

COURT OF APPEAL OF ALBERTA

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[Rule 14.87]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: **EXTRACTS OF KEY EVIDENCE OF
SAWRIDGE FIRST NATION**

Appeal from the Decision of

The Honourable Mr. Justice J. S. Little

Dated the 3rd day of September, 2025

EXTRACTS OF KEY EVIDENCE OF SAWRIDGE FIRST NATION

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COURT FILE NUMBER 1103 14112

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

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

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

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

DOCUMENT **AFFIDAVIT OF DARCY TWIN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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 File No.: 64203-7/EHM



AFFIDAVIT OF DARCY TWIN

Sworn on September 24, 2019

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

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

Sawridge First Nation and Chief and Council

2. Sawridge currently has 45 members, one of whom is a minor. These members are, by definition, the only beneficiaries of the 1982 Trust.
3. There are currently three members of Sawridge Chief and Council: Chief Roland Twinn, Councillor Gina Donald, and me. As duly elected Chief and Council, we represent the members of Sawridge.
4. Roland Twinn, who is also a Trustee of the Sawridge Band Inter Vivos Settlement (the "1985 Trust"), has abstained from involvement in this intervention application on behalf of Sawridge.

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

5. I am informed by my review of Declaration of Trust for the 1982 Trust, a copy of which is attached hereto and marked as **Exhibit "A"** to this my affidavit, that the beneficiaries of the 1982 Trust are all present and future members of Sawridge and that the Trustees of the 1982 Trust are Chief and Council of Sawridge.
6. The Trustees of the 1982 Trust are, by definition, the current elected Chief and Council of Sawridge, being Chief Roland Twinn, Councillor Gina Donald, and me.

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

7. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of certain portions of the transcript of the testimony of Chief Walter Patrick Twinn in the first trial of Sawridge's constitutional challenge to Bill C-31, copies of which are attached hereto as **Exhibit "B"** to this my affidavit, and do verily believe the following:

- a. When Walter Patrick Twinn became Chief of the Sawridge in 1966, Sawridge did not have any businesses (p 3418).
 - b. Sawridge's goal was to save as much as possible and use the capital and revenue funds to become totally self-supporting one day. (pp 3885-3887)
 - c. Sawridge was concerned that Bill C-31 would result in automatic reinstatement of a large group to membership in Sawridge. (p 3761)
 - d. The 1985 Trust was created two days before Bill C-31 was enacted, in anticipation of the passage of Bill C-31, and with the objectives that the beneficiaries of the 1985 Trust would be people who were considered Sawridge members before the passage of Bill C-31, that the people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries for a short time until Sawridge could see what Bill C-31 would bring about. The people who might become Sawridge members under Bill C-31 would be excluded as beneficiaries. (pp 3906-3909)
 - e. Ultimately, the intention was that the assets from the 1985 Trust would be placed in the 1986 Trust. (pp 3948-3949)
 - f. The primary source of income for Sawridge originated with the discovery of oil on the Sawridge reserve lands. The royalty monies resulting from the sale of oil and gas were received and held in Sawridge's capital account in accordance with the *Indian Act*, RSC 1970, c I-6. The Sawridge capital moneys were expended with the authority and direction of the Minister and the consent of the Council of Sawridge. The Sawridge capital moneys were used for economic development, specifically to invest in various companies carrying on business under the Sawridge name, and were placed in the Sawridge Trusts. (pp 3953-3957, 4004-4005)
- 8 In a letter dated December 23, 1993, a copy of which is attached hereto and marked as **Exhibit "C"** to this my affidavit, the Assistant Deputy Minister, Lands and Trust Services, Indian & Northern Affairs Canada, stated that the 1985 Trust held substantial sums which, to a large extent, had been derived from Sawridge capital and revenue moneys previously released by the Minister and that such moneys were expended pursuant to sections 64 and 66 of the *Indian Act*, for the benefit of the members of Sawridge.

