Public Trustee should not be paid by the Sawridge Trust and that the criteria and mechanisms by which the Sawridge

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Band identifies its members is not relevant and, in any event, the Court has no jurisdiction to make such determinations.

IV. Should the Public Trustee be Appointed as a Litigation Representative?

[16] Persons under the age of 18 who reside in Alberta may only participate in a legal action via a litigation representative: *Alberta Rules of Court*, Alta Reg 124/2010, s. 2.11(a) [the "Rules", or individually a "Rule"]. The general authority for the Court to appoint a litigation representative is provided by *Rule*, 2.15. A litigation representative is also required where the membership of a trust class is unclear: *Rule*, 2.16. The common-law *parens patriae* role of the courts (*E. v. Eve (Guardian Ad Litem)*, [1986] 2 S.C.R. 388, 31 D.L.R. (4th) 1) allows for the appointment of a litigation representative when such action is in the best interests of a child. The *parens patriae* authority serves to supplement authority provided by statute: *R.W. v. Alberta (Child, Youth and Family Enhancement Act Director)*, 2010 ABCA 412 at para. 15, 44 Alta. L.R. (5th) 313. In summary, I have the authority in these circumstances to appoint a litigation representative for minors potentially affected by the proposed changes to the 1985 Sawridge Trust definition of "Beneficiaries".

[17] The Public Trustee takes the position that it would be an appropriate litigation representative for the minors who may be potentially affected in an adverse way by the proposed redefinition of the term "Beneficiaries" in the 1985 Sawridge Trust documentation and also in respect to the transfer of the assets of that Trust. The alternative of the Minister of Aboriginal Affairs and Northern Development applying to act in that role, as potentially authorized by the *Indian Act*, R.S.C. 1985, c. I-5, s. 52, has not occurred, although counsel for the Minister takes a watching role.

[18] In any event, the Public Trustee argues that it is an appropriate litigation representative given the scope of its authorizing legislation. The Public Trustee is capable of being appointed to supervise trust entitlements of minors by a trust instrument (*Public Trustee Act*, S.A. 2004, c. P-44.1, s. 21) or by a court (*Public Trustee Act*, s. 22). These provisions apply to all minors in Alberta.

A. Is a litigation representative necessary?

[19] Both The Sawridge Trustees and Sawridge Band argue that there is no need for a litigation representative to be appointed in these proceedings. They acknowledge that under the proposed change to the definition of the term "Beneficiaries" no minors could be part of the 1985 Sawridge Trust. However, that would not mean that this class of minors would lose access to any resources of the Sawridge Trust; rather it is said that these benefits can and will be funnelled to those minors through those of their parents who are beneficiaries of the Sawridge Trust, or minors will become full members of the Sawridge Trust when they turn 18 years of age.

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[20] In the meantime the interests of the affected children would be defended by their parents. The Sawridge Trustees argue that the Courts have long presumptively recognized that parents will act in the best interest of their children, and that no one else is better positioned to care for and make decisions that affect a child: *R.B. v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at 317-318, 122 D.L.R. (4th) 1. Ideally, a parent should act as a 'next friend' [now a 'litigation representative' under the new Rules]: *V.B. v. Alberta (Minister of Children's Services)*, 2004 ABQB 788 at para. 19, 365 A.R. 179; *C.H.S. v. Alberta (Director of Child Welfare)*, 2008 ABQB 620, 452 A.R. 98.

[21] The Sawridge Trustees take the position at para. 48 of its written brief that:

[i]t is anachronistic to assume that the Public Trustee knows better than a First Nation parent what is best for the children of that parent.

The Sawridge Trustees observe that the parents have been notified of the plans of the Sawridge Trust, but none of them have commented, or asked for the Public Trustee to intervene on behalf of their children. They argue that the silence of the parents should be determinative.

[22] The Sawridge Band argues further that no conflict of interest arises from the fact that certain Sawridge Trustees have served and continue to serve as members of the Sawridge Band Chief and Council. At para. 27 of its written brief, the Sawridge Band advances the following argument:

... there is no conflict of interest between the fiduciary duty of a Sawridge Trustee administering the 1985 Trust and the duty of impartiality for determining membership application for the Sawridge First Nation. The two roles are separate and have no interests that are incompatible. The Public Trustee has provided no explanation for why or how the two roles are in conflict. Indeed, the interests of the two roles are more likely complementary.

[23] In response the Public Trustee notes the well established fiduciary obligation of a trustee in respect to trust property and beneficiaries: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at para. 148, [2011] 2 S.C.R. 175. It observes that a trustee should avoid potential conflict scenarios or any circumstance that is "... ambiguous ... a situation where a conflict of interest and duty might occur ..." (citing D. W. M. Waters, M. Gillen and L. Smith, eds., *Waters' Law of Trusts in Canada*, 3rd ed. (Toronto: Thomson Carswell, 2005), at p. 914 [*"Waters' Law of Trusts"*]). Here, the Sawridge Trustees are personally affected by the assignment of persons inside and outside of the Trust. However, they have not taken preemptive steps, for example, to appoint an independent person or entity to protect or oversee the interests of the 23 minors, each of whom the Sawridge Trustees acknowledge could lose their beneficial interest in approximately \$1.1 million in assets of the Sawridge Trust.

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[24] In these circumstances I conclude that a litigation representative is appropriate and required because of the substantial monetary interests involved in this case. The Sawridge Trustees have indicated that their plan has two parts:

firstly, to revise and clarify the definition of "Beneficiaries" under the 1985 Sawridge Trust; and

secondly, then seek direction to distribute the assets of the 1985 Sawridge Trust with the new amended definition of beneficiary.

While I do not dispute that the Sawridge Trustees plan to use the Trust to provide for various social and health benefits to the beneficiaries of the Trust and their children, I observe that to date the proposed variation to the 1985 Sawridge Trust does not include a *requirement* that the Trust distribution occur in that manner. The Trustees could, instead, exercise their powers to liquidate the Sawridge Trust and distribute approximate \$1.75 million shares to the 41 adult beneficiaries who are the present members of the Sawridge Band. That would, at a minimum, deny 23 of the minors their current share of approximately \$1.1 million each.

[25] It is obvious that very large sums of money are in play here. A decision on who falls inside or outside of the class of beneficiaries under the 1985 Sawridge Trust will significantly affect the potential share of those inside the Sawridge Trust. The key players in both the administration of the Sawridge Trust and of the Sawridge Band overlap and these persons are currently entitled to shares of the Trust property. The members of the Sawridge Band Chief and Council are elected by and answer to an interested group of persons, namely those who will have a right to share in the 1985 Sawridge Trust. These facts provide a logical basis for a concern by the Public Trustee and this Court of a potential for an unfair distribution of the assets of the 1985 Sawridge Trust.

[26] I reject the position of the Sawridge Band that there is no potential for a conflict of interest to arise in these circumstances. I also reject as being unhelpful the argument of the Sawridge Trustees that it is "anachronistic" to give oversight through a public body over the wisdom of a "First Nations parent". In Alberta, persons under the age of 18 are minors and their racial and cultural backgrounds are irrelevant when it comes to the question of protection of their interests by this Court.

[27] The essence of the argument of the Sawridge Trustees is that there is no need to be concerned that the current and potential beneficiaries who are minors would be denied their share of the 1985 Sawridge Trust; that their parents, the Trustees, and the Chief and Council will only act in the best interests of those children. One, of course, hopes that that would be the case, however, only a somewhat naive person would deny that, at times, parents do not always act in the best interests of their children and that elected persons sometimes misuse their authority for personal benefit. That is why the rules requiring fiduciaries to avoid conflicts of interest is so strict. It is a rule of very longstanding and applies to all persons in a position of trust.

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[28] I conclude that the appointment of the Public Trustee as a litigation representative of the minors involved in this case is appropriate. No alternative representatives have come forward as a result of the giving of notice, nor have any been nominated by the Respondents. The Sawridge Trustees and the adult members of the Sawridge Band (including the Chief and Council) are in a potential conflict between their personal interests and their duties as fiduciaries.

[29] This is a 'structural' conflict which, along with the fact that the proposed beneficiary definition would remove the entitlement to some share in the assets of the Sawridge Trust for at least some of the children, is a sufficient basis to order that a litigation representative be appointed. As a consequence I have not considered the history of litigation that relates to Sawridge Band membership and the allegations that the membership application and admission process may be suspect. Those issues (if indeed they are issues) will be better reviewed and addressed in the substantive argument on the adoption of a new definition of "Beneficiaries" under the revised 1985 Sawridge Trust.

B. Which minors should the Public Trustee represent?

[30] The second issue arising is who the Public Trustee ought to represent. Counsel for the Public Trustee notes that the Sawridge Trustees identify 31 children of current members of the Band. Some of these persons, according to the Sawridge Trustees, will lose their current entitlement to a share in the 1985 Sawridge Trust under the new definition of "Beneficiaries". Others may remain outside the beneficiary class.

[31] There is no question that the 31 children who are potentially affected by this variation to the Sawridge Trust ought to be represented by the Public Trustee. There are also an unknown number of potentially affected minors, namely, the children of applicants seeking to be admitted into membership of the Sawridge Band. These candidate children, as I will call them, could, in theory, be represented by their parents. However, that potential representation by parents may encounter the same issue of conflict of interest which arises in respect to the 31 children of current Band members.

[32] The Public Trustee can only identify these candidate children via inquiry into the outstanding membership applications of the Sawridge Band. The Sawridge Trustees and Band argue that this Court has no authority to investigate those applications and the application process. I will deal in more detail with that argument in Part VI of this decision.

[33] The candidate children of applicants for membership in the Sawridge Band are clearly a group of persons who may be readily ascertained. I am concerned that their interest is also at risk. Therefore, I conclude that the Public Trustee should be appointed as the litigation representative not only of minors who are children of current Band members, but also the children of applicants for Band membership who are also minors.

V. The Costs of the Public Trustee

[34] The Public Trustee is clear that it will only represent the minors involved here if:

1. advance costs determined on a solicitor and own client basis are paid to the Public Trustee by the Sawridge Trust; and
2. that the Public Trustee is exempted from liability for the costs of other litigation participants in this proceeding by an order of this Court.

[35] The Public Trustee says that it has no budget for the costs of this type of proceedings, and that its enabling legislation specifically includes cost recovery provisions: *Public Trustee Act*, ss. 10, 12(4), 41. The Public Trustee is not often involved in litigation raising aboriginal issues. As a general principle, a trust should pay for legal costs to clarify the construction or administration of that trust: *Deans v. Thachuk*, 2005 ABCA 368 at paras. 42-43, 261 D.L.R. (4th) 300, leave denied [2005] S.C.C.A. No. 555.

[36] Further, the Public Trustee observes that the Sawridge Trustees are, by virtue of their status as current beneficiaries of the Trust, in a conflict of interest. Their fiduciary obligations require independent representation of the potentially affected minors. Any litigation representative appointed for those children would most probably require payment of legal costs. It is not fair, nor is it equitable, at this point for the Sawridge Trustees to shift the obligation of their failure to nominate an independent representative for the minors to the taxpayers of Alberta.

[37] Aline Huzar, June Kolosky, and Maurice Stoney agree with the Public Trustee and observe that trusts have provided the funds for litigation representation in aboriginal disputes: *Horse Lake First Nation v. Horseman*, 2003 ABQB 114, 337 A.R. 22; *Blueberry Interim Trust (Re)*, 2012 BCSC 254.

[38] The Sawridge Trustees argue that the Public Trustee should only receive advance costs on a full indemnity basis if it meets the strict criteria set out in *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2, [2007] 1 S.C.R. 38 ["*Little Sisters*"] and *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78. They say that in this instance the Public Trustee can afford to pay, the issues are not of public or general importance and the litigation will proceed without the participation of the Public Trustee.

[39] Advance costs on a solicitor and own client basis are appropriate in this instance, as well as immunization against costs of other parties. The *Little Sisters* criteria are intended for advance costs by a litigant with an independent interest in a proceeding. Operationally, the role of the Public Trustee in this litigation is as a neutral 'agent' or 'officer' of the court. The Public Trustee will hold that position only by appointment by this Court. In these circumstances, the Public Trustee operates in a manner similar to a court appointed receiver, as described by Dickson J.A. (as he then was) in *Braid Builders Supply & Fuel Ltd. v. Genevieve Mortgage Corp. Ltd.* (1972), 29 D.L.R. (3d) 373, 17 C.B.R. (N.S.) 305 (Man. C.A.):

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In the performance of his duties the receiver is subject to the order and direction of the Court, not the parties. The parties do not control his acts nor his expenditures and cannot therefore in justice be accountable for his fees or for the reimbursement of his expenditures. It follows that the receiver's remuneration must come out of the assets under the control of the Court and not from the pocket of those who sought his appointment.

In this case, the property of the Sawridge Trust is the equivalent of the "assets under control of the Court" in an insolvency. Trustees in bankruptcy operate in a similar way and are generally indemnified for their reasonable costs: *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236, 393 A.R. 340, affirmed 2006 ABCA 293, 275 D.L.R. (4th).

[40] I have concluded that a litigation representative is appropriate in this instance. The Sawridge Trustees argue this litigation will proceed, irrespective of whether or not the potentially affected children are represented. That is not a basis to avoid the need and cost to represent these minors; the Sawridge Trustees cannot reasonably deny the requirement for independent representation of the affected minors. On that point, I note that the Sawridge Trustees did not propose an alternative entity or person to serve as an independent representative in the event this Court concluded the potentially affected minors required representation.

[41] The Sawridge Band cites recent caselaw where costs were denied parties in estate matters. These authorities are not relevant to the present scenario. Those disputes involved alleged entitlement of a person to a disputed estate; the litigant had an interest in the result. That is different from a court-appointed independent representative. A homologous example to the Public Trustee's representation of the Sawridge Trust potential minor beneficiaries would be a dispute on costs where the Public Trustee had represented a minor in a dispute over a last will and testament. In such a case this Court has authority to direct that the costs of the Public Trustee become a charge to the estate: *Public Trustee Act*, s. 41(b).

[42] The Public Trustee is a neutral and independent party which has agreed to represent the interests of minors who would otherwise remain unrepresented in proceedings that may affect their substantial monetary trust entitlements. The Public Trustee's role is necessary due to the potential conflict of interest of other litigants and the failure of the Sawridge Trustees to propose alternative independent representation. In these circumstances, I conclude that the Public Trustee should receive full and advance indemnification for its participation in the proceedings to make revisions to the 1985 Sawridge Trust.

VI. Inquiries into the Sawridge Band Membership Scheme and Application Processes

[43] The Public Trustee seeks authorization to make inquiries, through questioning under the *Rules*, into how the Sawridge Band determines membership and the status and number of applications before the Band Council for membership. The Public Trustee observes that the

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application process and membership criteria as reported in the affidavit of Elizabeth Poitras appears to be highly discretionary, with the decision-making falling to the Sawridge Band Chief and Council. At paras. 25 - 29 of its written brief, The Public Trustee notes that several reported cases suggest that the membership application and review processes may be less than timely and may possibly involve irregularities.

[44] The Band and Trustees argue that the Band membership rules and procedure should not be the subject of inquiry, because:

- A. those subjects are irrelevant to the application to revise certain aspects of the 1985 Sawridge Trust documentation; and
- B. this Court has no authority to review or challenge the membership definition and processes of the Band; as a federal tribunal decisions of a band council are subject to the exclusive jurisdiction of the Federal Court of Canada: *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.

A. In this proceeding are the Band membership rules and application processes relevant?

[45] The Band Chief and Council argue that the rules of the Sawridge Band for membership and application for membership and the existence and status of any outstanding applications for such membership are irrelevant to this proceeding. They stress at para. 16 of their written brief that the "Advice and Direction Application" will not ask the Court to identify beneficiaries of the 1985 Sawridge Trust, and state further at para. 17 that "... the Sawridge First Nation is fully capable of determining its membership and identifying members of the Sawridge First Nation." They argue that any question of trust entitlement will be addressed by the Sawridge Trustees, in due course.

[46] The Sawridge Trustees also argue that the question of yet to be resolved Band membership issues is irrelevant, simply because the Public Trustee has not shown that Band membership is a relevant consideration. At para. 108 of its written brief the Sawridge Trustees observe that the fact the Band membership was in flux several years ago, or that litigation had occurred on that topic, does not mean that Band membership remains unclear. However, I think that argument is premature. The Public Trustee seeks to investigate these issues not because it has *proven* Band membership is a point of uncertainty and dispute, but rather to reassure itself (and the Court) that the beneficiary class can and has been adequately defined.

[47] The Public Trustee explains its interest in these questions on several bases. The first is simply a matter of logic. The terms of the 1985 Sawridge Trust link membership in the Band to an interest in the Trust property. The Public Trustee notes that one of the three 'certainties' of a valid trust is that the beneficiaries can be "ascertained", and that if identification of Band membership is difficult or impossible, then that uncertainty feeds through and could disrupt the "certainty of object": *Waters' Law of Trusts* at p. 156-157.

[48] The Public Trustee notes that the historical litigation and the controversy around membership in the Sawridge Band suggests that the 'upstream' criteria for membership in the Sawridge Trust may be a subject of some dispute and disagreement. In any case, it occurs to me that it would be peculiar if, in varying the definition of "Beneficiaries" in the trust documents, that the Court did not make some sort inquiry as to the membership application process that the Trustees and the Chief and Council acknowledge is underway.

[49] I agree with the Public Trustee. I note that the Sawridge Band Chief and Council argue that the Band membership issue is irrelevant and immaterial because Band membership will be clarified at the appropriate time, and the proper persons will then become beneficiaries of the 1985 Sawridge Trust. It contrasts the actions of the Sawridge Band and Trustees with the scenario reported in *Barry v. Garden River Band of Ojibways* (1997), 33 O.R. (3d) 782, 147 D.L.R. (4th) 61 (Ont. C.A.), where premature distribution of a trust had the effect of denying shares to potential beneficiaries whose claims, via band membership, had not yet crystalized. While the Band and Trustees stress their good intentions, this Court has an obligation to make inquiries as to the procedures and status of Band memberships where a party (or its representative) who is potentially a claimant to the Trust queries whether the beneficiary class can be "ascertained". In coming to that conclusion, I also note that the Sawridge Trustees acknowledge that the proposed revised definition of "Beneficiaries" may exclude a significant number of the persons who are currently within that group.

B. Exclusive jurisdiction of the Federal Court of Canada

[50] The Public Trustee emphasizes that its application is not to challenge the procedure, guidelines, or otherwise "interfere in the affairs of the First Nations membership application process". Rather, the Public Trustee says that the information which it seeks is relevant to evaluate and identify the beneficiaries of the 1985 Sawridge Trust. As such, it seeks information in respect to Band membership processes, but not to affect those processes. They say that this Court will not intrude into the jurisdiction of the Federal Court because that is not 'relief' against the Sawridge Band Chief and Council. Disclosure of information by a federal board, commission, or tribunal is not a kind of relief that falls into the exclusive jurisdiction of the Federal Courts, per *Federal Court Act*, s. 18.

[51] As well, I note that the "exclusive jurisdiction" of statutory courts is not as strict as alleged by the Trustees and the Band Chief and Council. In *783783 Alberta Ltd. v. Canada (Attorney General)*, 2010 ABCA 226, 322 D.L.R. (4th) 56, the Alberta Court of Appeal commented on the jurisdiction of the Tax Court of Canada, which per *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, s. 12 has "exclusive original jurisdiction" to hear appeals of or references to interpret the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp). The Supreme Court of Canada in *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33, 365 N.R. 62 indicated that interpretation of the *Income Tax Act* was the sole jurisdiction of the Tax Court of Canada (para. 7), and that (para. 11):

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... The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. ...

[52] The legal issue in *783783 Alberta Ltd. v. Canada (Attorney General)* was an unusual tort claim against the Government of Canada for what might be described as "negligent taxation" of a group of advertisers, with the alleged effect that one of two competing newspapers was disadvantaged. Whether the advertisers had or had not paid the correct income tax was a necessary fact to be proven at trial to establish that injury: paras. 24-25. The Alberta Court of Appeal concluded that the jurisdiction of a provincial superior court includes whatever statutory interpretation or application of fact to law that is necessary for a given issue, in that case a tort: para. 28. In that sense, the trial court was free to interpret and apply the *Income Tax Act*, provided in doing so it did not determine the income tax liability of a taxpayer: paras. 26-27.

[53] I conclude that it is entirely within the jurisdiction of this Court to examine the Band's membership definition and application processes, provided that:

1. investigation and commentary is appropriate to evaluate the proposed amendments to the 1985 Sawridge Trust, and
2. the result of that investigation does not duplicate the exclusive jurisdiction of the Federal Court to order "relief" against the Sawridge Band Chief and Council.

[54] Put another way, this Court has the authority to examine the band membership processes and evaluate, for example, whether or not those processes are discriminatory, biased, unreasonable, delayed without reason, and otherwise breach *Charter* principles and the requirements of natural justice. However, I do not have authority to order a judicial review remedy on that basis because that jurisdiction is assigned to the Federal Court of Canada.

[55] In the result, I direct that the Public Trustee may pursue, through questioning, information relating to the Sawridge Band membership criteria and processes because such information may be relevant and material to determining issues arising on the advice and directions application.

VII. Conclusion

[56] The application of the Public Trustee is granted with all costs of this application to be calculated on a solicitor and its own client basis.

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Heard on the 5th day of April, 2012.

Dated at the City of Edmonton, Alberta this 12th day of June, 2012.

D.R.G. Thomas
J.C.Q.B.A.

Appearances:

Ms. Janet L. Hutchison
(Chamberlain Hutchison)
for the Public Trustee / Applicants

Ms. Doris Bonora,
Mr. Marco S. Poretti
(Reynolds, Mirth, Richards & Farmer LLP)
for the Sawridge Trustees / Respondents

Mr. Edward H. Molstad, Q.C.
(Parlee McLaws LLP)
for the Sawridge Band / Respondents

2012 ABQB 365 (CanLII)

Twinn

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January 19, 2009

ATTENTION: DAVID WARD Q.C.

DAVIES WARD PHILLIPS & VINEBERG LLP
44th Floor
1 First Canadian Place
Toronto, Ontario M5X 1B1

This is Exhibit "D" referred to in the
Affidavit of
Catherine Twinn
Sworn before me this 23 day
of September A.D., 2015
[Signature]
A Commissioner for Oaths in and for the
Province of Alberta

KAREN A. PLATTEN, Q.C.
BARRISTER & SOLICITOR
A COMMISSIONER FOR OATHS
IN AND FOR ALBERTA

Dear David,

Given Ron Ewoniak's January 14, 2009 resignation as Chair of the Trustees, his reasons for resigning and his January 15, 2009 communication he would reconsider only if there were a significant change in the composition of the Board of Trustees, it is clear the Board is not functioning and its composition must be seriously examined. My main goal is to ensure the Beneficiaries are properly served. This means there must be significant change in the composition of the Trustee Group. Each of the Trustees must resolve what they intend to do after they have been given an opportunity to:

- fully understand Ron's reasons for resigning;
- Self- assess, seek counsel and determine their response.

Beneficiaries must be confident that the Trustees can individually and as a group work, think and act in an effective and fair manner.

I've requested a conference call today with the Trustees at 3:00 p.m. to:

- a. Understand and discuss Ron's reasons for resigning;
- b. Initiate a Trustee performance review;
- c. Determine what to do to have Ron reconsider or find a replacement;
- d. Retain an interim administrator.

What follows below is my summary from various discussions with you and Ron as to why Ron resigned.

1. The Trustees, as a group, are not functional.
2. In Ron's view, which I share, 3 Trustees are not performing the function of Trustee.

3. The work that must be done is not being done by the Trustees. I am doing the work which the Trustees as a body are supposed to be doing. By my performing the work of the group, other Trustees think this is improper. They refuse to pay me for my work, time and effort beyond the meeting fee. They seem to take the position that I should not be doing this work, that they have not authorized the work to be done and they do not intend that the work should be paid for. The Chair is not prepared to take on this work. No one has stepped up to do the work, but they fault me for doing so, even though I am fulfilling my duties and theirs.
3. Some trustees do not prepare for meetings of the trustees by reading the material sent to them. This wastes the time of the chair, of other trustees and the \$15,000 plus meeting fee.
4. Some of the trustees bring into the meetings a baggage of personal hostility that makes working with them intolerable.
5. The trustees, apart from me, do not prepare for their meetings and criticize me for the work I do including the work I do to support the Chair. So long as I am a Trustee, it is necessary I do this work to discharge my duties as a Trustee.
6. Some Trustees have not enabled effective communication amongst Trustees then blame me and/or the Chair for what they do not know or understand.

Ron Ewoniak would reconsider his resignation if there is a significant change in the composition of the Trustees. Ron has done an excellent job as Chair. Since he assumed the duties of Chair, much has been accomplished.

Ron believes a cooperative, functional group of Trustees could, within 6 months, resolve all issues with the Board of Directors and deliver benefits (e.g. financial distributions, programs and services) to the Beneficiaries.

With Ron gone, all the work will fall back on me. My potential liability as a Trustee increased with Ron's resignation.

My health is adversely affected by constant criticisms, attacks, stonewalling and selective recall. Financially, I cannot continue to provide hours of uncompensated work.

If I continue as a Trustee, I am legally bound to fulfill my individual duty as a Trustee. This means doing all the work for all Trustees, without compensation, working in oppressive and hostile conditions.

A Trustee can be removed:

- a. By the Court, on its own motion or on application by a Beneficiary;
- b. By 80% of the Beneficiaries.

In the call will you explain to the Trustees why you think Ron Ewoniak resigned and whether the reasons stated above accurately express Ron's reasons? I have copied Ron on this letter which is appropriate. The Trustees must be clear on what Ron's reasons are, then be responsible for their personal self assessment and what happens next. In today's call, Trustees should be asked

what they intend to do and how long they need to consider this. Perhaps they may wish to speak with you individually. I will suggest in today's call that each Trustee is free to speak with you on a confidential basis, or anyone else they feel comfortable with, as to whether they should continue as a Trustee.

While the self-reflection process is underway, today I will ask the Trustees to make decisions on two matters:

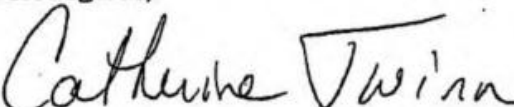
- a. A performance evaluation should be undertaken forthwith of each Trustee by a Trust lawyer in Alberta. You and Ron Ewoniak should be interviewed. This should be completed quickly.
- b. Appointment of an interim administrator to be retained immediately to ensure the orderly administration of the Trusts.

The goal is to bring about a functional and cooperative group of individuals who can work together.

As I understand, when Trustees resign, the issues of compensation can and ought to be passed through the Courts. This would include my unpaid compensation claim. Please confirm that the Trusts are responsible for all costs involved in the preparation and passing of all Accounts before the Court from the beginning and the notice requirements to Beneficiaries.

You have my authorization to release this letter to any Beneficiary as you see fit.

Best Regards,


Catherine Twinn

cc. Roland Twinn
dd. Bertha L'Hirondelle
ee. Clara Midbo
ff. Walter F. Twin
gg. Ronald Ewoniak

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

Catherine Twinn

Sworn before me this 23 day
of September A.D., 2015

Karen A. Platten

A Commissioner for Oaths in and for the
Province of Alberta

CODE OF CONDUCT

Trustees of The Sawridge Band *Inter Vivos* Settlement and of The Sawridge Trust
KAREN A. PLATTEN, Q.C.
BARRISTER & SOLICITOR
A COMMISSIONER FOR OATHS
IN AND FOR ALBERTA

WHEREAS:

- (1) The Sawridge Band *Inter Vivos* Settlement (the "1985 Trust") was established by Chief Walter P. Twinn by a Deed dated April 15, 1985.
- (2) The Sawridge Trust (the "1986 Trust") was established by Chief Walter P. Twinn by a Deed dated August 15, 1986.
- (3) The undersigned, Walter Felix Twinn, Bertha L'Hirondelle, Roland Twinn, Catherine Twinn and Clara Midbo, are currently the trustees (the "Current Trustees") of both the 1985 Trust and the 1986 Trust (collectively, the "Trusts"). The trustees of the Trusts from time to time are hereinafter referred to as the "Trustees".
- (4) The following additional documents are attached as schedules to this Code of Conduct:
 - (a) a document prepared by Davies Ward Phillips & Vineberg LLP as counsel for the Trustees which is entitled "Responsibilities of Trustees of the Sawridge Trusts" (the "Trustees' Responsibilities document"), which is attached as Schedule A; and
 - (b) Trustees' resolutions dealing with the procedure for Trustee decision-making, which are attached as Schedules B1 and B2.
- (5) In order to facilitate the effective administration of the Trusts, the Current Trustees wish to enter this Code of Conduct to which they have all agreed.

NOW THEREFORE the undersigned Current Trustees all agree to the following provisions of this Code of Conduct:

1. General

In order to carry out the Trustees' basic obligation of acting in the best interests of the beneficiaries, the Trustees must act with care, skill and diligence, integrity and impartiality; they must in general avoid conflicts of interest and duty; they must act in a way that enables decisions to be made effectively; they must respect confidentiality; and they must not act in a way which brings the office of Trustee into disrepute. This Code of Conduct will deal with each of these aspects of the Trustees' responsibilities. It will also deal with communications between Trustees and directors and management of the corporations directly or indirectly owned by the Trusts (the "Sawridge Corporations").

This Code of Conduct will also provide a procedure for resolving disputes arising from this Code of Conduct.

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2. Care and Diligence

As expressed in the Trustees' Responsibilities document, the applicable general principle is that Trustees are required to exercise the care, skill and diligence of an ordinary prudent person. In particular, this requires that Trustees will:

- (a) attend all Trustee meetings except only when unable to do so;
- (b) read and consider the agendas for Trustee meetings along with accompanying materials; and
- (c) generally give careful consideration to all issues arising for decision by them as Trustees.

3. Communications with Directors and Management of Sawridge Corporations

As expressed in the Trustees' Responsibilities document, the Trustees have adopted an arrangement under which none of them sit on the boards of Sawridge Corporations; instead, the Trustees have elected qualified persons to act as directors. This arrangement rests on two principles. The first is that the Trustees will not interfere in the roles, respectively, of the directors and of the management of the corporations. The second is that the Trustees will have sufficient and timely information about the conduct of the Sawridge Corporations so that, as a group, they are kept fully apprised of the business and affairs of the corporations and where considered advisable communicate any concerns through the Trustees' Chair to the Chair of the Board of Directors.

Two points dealing with the practical application of these principles apply to the conduct of Trustees. These are:

- (a) Communications between the Trustees and the directors will ordinarily be made by and to the Trustees collectively only through the Trustees' Chair. Individual communications may occur only at meetings of the shareholders at which directors attend, including at annual shareholder meetings.
- (b) Trustees will not interfere with management of the Sawridge Corporations. If any Trustee has any concern relating to management of the corporations that concern must not be communicated to the management but is to be brought to the attention of the Trustees as a group and the Trustees' concern can then be communicated through the Trustees' Chair to the Chair of the Board of Directors.

4. Integrity, Impartiality and Conflict of Interest

Trustees must at all times act honestly in the best interests of beneficiaries and in making decisions as Trustees must make decisions which they honestly believe to be in the beneficiaries' best interests.

Trustees must exercise their functions as trustees free of extraneous and improper influence. This includes obvious circumstances such as receiving bribes but also extends to less obvious

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circumstances such as making a decision on the basis of personal feelings about a particular beneficiary where such feelings have no relevance to the matter under consideration or where the Trustee has not expressed to the other Trustees the fact that such feelings are affecting his or her decision.

Conflicts of Interest

Avoidance of conflicts of interest is an aspect of the requirements of integrity and impartiality. As stated in the Trustees' Responsibilities document, the Trustees must avoid improperly acting in a position of conflict between self-interest and duty. The following procedure will be followed to deal with such conflicts:

- (a) For the purposes of this procedure, there will be considered to be a conflict in the following circumstances:

"There will be a conflict when a Trustee may obtain some benefit, directly or indirectly, from his or her position as Trustee or when the Trustee is in a position in which his or her decision-making as Trustee may potentially be influenced, directly or indirectly, by his or her personal interests. It will be assumed that a Trustee may obtain such a benefit if the benefit is obtained, not only by the Trustee, but also by the spouse, parent, sibling or child of the Trustee. Similarly, it will be assumed that a Trustee may be influenced if, not only the Trustee, but also the spouse, parent, sibling or child of the Trustee may be affected by the decision."

- (b) All possible conflicts must be disclosed by a Trustee to the other Trustees when the possible conflict becomes apparent to him or her. If in doubt about whether there is a conflict, the possible conflict should be disclosed.
- (c) Any Trustee, or the Chair if not a Trustee, may raise with the Trustees the issue of a possible conflict affecting any other Trustee.
- (d) If a conflict does not arise from the Trustees' dual position of Trustee and beneficiary, the conflict should ordinarily be avoided by the Trustee not entering into the transaction that would give rise to the conflict. For example, a Trustee must not sell his own property to the Trust (without court approval). Such a transaction cannot properly be carried out even if the vendor Trustee does not take part in the decision-making by the Trustees.

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- (e) When the conflict is expressly dealt with by the terms of the Trust Deeds, the Trustees may, despite the conflict, take part in the applicable decision-making. In particular, the Trust Deeds expressly provide for the Trustees receiving reasonable fees for their services as Trustees. They can, therefore, properly make the decision about their own fees. However, such decisions must not be open to the criticism that the Trustees have abused their position. The fees must therefore be demonstrably reasonable, and this may involve obtaining input from qualified advisors.
- (f) When the conflict arises from the Trustees' dual position as Trustee and beneficiary – for example, when consideration is being given to a distribution of trust property to a Trustee/beneficiary, the normal procedure should be for the conflicted Trustee not to be present at the Trustees' consideration of the question and should not vote on the question. In effect, such Trustee should be treated in the same way as a beneficiary who is not a Trustee.
- (g) Where possible benefits to Trustees or their relatives from a proposal under consideration by the Trustees arise only because the proposal may benefit all beneficiaries, or a broad category of them, with no particular advantage being conferred upon any Trustee or relative of a Trustee, it would be impractical and unreasonable to disqualify Trustees from consideration of the proposal merely because of such potential benefits. In such cases the potential benefits to Trustees and their relatives will generally be obvious on the face of the proposal, so that there is no hidden advantage to a Trustee or relative which should be disclosed, nor should the Trustee be exposed to criticism or potential liability for having made such a decision on the basis that it would be in the interests of the beneficiaries as a whole, or some significant group of beneficiaries.
- (h) When the Trustees decide that there is in fact no conflict in respect of a particular question or transaction but that one or more beneficiaries might nevertheless consider that there is a conflict, it will ordinarily be appropriate for the affected Trustee not to be present at the Trustees' consideration of the matter and not to vote on it.

5. Conduct Involving Decision-Making Process

In order that the decision-making process be fair and effective, it is crucial that communication among Trustees be fair and effective. Therefore, the Trustees shall act in accordance with the following principles:

- (a) **Cooperation:** Trustees shall collaborate to serve the best interests of the beneficiaries.
- (b) **Tolerance:** each Trustee should seek to fully understand the views and values of the other Trustees in the best possible light and consider whether those views and values might be usefully adopted to guide the ongoing deliberations of the Trustees.

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- (c) **Inclusion:** Trustees shall use their best efforts to include all Trustees in their deliberations so that each Trustee feels that he/she had a meaningful opportunity to contribute to the discussion and that his/her views and values were given fair and full consideration.
- (d) **Compassion:** each Trustee recognizes that the other Trustees are human beings with their own weaknesses and capable of making mistakes. The Trustees agree to show patience, and provide mentorship and caring for each other.
- (e) **Relationship:** the Trustees recognize that people live in complex and essential webs of relationship and acknowledge that decisions and actions of individuals and the community unavoidably affect each other. The Trustees shall seek to make their decisions in ways that positively strengthen their relationships and in ways that promote the best consequences for the beneficiaries.
- (f) **Honesty in Communication:** Trustees must be fair, open, truthful and sincere when dealing with each other and shall all times avoid attempts to deceive or mislead each other.
- (g) **Fair Procedures:** the Trustees agree to proceed with their decisions in accordance with known and fair procedures.
- (h) **Assertiveness:** Trustees have an obligation to state their views and concerns openly and clearly for consideration by the other Trustees.
- (i) **Consensus:** where possible, Trustees should work towards unanimous agreement; where unanimous agreement is not possible, Trustees shall try to come to a consensus; where neither of these is possible Trustees shall reach decisions by simple majority. In all cases, once a decision is made by the Trustees it should be respected and followed by all.
- (j) **Objectivity:** Trustees must base their decisions upon relevant facts and information in a way that is not biased by undisclosed personal feelings or opinions.
- (k) **Transparency:** to the extent possible, the Trustees should be able to articulate their reasons for coming to a particular decision.
- (l) **Peacefulness & Respect:** Trustees have an obligation to be polite, respectful and courteous in their dealings with other Trustees; they agree to deal with each other in a calm and open manner; and they agree to avoid expressions of anger and personal attacks which may disrupt the harmony of the group.
- (m) **Reconciliation:** the Trustees accept that they are morally accountable for their own actions. Where their actions or decisions have, intentionally or unintentionally, caused disharmony, they accept a personal obligation to work towards restoring harmony.

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6. Confidentiality

The Trustees shall maintain the confidentiality of the deliberations of the Trustees and of any other confidential information imparted to the Trustees including information received from the Sawridge Corporations and their businesses and affairs.

7. Conduct Bringing Office of Trustee Into Disrepute

It is important that the role of the Trustees be respected by the beneficiaries of the Trusts. Therefore, criminal conduct or other conduct which brings the office of trustee into disrepute is contrary to this Code of Conduct, whether or not such conduct is directly connected to the carrying on of responsibilities as Trustee.

8. Application of the Code of Conduct

The following are the guiding principles applicable to the application of this Code of Conduct:

- (a) It is intended that Trustees will abide by this Code of Conduct, along with the Schedules to it, in carrying out their responsibilities as Trustees.
- (b) Any Trustee who has any concern about the conduct of another Trustee will ordinarily in the first place raise the concern either privately with the other Trustee or at a meeting of the Trustees, as may be appropriate in the circumstances. It is expected that such concerns will ordinarily be resolved informally without the need for any outside intervention.
- (c) Where it is alleged by a Trustee (the "Claimant") that another Trustee has acted inconsistently with this Code of Conduct and the Claimant is not satisfied that his or her concern has been properly resolved in accordance with (b) above, the Claimant may require that an outside person be appointed to act as a mediator and arbitrator to deal with the complaint, as follows:
 - (i) Subject to (iii) below, the Claimant will by notice in writing request the Trustees' Chair to arrange the selection of a mediator/arbitrator. Such mediator/arbitrator will be such person as shall be agreed by both the Claimant and the Respondent.
 - (ii) Subject to (iii) below, if the disputing Trustees do not, within 30 days from the date of the notice referred to in (i) above, agree on a mediator/arbitrator the Trustees' Chair shall appoint a mediator/arbitrator.
 - (iii) If the Trustees' Chair is a Trustee who is a disputing Trustee, the notice referred to in (i) above will be provided to the Trustees who are not the disputing Trustees and the appointment referred to in (ii) above will be made by the majority of the Trustees who are not the disputing Trustees.

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- (d) The role and authority of the mediator/arbitrator will be as follows:
- (i) the mediator/arbitrator shall arrange for a joint meeting with the parties not later than 90 days from the date of the notice referred to in 8(c)(i) above;
 - (ii) the mediator/arbitrator will first act as a mediator in order to facilitate a resolution of the dispute without the need for any binding direction;
 - (iii) if the mediator/arbitrator determines that it will not be possible to resolve the dispute without any binding direction, he or she shall act as an arbitrator to resolve the dispute by one or more directions;
 - (iv) the mediator/arbitrator shall have all the authority, powers and discretion granted to an arbitrator under the *Alberta Arbitration Act*;
 - (v) if the mediator/arbitrator makes a finding that a Trustee has acted inconsistently with this Code of Conduct the mediator/arbitrator may make one or more directions relating to any of the following:
 - (A) that a Trustee act or abstain from acting in particular ways;
 - (B) that a Trustee not be entitled to be paid remuneration to which he or she would otherwise be entitled;
 - (C) that a Trustee resign as Trustee;
 - (D) that some or all of the costs and expenses of the dispute resolution process be paid by one or more of the Trustees personally.
 - (vi) Subject to a direction made by the mediator/arbitrator pursuant to 8(c)(iv) above, the costs and expenses incurred in respect of the dispute resolution process will be paid from the assets of the Trusts.
 - (vii) There shall be no appeal from a decision of the mediator/arbitrator.

9. Application of Code of Conduct to all Trustees

It is intended that all Trustees will be subject to this Code of Conduct. Therefore, it will be a condition of appointment of a person as Trustee that he or she will agree to become a signatory to the Code of Conduct.

10. Severability

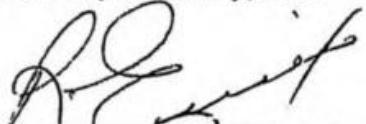
If any provision of this Code of Conduct is determined to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Code of Conduct.

- 8 -

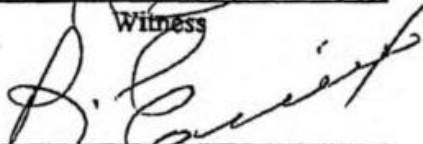
11. Amendment of Code of Conduct

This Code of Conduct may be amended from time to time by the unanimous agreement of all of the Trustees at any such time by instrument in writing.

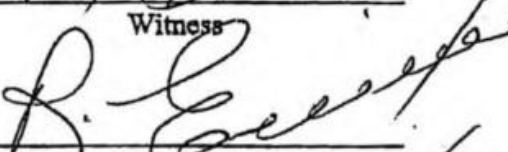
DATED this 12th day of January, 2009.



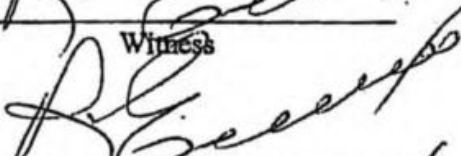
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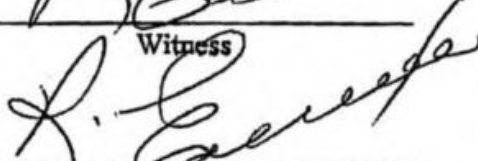
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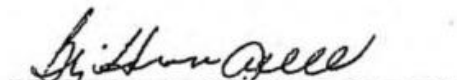
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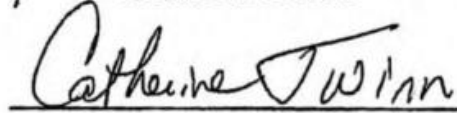
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 Walter Felix Twinn. WFT



 Bertha L'Hirondelle



 Catherine Twinn



 Roland Twinn



 Clara Midbo

SCHEDULE A

Responsibilities of Trustees of the Sawridge Trust

Introduction

This document describes, in a general way, the responsibilities of the trustees (the "Trustees") of the Sawridge Band *Inter Vivos* Settlement (the "1985 Trust") and of the Sawridge Trust (the "1986 Trust") (together, the "Trusts").

Trustees are required to act in accordance with the general law of trusts as modified by the provisions of the document establishing the particular trust.

Beneficiaries

Paragraph 2(a) of the Trust Deed applying to the 1985 Trust defines beneficiaries for the purposes of that Trust as all persons who at any particular time qualify as members of the Sawridge Indian Band pursuant to the provisions of the *Indian Act* as those provisions existed on April 15, 1982.

Paragraph 2(a) of the Trust Deed applying to the 1986 Trust defines beneficiaries for the purposes of that Trust as all persons who at any particular time qualify as members of the Sawridge Indian Band under the laws of Canada in force from time to time including the membership rules and customary laws of the Sawridge Indian Band as they 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.

Number of Trustees

The Trust Deed applying to the 1985 Trust provides that at all times (except for the period pending an appointment) there shall be at least five Trustees. A non-beneficiary may not be appointed if immediately before such appointment there is more than one Trustee who is not a beneficiary. There cannot, therefore, be more than two Trustees who are not beneficiaries (paragraph 5).

The Trust Deed applying to the 1986 Trust provides that at all times (except for the period pending an appointment) there is required to be a minimum of three Trustees and a maximum of seven Trustees. A non-beneficiary may not be appointed if immediately before such appointment there are more than two Trustees who are not beneficiaries (paragraph 5). It would, therefore, be possible to have three Trustees who are not beneficiaries. However, for tax reasons, it is preferable that the two Trusts have the same Trustees.

Basic Obligation of Trustees

The basic obligation of trustees is to act in the best interest of the beneficiaries.

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Distribution of Income or Capital of Trusts

Both Trusts provide for the Trustees to have a wide discretion as to the distribution of income or capital of the Trusts, paragraph 6 of each Trust Deed providing (in part) that 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."

Although the provision of the Trust Deeds refers to the discretion as "unfettered" and "uncontrolled", it is in fact "fettered" and "controlled" by the requirements of the law of trusts. The point is that since the discretion is exercisable by the Trustees as trustees they must not exercise it arbitrarily but must do so in accordance with 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 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.

The case law does not define what is relevant for these purposes. It depends on the circumstances of each particular trust. However, the basic idea is that trustees should take account of factors relevant to the purposes of the particular trust. They must not, for example, take account of their personal feelings about particular beneficiaries.

Distributions from the Trusts may be made to or for the benefit of the beneficiaries in a variety of ways. These would include providing facilities or programmes generally for the benefit of beneficiaries and by programmes involving distributions to beneficiaries. It is important that the availability of any such facilities or programmes is made known to beneficiaries so that beneficiaries have the opportunity both to take advantage of any facilities or programmes that are generally available for beneficiaries and to apply for any facility or programme that will involve selection among the beneficiaries.

The topic of conflict of interest and duty is relevant to the exercise of the Trustees' discretion to distribute trust property. This is discussed below.

Process of Decision Making

Unlike the law applicable to corporations, trust law does not specify a procedure for trustees to make decisions. Also, trust documents – like the Deeds applicable to the Trusts – do not typically provide detailed guidance for such decision making.

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The following should be noted:

- Both Trust Deeds provide for decisions being made by a majority of Trustees. In the case of the 1985 Trust, paragraph 13 of the Deed states that a "majority of fifty percent" of the Trustees shall be required for any decision or action taken on behalf of the Trust. This should be interpreted to require a simple majority which is clear when there is an odd number of Trustees, and when there is an even number it should be interpreted as a simple majority. In the case of the 1986 Trust, paragraph 13 of the deed provides as follows:

"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."

Although, as described above, both Trust Deeds provide that the Trustees' decisions may be made by a majority, this does not mean that decisions can properly be made with the involvement of only a majority. In general, all Trustees must take part in the decision-making process, even though ultimately the decision may be made by a majority.

- Although trustees are not required to make decisions by any particular procedure, it is important that they do have a procedure that enables decisions to be made effectively.

Delegation

In general, trustees cannot delegate to others the exercise of their discretionary powers. They can, however, seek professional advice and they can appoint agents to implement their decisions. In fact, when trustees do not have the expertise needed for the making of a particular decision, they should obtain such advice.

Paragraph 8(c) of both Trust Deeds provides for the employment of professional advisors and agents as follows by conferring power,

"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 payments of professional fees to any Trustee who renders professional services to the Trustees)."

The Trustees must exercise care in the appointment of professional advisors and agents and in monitoring their work appropriately.

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Duty of Care

In general, in administering a trust and its property, trustees are required to exercise the care, skill and diligence of an ordinary prudent person. Two aspects of this should be noted, as follows.

Control of Corporations

Where trustees hold sufficient shares of a corporation to enable them to control that corporation, their fundamental obligation is to exercise that control for the benefit of the trust, and in doing so they must act in accordance with the standard of care referred to above. Ordinarily, this requires that:

- (1) the trustees obtain appropriate representation on the board of directors and, typically, this will have the result that one or more of the trustees will be directors;
- (2) the trustees should obtain and review appropriate information about the corporation's affairs; and
- (3) the trustees must exercise their powers as shareholders in order to fully protect the interests of the trust.

The principal assets of the Trusts are the shares in and debt owed by Sawridge Holdings Ltd. and 352736 Alberta Ltd. and their various subsidiaries (the "Sawridge Corporations"). Until the re-organization carried out in 2006, the same persons acted as Trustees of the Trusts and as directors of Sawridge Corporations. Since then, the Trustees have elected qualified persons whom they consider suitable to act as directors, and none of the Trustees has sat on the boards of Sawridge Corporations. In the circumstances of the Trusts and the Sawridge Corporations, this arrangement was considered to be the best method of dealing with the Sawridge Corporations. There are two inter-related aspects to this arrangement. The first is that the Trustees will not individually interfere in the respective roles of the directors and of management of the corporations. The second is that the Trustees have sufficient information about the conduct of the Sawridge Corporations so that they can properly monitor the activities of the corporations and be able to make informed decisions about their concerns and what should be communicated by the Trustees' Chair to the Chair of the Boards of Directors; the election of the boards of directors; and when it might be necessary – in unusual circumstances – to take a position by communication on a Chair-to-Chair basis regarding the management of the corporations. The following principles are applicable in this context:

- (1) The Trustees shall be routinely provided with the same information as is provided by management to directors.
- (2) The Trustees shall be routinely and promptly provided with the material received by directors at directors' meetings, including agenda and minutes of meetings.
- (3) Generally, the directors will supply any other information requested by the Trustees' Chair as collectively required by the Trustees.

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- (4) In order that the board of directors will not have concerns about providing confidential information, the Trustees receiving confidential information must respect the confidentiality of the information.
- (5) Communication between the Trustees and the directors will occur through the Trustees' positions being expressed collectively and through the Trustees' Chair. However, individual communications may occur at meetings of the Trustees as shareholders of the corporation, including at annual shareholder meetings.
- (6) Trustees should not interfere with management. If any Trustee has any concern relating to management, that concern should be brought to the attention of the other Trustees, and if considered by the other Trustees to be sufficiently material the Trustees' concern can then be communicated through the Trustees' Chair to the directors.

Investment

Paragraph 7 of both Trust Deeds gives the Trustees power to invest the Trust Fund in any investments authorized for trustees' investments by the *Alberta Trustee Act*, but the Trustees are not restricted to such investments and they may invest in any investment which they in their discretion think fit.

In dealing with investments, trustees are required to act in accordance with the standard of care described above. The Trusts were established in order to hold the Sawridge Corporations and the businesses carried on by them, and the exercise of the Trustees' investment responsibilities can properly be considered in light of this. However, it is also important for the Trustees to have regard to the principles generally applied, which are as follows:

- Trustees should, in selecting investments, perform an assessment of proposed investments, evaluating both the safety of the capital invested and the potential return from the investment. An assessment of risk, both of achieving the potential return and risk to the safety of the capital investment, should be considered.
- Ordinarily, trustees should diversify the investments of the trust, having regard to the requirements of the particular trust.
- The investment portfolio of the trust should be reviewed periodically as well as when unusual changes affecting the portfolio occur.
- Trustees may obtain expert professional advice on evaluating and selecting investments. Trustees may delegate authority to an agent with respect to the investments, so long as the trustees exercise appropriate care in the selection of the agent; the authority of the agent is clearly and appropriately restricted; and the performance of the agent is appropriately monitored.

Duty to Keep and Render Accounts and to Provide other Information

Under the general law of trusts, trustees have an obligation to maintain proper accounts dealing with the income and capital of the trust and, on request, to provide the accounts for the inspection of beneficiaries. Paragraph 10 of both Trust Deeds provides as follows:

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

In addition to their right to inspect trust accounts, beneficiaries are also entitled to obtain information about the trust and its administration and to inspect trust documents. This includes a right to inspect legal opinions obtained by the trustees in their capacities as trustees. A recent court decision indicates that, at least in some circumstances, beneficiaries do not have an absolute entitlement to obtain trust information and documents but that the court has an overriding ability to control such entitlement. Nevertheless, the Trustees should assume that beneficiaries will, generally, be able to assert a right to obtain trust information and documents.

It is not completely clear to what extent beneficiaries are entitled to information relating to corporations, shares of which are directly or indirectly held in the Trust. It should be assumed that the beneficiaries will be entitled to obtain all information and documents in the possession of the Trustees as trustees or which the Trustees are entitled to obtain as trustees. This will likely include any information or documents relating to any of the Sawridge Corporations, unless the production of such information or documents involves a breach of confidence or otherwise would be improper. Even in this situation, court controlled production of information or documents may permit disclosure to be made in a controlled manner. As was stated in the recent case referred to above:

"Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves and third parties. Disclosure may have to be limited and safeguards may have to be put in place."

It is the orthodox position that trustees cannot be required to provide beneficiaries with the reasons for their exercise of discretionary powers and, similarly, that documents expressing such reasons can be withheld. However, the Trustees should not rely on this orthodox position and should assume that their reasons for decisions (and the documents expressing them) will be scrutinized by beneficiaries and, in the event of a dispute, by the court.

The law is unclear as to trustees' obligations to volunteer information about the trust. As stated above, it is suggested that, at least when the Trustees have adopted a programme involving selection among beneficiaries, the availability of the programme should be made known to the beneficiaries.

Duty of Loyalty: Conflict of Interest and Duty

No Statutory Code

Unlike corporate law, trust law provides no statutory code dealing with the fiduciary obligations of trustees or, in particular, with conflict of interest and duty.

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General Principles

The overriding obligation of trustees is to act in the best interests of the beneficiaries, and to prefer the interests of the beneficiaries over their personal interests. This is often described as the duty of loyalty. There are two, overlapping, aspects of the duty of loyalty. First, a trustee must not place himself in a position of conflict between his self-interest and his duty. Second, a trustee must not profit from his position as trustee. In general, a trustee who puts himself in a position of conflict is liable to disgorge any of the gains made from so doing and is liable for losses to the trust flowing from the breach of his trustee obligation. These general principles are applied very strictly against trustees. Liability does not depend on proof that the trustee in fact abused his or her position and the liability to disgorge gains does not require proof that the trust suffered any loss. Also, the liability to disgorge gains extends to those obtained indirectly as well as those obtained directly.

Remuneration as Trustees

The general principles dealing with conflict of interest and duty are subject to modification by the terms of a particular trust. Paragraph 9 of each of the Trust Deeds provides for the Trustees to receive reasonable fees for their services as trustees in the administration of the Trusts.

Application of General Principles

Clear examples of conflict occur if:

- a trustee makes use of trust property for his personal benefit;
- a trustee sells her own property to the trust;
- a trustee purchases property from the trust;
- a trustee establishes for herself personally a business competing directly with an established business of the trust; and
- a trustee takes advantage of a "maturing business opportunity" of the trust. For example, if trustees were negotiating to obtain some business opportunity for the trust, it would be improper for a trustee to obtain such business opportunity for himself or herself.

It is not clear whether a trustee may obtain for himself a business opportunity obtained otherwise than through his position as trustee in the circumstances that the business opportunity is of a type that the trust has adopted a policy of attempting to obtain.

It is not clear to what extent and in what circumstances the conflict principles apply where a benefit is obtained by the spouse or other close relative of the trustee. However, the Trustees should assume that the conflict principle will be applied in respect of any benefit that may be obtained indirectly by the Trustee, including where the benefit is obtained by the spouse or close relative.

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Application of Principles Where Trustees are Also Beneficiaries

The application of the general principles discussed above gives rise to some difficulty when the same persons are both trustees and beneficiaries since a conflict will often be inevitable in such circumstances. Some conflict is inherent in the two Trusts. In particular, the 1985 Trust requires that at least two Trustees be beneficiaries. Also, although it would be possible to have three Trustees of the 1986 Trust who are non-beneficiaries, for tax reasons it is preferable to have the same Trustees of the two Trusts.

As stated above, both of the Trusts give the Trustees a wide discretion to distribute income or capital of the respective Trusts to one or more of the beneficiaries. Obviously, the Trustees may be in a position of conflict – one created by the Trust arrangements and not one they have put themselves into – in exercising their discretion in a way that might benefit themselves as beneficiaries. This conflict is not acute if the policy is adopted of making distributions from the Trusts that are of general benefit for the beneficiaries, for example, if a distribution of a particular amount was distributed to each and every beneficiary or if funds were expended in creating facilities or programs available for the general benefit of beneficiaries. However, the conflict may be problematic if a policy is adopted involving the exercise of discretion to make distributions – either by way of grant or by way of loan – to particular beneficiaries. There is an obvious danger that the Trustees could be accused of acting improperly if their powers are used to benefit one or more of their own number, particularly if applications for assistance are denied to other beneficiaries.

There are two possible ways in which the inherent conflict in which the Trustees may find themselves can be managed. They are as follows:

- (1) One possibility would be for Trustees (and perhaps others closely connected to them, such as spouse and other close relations) to be excluded from benefit from any programs that involve choice among beneficiaries. However, this appears to be unfair to persons who choose to take on the responsibility of being trustees and may be an inappropriate disincentive. It must be remembered in this context that the terms of the trust instrument clearly contemplate that not only may the same person be both a trustee and a beneficiary but, particularly in the case of the 1985 Trust, it is required that some trustees must be beneficiaries.
- (2) Another possibility is to permit trustees to benefit from programmes of the sort under consideration but to manage the conflict arising from that by the use of arrangements such as the typical provisions applicable to corporations. For example, section 120 of the *Canada Business Corporations Act* contains a scheme applicable to directors under which directors are required to disclose their interests when they have a personal interest in a matter involving the corporation and they are then excluded from voting on any resolution of the board of directors relating to such matter.