The Jurisdiction Applications in the within Action

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

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


10. I am informed by our counsel, Edward H. Molstad, Q.C. and do verily believe, that counsel for Sawridge was in attendance at the August 24, 2016 hearing to speak to a Rule 5.13 Application brought by the Office of the Public Trustee and Guardian of Alberta for document production from Sawridge and, although the Court asked if counsel for Sawridge had anything to say with regard to the August 24, 2016 Consent Order, Sawridge was not a party to the Consent Order and its counsel declined to make submissions on its behalf in relation to the Consent Order.
11. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits "D", "E", "F" and "G", and do verily believe, that prior to and during the case management hearing in the within action on April 25, 2019 and again during the case management hearing on September 4, 2019, the Honourable Mr. Justice J.T. Henderson raised concerns about the August 24, 2016 Consent Order, and whether the trust assets transferred from the 1982 Trust are held pursuant to the terms of the 1982 Trust or the 1985 Trust. Attached hereto and marked as **Exhibit "E"** to this my affidavit is a copy of the April 25, 2019 email from the Honourable Mr. Justice J.T. Henderson. Attached hereto and marked as **Exhibit "F"** to this my affidavit is a copy of the transcript from the April 25, 2019 proceeding. Attached hereto and marked as **Exhibit "G"** to this my affidavit is a copy of the transcript from the September 4, 2019 proceeding.
12. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits "E", "F" and "G", and do verily believe that the Honourable Mr. Justice J.T. Henderson directed the filing of an application seeking a determination of the effect of the August 24, 2016 Consent Order, returnable November 27, 2019.
13. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibit "H", and do verily believe, that on September 13, 2019, the Trustees of the 1985 Trust filed and served on him an application requesting a determination of the transfer of asset issue raised by the Honourable Mr. Justice J.T. Henderson, and the effect of the August 24, 2016 Consent Order, and a copy of the filed application is attached hereto as **Exhibit "H"** to this my affidavit.
14. I am informed by our counsel, Edward H. Molstad, Q.C. and by my review of the attached Exhibits "H" and "I" and do verily believe, that Sawridge, if granted status to intervene in the hearing on the Jurisdictional Question ordered by the Honourable Mr. Justice J.T. Henderson pursuant to a Consent Order on December 18, 2018 and in the application filed by the Trustees of the 1985 Sawridge Trust on September 13, 2019 (collectively, the "Jurisdiction Applications"), would be the only participant that represents all members of Sawridge to the exclusion of other persons. Attached hereto and marked as **Exhibit "I"** to this my affidavit is a copy of the December 18, 2018 Consent Order.

15. Sawridge would be specially effected by the outcome of the Jurisdiction Applications as its members are the beneficiaries of the 1982 Trust, Sawridge Chief and Council are the Trustees of the 1982 Trust, and the source of funds used to purchase the assets held in the 1982 Trust are capital and/or revenue expenditures made pursuant to sections 64 and 66 of the *Indian Act*, which must only be used for the benefit of the members of Sawridge.
16. Sawridge has a unique perspective and insight concerning the issues raised by the Jurisdiction Applications, as the interests of the Trustees and the beneficiaries of the 1982 Trust are not currently represented by the parties to the within Action.

Purpose of this Affidavit

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

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



A Commissioner for Oaths in and for the
Province of Alberta

**MICHAEL R. MCKINNEY Q.C.
BARRISTER & SOLICITOR**



DARCY TWIN

EXHIBIT “B”

03324.01 IN THE FEDERAL COURT OF CANADA TRIAL DIVISION

02 Court File No T-66-86

03 BETWEEN:

04 WALTER PATRICK TWINN, suing on his own behalf and on
05 behalf of all other members of the Sawridge Band,
06 WAYNE ROAN, suing on his own behalf and on behalf of
07 all other members of the Ermineskin Band,
08 BRUCE STARLIGHT, suing on his own behalf and on behalf
09 of all other members of the Sarcee Band

10 Plaintiffs,

11 -and-

12 HER MAJESTY THE QUEEN

13 Defendant

14 -and-

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

ALBERTA

17 Interveners

18

19 PROCEEDINGS

20 October 26, 1993

21 Volume 22

22 Held at the Federal Court of Canada

23 Edmonton, Alberta

24 Pages 3324 to 3551

25

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

03325 01 APPEARANCES

02 M. Henderson, Esq. For the Plaintiffs

03 C. M. Twinn, Ms

04 P. Healey, Esq.

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

06 C. Meehan, Esq. Intervener for the

07 Native Council of Canada

08

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

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

11

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

13 Non-Status Indian

14 Association of Alberta

15

16

17

18 June Rossetto Court Registrar

19

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

DARCY TWINN

Sworn before me this 24TH day
of SEPTEMBER, 2019

A Commissioner for Oaths in and for Alberta

MICHAEL R. McKINNEY Q.C.
BARRISTER & SOLICITOR

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

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22 * * * * *

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03327 01 THE REGISTRAR: This Court is now resumed

02 MR. HENDERSON: My Lord, sorry, counsel had asked

03 for a bit more time and that's why we're late this

04 morning. I think Mr. Meehan and/or Mr. Glancy may want

05 to address the Court about the comments yesterday

06 THE COURT: Yes. Thank you.

07 MR. MEEHAN: Good morning, Your Lordship.

08 Mr. Henderson and other counsel had a brief discussion

09 prior to court this morning, and there was a few

10 matters that we would wish to bring to the Court's

11 attention for your consideration.