The second alternative is not perfect since trust law does not contain any provision or other rule absolving a trustee from responsibility with regard to a decision affecting a matter in the circumstances described in the second alternative. Nevertheless, in the special circumstances of

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the Sawridge Trusts this is the better of the two alternatives and should provide the most appropriate method of minimizing the conflict to the extent reasonably possible.

Dealing with Conflict

Certain preliminary points should be emphasized. First, although a "working definition" of a conflict will be set out below, and although there are situations in which it is clear that there will be an improper conflict, there will be many other situations in which it will not be possible to determine with certainty whether it would be considered there was an improper conflict. Second, the relevant principles of trust law are typically applied strictly against trustees. Therefore, when in doubt the safe course is for trustees to avoid acting in a way that could be characterized as putting themselves into a position of conflict. This presumption in favour of caution is particularly applicable to the Trustees as the Trustees must be particularly careful not to attract the criticism that they may be improperly taking advantage of their position as Trustees to benefit themselves.

In order to deal with the management of conflicts, the following is a useful "working definition" of a conflict:

There will be a conflict whenever a Trustee may obtain some benefit, directly or indirectly, from his or her position as Trustee or when the Trustee is in a position in which his or her decision-making as Trustee may potentially be influenced, directly or indirectly, by his or her personal interests. It will be assumed that a Trustee may obtain such a benefit if the benefit is obtained, not only by the Trustee, but also by the spouse, parent, sibling or child of the Trustee. Similarly, it will be assumed that a Trustee may be influenced if, not only the Trustee, but also the spouse, parent, sibling or child of the Trustee may be affected by the decision.

Not every conflict literally falling within this definition is necessarily problematic. Where a decision of the Trustees will benefit a group of beneficiaries that may include some or all of the Trustees who are themselves beneficiaries, or other beneficiaries related to them, as long as there is no ulterior purpose of conferring advantages on Trustees or their relatives under the guise of a scheme purportedly for the benefit of a broader category of beneficiaries, the fact that Trustees or their relatives may incidentally benefit should not preclude the Trustees from making such a decision. As previously noted, the terms of the Trusts require some Trustees to be beneficiaries, so that it cannot have been the intention that decisions of the Trustees be disinterested in the sense of there being no possible interest of any Trustee in the administration of the Trusts.

SCHEDULE B1**THE SAWRIDGE BAND INTER VIVOS SETTLEMENT****Resolution of Trustees: Process of Decision-Making****WHEREAS:**

- (1) The Sawridge Band Inter Vivos Settlement (the "Trust") was settled by Chief Walter P. Twinn on April 15, 1985.
- (2) The undersigned, Bertha L'Hirondelle, Walter Felix Twinn, Roland Twinn, Catherine Twinn and Clara Midbo, are the present Trustees of the Trust.
- (3) Paragraph 13 of the Deed applying to the Trust provides that any decision of the Trustees may be made by a majority of 50% of the Trustees.
- (4) The Trustees, subject to the provisions of the Trust, wish to regulate the manner of making decisions by them as Trustees.

NOW THEREFORE BE IT RESOLVED THAT:**1. Chair of Trustee Meetings**

- (a) Ronald Ewoniak shall be invited to attend meetings of the Trustees and shall act as chair (the "Chair") of such meetings, provided that the Trustees may terminate such arrangement on reasonable notice to Ronald Ewoniak and shall from time to time appoint one of the Trustees or some other person to act as Chair.

2. Meetings of Trustees

- (a) Subject to paragraph 3 below, all decisions of the Trustees shall be made at meetings of the Trustees.
- (b) The Trustees shall meet at least once every quarter.
- (c) The Chair shall be responsible for calling the regularly scheduled quarterly meetings of the Trustees and additional meetings which may be called by the Chair on 48 hours' notice to the Trustees.
- (d) Meetings in addition to the regularly scheduled meetings may be called by the Chair or any Trustee on 48 hours' notice to the Chair (if not calling the meeting) and to the other Trustees.
- (e) Notice may be given in writing, by e-mail, fax or telephone or in person.
- (f) Any person may participate in a meeting by means of telephone, electronic or other communication facility as permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

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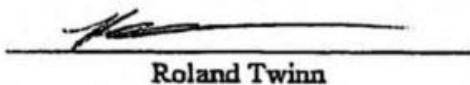
- (g) A majority of the Trustees shall constitute a quorum of Trustees.
- (h) A reasonable time before each meeting, the Chair shall circulate to all Trustees an agenda to which shall be attached all relevant documents for consideration by the Trustees at the meeting.
- (i) The Trustees present at a meeting shall appoint one of the Trustees or some other person to act as the secretary of the meeting and to record the minutes of the meeting, including decisions of the Trustees.

3. Resolutions of Trustees

A decision of the Trustees may be also made by a resolution in writing signed by all of the Trustees.

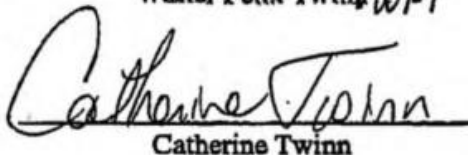
DATED this 12th day of January, 2009.


Bertha L'Hirondelle


Roland Twinn


Clara Midbo


Walter Felix Twinn WFT


Catherine Twinn

SCHEDULE B2**THE SAWRIDGE TRUST****Resolution of Trustees; Process of Decision-Making****WHEREAS:**

- (1) The Sawridge Trust (the "Trust") was settled by Chief Walter P. Twinn on August 15, 1986.
- (2) The undersigned, Bertha L'Hirondelle, Walter Felix Twinn, Roland Twinn, Catherine Twinn and Clara Midbo, are the present Trustees of the Trust.
- (3) Paragraph 13 of the Deed applying to the Trust provides that 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 claims 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.
- (4) The Trustees, subject to the provisions of the Trust, wish to regulate the manner of making decisions by them as Trustees.

NOW THEREFORE BE IT RESOLVED THAT:**1. Chair of Trustee Meetings**

- (a) Ronald Ewoniak shall be invited to attend meetings of the Trustees and shall act as chair (the "Chair") of such meetings, provided that the Trustees may terminate such arrangement on reasonable notice to Ronald Ewoniak and shall from time to time appoint one of the Trustees or some other person to act as Chair.

2. Meetings of Trustees

- (a) Subject to paragraph 3 below, all decisions of the Trustees shall be made at meetings of the Trustees.
- (b) The Trustees shall meet at least once every quarter.
- (c) The Chair shall be responsible for calling the regularly scheduled quarterly meetings of the Trustees and additional meetings which may be called by the Chair on 48 hours' notice to the Trustees.
- (d) Meetings in addition to the regularly scheduled meetings may be called by the Chair or any Trustee on 48 hours' notice to the Chair (if not calling the meeting) and to the other Trustees.
- (e) Notice may be given in writing, by e-mail, fax or telephone or in person.

- 2 -

- (f) Any person may participate in a meeting by means of telephone, electronic or other communication facility as permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously.
- (g) A majority of the Trustees shall constitute a quorum of Trustees.
- (h) A reasonable time before each meeting, the Chair shall circulate to all Trustees an agenda to which shall be attached all relevant documents for consideration by the Trustees at the meeting.
- (i) The Trustees present at a meeting shall appoint one of the Trustees or some other person to act as the secretary of the meeting and to record the minutes of the meeting, including decisions of the Trustees.

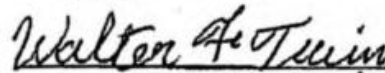
3. Resolutions of Trustees


A decision of the Trustees may be also made by a resolution in writing signed by all of the Trustees.

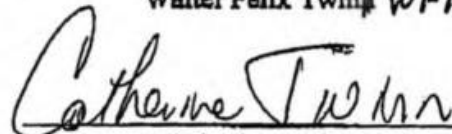
DATED this 12th day of January

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2008
WFT
CLK


Bertha L'Hirondelle


Walter Felix Twinn WFT


Roland Twinn


Catherine Twinn


Clara Midbo

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

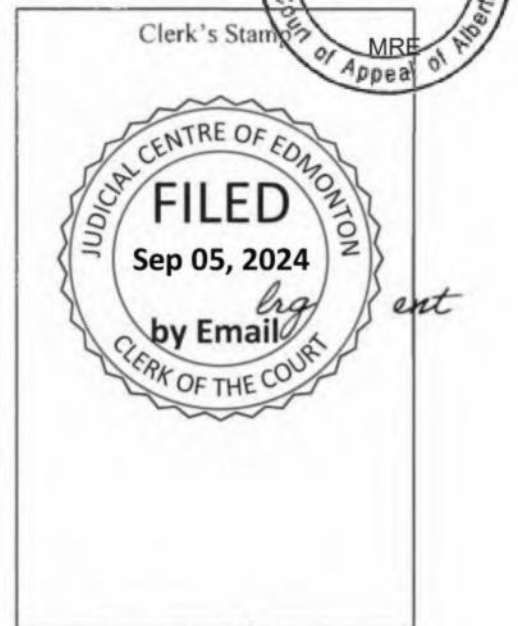
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Telephone: (780) 482-9200
Facsimile: (780) 482-9100
E-mail: cosualdini@mross.com
File No. 000333

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 9th letter from Ms. Scarlett, I wrote again to the trustees seeking information about the trustee replacement process. Attached as **Exhibit "E"** to my Affidavit is my March 5, 2024 letter in this regard.
19. By March 20, 2024 I still had not received a response to my March 5, 2024 letter, despite the 1985 Sawridge Trustees imposed deadline for applications of March 29 2024. Attached as **Exhibit "F"** to my Affidavit is my March 20, 2024 follow up letter to the trustees in this regard.
20. Later in the day on March 20, 2024 I received a reply from the Sawridge Trustees. In their written reply, the 1985 Sawridge Trustees refused to answer my pointed questions regarding the trustee selection process and acknowledged that they would not be identifying the beneficiaries of the 1985 Sawridge Trust in accordance with the terms of the deed until after the subject proceedings are concluded. Attached as **Exhibit "G"** to my Affidavit is the March 20, 2024 letter from the 1985 Sawridge Trustees.
21. Despite having serious concerns regarding the legitimacy of the selection process, I submitted my application for trusteeship by the imposed March 29th deadline.
22. In response to my application, I received a request from the 1985 Sawridge Trustees for further information regarding my lineage, more specifically they were seeking information regarding my mother's, maternal grandmother's and paternal grandmother's:
 - (a) Status at birth
 - (b) Band Number; and
 - (c) First Nation at 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.

SWORN BEFORE ME at the

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

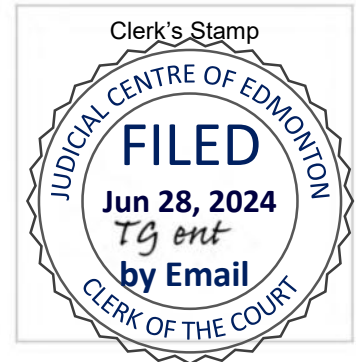
Derek R. Renzini
Barrister & Solicitor

**Form 27
Rule 6.3**

COURT FILE NUMBER 1103 14112

COURT COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE TRUSTEE ACT,
R.S.A. 2000, c. T-8, AS AMENDED, andIN THE MATTER OF THE SAWRIDGE
BAND INTER VIVOS SETTLEMENT
CREATED BY CHIEF WALTER PATRICK
TWINN, OF THE SAWRIDGE INDIAN
BAND, NO. 19 now known as SAWRIDGE
FIRST NATION ON APRIL 15, 1985 (the
"1985 Sawridge Trust")APPLICANT ROLAND TWINN, MARGARET WARD,
TRACEY SCARLETT, EVERETT JUSTIN
TWIN AND DAVID MAJESKI, as Trustees
for the 1985 Sawridge Trust ("Sawridge
Trustees")DOCUMENT **APPLICATION**ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT Dentons Canada LLP
2500 Stantec Tower
10230 – 103 Avenue
Edmonton, AB T5J 0K4Attention: Michael S Sestito
Telephone: (780) 423-7300
Email: Michael.sestito@dentons.com
File No: 551860-001-MSS**NOTICE TO RESPONDENT(S)**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: **To be Scheduled before Case Management Justice**
 Time: **To be Scheduled before Case Management Justice**
 Where: **Law Courts, 1A Sir Winston Churchill Square,
 Edmonton, Alberta T5J 0R2**

Before Whom: **Justice J.S. Little**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order setting out the following:
 - 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;
 - c. Approving the Distribution Proposal submitted by the Sawridge Trustees;
 - d. Confirming that the Office of the Public Guardian and Trustee has fully executed and satisfied its obligations, as of the date this Order is filed, imposed upon them by this Court;
 - e. Discharging the Office of the Public Guardian and Trustee from any further duties in relation to this Action;
 - f. Declaring that the indemnification and funding of the Office of the Public Guardian and Trustee, as set out in the Order of Justice Thomas, pronounced June 12, 2012, and filed September 20, 2012, is ended; and
 - g. Confirming that the litigation has concluded and that nothing in the Order negates the Sawridge Trustees’ ongoing duty to act in good faith in carrying out their duties and powers as defined in the 1985 Sawridge Trust, or the Beneficiaries’ ongoing right to enforce the bona fides of the Sawridge Trustees in the exercise of their powers and duties as outlined in the 1985 Sawridge Trust Deed.

Grounds for making this application:

2. In 2011, the Sawridge Trustees brought an application for advice and direction to the court seeking certain relief.
3. In 2012, the OPGT was appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.
4. In 2015, the Court ordered the Trustees to present a distribution proposal and have it approved by the Court.

5. Also in 2015, the Court Ordered the OPGT to limit its role to four tasks:
 - a. Representing the interests of minor beneficiaries and potential minor beneficiaries to ensure that they receive fair treatment (either direct or indirect) in the distribution of the assets of the 1985 Sawridge Trust; and
 - b. Examining on behalf of the minor beneficiaries the manner in which the property was placed / settled in the Trust; and
 - c. Identifying potential but not yet identified minors who are children of Sawridge First Nation members or membership candidates as these are potentially minor beneficiaries of the 1985 Sawridge Trust; and
 - d. Supervising the distribution process itself.
6. In 2016, the application concerning the 1985 Sawridge Trust distribution proposal was adjourned *sine die*. The issue of the distribution proposal remains outstanding.
7. The Sawridge Trustees wish to begin distributing benefits to the 1985 Sawridge Beneficiaries.
8. The Sawridge Trustees have prepared a draft distribution proposal and have shared that draft with the parties.

Material or evidence to be relied on:

9. The Distribution Proposal of the Sawridge Trustees;
10. Affidavits previously filed in this action;
11. Questionings filed in this action;
12. Undertakings filed in this action;
13. Affidavits of records and supplemental affidavits of records in this action;
14. Such further material as counsel may further advise and this Honourable Court may permit.

Applicable rules:

15. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 1.2, 1.3, 1.4, 4.11, 4.14, 6.3,
16. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts, regulations and Orders:

17. *Trustee Act*, SA 2022, c T-8.1, as amended;
18. Various procedural orders made in the within action;
19. Such further and other acts, regulations, and orders as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

20. None.

How the application is proposed to be heard or considered:

21. In person before the Case Management Justice.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

COURT FILE NUMBER	1103 14112	Clerk's Stamp
COURT	COURT OF KING'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 <i>INTER VIVOS</i> 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")	
RESPONDENTS	CATHERINE TWINN and OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE	
INTERVENOR	SAWRIDGE FIRST NATION	
DOCUMENT	CASE MANAGEMENT ORDER - SEPTEMBER 3, 2025 RE THE THRESHOLD QUESTION	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DENTONS CANADA LLP Attn: Michael Sestito 2500 Stantec Tower 10220 – 103 Avenue NW Edmonton, AB T5J 0K4 Phone: 780-423-7300 Email: michael.sestito@dentons.com File: 551860-1/MSS and Doris Bonora KC Email : dorisbonora@kpmg.ca	

DATE THIS ORDER WAS PRONOUNCED:	<u>September 3, 2025</u>
PLACE WHERE THIS ORDER WAS PRONOUNCED:	<u>Edmonton, Alberta</u>
NAME OF JUSTICE WHO PRONOUNCED THIS ORDER:	<u>Justice J.S. Little</u>

UPON Application of the Applicants filed June 28, 2024 with multistep issues (the "**Full Application**"); AND UPON the Case Management Order pronounced November 27, 2024 (the "**Case Management Order**"); AND UPON being informed by the Sawridge Trustees that they wish to have the Court adjudicate the threshold issue referenced at paragraph 1(b) of the Full Application before the balance of the Application is considered (the "**Threshold Application**"); AND UPON reading the briefs of and hearing the submissions

from counsel for the Sawridge Trustees, the Office of the Public Guardian and Trustee ("OPGT"), Catherine Twinn, and the Intervenor, Sawridge First Nation;

IT IS HEREBY ORDERED THAT:

1. Notwithstanding that the definition of "Beneficiary" set out under the 1985 Sawridge Trust is discriminatory, and includes certain non-members of the Sawridge First Nation and may exclude certain members of the Sawridge First 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.


COURT OF KING'S BENCH OF ALBERTA



Justice J.S. Little

APPROVED AS TO FORM AND CONTENT BY:

KPMG LAW LLP / DENTONS CANADA LLP

For 
 Doris C Bonora KC / Michael Sestito,
 Co-Counsel for the Sawridge Trustees

HUTCHISON LAW / FIELD LAW

P. Jonathan Faulds KC / Janet Hutchison,
 Co-Counsel for the OPGT

MCLENNAN ROSS LLP / DIONNE SCHULZE

Crista Osualdini and David Risling /
 David Schulze and Nicolas Dodd,
 Co-Counsel for the Intervenor,
 Sawridge First Nation

CATHERINE TWINN

Catherine Twinn, Self-Represented Respondent

from counsel for the Sawridge Trustees, the Office of the Public Guardian and Trustee ("OPGT"), Catherine Twinn, and the Intervenor, Sawridge First Nation;

IT IS HEREBY ORDERED THAT:

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COURT OF KING'S BENCH OF ALBERTA

Justice J.S. Little

APPROVED AS TO FORM AND CONTENT BY:


KPMG LAW LLP / DENTONS CANADA LLP

Doris C Bonora KC / Michael Sestito,
Co-Counsel for the Sawridge Trustees

HUTCHISON LAW / FIELD LAW

P. Jonathan Faulds KC / Janet Hutchison,
Co-Counsel for the OPGT

MCLENNAN ROSS LLP / DIONNE SCHULZE



Crista Osualdini and David Risling /
David Schulze and Nicolas Dodd,
Co-Counsel for the Intervenor,
Sawridge First Nation

CATHERINE TWINN

Catherine Twinn, Self-Represented Respondent

- 2 -

from counsel for the Sawridge Trustees, the Office of the Public Guardian and Trustee ("OPGT"), Catherine Twinn, and the Intervenor, Sawridge First Nation;

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COURT OF KING'S BENCH OF ALBERTA

Justice J.S. Little

APPROVED AS TO FORM AND CONTENT BY:

KPMG LAW LLP / DENTONS CANADA LLP

Doris C Bonora KC / Michael Sestito,
Co-Counsel for the Sawridge Trustees

MCLENNAN ROSS LLP / DIONNE SCHULZE

Crista Osualdini and David Risling /
David Schulze and Nicolas Dodd,
Co-Counsel for the Intervenor,
Sawridge First Nation

HUTCHISON LAW / FIELD LAW

P. Jonathan Paulds KC / Janet Hutchison,
Co-Counsel for the OPGT

CATHERINE TWINN


Catherine Twinn, Self-Represented Respondent

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.

[Signature]
 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;

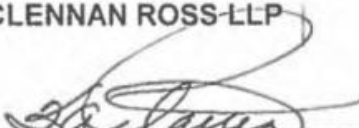
1. The definition of "Beneficiary" in the 1985 Trust is declared to be discriminatory insofar as it prohibits persons who are members of the Sawridge Indian Band No. 19 pursuant to the amendments to the *Indian Act* made after April 15, 1982 from being beneficiaries of the 1985 Trust.
2. The remaining 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.~~

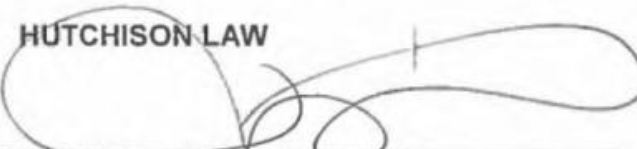

The Honourable D/R. G. Thomas
Thomas J

CONSENTED TO BY:

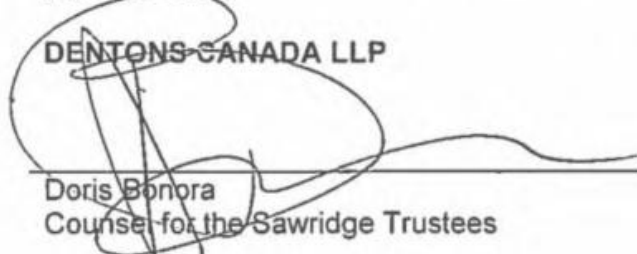
MCLENNAN ROSS-LLP


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

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

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 (Statement of Issues and
Relief Sought)**

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

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	To Be Determined
Time	To Be Determined
Where	Law Courts, 1 A Sir Winston Churchill Square, Edmonton
Before Whom	To Be Determined

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicants, the Sawridge Trustees, are the Trustees of the Sawridge Band Inter Vivos Settlement ("1985 Trust"). The Applicants seek determination of an issue and advice and directions from this Court. Pursuant to the comments of the Court of Appeal in *Twinn v Twinn*, 2017 ABCA 419, the Applicants file this document to set out and clarify the advice and directions sought in this Application.
2. The 1985 Trust was settled on April 15, 1985. Thereafter, section 15 of the *Canadian Charter of Rights and Freedoms* came into force, following the signing of the *Charter* into law.
3. After the 1985 Trust was settled, Bill C-31 was passed into law, making significant amendments to the *Indian Act*, R.S.C. 1970, Chapter I-6. Those amendments included the reinstatement of status and membership to women who had married non-Indigenous men and therefore lost their status and membership under the *Indian Act* prior to the amendments.
4. The definition of "Beneficiary" in the Trust Deed of the 1985 Trust makes specific reference to determining members of the Sawridge First Nation ("SFN") by reference to the *Indian Act* as it read as at April 15, 1982, before Bill C-31 was passed. The Trust Deed specifically prohibits amendment of the definition of "Beneficiary".
5. The 1985 Trust was funded from assets that had belonged to the SFN. Currently, there are members of SFN who are not beneficiaries of the 1985 Trust, such as the Bill C-31 women. There are beneficiaries of the 1985 Trust who are not members of SFN.
6. There may be other forms of discrimination in the definition of "Beneficiary".
7. The Applicants seek a determination of the following issue:

Is the definition of "Beneficiary" in the Trust Deed of the 1985 Trust discriminatory, insofar as the

definition refers to provisions of the *Indian Act*, RSC 1970, c I-6, which have since been amended, and 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;

Remedy sought:

8. If the definition of "Beneficiaries" is found not to be discriminatory, then the Applicants do not expect to seek any other relief.
9. If the definition of "Beneficiary" is discriminatory, the Applicants seek direction from this Court as to the appropriate remedy, and particularly whether the appropriate remedy is:
 - (a) To modify the definition by striking out language that has a discriminatory effect such that the definition of "Beneficiary" in the 1985 Trust will be reduced to members of the Sawridge First Nation?
 - (b) If the remedy in paragraph 9(a) is not granted to determine if the 1985 Trust can be amended pursuant to,
 - (i) the amending provisions of the Trust Deed, or
 - (ii) Section 42 of the *Trustee Act*?
10. If the definition of "Beneficiary" is modified, by striking out language or otherwise, then:
 - (a) Should there be "grandfathering" such that any of the individuals who met the definition of "Beneficiary" before this relief is granted will remain Beneficiaries?

- (b) If the answer to 10(a) is "yes", what should the terms of such "grandfathering" be and who will be grandfathered?

11. Such further and other relief as this Court may deem appropriate.

Affidavit or other evidence to be used in support of this application:

12. Such material as has been filed to date and has been posted on the applicable court ordered website at www.sawridgetrusts.ca
13. Such further material as counsel may further advise and this Honourable Court may admit.

How the Application is to be heard:

14. The application is to be heard in Special Chambers before the presiding Justice at a date to be determined.

Applicable Acts and regulations and Orders:

15. *Alberta Rules of Court*, Alta Reg 124/2010;
16. *Trustee Act*, RSA 2000, c T-8;
17. Order of the Court of Queen's Bench of Alberta dated January 5, 2018 in case management.

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.

Court File Number: T-66-86 (Re-Trial)

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

BETWEEN:

BERTHA L'HIRONDELLE, suing on her own behalf and on behalf of all other members of the Sawridge Indian Band;

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

HARLEY CROWCHILD, suing on his own behalf and on behalf of all other members of the Tsuu T'ina First Nation (formerly the Sarcee Indian Band);

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

FRESH AS AMENDED STATEMENT OF CLAIM

1. The plaintiffs state that each of the plaintiff Indian Bands (hereinafter referred to as the "First Nations") are Indian Bands recognized, *inter alia*, by the Crown and the Indian Act with reserve lands located in the Province of Alberta. At various dates commencing in 1876 and extending through to 1899 representatives of the First Nations executed instruments of adhesion to Treaty No.'s 6, 7 and 8 respectively with Her Majesty the Queen ("Her Majesty").
2. The plaintiffs state that the First Nations existed as distinctive polities with their own institutions, customs and traditions, governing themselves by their own laws, prior to the European colonization of North America and/or the assertion of sovereignty by European states. They were further recognized as such by the Crown with the execution of their respective treaties and the subsequent setting aside of their reserve lands.
3. In the alternative, the plaintiffs state that the First Nations existed as distinctive polities with their own institutions, customs and traditions, and governed their own membership by their own laws, prior to the European colonization of North America and/or the assertion of sovereignty by

European states. They were further recognized as such by the Crown with the execution of their respective treaties and the subsequent setting aside of their reserve lands.

4. The plaintiffs state that the First Nations have unextinguished Indian and/or Aboriginal title to their reserve lands.
5. The plaintiffs state that the *Royal Proclamation* of 1763 applies to the geographical areas within which the reserves of the First Nations are situate.
6. The plaintiffs state that the members of the First Nations on whose behalf each of them is suing do not include persons who claim membership or purportedly have become members of the First Nations solely by virtue of the operation of sections 8 to 14.3, both inclusive, of the *Indian Act*, being amendments to the *Indian Act* enacted in 1985 and 1988 ("Amendments"), without the consent of the First Nations.
7. The plaintiffs state that the members of the First Nations on whose behalf each of them is suing do include some persons who claim membership or purportedly have become members by virtue of the operation of the Amendments, namely those persons who have applied to and have been recognized as members by a First Nation.
8. The plaintiffs state that the members of the First Nations on whose behalf each of them is suing are as collectives aboriginal peoples within the meaning of section 35 of the *Constitution Act*.
9. The plaintiffs state that subsection 35(1) of the *Constitution Acts*, 1867 to 1982 constitutionally entrenched the aboriginal rights and the treaty rights of the aboriginal peoples of Canada as they existed on April 17, 1982, the date on which the *Constitution Act*, 1982 was

proclaimed in force. Where used herein, the *Constitution Acts*, 1867 to 1982 will be referred to collectively as the "*Constitution*".

10. The plaintiffs state that the aboriginal rights of the First Nations are group rights which include the property rights, governmental institutions and customary jurisdiction and laws of the respective First Nations, particularly in relation to matters internal to each First Nation. They were possessed by them as aboriginal peoples, retained notwithstanding the European colonization of North America and/or the assertion of sovereignty, and given constitutional status by section 35 of the Constitution.

11. The plaintiffs state that the right of the First Nations to govern themselves with their own institutions, customary laws and traditions was an existing aboriginal right both prior to and after the execution of Treaty No.'s 6, 7 and 8. These rights remained section 35 aboriginal rights on April 17, 1982.

12. The plaintiffs state that the right of the First Nations to determine the membership of their bands was an existing aboriginal right both prior to and after the execution of Treaty No.'s 6, 7 and 8. These rights remained section 35 aboriginal rights on April 17, 1982.

13. The plaintiffs state that the treaty rights of the First Nations include all rights confirmed or obtained by them pursuant to the treaties entered into with Her Majesty. These rights inhere in the First Nation as the collective upon whose behalf the treaty was executed.

14. The plaintiffs state that because Treaties 6, 7 and 8 recognized the First Nations, with whom the Treaties were entered into, as political entities capable of making Treaties on behalf of identifiable, distinct peoples, and because from those Treaties reserves would be set aside and other rights and benefits would flow, these Treaties assumed and recognized a right of self-government

in the political entities entering into the Treaties. This right was earlier recognized in the *Royal Proclamation of 1763* and protected by s.35 of the *Constitution Act*.

15. The plaintiffs state that because *Treaties 6, 7 and 8* recognized *First Nations* as community-based polities for which reserves were set aside and to which other rights and benefits would flow, these *Treaties* assumed and recognized the right of the *First Nations* to determine their own memberships. The *First Nation* signatories to *Treaties 6, 7 and 8* thus possess a *Treaty* right to determine who their members are, which was protected by s.35 of the *Constitution Act* on April 17, 1982.

16. The plaintiffs state that the Indian title held by the *First Nations* in their reserve lands is a section 35 right which is recognized, affirmed and protected by section 35 of the *Constitution*. Furthermore, the Indian title of each of the *First Nations* remained a section 35 right on April 17, 1982.

17. The plaintiffs state that the right of the *First Nations* to govern and determine their own membership is parasitic to all of their aboriginal and treaty rights including their aboriginal and treaty rights of self-government, their unextinguished Indian title to their reserve lands and to their status as *First Nations*. As such, it is a core and even essential component of these rights and is recognized, affirmed and protected by section 35 of the *Constitution*.

18. The plaintiffs state that the right of each of the *First Nations* to determine the membership of their bands is their right as derived from the *Royal Proclamation of 1763*.

19. The plaintiffs plead and rely upon section 25 of the *Canadian Charter of Rights and Freedoms* and further state that their section 35 rights, and their other rights within section 25 are protected from any other guarantee in the *Charter of Rights and Freedoms*.

20. The plaintiffs state that the Constitution, the pre-confederation laws of the colonies in British North America, the Royal Proclamation of 1763 and the statutes of the Parliament of Canada in force from time to time, recognized the rights of the First Nations to self-government.
21. The plaintiffs state that the Constitution, the pre-confederation laws of the colonies in British North America, the Royal Proclamation of 1763, and the statutes of the Parliament of Canada in force from time to time, recognized the rights of the First Nations to determine their own membership.
22. The plaintiffs state that with the enactment of the Amendments, Parliament attempted unilaterally to require the First Nations to admit certain persons to membership. The Amendments granted individual membership rights in each of the First Nations without their consent, and indeed over their objection. Furthermore, such membership rights were granted to individuals without regard for their actual connection to or interest in the First Nation, and regardless of their individual desires or that of the First Nation, or the circumstances pertaining the First Nation. This exercise of power by Parliament was unprecedented in the predecessor legislation.
23. In particular, the Amendments add new sections to the Indian Act, the effect of which may be summarized as follows:
- a. a Band list must be maintained for each Band (i.e. First Nation) in which shall be entered the name of every person who is a member of that Band; (section 8)
 - b. commencing on April 17, 1985, certain persons who were not prior to that date members of a Band became entitled to have their names entered in a Band list for that Band maintained in the Department. These include persons whose names were omitted or deleted from the Indian Register, or from a Band list prior to September

4, 1951, under certain prescribed provisions of the *Indian Act* as they read immediately prior to April 17, 1985, or under any former provision of the *Indian Act* relating to the same subject matter as any of those provisions. The disqualifying provisions include the marriage by an Indian woman to a man who was not registered as an Indian and included any children of that woman born prior to that marriage and illegitimate children of Indian women whose membership in that band was protested under section 12(2) of the *Indian Act*, S.C. 1951, c.29. (subsection 11(1));

- c. commencing on June 28, 1987, large numbers of additional persons who were not prior to April 17, 1985, members of a Band will become entitled to have their names entered in a Band list for that Band maintained in the Department. These include Indian men and their families who voluntarily gave up their Indian status; first generation descendants of persons whose names were omitted or deleted from the Indian Register or from a Band list by virtue of the disqualifying provisions referred to in paragraph (b); first generation descendants of the members of the families of such men who were alive at the time that the men voluntarily gave up their Indian status (subsection 11(2));
- d. subject to the operation of the impugned Amendments, a Band may assume control of its own membership if a majority of the electors of the Band consent to its so doing and consent to the establishment by the Band of membership rules. (Section 10);
- e. membership rules established by the Band may not disqualify from membership in the Band any of the persons described in paragraphs (b) and (c) above by reason only of a situation that existed or an action that was taken before the rules came into force. (Subsections 10(4) and (5)); and

f. in 1988, further amendments were enacted which became known as the "Death Rule amendments" whereby membership in the First Nations was conferred upon the dead thereby providing membership claims to descendants of the dead. These further amendments, announced by the Crown at the time, to be merely technical in nature, were made without any consultation with the First Nations and had the effect of significantly increasing the impact of the Amendments.

24. The plaintiffs state that this unilateral imposition of additional members has caused and will cause profound actual and future interference with and damaging impacts upon the equilibrium of their respective First Nations' social, cultural, economic and political lives and structures. Moreover, this imposition fundamentally interferes with the exercise of their collective rights of self-determination and/or self-government, and tends to undermine the health, well-being and stability of the First Nations' communities.

25. The plaintiffs state that the unilateral imposition of additional members on each of the First Nations without their consent constitutes an interference with and infringement of their aforementioned aboriginal and treaty rights of self-government, their aboriginal and treaty rights to determine their own membership, their Royal Proclamation right to determine their own membership, their use and enjoyment of Indian title, and their other aforementioned rights, all of which were entrenched by the Constitution and are protected from any other guarantee in the Charter of Rights and Freedoms.

26. The plaintiffs state that the unilateral imposition of additional members on each of the First Nations was implemented without meaningful consultation with them and in a manner which caused undue hardship and greater infringement than necessary to meet the proposed legislative objective.

The Amendments themselves are over-inclusive, granting to many persons membership who had never before been members, and who were in essence complete strangers, in law and in fact, with no ties to the respective First Nation. The Crown was not sensitive to the responsibilities arising from the special trust relationship with aboriginal peoples. Specifically:

- a. it did not study and properly consider the impact of the Amendments. It failed to recognize (or did recognize but ignored) the negative impacts, chaos and turmoil which would result;
- b. it failed to properly assist First Nations with the proposed transition;
- c. it did not provide sufficient information, funding and/or land. In fact, the limited information provided was misleading, prejudicial to First Nations who had relied upon same; harmful to the process;
- d. it failed to properly consider the community views of each of the First Nations; and
- e. it acted in bad faith. Specifically:
 - i. it ignored the pleas of the First Nations concerning the impact of the Amendments;
 - ii. it withheld information it had access to which confirmed the concerns of the First Nations with respect to the impact of the Amendments;
 - iii. it misrepresented to the First Nations what the impact of the Amendments would be;

- iv. it acted to increase the negative impacts of the Amendments and frustrate First Nations' abilities to attempt to manage them;
- v. it enacted further amendments in 1988 without consultation in circumstances where it knew or should have known would result with significant further impact; and
- vi. it failed to fulfill the promises made to and relied upon by the First Nations when the Amendments were enacted, including promises of an impact study focussing on higher impact communities and pledges that no First Nation would be worse off as a result of the Amendments;
- vii. it further empowered the federal bureaucracy to interfere in the rights of First Nations communities; and
- viii. it purported to add members to First Nations through a process which intentionally excluded these Nations from participating in or even providing input into, membership decisions.

27. The plaintiffs state that the rights of the First Nations pleaded here are the most central of all First Nation rights protected by section 35. The consent of the First Nation is required before such rights may be interfered with.

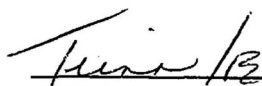
28. The plaintiffs therefore claim as follows:

- a. a declaration that the Amendments are inconsistent with the provisions of section 35 of the Constitution of Canada to the extent that they infringe or deny the right of each

of the First Nations to their self-government, their right to determine their own membership and their right to unextinguished Indian title to their reserve lands, and therefore to that extent are of no force or effect;

- b. a declaration that the Amendments are inconsistent with the section 35 rights of the First Nations protected by section 25 of the *Charter*, and therefore to that extent are of no force or effect;
- c. in any event, a declaration that the Amendments are inconsistent with the further rights of the First Nations protected by section 25 of the *Charter*, and therefore to that extent are of no force or effect;
- d. their costs of this action on a solicitor and his own client scale; and
- e. such further and other relief as this Honourable Court may deem just.

Dated at Toronto this September 23, 1998.



TWINN, Barrister & Solicitor
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Slave Lake, Alberta
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Catherine Twinn


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Solicitor of Record for Bertha Neesotasis, suing on her own behalf and on behalf of all other members of the Sawridge Band, Wayne Roan, suing on his own behalf and on behalf of the members of the Ermineskin Band and Harley Crowchild, suing on his own behalf and on behalf of all other members of the Sarcee Band (Tsuu T'ina First Nation)

TO: DEPUTY ATTORNEY GENERAL
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FEDERAL COURT OF CANADA
(TRIAL DIVISION)

BETWEEN:

BERTHAL'HIRONDELLE, suing on her own
behalf and on behalf of all other membes of
the Sawridge Band;

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

HARLEY CROWCHILD suing on his behalf
and on behalf of all other members of the
Sarcee Band (Tsuu T'ina Band);

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

**FRESH AS AMENDED STATEMENT OF
CLAIM**

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Counsel of record for the plaintiffs

SAWRIDGE MEMBERSHIP RULES

1. These Rules shall come into force on the day on which the Band gives notice to the Minister pursuant to subsection 10(6) of the Act. **[PASSED JULY 4, 1985]**

2. On and after the day these Rules come into force the Band List of the Band shall be maintained by the Band under the direction and supervision of the Band Council and only those persons whose names are included therein, or who have rights to have their names entered therein, pursuant to these rules shall be members of the Band. **[PASSED JULY 4, 1985]**

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

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

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

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

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

- (i) has applied for membership in the Band;
- (ii) is entitled to be registered in the Indian Register pursuant to the

Act;

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

(iv) is not a member of another band;

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

- (i) has applied for membership in the Band,
- (ii) was born after the date these rules come into force, and

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

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

4. For the purpose of section 3(a)(i) and section 6 the question whether a person is lawfully resident on the reserve shall be determined exclusively by reference to by-laws made by the Band Council pursuant to section 81 of the Act except that, at any time when there are no such applicable by-laws in force, no person shall be considered to be lawfully resident on the reserve for the purpose of section 3(a)(i) and section 6 unless the residence of such person on the reserve has been approved or ratified by a resolution of the Band Council that is expressed to be made for the purpose of these Rules. **[PASSED JULY 4, 1985]**

5. In considering an application under section 3, the Band Council shall not refuse to enter the name of the applicant in the Band List by reason only of a situation that existed or an action that was taken before these Rules came into force. **[PASSED JULY 4, 1985]**

6. The Band Council may at any time delete from the Band List the name of any person who has applied to the Band Council to have his or her name deleted from the Band List or the name of any person who is not then lawfully resident on the reserve and who, in the judgment of the Band Council, either does not have a significant commitment to the history, customs, traditions, culture and communal life of the Band or has a character or lifestyle that would cause his or her continued membership in the Band to be seriously detrimental to the future welfare or advancement of the Band; provided that, before a decision to delete the name of any person from the Band List is made under this section, otherwise than pursuant to an application by such person, the Band Council shall give fifteen days notice to such person who shall then be entitled to make representation to the Band Council in writing, in person or through an agent or counsel within such period of fifteen days. **[PASSED JULY 4, 1985]**

7. Where the name of a person is deleted from the Band List pursuant to section 6, the names of his or her minor children may, in the discretion of the Band Council, also be deleted from the Band List. **[PASSED JULY 4, 1985]**

8. Notwithstanding section 6 the Band Council shall delete from the Band List the name of any person who has been admitted into membership of another band with the consent of both the Band council and the admitting band. **[PASSED JULY 4, 1985]**

9. Except as otherwise expressly provided in these Rules, no application shall be required before the Band Council may enter in the Band List the name of any person who has a right to have his or her name entered in the Band List pursuant to these Rules. **[PASSED JULY 5, 1985]**

10. Where, pursuant to section 3 of these Rules, an application is required before a person has a right to have his or her name entered in the Band List, such application may be made in such manner and form as the Band Council may determine from time to time and, for greater certainty, the Band Council may permit applications to be made

under section 3(d) by a parent or guardian of a natural child referred to therein who is an infant at the time the application is made. **[PASSED JULY 5, 1985]**

11. The Band Council may consider and deal with applications made pursuant to section 3 of these Rules according to such procedure and at such time or times as it shall determine in its discretion and, without detracting from the generality of the foregoing, the Band Council may conduct such interviews, require such evidence and may deal with any two or more of such applications separately or together as it shall determine in its discretion. **[PASSED JULY 5, 1985]**

12. Any person whose application for membership in the Band pursuant to section 3 of these Rules has been denied, or whose name has been deleted from the Band List pursuant to section 6, by the Band Council may appeal such decision to the electors of the Band by delivering notice in writing to the Band Council at the office of the Band within 15 days after communication to him or her of the decision of the Band Council. **[PASSED JULY 5, 1985]**

13. Within 60 days after receipt of a notice of appeal pursuant to section 12 of these Rules the Band Council shall convene a meeting of the electors of the Band for the purpose of disposing of the appeal and the applicant shall be entitled to be present at such meeting and make representations thereto in person or through an agent or counsel. **[PASSED JULY 5, 1985]**

14. Each discretionary power conferred upon the Band Council under these rules shall be exercised by the Band Council in good faith, without discrimination on the basis of sex and in accordance with its judgment of the best interests and welfare of the Band. **[PASSED JULY 5, 1985]**

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

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

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

Form 10
[Rule 3.25]

Clerk's stamp:



COURT FILE NUMBER

1503 08727

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

Edmonton

PLAINTIFF(S)

Catherine Twinn

DEFENDANT(S)

Roland Twinn, Bertha L'Hirondelle, Everett Justin Twin, Margaret Ward and Brian Heidecker

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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Lawyer's

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File No.: 121435.01

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

The Parties

1. The Plaintiff, Catherine Twinn resides at the Sawridge Indian Reserve near Slave Lake, in the Province of Alberta and at the City of Edmonton, in the Province of Alberta.
2. The Defendants, Roland Twinn, Bertha L'Hirondelle and Everett Justin Twin reside at the Sawridge Indian Reserve near Slave Lake, in the Province of Alberta.
3. The Defendant, Brian Heidecker resides at or near Edmonton, in the Province of Alberta.

– 2 –

4. The Defendant, Margaret Ward, resides at or near Wetaskiwin, in the Province of Alberta.
5. Roland Twinn has been the Chief of the Sawridge Indian Band (the "Band") since 2003. The Defendants, Bertha L'Hirondelle and Everett Justin Twin are former members of the Band Council.
6. The Plaintiff, Catherine Twinn, is a Trustee of the Sawridge Band Inter Vivos Settlement, April 15, 1985 (the "1985 Trust") and the Sawridge Trust, August 15, 1986 (the "1986 Trust") (collectively referred to as the "Trusts").
7. The Trusts currently have an estimated gross asset value of \$300 million.
8. Catherine Twinn was appointed as a Trustee of the 1985 Trust on December 18, 1986 and of the 1986 Trust on August 15, 1986. She has continuously maintained that position since this appointment.
9. The Defendants, Roland Twinn, Bertha L'Hirondelle, Everett Justin Twin and Margaret Ward are the other current Trustees of the Trusts (the "Defendant Trustees").
10. The Defendant, Brian Heidecker ("Heidecker") is not a Trustee. He is the current Chair of the Trustees and holds the position of "Trustee's Chair".

Ascertainment of Trust Beneficiaries and Conflict of Interest Issues

11. The 1985 Trust defines "beneficiaries", in part, as:

"All persons who at [April 15, 1982] 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..."

12. The 1986 Trust defines "beneficiaries" 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 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."

13. In or about August and September of 2011, Bujold filed Affidavits in Queen's Bench Action No. 1103 14112 (the "Trusts Application") seeking the opinion, advice and direction of the Alberta Court of Queen's Bench 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" and adopt the definition of "beneficiaries" that exists in the 1986 Trust. These changes would, based on the current practice of the Band, render individuals who are accepted by the Chief and Council as Band members as the only beneficiaries of the 1985 Trust.
14. In Reasons for Judgment dated June 12, 2012 in the Trusts Application, the Honourable Mr. Justice D.R.G. Thomas expressed concerns that persons excluded by the Band from Band membership would thereby also be excluded as beneficiaries of the 1985 Trust if the 1985 Trust adopted the 1986 Trust's definition of beneficiaries; that the Public Trustee should make enquiries into the membership and application processes and practices of the Band; that there is an overlap between the Trustees and the Sawridge Band Chief and

Council; that there is a potential conflict between the personal interests of the Sawridge Trustees (including the Chief and Council) and their duties as fiduciaries under the Trusts, and that the Court of Queen's Bench has "...the authority to examine the band membership processes and evaluate, for example, whether or not those processes are discriminatory, biased, unreasonable, delayed without reason, and otherwise in breach of Charter principles and the requirements of natural justice".

15. Mr. Justice Thomas directed the appointment of the Public Trustee for the Province of Alberta to represent the interests of children potentially affected by the application with authority to enquire into the Band's processes for admission of individuals as Band members and to report to the Court whether the Band's system is fair, reasonable, timely, unbiased and in accordance with Charter principles and natural justice.
16. The Band currently has 44 Band members, the majority of whom are comprised of the Twin(n) family.
17. The Plaintiff has, for a number of years, expressed concerns with respect to the potential conflict of interest in having elected officials of the Sawridge First Nation act as Trustees; the need to ensure a de-politicized independent Board of Trustees; a Trustee succession plan which involves the appointment of independent and qualified Trustees, and a system for ascertaining beneficiaries which is fair, timely, reasonable and unbiased in accordance with Charter principles and natural justice. The Plaintiff had at various times to no avail, put forward recommendations to fairly ascertain beneficiaries under both Trusts and for an independent Board.
18. On January 17, 2014, the Plaintiff wrote the then Trustees an open letter reminding them of their fiduciary obligations under the Trusts in this regard and urging them to address these issues. The Plaintiff hoped that the letter would bring about a non-litigious resolution.
19. The then Trustees, including the Defendants, Roland Twinn and Bertha L'Hirondelle, and the late Clara Midbo, and Heidecker refused to discuss these issues. On January 21, 2014 the other Trustees appointed a Band Councillor, the Defendant, Everett Justin Twin as a replacement Trustee with no regard to his eligibility.
20. On August 12, 2014, without any prior notice to the Plaintiff, the Defendants, Roland Twinn, Bertha L'Hirondelle and Everett Justin Twin appointed the Defendant, Margaret Ward as a Trustee to replace Clara Midbo who died on or about July 13, 2014.
21. On September 26, 2014, the Plaintiff brought an application in Queen's Bench Action No. 1403 04885 for advice and direction with respect to the eligibility of the Defendant, Everett Justin Twin to be appointed as a Trustee of the 1985 Trust and for assistance from the Court with respect to, among other things, the appointment of an appropriate replacement Trustee for Everett Justin Twin and the deceased Trustee, Clara Midbo.

The Code of Conduct Agreement

22. By virtue of an agreement dated January 12, 2009, the then Trustees of the Trusts agreed to the terms of a Code of Conduct (the "Code of Conduct") which the Trustees affirmed their basic obligation of acting in the best interests of beneficiaries, integrity, impartiality and without conflicts of interest. They also agreed to an elective procedure for resolving disputes arising from the Code of Conduct.

23. The Plaintiff and the Defendant Trustees have all signed and agreed to the terms of the Code of Conduct.
24. Clauses 8(b) and (c) of the Code of Conduct provide as follows with respect to any concerns any Trustee has about the conduct of other Trustees:

"The following are the guiding principles applicable to the application of this Code of Conduct:

(b) Any Trustee who has any concern about the conduct of another Trustee will ordinarily in the first place raise the concern either privately with the other Trustee or at a meeting of the Trustees, as may be appropriate in the circumstances. It is expected that such concerns will ordinarily be resolved informally without the need for any outside intervention.

(c) Where it is alleged by a Trustee (the "Claimant") that another Trustee has acted inconsistently with this Code of conduct and the Claimant is not satisfied that his or her concern has been properly resolved in accordance with (b) above, the Claimant may require that an outside person be appointed to act as a mediator and arbitrator to deal with the complaint, as follows:

(i) Subject to (iii) below, the Claimant will by notice in writing request the Trustees' Chair to arrange the selection of a mediator/arbitrator. Such mediator/arbitrator will be such person as shall be agreed by both the Claimant and the Respondent.

(ii) Subject to (iii) below, if the disputing Trustees do not, within 30 days from the date of the notice referred to in (i) above, agree on a mediator/ arbitrator the Trustees' Chair shall appoint a mediator/arbitrator.

(iii) If the Trustees' Chair is a Trustee who is a disputing Trustee, the notice referred to in (i) above will be provided to the Trustees who are not the disputing Trustees and the appointment referred to in (ii) above will be made by the majority of the Trustees who are not the disputing Trustees..."

25. Pursuant to the Code of Conduct, the Plaintiff and the Defendant Trustees agreed, pledged and committed, expressly or implied, that they would, among other things:
 - (a) Act in the best interests of the beneficiaries;
 - (b) Communicate with one another fairly and effectively
 - (c) Use their best efforts to include all Trustees in their deliberations so that each Trustee felt that he or she had a meaningful opportunity to contribute to the discussion and that his or her views and values were given fair and full consideration;
 - (d) Be fair, open, truthful and sincere when dealing with each other and at all times avoid attempts to deceive or mislead each other;
 - (e) Where possible, work towards unanimous agreement and where unanimous agreement is not possible, to try to come to a consensus;
 - (f) Base their decisions upon relevant facts and information in a way that is not biased by undisclosed personal feelings or opinions;
 - (g) Have appropriate regard to one another's legitimate interests;
 - (h) Act with care, skill and diligence, integrity and impartiality;

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- (i) Avoid conflicts of interest and duty.

The Complaints

26. On February 5, 2015, Heidecker served the Plaintiff with four complaints under the Code of Conduct that were signed by each of the Defendant Trustees (the "Complaints").
27. The Complaints were all prepared in late January or early February of 2015.
28. None of the Defendant Trustees had contacted the Plaintiff privately with respect to the concerns set forth in the Complaints as required by clauses 8(b) and (c) of the Code of Conduct.
29. None of the Defendant Trustees had attempted to resolve any of their concerns informally.
30. None of the Defendant Trustees contacted the Plaintiff as regards the appointment of a mediator/arbitrator after the Complaints were served by Heidecker.
31. The Plaintiff, through her solicitors, advised Mr. Heidecker that the fact that clauses 8(b) and (c) of the Code of Conduct had not been complied with and that the failure to do so deprived Heidecker of any legal authority to appoint a mediator/arbitrator pursuant to the Code of Conduct.
32. Both Heidecker and the Defendant Trustees, through their legal counsel, have ignored this objection. Heidecker has appointed J. Leslie Wallace as a mediator/arbitrator.
33. The Complaints were prepared and submitted collectively. Much of the content of the Complaints is biased and untrue and contains materials which are irrelevant and predate the Code of Conduct or relate to the legitimate conduct of the Plaintiff in the discharge of her fiduciary duties.

Breach of Contract and Fiduciary Duties

34. Heidecker had no authority to appoint a mediator/arbitrator as, among other things, the contractual pre-conditions under clauses 8(b) and 8(c) of the Code of conduct have not been satisfied with respect to the Complaints. The appointment of J. Leslie Wallace to mediate and arbitrate the Complaints is void.
35. It was a reasonable expectation of the Plaintiff and the beneficiaries, both current and potential, pursuant to the Code of Conduct, that any exercise of the Trustees' duties and powers, including bring a complaint, would not be used in bad faith, malice or for purposes not motivated by or in furtherance of the beneficiaries' best interests.
36. At all material times, the Defendant Trustees occupied fiduciary roles as Trustees to the Trusts. Pursuant to their roles as fiduciaries, as well as the provisions agreed to in the Code of Conduct, the Defendant Trustees owed statutory, contractual, common law, and fiduciary duties to the beneficiaries, which they breached, particulars of which include, but are not restricted to, the following:
 - (a) Creating contrived, irrelevant and biased Complaints motivated by malice for the Plaintiff, for the improper purpose of:

– 6 –

- (i) preventing the Plaintiff from performing her fiduciary obligations under the Trusts as it relates to the ascertainment and recognition of Trust beneficiaries and fulfillment of Trust objects by independent Trustees, and
- (ii) attempting to silence the Plaintiff from voicing legitimate concerns with respect to the ascertainment of beneficiaries and the independence of the Trustees, which were simply attempts to discharge her fiduciary duties of disclosure and to impartially act for all beneficiaries and individuals who qualified as beneficiaries,

thereby breaching the overarching duty of utmost loyalty to act in a selfless manner while in their capacity as Trustees, for the benefit of the Trusts and its beneficiaries;

- (b) Failing to give appropriate regard to the Plaintiff's legitimate interests regarding the Code of Conduct and the Trusts;
 - (c) Failing to engage in reasonable and fair discussions or consensual decision-making with the Plaintiff pursuant to decisions to be made relating to the Trusts;
 - (d) Failing to avoid conflicts of interest;
 - (e) Failing to exercise the degree of care, diligence and skill that a reasonably prudent Trustee would exercise in comparable circumstances;
 - (f) Failing to discharge their roles as Trustees of the Trusts honestly, in good faith and in the best interests of the beneficiaries, by failing to promote the best interests of the beneficiaries but instead facilitating, assisting or participating in conduct motivated by personal reasons;
 - (g) Generally, failing to honour the Code of Conduct's true purpose and intent, which was to act cooperatively with integrity and impartiality in managing the Trusts so as to further the beneficiaries' best interests;
 - (h) Generally, failing to carry out their duties and powers under the Code of Conduct honestly, cooperatively, and in good faith consistent with fair dealing, in an effort to remove the Plaintiff from her position as Trustee, by basing their Complaints on irrelevant information in a way that was biased by undisclosed personal feelings or opinions;
 - (i) Such further and other breaches of duty as may be proven at the trial of this action.
37. The Defendant Trustees' conduct as outlined above is also in breach of the fiduciary obligations of the Defendant Trustees to individuals who qualify as beneficiaries of the 1986 Trust, but have been improperly refused or delayed Band membership, as well as to those individuals who qualify under the rules in the 1985 Trust, by failing to implement any number of fair processes to apply these rules to individuals to ascertain their beneficiary status.
38. In furtherance of these improper purposes the Defendants improperly used to Trust assets to indemnify the Defendant Trustees for legal costs they incurred to retain a

lawyer in order to assist them in removing the Plaintiff as a Trustee through the mediation/arbitration process under the Code of Conduct.

39. These actions bring the Trusts and the Trustees into disrepute and jeopardize the Trust Assets, by improperly influencing the administration of the Trusts through the political and personal agendas of the Defendant Trustees and their supporters.

Losses

40. The full extent of the Plaintiff's, beneficiaries' and potential beneficiaries' losses and damages remain unknown to the Plaintiff at the time of the delivery of the Statement of Claim.
41. The Defendant Trustees' breaches will cause the Plaintiff to suffer irreparable harm. There is a serious risk of her removal as a Trustee to the Trusts by the mediator/arbitrator. The Plaintiff is the only Trustee who has advocated for the interests of potential present and future beneficiaries who have been improperly excluded as beneficiaries. The carrying out of these duties affects fundamental aspects of these individuals' lives. This cannot be adequately compensated by damages.
42. Further, the Defendant Trustees' breaches will cause irreparable harm to individuals who qualify as beneficiaries but whose applications for Band membership and beneficiary status have been improperly rejected, hindered or delayed, or not yet ascertained. These breaches will cause irreparable future damage to future generations of potential beneficiaries.
43. The Plaintiff has incurred expenses and damages, including legal and related costs, to protect the interests of individuals who qualify as beneficiaries but whose applications for Band membership or beneficiary status have been improperly rejected, hindered or delayed, and to protect the interests of future generations of potential beneficiaries. It is inequitable for the Trusts to pay the legal costs of the Defendant Trustees for the purpose of defeating this objective. The Plaintiff seeks an Order prohibiting the Defendant Trustees from seeking payment of their legal costs from the Trusts and requiring the Defendants to reimburse the Trusts for all such legal costs paid to date.
44. If the Defendant Trustees are entitled to indemnification for their legal costs under the Trusts, the Plaintiff seeks a declaration that she is also entitled to indemnification from the Trusts for her legal costs on a solicitor and client full indemnity basis.

Jurisdiction

45. The dispute resolution clause provided for in the Code of Conduct is permissive and elective, not mandatory. It is restricted to concerns related to the Code of Conduct. The Plaintiff has redress to this Court for the matters addressed in this Statement of Claim.
46. This Court has inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts, pursuant to *The Constitution Act*, 1867, 30 & 31, Vict, c3, s 96. This Court has inherent jurisdiction as the support of Trustees, protector of the incapacitated, and guardian of the trust.
47. In the alternative, the Court may intervene to decide this matter so as to ensure that the arbitration is carried on in accordance with the Code of Conduct, and/or to prevent

manifestly unfair or unequal treatment of the Plaintiff pursuant to the *Arbitration Act*, RSA 2000, c A-43, s 6(b) and (c).

Remedy sought:

48. An Order and declaration that Brian Heidecker has no authority to appoint a mediator/arbitrator pursuant to the Code of Conduct, as the contractual pre-conditions under clauses 8(b) and 8(c) of the Code of Conduct have not been satisfied with respect to the Complaints, and that the appointment of J. Leslie Wallace to mediate and arbitrate the Complaints is void.
49. Such directions as the Court may think fit or proper pursuant to the provisions of the *Arbitration Act*.
50. An interim and permanent injunction restraining the Defendants from proceeding with the Complaints, or similar complaints.
51. Damages against the Defendant Trustees in such amount as may be proven at trial.
52. An Order directing the Defendant Trustees to reimburse the Trusts for all legal costs received by them or their solicitors with respect to the Complaints and the proposed mediation/arbitration referred to in this Statement of Claim.
53. In the alternative, a declaration that the Plaintiff is entitled to indemnification for her legal costs on a solicitor and client full indemnity basis from the Trusts.
54. A judgment for legal costs against the Defendant Trustees as between solicitor and client on a full indemnity basis.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

1 COURT FILE NO: 1103 14112

2 COURT: QUEEN'S BENCH OF ALBERTA

3 JUDICIAL CENTRE: EDMONTON

4
5 IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000,
6 c.T-8 as amended

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

10
11 APPLICANTS: ROLAND TWINN, CATHERINE TWINN, WALTER
12 FELIX TWIN, BERTHA L'HIRONDELLE and
13 CLARA MIDBO, as TRUSTEES FOR THE 1985
14 SAWRIDGE TRUST

15 -----
16 QUESTIONING ON AFFIDAVIT
17 OF
18 PAUL BUJOLD
19 -----

20 Ms. D.C.E. Bonora For the Applicants
21 Ms. J.L. Hutchison For the Public Trustee
22
23 Susan Stelter Court Reporter
24

25 Edmonton, Alberta

26 27 & 28 May, 2014
27

1 PAUL BUJOLD, SWORN AT 10:00 A.M., QUESTIONED BY

2 MS. HUTCHISON:

3 Q MS. HUTCHISON: Good morning, Mr. Bujold. How are
4 you?

5 A I am good.

6 Q Just a few initial questions, Mr. Bujold. Am I
7 pronouncing your name correctly?

8 A Yes, you are actually.

9 Q You are the Paul Bujold who swore the Affidavit dated
10 August 30th, 2011?

11 A Yes.

12 Q September 12th, 2011?

13 A Yes.

14 Q And September 30th, 2011 in the Court of Queen's Bench
15 Action Number 1103 14112?

16 A Yes.

17 Q Thank you. And is it your understanding that you have
18 the authority to bind the 1985 Sawridge Trust with your
19 evidence today?

20 A Yes, I do.

21 Q Now I understand, Mr. Bujold, that you are the CEO of
22 both Sawridge Trusts?

23 A That is right.

24 Q So we have a 1986 Trust and a 1985 Trust, and
25 collectively they are known as the Sawridge Trusts?

26 A Trusts, yeah.

27 Q Are you also the Trust administrator and program

1 manager?

2 A Yes.

3 Q You are, okay. When did you start as CEO?

4 A The 14th of September, 2009.

5 Q And do you know who held that position prior?

6 A There wasn't anybody before.

7 Q Okay. It was just the trustees prior to that?

8 A That is right.

9 Q And did you start the role of Trust administrator and
10 program manager at the same time?

11 A Yeah, everything started simultaneous.

12 Q And could you just give me a general idea of what your
13 duties, your job description is for all three of those
14 positions?

15 A Okay. For the Trust administration I advise the
16 trustees, I prepare the minutes for the meetings, and
17 the agenda, along with our chair. I administer the
18 accounts and I provide payouts for beneficiaries.

19 For the program manager I create programs that are
20 benefits to the beneficiaries, and advise the trustees
21 on the creation of those benefits, and then I get their
22 approval for policies to govern the various benefits.

23 Q Okay.

24 A As the chief executive officer I am basically
25 responsible for the management of all the affairs of
26 the Trust at the direction of the trustees. So I relay
27 to the accountants, to the legal counsel, to institute

1 actions when it is necessary.

2 Q Thank you. Are you also the principal management
3 officer under the Sawridge Financial Administration
4 Act, or do you know?

5 A I don't know.

6 Q Let me actually take you to one of the documents that
7 your counsel provided to me recently. Sorry, I
8 apologize, Mr. Bujold, the Financial Administration Act
9 is on your web site, or on Sawridge's web site.

10 MS. BONORA: Is that the Sawridge First Nation
11 web site?

12 Q MS. HUTCHISON: First Nation web site. So as far
13 as you know you are not the principal management
14 officer under the Administration Act?

15 A No, I don't work for the band.

16 Q At all?

17 A At all. So I have no relationship to the First Nation.

18 Q Okay. That answers that question, that is great.

19 A Okay. Nor do the Trusts.

20 Q Do you hold any other roles or positions with the
21 Trusts that we haven't talked about?

22 A No.

23 Q Just those three?

24 A That is right.

25 Q Okay. Preliminaries done, Mr. Bujold. Just a couple
26 of things. I suspect just based on all of the
27 shortened terminology that we have already adopted in

1 the Affidavit and in the material, I am going to be
2 using short versions of longer terms throughout the
3 examination. If I use one of those terms and you don't
4 understand what I am referring to, will you ask me for
5 clarification?

6 A I will absolutely.

7 Q Wonderful. And if I ask you a question you just don't
8 understand, you will ask me for clarification?

9 A Same.

10 Q Great. And if I ask you a question that you need to
11 look at documents or some sort of paperwork to refresh
12 your memory, will you stop me and ask to do that?

13 A Yes.

14 Q Perfect. Okay. Speaking of paperwork, I have one
15 quick question for you. In the style of cause in this
16 action there is reference to the Sawridge Indian Band,
17 No. 19?

18 A Yes.

19 Q In paragraph 6 of your September 12, 2011 Affidavit
20 there is reference to Sawridge Band No. 454?

21 A That is right.

22 Q Are there two different designations for the band?

23 A No, we don't know where the 19 comes from. It showed
24 up in legal documents and it shows up in the Trust
25 documents, but it was never a number that referred to
26 the First Nation.

27 Q Okay.

1 A It has always been 454.

2 Q Okay.

3 A So maybe at some time in the distant past 19 was the
4 number that was assigned by the federal government, but
5 it hasn't shown up anywhere else, and the Chief and
6 Council of the band have told me that they don't know
7 where that number comes from.

8 Q So as far as you know it is Sawridge Indian Band No.
9 454?

10 A That is right.

11 Q Okay. Thank you. Mr. Bujold, going to your Affidavit
12 sworn on August 30th of 2011, if you have a copy of
13 that available?

14 A M-hm.

15 Q I see in that Affidavit, and I am looking particularly
16 at paragraphs 3 through 5, you have attached deeds of
17 settlement for the 1982 Trust, the 1985 Trust, and the
18 1986 Trust?

19 A That is right.

20 Q I am assuming based on the time that you started with
21 the Trust you didn't have any direct or personal
22 involvement with the Trust being established?

23 A None.

24 Q Okay. So anything that you know about the
25 establishment of the Trust is from your review of
26 documentation or talking to other individuals connected
27 with Sawridge or the Sawridge Trusts?

1 A That is correct.

2 (Discussion off the record.)

3 Q MS. HUTCHISON: Mr. Bujold, just looking at the
4 1982 Trust to begin with, can you help me a bit with, I
5 am just looking at the names of the trustees in the
6 first 1982 Trust. Walter Patrick Twinn, Walter Felix
7 Twin, and George Twin?

8 A Right.

9 Q Do you know what the relationship was between those
10 three individuals? Were they brothers, cousins?

11 A Well, Walter Patrick Twinn is a cousin to Walter Felix
12 Twin.

13 Q Okay.

14 A And a brother to George Twin.

15 Q Okay. And is it your understanding that at the time
16 the 1982 Trust was created Walter Patrick Twinn, Walter
17 Felix Twin, and George Twin were the only members of
18 Chief and Council for Sawridge First Nation?

19 A Yes.

20 Q Okay. And then when we turn to Exhibit D which is the
21 1985 Trust, am I correct in understanding that Walter
22 Patrick Twinn, George V. Twin, and Samuel G. Twin were
23 the councillors of Sawridge First Nation in 1985?

24 A That is right.

25 Q Okay. And what was the relationship as far as you know
26 between Walter Patrick Twinn and Samuel G. Twin?

27 A They were brothers as well.

1 Q Okay. And just out of curiosity, any idea why the Twin
2 name is spelt with two N's in some places and one in
3 others?

4 A Yes. Walter Patrick Twinn and Walter Felix Twin had
5 the same name.

6 Q Okay.

7 A And so it caused confusion and so they added a double N
8 on Walter Patrick Twinn's name, even though -- because
9 he never went by Walter Patrick, he went by Walter.
10 And Walter Felix actually started going by Walter
11 Felix, so everybody knows him as Walter Felix Twin, but
12 the name, just so that there is no confusion, is spelt
13 differently.

14 Q Thank you, that is very helpful. And the George V.
15 Twin that is referred to here in the 1985 Trust is the
16 same, that is the George Twin as referred to in the
17 1982 one?

18 A Yes.

19 Q Okay. Turning to the 1986 Trust, which is Exhibit C to
20 your Affidavit, I see that the trustees for that Trust
21 are Chief Walter P. Twinn, Catherine Twinn and George
22 Twin?

23 A Yes.

24 Q So George again is Walter Patrick's brother?

25 A Yes.

26 Q Catherine Twinn was Walter Patrick's wife at that time?

27 A That is right.

1 Q Was she also a member of Chief and Council at that
2 time?

3 A No.

4 Q Has she ever been a member?

5 A Never.

6 Q Never been on council?

7 A Never.

8 Q Okay. If we could just flip to your September 12th,
9 2011 Affidavit for a moment, paragraph 3, where you
10 list the five trustees of the 1985 Trust?

11 A Yes.

12 Q Bertha L'Hirondelle, Clara Midbo, Catherine Twinn,
13 Roland C. Twinn, and Walter Felix Twin, are those still
14 the trustees as of today's date?

15 A No.

16 Q Who are the current trustees?

17 A Walter Felix Twin resigned the 21st of January of this
18 year, 2014.

19 Q Okay.

20 A And was replaced by Everett Justin Twin, single N Twin.

21 Q And sorry, Everett Justin?

22 A He goes by Justin, but his legal name is Everett,
23 E-V-E-R-E-T-T.

24 Q So that would be the same Justin Twin that is currently
25 a member of Chief and Council for Sawridge First
26 Nation?

27 A That is right.

1 Q Okay. And so I understand that Walter Felix Twin also
2 resigned from the Membership Review Committee?

3 A I understand that. It is not -- we don't know who sits
4 on that committee anymore.

5 Q Okay. So in terms of Walter Felix Twin's resignation
6 from the Trust, did he give any reasons for his
7 resignation?

8 A He was aged and ill. He had just had major surgery.

9 Q Sorry to hear that.

10 A Yes.

11 Q Now just so that I can try to get a bit of a sense of
12 the trustees, then. Bertha L'Hirondelle was Walter
13 Patrick Twinn's sister, or is his sister?

14 A Right.

15 Q Clara Midbo is also his sister?

16 A Yes.

17 Q Catherine Twinn is his widow?

18 A Right.

19 Q And Roland C. Twinn, was that Walter Patrick's son?

20 A Yes.

21 Q And Walter Felix Twin, when he was a trustee, was
22 Walter Patrick's brother?

23 A Cousin.

24 Q Cousin, right. And what relationship, if any, did
25 Everett Justin Twin have to Walter Patrick?

26 A Justin is the son of Vera Twin, Vera McCoy as she is
27 known now, but she was Vera Twin, and I think she is

1 the niece of Walter Patrick and Bertha and Clara.
2 Q Okay.
3 A So that makes Justin their --
4 Q That is okay.
5 A -- nephew once removed.
6 Q We will figure that out.
7 A Okay.
8 Q But Vera was Walter Patrick's niece?
9 A Yes.
10 Q Do you know who her mother was?
11 A Pauline.
12 Q Twin?
13 A Yes.
14 Q And Pauline was one of Walter Patrick's sisters?
15 A Sisters.
16 Q Okay. Now I understand the other current member of
17 Chief and Council, and there are only three members of
18 Chief and Council, correct?
19 A Yes.
20 Q Is Winona Twin?
21 A Yes.
22 Q And what is her relationship to either Walter Patrick
23 or --
24 A She is Justin's sister.
25 Q Okay.
26 A But they were raised by different people.
27 Q Okay. But by birth they are brother and sister?

1 A Right.

2 Q Mr. Bujold, I will probably ask this question by way of
3 undertaking unless you have a very good memory, but
4 what I am interested in is getting a list of who sat on
5 Sawridge First Nation Chief and Council from 1985 until
6 present. And the second undertaking would be to advise
7 me who the Sawridge trustees were from 1985 to present.
8 And if you could break it up as terms that they sat,
9 you know, if they had multiple terms, just give me the
10 date range, that would be super.

11 A I can do that for the trustees.

12 Q Okay.

13 A But I can't do it off the top of my head. I will have
14 to look it up.

15 Q That is fantastic.

16 A And the Chief and Council, I have no idea. So we would
17 have to get that information.

18 Q If you could certainly make inquiries, perhaps, of the
19 trustees if they might be able to assist on that? Your
20 counsel will have a very good understanding of the
21 scope of information that you are required to actually
22 ask. So if you are able to provide it that is super.

23 MS. BONORA: We will undertake to provide the
24 Sawridge list of trustees. We will make our best
25 efforts to try and get the information on Chief and
26 Council since 1985.

27 MS. HUTCHISON: Thank you.

1 UNDERTAKING NO. 1:

2 RE PROVIDE LIST OF WHO SAT ON SAWRIDGE
3 FIRST NATION CHIEF AND COUNCIL FROM 1985
4 UNTIL PRESENT.

5 UNDERTAKING NO. 2:

6 RE ADVISE WHO THE SAWRIDGE TRUSTEES WERE
7 FROM 1985 TO PRESENT, BREAKING IT UP
8 INTO TERMS THAT THEY SAT IF THEY HAD
9 MULTIPLE TERMS, AND PROVIDE DATE RANGE.

10 Q MS. HUTCHISON: So I am still on our list of
11 trustees for now. So let's start with the new trustee,
12 Mr. Bujold. He is Justin Twin?

13 A Yes.

14 Q He is a member of Chief and Council?

15 A Yes.

16 Q Obviously he is a member of the Sawridge First Nation?

17 A Yes.

18 Q And by virtue of being a member of the Sawridge First
19 Nation he would also be a beneficiary of both Trusts,
20 the 1986 and '85?

21 A Yes, yes.

22 Q Okay. And is it your understanding that as a member of
23 the First Nations he would also be a member of the
24 Appeal Committee for membership issues? Are you aware
25 of that structure?

26 A The Appeal Committee are all of the electors, and I
27 would presume he is an elector.

1 Q Okay.

2 A But I don't know.

3 Q So the Appeal Committee is electors, not necessarily --
4 so there could be members that are not electors?

5 A Right.

6 Q Okay.

7 A There would probably be minors.

8 Q Okay. And do you know if Justin Twin sits on the
9 Membership Review Committee? Did he take Walter
10 Felix's position on that, or you are not --

11 A I don't know.

12 Q Let's just go off for a second.

13 (Discussion off the record.)

14 Q MS. HUTCHISON: Mr. Bujold, your counsel just
15 reminded me that she gave me a list a week or so ago,
16 and the current members of the Membership Committee are
17 Vera McCoy, and she is the mother of Winona and Justin,
18 correct?

19 A That is correct.

20 Q Roland C. Twinn who is Chief of Sawridge?

21 A Yes.

22 Q Catherine Twinn, Walter Patrick's widow?

23 A Yes.

24 Q Bertha L'Hirondelle, Walter Patrick's sister?

25 A Yes.

26 Q And Arlene Twinn?

27 A Is Roland's sister.

1 Q Okay. And so Walter Patrick's daughter?

2 A Right. I don't know if I need to clarify this, but she
3 is -- Roland and Arlene are children of Walter's first
4 marriage.

5 Q Okay. And are there children of Walter and Catherine's
6 marriage as well?

7 A Yes.

8 Q Who are they?

9 A Walter Patrick; Samuel, I can't remember his second
10 name; and Isaac, and I can't remember his second name.

11 Q Okay. And none of those children are trustees?

12 A No.

13 Q And none of them are on council?

14 A No.

15 Q Do you know if they hold any particular positions
16 within the Nation?

17 A Not that I know of.

18 Q And no positions within the Trust?

19 A No.

20 Q They are beneficiaries of both Trusts?

21 A Yes, yes.

22 Q Okay. So other than the positions that we have just
23 talked about for Justin Twin, any other positions that
24 he holds in relation to the Sawridge Trust or the
25 Nation that you are aware of?

26 A In relation to the Trusts, no. In relation to the
27 First Nation, I am not aware of.

1 Q Any other one?

2 A No.

3 Q If you become aware of any other positions Justin Twin
4 holds within the First Nation, if you could advise us?

5 A Sure.

6 MS. BONORA: Well, it will always be under this
7 constant undertaking. So do you want us to undertake
8 to inquire, or?

9 MS. HUTCHISON: Sure.

10 MS. BONORA: I don't want to be under a constant
11 undertaking.

12 MS. HUTCHISON: Let's do it that way.

13 MS. BONORA: Okay.

14 MS. HUTCHISON: If you could undertake to advise us
15 of any other titles or positions Justin Twin holds
16 within the Sawridge First Nation.

17 UNDERTAKING NO. 3:

18 RE ADVISE OF ANY OTHER TITLES OR
19 POSITIONS JUSTIN TWIN HOLDS UNDER THE
20 SAWRIDGE FIRST NATION.

21 Q MS. HUTCHISON: Let's chat about Catherine Twinn
22 for a second. Catherine Twinn is a trustee of the
23 Sawridge Trust?

24 A Yes.

25 Q She was married to Walter Patrick Twinn?

26 A Yes.

27 Q Obviously she is a member of Sawridge?

1 A Yes.

2 Q And as far as you know, is she an elector?

3 A Yes.

4 Q Okay. So she would also be a member of the Membership
5 Appeal Committee as an elector?

6 A As far as the definition goes.

7 Q As far as you know, is she a beneficiary of both the
8 '85 and '86 Trust?

9 A Yes.

10 Q And Roland C. Twinn, the current Chief of Sawridge,
11 would be her stepson?

12 A Yes.

13 Q Okay. And Catherine Twinn was, are you aware of her
14 having a role in council or the Sawridge First Nation
15 litigation about the constitutionality about Bill C-31?

16 A Yes.

17 Q She played that role?

18 A Yes.

19 Q Does she continue to deal with membership issues in
20 that capacity?

21 A No.

22 Q And you have told me that she has never sat on Chief
23 and Council?

24 A Not that I am aware of.

25 Q Okay.

26 MS. HUTCHISON: Ms. Bonora, if I could ask you to
27 undertake to inquire whether or not Catherine Twinn has

1 actually ever been a member of Chief and Council.

2 MS. BONORA: We will give that to you in our
3 earlier undertaking, so I don't need to give you
4 another one.

5 MS. HUTCHISON: That is right.

6 Q MS. HUTCHISON: And Catherine Twinn sits on the
7 Membership Review Committee?

8 A Yes, as far as I know.

9 Q Okay. Do you have any idea how long she has been on
10 the Membership Review Committee?

11 A No, I don't.

12 Q Okay. As of today are you aware of any other role that
13 Catherine Twinn holds for the Sawridge Trust?

14 A No.

15 Q Nothing, okay. Are you aware of any other roles or
16 positions, titles, that she has for the Sawridge First
17 Nation?

18 A No.

19 Q If I could ask you to undertake to inquire whether or
20 not Catherine Twinn does actually hold any other roles,
21 titles, positions, or fulfill any other
22 responsibilities for the Sawridge First Nation, other
23 than what we have discussed already.

24 UNDERTAKING NO. 4:

25 RE ADVISE WHETHER CATHERINE TWINN HOLDS
26 ANY OTHER ROLES, TITLES, POSITIONS, OR
27 FULFILLS ANY OTHER RESPONSIBILITIES FOR

1 THE SAWRIDGE FIRST NATION OTHER THAN
2 THAT PREVIOUSLY DISCUSSED.

3 Q MS. HUTCHISON: Bertha L'Hirondelle. We have
4 talked about the fact that she is a sister of Walter
5 Patrick Twinn?

6 A Yes.

7 Q My understanding is that Bertha L'Hirondelle was Chief
8 of Sawridge First Nation for a period of time?

9 A Yes.

10 Q And we will find out timing on that with the other
11 undertaking. Do you happen to know if she stopped --
12 when her last term as Chief ended?

13 A No. The only thing that I am aware of is she became
14 Chief when Walter Patrick died.

15 Q Okay.

16 A And she ceased to be Chief when she resigned and Roland
17 Twinn was elected.

18 Q Okay.

19 A But the first undertaking should give you that.

20 Q The time frame?

21 A That time frame.

22 Q Thank you. And Bertha L'Hirondelle, she is a member of
23 Sawridge First Nation?

24 A Yes.

25 Q As far as you are aware she is an elector of Sawridge
26 First Nation?

27 A Yes.

1 Q Is she a beneficiary of both the '85 and '86 Trust?

2 A No.

3 Q She is not. So only the --

4 A Only the '86 Trust.

5 Q So Bertha is one of the individuals who, if the
6 proposed new definition, I'm going to use that sort of
7 terminology, for the 1985 Trust were adopted, Bertha
8 would become a beneficiary of the '85 Trust?

9 A Yes.

10 Q Okay. And just your understanding, Mr. Bujold, but
11 that is because Bertha L'Hirondelle was reinstated
12 under Bill C-31, is that right? So she lost her --

13 A She lost her status.

14 Q -- her status, her membership because of marriage?

15 A Because of marriage, and then applied to be reinstated
16 post Bill C-31.

17 Q Okay. So she was not only reinstated as a registered
18 Indian, but Sawridge First Nation took her back as a
19 member; is that correct?

20 A Yes.

21 Q Do you know what year she was reinstated as a Sawridge
22 member?

23 A No.

24 Q Okay. I understand best efforts, Ms. Bonora, but if
25 you could undertake to advise as to which year Bertha
26 L'Hirondelle was accepted back into the Sawridge First
27 Nation as a member.

1 UNDERTAKING NO. 5:

2 RE ADVISE WHICH YEAR BERTHA L'HIRONDELLE
3 WAS ACCEPTED BACK INTO THE SAWRIDGE
4 FIRST NATION AS A MEMBER.

5 Q MS. HUTCHISON: And we have already talked about
6 Bertha also having a role in the Membership Review
7 Committee.

8 A Yes.

9 Q Do you know how long she sat in that position?

10 A No.

11 Q My understanding from your counsel, and perhaps I will
12 just ask if you have different information, is that the
13 current membership of the Membership Review Committee,
14 other than Walter Felix Twin's recent resignation, has
15 been essentially the same for approximately a decade.
16 Do you have any other information?

17 A No.

18 Q Okay. Other than the roles or the titles that we have
19 discussed for Bertha L'Hirondelle, are you aware of her
20 holding any other roles, titles, positions, or having
21 responsibilities for the Sawridge Trust?

22 A No.

23 Q Okay.

24 MS. BONORA: Perhaps let's just go off the
25 record for a second.

26 (Discussion off the Record.)

27 Q MS. HUTCHISON: Mr. Bujold, we just had a bit of a

1 chat off the record. I understand within the Sawridge
2 Trust structure, at least, other than the trustees and
3 yourself and the chairman, which is Brian Heidecker,
4 there are no other roles --

5 A No.

6 Q -- within the structure of the Trust?

7 A No, there aren't.

8 Q So no subcommittees, no other particular titles or
9 positions?

10 A No.

11 Q Okay. Thank you. That will save time. With Bertha
12 L'Hirondelle, are you aware of her holding any roles,
13 titles, positions or having other responsibilities
14 within the Sawridge First Nation?

15 A Yes.

16 Q And what are the other roles?

17 A She is an elected elder.

18 Q Okay.

19 A Under the constitution.

20 Q Any other roles that you are aware of?

21 A Not that I am aware of. She could have, but I am not
22 aware of them.

23 Q Ms. Bonora, I will ask for the same undertaking that we
24 have been asking for, just to check and confirm whether
25 or not Bertha L'Hirondelle holds any other roles,
26 titles, positions or has other significant
27 responsibilities within the Sawridge First Nation

1 structure?

2 MS. BONORA: Yes.

3 MS. HUTCHISON: Thank you.

4 UNDERTAKING NO. 6:

5 RE ADVISE IF BERTHA L'HIRONDELLE HOLDS
6 ANY OTHER ROLES, TITLES, POSITIONS OR
7 HAS OTHER SIGNIFICANT RESPONSIBILITIES
8 WITHIN THE SAWRIDGE FIRST NATION
9 STRUCTURE.

10 MS. BONORA: I am just going to say overall,
11 that anything to do with our inquiries of Sawridge
12 First Nation will just be on best efforts because we
13 can't actually undertake.

14 MS. HUTCHISON: I understand. I do understand. I
15 also appreciate that through the trustees you have a
16 fair repository of knowledge about the Nation, but.

17 MS. BONORA: Absolutely.

18 MS. HUTCHISON: But I completely understand that it
19 is a separate legal entity.

20 Q MS. HUTCHISON: Okay. Clara Midbo. We already
21 chatted about the fact that she is the sister of Walter
22 Patrick Twinn?

23 A Yes.

24 Q A member of Sawridge First Nation?

25 A Yes.

26 Q As far as you are aware, is she an elector of Sawridge
27 First Nation?

1 A As far as I am aware of.

2 Q And Clara would be also in a situation of being a
3 beneficiary of the '86 Trust but not the '85 Trust; is
4 that correct?

5 A That is correct.

6 Q And another individual who would become a beneficiary
7 of the 1985 Trust if the new definition were adopted?

8 A That is correct.

9 Q Are you aware of Clara holding any other roles, titles,
10 positions or having significant responsibilities within
11 the Sawridge First Nation?

12 A She is also an elected elder and I am not aware of any
13 other roles that she may have.

14 Q Okay. And I will just ask for the same best efforts
15 undertaking to find out if she does hold any other
16 roles, titles, positions or responsibilities, Ms.
17 Bonora. Thank you.

18 MS. BONORA: Yes.

19 UNDERTAKING NO. 7:
20 RE DETERMINE IF CLARA MIDBO HOLDS ANY
21 OTHER ROLES, TITLES, POSITIONS OR
22 RESPONSIBILITIES WITH SAWRIDGE FIRST
23 NATION.

24 Q MS. HUTCHISON: Roland Twinn. So Chief of
25 Sawridge?

26 A Yes.

27 Q At the present time. Are you aware of, and you may not

1 be, but are you aware of his role as principal
2 financial officer under the Sawridge Financial
3 Administration Act?

4 A I am not aware.

5 Q Not aware of it, okay. He is a member of Sawridge
6 First Nation, obviously. And as far as you know he
7 would be an elector?

8 A As far as I know.

9 Q Is Roland the beneficiary of both the '85 and '86
10 Trust?

11 A Yes, he is.

12 Q And we have confirmed that he is on the Membership
13 Review Committee?

14 A Yes.

15 Q Any other roles, titles, positions or responsibilities
16 that you are aware of Roland Twinn holding for the
17 Sawridge First Nation?

18 A I am not aware of any.

19 MS. HUTCHISON: We will ask for the same
20 undertaking, Ms. Bonora, to check on that.

21 MS. BONORA: Yes.

22 UNDERTAKING NO. 8:

23 RE ADVISE IF ROLAND TWINN HOLDS ANY
24 OTHER ROLES, TITLES, POSITIONS OR
25 RESPONSIBILITIES FOR SAWRIDGE FIRST
26 NATION.

27 Q MS. HUTCHISON: Now Walter Felix Twin, and I do

1 understand that he is not currently a trustee, but he
2 was at the time that the application was filed?

3 A Yes.

4 Q He was one of the original settlers of the Trust?

5 A Yes.

6 Q Okay. As far as you are aware, Walter Felix Twin is a
7 member of Sawridge?

8 A Yes.

9 Q And as far as you are aware he is an elector of
10 Sawridge?

11 A Yes.

12 Q And is he a beneficiary of both Trusts?

13 A Yes.

14 Q Okay. Are you aware of Walter Felix Twin holding any
15 other roles, titles, positions or having significant
16 responsibilities within the Sawridge First Nation?

17 A No.

18 Q And I will just ask you to undertake to make best
19 efforts to confirm that.

20 UNDERTAKING NO. 9:

21 RE CONFIRM WHETHER WALTER FELIX TWIN
22 HOLDS ANY OTHER ROLES, TITLES, POSITIONS
23 OR HAS SIGNIFICANT RESPONSIBILITIES
24 WITHIN THE SAWRIDGE FIRST NATION.

25 Q MS. HUTCHISON: Mr. Bujold, we have talked a little
26 bit about individuals that might be elected elders
27 within the Sawridge First Nation. Do you know who else

1 holds that title or that privilege other than Bertha
2 L'Hirondelle and Clara Midbo?

3 A As far as I understand from the constitution, there are
4 two elders who are elected to the Elders Commission, I
5 think it is called, under their constitution.

6 Q Okay.

7 A And those are the two at this time.

8 Q Okay. And are there other members of the Elders
9 Commission, or it is just a two-person?

10 A A two-person.

11 Q A two-person Commission. I think that I will ask for
12 an undertaking, Mr. Bujold, could you make inquiries on
13 a best efforts basis as to whether or not any of the
14 past or present trustees have sat on the management
15 board that is established under the Sawridge Financial
16 Administration Act?

17 MS. BONORA: Sorry, why is that relevant?

18 MS. HUTCHISON: Well, we are trying to get a sense,
19 I guess, of some of the crossover roles and
20 responsibilities, Ms. Bonora, whether or not there is
21 actually any issue or concern there around the
22 administration.

23 MS. BONORA: So obviously when we answer all of
24 the undertakings on the current trustees and other
25 roles that they have, that undertaking will be
26 answered.

27 MS. HUTCHISON: That is excellent. I just wanted

1 to point out that specific board. That's great. We
2 can do it within those general undertakings.

3 MS. BONORA: I mean it will come up if it is
4 going to come up, right.

5 Q MS. HUTCHISON: So, Mr. Bujold, again talking about
6 the trustees. What policies, codes of conduct,
7 procedures, do you have in place at the present time in
8 relation to the trustees' role themselves?

9 A In the trustees there are some parameters listed for
10 what -- for each -- not for each but for the trustees
11 as a whole.

12 Q Okay.

13 A In addition to that they have also established a code
14 of conduct to which they are all party as a contract.

15 Q Okay.

16 A In addition to that they also establish policies,
17 various administrative policies for the Trust which
18 includes remuneration for trustees, procedures for
19 meetings, and benefits, and payment benefits.

20 Q So, Mr. Bujold, if you could undertake to provide us
21 with a copy of any policies or contracts or other
22 documents that relate to a code of conduct or matters
23 such as conflict of interest for the trustees
24 themselves?

25 A Yes.

26 Q That would be appreciated:

27 UNDERTAKING NO. 10:

1 RE PROVIDE A COPY OF ANY POLICIES OR
2 CONTRACTS OR OTHER DOCUMENTATION
3 RELATING TO A CODE OF CONDUCT OR MATTERS
4 SUCH AS CONFLICT OF INTEREST FOR THE
5 TRUSTEES THEMSELVES.

6 Q MS. HUTCHISON: Do you personally have an awareness
7 of whether or not similar sorts of policies or
8 documents exist for Chief and Council of the Sawridge
9 First Nation? Codes of conduct, codes of ethics,
10 guidelines around conflict of interest and that type of
11 thing?

12 A I am not aware of.

13 Q Your counsel, in response to one of my inquiries, did
14 provide us with a copy of a governance policy or a
15 Governance Act, I should say, and the constitution of
16 Sawridge First Nation. I take it that you are not
17 personally familiar with those documents?

18 A I have read them.

19 Q Okay. And do you have any basis to understand that
20 those documents apply to the trustees in their roles as
21 trustees?

22 A None of the legislation or policies of the First Nation
23 apply to the Trusts, because they are two separate
24 entities.

25 Q Thank you.

26 MS. HUTCHISON: Ms. Bonora, very much on a best
27 efforts basis, to the extent that you are able to

1 determine whether or not there are any other
2 guidelines, policies, contracts, that relate to code of
3 conduct or conflict of interest, or dealing with
4 conflict of interest in relation to Sawridge First
5 Nation Chief and Council, the Membership Review
6 Committee, the Elders Commission, or the Membership
7 Appeal Committee, other than what you have already
8 provided to us which is the Governance Act and the
9 Constitution Act, if you could undertake to use best
10 efforts and advise.

11 MS. BONORA: I don't think that we will provide
12 the undertaking with respect to all of Sawridge First
13 Nation.

14 MS. HUTCHISON: Okay.

15 MS. BONORA: We are prepared to provide you with
16 the Membership Committee and Membership Appeal
17 Committee. But I don't think the whole of Sawridge
18 First Nation is relevant to these proceedings. But we
19 will give the undertaking on membership.

20 MS. HUTCHISON: I would also like it in relation to
21 Chief and Council.

22 MS. BONORA: I don't understand the relevance.
23 I'm happy to hear it, but I don't understand the
24 relevance with respect to Chief and Council and these
25 Trusts.

26 MS. HUTCHISON: The relevance, I would suggest, is
27 that Chief and Council is actually the decision maker

1 on membership issues. So in the membership process, as
2 I understand it, the Membership Review Committee makes
3 a recommendation to Chief and Council and then Chief
4 and Council make a decision to accept or reject. Is
5 that your understanding, Mr. Bujold?

6 A That is my understanding.

7 MS. HUTCHISON: So Chief and Council being
8 inherently involved in the membership process I would
9 suggest makes that relevant.

10 MS. BONORA: So what specifically are you asking
11 for with respect to Chief and Council?

12 MS. HUTCHISON: Whether are not there are any codes
13 of conduct or any policies or legislation -- I
14 understand the Nation refers to their policies as acts
15 as a general rule, really any documentation that would
16 deal with codes of conduct and conflicts of interest
17 for Chief and Council. If there is one specific to the
18 membership decision, that is really all I am interested
19 in.

20 MS. BONORA: We will give an undertaking to
21 provide code of conduct, conflict of interest issues,
22 make our best efforts, for Chief and Council specific
23 to membership. So that what is what we are prepared to
24 do.

25 MS. HUTCHISON: Thank you.

26 UNDERTAKING NO. 11:

27 RE ON A BEST EFFORTS BASIS DETERMINE

1 WHETHER THERE ARE ANY GUIDELINES,
2 POLICIES, CONTRACTS OR ANY DOCUMENTATION
3 RELATING TO CODES OF CONDUCT OR CONFLICT
4 OF INTEREST IN RELATION TO THE
5 MEMBERSHIP REVIEW COMMITTEE, MEMBERSHIP
6 APPEAL COMMITTEE, OR CHIEF AND COUNCIL
7 SPECIFIC TO MEMBERSHIP.

8 Q MS. HUTCHISON: And I guess on that -- I am going
9 to talk to your counsel for a minute, Mr. Bujold.
10 Sorry to be rude. But given the constitution and the
11 Governance Act have been provided in response to the
12 May 5th, 2014 request for information, perhaps you
13 could just clarify for me in that, as part of that
14 response, Ms. Bonora, whether or not it is the
15 trustee's understanding that those two documents apply
16 to Chief and Council when they are dealing with
17 membership decisions, and similarly, whether or not
18 those two documents would apply to the Membership
19 Review Committee or the Membership Appeal Committee
20 when they are dealing with membership issues.

21 MS. BONORA: In answer -- you asked us a
22 question to provide codes of conduct or any guidelines
23 or policies regarding conflict of interest that have
24 existed with Sawridge Band Membership Committee,
25 Membership Appeal Committee or the Sawridge Trust from
26 1985 to present. And we asked that question of
27 Sawridge First Nation, and they provided copies of the

1 constitution, referring you to Section 17.7 and the
2 Governance Act referring to part 2. There would be no
3 other answer that we could provide you.

4 MS. HUTCHISON: Thank you for that clarification.

5 Q MS. HUTCHISON: Do you accept the answer of your
6 counsel on that, Mr. Bujold?

7 A Yes, I do.

8 Q Thank you. Mr. Bujold, if you have got your September
9 12th, 2011 Affidavit handy. And I am looking at
10 paragraph 7, 8, and 9. I'll just give you a second to
11 take a quick look at those paragraphs.

12 A M-hm.

13 Q I take it from those paragraphs, Mr. Bujold, that you
14 actually spoke to Ron Ewoniak before you swore this
15 Affidavit?

16 A Yes, I did.

17 Q Just help me understand. Mr. Ewoniak, is he completely
18 retired or sort of does an engagement partner at
19 Deloitte mean he is still available to respond to
20 inquiries and do some work?

21 A As far as I understand he is completely retired.

22 Q Okay. So he was speaking to you really on a personal
23 basis, I guess?

24 A Yes.

25 Q He is not with Deloitte anymore?

26 A No.

27 Q But I take it that he had a recollection of

1 establishing the Trust or being involved in
2 establishing the Trust?

3 A Yes.

4 Q And what is your understanding of what role Mr. Ewoniak
5 played in creation of the 1982 and 1985 and '86 Trust?

6 A I am not sure about the '82 Trust. My understanding is
7 that for the '85 and '86 Trust he was the Deloitte
8 partner who was providing accounting advice to the
9 trustees.

10 Q Okay. And did you inquire with Mr. Ewoniak as to
11 whether or not his files from that time period were
12 still in existence?

13 A Yes, I did. And he did provide some documentation, but
14 most of it he referred us to Deloitte.

15 Q Okay. And were you able to find out from Deloitte
16 whether or not those files still exist?

17 A What we found out was --

18 MS. BONORA: Sorry, so which files are you
19 particularly talking about? The files in relation to
20 the creation of the Trust? Is that what you are asking
21 about?

22 MS. HUTCHISON: That is what we are talking about
23 at the moment, yes.

24 MS. BONORA: Okay.

25 A The files that Deloitte held had been -- weren't the
26 complete accounting files. So they were sort of the
27 remnant of the basic information.

1 Q MS. HUTCHISON: Okay.

2 A And so we were able to get copies for our files, some
3 of which has been provided here.

4 Q Okay.

5 A Of the information that we have. And that was the only
6 information they had available.

7 Q So I will just go a bit broader. Now you spoke to
8 Mr. Ewoniak about the creation of the '85 and '86
9 Trust?

10 A Yes.

11 Q It appears from paragraph 7, 8, and 9 that he had some
12 knowledge of the individuals that had held property in
13 trust before it was transferred?

14 A Yes.

15 Q To the '82 Trust?

16 A That is correct.

17 Q Was he involved in setting that up as well, or?

18 A My understanding was that he was involved as the
19 Deloitte partner assigned to this client. So he did
20 have some knowledge of the entire financial process of
21 the Trusts.

22 Q Okay.

23 A And the holding companies related to them.

24 Q Okay. So I understand your counsel has provided some
25 documentation around or relating to the transfer of
26 assets from the '82 Trust to the '85 Trust. It is not
27 clear to me at this point, though, that we have gotten

1 everything. I'm going to put a few undertakings on the
2 record.

3 MS. BONORA: Maybe just go off the record for
4 now.

5 MS. HUTCHISON: Sure.

6 (Discussion off the Record.)

7 Q MS. HUTCHISON: So, Mr. Bujold, we have had a chat
8 off the record, counsel has had a chat off the record
9 about some of the efforts that have been made to locate
10 documentation around the assets that were transferred
11 from individuals to the 1982 Trust and then ultimately
12 transferred from the 1982 Trust to the 1985 Trust. So
13 I am just going to go through a little bit of that with
14 you. Your counsel may want to assist, and I have no
15 objection to her doing that, by explaining some of the
16 efforts that have been made, and then we will deal with
17 a few undertakings.

18 In general, what efforts have you made to try and
19 locate documentation to demonstrate what assets were
20 held by individuals prior to the creation of the 1982
21 Trust, and that were then transferred into the 1982
22 Trust? What have you done to locate that
23 documentation?

24 A We tried to contact everyone who was still alive who
25 had knowledge of the financial dealings of the Trusts
26 at the time.

27 Q And who would that include?

1 A Well, Ron turned out to be the -- Ron Ewoniak turned
2 out to be the main person.

3 Q Okay.

4 A So we contacted him. We also contacted the company --
5 the companies of the Sawridge Trusts for any records
6 that they may be holding, and through the company and
7 Ron Ewoniak we inquired with Deloitte who had been the
8 accounting firm holding the records.

9 Q Okay.

10 A We also inquired with various legal firms who had
11 provided counsel to the Trusts.

12 Q And so David Jones?

13 A David Jones we couldn't find. We spoke to -- we
14 couldn't find David Fennell either.

15 Q Sorry, you couldn't find David Fennell?

16 A David Fennell.

17 Q Are you aware that he is actively involved in the gold
18 mining corporation?

19 A Yes, we heard that but we were never able to sort of
20 track him down to see if he still held any records.

21 Q So nobody has actually spoken to Mr. Fennell?

22 A Not that I am aware of.

23 Q Let's just go off the record for a second.

24 (Discussion off the record.)

25 Q MS. HUTCHISON: So Mr. Bujold, my understanding is
26 that attempts were made to contact David Fennell but he
27 didn't respond to your inquiries?

1 A No, and he didn't provide any documents.

2 Q Sorry, did he respond to your inquiries?

3 A No.

4 Q So nobody has actually spoken to him?

5 A And the requests -- we did contact him, or tried to
6 contact him, but the request that we sent was a request
7 for information that he may have, or records that he
8 may hold in his, or have in his possession of the
9 financial dealings of the Trusts in the earlier days.
10 And he never responded to that.

11 Q Okay. So I am going to ask for a couple of things.
12 First I will ask you to undertake to provide us with
13 copies of any actual communications sent to Mr.
14 Fennell, whether they were by letter, email, or
15 otherwise, documenting the request that you were
16 making. We would like a copy of those.

17 MS. BONORA: We will take that under advisement.
18 I'm not sure that that is entirely relevant. But
19 anyway, we will take that under advisement.

20 UNDERTAKING NO. 12: (UNDER ADVISEMENT)
21 RE PROVIDE COPIES OF ANY COMMUNICATIONS
22 SENT TO MR. FENNELL, WHETHER THEY WERE
23 BY LETTER, EMAIL, OR OTHERWISE,
24 DOCUMENTING THE REQUEST THAT WAS BEING
25 MADE.

26 MS. HUTCHISON: Secondly, I would ask you to
27 undertake to renew your efforts to contact Mr. Fennell

1 and advise whether or not he has any documentation
2 relevant to the assets that were held by individuals,
3 and then the transfer from those individuals to the '82
4 Trust, or relevant to the transfer of assets from the
5 '82 Trust to the '85 Trust. So whether he has got
6 documentation relevant to that, has access to
7 documentation relevant to that, or is aware of another
8 resource or source that may have those documents
9 available.

10 MS. BONORA: We will undertake to send him a
11 letter. We can't make him respond. So all we will do
12 is undertake to write to him again.

13 MS. HUTCHISON: Thank you, Ms. Bonora.

14 UNDERTAKING NO. 13:

15 RE CONTACT MR. FENNEL AND ADVISE
16 WHETHER OR NOT HE HAS ANY DOCUMENTATION
17 OR ACCESS TO DOCUMENTATION OR IS AWARE
18 OF ANOTHER RESOURCE OR SOURCE THAT MAY
19 HAVE DOCUMENTS RELEVANT TO THE ASSETS
20 THAT WERE HELD BY INDIVIDUALS AND THEN
21 THE TRANSFER FROM THOSE INDIVIDUALS TO
22 THE '82 TRUST, OR RELEVANT TO THE
23 TRANSFER OF ASSETS FROM THE '82 TRUST TO
24 THE '85 TRUST.

25 Q MS. HUTCHISON: Now there is reference to a David
26 Jones, legal counsel, that may have been involved in
27 the establishment of the Trusts or the transfers of

1 assets. Do you know if that is David Jones of Jones De
2 Villars here in Edmonton, or is it a different David
3 Jones?

4 A As far as I know that is who it is.

5 Q Do you know if anyone made efforts to contact David
6 Jones on the same topics that we have just been
7 discussing?

8 A I can't recall if we actually made contact with him or
9 not. Yeah, no, I can't recall if we tried or not to
10 make contact.

11 Q So we will just deal with it as an undertaking, first,
12 to provide copies of any documentation where you did
13 attempt to seek information from David Jones?

14 A Okay.

15 Q Or if that didn't occur, I would ask you to, as with
16 Mr. Fennell, send a letter or other communication to
17 Mr. Jones to inquire whether or not he has access to
18 documents that relate to the assets held by individuals
19 that were ultimately transferred to the 1982 Trust, or
20 the assets that were then transferred from the 1982
21 Trust to the 1985 Trust?

22 MS. BONORA: We won't give the first
23 undertaking, but we will give the second that you asked
24 for in terms of writing to him again to ask if he has
25 any documents. My memory is that he was canvassed and
26 he doesn't keep records going back 30 years, so those
27 are not available. But we will write and confirm that

1 he has no records.

2 UNDERTAKING NO. 14: (REFUSED)

3 RE PROVIDE COPIES OF ANY DOCUMENTATION
4 SENT ATTEMPTING TO SEEK INFORMATION FROM
5 DAVID JONES.

6 UNDERTAKING NO. 15:

7 RE CONTACT MR. JONES AND ADVISE WHETHER
8 OR NOT HE HAS ACCESS TO DOCUMENTS THAT
9 RELATE TO THE ASSETS HELD BY INDIVIDUALS
10 THAT WERE ULTIMATELY TRANSFERRED TO THE
11 1982 TRUST, OR THE ASSETS THAT WERE THEN
12 TRANSFERRED FROM THE 1982 TRUST TO THE
13 1985 TRUST.

14 Q MS. HUTCHISON: On the efforts to contact David
15 Jones, do you have any different information than what
16 your counsel has just given?

17 A No, no.

18 Q Okay, thank you. In your discussions with Deloitte or
19 Mr. Ewoniak, did you make inquiries or requests for
20 financial statements or other forms of financial
21 reporting that they might have prepared in 1982 through
22 1986 that might give some information about the assets
23 and what was transferred?

24 A Yes.

25 Q And did they have those?

26 A What they had were the, for the most part, they had T3s
27 that were filed on behalf of the Trusts for income tax

1 purposes, they had the financial statements that were
2 used to prepare those tax returns, and that was all.

3 Q Okay.

4 A And we got copies of all of those documents and you
5 have been provided with most of those.

6 Q So we have received most of them, Mr. Bujold. What
7 have we not received?

8 A I am not sure.

9 MS. BONORA: So I think that that is a question
10 that involves giving legal advice. We provided
11 documents that showed anything in relation to the
12 transfer of assets. If it didn't show anything in
13 relation to the transfer of assets we haven't provided
14 it because we did not deem it relevant. So we have
15 provided the relevant documents in relation to the
16 transfer of assets.

17 MS. HUTCHISON: So because we do need to get these
18 documents into evidence, Ms. Bonora, I'm going to ask
19 for the undertaking to provide us with copies of any of
20 the documentation that you have located that is not in
21 the original Affidavit that relates to what assets were
22 originally held by the individuals pre 1982 in trust,
23 what assets were then transferred into the 1982 Trust,
24 and what assets were then transferred from the 1982
25 Trust to the 1985 Trust. And just to be clear, I
26 understand that you sent me an email with some pdf's
27 late Friday. I need those to be provided in some

1 format that we can get it in front of a court. So if
2 you can send that as an answer to undertaking that
3 would be super.

4 MS. BONORA: How about if we mark them today?
5 That way I don't have to provide them in an undertaking
6 later. We have them, they can be marked as a group,
7 and --

8 MS. HUTCHISON: Let's go off for a second.

9 (Discussion off the Record.)

10 (Questioning adjourned.)

11 (Questioning resumed.)

12 Q MS. HUTCHISON: Mr. Bujold, still looking at your
13 September 12th, 2011 Affidavit.

14 MS. BONORA: I am going to put on we will
15 produce by way of undertaking the documents that we
16 have with respect to the transfer of the assets from
17 individuals into the 1982 Trust and then from the 1982
18 Trust to the 1985 Trust, and those are the documents
19 that we provided you last Friday, May 23rd, and the
20 additional financial statements that we provided you
21 this morning. But we will provide those by way of
22 undertaking to you.

23 MS. HUTCHISON: That is super, Ms. Bonora, and
24 obviously if any other documents are located between
25 now and the time you send those answers to me if you
26 could include those in the answer to undertaking, that
27 would be super.

1 MS. BONORA: Of course.

2 UNDERTAKING NO. 16:

3 RE PRODUCE DOCUMENTS WITH RESPECT TO THE
4 TRANSFER OF THE ASSETS FROM INDIVIDUALS
5 INTO THE 1982 TRUST AND THEN FROM THE
6 1982 TRUST TO THE 1985 TRUST, AND THE
7 ADDITIONAL FINANCIAL STATEMENTS.

8 Q MS. HUTCHISON: Looking at your September 12th,
9 2011 Affidavit, paragraph 7, 8, and 9, do you
10 personally have any understanding of what assets
11 specifically were being held by Chief Walter Twinn,
12 George Twin, Walter Felix Twin, Samuel Gilbert Twin,
13 and Dave Fennell by 1982? And I am really looking
14 specifically at your wording where you say they held a
15 number of assets in trust for the Sawridge First
16 Nation. I know that we have got the list in the
17 exhibits to your Affidavit. Do you have any
18 information other than what is set out in the documents
19 that are attached as exhibits to your Affidavit?

20 A No.

21 Q Okay. Have you had an opportunity to speak to Walter
22 Felix Twin about whether he recalls any specific assets
23 that were being held by individuals in trust for the
24 Sawridge Band other than the ones that are listed in
25 Exhibit D of your Affidavit?

26 MS. BONORA: I think that we would only answer
27 that question in relation to assets that were

1 transferred into the Trust. We couldn't possibly go
2 through and give you a history of assets that were held
3 by individuals by the First Nation because those are
4 entirely irrelevant, except for those assets that were
5 transferred into the Trust, because there may well have
6 been lots of assets held by individuals in the Sawridge
7 First Nation in terms of how they ran their assets. So
8 the only relevant assets would be those that were
9 transferred into the 1982 Trust, and then ultimately
10 into the '85 Trust.

11 Q MS. HUTCHISON: I am sorry, Mr. Bujold, just so
12 that I am clear. So you have indicated in paragraph 8
13 of your Affidavit that Mr. Ewoniak explained to you or
14 advised you that at some time in the early 1970s
15 individuals were starting to hold property in trust for
16 Sawridge First Nation because of a concern about
17 whether the nation had statutory ownership power?

18 A Yes.

19 Q Do you have any information to indicate that the assets
20 that individuals were holding between the early 1970s
21 and 1982, that some of those assets were not ultimately
22 transferred into the 1982 Trust?

23 A From the records that we have got my understanding is
24 that all of the assets that were held by individuals
25 for the '82 Trust eventually ended up in the '82 Trust.
26 And those assets were then transferred in full to the
27 '85 Trust.

1 Q Okay. And I am not sure -- so were there other assets
2 individuals were holding in trust that were transferred
3 into the '86 Trust?

4 A No, because the arrangement was different by then. The
5 question of whether or not the First Nation could own
6 -- or whether or not the First Nation had the right to
7 own assets was cleared up by 1985.

8 Q Okay.

9 A And the 1986 Trust was created a year after the 1985
10 Trust was created. And so by that time the ownership
11 issue had been cleared up.

12 Q Okay.

13 A Between Indian Affairs and the First Nation.

14 Q I'm going to get you to look at paragraph 22 of your
15 Affidavit.

16 A Yes.

17 Q And this might actually help. I was trying to
18 understand something in your Affidavit. So in that
19 paragraph you give us your understanding or belief
20 about the transfer from the '82 Trust to the '85 Trust?

21 A Yes.

22 Q I am looking at the last sentence, though, it states,
23 "Further there was additional property transferred into
24 the 1985 Trust by the Sawridge First Nation or
25 individuals holding property in trust for the nation
26 and its members."

27 A Yes.

1 Q So were you intending to say there that pre 1982
2 individuals were holding certain assets in trust, and
3 at the time that the '82 Trust was created some but not
4 all of those assets were transferred into the '82
5 Trust, and then at a later date some further assets
6 held by individuals were transferred directly into the
7 '85 Trust?

8 A I will try and explain my understanding.

9 Q Sure, that would be super.

10 A So the assets -- initially the assets were owned by the
11 First Nation, although there was a question of whether
12 they had the authority to own those assets.

13 Q Yes.

14 A So they were assigned to individuals to be held in
15 trust.

16 Q Yes.

17 A Sometime prior to 1982 there was a decision made to set
18 some of those assets that were being held by
19 individuals in trust for the First Nation into, they
20 were to be put into or settled into a trust. And it
21 was a First Nations trust. So the 1982 Trust was a
22 First Nations trust.

23 Q Yes.

24 A So I don't know if there were other assets that were
25 being held that continued to operate after the creation
26 of the 1982 Trust, but those assets that the Chief and
27 Council decided to settle into the 1982 Trusts were all

1 settled into -- you know, they were held by individuals
2 and all of the assets that they decided to put into the
3 Trust were put into the Trust in '82.

4 Then the '82 Trust, and as part of the undertaking
5 you will see in the explanation, the '82 Trust created
6 a holding company.

7 Q Yes.

8 A And that holding company actually acted on the asset,
9 but the Trust also held shares that weren't part of the
10 holding company. So there were two sets of assets.
11 Those held by the holding company, and those held by
12 the Trust. This is the '82 Trust.

13 Q Okay.

14 A And so all of those assets were transferred to the '85
15 Trust, it is just that they had to be transferred in
16 two separate moves. The holding company assets were
17 transferred in one move and then the non-holding
18 company assets were transferred in a second move.

19 Our understanding from the records is that in order
20 to effect that transfer the '82 Trust transferred the
21 assets in the '82 Trust to the trustees, and then the
22 trustees transferred these assets into the '85 Trust.

23 The holding company was, by resolution, the
24 trustees decided to move all of the assets from the
25 holding company -- actually they moved the whole
26 holding company into the '85 Trust. So there is those
27 two movements going on. But all of the assets that

1 were held by the '82 Trust, and that includes those
2 that weren't part of the holding company and those that
3 were part of the holding company, moved into the '85
4 Trust.

5 Q Okay.

6 A As far as we can determine from the records that we
7 have.

8 Q Okay. So in paragraph 22 of your September 12th, 2011
9 Affidavit when you say that there was additional
10 property transferred into the 1985 Trust by Sawridge
11 First Nation or individuals holding property in trust
12 for the nation and its members?

13 A Right.

14 Q When you are talking about individuals holding property
15 in trust for the nation and its members, if I am
16 understanding you you are not referring to individuals
17 that had been set up to hold assets in trust pre 1982?

18 A No.

19 Q Okay.

20 A So these are -- this is the holding company -- or this
21 is the differential --

22 Q The non-holding company assets?

23 A The non-holding company assets. So the non-holding
24 company assets were held by the Trust, and then in
25 order to move them from the Trust, '82 Trust to the '85
26 Trust, they were transferred to individual trustees,
27 and then the individual trustees moved or settled them

1 into the '85 Trust.

2 Q Okay. Thank you. I was finding that a bit confusing.

3 A It is very confusing for us as well, so.

4 Q Okay, thank you. And just so that I am clear on this,
5 going back to paragraph 7, 8, and 9?

6 MS. BONORA: Can we just go off the record for a
7 second, just so that there is a clear picture.

8 (Discussion off the Record.)

9 Q MS. HUTCHISON: We had a useful discussion off the
10 record. Thank you, Ms. Bonora.

11 So my understanding is that the transfer from the
12 '82 Trust to the '85 Trust, we can probably talk about
13 it as being three components. The holdco transfer?

14 A Yes.

15 Q The non-holdco asset transfer?

16 A Yes.

17 Q And then there was a third element that we hadn't
18 discussed until we went off the record, where there was
19 a transfer of a debenture?

20 A Yes.

21 Q From the '82 Trust to the '85 Trust?

22 A There was a debenture held by the First Nation
23 separately, and it was a debenture for the construction
24 of the Slave Lake Hotel and the development of that
25 property. And so that debenture was held by the First
26 Nation itself, and it decided to transfer that
27 debenture to the '85 -- it wasn't part of the '82

1 Trust, but it was added to the 1985 Trust.

2 Q I see. So the '85 Trust ultimately ended up holding
3 more assets actually than the '82 Trust?

4 A Yes, that is right.

5 Q Okay.

6 MS. BONORA: Sorry, if we just go off the
7 record.

8 (Discussion off the Record.)

9 Q MS. HUTCHISON: Mr. Bujold, we are showing you a
10 copy of what we have called the debenture?

11 A Yes.

12 Q Are you familiar with that document?

13 A I am, yes.

14 MS. HUTCHISON: So I wonder if we could mark that
15 as Exhibit 1.

16 EXHIBIT NO. 1:

17 DEMAND DEBENTURE OF SAWRIDGE ENTERPRISES
18 LTD.

19 Q MS. HUTCHISON: Mr. Bujold, I am just showing you a
20 band council resolution dated April 15th, 1985. Is
21 that document familiar to you?

22 A Yes.

23 Q And so if we could mark that as Exhibit 2.

24 EXHIBIT NO. 2:

25 BAND COUNCIL RESOLUTION DATED APRIL 15,
26 1985.

27 Q MS. HUTCHISON: And just by way of clarification,

1 taking a look at this document on its face, it appears
2 that the debenture was being held in trust by Walter
3 Patrick Twinn as an individual as opposed to by the
4 First Nation?

5 A Yes.

6 Q And then that debenture was transferred into the 1985
7 Trust?

8 A Right. So the assets that were -- because of this
9 ownership issue, the assets, even those held by the
10 First Nation and not by the Trust, were still held by a
11 trustee. And in this case it was the Chief.

12 Q Understood. So Walter Patrick Twinn was holding the
13 debenture in trust for the band?

14 A That is right.

15 Q And that is what you were referring to?

16 A That is what I was referring to with the First Nations.
17 So it is the First Nation that was doing the transfer
18 because the BCR shows all of the Chief and Council
19 agreed to it.

20 Q Just going back to this time period when there were
21 individuals holding assets in trust, and then up to and
22 including the creation of the 1982 Trust, I just want
23 to be sure that I am understanding. It sounds as
24 though at least at this point in time Sawridge Trust
25 doesn't know or hasn't really -- does not know if there
26 were other assets that individuals were holding in
27 trust in that time period that didn't ultimately roll

1 into the 1982 Trust? You just know that --

2 A We are not aware of any assets that aren't part of the
3 Trust.

4 Q Okay.

5 A So -- and we haven't made any attempts to determine if
6 there were other assets because they are not relevant
7 to us. So we have traced the assets that ended up in
8 the 1985 Trust back to the '82 Trust.

9 Q Right.

10 A And from the '82 Trust to the First Nation, or to the
11 trustees appointed by the First Nation to hold those
12 assets in trust, or by the Trust -- the 1982 Trust to
13 hold those assets in trust for various reasons. So
14 that is the only part that we have traced. So we
15 haven't traced anything outside of the creation of the
16 Trust or the settlement of the Trust.

17 Q So I guess what I am trying to get a sense of,
18 Mr. Bujold, and it may just be that I haven't tracked
19 it down in the documents, but if we take a look at --
20 let's first look at Exhibit B of your September 12th,
21 2011 Affidavit?

22 A M-hm.

23 Q And Exhibit A, of course, is the 1982 Declaration of
24 Trust.

25 A Yes.

26 Q So both of those documents refer to certain assets
27 being put in to the Trust?

1 A Yes.

2 Q And I am looking right now at the meeting of the
3 trustees and settlers of the Sawridge Band Trust, June
4 1982. Have you located a document that lists
5 specifically what the certain assets were intended to
6 be, or is it that you tracked back to figure out what
7 was actually in the 1982 Trust?

8 A Yeah, in Attachment D.

9 Q So Exhibit D, this is the 1983 agreement?

10 A So the 1983 agreement, which is a restatement of the
11 '82 agreement basically, does have a list of assets.
12 And we have tried, you know, using this list, this is
13 the assets that were held in trust and were held by the
14 Trust and were part of the holding company. So part of
15 this list of assets -- or this list of assets that is
16 here is what we understand was transferred in.

17 Q Okay.

18 A But --

19 Q I am sorry, I'm going to interrupt to sort of break up
20 my questions a bit. So you are telling me that the
21 assets that are listed in Exhibit D --

22 A Right.

23 Q -- you have been able to determine that those assets,
24 they all went in to the '82 Trust?

25 A Yes.

26 Q And all of them ultimately went into the '85 Trust?

27 A The '85 Trust.

1 Q Have you been able to determine if the list attached to
2 the 1983 document, Exhibit D, was the certain assets
3 that were being contemplated by the 1982 resolution
4 that is attached as Exhibit B, or is it more that you
5 have --

6 A We have assumed.

7 Q You have assumed, okay. So we don't have something
8 nice and neat like an attachment that gives us a list
9 of assets in '82?

10 A No. The other part of the difficulty that we have got
11 is with a lot of these trust deeds we don't have the
12 originals. So we don't -- in some cases there may have
13 been attachments that we --

14 Q Don't have?

15 A -- don't have. And we have got copies of copies of
16 copies for the most part of all of our documents.

17 Q Okay. That helps me. I was trying to just understand
18 that.

19 So have you had an opportunity to talk to Walter
20 Felix Twin about whether he was aware of any assets
21 that were intended to be transferred into the 1982
22 Trust, and that is the resolution that we are looking
23 at at Exhibit B, that are not listed in Exhibit D of
24 your September 12th, 2011 Affidavit?

25 A The trustees and Walter Felix was part of that process
26 of determining when we started trying to collect the
27 information. To his recollection at the time, as I

1 recall, he didn't point out that there were any other
2 assets. But we didn't ask him specifically if there
3 were, but he didn't say, you know, there were other
4 assets that were also included in this because all that
5 we were looking at was tracing what was in the '82
6 Trust and what ended up in the '85 Trust.

7 Q Understood. You didn't go back to what existed just
8 before the '82 Trust was created, and whether or not we
9 have got something that tells us what exactly was
10 intended in this document when it says settled certain
11 assets?

12 A No, we don't know what the certain assets are, for
13 sure.

14 Q Is Walter well enough to discuss any of this at the
15 moment?

16 A Probably not.

17 Q Okay.

18 A No, he is probably not in very good frame of mind to be
19 able to discuss this.

20 Q Sorry, is it health related?

21 A Yes, he is sort of starting to lose memory.

22 Q Okay. Had you, prior to Walter Felix's health issues,
23 had he been asked to check his own records?

24 A Yes.

25 Q He has. And he found nothing around those issues?

26 A No. All of the trustees were asked to provide all of
27 the records or copies of all of the records that they

1 had in their possession to me so that we could create a
2 filing system with all of the records. They provided
3 everything that they had.

4 Q Okay.

5 A And what we have provided you wasn't in their
6 possession, it was in the possession of Deloitte's, or
7 the companies, or ...

8 Q Is George Twin still alive?

9 A No, he is dead.

10 Q When did he pass?

11 A '86.

12 Q We have asked for some undertakings around contact with
13 Dave Fennell and David Jones. If they actually respond
14 I would ask you to inquire with them whether or not
15 they have got either a recollection or documentation
16 that would provide a list of the certain assets that
17 were intended to be referred to in the Exhibit B, so
18 this is the --

19 MS. BONORA: In Undertaking 14 and 15 we have
20 undertaken to write to them to get any documents they
21 have about the transfer. So that will be encompassed
22 in those undertakings. We don't need a separate
23 undertaking of that.

24 MS. HUTCHISON: All right. As long as that is
25 understood. And also just to be clear, if they have
26 got any sort of a schedule or a list that would have
27 originally been attached to the 1982 Declaration of

1 Trust we would like a copy.

2 MS. BONORA: We are going to ask for a
3 comprehensive request about any documents they have.

4 MS. HUTCHISON: Great.

5 MS. BONORA: I'm not going to give any more
6 specific undertakings than our general request for them
7 if they have any documents.

8 MS. HUTCHISON: As long as you and I are on the
9 same page about what is relevant. That is what I am
10 looking for.

11 Q MS. HUTCHISON: Do you recall if you made a
12 specific request of Mr. Ewoniak or Deloitte for whether
13 or not there was a schedule or a list of assets that
14 was attached to either Exhibit D or Exhibit A of your
15 September 12th, 2012 Affidavit?

16 A Yes. While we were tracing we asked everybody that we
17 could ask if they had any documents relating to the
18 transfer of assets from '82 to '85.

19 Q Right.

20 A So yes, we asked everybody if they had. That was as a
21 matter of course. So the companies were asked,
22 Deloitte's was asked, any of the law firms that we were
23 in contact with were asked as well, and the trustees
24 were asked. So everybody was asked.

25 Q I appreciate, Mr. Bujold, that they have been asked
26 about the transfer from '82 to '85. What I am also
27 really looking for here is the transfer from pre 1982

1 into 1982. So that is what we are talking about here
2 with Exhibit B and Exhibit A. Have those requests been
3 made?

4 A No, because of what we -- the way that the request was
5 formatted was do you have any documents related to any
6 of the Sawridge Trusts. So that was the '82 Trust, the
7 '85 Trust, and the '86 Trust. Do you have any
8 documents relating to any transactions done by any of
9 these three Trusts. And at the time I think that we
10 thought that there were four Trusts because we thought
11 '83 was actually a separate trust, but it turned out
12 that it was just an extension of the '82. So we did
13 ask in that format. So we have never asked for
14 information about what the First Nation held before,
15 and that has always been a very sensitive subject in
16 any case.

17 Q So what I am interested in, Mr. Bujold, is an
18 undertaking to locate, and we have talked about many of
19 the sources of information, so I will let you and your
20 counsel discuss what sources that you have got, but to
21 locate and provide any documentation you may have that
22 would assist us in determining what certain assets were
23 to be settled into the 1982 Trust as that term, certain
24 assets, is being used in Exhibit B and in terms of the
25 intention of the settlement in Exhibit A, the 1982
26 Trust.

27 MS. BONORA: I think that actually that inquiry

1 has been made in the sense that this is clearly taking
2 the assets that were previously held by individuals and
3 transferred into the Trust. This document doesn't make
4 reference to a schedule. So there isn't going to be a
5 schedule to this document as far as when you read the
6 face of it there isn't a schedule anticipated. When we
7 look again at Exhibit D which Mr. Bujold made reference
8 to, that is a document that talks about a transfer from
9 the individual to the Trust. So again, this is a
10 document talking about assets held prior and --

11 MS. HUTCHISON: Ms. Bonora, I do appreciate you
12 being very helpful and I do appreciate it. But based
13 on Mr. Bujold's answers, I am just going to leave that
14 undertaking on the record. If you want to take it
15 under advisement I completely understand. But based on
16 his actual responses to my inquiries I will leave my
17 undertaking on the record.

18 MS. BONORA: I am going to say that we won't
19 give the undertaking because we believe that it has
20 been answered. That all of the documents have been
21 produced. That is the answer, and so we will not give
22 that undertaking.

23 MS. HUTCHISON: It is refused?

24 MS. BONORA: The undertaking isn't refused
25 because there are no other documents that will be
26 produced. I am satisfied in having reviewed documents
27 that there are no other documents. I can't give you an

1 undertaking to do a search to tell you that there is
2 going to be nothing. We are answering the undertaking.
3 The answer to the undertaking is there are no other
4 documents. So we are not refusing the undertaking, we
5 are answering it.

6 MS. HUTCHISON: I am going to leave the undertaking
7 on the record and we will all get to read transcripts
8 in due course and let's put it under advisement so that
9 you are not committed.

10 MS. BONORA: No, I'm telling you that I am
11 providing the answer. The answer is that there will be
12 no other documents. I can tell you -- I can't go away
13 and review it again.

14 MS. HUTCHISON: Let's go off.

15 (Discussion off the Record.)

16 MS. BONORA: We will give the undertaking with
17 respect to making an inquiry on whether there are any
18 documents that show assets that were held in trust by
19 individuals of Sawridge First Nation that were
20 transferred into the 1982 Trust.

21 MS. HUTCHISON: I will go with my initial wording
22 on the undertaking, but I understand.

23 MS. BONORA: Then I need to understand what your
24 initial wording was. So just tell me what your
25 undertaking is.

26 MS. HUTCHISON: I am asking for an undertaking for
27 you to inquire of all of the various individuals and

1 sources that we have already discussed to find out if
2 they have any documentation or information that would
3 assist us in understanding what specific assets were
4 intended to be settled as the certain assets referred
5 to in Exhibit B, and what specific assets were intended
6 to be included in the Declaration of Trust that we see
7 at Exhibit A. So whether it is schedules, a list,
8 someone's recollection, we are trying to determine
9 which of the pre '82 assets, I will call them, were
10 intended to be transferred into the 1982 Trust vehicle.
11 Is that making sense?

12 MS. BONORA: I'm having some trouble with
13 intention. The idea that they were -- the assets were
14 to be transferred, because even if there was an
15 intention, if they actually weren't transferred it had
16 to actually be formulated. They might have talked
17 about having an intention. It had to be formulated
18 into a transfer, right.

19 MS. HUTCHISON: I am trying to determine what -- I
20 think can we leave it on the record as that
21 undertaking, Ms. Bonora, and we will go from there. I
22 am looking -- I think that --

23 MS. BONORA: I will take that undertaking under
24 advisement.

25 MS. HUTCHISON: Super.

26 UNDERTAKING NO. 17: (UNDER ADVISEMENT)
27 RE INQUIRE OF THE VARIOUS INDIVIDUALS

1 AND SOURCES PREVIOUSLY DISCUSSED TO
2 DETERMINE IF THEY HAVE ANY DOCUMENTATION
3 OR INFORMATION THAT WOULD ASSIST IN
4 UNDERSTANDING WHAT SPECIFIC ASSETS WERE
5 INTENDED TO BE SETTLED AS THE CERTAIN
6 ASSETS REFERRED TO IN EXHIBIT B, AND
7 WHAT SPECIFIC ASSETS WERE INTENDED TO BE
8 INCLUDED IN THE DECLARATION OF TRUST AT
9 EXHIBIT A.

10 (Questioning adjourned 12:00 p.m.)

11 (Questioning resumed 1:30 p.m.)

12 Q MS. HUTCHISON: Mr. Bujold, you acknowledge that
13 you are still under oath?

14 A Yes.

15 Q So going back, Mr. Bujold, to paragraph 7, 8, 9 and 10
16 of your September 12th, 2011 Affidavit, what I am sort
17 of focusing on there is that if I understand what you
18 are saying your belief is that, and I apologize, I am
19 actually looking at paragraph 22, so you indicate that
20 your belief is that all of the assets from the 1982
21 Trust were actually transferred over to the 1985 Trust?

22 A Yes.

23 Q Now so I understand the basis of your understanding of
24 that, it is from talking to Ron Ewoniak, talking to the
25 trustees, looking at the documents that your counsel
26 has provided informally to me today and we are getting
27 by way of undertaking. What else was forming it to

1 your understanding?

2 A It is primarily in connection with the documents,
3 because people's recollection, like even talking to Ron
4 Ewoniak he couldn't identify this asset was
5 transferred. I mean he may have sort of a general
6 recollection about, you know, these property assets, or
7 this share or whatever, but it is primarily the
8 Deloitte's financial statements and the T3s that gave
9 us any lead as to what the transfer is that took place.
10 And then the '83 Trust document that sort of lists some
11 of the assets. But that is the sort of -- that is the
12 closest connection that we can make, given the
13 documentation that is available to us.

14 Q Okay. So there is nothing that we haven't discussed
15 already today, at least, that you are relying on when
16 you say that you believe that all of the '82 Trust
17 property was transferred into the '85 Trust?

18 A No. I mean there isn't any -- in terms of
19 documentation, and that is all that I have relied on
20 primarily is the documentation, there isn't any other
21 document that has led me to believe that there is any
22 outstanding asset that wasn't transferred from the '82
23 to the '85 Trust.

24 Q Okay. Now looking at paragraph 24 of your Affidavit
25 you are talking about, you say the transfers were done
26 but the documentation is not currently available.

27 At the time that you swore the Affidavit were there

1 other avenues that you were trying to explore to get
2 documentation? Is that what you were intending to
3 communicate?

4 A No. What -- I don't know what we were intending to
5 communicate in terms of in the future -- because we had
6 exhausted -- we had done an exhaustive search from 2009
7 until this date. We had done an exhaustive search of
8 documents to try and collect them, and we scanned them
9 into our system. And I had gone through every single
10 document that came in.

11 Q Okay. So it wasn't, when you swore this Affidavit, it
12 wasn't that you were aware of some other potential
13 repository of documentation. It is that you are just
14 communicating that there is documentation that you
15 haven't located and may not be available?

16 A I guess what we are communicating is if there is any
17 document that would indicate otherwise, we aren't aware
18 of it, nor are we aware of if there is any hidden
19 repository of documents. We just -- we have done an
20 exhaustive search ourselves. What we have got is what
21 we have got. We don't expect to find anything else.
22 You sort of -- at the initial phase you get a whole
23 bunch of documents, and then in the end it is a trickle
24 of one document here. I mean the Deloitte stuff was at
25 the end of this process when we finally -- we finally
26 felt that we had exhausted all search possibilities.

27 Q Okay. So just on that, on what you had done in terms

1 of searching, had any inquiries been made to Canada
2 Revenue Agency, CRA, to see if they had documentation
3 through their archives or their records that would be
4 of assistance?

5 A No, because we had the T3s from Deloitte's and we had
6 some correspondence, some early correspondence between
7 Canada Revenue Agency and First Nation about assets and
8 Indian Affairs. So there was sort of three, you know,
9 three-party communication going on about these assets
10 and the transfers out of the First Nation capital
11 revenue account into these Trusts and into assets. So
12 we had that and we still do have those documents. Then
13 we had Deloitte's. So we didn't think that Canada
14 Revenue Agency would have any more than the T3s because
15 that is what was filed officially, along with the
16 financial statement.

17 Q I take it you did make inquiries with the Department of
18 Indian Affairs or INAC to see if they had any
19 documentation relevant to the assets of the band pre
20 '82, and then --

21 A No, we didn't. And again, we had correspondence
22 between the First Nation and Indian Affairs, whatever
23 it was called at that time. And it was about the
24 transfer of money out of capital revenue into various
25 assets, primarily the assets that were related to the
26 Trust. So the Slave Lake Hotel -- the building of the
27 Slave Lake Hotel, there was a lot of correspondence

1 around that. So we didn't inquire if there was any
2 further information.

3 Q Not even to the regional office?

4 A No.

5 Q How about inquiries with the Sawridge Trust Banking
6 institution?

7 A Yes.

8 Q You made those inquiries?

9 A Yes, we inquired -- they primarily dealt with
10 Scotiabank, so we inquired with Scotiabank on all of
11 the records. We wanted copies of all of their bank
12 statements and all of their cancelled cheques going
13 back to the beginning. They were able to provide that
14 a limited period of time because they destroy all of
15 their documents after, I think it is seven years. So
16 they had destroyed all of the documents when I made the
17 inquiry, they had destroyed everything past a certain
18 date. And I think that I got back to 2001 or something
19 like that.

20 Q So nothing that went back as far as either the
21 individual to '82 Trust transfer, or '82 Trust transfer
22 to '85 Trust transfer?

23 A Definitely not. So they had destroyed everything, all
24 of the records that I had -- past the date that I got
25 which I think was 2001.

26 Q Okay. And we have established that you made inquiries
27 with Deloitte's?

1 A Yes.

2 Q Were they the only accountant that the Trust were using
3 from --

4 A No. Well, they were the only accounting company that
5 was used. The First Nation and the Trust and the
6 companies used various bookkeepers, internal
7 bookkeepers. So there was a lot of internal
8 bookkeeping documents that we were able to access
9 through the companies.

10 Q Anything that related to, so I am going to say from pre
11 '82 transfer to --

12 A Nothing.

13 Q Nothing?

14 A Nothing from pre '82 to '82. Nothing really from '82
15 to '85. A little bit -- it sort of was a trickle at
16 the beginning because the companies didn't really
17 function as organized entities until the late '80s,
18 early '90s. So that is about when the accounting
19 records, the company records start showing up, is late
20 '80s, about '88 to '92 you start seeing sort of a
21 growing number of records. But they weren't -- even
22 then, they weren't complete. The companies hadn't --
23 like some of the documents had been stored, because the
24 First Nation was doing the accounting for the Trusts
25 and the companies, as well as their own accounting. So
26 we had -- they provided what they had left.

27 Q Okay.

1 A We were able to go through their storage facility to
2 see what they had. A lot of what they had were bar
3 chits from Slave Lake Hotel, you know, which doesn't
4 tell us anything about the transfer of assets. So, you
5 know, there was those kinds of documents. There was
6 more company operating documents or business sales
7 documents rather than transfer of assets. So the
8 transfer of asset information came primarily from
9 Deloitte's and from the T3s and from the legal
10 documents that we were able to gather together from the
11 company that it had stored for the Trusts. And that
12 was basically it.

13 Q Okay.

14 MS. BONORA: Can we go off the record for a
15 second.

16 (Discussion off the Record.)

17 Q MS. HUTCHISON: Mr. Bujold, I am going to ask you
18 to undertake to make inquiries with CRA and the
19 Department of Indian Affairs to determine whether or
20 not they may have documents relevant to several
21 periods. The first period would be documents that
22 would assist in any way in showing what assets were
23 intended to be included within the Trust settlement
24 that we find at Exhibit A, the 1982 Trust or
25 Declaration of Trust, and then any documentation that
26 would assist in showing us what happened with the
27 transfer from the 1982 Trust to the 1985 Trust, and

1 obviously if they have no documentation that is my
2 answer. But my understanding is at this point we don't
3 know. So I would ask you to inquire of those two
4 entities.

5 A With CRA and Indian Affairs?

6 Q And Department of Indian Affairs, yes. That would
7 include obviously the regional office, but I think that
8 you have to make the request through Ottawa. So I will
9 leave that with your counsel.

10 MS. BONORA: So I mean obviously CRA is only
11 going to have filings, right, so we are going to make
12 inquiries with respect to filings they may have with
13 respect to the 1982 Trust and the 1985 Trust; is that
14 correct? I just need to understand the undertaking,
15 and what time period you are looking for, because there
16 would have been filings for the '82 Trust and the --
17 the '82 Trust up to 1985 and then the 1985 Trust up to
18 the present. So I don't know what time period you want
19 us to ask for filings from the CRA.

20 MS. HUTCHISON: Well, certainly the time period --
21 any time period for the '85 Trust that is going to give
22 us insight into the transfer from the 1982 Trust to the
23 1985 Trust. I can't say at this point in time if that
24 is only '85 and '86, or if there might be relevant
25 documentation beyond that date because I don't know
26 what they might have and we don't have a complete
27 record, so.

1 In relation to the transfer from the 1982 Trust
2 into the '85 Trust, so the period prior to that,
3 frankly I would say that any information that is going
4 to give us insight into what assets are being held by
5 individuals in trust for the band that were intended to
6 form part of the 1982 Trust is potentially relevant.

7 MS. BONORA: I won't give the undertaking to
8 inquire of the CRA with respect to intentions.

9 MS. HUTCHISON: No, Ms. Bonora, that is not my
10 point. And I'm not asking you to inquire of the CRA
11 with respect to intentions. I am asking you to inquire
12 of them with respect to documentation that may assist
13 us into determining what assets existed prior to the
14 creation of the 1982 Trust, and were to be transferred
15 -- we have nothing in front of us right now that
16 definitively tells us what the certain assets that were
17 to form part of the 1982 Trust were.

18 Mr. Bujold has been very frank with me that he is
19 assuming the list for the 1983 transfer was the whole
20 list of assets that were being contemplated in 1982,
21 but we don't know that. So there is, frankly, at the
22 moment a complete lack of information about the
23 specifics of the assets that were being held by
24 individuals from the early 1970s until just prior to
25 the creation of the 1982 Trust.

26 So if there is documentation in possession of the
27 Department of Indian Affairs or CRA that assists us in

1 filling in that blank we would certainly take the
2 position it is relevant to your application to
3 regularize all of these transfers.

4 MS. BONORA: So what I would say to you is we
5 will not give the undertaking to determine all of the
6 assets that were being held by individuals for Sawridge
7 First Nation. That is not relevant to us, it is not
8 relevant to the Trust, and we are not regularizing the
9 transfer into the '82 Trust, only the transfer between
10 the '82 Trust and the '85 Trust. So we are not saying
11 that there is anything wrong with the transfers that
12 happened in '82. We are not asking the court to look
13 at those transfers. Just so that you understand what
14 our application is about.

15 The transfer that we think has some problems
16 because we are missing some documents -- we believe we
17 are missing documents -- is between '82 and '85. So we
18 are not asking the court to regularize anything pre '82
19 or in '82 because that transfer and those transactions
20 happened absolutely regularly.

21 In respect of CRA, they will not have documents in
22 relation to this trust prior to its first filing in
23 '83. It would have had a year-end and then filed in
24 '83. We can provide you with -- we can ask CRA for the
25 filings of these Trusts between '82 and '86, for sure
26 we will give that undertaking. There would be nothing
27 else. And so I am prepared to give that undertaking.

1 With respect to the Department of Indian Affairs,
2 we can ask them about whether they have any knowledge
3 of intention, I don't know if they will, so knowledge
4 of intention to transfer assets into the '82 Trust and
5 we can ask them about any knowledge that they have
6 about the transfers that actually occurred into the '82
7 Trust. So we will give that undertaking.

8 MS. HUTCHISON: Okay. And I will let my
9 undertaking stand on the record, and obviously you will
10 respond to the portions that you are accepting. Can we
11 go off for a second.

12 (Discussion off the Record.)

13 UNDERTAKING NO. 18:

14 RE INQUIRE OF CRA AND DEPARTMENT OF
15 INDIAN AFFAIRS TO DETERMINE IF THEY HAVE
16 DOCUMENTATION SHOWING WHAT ASSETS WERE
17 INTENDED TO BE INCLUDED WITHIN THE TRUST
18 SETTLEMENT AT EXHIBIT A, THE 1982 TRUST
19 OR DECLARATION OF TRUST, AND ANY
20 DOCUMENTATION INDICATING WHAT HAPPENED
21 WITH THE TRANSFER FROM THE 1982 TRUST TO
22 THE 1985 TRUST.

23 Q MS. HUTCHISON: Mr. Bujold, if you could just flip
24 to again your Affidavit of September 12th, 2011, and I
25 am looking at paragraph 11 which is also related to
26 Exhibit C. And I just wanted to be sure that I wasn't
27 misunderstanding something. Your Affidavit refers to a

1 court order entered June 17th, 2003, but it looks as
2 though Exhibit C is actually a 1983 document. I just
3 wanted to be sure that we were both of the same
4 understanding about that. I think that there is just a
5 typographical error in your Affidavit. I just wanted
6 to confirm.

7 A Where is the typographical?

8 Q Paragraph 11 of your Affidavit says the '82 Trust was
9 varied by court order entered on June 17th, 2003 to
10 stagger the terms. When I turn to your Exhibit C,
11 which is the court order, it says 1983. I just wanted
12 to be sure that there is not some other court order
13 that varies the Trust.

14 A Oh, oh, oh, I see. No, it is the one.

15 Q So the 1983 court order at Exhibit C is the only order
16 that you are aware of that varies the terms of the '82
17 Trust before it was wrapped up?

18 A Yes.

19 Q Okay. Thank you. Now turning to paragraph 15 and then
20 18 of your September 12th, 2011 Affidavit, Mr. Bujold.
21 The last sentence of paragraph 15 and then paragraph
22 18, I read those as your understanding to some degree
23 of the purpose of the '85 Trust?

24 A Yes.

25 Q What were you basing your understanding on, other than
26 just the text of the Trust deed itself, or the Trust
27 declaration, if anything?

1 A I was basing this on documents and conversations that I
2 have had with various individuals including the
3 trustees about the reason for the establishment of the
4 1985 Trust.

5 Q Okay. So which trustees did you discuss that with?

6 A All of them.

7 Q All of them, okay. Can you give me a bit of a summary
8 of what -- let's start with Catherine Twinn, what her
9 recollection was about the purposes or intention of the
10 Trust?

11 A What the purpose of the Trust was to provide for the
12 economic future of the members of the Sawridge First
13 Nation. That was pretty much understood by everybody.

14 Q But not Bill C-31 individuals?

15 A Well --

16 Q At that time?

17 A Right, right.

18 Q At that time, okay. So when you say the members, you
19 mean the members that existed prior to --

20 A In 1985.

21 Q -- Bill 31, okay. And anything else that Catherine
22 Twinn was able to advise you on or inform you about on
23 the background or the purposes of the Trust?

24 A Well, the concern, and I can't remember exactly where I
25 got the information, but I remember from looking at the
26 court record of the constitutional challenge on Bill
27 C-31, and some of the testimony of Walter, Chief Walter

1 Twinn at that, in the discoveries of that case, and
2 also other testimony that he had given, that there was
3 concern that there would be a huge increase in the
4 membership of the Sawridge First Nation caused by the
5 provisions of Bill C-31. And in an effort to preserve
6 the assets for those people who had stayed with the
7 First Nation that the provisions of the 1995 Trust was
8 set up.

9 Q Anything else that you recall from your discussions
10 with Catherine?

11 A No, no.

12 Q Was Bertha L'Hirondelle able to add anything to that?

13 A No, they basically all said the same thing. You know,
14 it was the concern of Chief Twinn and all of the
15 members of the First Nation at the time were that there
16 would be this huge influx as a result of Bill C-31.

17 Q Okay. So rather than go through each trustee
18 individually, was there any discussion that you had
19 with any of the other trustees that amplified that
20 understanding or added to your information that you can
21 recall?

22 A No, that was -- I mean that pretty much --

23 Q Captured it?

24 A -- captured it, yeah.

25 Q Did you prepare memorandums or summaries of your
26 discussions with the trustees on those topics?

27 A No.

1 Q Okay. Would any of the discussions have occurred by
2 email, do you know, or in a written format?

3 A No.

4 Q Okay. To the extent that you have got any records, or
5 any actual documentation of, you know, written
6 documentation that supports your understanding as set
7 out in paragraph 15 and 18 of your September 12th, 2011
8 Affidavit, if you could undertake to provide us with
9 copies, that would be appreciated.

10 A These two pieces, as I recall, are primarily related to
11 an extract from the testimony of Chief Twinn where he
12 explained these two pieces exactly the way they are
13 explained here.

14 Q Okay. Interesting issue about whether it is producible
15 in this proceeding or not, but I am still going to ask
16 for the undertaking to produce it so that we can take a
17 look at it.

18 MS. BONORA: I will take that under advisement.

19 MS. HUTCHISON: Okay.

20 MS. BONORA: I will, for your benefit, in terms
21 of one answer to that undertaking is going to be
22 Exhibit H already to the Affidavit, which sets out
23 exactly that history on the resolution of the trustees
24 and why they created the '85 Trust. So that document
25 is already produced.

26 UNDERTAKING NO. 19: (UNDER ADVISEMENT)
27 RE PRODUCE WRITTEN DOCUMENTATION THAT

1 SUPPORTS THE UNDERSTANDING SET OUT IN
2 PARAGRAPH 15 AND 18 OF MR. BUJOLD'S
3 SEPTEMBER 12TH, 2011 AFFIDAVIT.

4 Q MS. HUTCHISON: Mr. Bujold, let's go back to your
5 August 30th Affidavit, if we could. So starting with
6 paragraph 7, Mr. Bujold. The direction that you are
7 referring to there from the trustees to place
8 advertisements to collect the names of individuals who
9 may be beneficiaries of the 1985 Trust, was that
10 communication between you and the trustees in writing,
11 verbal? How did that occur?

12 A The advice was provided by legal counsel to the
13 trustees at the time. And it was discussed at board
14 meetings and minuted, and the decision was made and it
15 was just carried out based on the decision of the
16 trustees.

17 Q Okay. Clearly I don't want any -- well, I might want
18 privileged information but I can't have it. To the
19 extent that there is anything in the minutes that is
20 not privileged, but that deals with this topic, if you
21 could undertake to provide us with a copy?

22 A Okay.

23 Q Thank you.

24 UNDERTAKING NO. 20:

25 RE PRODUCE ANY PORTION OF BOARD MEETING
26 MINUTES DEALING WITH THE DIRECTION
27 REFERENCED IN PARAGRAPH 7 OF MR.

1 BUJOLD'S AUGUST 30, 2011 AFFIDAVIT.

2 Q MS. HUTCHISON: You then went ahead and carried out
3 that direction by placing advertisements. Do you
4 recall what publications you put advertisements in?

5 A Yes.

6 Q And what were they?

7 A I couldn't tell you off the top of my head. I recall
8 they were all the -- I mean we went to, our office was
9 located on the south side right next to the Local
10 Newspaper Association of Western Canada or something
11 like that. So I said to them give me the names of all
12 of the newspapers. And they said you just can place an
13 ad and it will place in all of the local newspapers,
14 and in certain city newspapers.

15 Q Okay.

16 A So that is how we determined who to send it to. I just
17 had to determine the territory, and that was Alberta,
18 Saskatchewan, and British Columbia. I don't think we
19 eventually went to Manitoba, or -- I am not sure if we
20 went to Manitoba.

21 Q If I could ask you to undertake to check your records
22 and advise us which publications you advertised in?

23 A Okay.

24 Q And how regularly that advertisement appeared and over
25 what period of time?

26 A All right.

27 Q Okay. And also if I could ask you to undertake to

1 provide us with a copy of the advertisement?

2 A The newspaper ad?

3 Q Yes.

4 A Yes.

5 Q I am assuming it was one, an identical ad that --

6 A It was a standard ad, and it was ran twice.

7 Q Okay.

8 UNDERTAKING NO. 21:

9 RE ADVISE WHICH PUBLICATIONS WERE
10 ADVERTISED IN, HOW REGULARLY, AND OVER
11 WHAT PERIOD OF TIME. ALSO PROVIDE COPY
12 OF ADVERTISEMENT.

13 Q MS. HUTCHISON: Now I understand from your
14 Affidavit then, Mr. Bujold, that after that ad was
15 placed you did receive some inquiries, perhaps
16 correspondence. You got some feedback from potential
17 beneficiaries?

18 A That is right.

19 Q Tell me what you recall about that. Was it phone call,
20 emails, letters?

21 A There was phone calls, emails, letters, faxes just
22 inquiring, because the ad also said that they should
23 get in touch and we would send them out a package.

24 Q Okay. So what sort of volume of documentation are we
25 talking about for responses?

26 A I think it was about 192 in total.

27 Q Okay.

1 A I can check actually.

2 Q I am going to ask you to undertake to give us copies of
3 any documentation that you got. You don't have to do
4 it right now.

5 A I have got a list, I can tell you the number. No?

6 Q I would ask you to undertake to provide us with copies
7 of any responses you received to the newspaper ads.
8 And that may be letters, faxes, emails. If they were
9 phone calls and you kept notes of the discussions?

10 A I didn't, because primarily what the newspaper ad says
11 is get in touch with us, we will send you an
12 application package. And so that is basically -- I
13 didn't keep any notes of who called in, other than to
14 get their name, address, telephone number, and then I
15 would send them by mail a package which included an
16 application form and a letter.

17 Q And that is the letter at Exhibit D of your Affidavit?

18 A Yes, that is it exactly.

19 UNDERTAKING NO. 22:

20 RE PROVIDE ANY RESPONSES RECEIVED TO
21 NEWSPAPER ADVERTISEMENT.

22 Q MS. HUTCHISON: Okay. Sorry, you sent that letter.
23 You also sent an application form?

24 A Yes.

25 Q Was that an application form for membership in the
26 Sawridge First Nation?

27 A No, it was an application form -- it wasn't actually an

1 application form in terms of applying for something.

2 It was an application form to give us information about
3 whether or not they were potential beneficiaries. And
4 they had to -- the form, we spent a fair amount of time
5 figuring out what information we would require in order
6 to determine who was an eligible beneficiary or not.
7 And so those categories were sort of listed out on the
8 form.

9 Q Could I ask you to undertake to get us a copy of that
10 standard form that was sent out?

11 A Yes.

12 UNDERTAKING NO. 23:

13 RE PRODUCE COPY OF STANDARD FORM THAT
14 WAS SENT OUT TO THOSE WHO RESPONDED TO
15 AD.

16 Q MS. HUTCHISON: I take it some people returned them
17 filled out?

18 A Sort of.

19 Q Okay. Could I ask you to undertake to give us copies
20 of any, whether they were complete or partially
21 complete, anything that you got back in response to
22 sending that application out to people?

23 A Okay.

24 UNDERTAKING NO. 24:

25 RE PRODUCE COPIES OF ANY COMPLETED OR
26 PARTIALLY COMPLETED APPLICATIONS
27 RECEIVED BACK.

1 Q MS. HUTCHISON: Okay. So in paragraph 9 of your
2 Affidavit where you say correspondence with potential
3 beneficiaries of the 1985 Trust, you are just referring
4 to the form letter dated November 24th, 2009 attached
5 as Exhibit D?

6 A That is right.

7 Q There weren't sort of individualized communications
8 beyond that?

9 A No.

10 Q Okay. Have you checked your records for that, for
11 additional communications with potential beneficiaries
12 other than the November 29th, 2009 letter?

13 A I am not sure that -- the purpose of the newspaper ad
14 was just to get them to contact us and request the
15 application form and to get this information letter.

16 Q Right.

17 A It wasn't to enter into a dialogue with them. So I
18 discouraged any dialogue overtures. And there were
19 lots of dialogue overtures. So there were a lot of
20 people who wanted to have extensive discussions over
21 the phone about why they should be members of the First
22 Nation, and I said this has nothing to do with the
23 First Nation, it is just the Trust. There were a lot
24 of people who wanted to discuss why should they -- why
25 they should get Indian status. I said I have nothing
26 to do with your Indian status. You need to get in
27 touch with Indian Affairs in order to get Indian

1 status. So there was, you know -- and then there were
2 people who said, you know, I have already done that and
3 I have been refused. I still think that I should be a
4 beneficiary of the Trust. I said well, you know, that
5 is not the way that it works. You fill out the
6 application, we will look at your application, and we
7 will get back to you.

8 Q Okay. And --

9 A So this was mainly phone stuff.

10 Q And it doesn't sound from our discussions thus far that
11 you were keeping notes of those telephone discussions?

12 A No, no.

13 Q Okay. And just moving to paragraph 10 of your
14 Affidavit where you are referring to the list that you
15 had compiled?

16 A Yes.

17 Q I take it that that list was developed based on the
18 responses that you got to the November 24th, 2009
19 letter?

20 A That is right.

21 Q And could I ask you to undertake to give us a copy of
22 that letter?

23 A We have it here if you want.

24 Q I will ask your counsel to give it to us as an
25 undertaking. I suspect that we will be back to chat
26 about a few of the undertakings.

27 MS. BONORA: Just to be clear, paragraph 10

1 makes reference to a list of the following people
2 respecting the administration, and then there is a
3 series of subparagraphs. So I just want to be clear,
4 obviously Sawridge First Nation is just one person,
5 paragraph (a). So just to be clear about the
6 undertaking --

7 Q MS. HUTCHISON: Sorry, I'm talking about -- my
8 understanding, Mr. Bujold, is that in paragraph 10 you
9 list some categories of individuals that are on your
10 list, but you actually have got a list with people's
11 names on it; is that correct?

12 A Right. It is not by category.

13 Q So your Affidavit has set out the categories of
14 individuals but the list that you are talking about at
15 the start of paragraph 10 is a list of people's names,
16 right?

17 A Right.

18 Q So I am looking for the list of people's names.

19 A So just the list.

20 MS. BONORA: List of people's names.

21 MS. HUTCHISON: Yes. The list that Mr. Bujold is
22 referring to specifically in paragraph 10, which I
23 understand exists as a document.

24 MS. BONORA: Understand that paragraph 10 ends
25 with a colon and the list with the following persons is
26 a reference to all of (a) to (i).

27 MS. HUTCHISON: Ms. Bonora, the witness has

1 actually given evidence that a list exists with a list
2 of individuals' names. And I am sorry, when I look at
3 paragraph 10 I consider that to include all of the
4 subparagraphs. Paragraph 10 is multiple paragraphs.
5 Regardless, I am looking for, when swearing his
6 Affidavit he was referring to a list of persons. He
7 has told me that such a list exists and it has people's
8 names on it, not divided up into categories, just
9 individuals' names. That is the list that I am looking
10 for.

11 MS. BONORA: So that list of persons is what,
12 just so that we are clear on the undertaking. The list
13 of persons that what?

14 MS. HUTCHISON: I'm reading from Mr. Bujold's
15 Affidavit, that he believes may have an interest in the
16 application for the opinion, advice, and direction of
17 the court.

18 Q MS. HUTCHISON: Mr. Bujold, is there another list
19 that --

20 A Well, there is a number of lists actually. There is
21 three separate lists.

22 Q What are the three lists?

23 A There is the list of all of the people who applied, or
24 who gave information in the process that we undertook
25 in the newspaper ad.

26 Q So everyone --

27 A Everybody who filled out the application form.

1 Q Got you.

2 A Then there is a list of band members.

3 Q Okay.

4 A And then there is a list of all of those people who are
5 affiliated with Sawridge First Nation by Indian
6 Affairs, but are not members of Sawridge First Nation.
7 So they are considered by Indian Affairs to be somehow
8 affiliated with Sawridge First Nation, and so they are
9 listed with a 454 number.

10 Q Okay.

11 A You understand the band numbering system?

12 Q I do, yes.

13 A They are listed with the 454 number by Indian Affairs,
14 but they are not members of the Sawridge First Nation.
15 So those are the three lists that we have.

16 Q So I will ask you to undertake to provide us with a
17 copy of all three lists, and I am assuming that one of
18 those lists is the list that you were referring to in
19 paragraph 10, at least?

20 A Yes, paragraph 10 and 11.

21 Q Great, okay. So we will ask for an undertaking for all
22 three lists.

23 UNDERTAKING NO. 25:

24 RE PRODUCE ALL THREE LISTS REFERENCED IN
25 PARAGRAPH 10 AND 11 OF MR. BUJOLD'S
26 AUGUST 30, 2011 AFFIDAVIT.

27 Q MS. HUTCHISON: One point, Mr. Bujold. Paragraph

1 12 of your Affidavit, at least at the time that you
2 have sworn the Affidavit, you were indicating that the
3 Minister wouldn't provide a list of the individuals
4 affiliated, considered by the Department of Indian
5 Affairs to be affiliated with Sawridge First Nation. I
6 take it that you have provided it since?

7 A No.

8 Q So how did you get a list of the individuals?

9 A We were able to obtain a copy of the 2001 pay list from
10 a regional office that used to exist in High Prairie.
11 So we -- but it doesn't have any addresses on. So when
12 we had to notify -- when Justice Thomas asked us to
13 notify all of these individuals we explained to him
14 that we didn't have addresses for these individuals.
15 So we were told to request the Minister to send out
16 notification to all of the individuals on this list, on
17 the pay list.

18 Q Okay.

19 A As it existed as of this date. So the only list that
20 we have got are the affiliates as of 2001.

21 Q Okay. And as far as you know the Minister, or
22 Department of Indian Affairs did send those notices
23 out?

24 A They said that they would and I got telephone calls
25 from some people who said they had received such a
26 letter from the Minister's office, so.

27 Q Have you seen a copy of the letter from the Minister's

1 office?

2 A No, I didn't actually, although we did provide the
3 Minister with a copy of the letter that we were sending
4 out to the other lists.

5 Q Okay.

6 A So that they could use that as their framework.

7 Q And that is the letter at Exhibit D of your Affidavit
8 or is that a different --

9 A Is that the November --

10 Q November 24th, 2009 letter?

11 A No, this is a different letter that was as a result of
12 our application for advice and direction. So it was
13 specifically saying we are going to court to apply for
14 advice and direction, and it was sent by registered --
15 that is it.

16 Q I am showing you a September 1st, 2011 letter to the
17 Public Trustee. Does that look familiar?

18 A That is it, yes.

19 Q So that would be --

20 A This is the letter that we also sent to the Department
21 of Indian Affairs to use as a model. So I don't know
22 if they used this information or if they copied my
23 letter, or I don't know what they did.

24 Q They didn't send you a copy of it?

25 A No.

26 Q Could we mark that as Exhibit 3.

27 EXHIBIT NO. 3:

1 LETTER DATED SEPTEMBER 1, 2011 FROM
2 SAWRIDGE TRUST TO THE OFFICE OF THE
3 PUBLIC TRUSTEE.

4 Q MS. HUTCHISON: So let's take a look at Exhibit D
5 of your August 30th Affidavit. That is the November
6 29th, 2009 letter, Mr. Bujold. So August 30th, 2011
7 Affidavit, Exhibit D, and it should be a November 24th,
8 2009?

9 A Okay.

10 Q So I am just looking near the bottom of the first page,
11 Mr. Bujold, where you indicate that there is a
12 statement that the two Trusts can operate together. So
13 just help me understand what you are describing there.
14 I mean I am assuming that there is no mixing of funds
15 or assets?

16 A No.

17 Q So what were you trying to communicate in terms of --

18 A That the two Trusts operate out of the same office.

19 Q Okay.

20 A With the same trustees and the same administration.

21 Q Okay. So it is simply a matter of the two Trusts using
22 the same infrastructure, as it were?

23 A That is right. I mean from a beneficiaries point of
24 view and from the most uninformed public people, they
25 wouldn't know about mixing of assets and all of that
26 other stuff, but ...

27 Q Great. Turning to page 2, and I am looking at the

1 third paragraph.

2 A It starts "whatever"?

3 Q "Whatever is relevant for these purposes." Again, we
4 talked a little bit about your understanding of what
5 the purposes of the Trust was. Was there anything
6 beyond what we have already discussed that you had in
7 mind when you were talking about the purposes of the
8 Trust here?

9 A No.

10 Q Your understanding of the purposes of the Trust when
11 you were writing this letter was again based on the
12 Trust deeds and discussions with the trustees?

13 A Yes. The letter, I should tell you, was drafted by our
14 legal counsel.

15 Q Okay.

16 A And I made some minor modifications for formatting and
17 that was about it.

18 Q Okay. So these are not necessarily your words?

19 A No.

20 Q Okay.

21 A And our legal counsel at the time was not Doris.

22 Q Okay. Going to the fifth paragraph it says, "Sawridge
23 Trusts are developing a web site".

24 A Yes.

25 Q And there is reference to the web site will list
26 programs currently available through the Trust. Is
27 that part of the web site developed at this point,

1 Mr. Bujold? Does it exist?

2 A We did set up the web site with the programs that
3 provided program descriptions, and then if people felt
4 that they -- if they were beneficiaries, if they were
5 identified beneficiaries and felt that they wanted
6 access to that program, they could click on the link
7 and I would get a message and I would then get in touch
8 with them. Nobody has used that so I have disconnected
9 that part.

10 Q Okay. Do you still have access to the information that
11 would have been set out for what programs were
12 available for the beneficiaries of the '85 Trust?

13 A There were no programs available to the beneficiaries
14 of the '85 Trust.

15 Q So it was only for the '86 Trust at that point in time?

16 A That is right, because we don't know who the
17 beneficiaries are for the '85 Trust.

18 Q Okay. So --

19 A And that is part of the infrastructure stuff that we
20 are talking about. We talk about this as if both
21 Trusts are involved all of the time, but.

22 Q They are not?

23 A But they are not.

24 Q Okay. That makes more sense to me, thank you,
25 Mr. Bujold. Now the next paragraph refers to an
26 attached flow chart in relation to this company.

27 A Yes.

1 Q Do you still have a copy of that flow chart?

2 A Yes.

3 Q Could you undertake to provide me with a copy of it,
4 please?

5 A Certainly.

6 Q Thank you.

7 UNDERTAKING NO. 26:

8 RE PRODUCE COPY OF FLOW CHART REFERENCED
9 ON PAGE 2 OF EXHIBIT D TO MR. BUJOLD'S
10 AUGUST 30, 2011 AFFIDAVIT.

11 Q MS. HUTCHISON: Will that flow chart let us know
12 who the directors and officers of Sawridge Holdings
13 Ltd. and 352736 Alberta Ltd. were in 2011?

14 A No.

15 Q Could you undertake to let me know who they were in
16 2011 and if there has been a change in the interim,
17 just let me know about the change?

18 A Okay.

19 MS. BONORA: I'm going to take that under
20 advisement because this letter from 2009 -- like do you
21 want to know as at the date in 2009? Is that your
22 question?

23 MS. HUTCHISON: As of the date in 2009, and then
24 changes subsequently, yes, thank you.

25 UNDERTAKING NO. 27: (UNDER ADVISEMENT)

26 RE ADVISE WHO THE DIRECTORS AND OFFICERS
27 OF SAWRIDGE HOLDINGS LTD. AND 352736

1 ALBERTA LTD. WERE IN 2011 AND ADVISE IF
2 THERE WERE ANY CHANGES IN THE INTERIM.

3 Q MS. HUTCHISON: Looking at the last paragraph, Mr.
4 Bujold, on page 2 there is reference to the resources
5 of each trust are limited. I am just curious, in this
6 process of reaching out to the potential beneficiaries
7 in 2009 and right up to just before filing the
8 application for advice and direction, were the
9 potential beneficiaries of the 1985 Trust told that,
10 you know, roughly what the total value of the Trust
11 was? Of the assets that were held by the '85 Trust?

12 A The potential beneficiaries?

13 Q Yes.

14 A No.

15 Q So the existing beneficiaries would have been aware of
16 that figure?

17 A No.

18 Q Okay. I guess I am trying to understand what was your
19 purpose in talking about limited resources of the '85
20 Trust when it --

21 A There was a very good reason for that. One of the
22 reasons was that I was getting phone calls from people
23 saying I understand that the Trust is worth many
24 millions of dollars and I should get my share. I want
25 my share.

26 Q Okay.

27 A And my share should be 1 or 2 million.

1 Q So it was just sort of to stop the looting of the
2 store, as it were?

3 A That is right.

4 Q Okay. But it is individuals who got in touch as
5 potential beneficiaries requested that information,
6 were they told what the value of the Trust assets was?

7 A No, they weren't, because at the time the trustees felt
8 that potential beneficiaries were not beneficiaries and
9 therefore not entitled to any information about the
10 Trust until they were determined to be beneficiaries at
11 which time they would be -- they would have a legal
12 right to the information.

13 Q Okay.

14 A Potential beneficiaries were members of the general
15 public as far as the trustees were concerned.

16 Q Okay.

17 A And continue to be that. And this is a private trust,
18 so.

19 Q Okay. The top of page 3, and I am just looking at the
20 first paragraph. Was it your understanding when this
21 letter was prepared that a newer beneficiary of the
22 '85 Trust action, some who were freshly approved, might
23 not have the same access, I guess, to programs or
24 services or payments from the 1985 Trust as the
25 long-standing beneficiaries?

26 A No, there was some discussion with our legal counsel at
27 the time because the trustee talks about unfettered

1 discretion, that the trustees have unfettered
2 discretion in distributing assets to any and all who
3 they so choose, including one single beneficiary, if
4 that is what they choose. And so there was some
5 discussion with legal counsel about what parameters
6 that you could put on benefits. And so we didn't want
7 anyone to think that they would simply, by becoming a
8 new beneficiary, that they would be entitled to a full
9 set of assets. And we weren't sure at this time,
10 anyway, whether the beneficiaries of the '85 Trust
11 would be the same as the beneficiaries of the '86
12 Trust. And if the beneficiaries of the '85 Trust were
13 primarily people who had been long-time member, because
14 the way that the Trust is defined, that basically it
15 sets -- there is sort of a freeze on who the
16 beneficiaries are, at least as far as the adults are
17 concerned as of 15 April, 1985, so there is a freeze
18 and that is a very small number compared to the band
19 list. It is actually about half the band list.

20 Q Right.

21 A So there was some question about should they get the
22 same assets, should they claim double assets from one
23 -- could they claim the same asset from the '85, or the
24 same benefit from the '85 Trust as they got from the
25 '86 Trust. Would we look at it as a combined trust
26 where if they got it from one it would be considered
27 50/50 from both, but only if they were beneficiaries of

1 both Trusts. So I mean there was a lot of
2 complications about how we could -- because, and that
3 is part of the reason for coming for advice and
4 direction, is this separation of lists and, you know,
5 the fact that there could be two different lists
6 troubled with the trustees because they made it
7 difficult to have a community, a small community of
8 people, some of whom have greater benefits than others
9 and maybe they could double dip from '85 and '86 Trust,
10 and others who weren't eligible for '85 Trust that only
11 single dip from the '86 Trust. So that was the concern
12 that we not give anybody the impression that they would
13 be able to get a windfall from both Trusts.

14 Q Okay. Now in relation to the -- I understand the
15 purpose of your application for advice and direction
16 is, in part, a wish to start to distribute through the
17 Trust -- just off.

18 (Questioning adjourned.)

19 (Questioning resumed.)

20 Q MS. HUTCHISON: So I understand one of the
21 reasons for the application for advice and direction is
22 a desire to, you know, start to access the assets of
23 the 1985 Trust and distribute benefits possibly through
24 the four world model of these programs and benefits and
25 services.

26 So in relation to that vision, and it is sort of
27 referred to in some of your Affidavit, as well as

1 written material, is there any intention at the moment
2 that new 1985 beneficiaries would get different
3 programs and services, or a different distribution than
4 old 1985 Trust beneficiaries, the long-standing ones?

5 A No.

6 Q Okay.

7 A The discussion that the trustees had was that everybody
8 would have as equal a benefit as they could possibly
9 get. The reason for wanting to have access to
10 distribute '85 Trust funds is that all of the benefits
11 at this point are being paid out of the '86 Trust.

12 Q Okay.

13 A And that in the long-term will deplete the resources of
14 the '86 Trust if the '85 Trust can never be accessed.
15 So if there are some beneficiaries whose benefits could
16 be split 50/50 between the two Trusts, it would be more
17 advantageous than to have them all coming out of the
18 '86 Trust. That is where the distribution is. So
19 there is not going to be like a windfall coming out of
20 the '86 Trust -- or the '85 Trust, rather, it is we
21 want to equalize between the two Trusts, or we want to
22 be able to use the full resource of the Trusts to
23 provide for the beneficiaries.

24 Q Okay. So going to the next paragraph of Exhibit D, the
25 paragraph that starts "Another factor the trustees may
26 consider".

27 A Are we on the letter?

1 Q Yes, page 3 of the letter.

2 A Okay.

3 Q And if you go to the very last sentence it says, "In
4 considering the appropriate programs the trustees may
5 consider it relevant that certain programs and other
6 benefits are only available to beneficiaries who live
7 on reserve and other programs may only be available to
8 beneficiaries living off the reserve."

9 A Yes.

10 Q Is that structure or model different than programs and
11 services on reserve versus off reserve still part of
12 the proposed distribution that the Trusts are looking
13 at for the 1985 Trust?

14 A It is not part of a proposal. It is part of a
15 consideration. The people -- the beneficiaries who
16 live on reserve have housing, utilities, and home
17 maintenance provided. Those who live off the reserve
18 don't have that.

19 Q Okay.

20 A If the Trust, and the Trust is considered providing a
21 housing benefit. If the Trust were to provide a
22 housing benefit it would not be, in the trustee's mind,
23 it would not be fair to provide the same housing
24 benefit to people who live on reserve who are already
25 receiving a free benefit from the First Nation, and
26 instead wanted to provide that to people who are living
27 off reserve and are having to struggle with mortgages

1 and utility bills and home repairs and that sort of
2 stuff. We haven't resolved that, and there is still a
3 question about whether or not the First Nation could
4 free up some of its resources if the Trust were to take
5 over a housing benefit and provide the same benefit for
6 on and off reserve. But then those -- then the
7 question becomes those living on reserve don't own
8 their homes because it is communal property, and those
9 living off reserve own their homes and therefore can
10 sell it and profit from it since it is not communal
11 property. So again, we always have this, you know,
12 because of the strange situation for a First Nations
13 people and communal property and reserves and how they
14 are run and on and off reserve benefits, it has been
15 very difficult. So at this point all of the benefits
16 are provided equally on and off reserve, but there is
17 discussion about how could we help in these special
18 circumstances, like housing.

19 Q Other than housing, are there any other programs where
20 the trustees are struggling with that, how to deal with
21 benefits on reserve versus off reserve, or are the
22 programs and services outside of housing --

23 A Sort of related to housing is seniors housing, so
24 lodges and assisted-living facilities are available off
25 reserve but are not available on reserve because the
26 population is too small, or because the federal
27 government doesn't provide that benefit. So those

1 usually have to be funded either by the First Nation or
2 in this case they could be funded by the Trust, but
3 again, it becomes this -- so then we would provide
4 assisted-living facilities on reserve, but not off
5 reserve. And so what would we do for those off
6 reserve. If you live in an assisted-living facility
7 off reserve, only a quarter of your income goes into
8 paying for that facility in most cases. So does that
9 mean that First Nations people living off reserve have
10 sufficient resources to pay that? Probably. So I mean
11 those are the kinds of questions that we are struggling
12 with.

13 Q Okay. Any differences of that nature in relation to
14 education benefit that you are aware of?

15 A No, absolutely not.

16 Q In relation to health benefit?

17 A No.

18 Q In relation to other social, I will call them social
19 support benefit?

20 A No, not -- we provide child support benefits, we
21 provide personal development benefits, we provide
22 education benefits, we provide health benefits, life
23 insurance, all of those are equally provided off and on
24 reserve to beneficiaries, and sometimes to their
25 children through their parents.

26 Q So actually I will just, it might be faster if we took
27 a look at Exhibit L of your September 12th, 2011

1 Affidavit.

2 A Okay.

3 Q Just from your understanding is there anything, or are
4 any of these programs that are described in Exhibit L
5 that you understand may be provided, you know,
6 differently to individuals on reserve versus off
7 reserve? Whether that difference is in amount or
8 accessibility, value, or is it really just housing is
9 the only one on this list?

10 A Housing is really the only one that is strange. I mean
11 the other -- there are some benefits that we are having
12 difficulty with because of trust law, because there is
13 no beneficiary identified. So Number 11, for example,
14 on page 46, numbered page 46, community strengthening,
15 there is no identified beneficiary that you pay that to
16 so we could actually not provide that benefit.

17 Q Okay. So there is --

18 A Well, no, none of these -- 18 is the same as the other
19 one.

20 Q There is no actual specific --

21 A There is no actual beneficiary. It is sort of a
22 wellness, community wellness stuff, but there is no
23 identified beneficiary, so. And we have about 50
24 percent of our beneficiaries live off reserve, so.

25 Q Okay. Back to Exhibit D. Sorry, we are flipping back
26 and forth.

27 A Back to the letter.

1 Q Back to the letter of November 24th, 2009.

2 A Right.

3 Q Try not to laugh at this question but I want to be sure
4 I understand. If you look at the fifth paragraph it
5 talks about the rules for eligibility of the
6 beneficiary are presently being worked out for each of
7 the Trusts. I understand the entire purpose of your
8 application is to set the beneficiary definition for
9 the 1985 Trust. What I was struggling to understand is
10 what rules for eligibility you would be working on
11 other than just to determine if someone is a member or
12 not?

13 A It depended whether or not we were using the 1970s
14 Indian Act rules as they existed on the 15th day of
15 April, 1982, and what were those. So you would have to
16 -- we would have to go back to the 1970s Indian Act,
17 find the version that existed on the 15th of April,
18 then find the membership rules that applied at the time
19 that we could -- because it is members who qualify as
20 members as of that date. So then we would have to say
21 okay, as of today would you have qualified if today was
22 the 15th of April, 1982. So that is what we meant by
23 determining the beneficiaries for the 1985 Trust, is
24 that.

25 Q So when you are talking about rules for eligibility,
26 and then in the last paragraph, last sentence, there is
27 a reference to developing a clear list of criteria?

1 A Right.

2 Q You are not talking about something over and above
3 membership?

4 A Oh, no.

5 Q It is just a question of whether it is a pre Bill C-31
6 membership or post Bill C-31 membership?

7 A If it is post Bill C-31 membership then the membership
8 rules of the Sawridge First Nation apply as of April
9 15th -- no, actually as of the 15th of June, 1985,
10 something like that, when that was approved by the
11 Minister.

12 Q But nothing that the Trusts were referring to here
13 other than membership. It is just a question of which
14 model of membership was going to determine
15 beneficiaries added?

16 A Yeah, because the trustees felt that they really don't
17 have control of who the beneficiaries are, because the
18 beneficiaries are defined by other rules. So they are
19 defined by either the Indian Act if we are using the
20 1970s Indian Act, or defined by the membership rule if
21 they are defined under the 1986 Trust as who is a
22 member of the Sawridge First Nation.

23 Q Okay. Thank you. Back into the body of your August
24 30th, 2011 Affidavit, and you were looking at paragraph
25 10 previously, and 11. If I could get you to have
26 those in front of you?

27 A 10 and 11, yes.

1 Q So the three lists that we were talking about
2 previously, have you updated those lists since 2011,
3 since the application was filed?

4 A Yes, this -- well, parts of it. So the people who
5 applied hasn't changed because we stopped the
6 application process when we launched the application.

7 Q Okay.

8 A So I am confusing you. So when we launched the
9 application for advice and direction we stopped anybody
10 who had felt that they had an interest as a beneficiary
11 to the 1985 Trust, we stopped them filling out forms.

12 Q You didn't ask them to keep working on forms?

13 A We actually refused forms after that point.

14 Q Okay.

15 A Because we felt that the court would, at the end of the
16 application for advice and direction process, that the
17 court will settle this issue. So it was no longer
18 necessary for the trustees to get a bunch of people to
19 state their claim.

20 Q Okay. How were forms refused? Was it in writing? Was
21 it verbal?

22 A Well, they had sort of petered off by then anyway.
23 People weren't applying very much. Those who did, I
24 still get calls every once in a while saying I would
25 like an application form and I just tell them we don't
26 do that anymore. And we are in this process and the
27 court is going to, we hope --

1 Q Decide?

2 A -- give us a new definition and then we will have to
3 figure out how we decide then.

4 Q Is there a form letter that you send out to explain
5 that?

6 A No.

7 Q It is just verbal?

8 A Verbal. Most of the people are phoning and asking. So
9 that list hasn't changed. The affiliates list, we
10 don't -- Indian Affairs won't tell us who is on the
11 list. We would only have the 2001 pay list, that is
12 it. So that is the end of that list. And the only
13 list that changes is the Sawridge First Nation
14 membership list and who has been born and died since
15 then. So I do not modify that list.

16 Q Okay.

17 A So that is a list of beneficiaries.

18 Q So to the extent that that list has changed,
19 particularly in relation to minor children of members,
20 if you could give us both the list that existed when
21 you swore the Affidavit and the updated list?

22 A Yeah, it is actually one list because it changes as of
23 their birthday. So all you need to do is look at their
24 birthday and if the birthday is the date of the
25 application, then they were on the other list.

26 Q Okay.

27 MS. BONORA: We will just amend Undertaking 24

1 to provide you with the most recent list of Sawridge
2 members.

3 MS. HUTCHISON: Sure.

4 MS. BONORA: Which shows all of that
5 information.

6 A It has all of that information.

7 Q MS. HUTCHISON: The original information?

8 A Yes.

9 MS. HUTCHISON: Great.

10 Q MS. HUTCHISON: If you look just under subparagraph
11 (h) of paragraph 10, Mr. Bujold, it indicates that
12 everybody in the categories above, so from subparagraph
13 (a) to (h) are collectively referred to as
14 beneficiaries and potential beneficiaries. And then
15 subparagraph (i) is referring to people who regain
16 their status as Indians under Bill C-31 and who in the
17 Department of Indian Affairs or Aboriginal Affairs and
18 Northern Development is considered to be affiliated
19 with Sawridge First Nation. And I just wanted to
20 understand, was that category of individuals excluded
21 from the, you know, the definition just within your
22 Affidavit, but were they excluded from that because it
23 is your understanding that individuals affiliated with
24 Sawridge First Nation for the purposes of Indian
25 Affairs are not potential beneficiaries? Are they not
26 even considered as potential beneficiaries, or --

27 A The only way they can be considered, if you look at the

1 definition in the 1985 Trust, is they have to be
2 members of the Sawridge First Nation.

3 Q So if --

4 A And so they have to -- they have to have qualified as
5 members of the Sawridge First Nation under the 1970s
6 Indian Act as it existed on the 15th of April, 1982.
7 So these -- this last category, these affiliates, are
8 anybody that the Minister feels has an affiliation with
9 somebody.

10 Q So they are the individuals --

11 MS. BONORA: Can we go off the record for a
12 second?

13 MS. HUTCHISON: No, we can't, Ms. Bonora. I'm
14 sorry.

15 MS. BONORA: I'm going to say it on the record
16 then.

17 MS. HUTCHISON: I have given you a lot of leeway
18 about interrupting today.

19 MS. BONORA: I drafted the Affidavit. The
20 purpose of the split was purely definitional. So we
21 could serve the people in (a) to (h), we categorized
22 them as beneficiaries and potential beneficiaries so
23 that we could tell the court how we wanted to serve
24 them. We separated out (i) because we couldn't serve
25 them and we had to deal with them differently. There
26 is nothing in respect of how we are treating those
27 people differently. I can tell you it is purely

1 definitional for the purpose of how we were going to
2 serve those people. So there is nothing sinister about
3 it, it is just purely definitional. And I'm putting
4 that on the record because it is just an important
5 fact. It saves a lot of time.

6 Q MS. HUTCHISON: Mr. Bujold, you read this Affidavit
7 thoroughly before you signed it?

8 A I did.

9 Q And you were comfortable with the words?

10 A Yes.

11 Q Representing your understanding of all of the
12 information?

13 A Yes.

14 Q Okay, thank you. So the individuals in subparagraph
15 (i) wouldn't even be potential beneficiaries under the
16 current definition of the 1985 Trust, is that fair?

17 A Under the '85 Trust -- well, we don't know. We don't
18 know because we don't know what their qualifications
19 are for being placed on the affiliated list by Indian
20 Affairs in the first place.

21 Q Okay. Assuming, though, that they were not members of
22 the Sawridge Band before Bill C-31 was passed?

23 A Right.

24 Q They couldn't qualify as beneficiaries under the '85
25 Trust today?

26 A That is right.

27 Q Okay. But there is a possibility that they could be

1 potential beneficiaries if the new definition for the
2 '85 Trust was adopted, if they were accepted by
3 Sawridge?

4 A Yes.

5 Q Through its membership?

6 A If they were accepted by Sawridge through its
7 membership process. This list, the other thing that
8 you need to know about this (a) to (i) list is that
9 these were the requirements of Justice Thomas. So he
10 said you have to notify these people, these people, and
11 he actually specified each of these categories.

12 Q Understood, okay. Thank you. Just so I am clear on
13 this point, Mr. Bujold, the three lists that you talked
14 about providing to me, one of them is going to be the
15 list of beneficiaries and potential beneficiaries
16 consisting of 194 people, correct? I just want to make
17 sure --

18 A I don't think that it is 194. I think we may have sort
19 of edited it down. I don't know. I have got it, and I
20 can check it if you want and tell you if it is 194.

21 Q You can definitely do that through undertaking, and I
22 appreciate it. But the list that you are referring to
23 in paragraph 11 is one of the lists that you are going
24 to give to me?

25 A One of the lists, yes.

26 Q Okay, great. Now for the four individuals that you
27 were not able to find mailing addresses for -- sorry,

1 tell me a bit about those individuals. Have you, at
2 this point in time, have you been able to find mailing
3 addresses for them?

4 A No.

5 Q Do you have any information at all about whether any of
6 those four individuals have minor children or did at
7 the time that you swore this Affidavit?

8 A There is one, and that is William MacDonald, who has
9 minor beneficiaries who are members of another First
10 Nation and therefore wouldn't qualify under our trust.

11 Q Okay.

12 A They are members of Seneca First Nation.

13 Q And so the other three individuals who you don't have
14 mailing addresses for, do you know if they have minor
15 children or not?

16 A I don't think that they do. But they didn't always
17 tell us whether they had minor children. I mean we
18 asked the question, but they didn't always tell us, so.

19 Q The four individuals that you are referring to here,
20 did you become aware of those individuals because they
21 submitted the application form?

22 A Yes.

23 Q Okay.

24 A And then we corresponded with them and our letter came
25 back, the mail came back.

26 Q And we are going to get copies of that correspondence
27 already so we will take a look at that and see what it

1 says.

2 A Yes.

3 Q Okay, thank you.

4 (Questioning adjourned.)

5 (Questioning resumed.)

6 Q MS. HUTCHISON: Mr. Bujold, I understand that at
7 the break you pulled out your copy of one of the
8 listings that we have been talking about and you wanted
9 to clarify an answer that you have given?

10 A Yes. I mentioned one of the people whose addresses
11 that I didn't have was William MacDonald and that is
12 incorrect. So those people who I didn't have addresses
13 for, as far as I know, had no minor beneficiaries -- or
14 no minor dependents.

15 Q Dependents, okay. Thank you for clarifying that,
16 Mr. Bujold.

17 Just speaking of lists, when I get your three lists
18 am I going to be able to tell from the lists who has
19 minor dependents, or who on the list is a minor?

20 A Depends which list, so.

21 Q Let's do it this way, then. How about if you undertake
22 to get to us any of the information that you have about
23 the identity, contact information, of presumably their
24 parents, of all of the minors that the Sawridge
25 trustees are aware who are affected or potentially
26 affected by the main application? So I am looking for
27 minors that --

1 A That is one of the lists that we are going to be
2 providing, with their birth dates.

3 Q Okay, perfect.

4 A And their reasons for qualifying.

5 Q Okay, thank you.

6 MS. BONORA: We will make that undertaking. I
7 don't think that that was necessarily part of the prior
8 list. So we will do the list of minor beneficiaries
9 that may be impacted by this application and the
10 reason, did you say?

11 A Also the reason that they qualify or do not qualify.

12 MS. HUTCHISON: Thank you, Mr. Bujold.

13 UNDERTAKING NO. 28:
14 RE PROVIDE LIST OF MINOR BENEFICIARIES
15 IMPACTED BY THE APPLICATION, INCLUDING
16 IDENTITY AND CONTACT INFORMATION, AND
17 THEIR REASONS FOR QUALIFYING.

18 A I'm not sure if it identifies their parents, though.
19 Is that what you wanted as well?

20 MS. HUTCHISON: We will be looking for contact
21 information. So I am assuming that that will mean
22 contact information for their parents in the course of
23 their --

24 A Then I will need to modify that list if I need to
25 provide contact information.

26 MS. HUTCHISON: Thank you.

27 Q MS. HUTCHISON: So just returning to the topic of

1 the individuals who regained their status as Indians
2 under Bill C-31, and who have been deemed to be
3 affiliated with Sawridge First Nation by the Minister
4 of Aboriginal Affairs.

5 I take it not only has the Minister not been
6 willing to provide you with their names and addresses,
7 the Minister has not provided you with any information
8 about whether they have minor dependents?

9 A No.

10 Q So you have no information on that at this point in
11 time?

12 A No.

13 Q I am going to ask you to provide me with copies of any
14 correspondence or documentation as between the Trust
15 and the Minister requesting that information. It is my
16 understanding that you did ask them for a list of
17 individuals affiliated with Sawridge and their
18 addresses. So any documentation around your request to
19 the Minister on that topic, and their responses, if you
20 can undertake to provide us with copies of that
21 documentation. Sorry, you can't actually ask your
22 counsel questions.

23 A You know, Janet, I'm not sure. I don't remember if we
24 ever asked them.

25 Q Take a look at paragraph 12, Mr. Bujold, of your
26 Affidavit. It says, "The Minister will not provide us
27 with a current list of these individuals, nor their

1 addresses, citing privacy concerns."

2 A Okay. I think we may have gotten that information from
3 the department's lawyer. Do you remember when we had
4 the first meeting?

5 Q Mr. Kindrake.

6 A Mr. Kindrake.

7 Q We will leave it as an undertaking. You can review
8 your records.

9 A I will see if I have got anything.

10 Q And, of course, we are particularly interested in
11 whether there was any documented request to the
12 Minister about information for minor dependents of
13 these Bill C-31 individuals?

14 A There wasn't. For sure there wasn't.

15 Q Okay.

16 MS. BONORA: So I am just going to clarify, the
17 undertaking is to review our records and provide any
18 correspondence that we have with the Minister with
19 respect to the refusal to provide the current list of
20 these individuals mentioned in paragraph 12.

21 MS. HUTCHISON: With respect to the request for the
22 information and their subsequent refusal to provide it,
23 yes. That is correct.

24 UNDERTAKING NO. 29:
25 RE PROVIDE ANY CORRESPONDENCE WITH THE
26 MINISTER RESPECTING THE REQUEST FOR
27 INFORMATION AND REFUSAL TO PROVIDE THE

1 CURRENT LIST OF INDIVIDUALS MENTIONED IN
2 PARAGRAPH 12 OF MR. BUJOLD'S AUGUST 30,
3 2011 AFFIDAVIT.

4 Q MS. HUTCHISON: Turning to your September 12th,
5 2011 Affidavit, and specifically paragraph 32. The
6 statement in the first sentence of that paragraph is
7 that the trustees have determined that maintaining the
8 definition of beneficiaries contained in the 1985 Trust
9 is potentially discriminatory?

10 A Yes.

11 Q Without getting into communications with the Trust
12 lawyers, because that is not something that we can talk
13 about, what is your understanding of what led up to
14 this trustees arriving at that determination? Were
15 there discussion papers, was it dealt with in non
16 in-camera portions of your trustee meeting minutes? I
17 am just looking for really any source of information
18 around that topic.

19 A It was primarily dealt with in discussions with our
20 legal counsel.

21 Q Okay.

22 A And the legal counsel was present at trustee meetings
23 where that topic was discussed.

24 Q Okay.

25 A So it was primarily my discussions with legal counsel
26 and my -- and the trustee's discussion with legal
27 counsel that led us to believe that.

1 Q Okay. So this undertaking may not result in any
2 documentation, but I am still going to ask for it. If
3 you could undertake to review your documentation and if
4 there is any nonprivileged documentation that deals
5 with discussion or assessment of that topic, including
6 any sort of communication as between the trustees and
7 the Nation, if you could undertake to provide us with
8 any of that?

9 A Between the trustees and the Sawridge First Nation?

10 Q That is correct, yes. So it may not exist, Mr. Bujold.

11 A It doesn't, I can tell you right off, because we don't
12 get communications from the Sawridge First Nation.

13 Q Not from --

14 A No. We don't get any letters from them. We get --
15 occasionally we get a phone call from the office staff
16 saying Chief and Council have just added so and so to
17 the list and here is his name.

18 Q Okay.

19 A And his address.

20 MS. BONORA: So just to clarify, can you clarify
21 the undertaking that you are asking?

22 MS. HUTCHISON: I think that I will just leave the
23 undertaking as is, and if you need to repeat it maybe
24 Susan can read back.

25 MS. BONORA: You said about this topic, so I
26 need to understand what topic you are talking about.

27 MS. HUTCHISON: About the determination of the

1 trustees maintaining the definition of beneficiaries
2 from the 1985 Trust would be potentially
3 discriminatory.

4 MS. BONORA: Okay.

5 UNDERTAKING NO. 30:
6 RE REVIEW DOCUMENTATION AND PRODUCE
7 ANYTHING NONPRIVILEGED DEALING WITH THE
8 TOPIC OF THE DETERMINATION OF THE
9 TRUSTEES MAINTAINING THE DEFINITION OF
10 BENEFICIARIES FROM THE 1985 TRUST WOULD
11 BE POTENTIALLY DISCRIMINATORY, INCLUDING
12 ANY COMMUNICATION BETWEEN THE TRUSTEES
13 AND THE SAWRIDGE FIRST NATION.

14 Q MS. HUTCHISON: Mr. Bujold, still in paragraph 32 I
15 am wondering if you can help me understand this one
16 element of this whole matter. So you are saying in
17 paragraph 32 that the current definition of
18 beneficiaries of the '85 Trust would allow nonmembers
19 of the Nation to be beneficiaries of the '85 Trust
20 while excluding certain members of the Nation.

21 Can you give me some examples of a situation where
22 an individual would qualify as a beneficiary under the
23 1985 definition without being a member of Sawridge
24 First Nation today?

25 A I would have to use names. Is that okay?

26 Q That is okay. I'm trying to understand the process,
27 because...

1 A Roland Twinn's wife, Haytena (phonetic) Twinn --

2 Q Okay.

3 A Is white, not a member of Sawridge First Nation and not
4 eligible under current membership rules to be a member
5 because she doesn't have Indian status.

6 Q Okay.

7 A She does qualify under the 1970 Indian Act as the wife
8 of an Indian male and, therefore, as a member of a
9 First Nation and, therefore, as a beneficiary of the
10 1985 Trust. So she is not a member of the First
11 Nation, but she is a beneficiary to the 1985 Trust.

12 Q Okay.

13 A Adversely Clara and -- Bertha L'Hirondelle, Clara
14 Midbo, Liz Poitras and any of the other Bill C-31s, if
15 they came in as a result of application or as a result
16 of the court order from Justice Huggessen don't qualify
17 as members of the Sawridge -- of the 1985 Trust but
18 they are members of the Sawridge First Nation.

19 Q Okay. That helps me. So my understanding is that
20 there are, and I am turning quickly here to your
21 September 30th Affidavit. Sorry, it is the
22 Supplemental Affidavit to the September 12th, 2011
23 Affidavit.

24 A Okay.

25 Q So help me understand what you are talking about in
26 paragraph 3 and 4, Mr. Bujold. So there are 8 mine or
27 dependents?

- 1 A This is a moving target, this minor dependent stuff is
2 a moving target because they get old.
- 3 Q Got you. At the time that you swore this Affidavit
4 there were 8 minor dependents?
- 5 A That is right.
- 6 Q And I just want to be clear, at the time these 8 minor
7 dependents did or did not qualify under the current
8 definition?
- 9 A Did not.
- 10 Q Did not?
- 11 A Yeah.
- 12 Q But would qualify as beneficiaries under the new
13 definition of the '85 Trust? The proposed one?
- 14 A No. They would continue not to qualify unless they
15 applied for membership.
- 16 Q Okay.
- 17 A So under the '86 Trust it is a member -- anybody who is
18 a member of the Sawridge First Nation, and that
19 includes children. Children have to apply just like
20 adults have to apply. Parents can apply on behalf of
21 their children, but they still have to apply.
- 22 Q Are there situations, though, where some children will
23 automatically be considered members?
- 24 A If a band member marries a band member, then those.
25 But in most cases in Sawridge it would be incestuous.
- 26 Q There are very few children that qualify under that
27 provision?

1 A Practically none.

2 Q It is a small community?

3 A It is a very small one or two family, and that is, you
4 know, very hard not to marry your cousin and then you
5 end up with --

6 Q Okay, got you.

7 A So the only way that you can qualify is to apply for
8 membership. And so the 8 children who don't qualify
9 under the '85 Trust would also continue not to qualify
10 even if the definition changed because they don't
11 qualify under the '86 Trust either, neither do the
12 other 31 children qualify because their parents have to
13 apply.

14 Now of these 31 dependents one of the parents has
15 actually applied on behalf of two of those children and
16 they have been admitted, and they are continuing to be
17 minors, but they are also members of the First Nation
18 and, therefore, full beneficiaries of the Trust -- of
19 the '86 Trust, but not of the '85 Trust.

20 Q But if the '85 Trust definition changes --

21 A Changes.

22 Q -- they would become beneficiaries?

23 A They will continue to be, because they already are
24 beneficiaries under the '85 Trust. They are part of
25 the 31 who already are. So there is two who are
26 already beneficiaries, but under the '86 Trust they
27 don't qualify because -- okay, we have to sort of back

1 up a little bit.

2 So under the '85 Trust the definition is if you
3 could be a member --

4 Q Pre Bill C-31?

5 A -- using the rules as they existed on that day, and you
6 could be a member as a minor under those rules. Under
7 the new Sawridge membership rule you can't be -- you
8 are not automatically considered a member just because
9 you are born to a member. You have to apply.

10 Q Right.

11 A So the children of members of the Sawridge First Nation
12 all have to apply. And if they don't apply, they don't
13 become members. Therefore, they won't be
14 beneficiaries.

15 Q Okay. So I just want to be clear because I know we
16 have all gotten a little confused on this issue at
17 times. So in paragraph 4 when you say 23 of the minor
18 dependents qualify as beneficiaries of the 1985 Trust,
19 and I understand that the 23 may have changed over
20 time?

21 A Right, right, right.

22 Q But were you saying that they qualify as beneficiaries
23 of the '85 Trust with the current definition?

24 A Yes.

25 Q Okay. And would any of those 23 cease to be
26 beneficiaries of the 1985 Trust under the proposed new
27 definition?

- 1 A Yes. 21 of them.
- 2 Q 21 of them?
- 3 A Because two of them have applied for membership and
4 have been accepted.
- 5 Q Okay.
- 6 A So because they applied and were accepted their
7 beneficiary status continues because then they are
8 still members of the First Nation.
- 9 Q The remaining 21 would have to apply for membership?
- 10 A Would have to apply for membership in the First Nation.
- 11 Q And if they didn't receive it they would not be
12 beneficiaries of the 1985 Trust?
- 13 A That is right.
- 14 Q Or the 1986 Trust?
- 15 A That is right.
- 16 Q Okay. Just going back to numbers for a moment,
17 Mr. Bujold. The numbers of dependent children of
18 Sawridge members has changed, I think, since 2011,
19 right?
- 20 A Yes.
- 21 Q Do you know what the current figure is? How many
22 dependent children there are, or would you like to
23 undertake to --
- 24 A I can give you an undertaking, because even though the
25 numbers have changed, I think that the numbers are
26 constant. So I think that it is still 31 but, you
27 know, we have two who became adults and two who were

1 born, and I think that that is what has happened. I
2 think we still have 31, but I can do an undertaking.

3 Q Let's do it this way because we need to establish names
4 and identities here, so.

5 A Yes.

6 Q So why don't you undertake to give us a list of who the
7 31 dependent children were at the time that this
8 Affidavit was sworn, and then also identify of those 31
9 dependent children which were the 23 that qualified as
10 beneficiaries of the '85 Trust at the time that you
11 swore the Affidavit and which were the 8 that did not
12 qualify as beneficiaries of the '85 Trust at the time
13 that you swore the Affidavit, and then update that list
14 for me through until today's date?

15 A All right.

16 Q Okay.

17 UNDERTAKING NO. 31:

18 RE PROVIDE LIST OF WHO THE 31 DEPENDENT
19 CHILDREN WERE AT THE TIME THE AFFIDAVIT
20 WAS SWORN AND IDENTIFY OF THOSE 31 WHICH
21 WERE THE 23 THAT QUALIFIED AS
22 BENEFICIARIES OF THE '85 TRUST AT THE
23 TIME THAT THE AFFIDAVIT WAS SWORN AND
24 WHICH WERE THE EIGHT THAT DID NOT
25 QUALIFY. ALSO UPDATE THE LIST UNTIL
26 TODAY'S DATE.

27 Q MS. HUTCHISON: Mr. Bujold, are you able to tell

1 me, and I am asking a question about the '86 Trust just
2 because it is pertinent to the proposed new definition.
3 So since Sawridge took over its membership process,
4 which was 1985, how many Bill C-31 members are you
5 aware of that have also become beneficiaries of the
6 1986 Trust?

7 A Of the '86 Trust?

8 Q Yes. So how many of those Bill C-31 individuals have
9 actually become members since Sawridge took over its
10 membership process?

11 A Those -- if I am understanding the question correctly,
12 there are -- there is 14 or 15 absolutes. So those --
13 and those are just about -- there was one man, but the
14 rest were all women. Most of them came in as a result
15 of Judge Huggessen's court order.

16 Q Came in as members?

17 A Came in as members and therefore as beneficiaries of
18 the '86 Trust. Clara Midbo and Bertha L'Hirondelle and
19 Frieda Draney were Bill C-31 who applied and were
20 granted membership.

21 Q Okay. Just remind me, Frieda Draney is also --

22 A She is a sister.

23 Q A sister of Walter Twinn. Other than Clara, Bertha,
24 and Frieda, if I may just use their first names, the
25 only other individuals that have become Bill C-31
26 individuals -- I apologize, that have become members of
27 the Sawridge First Nation and the beneficiaries of the

1 '86 Trust are the women and other individuals added by
2 Justice Huggessen?

3 A That is right.

4 Q Just so there is no confusion could I ask you to give
5 us a list of those names so that we are all on the same
6 page? If you could undertake to tell us who --

7 A The applications plus the Huggessen order?

8 Q Let's do that, yes.

9 UNDERTAKING NO. 32:

10 RE PROVIDE LIST OF INDIVIDUALS ADDED BY
11 JUSTICE HUGGESSEN TO BE MEMBERS OF
12 SAWRIDGE AND BENEFICIARIES OF THE '86
13 TRUST.

14 Q MS. HUTCHISON: There have been other applications
15 for membership since the 1985 Trust has been approved?

16 A Yes.

17 Q But they weren't for Bill C-31 individuals. They were
18 children that were born to only one member, and that
19 sort of situation?

20 A Yeah, but Bill C-31 rules are actually quite
21 restrictive. So in order to meet the restrictions
22 there were only these people who actually qualified.
23 And even, you know, there is some -- Sawridge First
24 Nation doesn't agree with all of the people who were
25 placed on the list by Huggessen because they didn't
26 have any affiliation that they know of.

27 Q Right.

1 A By blood or by residence with the Sawridge First
2 Nation. So none of the people that we know, other than
3 those who we have been sort of pulling through our
4 process or the affiliates, would qualify as absolutes.
5 So they have to meet that very narrow definition.

6 Q Okay. From what you know, Mr. Bujold, I mean do you
7 know what the total number of applications, and whether
8 it is complete or incomplete application, the total
9 number of applications that the Nation has received for
10 membership since 1985, since they took over the
11 process?

12 A I don't know it off the top of my head. I know that a
13 report was provided to you that we received from
14 Sawridge First Nation, and I think the number was about
15 40 or something.

16 Q Do you have that?

17 A Because it came from the First Nation. It is not
18 something that -- we don't pay attention to that unless
19 it results in a beneficiary.

20 Q Does that look familiar, Mr. Bujold?

21 A Yes, this is it, yes.

22 Q So this is a list that your counsel sent me?

23 A Yes. So this is the list that we received from
24 Sawridge First Nation and they would know. I wouldn't
25 know how many applications they have received, so. They
26 are saying 74 received and 52 processed.

27 Q Are we okay to mark this as an exhibit?

- 1 MS. BONORA: It came from the stuff I sent you
2 by email?
- 3 MS. HUTCHISON: Yes. Or you can undertake to
4 provide it to me in another format.
- 5 A There was another sheet that went in front of it.
- 6 Q MS. HUTCHISON: There are answers to other
7 questions in front of it, yes.
- 8 A Okay.
- 9 Q Do you want to undertake to --
- 10 MS. BONORA: I'm good. I see it now.
- 11 MS. HUTCHISON: So we can mark that as an exhibit?
- 12 MS. BONORA: M-hm, that would be fine.
- 13 EXHIBIT NO. 4:
14 DOCUMENT ENTITLED TOTAL APPLICATIONS
15 RECEIVED AND PROCESSED.
- 16 Q MS. HUTCHISON: Mr. Bujold, this page sets out some
17 statistics on total membership applications received
18 and processed. So what you are telling me is that that
19 information came from the Sawridge First Nation?
- 20 A That is right.
- 21 Q So the trustees haven't done anything to double-check
22 those numbers or determine if they are accurate at this
23 point in time?
- 24 A We wouldn't have any cause to interfere in Sawridge
25 First Nation business.
- 26 Q And I am not suggesting --
- 27 A So we haven't checked that.

1 Q So you haven't requested any of the documentation that
2 would be behind this list, like the membership
3 application forms, or --

4 A No.

5 Q Okay. So this list is saying between 1993 and 2014 74
6 applications for membership were received and 52 were
7 processed?

8 A Right.

9 Q And within that number, 74, 15 were accepted. I'm
10 trying to understand, I am not sure if you can tell me,
11 but within the 15 that were accepted does that include
12 the 11 people that were added by order of Justice
13 Huggessen?

14 A No.

15 Q So you have actually got 26 individuals that were
16 accepted or added to the Sawridge membership?

17 A That is right.

18 Q Okay.

19 A And that would tally, because in 1985 there were 23
20 members, and now there are 40-some members, so.

21 Q Okay. Within this accepted number for this 15, that
22 would include Clara, Frieda, and Bertha; is that
23 correct?

24 A Yes.

25 Q Okay. Other than the 11 individuals added by court
26 order --

27 A Just hang on a sec because the beginning date that he

1 has got here is '93.

2 Q And they were added before that?

3 A And I think Bertha's application, I just read somewhere
4 Bertha's application was in '91. So maybe that doesn't
5 include. So maybe I am wrong.

6 Q You are taking me to my next question actually. So
7 this list starts at 1993, but it is your understanding
8 Sawridge took over its membership process in 1985?

9 A Yes, in July of 1985.

10 Q So what I would like you to undertake to do is to
11 inquire with Sawridge First Nation about how many
12 applications they received between 1985 and 1993, and
13 just exactly the same review as is done here, how many
14 were received, how many were processed, and what were
15 the outcome of those membership applications 1985 to
16 1993?

17 MS. BONORA: We will make that inquiry. We will
18 make our best efforts to provide an answer. We can't
19 control that answer, so.

20 MS. HUTCHISON: Thank you.

21 UNDERTAKING NO. 33:
22 RE INQUIRE OF SAWRIDGE FIRST NATION AS
23 TO NUMBER OF APPLICATIONS THEY RECEIVED
24 BETWEEN 1985 AND 1993, HOW MANY WERE
25 RECEIVED, HOW MANY WERE PROCESSED, AND
26 WHAT THE OUTCOME OF THOSE MEMBERSHIP
27 APPLICATIONS WERE FROM 1985 TO 1993.

1 Q MS. HUTCHISON: And I am just looking at one of the
2 little notes here in this summary, Mr. Bujold, that
3 talks about 14 applications received in 2006 which were
4 determined not to be complete and letters were sent out
5 to request additional information.

6 At this point in time has the Sawridge trustees
7 been able to get copies of either those membership
8 applications or the correspondence indicating that they
9 were incomplete?

10 A The letters -- the incomplete letters, we have received
11 copies of those, and those were provided to you.

12 Q Okay. So you have provided me with any that you
13 received back?

14 A That is right.

15 Q Okay. But not copies of the application forms
16 themselves?

17 A No, we would -- the application forms, even though the
18 trustees have asked about them, we have been informed
19 that under the privacy legislation that they are not
20 allowed to give us that so we are not allowed to see
21 them.

22 Q Despite that, and I recognize all you can do is the
23 make the request, one of the undertakings that I will
24 ask you for today is request from the Sawridge First
25 Nation copies of all membership application forms that
26 they have received from 1985 until today's date.

27 MS. BONORA: Copies of all application forms?

1 MS. HUTCHISON: Membership application forms that
2 they have received, whether complete or incomplete,
3 since they took over their membership process, so that
4 would be 1985.

5 MS. BONORA: We will make the request. We are
6 not undertaking to provide an answer. We expect the
7 answer will be no, so.

8 MS. HUTCHISON: Understood.

9 UNDERTAKING NO. 34:
10 RE REQUEST OF THE SAWRIDGE FIRST NATION
11 TO PRODUCE COPIES OF ALL MEMBERSHIP
12 APPLICATION FORMS THAT THEY HAVE
13 RECEIVED FROM 1985 UNTIL PRESENT DATE.

14 Q MS. HUTCHISON: Mr. Bujold, you may or may not
15 be aware of this, but are you aware of band council
16 resolution, Sawridge Band Council Resolution from July
17 21st, 1988 that attached a list of 164 people who had
18 expressed an interest in writing in making an
19 application for membership with the band?

20 A No.

21 Q So you have never seen that before?

22 A No. I don't know if I ever heard of it.

23 Q Just for reference for the undertaking that I am going
24 to ask you for, it is referred to in paragraph 34 of
25 Sawridge Band v. Canada 2004 SCA 16.

26 So I am going to ask you to inquire, or to request
27 from Sawridge First Nation a copy of that July 21st,

1 1988 band council resolution, and specifically to ask
2 them to check the documentation that was filed in
3 relation to this court application to see if they can
4 locate a copy of that BCR and the list attached.

5 MS. BONORA: What is the number?

6 MS. HUTCHISON: There is not a BCR number. I can
7 just give you that case. There are apparently 194
8 individuals listed in the BCR, or in a list attached to
9 the BCR, and the BCR is dated July 21st, 1988.

10 UNDERTAKING NO. 35:
11 RE REQUEST OF SAWRIDGE FIRST NATION TO
12 PRODUCE A COPY OF THE JULY 21ST, 1988
13 BAND COUNCIL RESOLUTION, AND
14 SPECIFICALLY ASK THEM TO CHECK THE
15 DOCUMENTATION THAT WAS FILED IN RELATION
16 TO THE COURT APPLICATION SAWRIDGE BAND
17 V. CANADA 2004 SCA 16, TO SEE IF THEY
18 CAN LOCATE A COPY OF THAT BCR AND THE
19 ATTACHED LIST.

20 Q MS. HUTCHISON: Just so I am clear, Mr. Bujold, the
21 trustees, as part of your efforts to identify
22 beneficiaries or potential beneficiaries, clearly you
23 have not had access to the resource of that BCR that we
24 are talking about?

25 A No.

26 Q Never seen it?

27 A No.

1 Q So you would have no way to know how the list of 194
2 people attached to that BCR would interrelate with the
3 list that you have developed?

4 MS. BONORA: The 164?

5 Q MS. HUTCHISON: Sorry, the 164. You wouldn't have
6 any way to cross-reference them at this point in time?

7 A No.

8 Q We have had quite a lot of discussions about what
9 efforts that you have made to try and identify
10 beneficiaries or potential beneficiaries. Are there
11 any efforts in that regard that you have made or that
12 the trustees have made that we have not discussed?
13 Other correspondence, documentation, searches?
14 Anything else that the trustees have been doing on that
15 front?

16 A No. The original list of potential beneficiaries to
17 the 1985 Trust that I started working with is a list
18 that was developed by the trustees themselves sometime
19 in the 1980s. I think '88 or '89.

20 Q Okay.

21 A Or maybe later. I would have to -- and so we sort of
22 use that as the basis list, and then we sort of
23 evaluate it based on who was still alive and who was
24 living, and. So that is the only other work that I
25 know of, and then we have done this research putting
26 together lists of names, getting these applications.

27 Q Okay. So turning back to your August 30th, 2011

1 Affidavit for a moment. And specifically I am looking
2 at paragraph 10 sub (e). So I just want to be clear,
3 at the time that you swore this Affidavit had Sawridge
4 First Nation actually provided a list of names of
5 individuals who applied for membership in Sawridge
6 First Nation, or was this just one of the general
7 categories?

8 A This was the general category.

9 Q So they hadn't given you that information then?

10 A No.

11 Q And haven't given it to you today?

12 A Haven't given it to me since.

13 Q I will ask you to undertake when you are requesting the
14 other information from the Sawridge First Nation on
15 membership application, to the extent that it is not
16 apparent from the other documents that they might
17 provide, we would like to know the date that each
18 membership application was received by the First
19 Nation, and the date that a decision was actually made
20 on each membership application. And I understand all
21 you can do is ask, Ms. Bonora.

22 UNDERTAKING NO. 36:

23 RE INQUIRE OF SAWRIDGE FIRST NATION THE
24 DATE EACH MEMBERSHIP APPLICATION WAS
25 RECEIVED BY THEM AND THE DATE A DECISION
26 WAS MADE ON EACH MEMBERSHIP APPLICATION.

27 Q MS. HUTCHISON: I am going to add one other element

1 to all of the undertakings that are requesting
2 information on Sawridge First Nation membership
3 applications. So should a situation arise where for
4 some reason the First Nation refuses or fails to
5 provide any of that information, I am going to ask you
6 to canvass the trustees directly to provide any and all
7 information or documentation that they can and provide
8 to answer those questions around membership
9 applications.

10 A Wouldn't that cause a conflict of interest to arise?
11 Like aren't you promoting a conflict of interest to
12 arise in the Trust?

13 MS. BONORA: We will take that under advisement.
14 UNDERTAKING NO. 37: (UNDER ADVISEMENT)
15 RE WITH RESPECT TO UNDERTAKINGS
16 REQUESTING INFORMATION ON SAWRIDGE FIRST
17 NATION MEMBERSHIP APPLICATIONS, IF THE
18 FIRST NATION REFUSES OR FAILS TO PROVIDE
19 THAT INFORMATION INQUIRE OF THE TRUSTEES
20 DIRECTLY TO PROVIDE ANY AND ALL
21 INFORMATION OR DOCUMENTATION THAT THEY
22 CAN TO ANSWER THOSE QUESTIONS AROUND
23 MEMBERSHIP APPLICATIONS.

24 (Discussion off the Record.)

25 MS. BONORA: Based on discussion off the record
26 in respect of Undertaking 35 which we have taken under
27 advisement, but just to be clear, we are only making

1 the request of the trustees as trustees, and not in any
2 other role that they would play.

3 MS. HUTCHISON: That is actually not how the
4 undertaking is phrased. You may choose to respond in
5 that context, but that is not how my undertaking is
6 phrased.

7 Q MS. HUTCHISON: Mr. Bujold, looking at your
8 September 30th Affidavit again, paragraph 3. To the
9 extent that your other undertakings don't tell me this,
10 and I suspect that your other answers to undertakings
11 will tell me this, but if they don't could you just
12 update the figure that is set out in paragraph 3 if it
13 has changed?

14 A It has.

15 Q Okay. Do you know what the figure is today?

16 A Yes, it is 45.

17 Q Okay, thank you.

18 A But they are not all older than 18 years of age because
19 now there are two minors in there.

20 Q Okay. So 43 adult members and 2 minor members?

21 A 2 minors.

22 Q Okay. And just going back to the 8 beneficiaries that
23 you were discussing in paragraph 4, and I realize they
24 may or may not still be -- I apologize. Minor
25 dependents, not beneficiaries, the 8 minor dependents,
26 at the time that you swore the Affidavit do you know if
27 they were living on or off reserve?

- 1 A They were living off reserve. They were in the process
2 of moving on to reserve.
- 3 Q Okay. And are any of these -- some of these 8 minor
4 dependents remain minor dependents today; is that
5 correct?
- 6 A No, they all do. They all do.
- 7 Q They are all still minors?
- 8 A They are all still minors.
- 9 Q Are they all living on reserve now?
- 10 A No, they are right now living in Sherwood Park but they
11 will be living on reserve soon. They have a house, it
12 is just not complete yet.
- 13 Q But the house has been allocated to the family?
- 14 A Yes.
- 15 Q Okay. Now in paragraph 6 my understanding is that you
16 were explaining the proposal of the Trust, or the
17 intention of the trustees that those 8 minor dependents
18 who did not qualify as beneficiaries in the 1985 Trust
19 would still be offered programs, services and other
20 benefits through their parents. So they would have
21 access to the same programs, services, and other
22 benefits as would be offered to the 1985 minor
23 beneficiaries?
- 24 A That is right.
- 25 Q Now once those 8 minor dependents turn 18, you agree
26 with me that unless the new definition is accepted, and
27 unless they are accepted as members of Sawridge First

1 Nation, they would no longer have access to the
2 programs, services and benefits through the 1985 Trust?

3 A The 8?

4 Q The 8 minor dependents?

5 A The 8 minor dependents don't have access now, so there
6 is 8 who don't have access.

7 Q Understood. And paragraph --

8 A And they would continue not to have access when they
9 are 18 or 50 or 75 unless they apply for membership.

10 Q Sorry, and I may have misunderstood your Affidavit,
11 Mr. Bujold. Were you trying to communicate in your
12 Affidavit here that if the new definition was adopted
13 for the 1985 Trust, the Trust would still provide
14 programs, services, and other benefits to the 8 minor
15 dependents through their parents?

16 A Paragraph 6 was not meant to talk about the 8 minors
17 who don't qualify, and would continue not to qualify
18 regardless of what the membership -- regardless of what
19 the beneficiary definition is.

20 Q Okay.

21 A Unless they applied for membership. If they don't
22 apply for membership they will continue to receive some
23 of the benefits of the Trust as dependents of their
24 parents until age 18 or age 25 for educational
25 benefits.

26 Q Okay.

27 A There are some benefits that they -- I mean they would

- 1 never get seniors benefits obviously if they don't
2 apply and become members.
- 3 Q Okay. And then the 21, and I just want to be sure I
4 understood --
- 5 A The 23? There is 31.
- 6 Q There is 31.
- 7 A So there is 23 minors under the '85 Trust who now
8 qualify.
- 9 Q Who will cease to qualify under the new definition?
- 10 A Who would cease to qualify under a new definition
11 unless they or their parents applied for membership.
- 12 Q And succeeded in getting membership?
- 13 A Obviously.
- 14 Q So 23, not 21?
- 15 A There is 23. There is 31 total so 23 plus 8.
- 16 Q Got you. So those 23 minors, unless they were
17 successful in their application to become members of
18 the Sawridge First Nation, would cease to receive any
19 benefit through the 1985 Trust if the new definition is
20 approved, once they cease to be minor dependents of
21 their parents? Is that your understanding?
- 22 A Once they cease to qualify as minor dependents under
23 the policies of the benefits. So it is 18 for most
24 benefits, 25 for educational benefits.
- 25 Q Understood, thank you.
- 26 A Or if they are handicapped then they continue until
27 they are 25.

1 Q Are you aware, are any of the 23 minors handicapped?

2 A No.

3 Q And --

4 A Not that I know of.

5 Q And any of the 8 minors that would not qualify under
6 any definition? Anybody who is handicapped?

7 A No. I mean some of them have learning disabilities,
8 but they are not -- like it is not a handicap.

9 Q They are not dependent adults?

10 A No.

11 Q Okay. Mr. Bujold, turning to your September 12th, 2011
12 Affidavit and looking at paragraph 22. To the extent
13 that the other undertakings don't result in production
14 of these documents, what I would like you to do is
15 undertake to provide us with any other documents or
16 additional documents that you have reviewed or are
17 relying on for your belief that all of the property
18 from the 1982 Trust was transferred to the 1985 Trust.
19 Just a little bit broader than one of your previous
20 undertakings.

21 MS. BONORA: Sorry, you are asking us for any
22 other documents than is already produced and that we
23 have produced in our email to you, is that right?

24 MS. HUTCHISON: Well, as we talked about a number
25 of times, Ms. Bonora, you have given me documents that
26 at the moment have absolutely no status before the
27 court, so.

1 MS. BONORA: In Undertaking 16 we would --

2 MS. HUTCHISON: Unless you are planning to produce
3 a supplemental Affidavit we need to get all of the
4 documents that you provided by undertaking or in some
5 form.

6 MS. BONORA: Okay. So in Undertaking 15 we said
7 we would produce all of the documents with respect to
8 the transfer of assets, and that we produced to you on
9 Friday and any other documents in relation to the
10 transfer of assets. So I can't imagine that we need
11 another undertaking.

12 MS. HUTCHISON: We may not. I'm asking for, and it
13 may simply be that your answer is to say all of the
14 documents that he is relying on are the ones provided
15 in response to the previous undertaking. But I'm
16 looking for copies of any and all documents that
17 Mr. Bujold was relying on when he swore that he
18 believed that all of the property for the 1982 Trust
19 was transferred to the 1985 Trust.

20 MS. BONORA: We aren't going to give that
21 undertaking because now you are going to ask us to
22 separate out ones he may have relied on compared to
23 ones that we have subsequently found and we are not
24 going to do that. We are going to produce the relevant
25 documents with respect to the transfer of assets. So
26 that undertaking is refused.

27 Q MS. HUTCHISON: Mr. Bujold, your understanding in

1 paragraph 22 hasn't changed as of today's date? You
2 still believe all of the 1982 assets were changed to
3 the 1985 Trust assets?

4 A M-hm.

5 Q If you could undertake to provide me with copies of any
6 documents that you are relying on to support that
7 belief and understanding. Ms. Bonora, if the answer to
8 that undertaking is simply to say it is only the
9 documents provided in response to previous
10 undertakings, that is fine. But I want to be
11 absolutely certain we have every piece of paper that
12 Mr. Bujold is relying on to arrive at that
13 understanding.

14 MS. BONORA: That is a duplication, so that
15 undertaking is refused.

16 UNDERTAKING NO. 38: (REFUSED)
17 RE PROVIDE COPIES OF ANY DOCUMENTS BEING
18 RELIED UPON TO SUPPORT THE BELIEF AND
19 UNDERSTANDING THAT THE 1982 ASSETS WERE
20 CHANGED TO THE 1985 TRUST ASSETS.

21 Q MS. HUTCHISON: Turning to paragraph 26 of your
22 September 12th Affidavit, Mr. Bujold. Do you have, or
23 does the Trust have financial statements for Sawridge
24 Holdings Ltd. and/or the Sawridge group of companies?

25 MS. BONORA: Excuse me, can you tell me why that
26 is relevant?

27 MS. HUTCHISON: What I would like to know -- I'll

1 ask it another way, Ms. Bonora.

2 Q MS. HUTCHISON: Did Mr. Peterson simply provide you
3 with the figure of \$68,506,815 or did he provide you
4 with documentation to show you that value?

5 A The companies are required to provide the trustees with
6 financial statements.

7 Q Could I ask you to provide us with copies of those
8 financial statements from 2011 until today's date,
9 please?

10 MS. BONORA: Sorry, again can I ask for the
11 relevance of it? Just because they have it doesn't
12 make it relevant. If you would like to know, we
13 thought it important for the court to know value. The
14 whole issue of what is in those financial statements I
15 am not sure is relevant to this application. So if you
16 tell me why it is relevant, I can then make a
17 determination of whether we will give that undertaking.

18 MS. HUTCHISON: The court's previous decision have
19 already made it rather clear that the amounts in
20 question are pertinent to some of the care that is
21 required to deal with this application. There is also
22 a statement in paragraph 28 of Mr. Bujold's Affidavit
23 that in order to try to actually find or deal with the
24 documentation around the transfer of assets of the '85
25 Trust would destroy the Trust. It has absolutely been
26 put in issue by the Sawridge trustees what the current
27 status of the Trust is, what its wherewithal is, what

1 its value is, what assets it holds. So I will leave my
2 undertaking on the record.

3 MS. BONORA: We will take it under advisement.

4 MS. HUTCHISON: Thank you.

5 UNDERTAKING NO. 39: (UNDER ADVISEMENT)
6 RE PRODUCE COPIES OF THE FINANCIAL
7 STATEMENTS FOR SAWRIDGE HOLDINGS LTD.
8 AND/OR THE SAWRIDGE GROUP OF COMPANIES
9 FROM 2011 UNTIL PRESENT DATE.

10 Q MS. HUTCHISON: So turning to paragraph 28 of your
11 September 12th, 2011 Affidavit, Mr. Bujold, what
12 research or investigation did you do to determine what
13 the cost would be? You are referring to enormous costs
14 to unravel the assets of the 1985 Trust. So what did
15 you do to determine those costs, and is it documented?

16 A Well, we had discussions with our accountant, with the
17 trust's accountant.

18 Q M-hm.

19 A About what would be required, and we have had other
20 discussions related to the 21-year rule and other taxes
21 that the Trusts have to pay. And that is on which
22 basis we came to the conclusion that it would be very
23 expensive.

24 Q And I am just trying to get an understanding here.
25 Enormous costs and very expensive could be considered
26 two different ends of the spectrum. So did you
27 actually get some sort of an estimate of costs from

1 your accountant? Was there some --

2 A I can't recall that we did get like a detailed
3 breakdown, an estimating cost. We were just told that
4 it would be very expensive with the capital gains tax
5 that we would have to pay in the transfer, the cost of
6 transferring and the taxes and the reorg, the corporate
7 reorganization that would be required as a result of
8 that would be very expensive.

9 Q I think what I will do, Mr. Bujold, is ask you to
10 review your records and to the extent that you got
11 non-privileged documentation that relates to the
12 statements in paragraph 28, if you could undertake to
13 provide me with copies, please.

14 UNDERTAKING NO. 40:

15 RE PRODUCE ANY NONPRIVILEGED
16 DOCUMENTATION RECEIVED RELATING TO THE
17 STATEMENTS IN PARAGRAPH 28 OF MR.
18 BUJOLD'S SEPTEMBER 12, 2011 AFFIDAVIT.

19 Q MS. HUTCHISON: Now if I understand the situation
20 correctly, Mr. Bujold, since the transfer of assets
21 from the 1982 Trust to the 1985 Trust there have not
22 actually been any -- there has been no distribution or
23 benefit to any beneficiaries from the '85 Trust?

24 A No.

25 Q So there would be operating costs and expenses, assets
26 being sold with funds going back into the corpus of the
27 Trust, but no actual distribution of the assets?

1 A None to beneficiaries, no.

2 Q To anyone?

3 A To anyone, sorry.

4 Q Okay. Just so I am clear. Mr. Bujold, in response to
5 one of the informal information requests I had made to
6 your counsel we received a copy of the Sawridge Indian
7 Band membership application form, a flow chart for the
8 membership application process, and a document titled
9 Membership Application Process, as well as a document
10 entitled Sawridge Membership Rules.

11 I am going to start with the Sawridge Membership
12 Rules. Have you seen those rules before?

13 A Yes, I have.

14 Q As far as you are aware have they remained unamended
15 since they were first passed in 1985, or have they
16 changed?

17 A There has been some amendments. I don't have a copy in
18 front of me, but I think there have been some
19 amendments.

20 Q So I will just ask you to deal with this question by
21 undertaking, then. If you could undertake to try and
22 locate for us the original version of the Sawridge
23 membership rules and then any interim versions of those
24 rules?

25 MS. BONORA: We will take that under advisement.

26 UNDERTAKING NO. 41: (UNDER ADVISEMENT)

27 RE PRODUCE THE ORIGINAL VERSION OF THE

1 SAWRIDGE MEMBERSHIP RULES AND ANY INTERM
2 VERSIONS OF THOSE RULES.

3 Q MS. HUTCHISON: And I see that you are looking at a
4 copy of the Sawridge membership rules provided by your
5 counsel. Do you recognize those?

6 A Yes, I do.

7 Q If we could mark those as an exhibit. The copy that
8 you are looking at, as far as you are aware, Mr.
9 Bujold, is that the current membership rules?

10 A It is the current.

11 Q Great.

12 EXHIBIT NO. 5:

13 SAWRIDGE INDIAN BAND MEMBERSHIP RULES.

14 Q MS. HUTCHISON: And I don't know if your counsel
15 has an extra copy of the Sawridge Indian Band
16 Membership Application Form. So is it your
17 understanding that -- you recognize that application
18 form?

19 A I do.

20 Q Is it your understanding that that is the current
21 Sawridge Indian Band membership application form?

22 A As far as I know.

23 Q Could we mark that as an exhibit, please.

24 EXHIBIT NO. 6:

25 SAWRIDGE INDIAN BAND MEMBERSHIP
26 APPLICATION FORM.

27 Q MS. HUTCHISON: Mr. Bujold, do you know if there

1 have been previous iterations or versions of that
2 membership application form?

3 A I understand that there were other membership
4 application forms, yes.

5 Q And have you seen them?

6 A No.

7 Q Do you have copies?

8 A No.

9 Q You don't have copies of them?

10 A No.

11 Q Could I ask you to undertake to contact Sawridge First
12 Nation, all you can do is request it, but ask them to
13 provide all previous versions of the Sawridge Indian
14 Band membership application?

15 MS. BONORA: We will take that under advisement.

16 MS. HUTCHISON: Thank you.

17 UNDERTAKING NO. 42: (UNDER ADVISEMENT)
18 RE REQUEST OF SAWRIDGE INDIAN BAND TO
19 PRODUCE ALL MEMBERSHIP APPLICATION FORMS
20 PRIOR TO THE ONE ENTERED AS EXHIBIT 6.

21 Q MS. HUTCHISON: Mr. Bujold, do the trustees receive
22 copies of letters of acceptance, letters of rejection,
23 notices of appeal, or appeal decisions under the
24 membership process?

25 A No, they do not.

26 Q Have you requested copies of any of those documents as
27 part of your efforts to identify beneficiaries and

1 potential beneficiaries?

2 A No.

3 Q I am going to ask you to undertake to request copies of
4 all such documents from Sawridge First Nations. So any
5 letters of acceptance in relation to membership
6 application, any letters of rejection, any notices of
7 appeal that have been filed in relation to membership
8 decisions and any appeal?

9 MS. BONORA: So the acceptance and rejection
10 letters you already asked for and those were provided
11 to you.

12 MS. HUTCHISON: Those have been provided to me
13 informally, Ms. Bonora. We can mark them as exhibits
14 today, or we can deal with them by undertaking. What
15 is your preference?

16 MS. BONORA: No, we made that request already.
17 You asked us to make the request and we did and those
18 have been provided.

19 MS. HUTCHISON: How would you like to get them into
20 the evidentiary record?

21 MS. BONORA: We can mark them as exhibits.

22 Q MS. HUTCHISON: Mr. Bujold, you are looking at a
23 series of letters, the first one is June 1st, 2004 to
24 Mr. Alan Floyd McDermott?

25 A Yes.

26 Q And the last page is an April 25th, 2008 letter to
27 Mr. Kieran Cardinal?

1 A Yes.

2 Q Have you seen those letters before?

3 A Yes, I have.

4 Q If we could mark those as an exhibit as a bundle,
5 please. I would just note on the record, Ms. Bonora,
6 what we have previously discussed. Many, in fact
7 almost all of the documents we marked as exhibits today
8 I didn't receive by the May 16th date that we discussed
9 and the fact that we are marking them as exhibits today
10 we are agreed doesn't limit my ability to examine
11 Mr. Bujold on them in the future?

12 MS. BONORA: I understand that. I just wanted
13 to make clear that our answer to you when we provided
14 it was that we have not located a letter for every
15 processed applicant. They have provided what has been
16 located. So in respect of all letters of rejection or
17 acceptance, we have provided the ones that have been
18 located.

19 MS. HUTCHISON: Okay.

20 MS. BONORA: So does that answer the
21 undertaking? I just want to be clear. I think it is
22 an answer to the undertaking.

23 MS. HUTCHISON: I thought that you had asked me to
24 deal with these by way of exhibits.

25 MS. BONORA: So there is no Undertaking 41 then.

26 MS. HUTCHISON: Unless there are further efforts
27 that Sawridge First Nation can make to locate

1 additional letters. I haven't seen your request or
2 their responses.

3 MS. BONORA: I am telling you that that is all
4 of the information that they were able to provide, so.

5 EXHIBIT NO. 7:
6 BUNDLE OF LETTERS OF ACCEPTANCE AND
7 REJECTION, FIRST ONE DATED JUNE 1, 2004
8 TO MR. ALAN MCDERMOTT AND LAST ONE DATED
9 APRIL 25, 2008 TO MR. KIERAN CARDINAL.

10 Q MS. HUTCHISON: Mr. Bujold, let's take a look at
11 the first letter in Exhibit 7. Have you at this point
12 in your role with the Trust and information that you
13 have received from Sawridge First Nation, do you have
14 any understanding of what factors would be considered
15 in a membership process around the question of whether
16 an individual has the character and lifestyle that
17 would or would not cause their admission in the band to
18 be detrimental to the future welfare and advancement of
19 the band?

20 A I do not. I can make conjecture in this particular
21 case.

22 Q If you have information I would appreciate it.

23 A He was -- this application was filled out when he was
24 in provincial jail.

25 Q I see, okay. Do you have any understanding about,
26 let's go to the letter to Ms. Belcourt which is the
27 next letter in the package, October 31st, 2012. Do you

1 have any understanding of what factors would be
2 considered when deciding whether an applicant's
3 admission into the membership of Sawridge would be in
4 the best interest and welfare of the First Nation, in a
5 general sense, firstly?

6 A Paragraph 3?

7 Q Paragraph 3, yes.

8 A No.

9 Q Do you have an understanding in relation to Ms.
10 Belcourt specifically about what factors might have
11 been in play in the decision that it would not be in
12 the best interests and welfare of the First Nation to
13 accept her as a member?

14 A No.

15 Q Do you have any understanding at this point in your
16 tenure with the Sawridge Trust about what factors would
17 be considered in assessing whether an applicant for
18 band membership has a commitment to knowledge of the
19 history, customs, traditions, culture, and communal
20 life of the First Nation?

21 A No.

22 Q Have you or the trustees ever requested some detail
23 around what goes in to an assessment of those factors
24 from Sawridge First Nation?

25 A We haven't requested any information about what goes
26 into it because we feel this is a process that is
27 totally independent and not under our purview. So what

1 we have done is asked the First Nation to consider, is
2 to consider that the process be fair and that it meet
3 the standard of administrative law, and that is it.

4 Q Other than these types of letters that are sent out to
5 applicants to tell them the results of their
6 application, are you aware of any document that the
7 Sawridge First Nation might provide to an applicant to
8 give them any more detail about the reasons for refusal
9 or acceptance? And I am just referring to the fact
10 that all of these letters sort of use a standard
11 wording without relating them back to specific facts.
12 Is there a more detailed decision document?

13 A I don't know.

14 Q You have never seen one?

15 A No.

16 Q Okay.

17 A I understand from a description given by the band
18 administrator that sometimes the council or the
19 Membership Committee will meet with one of the
20 applicants, so I would suppose that the question that
21 we are asking may lead the applicant to have a better
22 understanding. But I don't know of any documents, no.

23 Q Okay. I realize all you can do is ask, Mr. Bujold, but
24 I am going to ask you to undertake to inquire of
25 Sawridge First Nation in relation to each one of these
26 letters, and of course any other refusals or approvals
27 that these letters may not deal with, whether or not a

1 more detailed sort of reasons for decision document or
2 something that sets out in more detail for these
3 applicants what specific factors or facts in their
4 application were considered?

5 A Okay.

6 Q Thank you.

7 UNDERTAKING NO. 43:
8 RE INQUIRE OF SAWRIDGE FIRST NATION
9 WHETHER APPLICANTS RECEIVED A MORE
10 DETAILED REASONS FOR DECISION DOCUMENT
11 THAN THAT RECEIVED IN EXHIBIT 7 IN
12 RESPECT TO WHAT SPECIFIC FACTORS OR
13 FACTS IN THEIR APPLICATION WERE
14 CONSIDERED.

15 Q MS. HUTCHISON: Have you ever seen, or are you
16 aware of any document, a policy, a guideline, anything
17 that would provide either applicants or the people
18 within Sawridge First Nation charged with reviewing
19 membership applications with more insight into how
20 these factors that we just discussed would relate back
21 to specific facts of an individual's application?

22 A No.

23 Q I suspect that you will end up telling me that they
24 will tell you that it doesn't exist, but I am going to
25 ask you to inquire of Sawridge First Nation if they
26 have any such policy or guide that would assist in
27 detailing what factors would be considered in assessing

1 whether an individual's admission into the Sawridge
2 First Nation would be in the best interest and welfare
3 of the nation, whether an individual applying for
4 membership has a sufficient commitment to and knowledge
5 of the history, customs, traditions, and culture and
6 communal life of the First Nation, and whether an
7 individual has a character and lifestyle that would
8 make their admission in the band detrimental to the
9 future welfare or advancement of the band.

10 MS. BONORA: We will undertake to make that
11 inquiry.

12 UNDERTAKING NO. 44:

13 RE INQUIRE OF SAWRIDGE IF THEY HAVE ANY
14 POLICY OR GUIDE THAT WOULD ASSIST IN
15 DETAILING WHAT FACTORS WOULD BE
16 CONSIDERED IN ASSESSING WHETHER AN
17 INDIVIDUAL'S ADMISSION INTO THE SAWRIDGE
18 FIRST NATION WOULD BE IN THE BEST
19 INTEREST AND WELFARE OF THE NATION, AND
20 WHETHER AN INDIVIDUAL APPLYING FOR
21 MEMBERSHIP HAS A SUFFICIENT COMMITMENT
22 TO AND KNOWLEDGE OF THE HISTORY,
23 CUSTOMS, TRADITIONS, AND CULTURE AND
24 COMMUNAL LIFE OF THE FIRST NATION, AND
25 WHETHER AN INDIVIDUAL HAS A CHARACTER
26 AND LIFESTYLE THAT WOULD MAKE THEIR
27 ADMISSION IN THE BAND DETRIMENTAL TO THE

1 FUTURE WELFARE OR ADVANCEMENT OF THE
2 BAND.

3 (Questioning adjourned 4:30 p.m.)

4 QUESTIONING RESUMED 10:00 A.M., MAY 28, 2014.

5 Q MS. HUTCHISON: Mr. Bujold, good morning.

6 A Good morning.

7 Q You will still acknowledge that you are under oath?

8 A Yes.

9 Q Thank you. Let's jump right back into membership,
10 Mr. Bujold.

11 Your counsel provided me with a copy of Sawridge
12 Constitution Act and Sawridge Governance Act. And I am
13 looking first at the Governance Act. There is a
14 provision under Section 5 that allows for complaints in
15 relation to conflicts of interest. So what I am going
16 to ask you to do is make inquiries with Sawridge First
17 Nation to obtain copies of any letters, emails, or
18 other documents that relate to complaints of conflict
19 of interest in relation to any element of the
20 membership process, whether it is a membership
21 application, Membership Appeal Committee hearing,
22 membership issues before council, or the interviews
23 that are held occasionally for members' admission.

24 UNDERTAKING NO. 45:

25 RE INQUIRE OF SAWRIDGE FIRST NATION TO
26 PRODUCE COPIES OF ANY LETTERS, EMAILS,
27 OR OTHER DOCUMENTS RELATING TO

1 COMPLAINTS OF CONFLICT OF INTEREST IN
2 RELATION TO ANY ELEMENT OF THE
3 MEMBERSHIP PROCESS, WHETHER IT IS
4 MEMBERSHIP APPLICATION, MEMBERSHIP
5 APPEAL COMMITTEE HEARING, MEMBERSHIP
6 ISSUES BEFORE COUNCIL, OR INTERVIEWS
7 THAT ARE HELD OCCASIONALLY FOR MEMBERS'
8 ADMISSION AS PROVIDED FOR UNDER SECTION
9 5 OF GOVERNANCE ACT.

10 MS. HUTCHISON: And if I could ask you to make the
11 same inquiries in relation to the Constitution Act
12 Article 17, Subsection (8), which allows a written
13 complaint with the Elders Commission around conflict of
14 interest. So again, we are only interested in any
15 complaints that might relate to the membership process,
16 any stage of the membership application process.

17 A Okay.

18 UNDERTAKING NO. 46:
19 RE INQUIRE OF SAWRIDGE FIRST NATION TO
20 PRODUCE COPIES OF ANY LETTERS, EMAILS,
21 OR OTHER DOCUMENTS RELATING TO
22 COMPLAINTS OF CONFLICT OF INTEREST IN
23 RELATION TO ANY ELEMENT OF THE
24 MEMBERSHIP PROCESS, WHETHER IT IS
25 MEMBERSHIP APPLICATION, MEMBERSHIP
26 APPEAL COMMITTEE HEARING, MEMBERSHIP
27 ISSUES BEFORE COUNCIL, OR INTERVIEWS

1 THAT ARE HELD OCCASIONALLY FOR MEMBERS'
2 ADMISSION AS PROVIDED FOR UNDER ARTICLE
3 17, SUBSECTION (8) OF THE CONSTITUTION
4 ACT.

5 MS. BONORA: Again, that is just documents,
6 correct? That is what you are asking for?

7 MS. HUTCHISON: Yes, any records that exist. I
8 recognize that there may be verbal complaints. It
9 seems that those sections are asking for written
10 complaints, so I would expect it would have to be a
11 document.

12 Q MS. HUTCHISON: Okay. Mr. Bujold, do you have
13 copies available of, there was a bundle of about seven
14 letters that your counsel provided to me in response to
15 item 10 of our sort of informal information request.

16 MS. BONORA: Is this with respect to missing
17 information?

18 MS. HUTCHISON: The applications made by minor
19 children that were deemed incomplete. So the first
20 letter I have is March 13th, 2013 letter to a
21 Mr. Wesley Twin.

22 A Yes.

23 Q Have you seen those letters before?

24 A Yes.

25 Q Could we mark those as the next exhibit as a bundle.

26 EXHIBIT NO. 8:

27 BUNDLE OF 7 LETTERS, TOP ONE DATED MARCH

1 13, 2013 FROM SAWRIDGE TO WESLEY TWIN.

2 Q MS. HUTCHISON: Mr. Bujold, do you know when these
3 applications -- it appears the membership application
4 is made for Brittany Twin, Alexander Twin and Justice
5 Twin. Do you have any other information about when the
6 applications were actually submitted?

7 A No, I don't.

8 Q Well, we have got undertakings asking for Sawridge to
9 let us know dates of receipt and dates that they were
10 processed.

11 Do you have any understanding or information about
12 whether Wesley Twin and his three minors, how they are
13 related to --

14 A To the family?

15 Q Yes.

16 A Wesley is Walter Felix's son.

17 Q Okay. With his first wife?

18 A No, Walter Felix, not Walter Patrick.

19 Q I apologize, Walter Felix.

20 A So Walter Felix, one N, Twin who -- and Wesley was
21 adopted.

22 Q And I am assuming that the mother of Brittany,
23 Alexander and Justice is not a Sawridge member?

24 A She is not a status member.

25 Q That is why there is a need for an application for
26 membership?

27 A That is right.

1 Q Do you know whether or not these membership
2 applications have now been processed?

3 A I don't.

4 Q As of January of this year they were still waiting for
5 information on them, I understand.

6 A Yes, so these all related to Wesley? Yes.

7 Q It appears that the entire bundle relates to his three
8 children?

9 A Right. And I haven't received notice from Sawridge
10 First Nation that these children have been admitted
11 into membership, so. I presume that their applications
12 are still outstanding.

13 Q And are you aware of any other pending membership
14 applications that relate to infants or minor
15 dependents?

16 A No, I am not.

17 Q Okay. And so I just want to tie in to a document that
18 we were talking about previously, Mr. Bujold. So the
19 trustees had at one point sent out what we were looking
20 at as Exhibit D attached to your September 12th
21 Affidavit, I believe. Sorry, attached to your August
22 30th Affidavit. The November 24th, 2009 letter?

23 A Yes.

24 Q So just talking about present day, when the trustees
25 become aware of a membership application similar to the
26 ones that we are looking at in Exhibit 8, is there a
27 process then where they receive a letter similar to

1 this November 24th, 2009 letter or something that
2 alerts them to this proceeding, alerts them to the
3 existence of the Trust?

4 A No, because the trustees generally don't become aware
5 of membership applications that are in process until
6 they are completed, and so they don't alert anybody.
7 Yeah, they don't alert anybody about the proceedings
8 proactively.

9 Q Proactively?

10 A Yes.

11 Q So, and I am sort of surmising here so please let me
12 know if I am not surmising correctly. So the trustees
13 would wait until a membership application was actually
14 approved by Sawridge First Nation before any contact
15 would be made with that individual about whether they
16 were now a beneficiary under one of the Trusts?

17 A That is right.

18 Q And tell me about that process. How do the trustees
19 find out about new membership approvals?

20 A Usually I receive an email from the band administration
21 office informing me that certain membership
22 applications have been approved and giving me the
23 coordinates of those people. Then I send them a letter
24 informing them that they are beneficiaries of the
25 Trust. And at this point I am just informing them that
26 they are beneficiaries of the 1986 Trust.

27 Q Right.

1 A And then I send them a package of information about
2 what benefits are available to them.

3 Q So it is sort of a standard form, standard package?

4 A That is right.

5 Q Okay. Could you undertake to just give me a copy of
6 the standard notification or first contact package that
7 you send out?

8 A For a new beneficiary?

9 Q Yes.

10 A Yes.

11 Q Thank you.

12 UNDERTAKING NO. 47:

13 RE PRODUCE STANDARD NOTIFICATION OR
14 FIRST CONTACT PACKAGE SENT OUT FOR A NEW
15 BENEFICIARY.

16 Q MS. HUTCHISON: Mr. Bujold, I am referring to -- at
17 the moment I am taking a look at a letter that I got
18 from your counsel dated January 27th, 2014 that sets
19 out a summary of Sawridge First Nation membership
20 application process and decisions which I don't believe
21 we can mark at this point in time. Sorry, can we just
22 go off.

23 (Discussion off the Record.)

24 MS. HUTCHISON: So we have just had a chat off the
25 record, and we will refrain from any reference to the
26 January 27th, 2014 correspondence for the purposes of
27 this examination.

1 MS. BONORA: Because it was provided on a
2 without prejudice basis.

3 MS. HUTCHISON: The memorandum attached to it was,
4 yes.

5 Q MS. HUTCHISON: Now, Mr. Bujold, are you at all
6 familiar with the membership applications or the
7 process around the membership applications for
8 Elizabeth Poitras and Tracy Poitras Collins?

9 A In a very general way. I certainly have seen
10 correspondence related to that.

11 Q Okay. What sort of correspondence? Have you been
12 copied by the band, or?

13 A I haven't been copied by the band, but there were some
14 documents that we received in the collection of trust
15 documents that happened to contain some of that
16 information.

17 Q Okay.

18 A I have had conversations, many conversations with Liz
19 Poitras.

20 Q Are you aware of the status of Tracy Poitras Collins of
21 the Sawridge Band membership at this point?

22 A Yes, I am.

23 Q What is your understanding?

24 A She is a full member.

25 Q What is your understanding of the process that she went
26 through prior to getting membership approved? Was she
27 approved by Chief and Council? Did she have to move

1 through the appeal process? What is your
2 understanding?

3 A My understanding, and this is only in hearsay, was that
4 her application had to go through the appeal process.

5 Q Okay. And has she now received one of those
6 introductory packages as a Trust beneficiary?

7 A She has, and she is receiving benefits for her
8 education amongst other things.

9 Q Through the 1986 Trust?

10 A That is right.

11 Q And am I correct in understanding that under the
12 current definition she would not qualify as a
13 beneficiary of the '85 Trust?

14 A That is right.

15 Q But she would qualify if the new definition is
16 approved?

17 A That is right.

18 Q I am just trying to get a sense of that. I am going to
19 ask you to undertake to get in touch with the Sawridge
20 First Nation and request any documents that they have
21 in relation to Tracy Poitras Collins' membership
22 application, and the various decisions that were made
23 along the way right up until the final decision that
24 approved her membership. So we are looking for the
25 letters that might have been sent out to her to tell
26 her the results of the initial application; if there
27 was then an appeal, the result of that; if there was a

1 community interview, the result of that. Really
2 anything.

3 MS. BONORA: And why Tracy Poitras? Why are you
4 singling her out and asking for her information?

5 MS. HUTCHISON: Because it is an example of how the
6 membership process has worked or not worked. So we
7 have been having some trouble getting information from
8 -- we have asked for some broad undertakings, I just
9 want to make sure that on this one we know that there
10 is some documentation that should exist.

11 MS. BONORA: And have you made inquiries of
12 Tracy to provide that information yourself?

13 MS. HUTCHISON: Do you want to go off the record
14 for a minute?

15 (Discussion off the Record.)

16 MS. HUTCHISON: So we will leave that undertaking
17 on the record as is, and Ms. Bonora, I understand that
18 you would like to take it under advisement.

19 MS. BONORA: Yes.

20 UNDERTAKING NO. 48: (UNDER ADVISEMENT)
21 RE INQUIRE OF SAWRIDGE FIRST NATION AND
22 REQUEST ANY DOCUMENTS THEY HAVE IN
23 RELATION TO TRACY POITRAS COLLINS'
24 MEMBERSHIP APPLICATION, AND THE VARIOUS
25 DECISIONS MADE ALONG THE WAY RIGHT UP TO
26 THE FINAL DECISION THAT APPROVED HER
27 MEMBERSHIP INCLUDING LETTERS THAT MIGHT

1 HAVE BEEN SENT OUT TO HER INITIALLY,
2 RESULTS OF ANY APPEALS AND RESULTS OF
3 ANY COMMUNITY INTERVIEW.

4 Q MS. HUTCHISON: Mr. Bujold, we have certainly had
5 some discussions already about what the Sawridge
6 trustees have been doing to identify and locate
7 beneficiaries, or potential beneficiaries of the '85 or
8 the '86 Trust. I am assuming -- I should just say '85,
9 but I think there is going to be overlap between the
10 two. Is there anything that we haven't talked about
11 that the trustees have been actively doing to identify
12 and locate particularly minor beneficiaries or
13 potential minor beneficiaries? Any other efforts or
14 research that we haven't already gone over?

15 A The other thing that the trustees have been doing is
16 based on their knowledge of the various families,
17 because it is a very small number.

18 Q Right.

19 A They have certainly identified certain potential
20 beneficiaries or, you know, minor beneficiaries that
21 should be checked out. That is how the list -- that is
22 how we came up with the list.

23 Q Okay. So the results of that research or dialoguing
24 will be in the list that you are going to provide to me
25 by way of undertaking?

26 A That is right.

27 Q Are there ongoing efforts being made in that regard, or

1 have they just stopped since the application was filed?

2 A I continue to keep -- because of the benefits provided
3 by the Sawridge Trust under the '86 Trust sometimes
4 extend to dependents I have to keep track of all births
5 and, you know, when children become adults and deaths,
6 so I do keep track of that information by polling the
7 known beneficiaries themselves, and I also receive
8 information from the band office when there is a birth
9 or a death, or.

10 Q So there is a process for communication between the
11 Trust and the First Nation at least around that
12 particular topic?

13 A That is right.

14 Q So new applications for membership, or approval for
15 membership you are advised of?

16 A Yes.

17 Q Not applications, though?

18 A No.

19 Q And then you are advised if an existing member were to
20 pass away or have a minor -- have a new child?

21 A That is right.

22 Q And I am just thinking for a moment about some of the
23 discussions that we had around Exhibit D, that November
24 24th, 2009 letter. Is there a process at the moment
25 where the trustees are also tracking whether these
26 individual beneficiaries or potential beneficiaries are
27 on or off reserve, or do you just deal with that issue

1 at such time as you have to actually provide a benefit?

2 A No, I also, as part of my own information, data base,
3 keep track of who is living on and off reserve.

4 Q Okay.

5 A And again, I check this with the band office and often
6 with the beneficiaries themselves.

7 Q Okay. And so how does the nation provide that
8 information to the Trust? Is it sort of you just
9 inquire from time to time, or do they actually notify
10 you when there is a change in residency?

11 A We keep each other -- because sometimes I receive
12 information that the First Nation doesn't receive
13 because the beneficiaries know that they have
14 connection with the Trust in terms of benefits. So
15 they do usually keep me apprised of their address
16 changes and changes in status. And so either I receive
17 that information directly from the beneficiaries or I
18 receive it from the band office if they get the
19 information first. And we also, I don't know how to
20 put this, we sort of keep track of the rumour mill of
21 where people have moved and who has had kids and who is
22 getting married and who has died or who is sick. So we
23 -- and the band office and the Trust office keep each
24 other informed because we need -- I mean we have a
25 mutual interest.

26 Q You need to keep track of the individuals that you are
27 trying to provide services to?

1 A That is right.

2 Q Okay. So, Mr. Bujold, looking at Exhibit 3, that is
3 the September 2011 letter, and we have chatted about
4 this. So that letter was sent out after the trustees
5 got some direction from Justice Thomas about who was to
6 be notified about the applications?

7 A That is correct.

8 Q So Justice Thomas gave you the categories, as it were,
9 of the people that were to be notified?

10 A That is correct.

11 Q Is there anything that we haven't already discussed in
12 terms of the various lists that you have developed that
13 was done by the trustees to actually generate or
14 populate, I guess, the list of names within each
15 category of individual that you were to send this
16 letter out to?

17 A I think that we have talked about all of the lists that
18 were generated as part of that process. I don't recall
19 that there is anything that we have missed. I think
20 that we have pretty much covered everything.

21 Q And it is hard not having some of the documents, there
22 may be other things that we need to chat about. But if
23 you do find as you are dealing with the answers to
24 undertakings that there were -- there is additional
25 documentation or background, research that led to you
26 developing the list that you used to send out this form
27 letter, September 1st, 2011, we would just like to see

1 anything that relates to potential beneficiaries
2 particularly, and most particularly any minor
3 dependents that those potential beneficiaries or actual
4 beneficiaries may have?

5 MS. BONORA: We will take that under advisement.
6 I am not sure that the research wouldn't partly be
7 privileged. I mean I think we can provide you with the
8 list which I think that we have already done. You are
9 now asking for the background information to the list,
10 is that what you are asking for?

11 MS. HUTCHISON: That is right, Ms. Bonora. So what
12 we are trying to -- obviously we don't know what
13 information was used to develop the list, and whether
14 or not the lists reflect potential minor beneficiaries.
15 You know, we don't know -- frankly, we don't know what
16 information was obtained. So we want to be sure that
17 we have got individuals, adults, identified as actual
18 beneficiaries or potential beneficiaries, that the
19 Office of the Public Trustee is fully aware of whether
20 they have children who may also have the potential to
21 be beneficiaries or to benefit from the Trust. So we
22 are just looking --

23 MS. BONORA: Just to short-circuit that, isn't
24 really what you are looking at is perhaps anyone who
25 didn't make it to the list? Like the idea is if the
26 person is on the list now you know about them, you can
27 investigate whether they have children, although their

1 children are listed. So you are going to get all of
2 the people who are notified, you are going to get the
3 lists of children. So really you don't want the
4 research on those people, that doesn't matter to you.

5 MS. HUTCHISON: Well, it does if the research
6 perhaps indicates that they have minor dependents,
7 because as we say, the minor dependents may or may not
8 have made it on the list.

9 MS. BONORA: No, the minor dependents are on the
10 list. All of the minors are on the list. So I am just
11 wondering -- I just think that what you are asking for
12 is something that is not going to be of any assistance.
13 If the person is on the list and the minors are on the
14 list why would you need the research behind that?

15 Q MS. HUTCHISON: Mr. Bujold, for every adult that is
16 on your list that you are going to be providing me by
17 way of undertaking, have you also listed their minor
18 dependents on the list?

19 A No.

20 MS. BONORA: Okay, sorry.

21 MS. HUTCHISON: I think that I will just leave the
22 undertaking on the record.

23 A So the applicants, those people who applied under this
24 process of the November 2009 letter.

25 Q MS. HUTCHISON: Where you sent out that form.

26 A That is right, so we didn't get a complete list of
27 minors. They often didn't give us the age of their

1 children. If they listed their children they often
2 didn't give us an age. So we didn't create a list of
3 those potential minors who would be involved.

4 Q Understood. So the form that we haven't seen yet, but
5 the form that you sent out when people contacted you
6 after you emailed them the November 24th, 2009 letter,
7 did ask for some information about minor dependents or
8 children, I take it?

9 A It did. Yes, it did.

10 Q Okay.

11 A That was often left blank.

12 Q Okay. So, you know, I know one of our undertakings was
13 to ask for copies of those forms that were returned?

14 A Yes.

15 Q So it may be that once we see those forms it answers
16 some of our questions. But I am looking for any other
17 research or documentation or information that would
18 assist us in determining whether the people on your
19 list have got minor dependents or not. So if --

20 A We couldn't identify that at the moment.

21 MS. BONORA: Are you going to have any other
22 documents that you can provide?

23 A Well, other than the application form which may list
24 the names of children; if they don't put the birthday,
25 I don't know if it is a minor or not. And if the
26 children that are listed -- I mean if there is no other
27 description of them other than their name, I don't even

1 know if they would qualify.

2 Q MS. HUTCHISON: So just so that I get the process
3 clear in my own mind, Mr. Bujold, so you get these
4 application forms back?

5 A Right.

6 Q And if there wasn't complete information on, let's just
7 talk about the minors or the children, there wasn't a
8 process then where you phoned or followed up and did
9 additional research on those particular applications?

10 A No. The way that the application process worked is
11 that anybody who wanted to apply had to apply for their
12 children as well, and they were informed of that
13 usually on the phone, when they phoned in. So some did
14 fill out separate applications for their children, most
15 of whom were not minors, but. And then sometimes the
16 children would list their children, but not necessarily
17 applied for them.

18 Q Okay.

19 A And so it was sort of a complicated process, you know,
20 that they -- some people were very detailed in what
21 they provided, some people were not.

22 Q Okay.

23 A And some people filled out separate application forms
24 for their children, minors or not, and some didn't. So
25 the -- in order for the Trust to be able to even deal
26 with these children we would have had to have had the
27 same kind of information that their parents were

1 providing. And if we didn't have it, then they
2 wouldn't have received notice.

3 Q Okay. So essentially, if I am understanding correctly,
4 you get the application forms back in and there just
5 wasn't, at least at this point in time, there is not a
6 process for follow-up to gather more information. You
7 are just accepting the information in those application
8 forms as is?

9 A That is right.

10 Q Okay. So I think because we will have an opportunity
11 to chat with you again if we need to, when we get your
12 answer to undertaking with all of the copies of the
13 application forms, perhaps we will just leave that. It
14 doesn't sound like there is any more research that we
15 can identify right now. So I will reserve my further
16 questions on that, I think, until we get the answer to
17 that previous undertaking?

18 A You know, on the applications, even though we asked
19 people for this information, it wasn't a process -- we
20 hadn't decided how we were going to deal with the
21 information that we received in this process.

22 Q Right. And then you proceeded with the application for
23 advice and direction?

24 A That is right.

25 Q And that is sort of -- I am using my own words, so
26 don't feel you have to adopt it, but once you filed the
27 application for advice and direction you sort of

1 suspended the qualification process as it were?

2 A That is right, because initially there was another
3 possibility and we looked at other ways of determining
4 who the beneficiaries were prior to the application for
5 advice and direction. So, you know, we looked at, you
6 know, some kind of review, some kind of arbitration
7 review, you know, some kind of process, tribunal, we
8 looked at the applications and then, you know,
9 interviewed the applicants. And then it was determined
10 that the Trusts had no right to inquire as to who the
11 members of the Sawridge First Nation were or should be
12 because that wasn't under our purview, under our legal
13 purview. So that is why we went for the application
14 for advice and direction.

15 Q Okay.

16 A The applications that we asked for led nowhere.

17 Q Okay.

18 A So we ended up with, you know, impartial -- or not
19 impartial, but partial information that couldn't go
20 anywhere.

21 Q Okay.

22 A So it sort of sat there.

23 Q So am I to understand at some point in time the Trust
24 wasn't able to get all of the information that you
25 wanted from the First Nation? There were privacy
26 concerns?

27 A No, that wasn't what the issue was. The issue was

1 whether or not the Trusts had the right to determine
2 who the beneficiaries were, given that the two trustees
3 named the beneficiaries as members of the Sawridge
4 First Nation.

5 Q Okay.

6 A So we would have to then determine who members would
7 be. And we felt that that question was beyond our
8 purview.

9 Q Okay.

10 A So then the legal obligation for determining membership
11 falls entirely within the Sawridge First Nation and not
12 with the Sawridge Trusts. And so it left us with a lot
13 of information that we couldn't do anything with,
14 because we couldn't determine membership not having
15 that as part of our legal responsibility.

16 Q Understood. Thank you for clarifying that, Mr. Bujold.

17 A Okay.

18 Q Just turning to Exhibit J of your September 12th, 2011
19 Affidavit. And if you just turn to the signature page,
20 Mr. Bujold. Have the trustees been able to locate a
21 copy of this document that has been signed by all of
22 the trustees, or is this the only one?

23 A It is the only one that we have got.

24 Q Okay. Have you been able, just looking at page 1 of
25 that document, have you been able to locate copies of
26 any minutes of the general meeting that is referred to
27 as being held on April 15th, 1985 to ratify and approve

1 the settlement of the '85 Trust?

2 MS. BONORA: Sorry, can you just tell me what
3 you are referencing?

4 Q MS. HUTCHISON: The second paragraph, "And whereas
5 the settlement was ratified and approved at a general
6 meeting of the Sawridge Indian Band held at the Band
7 office in Slave Lake, Alberta."

8 A Okay.

9 Q Have you been able to locate any minutes or documents
10 that would tell us whether there is any discussion of
11 the transfer of assets?

12 A Other than --

13 Q Sorry, I'm looking at Exhibit J?

14 A I know. The other -- the only other thing that we have
15 got is this resolution.

16 Q And that is --

17 A Exhibit I.

18 Q You are talking to the resolution attached to Exhibit
19 I. It is the last page of Exhibit I, is that right?

20 MS. BONORA: There is only one page of Exhibit
21 I.

22 Q MS. HUTCHISON: Sorry?

23 A It is just the resolution. That is the only record
24 that we have.

25 Q Okay.

26 A So I don't know if there were minutes that were taken
27 at that meeting other than this resolution.

1 Q Okay.

2 A I think that the resolution is the only document that
3 we have got on record.

4 Q Okay. Have you made any inquiries with Sawridge about
5 whether they have got other documentation that relates
6 to that April 15th, 1985 meeting?

7 A Yes.

8 Q And they have nothing?

9 A They have nothing.

10 Q Okay. Have you been able to discuss with, I'm just
11 looking at the signatories on Exhibit I, it looks like
12 we have Walter Felix Twin and Catherine Twinn, at
13 least.

14 Have you been able to find out from those two
15 individuals whether they recall if there was any
16 information presented about the assets that were
17 actually being transferred at that meeting?

18 A We never inquired.

19 Q Could I ask you to undertake to speak to them? And I
20 do understand that Walter Felix Twin may simply not be
21 able to --

22 MS. BONORA: We won't give the undertaking on
23 Walter Felix because there is a dementia issue, so.

24 MS. HUTCHISON: If you could undertake to make the
25 inquiries of Catherine Twinn about her recollection of
26 whether or not there was -- what I am looking for is
27 was there a paper trail. Was there some documentation

1 around the transfer of the 1982 Trust assets to the
2 1985 Trust at this April 15th, 1985 meeting.

3 MS. BONORA: Sorry, was there a paper trail
4 presented at this meeting? Is that what you are asking
5 for?

6 MS. HUTCHISON: Was there information or
7 documentation? I am looking for the paper trail.

8 MS. BONORA: But I am just -- you know, a paper
9 trail indicates that there is a whole bunch of
10 documents. We have presented a whole bunch of
11 documents. You are asking was their documents
12 presented at this meeting? Is that what the
13 undertaking is?

14 MS. HUTCHISON: Let's phrase the undertaking this
15 way. Could you please make inquiries with Catherine
16 Twinn about any recollection that she has of what was
17 discussed at the April 15th, 1985 meeting that the
18 Sawridge Band resolution presented at Exhibit I of this
19 Affidavit dealt with, and then specifically does she
20 recall if there was any discussion or documentation
21 presented in relation to the transfer of assets from
22 the 1982 Trust to the 1985 Trust. And also if Ms.
23 Twinn has any documentation of that particular meeting,
24 if you could undertake to make those inquiries and
25 provide anything that she has.

26 UNDERTAKING NO. 49:

27 RE INQUIRE OF CATHERINE TWINN HER

1 RECOLLECTION OF WHAT WAS DISCUSSED AT
2 THE APRIL 15TH, 1985 MEETING THAT THE
3 SAWRIDGE BAND RESOLUTION PRESENTED AT
4 EXHIBIT I OF MR. BUJOLD'S SEPTEMBER 12,
5 2011 AFFIDAVIT DEALT WITH. SPECIFICALLY
6 DOES SHE RECALL IF THERE WAS ANY
7 DISCUSSION OR DOCUMENTATION PRESENTED IN
8 RELATION TO THE TRANSFER OF ASSETS FROM
9 THE 1982 TRUST TO THE 1985 TRUST. ALSO
10 INQUIRE IF MS. TWINN HAS ANY
11 DOCUMENTATION OF THAT PARTICULAR
12 MEETING.

13 Q MS. HUTCHISON: Mr. Bujold, just looking at Exhibit
14 A of your August 30th, 2011 Affidavit. So that is the
15 1982 Declaration of Trust. And I am looking at
16 paragraph 10 of that instrument.

17 A Which one?

18 Q Paragraph 10 on page 5. So I just want to be clear in
19 some of the discussions that we have had around the
20 transfer of assets from the '82 Trust to the '85 Trust,
21 I take it that you have at this point made every
22 inquiry that you have been able to to try and locate
23 any documentation that would have been kept pursuant to
24 this paragraph?

25 A Yes.

26 Q You have, okay. And you have provided us with copies
27 of anything that in any way relates to, or you will be

1 by way of undertaking, anything that relates to the
2 transfer of the assets in the '82 Trust to the '85
3 Trust?

4 A Yes.

5 Q Okay. What is your understanding of what system did
6 the trustees have for -- there is an identical
7 paragraph to this in the '85 Trust. What system did
8 they have for keeping accounts, receipts,
9 disbursements, investments, and transactions prior to
10 you assuming the role of CEO?

11 A For the 1982 Trust all of the records were kept in the
12 band office and were administered through the band
13 office.

14 Q Okay.

15 A From 1985, so that includes both the '85 and '86
16 Trusts, until, I think until 2003, or it could be 2001,
17 the records were kept in the band office.

18 Q Okay. So some of the challenges that we talked about
19 in terms of documenting exactly what happened with the
20 transfer of assets from 1982 Trust to the 1985 Trust,
21 is it just a situation where the documents are no
22 longer -- they were perhaps in the band office at one
23 point and are no longer there, or?

24 A Yes, and I just wanted to continue. From either 2001
25 or 2003, whenever they switched over, then the
26 companies kept the Trust documents until I arrived in
27 2009. So company employees were managing the

1 transactions. Since that time I have maintained all of
2 the records.

3 Q Okay.

4 A When the records were in the band office, previous
5 year's records were kept in a storage room -- or in a
6 storage building, and I understand that there was a
7 flood or a fire that destroyed some of those documents.

8 Q Okay. Do you know what year?

9 A No, I don't. So when we started inquiring, you know,
10 the reason for not obtaining all of the documents was
11 that there had been a flood or a fire, and some of
12 these documents simply did not exist anymore. So they
13 aren't in the band office anymore and we, as far as we
14 know, have extracted out of the storage building for
15 records anything that remained, and out of the
16 companies anything that remained, and out of the
17 offices of the Trust anything that remained. So it is
18 quite possible that the band office also may not have
19 had the same records-keeping policy. So they, you
20 know, they wouldn't have realized that you need to keep
21 Trust records forever and probably used the seven-year
22 rule and also destroyed some of the records.

23 Q Okay.

24 A So some of that, you know, sort of leads to the paucity
25 of documents in the first place.

26 Q Thank you, Mr. Bujold.

27 (Questioning adjourned.)

(Questioning resumed.)

Q MS. HUTCHISON: Mr. Bujold, you acknowledge that you are still under oath?

A Yes, I do.

Q I just have one last question, Mr. Bujold. Have you been able to locate any minutes of trustees' meetings, either for the 1982 Trust or the '85 Trust, for the time period 1982 to 1986? Were there any minutes at all that exist for that time period?

A There are some minutes, yes. I am not sure if they go as far back as '82. I would have to check and see.

Q Have you reviewed the minutes that are available for any information that would assist or relate to the transfer of assets, either from individuals into the '82 Trust, or from the '82 Trust into the '85 Trust, or that one transfer that we are aware of from an individual to the '85 Trust. Have you looked for that information?

A No, I haven't been that filtered.

Q If I could ask you to undertake to just look at what is available, obviously?

A And just from '82 to '86?

Q Well, you know what, let's actually just say any date range where you are going to find information that may assist us with the asset transfer. I mean I can't speculate about whether the asset transfer might have been discussed at a later date.

1 A Okay.

2 Q It seems as though '82 to '86 is our most likely date
3 range, but if there is information in the minutes after
4 that date range that relates to these asset transfers,
5 either from the individual into the Trust, or from the
6 '82 Trust into the '85 Trust?

7 A Okay.

8 Q As you are aware from our discussions that is a topic
9 of interest.

10 A Okay.

11 UNDERTAKING NO. 50:

12 RE REVIEW ANY TRUSTEE MEETING MINUTES
13 AVAILABLE RELATING TO THE TRANSFER OF
14 ASSETS FROM INDIVIDUALS INTO THE '82
15 TRUST, OR '82 TRUST INTO '85 TRUST, OR
16 THE ONE INDIVIDUAL TRANSFER TO THE '85
17 TRUST.

18 MS. HUTCHISON: And I think that that is it. Now I
19 don't think that we need to belabour this, but Ms.
20 Bonora and I have had some discussions on we may have
21 some additional questions on the documents that we
22 received sort of later in the day, and of course we may
23 have questions on your answers to undertakings, but
24 other than those two areas we are concluded in our
25 examination on your Affidavit.

26 A That is good.

27 Q Thank you.

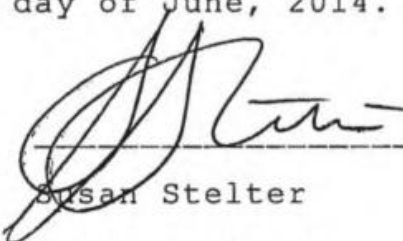
(Questioning adjourned 11:15 a.m.)

PROCEEDINGS ADJOURNED
SUBJECT TO UNDERTAKINGS

Certificate of Transcript

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

Dated at the City of Edmonton, Province of Alberta, this 13th day of June, 2014.



Susan Stelter

Court Reporter

EXHIBITS

EXHIBIT NO. 1:	51
DEMAND DEBENTURE OF SAWRIDGE ENTERPRISES LTD.	
EXHIBIT NO. 2:	51
BAND COUNCIL RESOLUTION DATED APRIL 15, 1985.	
EXHIBIT NO. 3:	89
LETTER DATED SEPTEMBER 1, 2011 FROM SAWRIDGE TRUST TO THE OFFICE OF THE PUBLIC TRUSTEE	
EXHIBIT NO. 4:	128
DOCUMENT ENTITLED TOTAL APPLICATIONS RECEIVED AND PROCESSED	
EXHIBIT NO. 5:	148
SAWRIDGE INDIAN BAND MEMBERSHIP RULES	
EXHIBIT NO. 6:	148
SAWRIDGE INDIAN BAND MEMBERSHIP APPLICATION FORM	
EXHIBIT NO. 7:	152
BUNDLE OF LETTERS OF ACCEPTANCE AND REJECTION, FIRST ONE DATED JUNE 1, 2004 TO MR. ALAN MCDERMOTT AND LAST ONE DATED APRIL 25, 2008 TO MR. KIERAN CARDINAL.	
EXHIBIT NO. 8:	159
BUNDLE OF 7 LETTERS, TOP ONE DATED MARCH 13, 2013 FROM SAWRIDGE TO WESLEY TWIN.	

UNDERTAKINGS

UNDERTAKING NO. 1: 13
RE PROVIDE LIST OF WHO SAT ON SAWRIDGE FIRST
NATION CHIEF AND COUNCIL FROM 1985 UNTIL
PRESENT

UNDERTAKING NO. 2: 13
RE ADVISE WHO THE SAWRIDGE TRUSTEES WERE
FROM 1985 TO PRESENT, BREAKING IT UP INTO
TERMS THAT THEY SAT IF THEY HAD MULTIPLE
TERMS, AND PROVIDE DATE RANGE

UNDERTAKING NO. 3: 16
RE ADVISE OF ANY OTHER TITLES OR POSITIONS
JUSTIN TWIN HOLDS UNDER THE SAWRIDGE FIRST
NATION.

UNDERTAKING NO. 4: 18
RE ADVISE WHETHER CATHERINE TWINN HOLDS ANY
OTHER ROLES, TITLES, POSITIONS, OR FULFILLS
ANY OTHER RESPONSIBILITIES FOR THE SAWRIDGE
FIRST NATION OTHER THAN THAT PREVIOUSLY
DISCUSSED.

UNDERTAKING NO. 5: 21
RE ADVISE WHICH YEAR BERTHA L'HIRONDELLE WAS
ACCEPTED BACK INTO THE SAWRIDGE FIRST NATION
AS A MEMBER.

UNDERTAKING NO. 6: 23
RE ADVISE IF BERTHA L'HIRONDELLE HOLDS ANY
OTHER ROLES, TITLES, POSITIONS OR HAS OTHER
SIGNIFICANT RESPONSIBILITIES WITHIN THE
SAWRIDGE FIRST NATION STRUCTURE.

UNDERTAKING NO. 7: 24
RE DETERMINE IF CLARA MIDBO HOLDS ANY OTHER
ROLES, TITLES, POSITIONS OR RESPONSIBILITIES
WITH SAWRIDGE FIRST NATION.

UNDERTAKING NO. 8: 25
RE ADVISE IF ROLAND TWINN HOLDS ANY OTHER
ROLES, TITLES, POSITIONS OR RESPONSIBILITIES
FOR SAWRIDGE FIRST NATION.

UNDERTAKING NO. 9: 26
RE CONFIRM WHETHER WALTER FELIX TWIN HOLDS
ANY OTHER ROLES, TITLES, POSITIONS OR HAS
SIGNIFICANT RESPONSIBILITIES WITHIN THE
SAWRIDGE FIRST NATION.

1	UNDERTAKING NO. 10:	28
2	RE PROVIDE A COPY OF ANY POLICIES OR	
3	CONTRACTS OR OTHER DOCUMENTATION RELATING TO	
4	A CODE OF CONDUCT OR MATTERS SUCH AS	
5	CONFLICT OF INTEREST FOR THE TRUSTEES	
6	THEMSELVES.	
7	UNDERTAKING NO. 11:	31
8	RE ON A BEST EFFORTS BASIS DETERMINE WHETHER	
9	THERE ARE ANY GUIDELINES, POLICIES,	
10	CONTRACTS OR ANY DOCUMENTATION RELATING TO	
11	CODES OF CONDUCT OR CONFLICT OF INTEREST IN	
12	RELATION TO THE MEMBERSHIP REVIEW COMMITTEE,	
13	MEMBERSHIP APPEAL COMMITTEE, OR CHIEF AND	
14	COUNCIL SPECIFIC TO MEMBERSHIP.	
15	UNDERTAKING NO. 12: (UNDER ADVISEMENT)	38
16	RE PROVIDE COPIES OF ANY COMMUNICATIONS SENT	
17	TO MR. FENNEL, WHETHER THEY WERE BY LETTER,	
18	EMAIL, OR OTHERWISE, DOCUMENTING THE REQUEST	
19	THAT WAS BEING MADE.	
20	UNDERTAKING NO. 13:	39
21	RE CONTACT MR. FENNEL AND ADVISE WHETHER OR	
22	NOT HE HAS ANY DOCUMENTATION OR ACCESS TO	
23	DOCUMENTATION OR IS AWARE OF ANOTHER	
24	RESOURCE OR SOURCE THAT MAY HAVE DOCUMENTS	
25	RELEVANT TO THE ASSETS THAT WERE HELD BY	
26	INDIVIDUALS AND THEN THE TRANSFER FROM THOSE	
27	INDIVIDUALS TO THE '82 TRUST, OR RELEVANT TO	
28	THE TRANSFER OF ASSETS FROM THE '82 TRUST TO	
29	THE '85 TRUST.	
30	UNDERTAKING NO. 14: (REFUSED)	41
31	RE PROVIDE COPIES OF ANY DOCUMENTATION SENT	
32	ATTEMPTING TO SEEK INFORMATION FROM DAVID	
33	JONES.	
34	UNDERTAKING NO. 15:	41
35	RE CONTACT MR. JONES AND ADVISE WHETHER OR	
36	NOT HE HAS ACCESS TO DOCUMENTS THAT RELATE	
37	TO THE ASSETS HELD BY INDIVIDUALS THAT WERE	
38	ULTIMATELY TRANSFERRED TO THE 1982 TRUST, OR	
39	THE ASSETS THAT WERE THEN TRANSFERRED FROM	
40	THE 1982 TRUST TO THE 1985 TRUST.	
41	UNDERTAKING NO. 16:	44
42	RE PRODUCE DOCUMENTS WITH RESPECT TO THE	
43	TRANSFER OF THE ASSETS FROM INDIVIDUALS INTO	
44	THE 1982 TRUST AND THEN FROM THE 1982 TRUST	
45	TO THE 1985 TRUST, AND THE ADDITIONAL	
46	FINANCIAL STATEMENTS.	

1	UNDERTAKING NO. 17:(UNDER ADVISEMENT)	62
2	RE INQUIRE OF THE VARIOUS INDIVIDUALS AND	
3	SOURCES PREVIOUSLY DISCUSSED TO DETERMINE IF	
4	THEY HAVE ANY DOCUMENTATION OR INFORMATION	
5	THAT WOULD ASSIST IN UNDERSTANDING WHAT	
6	SPECIFIC ASSETS WERE INTENDED TO BE SETTLED	
7	AS THE CERTAIN ASSETS REFERRED TO IN EXHIBIT	
8	B, AND WHAT SPECIFIC ASSETS WERE INTENDED TO	
9	BE INCLUDED IN THE DECLARATION OF TRUST AT	
10	EXHIBIT A.	
11	UNDERTAKING NO. 18:	73
12	RE INQUIRE OF CRA AND DEPARTMENT OF INDIAN	
13	AFFAIRS TO DETERMINE IF THEY HAVE	
14	DOCUMENTATION SHOWING WHAT ASSETS WERE	
15	INTENDED TO BE INCLUDED WITHIN THE TRUST	
16	SETTLEMENT AT EXHIBIT A, THE 1982 TRUST OR	
17	DECLARATION OF TRUST, AND ANY DOCUMENTATION	
18	INDICATING WHAT HAPPENED WITH THE TRANSFER	
19	FROM THE 1982 TRUST TO THE 1985 TRUST.	
20	UNDERTAKING NO. 19:(UNDER ADVISEMENT)	77
21	RE PRODUCE WRITTEN DOCUMENTATION THAT	
22	SUPPORTS THE UNDERSTANDING SET OUT IN	
23	PARAGRAPH 15 AND 18 OF MR. BUJOLD'S	
24	SEPTEMBER 12TH, 2011 AFFIDAVIT.	
25	UNDERTAKING NO. 20:	78
26	RE PRODUCE ANY PORTION OF BOARD MEETING	
27	MINUTES DEALING WITH THE DIRECTION	
28	REFERENCED IN PARAGRAPH 7 OF MR. BUJOLD'S	
29	AUGUST 30, 2011 AFFIDAVIT.	
30	UNDERTAKING NO. 21:	80
31	RE ADVISE WHICH PUBLICATIONS WERE ADVERTISED	
32	IN, HOW REGULARLY, AND OVER WHAT PERIOD OF	
33	TIME. ALSO PROVIDE COPY OF ADVERTISEMENT.	
34	UNDERTAKING NO. 22:	81
35	RE PROVIDE ANY RESPONSES RECEIVED TO	
36	NEWSPAPER ADVERTISEMENT.	
37	UNDERTAKING NO. 23:	82
38	RE PRODUCE COPY OF STANDARD FORM THAT WAS	
39	SENT OUT TO THOSE WHO RESPONDED TO AD.	
40	UNDERTAKING NO. 24:	82
41	RE PRODUCE COPIES OF ANY COMPLETED OR	
42	PARTIALLY COMPLETED APPLICATIONS RECEIVED	
43	BACK.	

1	UNDERTAKING NO. 25:	87
2	RE PRODUCE ALL THREE LISTS REFERENCED IN	
3	PARAGRAPH 10 AND 11 OF MR. BUJOLD'S AUGUST	
4	30, 2011 AFFIDAVIT.	
5	UNDERTAKING NO. 26:	93
6	RE PRODUCE COPY OF FLOW CHART REFERENCED ON	
7	PAGE 2 OF EXHIBIT D TO MR. BUJOLD'S AUGUST	
8	30, 2011 AFFIDAVIT.	
9	UNDERTAKING NO. 27:(UNDER ADVISEMENT)	93
10	RE ADVISE WHO THE DIRECTORS AND OFFICERS OF	
11	SAWRIDGE HOLDINGS LTD. AND 352736 ALBERTA	
12	LTD. WERE IN 2011 AND ADVISE IF THERE WERE	
13	ANY CHANGES IN THE INTERIM.	
14	UNDERTAKING NO. 28:	113
15	RE PROVIDE LIST OF MINOR BENEFICIARIES	
16	IMPACTED BY THE APPLICATION, INCLUDING	
17	IDENTITY AND CONTACT INFORMATION, AND THEIR	
18	REASONS FOR QUALIFYING.	
19	UNDERTAKING NO. 29:	115
20	RE PROVIDE ANY CORRESPONDENCE WITH THE	
21	MINISTER RESPECTING THE REQUEST FOR	
22	INFORMATION AND REFUSAL TO PROVIDE THE	
23	CURRENT LIST OF INDIVIDUALS MENTIONED IN	
24	PARAGRAPH 12 OF MR. BUJOLD'S AUGUST 30, 2011	
25	AFFIDAVIT.	
26	UNDERTAKING NO. 30:	118
27	RE REVIEW DOCUMENTATION AND PRODUCE ANYTHING	
28	NONPRIVILEGED DEALING WITH THE TOPIC OF THE	
29	DETERMINATION OF THE TRUSTEES MAINTAINING	
30	THE DEFINITION OF BENEFICIARIES FROM THE	
31	1985 TRUST WOULD BE POTENTIALLY	
32	DISCRIMINATORY, INCLUDING ANY COMMUNICATION	
33	BETWEEN THE TRUSTEES AND THE SAWRIDGE FIRST	
34	NATION.	
35	UNDERTAKING NO. 31:	124
36	RE PROVIDE LIST OF WHO THE 31 DEPENDENT	
37	CHILDREN WERE AT THE TIME THE AFFIDAVIT WAS	
38	SWORN AND IDENTIFY OF THOSE 31 WHICH WERE	
39	THE 23 THAT QUALIFIED AS BENEFICIARIES OF	
40	THE '85 TRUST AT THE TIME THAT THE AFFIDAVIT	
41	WAS SWORN AND WHICH WERE THE EIGHT THAT DID	
42	NOT QUALIFY. ALSO UPDATE THE LIST UNTIL	
43	TODAY'S DATE.	

1	UNDERTAKING NO. 32:	126
2	RE PROVIDE LIST OF INDIVIDUALS ADDED BY	
3	JUSTICE HUGGESSEN TO BE MEMBERS OF SAWRIDGE	
4	AND BENEFICIARIES OF THE '86 TRUST	
5	UNDERTAKING NO. 33:	130
6	RE INQUIRE OF SAWRIDGE FIRST NATION AS TO	
7	NUMBER OF APPLICATIONS THEY RECEIVED BETWEEN	
8	1985 AND 1993, HOW MANY WERE RECEIVED, HOW	
9	MANY WERE PROCESSED, AND WHAT THE OUTCOME OF	
10	THOSE MEMBERSHIP APPLICATIONS WERE FROM 1985	
11	TO 1993.	
12	UNDERTAKING NO. 34:	132
13	RE REQUEST OF THE SAWRIDGE FIRST NATION TO	
14	PRODUCE COPIES OF ALL MEMBERSHIP APPLICATION	
15	FORMS THAT THEY HAVE RECEIVED FROM 1985	
16	UNTIL PRESENT DATE.	
17	UNDERTAKING NO. 35:	133
18	RE REQUEST OF SAWRIDGE FIRST NATION TO	
19	PRODUCE A COPY OF THE JULY 21ST, 1988 BAND	
20	COUNCIL RESOLUTION, AND SPECIFICALLY ASK	
21	THEM TO CHECK THE DOCUMENTATION THAT WAS	
22	FILED IN RELATION TO THE COURT APPLICATION	
23	SAWRIDGE BAND V. CANADA 2004 SCA 16, TO SEE	
24	IF THEY CAN LOCATE A COPY OF THAT BCR AND	
25	THE ATTACHED LIST.	
26	UNDERTAKING NO. 36:	135
27	RE INQUIRE OF SAWRIDGE FIRST NATION THE DATE	
28	EACH MEMBERSHIP APPLICATION WAS RECEIVED BY	
29	THEM AND THE DATE A DECISION WAS MADE ON	
30	EACH MEMBERSHIP APPLICATION.	
31	UNDERTAKING NO. 37: (UNDER ADVISEMENT)	136
32	RE WITH RESPECT TO UNDERTAKINGS REQUESTING	
33	INFORMATION ON SAWRIDGE FIRST NATION	
34	MEMBERSHIP APPLICATIONS, IF THE FIRST NATION	
35	REFUSES OR FAILS TO PROVIDE THAT INFORMATION	
36	INQUIRE OF THE TRUSTEES DIRECTLY TO PROVIDE	
37	ANY AND ALL INFORMATION OR DOCUMENTATION	
38	THAT THEY CAN TO ANSWER THOSE QUESTIONS	
39	AROUND MEMBERSHIP APPLICATIONS.	
40	UNDERTAKING NO. 38: (REFUSED)	143
41	RE PROVIDE COPIES OF ANY DOCUMENTS BEING	
42	RELIED UPON TO SUPPORT THE BELIEFBELIEVE AND	
43	UNDERSTANDING THAT THE 1982 ASSETS WERE	
44	CHANGED TO THE 1985 TRUST ASSETS.	

1	UNDERTAKING NO. 39:(UNDER ADVISEMENT)	145
2	RE PRODUCE COPIES OF THE FINANCIAL	
3	STATEMENTS FOR SAWRIDGE HOLDINGS LTD. AND/OR	
4	THE SAWRIDGE GROUP OF COMPANIES FROM 2011	
5	UNTIL PRESENT DATE	
6	UNDERTAKING NO. 40:	146
7	RE PRODUCE ANY NONPRIVILEGED DOCUMENTATION	
8	RECEIVED RELATING TO THE STATEMENTS IN	
9	PARAGRAPH 28 OF MR. BUJOLD'S SEPTEMBER 12,	
10	2011 AFFIDAVIT.	
11	UNDERTAKING NO. 41:(UNDER ADVISEMENT)	147
12	RE PRODUCE THE ORIGINAL VERSION OF THE	
13	SAWRIDGE MEMBERSHIP RULES AND ANY INTERM	
14	VERSIONS OF THOSE RULES.	
15	UNDERTAKING NO. 42:(UNDER ADVISEMENT)	149
16	RE REQUEST OF SAWRIDGE INDIAN BAND TO	
17	PRODUCE ALL MEMBERSHIP APPLICATION FORMS	
18	PRIOR TO THE ONE ENTERED AS EXHIBIT 6.	
19	UNDERTAKING NO. 43:	155
20	RE INQUIRE OF SAWRIDGE FIRST NATION WHETHER	
21	APPLICANTS RECEIVED A MORE DETAILED REASONS	
22	FOR DECISION DOCUMENT THAN THAT RECEIVED IN	
23	EXHIBIT 7 IN RESPECT TO WHAT SPECIFIC	
24	FACTORS OR FACTS IN THEIR APPLICATION WERE	
25	CONSIDERED.	
26	UNDERTAKING NO. 44:	156
27	RE INQUIRE OF SAWRIDGE IF THEY HAVE ANY	
28	POLICY OR GUIDE THAT WOULD ASSIST IN	
29	DETAILING WHAT FACTORS WOULD BE CONSIDERED	
30	IN ASSESSING WHETHER AN INDIVIDUAL'S	
31	ADMISSION INTO THE SAWRIDGE FIRST NATION	
32	WOULD BE IN THE BEST INTEREST AND WELFARE OF	
33	THE NATION, AND WHETHER AN INDIVIDUAL	
34	APPLYING FOR MEMBERSHIP HAS A SUFFICIENT	
35	COMMITMENT TO AND KNOWLEDGE OF THE HISTORY,	
36	CUSTOMS, TRADITIONS, AND CULTURE AND	
37	COMMUNAL LIFE OF THE FIRST NATION, AND	
38	WHETHER AN INDIVIDUAL HAS A CHARACTER AND	
39	LIFESTYLE THAT WOULD MAKE THEIR ADMISSION IN	
40	THE BAND DETRIMENTAL TO THE FUTURE WELFARE	
41	OR ADVANCEMENT OF THE BAND	
42	UNDERTAKING NO. 45:	157
43	RE INQUIRE OF SAWRIDGE FIRST NATION TO	
44	PRODUCE COPIES OF ANY LETTERS, EMAILS, OR	
45	OTHER DOCUMENTS RELATING TO COMPLAINTS OF	
46	CONFLICT OF INTEREST IN RELATION TO ANY	
47	ELEMENT OF THE MEMBERSHIP PROCESS, WHETHER	
48	IT IS MEMBERSHIP APPLICATION, MEMBERSHIP	

1 APPEAL COMMITTEE HEARING, MEMBERSHIP ISSUES
2 BEFORE COUNCIL, OR INTERVIEWS THAT ARE HELD
3 OCCASIONALLY FOR MEMBERS' ADMISSION AS
4 PROVIDED FOR UNDER SECTION 5 OF GOVERNANCE
5 ACT.

6 UNDERTAKING NO. 46: 158
7 RE INQUIRE OF SAWRIDGE FIRST NATION TO
8 PRODUCE COPIES OF ANY LETTERS, EMAILS, OR
9 OTHER DOCUMENTS RELATING TO COMPLAINTS OF
10 CONFLICT OF INTEREST IN RELATION TO ANY
11 ELEMENT OF THE MEMBERSHIP PROCESS, WHETHER
12 IT IS MEMBERSHIP APPLICATION, MEMBERSHIP
13 APPEAL COMMITTEE HEARING, MEMBERSHIP ISSUES
14 BEFORE COUNCIL, OR INTERVIEWS THAT ARE HELD
15 OCCASIONALLY FOR MEMBERS' ADMISSION AS
16 PROVIDED FOR UNDER ARTICLE 17, SUBSECTION
17 (8) OF THE CONSTITUTION ACT.

18 UNDERTAKING NO. 47: 163
19 RE PRODUCE STANDARD NOTIFICATION OR FIRST
20 CONTACT PACKAGE SENT OUT FOR A NEW
21 BENEFICIARY.

22 UNDERTAKING NO. 48: (UNDER ADVISEMENT) 166
23 RE INQUIRE OF SAWRIDGE FIRST NATION AND
24 REQUEST ANY DOCUMENTS THEY HAVE IN RELATION
25 TO TRACY POITRAS COLLINS' MEMBERSHIP
26 APPLICATION, AND THE VARIOUS DECISIONS MADE
27 ALONG THE WAY RIGHT UP TO THE FINAL DECISION
28 THAT APPROVED HER MEMBERSHIP INCLUDING
29 LETTERS THAT MIGHT HAVE BEEN SENT OUT TO HER
30 INITIALLY, RESULTS OF ANY APPEALS AND
31 RESULTS OF ANY COMMUNITY INTERVIEW.

32 UNDERTAKING NO. 49: 180
33 RE INQUIRE OF CATHERINE TWINN HER
34 RECOLLECTION OF WHAT WAS DISCUSSED AT THE
35 APRIL 15TH, 1985 MEETING THAT THE SAWRIDGE
36 BAND RESOLUTION PRESENTED AT EXHIBIT I OF
37 MR. BUJOLD'S SEPTEMBER 12, 2011 AFFIDAVIT
38 DEALT WITH. SPECIFICALLY DOES SHE RECALL IF
39 THERE WAS ANY DISCUSSION OR DOCUMENTATION
40 PRESENTED IN RELATION TO THE TRANSFER OF
41 ASSETS FROM THE 1982 TRUST TO THE 1985
42 TRUST. ALSO INQUIRE IF MS. TWINN HAS ANY
43 DOCUMENTATION OF THAT PARTICULAR MEETING.

44 UNDERTAKING NO. 50: 185
45 RE REVIEW ANY TRUSTEE MEETING MINUTES
46 AVAILABLE RELATING TO THE TRANSFER OF ASSETS
47 FROM INDIVIDUALS INTO THE '82 TRUST, OR '82
48 TRUST INTO '85 TRUST, OR THE ONE INDIVIDUAL
49 TRANSFER TO THE '85 TRUST.

Excerpts of Bujold Transcript

Contents

Bujold March 7-10 Transcript, excerpts, for “intention” and “merge:”	1
Intention:	1
Merge:	2

Bujold March 7-10 Transcript, excerpts, for “intention” and “merge:”

Intention:

P. 382, Line 16:

5 Q. Okay. And if the 1985 trust failed--
 6 A. Yes.
 7 Q.-- for being discriminatory, would that be an
 8 acceptable outcome?
 9 A. Well, it-- it would certainly resolve a lot of
 10 problems.
 11 Q. Okay. So is it your-- is it the trustees' position
 12 that that would be an acceptable outcome?
 13 A. It wouldn't be the preferred outcome, but it
 14 would-- as long as the money remained for the
 15 members of the Sawridge First Nation as was
 16 originally intended, then-- then it would be-- I
 17 suppose it would be a less than acceptable but-- I
 18 mean, there isn't very much option.
 19 The trust-- once the trustees have launched
 20 the action, you know, that was presented to them
 21 early on as a possibility. They did risk assessment
 22 on it and felt that that was-- if that's what it
 23 came down to, that wasn't the preferred option, but
 24 it was certainly an acceptable option.

P. 469, Line 6:

2 Q. All right. And my understanding is as a result of
 3 such a change, then Band membership would be the
 4 requirement to be a beneficiary under the '85 trust?
 5 A. Our understanding of the 1985 trust deed definition
 6 of beneficiaries is that it was intended for the
 7 members of the Sawridge First Nation. That's the
 8 very first statement. As such, yes, we would expect
 9 that beneficiaries would be members of the
 10 Sawridge First Nation.
 11 Q. And as a result, beneficiaries like Aspen Twinn
 12 would no longer have that status; correct?
 13 A. Unless they applied for membership.
 14 Q. Which is a discretionary process that the Band
 15 determines?
 16 A. Yes.

Merge:

p.75:

1 The-- the-- initially when the trustees
 2 launched the 1103 action, the companies were
 3 requesting that the two trusts be merged because it
 4 was causing problems for the companies to operate
 5 two sets of trusts and two sets of holding companies
 6 and all the subsequent companies underneath.
 7 That became a moot point in 2012 when the
 8 companies reorganized to restructure the companies
 9 so that, rather than having to administer this--
 10 this business under the 1985 trust and this business
 11 under the '86 trust, they put all the businesses
 12 together in partnerships, and the holding companies
 13 now own shares of these holding-- of these
 14 partnerships.
 15 the trust.
 16 So merging the trusts is no longer a company
 17 requirement. So it doesn't-- it won't benefit the
 18 business of the trust to merge the trusts
 19 necessarily. It would simplify the administration
 20 of the trust, but it doesn't affect the business of
 21 So when the-- when the trustees began the 1103
 22 action, there was a desire to merge the trusts, and
 23 one of the-- the-- the advice that the trustees
 24 received or one of the-- the advisors of the trusts

25 provided a trust deed that would lead to that.

26 Q. And that was--

27 A. Or, no, it was a resulting-- like, once you merged

p. 76:

1 the trust, then-- if you merged the '85

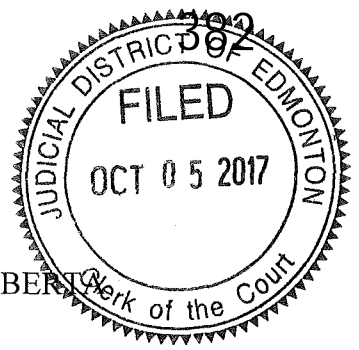
2 and '86 trust, then you could write a new trust
3 deed.

4 Q. And that was Donovan Waters; right?

5 A. That's right.

6 Q. And what was being proposed at the time in terms of
7 this merged trust deed? Would it be maintaining the
8 existing definitions of beneficiaries, or was it--

9 A. No. Because you can't merge two trusts that have
10 separate lists of beneficiaries, so it has to have
11 the same beneficiary list if you merge them.



COURT FILE NUMBERS: 1103 14112 and 1403 04885

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 BAN,
NO. 19, NOW KNOWN AS SAWRIDGE FIRST
NATION, ON APRIL 15, 1985 (the "1985 Trust"),

AND

IN THE MATTER OF THE SAWRIDGE TRUST
CREATED BY CHIEF WALTER PATRICK TWINN, OF
THE SAWRIDGE INDIAN BAND NO. 19, AUGUST 15,
1986 (the "1986 Trust")

APPLICANT: CATHERINE TWINN, as Trustee for the 1985 Trust and
the 1986 Trust

RESPONDENTS: ROLAND TWINN, BERTHA L'HIRONDELLE,
EVERETT JUSTIN TWIN AND MARGARET WARD, as
Trustees for the 1985 Trust and the 1986 Trust

QUESTIONING ON AFFIDAVIT TRANSCRIPT OF PAUL BUJOLD,

held from March 7 to 10, 2017

VOLUME I OF II

CONTAINING THE QUESTIONING HELD ON MARCH 7 & 8, 2017

Filed by: Crista Osualdini
McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, AB T5N 3Y4

PAUL BUJOLD - March 7, 2017
Questioned by Ms. Osualdini

1 point, are not seeking to have the definition
2 changed to "members."

3 Q. But that's their recommendation to the Court,
4 though, when it gets there?

5 A. No. That's not what the -- the recommendation is to
6 strike certain clauses, and what you'll be left with
7 is "members" because the definition of the '85 trust
8 -- or the '86 trust, for that matter -- the
9 definition, it starts out by saying "This is for the
10 members of the Sawridge First Nation." It's not for
11 you and I. It's not for anybody else around this
12 table, maybe except for Catherine. So that's where
13 it starts. That's the starting point.

14 Q. But the -- okay. I think we're talking about the
15 same thing. The effect of what the trustees are
16 recommending would have the result of it being the
17 Band -- current Band members of the
18 Sawridge First Nation?

19 A. Yeah, I -- I need to --

20 MS. CUMMING: But the trustees aren't
21 recommending.

22 A. No.

23 Q. MS. OSUALDINI: Well, okay. Let's talk about
24 your affidavit, then.

25 A. Just let me -- I just want to expand on that because
26 this may sort of clarify it so that we don't go down
27 this long garden path again.



PAUL BUJOLD - March 7, 2017
Questioned by Ms. Osualdini

1 The -- the -- initially when the trustees
2 launched the 1103 action, the companies were
3 requesting that the two trusts be merged because it
4 was causing problems for the companies to operate
5 two sets of trusts and two sets of holding companies
6 and all the subsequent companies underneath.

7 That became a moot point in 2012 when the
8 companies reorganized to restructure the companies
9 so that, rather than having to administer this --
11:31 10 this business under the 1985 trust and this business
11 under the '86 trust, they put all the businesses
12 together in partnerships, and the holding companies
13 now own shares of these holding -- of these
14 partnerships.

15 So merging the trusts is no longer a company
16 requirement. So it doesn't -- it won't benefit the
17 business of the trust to merge the trusts
18 necessarily. It would simplify the administration
19 of the trust, but it doesn't affect the business of
11:32 20 the trust.

21 So when the -- when the trustees began the 1103
22 action, there was a desire to merge the trusts, and
23 one of the -- the -- the advice that the trustees
24 received or one of the -- the advisors of the trusts
25 provided a trust deed that would lead to that.

26 Q. And that was --

27 A. Or, no, it was a resulting -- like, once you merged



PAUL BUJOLD - March 10, 2017

Questioned by Ms. Osualdini

1 A. Sorry.

2 Q. -- of the 2011 application?

3 A. Are you finished now?

4 Q. Pardon?

5 A. Are you finished now?

6 Q. Yes.

7 A. Okay. Yes, I do recognize that, and the trustees
8 recognize that.

9 Q. And how is it that you know that they recognize
10 that?

11 A. Because we've discussed it.

12 Q. Okay. And are the trustees concerned about that?

13 A. There was initial -- there was some initial concern
14 about it. I mean, that was one of the, you know,
15 possibilities that Donovan Waters and Doris Bonora
16 presented as possible outcomes. There was some --
17 you know, some discussion about what would happen if
18 the trust would fail. Would it -- where would it
19 go? What would happen to it? And, you know,
20 Donovan Waters said that in current trust practice
21 and -- that for the most part, the -- there were
22 probably -- the Court -- if the trust failed, the
23 Court would have very limited options in dealing
24 with it.

25 It could go back to the original trust, which
26 was the 1982 trust, or it could be folded into the
27 1986 trust. And so that's sort of what we're going



PAUL BUJOLD - March 10, 2017
Questioned by Mr. Risling

1 A. If it's discriminatory.

2 Q. All right. And my understanding is as a result of
3 such a change, then Band membership would be the
4 requirement to be a beneficiary under the '85 trust?

5 A. Our understanding of the 1985 trust deed definition
6 of beneficiaries is that it was intended for the
7 members of the Sawridge First Nation. That's the
8 very first statement. As such, yes, we would expect
9 that beneficiaries would be members of the
10 Sawridge First Nation.

12:04

11 Q. And as a result, beneficiaries like Aspen Twinn
12 would no longer have that status; correct?

13 A. Unless they applied for membership.

14 Q. Which is a discretionary process that the Band
15 determines?

16 A. Yes.

17 Q. All right. At the trustee table, has Roland Twinn
18 taken a position that that definition for
19 beneficiaries is not in there -- or that that change
20 would not be in those beneficiaries' best interest?

12:04

21 A. Yes.

22 Q. Has Bertha L'Hirondelle?

23 A. I don't recall.

24 Q. Has Justin Twin?

25 A. I don't -- I don't think so.

26 Q. Has Dr. Ward?

27 A. I don't think so.



Walter's Trial (1993) #20
Merge Trusts

387



COURT FILE NUMBER
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

1103 14112

EDMONTON

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

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

APPLICANTS

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

DOCUMENT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

AFFIDAVIT OF PAUL BUJOLD

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

Attention: Doris C.E. Bonora
Telephone: (780) 423-7100
Fax: (780) 423-72764
File No: 551860-1-DCEB

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

I, Paul Bujold, of Edmonton, Alberta, make oath and say that:

1. I am the Chief Executive Officer of the 1985 Sawridge 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 have reviewed the affidavit of Catherine Twinn ("Catherine") filed September 30, 2015 (the "September 30 Affidavit") and wish to provide by this affidavit my response to the

Trusts to Merge

153. At an October 18, 2011 meeting, Catherine referenced a part of the transcript from Chief Walter Twinn's testimony in the constitutional challenge litigation involving SFN suggesting that the two Trusts were not to co-exist; the 1985 Trust was not going to be effective and the 1986 Trust would survive. Catherine is now challenging that concept and suggesting that the Chief Walter Twinn always wanted two Trusts with two sets of beneficiaries.
154. In addition, in 2009, the Companies were lobbying the Trustees to merge the Trusts since the two-trust-situation was impeding business. Donovan Waters even drew up a Trust Deed in 2010 envisioning this merger of the Trusts if the beneficiary definition was changed to be the same in both Trusts. Catherine was involved in this process and approved it.
155. It is clear from the transcript of Chief Walter Twinn that the Trusts were to be merged. I also learned that from a phone call with Maurice Cullity. The relevant portion of the transcript is attached hereto as Exhibit "AA"

December 16, 2015 affidavit of Catherine Twinn

156. Catherine also deposed a further affidavit and filed such affidavit on December 16, 2015 ("December Affidavit"). Much of the evidence in the December Affidavit is a repetition of the evidence in the September 30 Affidavit and thus I will only address my concerns, and contrary evidence, about those matters which are not a repetition.
157. In several of the paragraphs of the December Affidavit, Catherine addresses the need for the Trustees to become involved in the SFN membership process. I believe that the decision of Justice Thomas in December 2015 has determined that it is not appropriate to address membership in the 1103 action. Further, membership is not relevant to the 1403 action. Thus, while I have contrary evidence to the issues as Catherine has raised them in the December Affidavit, I will not set out that evidence in detail as I believe it has now become irrelevant. Specifically, references to SFN membership in paragraphs 4, 6, 7, 10, 11 and 12 of the December Affidavit will not be specifically addressed.
158. Catherine suggests that the Trusts need independent representation so that the management of the assets is not affected by "improper motivations". The Trusts' assets

the membership committee and had ample opportunity for many years to change the membership process if she thought it was flawed, but she did not do so.

71. If beneficiaries need to be members of SFN, then there is already a process for determining members and there is no reason to create another process.
72. If the Trustees must determine the membership under the 1982 *Indian Act* definition, there are several problems as the 1982 Act has antiquated concepts which no longer are in force. The 1982 Act had the concept of enfranchisement and protesting illegitimate children, which no longer exists. The 1982 Act continues the discrimination against women who did not marry a man who had First Nation status and discriminates against their children. It discriminated against all kinds of people. To determine the beneficiaries under the 1982 *Indian Act* definition, by its nature, requires the Trust to function in a discriminatory manner.
73. In response to paragraph 29(e), of the September 30 Affidavit, while there may be a list of potential beneficiaries, the final determination of the Court is necessary. It may be that the Court determines that the definition should be "members" and thus no further process is necessary.
74. The 1982 Trust defined the beneficiaries as "members" of SFN.
75. My investigation shows that the goal of the Settlor of the 1985 Trust had been to switch back to "members" of SFN as beneficiaries and combine the 1985 and 1986 Trusts once the result of Bill C-31 was known.
76. I do not think that Chief Roland Twinn was the only one not to engage in the process set up by Catherine referred to in Exhibit "D" of the September 30 Affidavit.
77. In respect of paragraph 29(f) of the September 30 Affidavit, membership is the responsibility of SFN as has been the case since SFN took control of its membership in 1985. When the Settlor set up the Trusts, he could have given the Trustees control over who would be beneficiaries but he did not do so.
78. In respect of paragraph 29(g) of the September 30 Affidavit, the Trustees have concluded that SFN membership is the jurisdiction of SFN and not the Trustees. This determination is supported by:

From Bujoia Affid
Feb 15/17

391

CT054.009

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 -- Mr. Twinn,

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(E), 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?

see Oct 28/1993
transcript.
Not there.
see Oct 29/93
p93

111

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?

04 A That's right.

05 Q And then your signature under B as the first of the three

06 trustees?

07 A That's right.

Handwritten signature or mark.

03769:01 IN THE FEDERAL COURT OF CANADA
 02 TRIAL DIVISION
 03 Court File No. T-66-86
 04 BETWEEN:
 05 WALTER PATRICK TWINN, suing on his own behalf and on
 06 behalf of all other members of the Sawridge Band,
 07 WAYNE ROAN, suing on his own behalf and on behalf of all
 08 other members of the Ermineskin Band, BRUCE STARLIGHT,
 09 suing on his own behalf and on behalf of all other
 10 members of the Sarcee Band
 11 Plaintiffs
 12 -and-
 13 HER MAJESTY THE QUEEN
 14 Defendant
 15 -and-
 16 NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA
 17 (ALBERTA), AND NON-STATUS INDIAN ASSOCIATION OF

ALBERTA

 18 Interveners
 19 P R O C E E D I N G S
 20 Held at the Federal Court of Canada
 21 Edmonton, Alberta
 22 October 28, 1993
 23 Volume 24
 24 Pages 3769 to 3944
 25 Taken Before:
 26 The Honourable Mr. Justice F. Muldoon

03770:01

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 P. J. Faulds, Esq. Intervener for the Native
 09 Council of Canada (Alberta)
 10 T. P. Glancy, Esq. Intervener for the
 11 Non-Status Indian
 12 Association of Alberta

 13 -----
 14 June Rossetto Court Registrar
 15 M. Andruniak, CSR(A) Court Reporter
 16
 17

 18 *****
 19

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?

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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.

09 THE COURT: Thank you, Mr. Henderson.

10 Q MR. FAULDS: Now, Chief Twinn, I notice that the
11 people who are named as trustees on Document 92(A) are
12 yourself, George, and Samuel.

13 MR. HENDERSON: 92(A)?

08 are members, accepted, they would have to -- everything
09 is held in common.

10 Q It's a question of control, isn't it, Chief Twinn?

11 A Oh --

12 Q They have been deprived of their say over their assets?

13 A No, not at all.

14 THE COURT: Chief Twinn, we heard your opinion
15 the other day. It's not invalid. But you said you
16 didn't want a bunch of ill-educated people dissipating
17 the assets, that it would be better if everything were
18 tightly controlled so it could make money. That was what
19 I --

20 THE WITNESS: I'm sorry. This is a trust, and
21 it's -- like, the band is not a legal entity, and this is
22 from legal opinion. So that's how the structure has come
23 to be. It's between accounting and legal. This is the
24 advice we get. So . . .

25 Q MR. FAULDS: My question, Chief Twinn, was
26 directed more to the matter of authority. By what

03936:01 authority did you purport to dispose of the Bill C-31
02 people's share of band assets?

03 A They were not members until they pass our codes, they're
04 admitted by the band. That's the way I see it.

05 Q By the time they were admitted to the band, all of the
06 assets were dealt with, tied up in the trust?

07 A Tied up in trust is not necessarily -- I think I tried
08 to say the reasons for a trust. The band is not a legal
09 entity, and, you know, we have to have some -- some
10 structure to be able to operate. We need -- you know, we
11 need some -- this is a lot of legal stuff that's -- that
12 we've taken advice from professionals. But that's the
13 idea behind it. And . . .

14 Q Well, let me ask you just one last question on this
15 point, Chief Twinn: Was the Sawridge trust that we are
16 referring to, Exhibit 92(G) -- was it intended to
17 encompass all of the band's assets to take over from
18 Exhibit 92(E), which was the Sawridge inter vivos
19 settlement?

20 A It was intended to be like a holding company, the trust,
21 that we hold in trust. And also the equities that have
22 come in from the band funds are in there. So that's how
23 we've arrived at building that trust up. The
24 companies -- okay.

25 Q I have in front of me, Chief Twinn, Exhibit 92(E) and
26 92(G) side by side. And what I'm wondering is, Were

03937:01 there supposed to be two trusts -- one with Bill C-31s as

02 beneficiaries and one without -- or was there only
03 supposed to be one trust?

04 A The one in '85 was without Bill C-31s.

05 Q I'm sorry?

06 A I think the one -- the earlier one in 1985 -- the one in
07 1985, I believe, without reading, was the one without the
08 Bill C-31s.

09 Q That's correct.

10 A Right.

11 Q And the second one, Exhibit 92(G) from 1986, is the one
12 where you say the Bill C-31s were beneficiaries?

13 A That's right.

14 Q Were they supposed to exist side by side, or was one
15 supposed to take over from the other?

16 A No. Before the passage of Bill C-31, we didn't know what
17 would happen. And true to, I guess, what did happen,
18 that action has taken place. We thought we could be in a
19 lawsuit, or -- we did not like what was happening; we
20 would not survive. And that's what's going to happen.
21 We had to keep something to keep going to survive the
22 fight.

23 Maybe that's unethical, but we're
24 guilty for that, and we'll continue to do that, though.

25 MR. FAULDS: Perhaps this would be an
26 appropriate time to adjourn, My Lord.

03938:01 THE COURT: Yes.

02 There will be another day on which
03 you will be required to attend, Chief Twinn, and that
04 will be tomorrow, at least. And we'll begin again at
05 9:00.

06 Is anyone feeling any hardship from
07 that early hour? I mean any material or substantial
08 hardship.

09 Mr. Glancy?

10 MR. GLANCY: I feel no personal hardship,
11 My Lord, because my friend Mr. Faulds has very kindly
12 stood in for me. Tomorrow morning again will be one of
13 the mornings where I will not be able to attend at 9:00.
14 But I don't think anyone suffers any inconvenience as a
15 result -- I hope -- as a result of my nonattendance for
16 those few minutes.

17 THE COURT: We love to have you here all day,
18 Mr. Glancy, but if you can't make it, I understand.
19 You've got other cases to dispose of.

20 MR. GLANCY: Thank you, My Lord.

21 THE COURT: Surely.

03945:01 IN THE FEDERAL COURT OF CANADA
02 TRIAL DIVISION
03 Court File No. T-66-86
04 BETWEEN:
05 WALTER PATRICK TWINN, suing on his own behalf and on
06 behalf of all other members of the Sawridge Band,
07 WAYNE ROAN, suing on his own behalf and on behalf of all
08 other members of the Ermineskin Band, BRUCE STARLIGHT,
09 suing on his own behalf and on behalf of all other
10 members of the Sarcee Band
11 Plaintiffs
12 -and-
13 HER MAJESTY THE QUEEN
14 Defendant
15 -and-
16 NATIVE COUNCIL OF CANADA, NATIVE COUNCIL OF CANADA
17 (ALBERTA), AND NON-STATUS INDIAN ASSOCIATION OF
ALBERTA
18 Interveners
19 P R O C E E D I N G S
20 Held at the Federal Court of Canada
21 Edmonton, Alberta
22 October 29, 1993
23 Volume 25
24 Pages 3945 to 4047
25 Taken Before:
26 The Honourable Mr. Justice F. Muldoon
03946:01 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 P. J. Faulds, Esq. Intervener for the Native
09 T. K. O'Reilly, Esq. Council of Canada (Alberta)
10 T. P. Glancy, Esq. Intervener for the
11 Non-Status Indian
12 Association of Alberta
13
14 -----
15
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?
04 A That's right.
05 Q And then your signature under B as the first of the three
06 trustees?
07 A That's right.

08 Q Now, I'd like you to look at Exhibit 92(H). This, I
 09 understand, is a trust declaration apparently involving
 10 Sawridge Holdings Ltd. and the Sawridge trust. Perhaps
 11 both Mr. Henderson and I have inadvertently misled you,
 12 Chief Twinn.

13 If you look this over, is this a
 14 trust declaration placing this quarter-section of land
 15 into the Sawridge trust as well?

16 A If it's not in the Sawridge trust, it should have been.

17 Q As best you know, that's what the intention was?

18 A That's right.

19 Q If you turn over to page 3, on the signature page there,
 20 Sawridge Holdings Ltd. is the first party to the
 21 agreement.

22 Is that your signature on behalf of
 23 Sawridge Holdings Ltd.?

24 A That's right.

25 Q And then yourself as the trustee of the Sawridge trust.

26 That's your signature as the trustee on behalf of the

03951:01 Sawridge trust?

02 A That's right.

03 THE COURT: Who is the witness there? Can you
 04 make out the signature of the witness? It looks like
 05 something Dhalgren.

06 THE WITNESS: That's my secretary, Dhalgren.

07 THE COURT: D-a-h-l-g-r-e-n.

08 THE WITNESS: D-h-a-l-g-r-e-n.

09 Q MR. FAULDS: If I could perhaps direct your
 10 attention to the document after that, 92(I). If you have
 11 that in front of you, that, I understand, is a trust
 12 declaration involving shares in a numbered company -- oh,
 13 I'm sorry. I can't read my own initials. I think I'm
 14 looking at 92(J). Perhaps if Chief Twinn could see
 15 92(J).

16 That is a trust declaration
 17 relating to shares in a numbered company. And if you
 18 look at page 4, the parties to that agreement are the
 19 numbered company 352736 Alberta Ltd. and the
 20 Sawridge Indian Band?

21 A That's right.

22 Q Under the signature 352736 Alberta Ltd. that is your
 23 signature?

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?

26 A That's the economic structure of the Sawridge Band, yes.

03959:01 Q And the band council represents the political structure?

02 A That's right.

03 MR. FAULDS: If you'll just bear with me for one

04 moment, My Lord.

05 Q MR. FAULDS: I'd like to just turn away from
06 these economic questions now, Chief Twinn, and just pick
07 up a little bit more on something which Mr. Akman was
08 asking you about, and that had to do with the transcripts
09 of conversations that were conducted with Professor Moore
10 in 1991. And I'm looking at --

11 MR. HENDERSON: My Lord?

12 THE COURT: Yes.

13 MR. HENDERSON: I'm going to object to Mr. Faulds
14 asking any questions of the witness with respect to
15 issues involving aboriginal rights, because, of course,
16 in the intervener's pleading in this regard he agrees
17 with our pleading, that there are such aboriginal rights,
18 and he does not join issue in that regard.

19 Mr. Akman, of course, is fully
20 entitled to explore that, but not this intervener.

21 I could read you the paragraph of
22 the statement of intervention in that regard, My Lord.

23 THE COURT: You should read it just for the
24 record, if you would, please, Mr. Henderson.

25 MR. HENDERSON: My Lord, just for the record, the
26 relevant portion of the amended statement of claim is

03960:01 paragraph 11. And that paragraph simply states that

02 "The right of the members of an Indian band to
03 determine the membership of the band was an
04 existing aboriginal right prior to the signing
05 of Treaty Numbers 6, 7 and 8. The right
06 remained an aboriginal right on April 17,
07 1982."

08 And if I go to the statement of
09 intervention of my friend, which is at Tab 7 of the
10 record -- I'm sorry -- Tab 6 of the record, in
11 paragraph 5(c) my friend states, on behalf of his client,
12 that

13 "With respect to paragraphs 5, 11 and 12 of
14 the Statement of Claim, the NCC (Alberta)
15 states that prior to the signing of Treaties
16 Numbers 6, 7 and 8, aboriginal persons
17 organized themselves in self-governing groups
18 based upon kinship and other factors, the
19 existence of which groups was recognized by
20 the Government of Canada in the negotiation
21 execution of the said treaties."

22 Nowhere does my friend deny -- in
23 fact, with respect to the amended defence, in paragraph 6

Paul Bujala 411
Feb 15/2017

APPLICATION FOR ADVICE AND DIRECTION LEGAL ISSUES

14 February 2012

Pg 680-68

GRANDFATHERING

In earlier discussions on the Application for Advice and Direction on the 1985 Trust, Trustees had discussed the possibility of 'grandfathering' beneficiaries of the 1985 Trust who would be excluded as beneficiaries if the definition of beneficiaries in the 1985 Trust was revised to be more like the definition of beneficiaries in the 1986 Trust. The decision at the time was not to recommend 'grandfathering' since most of the affected beneficiaries would either continue to be covered as dependants of existing beneficiaries for most benefits or could apply to the First Nation for membership and had a likelihood of being favourably considered by the First Nation.

During our meeting with the Office of the Public Trustee, counsel for the Public Trustee again raised the issue of 'grandfathering' as a way to protect affected minor beneficiaries and suggested that the trusts consider including 'grandfathering' these minor beneficiaries in Application for Advice and Direction.

This issue was raised with the Trustees at the 9 January 2012 meeting but not resolved. After the trustee meeting, the legal team met with Paul and Brian to further discuss this issue. During that discussion, it became apparent that opening up the issue of 'grandfathering' could open both the Sawridge trusts and the Sawridge First Nation to a number of on-going problems:

- Would only the affected minor beneficiaries be included in this 'grandfathering' or would the affected adults also be included?
- Would including a number of 'grandfathered' beneficiaries open up the floodgates to other potential beneficiaries seeking beneficiary status?"
- Would those 'grandfathered' try to use this inclusion in future legal actions challenging the right of the Sawridge First Nation to determine its own membership?
- Would those not 'grandfathered' also try to use the fact that they had not been included under the Trust in legal challenges to the 1985 Trust?
- Would 'grandfathering' simply perpetuate the discrimination that the Application for Advice and Direction is trying to correct?

During our discussions with former Justice Maurice Cullity, it was pointed out that the 1985 Trust was meant to be a transition trust to protect assets while the constitutional court challenge to Bill C-31 was being decided. The intent was to merge the two Trusts and have the same class of beneficiaries as under the 1986 Trust in the combined Trust, that is, beneficiaries would be members of the Sawridge First Nation.

Given these questions and the information we have gathered on the history of the Trusts, the legal team is recommending that we do not 'grandfather' any affected beneficiaries from the current definition in the 1985 Trust and seeks the advice of the Trustees on this question.

ASKING PARENTS FOR LETTERS OF SUPPORT

At the 9 January 2012 Trustee meeting, the possibility was raised of asking parents of minor beneficiaries who would be excluded if the definition of beneficiaries of the 1985 Trust was changed to be more like the definition of beneficiaries in the 1986 Trust to provide letters of support saying that they were in support of this move by the Trusts. Some Trustees felt that since there are some who have negative views on the Trusts, such a move may be difficult.

Trustee Meeting Minutes, 14 February 2012

After the Trustee meeting, the legal team discussed this issue with Paul and Brian and raised a number of issues that may affect whether or not we undertake to get these letters of support.

- Should parents of affected minors be put in the position of having to decide whether to agree to the removal of legal rights possessed by their children, a proposition which on its face should be unacceptable?
- Would asking for letters of support or affidavits from parents open up the possibility of having these parents cross-examined by intervening parties in the Application for Advice and Direction, potentially raising the issue of membership and prolonging the process?
- If we could not get all affected parents to participate, would this raise questions about those parents who are not in favour of the move to change the definition of beneficiaries in the 1985 Trust?
- Would asking parents to participate raise the likelihood of negative backlash on the part of the parents or their children prior to the Accounting to Beneficiaries scheduled to take place after the completion of this Court Application?
- After discussing this issue, the legal team recommends not asking parents for letters or affidavits of support and seeks the advice of the Trustees on this question.



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
(the "1985 Sawridge Trust")

APPLICANTS

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

DOCUMENT

APPLICATION

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

Reynolds Mirth Richards & Farmer LLP
3200, 10180 101 Street
Edmonton AB T5J 3W8

Attention: Marco S. Poretti
Telephone: (780) 497-3325
Fax: (780) 429-3044

NOTICE TO RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date

June 30, 2015

Time	2:00pm
Where	Law Courts Building, Edmonton Alberta
Before Whom	Justice D. Thomas

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Advice and direction with respect to the litigation plan which is attached hereto as Schedule "A".
2. Advice and direction with respect to the offer of settlement which is attached hereto as Schedule "B".
3. Advice and direction with respect to the Public Trustee of Alberta retaining out-of-province lawyers to advise and provide research at significant costs to the trustees, when able lawyers exist in Alberta.
4. Advice and direction with respect to a full audit and review of this matter with all accounts including those of agents retained by the Public Trustee, produced in full without redaction.
5. Such further and other relief as this Honourable Court deems just and appropriate.

Grounds for making this application:

6. The litigation in this action seems to have stalled and the trustees seek the direction of the Court to set a litigation plan as set out in Schedule "A" or as may be directed by the Court.
7. The trustees have made a settlement offer to the Public Trustee of Alberta which settles all issues for the minor children who are affected by a change in definition of the 1985 Sawridge Trust. The trustees seek direction on the narrow issues which must be addressed if all the minor children who would be excluded by the change in definition are given irrevocable beneficiary status in the 1985 Sawridge Trust.
8. The Court in its inherent jurisdiction in the protection of minors and its *parens patriae* jurisdiction, must review the settlement and determine if it is appropriate for the Public Trustee of Alberta to refuse the generous settlement that is offered to the minor children. There are significant benefits to being granted beneficiary status without the need to apply for membership in the Sawridge Band. Such an offer should not be disregarded. There is no guarantee that these minors would be granted beneficiary status in the final result of this action.
9. The Public Trustee of Alberta was granted advance costs in this action. The expenditures are reviewable by this Court. To date the accounts of the Public Trustee have been paid without question although given the redacting of the accounts, it is difficult for the trustees to challenge the accounts.
10. The Public Trustee has now requested that out-of-province lawyers at significantly higher hourly rates than the Alberta lawyers involved in this action be retained and paid. The first account was submitted in excess of \$5,000 as a disbursement to the account of Ms. Hutchison. The account and letter from Ms. Hutchison are attached hereto as Schedule "C".

11. The applicants will rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

12. Schedules to this Application.
13. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

14. Alberta Rules of Court.
15. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

16. *Trustee Act*, RSA 2000, c. T-8, and regulations and amendments thereto.
17. *Minors' Property Act*, SA 2004, CM-18.1, and regulations and amendments thereto.
18. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

How the application is proposed to be heard or considered:

19. In person, with all parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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"

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

APPLICANTS

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

DOCUMENT

PROPOSED LITIGATION PLAN

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENTATTENTION: DORIS BONORA
DENTONS CANADA LLP
#2900, 10180 – 101 STREET
EDMONTON, AB T5J 3V5FILE NUMBER : 551860-1-DCEB
PH : 780-423-7100
FAX : 780-423-7276

1. The remaining steps and procedures are to be completed on or before the dates specified below:

ACTION	DUE ON OR BEFORE
Questioning of Paul Bujold on documents and undertakings	July 30, 2015
Application on Objections and documents	September 30, 2015
Questioning resulting from Application	November 30, 2015
Mediation to come up with joint proposal	December 31, 2015
Briefs for Applicant	January 31, 2016
Brief for Respondent	February 29, 2016
Application	March 31, 2016

This Litigation Plan is agreed to by the Parties

Dentons Canada LLP

Reynolds Mirth Richards & Farmer LLP

Per: _____
Doris Bonora
Solicitors for the Applicants

Per: _____
Marco S. Poretti
Solicitors for the Applicants

Chamberlain Hutchison

Per: _____
Janet L. Hutchison
Solicitors for the Office of the Public Trustee
of Alberta

DENTONS

Doris C.E. Bonora

doris.bonora@dentons.com
D +1 780 423 7188Salans FMC SNR Denton
dentons.comDentons Canada LLP
2900 Manulife Place
10180 - 101 Street
Edmonton, AB, Canada T5J 3V5T +1 780 423 7100
F +1 780 423 7278

June 1, 2015

File No.: 551860-1

SENT VIA E-MAIL

WITH PREJUDICE

Chamberlain Hutchison
Suite 155, Glenora Gates
10403 - 122 Street
Edmonton AB T5N 4C1

Attention: Ms. Janet L. Hutchison

Dear Madam:

RE: Sawridge Band Inter Vivos Settlement ("1985 Sawridge Trust" or "Trust" Action No. 1103 14112

These proceedings were initiated on August 31, 2011. At that time, the trustees of the 1985 Sawridge Trust obtained an Order directing that an application for advice and directions was to be brought regarding the definition of "beneficiaries" contained in the Trust deed. It is coming upon 4 years since the issuance of that Order, and despite great expense incurred by our clients, we are no nearer resolution of this issue. The time that has elapsed and the costs that have been incurred are detrimental to the Trust and are not in the best interests of the beneficiaries.

We are now in receipt of your letter dated May 15, 2015, wherein you advise that you will be seeking joinder of our action with Action No. 1403 04885. It is our respectful view that the two actions are unrelated, and joinder of these actions would result in further significant delay and expense to the Trust.

Our clients have considered how to best proceed given the circumstances and we wish to propose a settlement. As you know, the concern of the trustees is that the current definition of "beneficiaries" is discriminatory, and we are seeking the advice and direction of the Court to address this concern. By changing the definition of "beneficiaries" to one that references membership in the Band, it was thought that this would best express the intentions of all parties concerned including the settlors and trustees of the original trust. However, we acknowledge that such a change is a concern to your client and the minors that you represent. We have our list of beneficiaries and have included beneficiaries who were born after the litigation began and included children who have become adults and further included children who have become members. In particular, there are 24 children that are currently beneficiaries of the 1985 Sawridge Trust, and all but 4 of them would lose their beneficiary status should the definition of "beneficiaries" be changed to equate to membership. There are 4 children who have attained

membership status and thus they will continue to be beneficiaries if the definition of beneficiary changed to "members". See table 1 for a list of the children who would lose beneficiary status. See Table 2 for a list of the children who have been admitted as members. There are 4 minors who have become adults since the litigation began (or will be adults in 2015). They have remained on the tables despite becoming adults.

Our client is prepared to "grandfather" the 20 children who have not yet been admitted to membership whereby they would not lose their beneficiary status, despite the change in the definition. These individuals would maintain their beneficiary status throughout their lifetime. Thus we are essentially offering these minors a complete victory in this matter. They would not be excluded from the trust regardless of their ability to obtain membership. While we maintain that they are likely to become members, we would now guarantee their beneficiary status in the trust which could offer them significant benefits in the future. There is no guarantee that a change in definition if approved by the court would provide benefits for these children.

The perpetuation of discrimination in the current definition of beneficiaries is evident in respect the women who were excluded from beneficial status in the 1985 Trust by the Indian Act, 1970 even though they may have regained membership in the Sawridge First Nation. These women were granted membership in the Sawridge First Nation as a result of Bill C-31 either through application to the First Nation or as a result of a Court Order. Since these women are all current members of the Sawridge First Nation and since it is the intent of the Trustees to apply for a variance to the 1985 Trust definition of beneficiary which includes all members of the Sawridge First Nation as beneficiaries, these women will be included as beneficiaries in the 1985 Trust should the Court agree to the proposed variance to the 1985 Trust. The delay in this litigation and the delay in the change of definition perpetuates the discrimination for these women. They cannot receive benefits from this trust and they continue to be singled out as members who do not enjoy the same status as other members of the First Nation. A change in definition is a very good step to remedying the discrimination for these women as they are presently excluded from the trust and with the change in definition will be included as beneficiaries.

We believe that such a solution of grandfathering the minors on Table 1 is not only fair but provides the Public Trustee with everything that it could reasonably expect in these proceedings. Not only is the discriminatory provision removed, but all of the minor "beneficiaries" who would lose their status are protected. While we acknowledge that the Court will ultimately have to decide whether such a proposal is appropriate, we are hopeful that a joint submission to that effect will convince Justice Thomas of the same. We are also hopeful that your client will view such a proposal as a good faith attempt by the trustees to address the interests of the minor beneficiaries, and that you will agree to join us in seeking the necessary Order from the Court without delay. As noted above, we are essentially offering these minors a complete victory in this matter.

As we are proposing to grandfather as beneficiaries all of the minor children who would lose their status we feel that the Public Trustee has fulfilled the mandate provided to it by the court. We are offering to grandfather all of these children in the interests of fairness and in the interests of stopping the litigation and proceeding to use the trust assets for the benefit of the beneficiaries instead of the costs of litigation.

We would also seek consent or at least no opposition to the nunc pro tunc approval of the transfer of assets from the 1982 trust to the 1985 trust. We believe that this was clearly intended and the trust has been operating since 1982. It would be impossible to overturn the transactions and events that have occurred since 1982. Thus we seek the approval for the transfer of assets. It is a benefit to all the beneficiaries to remove this uncertainty. To be clear, if the transfer is not approved we believe that the assets would need to return to the 1982 trust in which the definition of beneficiary is the members of the First Nation and thus the children you represent would not be included.

Thus we seek your approval for an order

1. To amend the definition of beneficiaries as follows:

"Beneficiaries" at any particular time shall mean:

- a. 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. the individuals who are listed as Schedule A to this trust (Schedule A would include all the individuals listed on Table 1).

2. Approving the transfer of assets from the 1982 trust to the 1985 trust nunc pro tunc.

This offer is open for acceptance until **June 29, 2015**. We look forward to hearing from you.

Yours very truly,
Dentons Canada LLP

Doris C.E. Bonora

Reynolds Mirth Richards & Farmer LLP

Marco Poretti
DCEB/pach

Table 1: Minor Beneficiaries of the 1985 Trust as at August 31, 2011 updated to 2015

Beneficiary	Birthdate	Age in 2015	Category
1. Lamouche-Twin, Everett (Justin Twin)	05/10/2003	12	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
2. Lamouche-Twin, Justice (Justin Twin)	02/04/2001	14	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
3. Lamouche-Twin, Kalyn (Justin Twin)	24/08/2007	8	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
4. Lamouche-Twin, Maggie (Justin Twin)	27/03/2009	6	Illegitimate Child of Illegitimate Male Child of Female Band member Not Protested
5. Moodie, Jorja L. (Jeanine Potskin)	29/01/2008	7	Illegitimate Child of Female Band member Not Protested
6. Potskin, Ethan E.R. (Trent Potskin)	15/01/2004	11	Illegitimate Child of Male Illegitimate Child of Female Band member Not Protested
7. Potskin, Jaise A. (Jeanine Potskin)	25/03/2003	12	Illegitimate Child of Female Illegitimate Child of Female Band member Not Protested
8. Potskin, Talia M.L. (Trent Potskin)	16/03/2010	5	Illegitimate Child of Male Illegitimate Child of Female Band member Not Protested
9. Robberstad, Jadya (Jaclyn Twin)	04/07/2011	4	Illegitimate Child of Female Band member Not Protested
10. Twin, Alexander L. (Wesley Twin)	23/01/2005	10	Child of Married Male Band member
11. Twin, Autumn J. (Darcy Twin)	26/09/2002	13	Child of Married Male Band member
12. Twin, Destin D. (Jaclyn Twin)	24/06/2008	7	Illegitimate Child of Female Band member Not Protested
13. Twin, Justice W. (Wesley Twin)	20/09/2001	14	Child of Married Male Band member
14. Twin, Logan F. (Darcy)	17/04/2007	8	Child of Married Male Band member

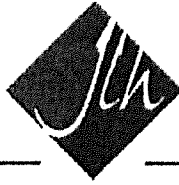
Beneficiary	Birthdate	Age in 2015	Category
Twin)			
15. Twin, River C. (Darcy Twin)	03/05/2010	5	Child of Married Male Band member
16. Twinn, Clinton (Irene Twinn)	03/02/1997	18	<ul style="list-style-type: none"> ➤ Illegitimate Child of Female Band Member Not Protested ➤ Adult after 30 August 2011
17. Twinn-Vincent, Seth (Arlene Twinn)	01/07/2001	14	Child of Female Band member who married Non-Band member
18. Twinn-Vincent, W. Chase (Arlene Twinn)	31/07/1998	17	Child of Female Band member who married Non-Band member
19. Potskin, William (Aaron Potskin)	19/09/2013	2	<ul style="list-style-type: none"> ➤ Child of Male band member ➤ Born after the litigation began
20. Twinn, Kaitlin (Paul Twinn)	23/02/1995	20	<ul style="list-style-type: none"> ➤ Child of male band member ➤ Adult after 30 August 2011

Table 1: Minor Beneficiaries of the 1985 Trust as at August 31, 2011 updated to 2015

Table 2: Beneficiaries to the 1985 Trust who have become members

Non-Beneficiary	Birthdate	Age in 2015	Category
1. Twinn, Alexander G. (Roland Twinn)	01/10/1997	18	<ul style="list-style-type: none"> ➤ Child of Married Male Band member ➤ Admitted as a member of the First nation ➤ Adult (this year) after 30 August 2011
2. Twinn, Corey (Ardell Twinn)	18/01/1994	21	<ul style="list-style-type: none"> ➤ Child of male band member ➤ Admitted as a member of the First nation ➤ Adult after 30 August 2011
3. Twin, Starr (Winona Twin)	29/11/2002	13	<ul style="list-style-type: none"> ➤ Illegitimate Child of Female Band member Not Protested ➤ Admitted as a member of the First nation
4. Twin, Rainbow (Winona Twin)	31/05/1998	17	<ul style="list-style-type: none"> ➤ Illegitimate Child of Female Band member Not Protested ➤ Admitted as a member of the First nation

Table 2: Beneficiaries to the 1985 Trust who have become members



HUTCHISON LAW

#155 Glenora Gates
10403 122 Street
Edmonton, Alberta
T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

* Janet L. Hutchison, L.L.B.
Rebecca C. Warner, B.A., J.D., Student-at-Law

Our File: 51433 JLH

SENT BY EMAIL ONLY

May 22, 2015

Reynolds Mirth Richards & Farmer LLP
Suite 3200 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3W8

Dentons LLP
2900 Manulife Place
10180 - 101 Street
Edmonton Alberta T5J 3V5

Attention: Marco Poretti

Attention: Doris Bonora

Dear Sir and Madam:

Re: In the Matter of the Sawridge Band Inter Vivos Settlement – Court of Q.B. Action No. 1103 14112

We are taking this opportunity to enclose our Statement of Account, File 51433, Invoice #4015, for services rendered between April 16, 2015 and May 19, 2015, balance owing \$19,369.69. In accordance with our agreement with the Sawridge Trustees, we are providing you with an account showing total time and charges but with privileged information blocked out. Should you have any questions or concerns on the account, please contact me directly.

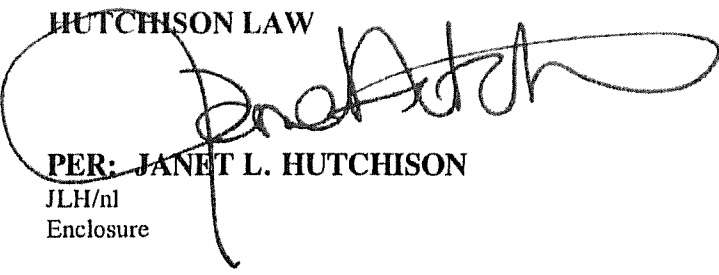
We look forward to receiving payment of this account in the amount of \$19,369.69 within 30 days of the issuance of this account.

If the Sawridge Trustees are objecting to Supreme Advocacy charges, we would request that all amounts other than the Supreme Advocacy disbursement be paid as per our costs agreement.

We look forward to continuing to provide you with quality legal services in this matter.

Yours truly,

HUTCHISON LAW



PER: JANET L. HUTCHISON

JLH/nl

Enclosure



#155, Glenora Gates
10403 122 Street
Edmonton, AB T5N 4C1

Telephone: (780) 423-3661
Fax: (780) 426-1293
Email: jhutchison@jlhlaw.ca
Website: www.jlhlaw.ca

STATEMENT OF ACCOUNT

Public Trustee of Alberta
400 South, 10365 97 Street
Edmonton, Alberta T5J 3Z8

File #:51433

Inv #: 4015

May 21, 2015

RE: In the Matter of the Sawridge Band Inter Vivos Settlement - Court of Q.B. Action No. 1103 14112

To all legal services rendered in connection with the above-noted matter, including the following:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
Apr-15	Review file; Receipt and review of correspondence [REDACTED]; Correspondence to [REDACTED]		
Apr-15	Receipt and review of correspondence from D. Bonora and M. Poretti; Correspondence to M. Poretti; Receipt and review of correspondence [REDACTED]; Correspondence to [REDACTED]; Receipt and review of correspondence from D. Bonora. Review file; Correspondence to D. Bonora.		
Apr-15	Receipt and review of correspondence from D. Bonora, M. Poretti and N. Cummings; Review file; Correspondence to D. Bonora and N. Cummings; Correspondence [REDACTED]; Teleconference [REDACTED]; Review file [REDACTED]; Review file re: questioning on P. Bujold's undertakings; Draft correspondence [REDACTED]		
Apr-15	Receipt and review of correspondence; Review file [REDACTED]; Meeting with [REDACTED]; Review P. Bujold answers to undertakings; Draft correspondence.		
Apr-15	Legal research [REDACTED]		

[REDACTED]; Review file [REDACTED]

May-15 Receipt and review of correspondence from Dentons; 2.80

Receipt and review of correspondence [REDACTED]
[REDACTED]; Legal research; Teleconference
[REDACTED]; Correspondence [REDACTED];
Correspondence [REDACTED].

May-15 Review file re: preparation for P. Bujold
questioning; Draft and revise [REDACTED];
Legal research; Draft and revise correspondence to
M. Poretti and D. Bonora; Receipt and review of
correspondence [REDACTED]; Receipt
and review of correspondence [REDACTED];
Correspondence [REDACTED]; Receipt and review of
correspondence [REDACTED]; Correspondence [REDACTED]
[REDACTED]; Update [REDACTED].
(full day)

May-15 Review and [REDACTED]
[REDACTED]; Telephone consultation [REDACTED]
[REDACTED] Receipt and review of correspondence
[REDACTED]; Receipt and review of correspondence
[REDACTED].

Review and revise correspondence to D. Bonora
and M. Poretti; Review file [REDACTED]
[REDACTED]

May-15 Review file [REDACTED]; Meeting [REDACTED]
[REDACTED]

May-15 Receipt and review of correspondence [REDACTED]
[REDACTED]; Review file [REDACTED]
[REDACTED] Review correspondence [REDACTED]; Draft
correspondence [REDACTED]; Draft
correspondence [REDACTED]; Draft
correspondence [REDACTED]
[REDACTED]

May-15 Receipt and review of correspondence [REDACTED]
[REDACTED]; Review and revise
correspondence [REDACTED].

May-15 Review file; Telephone consultation [REDACTED]
[REDACTED] Revise
correspondence to Dentons and RMRF.

FEES FOR PROFESSIONAL SERVICES

32.10

\$13,642.50

Total Hours: 32.10 X \$425/Hr (J. L. Hutchison)

OTHER CHARGES

Photocopies \$272.75

Total Other Charges

\$272.75

DISBURSEMENTS

Accuscript Reporting Services Invoice #17739 \$221.00

Parking - Meeting \$5.71

Supreme Advocacy Invoice #2254 \$4,955.00

Total Disbursements

\$5,181.71

GST \$272.73

Total Fees, Disbursements & GST

\$19,369.69

Balance Due **\$19,369.69**

Hutchison Law

E. & O.E.

* tax-exempt

GST # 87325 1573

Per: 

Janet L. Hutchison

Payable upon receipt. Interest charged at 18% per annum on accounts over 30 days.

TRUST STATEMENT

	<u>DISBURSEMENTS</u>	<u>RECEIPTS</u>
May-05-15 Received From: Sawridge Trust Conduct Monies for Elizabeth Poitras		338.76
May-06-15 Paid To: Liz Poitras Payment of Conduct money to witness	288.76	
Paid To: Janet Hutchison Prof Corp Reimbursement of Conduct money advance to witness	50.00	
Total Trust	<u>\$338.76</u>	<u>\$338.76</u>
Trust Balance		\$0.00

Invoice # 2254
 Date: 05/15/2015
 Due On: 06/14/2015

ADVOCACY LLP

340 Gilmour Street Suite 100
 Ottawa, Ontario
 K2P 0R3
 Phone: 613-695-8855
 613-695-8580

Janet L. Hutchison
 Hutchison Law
 #155, Glenora Gates
 10403 - 122 Street
 Edmonton, Alberta
 T5N 4C1

0274-006

1985 Sawridge Trust v. Alberta (Public Trustee)

Attorney	Description	Date
TS	Receive emails from client and review same; discussion prepare for teleconference; teleconference debrief	April 2015
MFM	Review of email sent	April 2015
EM	Email correspondence, detailed review of same, & making notes, meeting	April 2015
TS	Discussion	April 2015
EM	Email teleconference meetings	April 2015
TS	Review summary email ; discussion review	April 2015
MFM	Review	April 2015

Time Keeper	Position	Quantity	Rate	Total
Marie-France Major	Attorney	2.05	\$500.00	\$1,025.00
Eugene Meehan	Attorney	4.3	\$750.00	\$3,225.00

Thomas Slade	Attorney	2.35	\$300.00	\$705.00
			Subtotal	\$4,955.00
			HST (13.0%)	\$644.15
			Total	\$5,599.15

All invoice totals are in CDN funds.

HST #839003308

Please make all amounts payable to: Supreme Advocacy LLP

Please pay within 30 days.

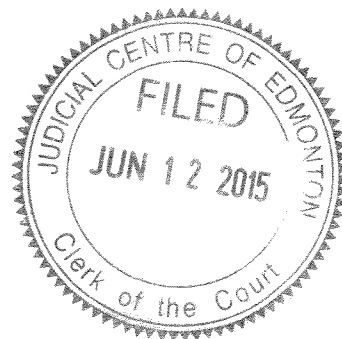
E & OE

Supreme Advocacy LLP



Per: Eugene Meehan, Q.C.

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

WRITTEN BRIEF OF THE APPLICANT, THE
PUBLIC TRUSTEE OF ALBERTA

ADDRESS FOR SERVICES AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Hutchison Law
#155, 10403 – 122 Street
Edmonton, AB T5N 4C1

Attention: **Janet L. Hutchison**
Telephone: (780) 423-3661
Fax: (780) 426-1293
File: 51433 JLH

**WRITTEN BRIEF OF THE APPLICANT, THE PUBLIC TRUSTEE OF
ALBERTA**

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

WRITTEN BRIEF OF THE APPLICANT, THE
PUBLIC TRUSTEE OF ALBERTA

ADDRESS FOR SERVICES AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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**WRITTEN BRIEF OF THE APPLICANT, THE PUBLIC TRUSTEE OF
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I. STATEMENT OF FACTS

A. Introduction

1. The Office of the Public Trustee of Alberta seeks an Order providing the Court's advice and direction as regards the following three issues which are directly related to the Public Trustee's ability to fulfill its mandate of identifying and protecting the interests of the minor beneficiaries, including the potential minor beneficiaries ("candidate children"):
 - i.) Production of all documents that are relevant and material;
 - ii.) Addressing the overlap in issues as between the within proceeding and QB 1403 04885, including providing a "green light" for appropriate communications between all counsel involved;
 - iii.) Confirmation that the Order requiring the Public Trustee be indemnified for costs, includes agency legal services, where required.

B. Facts

i.) Background

2. The Sawridge Band is a First Nation located in Northern Alberta. Prior to the coming into effect of amendments to the *Indian Act* in 1985¹ (known as *Bill C-31*) and s.15 (equality) of the *Charter*, the Sawridge Band established Trusts to hold significant portions of the Band's assets.² The goal of the Trusts was to protect the Band assets against individuals, primarily women, that would be restored to Indian status and Band membership by *Bill C-31*. The 1985 Trust is the subject of the main application in this proceeding.

¹ *An Act to amend the Indian Act*, S.C. 1985, c.27

² Affidavit of Paul Bujold, dated August 30, 2011 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

3. Under historical provisions of the *Indian Act*, a registered Indian woman lost her Indian status when she married a non-Indian male, and the couple's children were not entitled to be registered as Indians. As Band membership was an attribute of being a registered Indian, the woman and her children were also excluded from Band membership. This exclusion was permanent, surviving even the widowhood or divorce of the woman who had "married out". Losing Registered Indian status for marrying out was sometimes referred to as being "enfranchised".
4. Women who lost their Registered Indian status before 1985 for "marrying out" were restored to status by *Bill C-31*. These women, and any children they had with their non-Indian husbands, could be registered as Indians pursuant to s.6 of the *Indian Act*, enacted by *Bill C-31*.³
5. Once *Bill C-31* came into effect, the Sawridge Band was able to, and did, take control of its Band membership list.⁴ The Sawridge Band then became involved in protracted litigation aimed primarily at excluding those individuals who regained registered Indian status and Band membership under *Bill C-31*.⁵
6. In 2011, the Trustees of the 1985 Sawridge Trust filed an application for advice and directions. The application seeks, *inter alia*, to: i.) vary the definition of beneficiary in the 1985 Trust to that of the 1986 Trust; ii.) the Court's advice on identification of beneficiaries; and iii.) to regularize the transfer of assets from the 1982 Trust to the 1985 Trust.
7. The application seeks to amend the 1985 Trust to adopt the definition of beneficiaries that exists in the 1986 Trust, namely "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

³ *Indian Act*, R.S.C. 1985, c. I-5, s.6 [Tab 2, Public Trustee Authorities]

⁴ *Indian Act*, R.S.C. 1985, c. I-5, s.10, as enacted by S.C. 1985, c.27 [Tab 2, Authorities of the Public Trustee]

⁵ For example see: *Sawridge Band v. Canada* [2009] F.C.J. No. 465 (C.A.), leave to appeal refused [2009] S.C.C.A. No. 248 [Tab 12, Authorities of the Public Trustee]

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.” In other words, the variance of the definition of beneficiary would render current Sawridge Band members the only beneficiaries of the 1985 Trust.⁶

8. The value of the 1985 Trust is approximately \$70 million dollars. With the limited number of beneficiaries currently acknowledged, the impact on each individual who is a beneficiary or a potential beneficiary could be dramatic.⁷
9. The Office of the Public Trustee was notified of the proceeding and was appointed to represent the interests of minor beneficiaries by Court Order.⁸ Justice Thomas’s Reasons for Judgment included findings to the effect:
 - a.) There are potential, or actual, conflicts of interest affecting the Sawridge Band officials, Sawridge Trustees and adult Sawridge Band members;⁹
 - b.) The Public Trustee’s role in the proceeding is necessary due, in part, to those conflicts or potential conflicts of interest;¹⁰
 - c.) There are an unknown number of potentially affected minors, being children of individuals applying for Sawridge Band membership. The

⁶ Affidavit of Paul Bujold, September 12, 2011, ex. K, para. 2(a) [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

⁷ Affidavit of Paul Bujold, dated September 12, 2011, paras. 15, 17-18, 27, 29-31 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

⁸ *1985 Sawridge Trust v. Alberta (Public Trustee)* [2012] ABQB 365 [Tab 4 Authorities of the Public Trustee]

⁹ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 23, 25 and 28, [Tab 4, Authorities of the Public Trustee]

¹⁰ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 42 [Tab 4, Authorities of the Public Trustee]

Public Trustee can only identify these children through inquiries into the outstanding Sawridge Band membership applications.¹¹

d.) Inquiries into the Sawridge Band membership rules and application process is relevant and material in the within proceeding. These inquiries are necessary, *inter alia*, to reassure the Public Trustee, and the Court, that the beneficiary class for the 1985 Trust can be adequately defined. The inquiries are also necessary to evaluate whether the processes are discriminatory, biased, unreasonable, delayed without reason, and otherwise breach *Charter* principles and the requirements of natural justice.¹²

10. The Sawridge Trustees were also ordered to provide full, and advance, indemnification to the Public Trustee for its participation in the proceeding.¹³

ii. Proceedings to Date

11. Subsequent to the Public Trustee's appointment of the Court and the Court of Appeal's confirmation of this Court's cost order, questioning on Affidavit proceeded.

12. In response to the Public Trustee's request for relevant and material documents in advance of questioning, the Sawridge Trustees provided some documentation voluntarily.

13. Initial questioning of both Paul Bujold and Elizabeth Poitras have been completed. Answers to undertakings for Paul Bujold were provided in

¹¹ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 31-32 [Tab 4, Authorities of the Public Trustee]

¹² *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365 at para. 46-49 and 53-55 [Tab 4, Authorities of the Public Trustee]

¹³ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365 at para. 42 and 56 [Tab 4, Authorities of the Public Trustee]

December 2014. Additional questioning of Mr. Bujold was scheduled to occur May 13, 2015.

14. The Public Trustee began to raise concerns about the completeness of the documentary production in 2014. The Public Trustee's concerns were enhanced:

- i.) after the Sawridge Trustees relied on documents from Federal Court File No. T-2655-89 in Ms. Poitras' questioning;
- ii.) upon certain answers to Paul Bujold's undertakings regarding membership and Federal Court Action T-66-86 being refused; and
- iii.) upon learning of QB Action No. 1403 04885.¹⁴

15. After Counsel for the Public Trustee and the Sawridge Trustees were in the process of discussing the potential for resolution of the production issues by agreement and after the Public Trustee was in the process of confirming the scope of issues being raised in QB Action No. 1403 04885, the Sawridge Trustees raised concerns regarding communications amongst counsel, particularly regarding QB Action No. 1403 04885. The Public Trustee determined advice and direction of the Court was required prior to taking further steps in the proceeding.¹⁵

iii. Need for Further and Better Production of Documents

16. Counsel for the Sawridge Trusts has taken the position that it is "incumbent on all parties...to provide all relevant evidence to the Court." The Public Trustee fully supports this approach to production of evidence and has expressed concerns that production in the within proceeding has not occurred on that basis.¹⁶

¹⁴ Affidavit of Roman Bombak, dated June 12, 2015, ex.18

¹⁵ Affidavit of Roman Bombak, dated June 12, 2015, ex.8 and 19

¹⁶ Affidavit of Roman Bombak, dated June 12, 2015, ex.9 and 11

17. Based on the existing order of this Court, and in light of its statutory duties, the Public Trustee must have access to relevant and material evidence that would assist in:
- i.) Identifying the minors who are potential beneficiaries, such as children of individuals applying for, or potentially eligible for, Sawridge Band membership.
 - ii.) Assessing whether the Sawridge Band membership process is in any way “discriminatory, biased, unreasonable, delayed without reason, and otherwise breach *Charter* principles and the requirements of natural justice”.¹⁷
18. The Sawridge Band participated in the 2012 application. The Sawridge Band and the Sawridge Trustees have worked together on elements of the document production and answers to undertakings.¹⁸
19. However, the Sawridge First Nation is not currently under a specific obligation to produce all relevant and material evidence in the within proceeding. As is apparent in relation to, *inter alia*, answers to undertakings from Paul Bujold, if the Sawridge Band has relevant and material information, it will only be available to the Public Trustees, or indeed possibly the Sawridge Trustees, if the Sawridge Band decides to voluntarily produce it.¹⁹

¹⁷ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 54 [Tab 4, Authorities of the Public Trustee]; *Public Trustee Act*, S.A. 2004, c. P-44.1, s. 5, 21, 22 [Tab 3, Authorities of the Public Trustee].

¹⁸ Affidavit of Roman Bombak, dated June 12, 2015, ex.2 and 7

¹⁹ Affidavit of Roman Bombak, dated June 12, 2015, ex.7, page 154, 155 and 157

20. Specifically, although general statistics regarding membership applications have been produced, undertakings requesting access to membership application documentation itself has been refused.²⁰
21. The Public Trustee is now aware that a “membership processing form” exists and provides at least some insight into reasons for membership decisions. However, the Sawridge Band will not produce them.²¹
22. The importance of access to information about individual experiences negotiating the membership application process is highlighted by the experience of Elizabeth Poitras:
 - i.) Her first verbal requests for membership were in 1985;²²
 - ii.) Eventually received a 75 page membership application form to fill out in or about 1990. She had objections to the intrusive nature of elements of the form;²³
 - iii.) Received a shorter, 40+ page application, in or about 1991;²⁴
 - iv.) Submitted the membership application form to Sawridge Band in 1994;
 - v.) Engaged in over 9 years of discussion regarding the “completeness” of her membership application;²⁵
 - vi.) Sawridge Band developed a list of questions on her application that suggested a lack of neutrality toward the applicant;²⁶
 - vii.) Never received an actual membership decision from Sawridge Band. Was restored to membership by way of Court order in 2003.²⁷

²⁰ Affidavit of Roman Bombak, dated June 12, 2015, ex.7, page 154, 155 and 157

²¹ Affidavit of Roman Bombak, dated June 12, 2015, ex.7, page 155

²² Questioning of Elizabeth Poitras, May 29, 2014, page 19-24 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

²³ Questioning of Elizabeth Poitras, May 29, 2014, page 19-20, 23,47, 49-50, 66-69 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

²⁴ Questioning of Elizabeth Poitras, May 29, 2014, page 68-69 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

²⁵ Questioning of Elizabeth Poitras, May 29, 2014, pages 74 and 114 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

²⁶ Questioning of Elizabeth Poitras, April 9, 2015, ex.W [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

23. The Sawridge Trustees have provided information in the within application to the effect that only 74 applications were “received” between 1985 and present. It is not clear if “received” applications would include applications deemed to be incomplete (as with Ms. Poitras). The Sawridge Trustees have confirmed that prior to 2006, thus 21 years of the period Sawridge Band controlled its membership process, incomplete applications were not “tracked”.²⁸
24. Without access to the membership files, it is impossible to determine what Sawridge Band deemed to be a “received” application. Without access to individual information, it is impossible to cross reference the membership application information to the 147 Trust beneficiary applications provided.²⁹
25. The answer to Paul Bujold’s Undertaking #24 indicates the 147 individual applications for beneficiary status refer to approximately 191 children of the individual applicants. Little is known about the membership status of the listed children.³⁰
26. Without additional information, the Public Trustee cannot determine, with any precision, the number of listed children who actually remain minor dependents. A conservative estimate suggests that, in addition to the beneficiaries and non-beneficiaries the Sawridge Trustees regard as affected by the within application, there are 31 additional minor potential beneficiaries.³¹
27. In the absence of access to Sawridge Band membership files, the membership application status of these potential minor beneficiaries cannot be determined. Even for the few individuals affected by the bundle of membership decision

²⁷ Questioning of Elizabeth Poitras, May 29, 2014, pages 74 and 114 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

²⁸ Paul Bujold Answers to Undertakings, Undertaking #33 [Affidavit of Roman Bombak, ex. 7]; Questioning of Paul Bujold, May 27-28, 2014, ex. 4.

²⁹ Paul Bujold Answers to Undertakings, Undertaking #24 [Affidavit of Roman Bombak, ex. 7]; Questioning of Paul Bujold, May 27-28, 2014, Exhibit 4.

³⁰ Paul Bujold Answers to Undertakings, Undertaking #24 [Affidavit of Roman Bombak, ex. 7]

³¹ Table of Potential Minor Beneficiaries [Appendix C, Brief of the Public Trustee]

notice letters provided, it is not possible to determine fulsome reasons for the membership decisions issued.³²

28. Answers to undertakings indicate that a document does exist that would provide more detailed information on the reasons for membership decisions, referred to as a membership processing form. However, the Sawridge Trustees refuse to produce it.³³
29. In addition to these gaps in production, Counsel for the Sawridge Trustees has access to relevant and material evidence, that is not currently available to the Public Trustee, including:
 - i.) Documents from Elizabeth Poitras's Federal Court membership litigation (Federal Court Action No. T-2655-89);³⁴
 - ii.) Documents from the Sawridge Band Federal Court membership litigation (Federal Court Action No. T-66-86)³⁵
 - iii.) Counsel for the Sawridge Trustees in this matter was originally counsel of record in Court of QB Action No. 1403 04885. As such, they have been privy to all evidence generated in that proceeding, including a sworn but unfiled affidavit of Catherine Twinn.³⁶
 - iv.) Some level of access to Membership application information similar to that refused in answers to undertakings;³⁷

³² Table of Potential Minor Beneficiaries [Appendix C, Brief of the Public Trustee]; Affidavit of Roman Bombak, dated June 12, 2015, ex.2, page 24-55; Paul Bujold Answers to Undertakings, Undertaking #34, #42, and #43 [Affidavit of Roman Bombak, ex. 7]

³³ Paul Bujold Answers to Undertakings, Undertaking #43 [Affidavit of Roman Bombak, ex. 7]

³⁴ Questioning of Elizabeth Poitras, May 29, 2014, page 61-63 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]; Affidavit of Roman Bombak, dated June 12, 2015, ex.12

³⁵ Paul Bujold Answers to Undertakings, Undertaking #19 [Affidavit of Roman Bombak, ex. 7]

³⁶ Affidavit of Roman Bombak, dated June 12, 2015, ex.13 and 16

³⁷ Affidavit of Roman Bombak, dated June 12, 2015, ex.2; Paul Bujold Answers to Undertakings, Undertaking #34, #42, and #43 [Affidavit of Roman Bombak, ex. 7]

30. Counsel for Ms. Poitras in her Federal Court litigation further indicates that the documents which have been produced from that litigation appear to be selective in nature.³⁸

iv. Communications in QB Action No. 1403 04885

31. QB Action No. 1403 04885 was commenced by the Sawridge Trustees, represented by Dentons LLP, on April 1, 2014.³⁹
32. On September 26, 2014, Counsel for Catherine Twinn (Ms. Platten, Q.C. of McLennan Ross LLP) filed an application for advice and directions, seeking the Court's guidance on matters including: "Seeks advice and direction regarding the proper composition of the Board of Trustees, including elimination or reduction of the number of elected officials of the Sawridge Indian Band." [Application for Advice and Direction, September 26, 2014]⁴⁰
33. On September 29, 2014, Dentons was provided with a sworn, but unfiled, affidavit by Catherine Twinn in related to QB Action No. 1403 04885.⁴¹
34. Although April 2015 correspondence suggested Dentons was not counsel in QB Action No. 1403 04885, Dentons did continue as counsel of record until the October 16, 2014 order was obtained. At some point after that, the Sawridge Trustees retained Bryan & Co to represent them in QB Action No. 1403 04885.⁴²
35. On December 17, 2014 Bryan & Co and McLennan Ross attended in Court. It is unknown if Dentons LLP attended. Dentons LLP has advised Counsel for the

³⁸ Affidavit of Roman Bombak, dated June 12, 2015, ex.13

³⁹ Affidavit of Roman Bombak, dated June 12, 2015, ex.13

⁴⁰ Affidavit of Roman Bombak, dated June 12, 2015, ex. 13 and 19

⁴¹ Affidavit of Catherine Twinn, dated December 8, 2014, para. 8 [Affidavit of Roman Bombak, ex. 16]

⁴² Affidavit of Catherine Twinn, dated December 8, 2014, para. 8 [Affidavit of Roman Bombak, ex. 16]; Affidavit of Roman Bombak, dated June 12, 2015, ex.13 and 23

Public Trustee that the only issue dealt with that day was whether Justice Thomas was seized with QB Action No. 1403 04885 as a result of being seized with QB Action No. 1103 14112.⁴³

36. The Public Trustee was not made aware of the December 17, 2014 hearing, nor indeed, the existence of the action by the Sawridge Trustees at any point in time.⁴⁴
37. When the Public Trustee learned of the existence of QB Action No. 1403 04885, they obtained information on the proceeding through courthouse searches.
38. Based solely on a review of the pleadings in the two actions, there are significant overlaps in relation to key issues in the within proceeding.⁴⁵
39. Counsel for the Public Trustee discussed, *inter alia*, its awareness of QB Action No 1403 04885, and concerns about overlap, with Counsel for the Sawridge Trustees in a teleconference on April 7, 2015. In particular, the Public Trustee noted the issues set out in the Affidavit of Catherin Twinn, dated December 8, 2014, particularly Exhibit J, Dentons advised the Public Trustee that those issues would not be decided by a Court.⁴⁶
40. Counsel for the Public Trustee advised Counsel for the Sawridge Trustees that it would be contacting Ms. Platten, Q.C., counsel for Ms. Twinn in QB Action No. 1403 04885 to confirm this understanding.⁴⁷

⁴³ Affidavit of Roman Bombak, dated June 12, 2015, ex.13

⁴⁴ Affidavit of Roman Bombak, dated June 12, 2015

⁴⁵ Affidavit of Catherine Twinn, dated December 8, 2014 [Affidavit of Roman Bombak, ex. 16]; Table of Similarities and Dissimilarities Between Action No. 1103 14112 and 1403 04885 [Appendix A, Brief of the Public Trustee]

⁴⁶ Affidavit of Roman Bombak, dated June 12, 2015, para 11

⁴⁷ Affidavit of Roman Bombak, dated June 12, 2015, ex. 17, 18, and 23 (page 285)

41. Ms. Platten advised that issues #1, 3, 4 and 6 of paragraph E in Exhibit J remained live issues that would be addressed in QB Action No. 1403.⁴⁸
42. In the course of the correspondence exchange, Counsel for the Sawridge Trustees in the within proceeding indicated they regarded themselves as being legal counsel to Catherine Twinn, apparently as an individual rather than incidentally to their representation of the Sawridge Trust as an entity.⁴⁹
43. Counsel for the Sawridge Trustees objected to the communication between Counsel for the Public Trustee and Counsel for Catherine Twinn. Those objections lead to limited communications and progress in the litigation.⁵⁰
44. The advice and direction of the Court is required.

v. Costs

45. The Court's order of June 12, 2012 required the Sawridge Trustees to pay the Public Trustee's legal costs in the within proceeding.⁵¹
46. In June 2014, Counsel for the Public Trustee requested approval to retain Mr. Terrance Glancy, to assist in the review of documents from Liz Poitras' Federal Court Action No. T-2655-89 prior to resumption of her questioning. Mr. Glancy's familiarity with that litigation, as counsel of record in it, was expected to improve efficiency and timeliness, as well as manage costs. Counsel for the Sawridge Trustees indicated this retainer would not be acceptable.⁵²

⁴⁸ Affidavit of Roman Bombak, dated June 12, 2015, para 21

⁴⁹ Affidavit of Roman Bombak, dated June 12, 2015, ex. 23 (page 284-286)

⁵⁰ Affidavit of Roman Bombak, dated June 12, 2015, ex. 8

⁵¹ 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, para 42 and 56 [Tab 4, Authorities of the Public Trustee]; 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2013 ABCA 226 [Tab 5, Authorities of the Public Trustee]

⁵² Affidavit of Roman Bombak, dated June 12, 2015, ex. 11

47. In May 2015, after receipt of the Sawridge Trustees litigation plan, the Public Trustee advised it wished to retain Supreme Advocacy LLP for agency services, including legal research, to assist in moving the within proceeding along.⁵³
48. The Sawridge Trustees have indicated they are opposed to such a retainer as well, although the grounds for that position are unknown at this time.⁵⁴

PART II- ISSUES

49. The scope of production necessary in the within proceeding to provide the Public Trustee with the information it requires to fulfill its mandate, and provide the Court with a complete and objective evidentiary record;
50. The impact of the overlap in issues as between the within proceeding and QB 1403 04885;
51. Confirmation of the appropriate scope of communications as between counsel in both proceedings;
52. Confirmation that the Order requiring the Public Trustee be indemnified for costs includes agency legal services, where required.

PART III- SUBMISSIONS OF LAW

A. Application for Further and Better Production

i. Document Production in Originating Applications

53. Part 5 of the *Alberta Rules of Court*, setting requirements for production in actions, does not normally apply to Originating Applications.

⁵³ Affidavit of Roman Bombak, dated June 12, 2015, ex. 35

⁵⁴ Affidavit of Roman Bombak, dated June 12, 2015, ex. 29, 30, 36

Alberta Rules of Court, Rule 3.10 (1) [Tab 1, Authorities of the Public Trustee]

54. Regardless, the Court has discretion to apply Part 5 production rules to applications where it is appropriate.

Alberta Rules of Court, Rule 3.13 and 3.14 [Tab 1, Authorities of the Public Trustee]

55. The purpose of Rule 5.1 includes obtaining evidence that will be relied upon in the proceeding, narrowing and defining the issues between the parties and encouraging early disclosure.

Alberta Rules of Court, Rule 5.1 [Tab 1, Authorities of the Public Trustee]

56. Application of those purposes within this proceeding will serve to promote the overarching purposes of the *Rules*, including identification of the real issues in dispute, facilitation of the most efficient means of resolving the issues and creating a greater likelihood for opportunities to resolve the claim by agreement.

Alberta Rules of Court, Rule 1.2 [Tab 1, Authorities of the Public Trustee]

L.C. v. Alberta (Metis Settlements Child & Family Services, Region 10) [2011] A.J. No. 36, para 75-77 [Tab 9, Authorities of the Public Trustee]

57. Application and interpretation of the Rules should also be consistent with the cultural shift aimed at creating a litigation environment that enhances, and does not obstruct, access to justice.

Canadian Natural Resources Limited v. ShawCor Ltd. [2014] ABCA 289, para. 33-34, [Tab 6, Authorities of the Public Trustee]

58. In relation to the Rule 1.2 (1)(c), the reality for the Public Trustee is that a consent order to resolve this proceeding cannot be seriously considered while there are dramatic gaps in the information available. The Public Trustee simply cannot fully assess the interests of the minor beneficiaries without complete and objective production. The inability to access the information regarding potential minor beneficiaries will also seriously hamper settlement discussions.
59. Although the Public Trustee submits the Sawridge Band is already a party to this proceeding, as evidenced by its participation in the 2012 application, the Court does have authority to compel production of records from a non-party.

Alberta Rules of Court, Rule 5.13 [Tab 1, Authorities of the Public Trustee]

ii. *This Application Requires a Different Standard of Production*

60. The parties have, by conduct to date, already recognized the within Originating Application goes beyond the scope of most applications. It requires the benefit of at least some elements of the procedures applicable to an action. For example, the Sawridge Trustees did provide limited, but advance, production prior to questioning of their deponent.⁵⁵ Also, a litigation plan is being proposed for the within proceeding.⁵⁶
61. The subject matter of the within proceeding is complex due, to the membership litigation. It also deals with an extremely valuable trust. The impact of the proceeding on individual beneficiaries has the potential to be significant.

⁵⁵ Affidavit of Roman Bombak, dated June 12, 2015, ex.2-3

⁵⁶ Affidavit of Roman Bombak, dated June 12, 2015, ex. 36

62. The proceeding is further impacted by the existence of actual, or potential, conflicts of interest on the part of the Sawridge Trustees. Answers to undertakings have confirmed the extensive overlap in the roles of the Sawridge Trustees as between the Trusts, the Sawridge membership process and Sawridge band government.⁵⁷
63. The combined effect of complex legal issues, significant sums of money at play and the existence of conflict of interest issues creates the need for a higher standard of disclosure and production than normally applies to an application.

ii. Relevant and Material Records

64. The relevance of information that will permit a full assessment of the Sawridge Band membership process has been ruled relevant and material to the within proceeding.⁵⁸
65. The importance of the Public Trustee's ability to identify potential minor beneficiaries, or "candidate children" by way of inquiry into outstanding Band membership applications has also been recognized.⁵⁹
66. The Sawridge Band has a 3 stage membership application process. After an application is deemed "complete", it is referred to the Membership Review Committee (populated by individuals, including current Trustees). The recommendation is reviewed by Chief and Council (also populated by current trustees). Chief and Council makes a membership decision. If applicants are

⁵⁷ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 25-26 [Tab 4, Authorities of the Public Trustee]; Table of Overlapping Roles of Sawridge Trustees [Appendix B, Brief of the Public Trustee]; Questioning of Paul Bujold, May 27-28, 2014, pages 7-19, and 21-25 and 30-31; Application for Advice and Direction [Affidavit of Roman Bombak, dated June 12, 2015, ex.19]; Affidavit of Catherine Twinn, dated December 8, 2014, para. 8[Affidavit of Roman Bombak, ex. 16]

⁵⁸ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 46-48, 53-55 [Tab 4, Authorities of the Public Trustee];

⁵⁹ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 31-32 [Tab 4, Authorities of the Public Trustee];

dissatisfied with the membership decision, it can be appealed to the Membership Appeal Committee, which consists of all electors of the Sawridge Band (and thus includes current Trustees).⁶⁰

67. Currently, the Public Trustee is being refused access to the information from every stage of this membership application process, other than general statistics.⁶¹

iii. Objectivity in Production

68. Currently, neither the Sawridge Trustees nor the Sawridge Band have a generalized obligation to locate and produce relevant and material evidence in their power and possession. The Public Trustee has been attempting to create a complete, objective evidentiary record for the Court through questioning on affidavit and requesting undertakings. However, it is clear those processes have yet to access all relevant and material evidence available to the other parties.
69. Creating a situation where the Public Trustee must apply for further and better production or further and better answers to undertakings as it becomes aware of new sources of relevant and material evidence is not efficient or consistent with Rule 1.2.
70. The Sawridge Trustees have taken the position in correspondence that: "It is incumbent on all parties to address the issue objectively and provide all relevant evidence to the Court."⁶² The Public Trustee supports this approach in the within litigation.

⁶⁰ Questioning of Paul Bujold, May 27-28, 2014, pages 14-15 and 30-31; Paul Bujold Answers to Undertakings, Undertaking #1-9 [Affidavit of Roman Bombak, ex. 7]; Table of Overlapping Roles of Sawridge Trustees [Appendix B, Brief of the Public Trustee]; Questioning of Paul Bujold, May 27-28, 2014, pages 7-19, and 21-25 and 30-31

⁶¹ Paul Bujold Answers to Undertakings, Undertaking #34, 42 and 43 [Affidavit of Roman Bombak, ex. 7]

⁶² Affidavit of Roman Bombak, dated June 12, 2015, ex.9, page 161

71. To date, the Public Trustee has become aware of the following information that is available to the Sawridge Trustees and/or Sawridge Band, but is not available to this Court:

- i.) Individual Sawridge Band membership application files;⁶³
- ii.) Membership processing forms that would explain reasons for membership decision;⁶⁴
- iii.) Available information about applications or expressions of interest in membership during the time period incomplete applications were not tracked (1985-2006)⁶⁵
- iv.) Membership decisions;⁶⁶
- v.) Documents related to Elizabeth Poitras' membership litigation, as only a selection of documents have been produced to date;⁶⁷
- vi.) Documents related to the Sawridge Federal Court membership litigation (T-66-86);⁶⁸
- vii.) The evidence available in QB Action No. 1403 04885, including Catherine Twinn's sworn but unfiled affidavit, which appears to have the potential to relate to the issues set out in Exhibit J of her filed affidavit, namely:

- issues with the Sawridge Band membership process;
- how the membership process affects identification of beneficiaries of the Trust;
- issues arising from Sawridge Trustees' conflicts of interest; and
- Information regarding the transfer of assets into the 1985 Trust.⁶⁹

⁶³ Paul Bujold Answers to Undertakings, Undertaking #34 [Affidavit of Roman Bombak, ex. 7]

⁶⁴ Paul Bujold Answers to Undertakings, Undertaking #43 [Affidavit of Roman Bombak, ex. 7]

⁶⁵ Paul Bujold Answers to Undertakings, Undertaking #34 and #43 [Affidavit of Roman Bombak, ex. 7]

⁶⁶ Paul Bujold Answers to Undertakings, Undertaking #34 and #43 [Affidavit of Roman Bombak, ex. 7]

⁶⁷ Questioning of Elizabeth Poitras, May 29, 2014, page 61 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]; Affidavit of Roman Bombak, dated June 12, 2015, ex.12

⁶⁸ Paul Bujold Answers to Undertakings, Undertaking #19 [Affidavit of Roman Bombak, ex. 7]

⁶⁹ Affidavit of Catherine Twinn, dated December 8, 2014, para. 8[Affidavit of Roman Bombak, ex. 16]

72. The Sawridge Band's evidence, through the Sawridge Trustees, suggests at least some of the evidence in the Federal Court Sawridge membership litigation (Action No. T-66-86) may be the only source for certain items of relevant and material evidence. For example, the findings of one Federal Court of Appeal decision refers to a Band Council Resolution that is relevant to identification of potential beneficiaries:

*By Sawridge Band Council Resolution of July 21, 1988, the Band Council acknowledged that "at least 164 people had expressed an interest in writing in making application for membership in the Band." A list of such persons was attached to the Band Council Resolution.*⁷⁰

73. The Sawridge Band states it no longer has a copy in its possession.⁷¹ The documents from Federal Court T-66-86 may be the only remaining source for this document, but the Sawridge Trustees take the position none of those documents are producible in this proceeding.⁷²

74. There have also been certain inconsistencies in production:

- i.) The Sawridge Trustees appear to have at least some measure of access to membership information, including decisions. However, they have relied on Sawridge Band's refusal to produce membership application and decision information on the grounds that its release would breach confidentiality.⁷³

⁷⁰ *Sawridge Band v. Canada* [2004] F.C.J. No. 77 (C.A.) at para. 34 [Tab 11, Authorities of the Public Trustee]

⁷¹ Paul Bujold Answers to Undertakings, Undertaking #35 [Affidavit of Roman Bombak, ex. 7]

⁷² Paul Bujold Answers to Undertakings, Undertaking #19 [Affidavit of Roman Bombak, ex. 7]

⁷³ Affidavit of Roman Bombak, dated June 12, 2015, ex.2; Paul Bujold Answers to Undertakings, Undertaking #34 and #43 [Affidavit of Roman Bombak, ex. 7]

- ii.) Mr. Bujold acknowledges relying on evidence from the Federal Court membership litigation (T-66-86), but the Sawridge Trustees take the position none of the documents from that proceeding are admissible in this action.⁷⁴
- iii.) While taking the position relevant and material evidence from one Federal Court proceeding is inadmissible in the within proceeding, the Sawridge Trustees advance the position that documents from Elizabeth Poitras' Federal Court litigation is admissible.⁷⁵
- iv.) While accessing evidence from two separate proceedings, the Sawridge Trustees object to the Public Trustee seeking access to even general information regarding QB Action No. 1403 04885, despite the obvious overlap in issues with this proceeding.⁷⁶

75. All of the above noted issues with production would be resolved by creating a generalized obligation on the Sawridge Trustees and Sawridge Band to produce relevant and material evidence in this application.

76. Complete disclosure will also increase opportunities to narrow, or even resolve, issues in the proceeding.

iv. Court Authority to Waive the Implied Undertaking

77. In relation to the Public Trustee's request for production of relevant and material documents filed in Court of QB Action No. 1403 04885, or either Federal Court Action, to the extent that an implied undertaking of confidentiality applies, the Court's authority to waive the implied undertaking is

⁷⁴ Paul Bujold Answers to Undertakings, Undertaking #19 [Affidavit of Roman Bombak, ex. 7]

⁷⁵ Questioning of Elizabeth Poitras, May 29, 2014, page 61-63 [Excerpts From Pleadings, Transcripts, Exhibits And Answers To Undertakings]

⁷⁶ Table of Overlapping Roles of Sawridge Trustees [Appendix B], Brief of the Public Trustee]; Questioning of Paul Bujold, May 27-28, 2014, pages 7-19, and 21-25 and 30-31; Affidavit of Roman Bombak, dated June 12, 2015, ex.23.

well established. Such a waiver is highly unlikely to create prejudice where the parties to the two proceedings are the same, or similar.

Alberta Rules of Court, Rule 5.33 [Tab 1, Authorities of the Public Trustee]

Juman v. Doucette [2008] S.C.J. No. 8 at para. 20-25 [Tab 8 Authorities of the Public Trustee]

Henry v British Columbia (Attorney General) 2012 BCSC 1878, para 42-46 [Tab 7, Authorities of the Public Trustee]

v. *Refusal to Produce Documents Subject to June 12, 2012 Reasons for Judgment*

78. Sawridge Band, through the Sawridge Trustees, has refused to produce the documentation from individual membership files on the grounds that it is confidential and production would breach privacy legislation.⁷⁷

79. This Court has already ruled regarding the relevance and materiality of Sawridge Band membership process information. The Court specifically contemplated that the Public Trustee would be given access to:

- i.) Evidence about “candidate children” via inquiry into membership applications to the Sawridge Band.⁷⁸
- ii.) Evidence regarding the Sawridge membership process, including procedures and status of memberships, that would assist in determining whether the beneficiary class (namely Sawridge Band members) can be adequately defined;⁷⁹

⁷⁷ Paul Bujold Answers to Undertakings, Undertaking #34, #43 and #48 [Affidavit of Roman Bombak, ex. 7]

⁷⁸ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 31-32 [Tab 4, Authorities of the Public Trustee];

⁷⁹ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 46 and 48-49 [Tab 4, Authorities of the Public Trustee];

- iii.) Evidence that would assist in assessing whether the membership processes are “*discriminatory, biased, unreasonable, delayed without reason, and otherwise breach Charter principles and the requirements of natural justice.*”⁸⁰

80. Where legitimate claims of privilege exist, the party asserting the privilege, must provide sufficient information to permit a fulsome assessment of that claim. Such information was not provided in the claims of confidentiality and privacy.⁸¹

Canadian Natural Resources Limited v. ShawCor Ltd. [2014] ABCA 289, para. 5-8, [Tab 6, Authorities of the Public Trustee]

81. Without more than a bare assertion of confidentiality, the Sawridge Band cannot ignore the 2012 Reasons for Judgment. An order requiring the Sawridge Band to file an Affidavit of Records, with direction from the Court regarding producibility, will resolve critical gaps in the evidentiary record. Alternatively, further and better answers to undertakings #34, #43 and #48 would address the situation.
82. Should the Court find that answers to undertakings #34, #43 and #48 raises issues that go beyond the scope of the 2012 Reasons for Judgment, an application to deal with these production issues should be reflected in the proposed litigation plan and chambers dates should be secured.

B. Court of QB Action No. 1403 04885

⁸⁰ *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, at para. 53-55 [Tab 4, Authorities of the Public Trustee];

⁸¹ Paul Bujold Answers to Undertakings, Undertaking #34, #43 and #48 [Affidavit of Roman Bombak, ex. 7]

83. Prior to January 2015, the Public Trustee was entirely unaware of this related proceeding. The Public Trustee did not have the opportunity to participate in the December 17, 2014 appearance, or address comments regarding the relationship between the actions to the Court.
84. A review of the pleadings in each Action reveals striking overlaps between the proceedings on central issues, including:⁸²
- i.) Who qualifies as a Band member/ beneficiary identification;
 - ii.) Existence of conflicts of interest affecting the Band membership process, Trustees, or both;
 - iii.) Transfer of assets to the 1985 Trust;
 - iv.) Administration and Management of the 1985 Trust
85. Based on its review to date, the Public Trustee has genuine concerns that a consolidation of the proceedings may be necessary to preserve the interests of the administration of justice.

Alberta Rules of Court, Rule 3.72 [Tab 1, Authorities of the Public Trustee]

86. The overarching purpose of consolidation is to enhance the administration of justice. The factors that will normally be considered in a consolidation application include:
- i. whether there are common claims, disputes and relationships between the parties;
 - ii. whether consolidation will save time and resources in pre-trial procedures;
 - iii. whether time at trial will be reduced;
 - iv. whether one party will be seriously prejudiced by having two trials together;
 - v. whether one action is at a more advanced stage than the other; and

⁸² Table of Overlapping Roles of Sawridge Trustees [Appendix B], Brief of the Public Trustee]; Questioning of Paul Bujold, May 27-28, 2014, pages 7-19, and 21-25 and 30-31; Affidavit of Roman Bombak, dated June 12, 2015, ex.19

- vi. Whether consolidation will delay the trial of one action which will cause serious prejudice to one party.”

Munro v. Munro [2011] A.J. No. 1054 (C.A.) at para. 7-8 and 28-29 and 40, [Tab 10, Authorities of the Public Trustee]

- 87. In order for the Public Trustee, and indeed this Court, to be in a position to fully assess these factors, more information is required. The Public Trustee was in the process of gathering information about QB Action No. 1403 04885, when the objections of the Sawridge Trustees’ counsel limited further communications.
- 88. The order the Public Trustee seeks regarding relevant and material evidence will include production of relevant and material evidence from QB Action No. 1403 04885.
- 89. Once all counsel are returned to an “even playing field” in relation to access to relevant and material evidence, the Court should be updated, without delay, regarding whether the further production indicates a consolidation is merited.

C. Advice and Direction

i. Communication Between Counsel

- 90. Open communication between counsel in a proceeding and in related proceedings is a normal occurrence. Such communications can serve to narrow the issues in dispute and avoid duplication of effort. Such communications increase the opportunities for pre-trial resolutions and focus all parties on issues that actually require the assistance of the Court.
- 91. There may be times where, for strategic reasons, only some members of a group of counsel are included in discussion. There is nothing inappropriate about such

conduct. Indeed, particularly where it will facilitate the purposes of the Rules, it should be encouraged.

92. Efforts to limit, or prevent, such communications is not consistent with the purposes under the Rules.
93. Communications between counsel in the within proceeding, and Court of QB Action No. 1403 04885, have recently been impeded by the concerns of counsel for the Sawridge Trustees.
94. The Public Trustee seeks a “green light” to resume discussions with all counsel, including Ms. Platten, Q.C. These communications may occur individually or with the group, as the situation and goals of discussion may dictate.
95. All counsel involved are experienced and well aware of the limitations the Code of Conduct would create in any such communications.
96. Fulsome communication will be particularly desirable once further production is provided. Counsel for the Public Trustee should be permitted to communicate fully and openly with any counsel in QB Action No. 1403 04885, whether individual, as a group, or both, regarding the appropriate weighing of the factors affecting consolidation applications under Rule 3.72

ii. Costs

97. The Courts June 12, 2012 Reasons for Judgment were unambiguous regarding costs. The Sawridge Trustees are to indemnify the Public Trustee for its

participation in this proceeding. That award was upheld by the Court of Appeal.⁸³

98. The Sawridge Trustees have rejected two proposals to include fees for agency services in the Public Trustees costs in this matter. There appears to be no principled reason for this opposition, arising for example, out of concerns about unreasonable billing to date.
99. The term indemnification indicate full , rather than partial, protection from the costs of the within proceeding was ordered for the Public Trustee.
100. If costs are necessary for the Public Trustee to properly fulfill its role and are reasonably connected to the proceedings, they fall within the scope of indemnification for costs.

Stagg v. Condominium Plan No. 882-2999 [2013] A.J. No. 1306, para. 65-69
[Tab 13, Public Trustee Authorities]

PART IV- REMEDY SOUGHT

101. On the basis of the foregoing, the Public Trustee seeks an order:
 - a.) Applying Part 5 of the *Rules of Court* to the within proceeding to the extent of requiring Affidavits of Records be filed by the Sawridge Band and the Sawridge Trustees;
 - b.) Directing that in relation to the Affidavits of Records, and Paul Bujold's Answers to Undertakings #34, #43 and #48, relevant and material documents may not be withheld from production on the bare assertion of confidentiality or privacy;

⁸³ 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365, para 42 [Tab 4, Authorities of the Public Trustee]; 1985 *Sawridge Trust v. Alberta (Public Trustee)*, 2013 ABCA 226 [Tab 5, Authorities of the Public Trustee]

- c.) Directing the parties to report back to the Court on the merits of consolidation within 60 days of the Public Trustee's receipt of the completed additional document production;
- d.) Confirmation of the ability of counsel in the within proceeding to communicate with any or all counsel in Queen's Bench Action No. 1403 04885 whether individually or as a group on any matters related to:
 - i) The evidence produced pursuant to the order requested herein;
 - ii) The real issues in dispute in either proceeding;
 - iii) The merits of consolidation, or concurrent hearings, of the two proceedings;
 - iv) The most efficient way to resolve the issues that overlap as between the two proceedings; or
 - v) Any other matter consistent with the purposes of the *Alberta Rules of Court*.
- e.) Requiring the Sawridge Trustees to reimburse the Public Trustee for all legal costs, on a full indemnity basis, including for agency services that may be required from Terrance Glancy or Supreme Advocacy LLP.
- f.) Amendments or revisions, as appropriate, to the Sawridge Trustee's proposed litigation plan to reflect these orders
- g.) Such further and other relief as this Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the City of Edmonton, Province of Alberta, this 12th day of June, 2015.

HUTCHISON LAW

Per. 

JANET L. HUTCHISON
Solicitor for the Public Trustee

Estimation of time for Oral Argument: 45 minutes

QB Action No. 1103 14112

Overlapping Roles of Sawridge Trustees

Taken from, inter alia, Paul Bujold Answers to Undertakings #1-#9

Name	Roles	Decisions
Walter P. Twinn	<ul style="list-style-type: none"> • Chief of Sawridge First Nation (pre-1985 through to October 30, 1997) • Trustee of 1985 Trust (April 1985-October 1997) • Trustee of 1986 Trust (August 1986-October 30, 1997) • Settlor of 1982, 1985 and 1986 Trust • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	<p><u>Past Trustee</u></p> <p>Made membership decisions as a member of Council</p> <p>Heard appeals from those decisions as a Band Member (member of Appeal Committee)</p>
George V. Twin	<ul style="list-style-type: none"> • Band Councillor (Feb 85-August 1997) • Trustee of 1985 Trust (April 1985-August 1997) • Trustee of 1986 Trust (August 1986 – August 1997) • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	<p><u>Past Trustee</u></p> <p>Made membership decisions as a member of Council</p> <p>Heard appeals from those decisions as a Band Member (member of Appeal Committee)</p>
Chief Roland Twinn	<ul style="list-style-type: none"> • Band Councillor (August 1997-Feb 2003) • Current Chief (February 2003-present) • Member of Membership Review Committee • witness in Sawridge Bill C-31 membership litigation • Trustee of 1985 Trust (March 2002-present) • Trustee of 1986 Trust (March 2002 to present) • Band member (and member of 	<p><u>Current Trustee</u></p> <p>Makes Membership decisions/ recommendations at every stage of the Membership process (membership review committee, Chief and Council and Membership Appeal Committee)</p>

Name	Roles	Decisions
	Membership Appeal Committee) <ul style="list-style-type: none"> • Trust beneficiary 	
Walter Felix Twinn	<ul style="list-style-type: none"> • Band Councillor (pre-1985 to Feb 2003, continuous) • Settlor of 1982, 1985 and 1986 Trust • Former Member of Membership Committee • Trustee of 1985 Trust (December 1986-January 2014) • Trustee of 1986 Trust (Nov 1997-January 2014) • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	<u>Past Trustee</u> Made Membership decisions/ recommendations at every stage of the Membership process (membership review committee, Chief and Council and Membership Appeal Committee)
Catherine Twinn	<ul style="list-style-type: none"> • Member of Membership Review Committee • -Counsel for Sawridge First Nation in Sawridge Bill C31 membership litigation • Trustee of 1985 Trust (December 1986-present) • Trustee of 1986 Trust (August 1986-present) • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	<u>Current Trustee</u>
Bertha L'Hirondelle	<ul style="list-style-type: none"> • former Chief (October 1997- February 2003) • Band Councillor (Feb 2003-Feb 2007) • Member of Membership Committee • witness in Sawridge Bill C-31 membership litigation • Trustee of 1985 Trust (November 1997-present) • Trustee of 1986 Trust (November 1997 to present) 	<u>Current Trustee</u> Made Membership decisions/ recommendations at every stage of the Membership process (membership review committee, Chief and Council and Membership Appeal Committee)

Name	Roles	Decisions
	<ul style="list-style-type: none"> • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	
Clara Midbo	<ul style="list-style-type: none"> • Trustee of 1985 Trust (March 2002- July 2014) • Trustee of 1986 Trust (March 2002-July 2014) • witness in Sawridge Bill C-31 membership litigation • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	<u>Former Trustee</u>
Justin Twin	<ul style="list-style-type: none"> • Band Councillor (February 2005-present) • Trustee of 1985 Trust (January 2014 to present) • Trustee of 1986 Trust (January 2014 to present) • Band member (and member of Membership Appeal Committee) • Trust beneficiary 	<u>Present Trustee</u>

SIMILARITIES

Issue #1: Who qualifies as Band Member/ Beneficiary-identification**QB 1103 14112:**

- "The Public Trustee seeks to investigate these issues... to reassure itself (and the Court) that the beneficiary class can and has been adequately defined. [para 46, Justice D.R.G. Thomas, June 12, 2012 Reasons for Judgment ("Reasons")]
- "... it would be peculiar if, in varying the definition of "Beneficiaries" in the trust documents, that the Court did not make some sort of inquiry as to the membership application process that the Trustees and the Chief and Council acknowledge is underway" [para 48, Reasons]
- "This Court has an obligation to make inquiries as to the procedure and status of Band memberships where a party (or its representative) who is potentially a claimant to the Trust queries whether the beneficiary class can be "ascertained" [para 49, Reasons]
- "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" [para 14(a), Affidavit of Paul Bujold, August 30, 2011]

QB 1403 04885:

- "Examination of and ensuring that the system for ascertaining beneficiaries of the Trusts is fair, reasonable, timely, unbiased and in accordance with Charter principles and natural justice;" [Exhibit J, para E(3), Affidavit of Ms. Twinn, December 8, 2014]

Issue #2: Existence of Conflicts of Interest affecting Membership process, Trustees, or both**QB 1103 14112:**

- "...the Sawridge Trustees are personally affected by the assignment of persons inside and outside the Trust." [para 23, Reasons]
- "...the key players in both the administration of the Sawridge Trust and of the Sawridge Band overlap and these persons are currently entitled to shares of the Trust property. The members of the Sawridge Band Chief and Council are elected by and answer to an interested group of persons, namely those

QB 1403 04885:

- "Seeks advice and direction regarding the proper composition of the Board of trustees, including elimination or reduction of the number of elected officials of the Sawridge Indian Band." [Application for Advice and Direction, September 26, 2014]
- "Trustee selection and succession, including issues of conflict of interest now and in the future, including examination of a separated model to remove conflict of interest, be it

who will have a right to share in the 1985 Sawridge Trust. These facts provide a logical basis for a concern by the Public Trustee and this Court of a potential for an unfair distribution of the assets of the 1985 Sawridge Trust.” [para 25, Reasons]

- “I reject the position of the Sawridge Band that there is no potential for a conflict of interest to arise in these circumstances.” [para 26, Reasons]
- “The Sawridge Trustees and the adult members of the Sawridge Band (including the Chief and Council) are in a potential conflict between their personal interests and their duties as fiduciaries” [para 28, Reasons]
- “The Public Trustee’s role is necessary due to the potential conflict of interest of other litigants and the failure of the Sawridge Trustees to propose alternative independent representation.” [para 42, Reasons]

actual, structural or of the appearance of conflict of interest;” [Exhibit J, para E(1), Affidavit of Ms. Twinn, December 8, 2014]

Issue #3: Transfer of Assets to 1985 Trust

QB 1103 14112:

- “To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust” [para 1(b), Order by Justice D.R.G. Thomas, September 6, 2011]

QB 1403 04885:

- “Determination of how assets were held and transferred from Trust inception to the present day;” [Exhibit J, para E(6), Affidavit of Ms. Twinn, December 8, 2014]

Issue #4: Administration and Management of 1985 Trust

QB 1103 14112:

- “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”).” [para 1, Order by Justice D.R.G. Thomas, September 6, 2011]
- The Public Trustee of Alberta must protect

QB 1403 04885:

- “I have serious concerns regarding the administration of the Trusts and it is my belief that it is important and my duty that this information be brought to the attention of the Court. It is my intention to provide a copy of my Affidavit, unfiled, to the Court at the hearing of this application so that the confidentiality of the subject matter of my Affidavit can be maintained pending further direction from this Honourable Court on how to proceed in this regard.” [para 16, Affidavit

the interests of any minor beneficiaries or potential beneficiaries in relation to the 1985 Trust. [*Public Trustee Act*, s.21 and s.22]

of Ms. Twinn, December 8, 2014]

- "...I have raised the issues of trustee succession, accountability, beneficiary determination, undue influence and conflict of interest on numerous occasions, including putting forward a proposal in writing shortly after the June 12, 2012 decision issued by Justice Thomas in QB Action No. 1103-14112, but have been unable to obtain any results. A recent example of this is in May 2014 when I provided a Binding Issue Resolution Process Agreement to the other trustees for their review and comment in order to set out a process in which to discuss and resolve the issues that are the subject matter of the Application. The other trustees refused and/or willfully failed to engage in this or any process. I believe that I have exhausted my ability to address these matters internally and that adjudication by the Courts has become the only avenue available to address and resolve these matters. Attached as Exhibit "J" to my Affidavit is a copy of the Binding Issue Process Agreement I circulated." [para 23, Affidavit of Ms. Twinn, December 8, 2014]

DISSIMILARITIES

QB 1103 14112:

- "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"." [para 1(a), Order by Justice D.R.G. Thomas, September 6, 2011]

- Not in issue

QB 1403 04885:

- Not in issue

- Approval of appointment of individual Trustees

Paul Bujold, Undertaking #24
Potential Minor Beneficiaries

	Name	Date of Trust Application	Information on Membership Application	List of Minor Children; if any
1.	Conway Belcourt D.O.B.- 1971	February 24, 2010	Membership Denied, September 19, 2012. See Ex.7, Questioning P.Bujold	Kyle Belcourt-Gladue Kiersten Belcourt (*likely minor dependants)
2.	Sheena Lee Cardinal D.O.B. 1986	February 21, 2010	Membership Denied, December 11, 2011. See Ex.7, Questioning P.Bujold	Ronin Auger (*likely minor dependant)
3.	Misty Lee Dokken D.O.B. 1979	January 6, 2010	None available	Phoenix Fayant-Dion Joshua Fayant-Dion Avery Fayant-Dion (*likely minor dependants)
4.	Sydney Midbo D.O.B. February 26, 2006	April 30, 2010 *	None Available	IS A MINOR On list of non-beneficiaries- Paul Bujold UT #31
5.	Casey Elijah Midbo D.O.B.- August 21, 2003	April 30, 2010	None available	IS A MINOR *On list of minor non-beneficiaries- Paul Bujold UT #31
6.	Ethan Roy Midbo D.O.B. August 8, 2004	April 30, 2010 *	None Available	IS A MINOR On list of minor non-beneficiaries- Paul Bujold UT #31
7.	Jamie Gail Hunt (Maiden: O'Connell) D.O.B. 1978	April 5, 2010	None available	Kate Kona Hunt Kennedy Koda Hunt (*likely minor dependants)

Paul Bujold, Undertaking #24
Potential Minor Beneficiaries

	Name	Date of Trust Application	Information on Membership Application	List of Minor Children; if any
8.	Michelle Elizabeth Paquette D.O.B. 1972	November 7, 2010	None available	Victoria Ashley Taylor Matthew Aaron Taylor Amber Christian Faith Dix Franklyn Layne Dix Judith Charity Dix (*likely minor dependants)
9.	Heather Jacqueline Poitras D.O.B. 1970	June 9, 2010	None available	Theoren Poitras Anastasia Poitras Tamara Poitras (P.Bujold UT #22 includes 2011 email stating eldest just turned 18) (*includes 1-2 minor dependants)
10.	Jeanine Marie Potskin	February 5, 2010	None available	Jaise Ariel Potskin- D.O.B. March 25, 2003 Jorga Lynn Moodie- D.O.B. January 29, 2008 (*minor dependants) * On list of minor beneficiaries- Paul Bujold UT #31
11.	Nia Brooke Donald Lewis D.O.B. June 27, 2006	August 30, 2010	None available	IS A MINOR
12.	Niomi Mary Ann Donald D.O.B. December 12, 2007	August 30, 2010	None available	IS A MINOR

Paul Bujold, Undertaking #24
Potential Minor Beneficiaries

	Name	Date of Trust Application	Information on Membership Application	List of Minor Children; if any
13.	Stiles Ansley Donald January 5, 2005	August 30, 2010	None available	IS A MINOR
14.	Crystal Marie Poitras- John DOB 1968	May 11, 2010		Corbin Poitras (D.O.B. 1988) Jasmine Fowillard Jesse John Jordan John (*likely includes 2-3 minor dependants)
15.	Trent Ryan Albert Potskin D.O.B. 1981	January 28, 2010	None available	Ethan Elijah Tallia M.L. (*minor dependants) *On list of minor beneficiaries- Paul Bujold UT #31
16.	Nicole Tanya Marie Poitras	May 12, 2010	None available	Alisha Claire Poitras- D.O.B. 1995 Tonan Ashley Herman Poitras- D.O.B. 2000 Tyreese Cameron Poitras- DOB 2003 (*includes 2 minor dependants)
17.	Deanna Marie Quintal D.O.B. 1971	December 12, 2011	None available	Derek Luke Quintal Darren Luke Quintal Roseanna Mary Quintal (*likely minor dependants)

Paul Bujold, Undertaking #24
Potential Minor Beneficiaries

	Name	Date of Trust Application	Information on Membership Application	List of Minor Children; if any
18.	Justice Walter William Twin D.O.B. 2001	June 8, 2010	None available	IS A MINOR * On list of minor beneficiaries- Paul Bujold UT #31
19.	Nicole Charmaine Clara Twin	January 13, 2011 R: February 2, 2011	None available	Dominique Twin- D.O.B. 1994 Taylor Peterson- D.O.B. 2002 (*includes 1 minor dependants)
20.	Orleane Jennifer Claire Twin D.O.B. 1982	July 22, 2010	None available	Miel Bella Twin Abdi- D.O.B. 2004 Shirdon Keith Abdi- D.O.B. unknown (*likely 2 minor dependants)
21.	Miel Bella Twin, Abdi D.O.B. 2004 ***mother's application above	July 29, 2010	None available	IS A MINOR
22.	Wesley Irving Joseph Twin (son of Walter Felix Twin) D.O.B. 1963	February 26, 2010	Approved See April 17, 2008 letter, Ex. 7, P. Bujold Questioning.	Brittany Emma Marie Twin- D.O.B. 1993 Heather Doris Anne Twin- deceased Justice Walter William Twin- D.O.B. 2001 (*has own application) Alexander Lennon Luke Twin- D.O.B. 2005 (*has own application) (*includes 2 minor dependants) * On list of minor beneficiaries- Paul Bujold UT #31

Paul Bujold, Undertaking #24
Potential Minor Beneficiaries

	Name	Date of Trust Application	Information on Membership Application	List of Minor Children; if any
23.	Alexander Lennon Luke Twin D.O.B. 2005	R: June 8, 2010	None available	IS A MINOR *On list of minor beneficiaries- Paul Bujold UT #31
24.	Darcy Alexander Twin D.O.B. 1977	May 17, 2010	None available	Autumn Twin Logan Twin River (*likely includes minor dependants) *On list of minor beneficiaries- Paul Bujold UT #31
25.	Grace Erika Worden D.O.B. 1987	July 25, 2011 R: September 22, 2011		Kenzie Desha Kasokeo Kazley Tahilia Harmony Ward (*likely minor dependants)

List of Authorities

1. *Alberta Rules of Court*, Alta Reg. 124/2010
2. *Indian Act*, R.S.C. 1985, c. I-5
3. *Public Trustee Act*, S.A. 2004, c. P-44.1
4. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365
5. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2013 ABCA 226
6. *Canadian Natural Resources Limited v. ShawCor Ltd.* [2014] ABCA 289
7. *Henry v. British Columbia (Attorney General)* [2012] B.C.J. No. 2639 (B.C.S.C.)
8. *Juman v. Doucette* [2008] S.C.J. No. 8 (S.C.C.)
9. *L.C. v. Alberta (Metis Settlements Child & Family Services, Region 10)* [2011] A.J. No. 36 (Q.B.)
10. *Munro v. Munro* [2011] A.J. No. 1054 (C.A.)
11. *Sawridge Band v. Canada* [2004] F.C.J. No. 77 (C.A.)
12. *Sawridge Band v. Canada* [2009] F.C.J. No. 465 (C.A.), leave to appeal refused [2009] S.C.C.A. No. 248
13. *Stagg v. Condominium Plan No. 882-2999* [2013] A.J. No. 1306 (Q.B.)