12 THE COURT: Yes.

13 MR. MEEHAN: Yes, until yesterday, Your

- 19 have been entered into the band lists. They all will be
 20 entered into the band lists.
- 21 Q These are children born to members who were members
 22 before 1985?
- 23 A That's right.
- 24 Q And those children will all ultimately be entered on
 25 the band lists as members?
- 26 A That's automatic.
- 03418-01 Q And in some cases that hasn't happened yet?
- 02 A It hasn't happened yet. For no real reason. Difficulty
 03 the membership codes probably, whatever. We've got a
 04 legal opinion. You can't just do that. You have to do
 05 it in order that everyone has to apply which is not
 06 automatic.
- 07 Q So the parents of the children would ask you to enter
 08 the child and you would simply do that?
- 09 A They shouldn't have to ask, but that's when it comes.
 10 It's not -- it hadn't been relevant unless they're
 11 infants. Not that they would lose anything.
- 12 Q Now when you became chief in 1966, did Sawridge have
 13 any businesses?
- 14 A No.
- 15 Q Now, you were a member of the Sawridge band in 1967. In
 16 fact you were chief in 1967 and had been for one year
 17 at that time. Now if you had voluntarily enfranchised
 18 in 1967, how much money would you have received as your
 19 per capita share in 1967?
- 20 A No more than \$1200 I believe.
- 21 Q And how do you know that?
- 22 A I believe we had about -- if I recall when I was chief
 23 we had \$40,000 in the capital fund I believe. That's
 24 the figure I can remember. And others later on had
 25 voluntary -- or enfranchised either by marriage,
 26 whatever. That was about the figure I believe. It's
 03419-01 never -- the figure was never -- it's difficult.
- 02 Sometimes it would take us six months to get an
 03 accounting of what was in the capital revenue funds.
- 04 Q But the overall account in 1967 was --
- 05 A Was about 40,000.
- 06 Q \$40,000?
- 07 A I'm not saying it's exact. It's about \$40,000.
- 08 Q So if there were 30 members, say, they would each get
 09 1/30th of \$40,000.
- 10 A Yes, there was 38 members at '85.
- 11 Q I'm just asking a hypothetical question.
- 12 A Yes, right. About 1200 I said. No more.

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

- 21 business activity? That is what makes it distinct?
- 22 A That's right.
- 23 Q The Sawridge Band is essentially a business entity?
- 24 A The Sawridge Band is a group of people, a band, that we
25 use this for a common purpose. We believe that we have
26 to be strong financially.
- 03884.01 To do that, there's a lot of things
02 that people must be. It is not wrong for other people to
03 be strong and to be financially strong. All of the other
04 things that make society run, I guess we try to keep
05 up -- not keep up, but try to come to a level, if
06 possible.
- 07 This Country provides -- in
08 democracy and in free enterprise system, which I believe
09 very much -- opportunities for everyone to earn a living,
10 whatever. And that is the objective for us, is to
11 struggle.
- 12 Q Of course
- 13 A I don't know what . .
- 14 Q Of course. And what I'm saying is that when you talk
15 about the Sawridge Band and your concern for its future,
16 what you're really concerned about is the future of the
17 business activities of the Sawridge Band.
- 18 A If we were told initially by the oil companies an
19 estimate that the oil reserves would only be 20 years,
20 we've went that 20 years -- there is someone
21 speculating -- speculating -- it's going to be 30 years.
22 But it is our job that they don't diminish -- 15 million
23 hasn't -- it's been growing.
- 24 When we hold in common, the band --
25 and it goes for all bands, I think, in Canada, that these
26 assets -- I think I may be repeating myself. I'm
- 03885.01 sorry, but we cannot will our share. We do not -- a
02 child does not inherit. It's all in common.
- 03 It is our belief and it is our --
04 Sawridge -- that those lands that -- left to us by
05 someone else, those people that refuse to volunteer
06 enfranchise went through the hardships.
- 07 Like I said earlier, the band
08 council before me would not allow all the timber to be
09 cut all at once, as some people like to see. So . . .
- 10 Q Yes?
- 11 A So, in that respect, we try to save as much as possible,
12 all the capital funds, the revenue funds that are there,
13 and hopefully some day we can be totally
14 self-supporting. That is the goal.

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

25 Q My point, Chief Twinn, was simply that what you're
 26 concerned about -- and perhaps what you've been doing is
 03886.01 just confirming this for me -- what you're concerned
 02 about is the future of the band's business activities.

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

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

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

24 So I don't know what else you want,
 25 why you keep insinuating Sawridge is only interested in
 26 businesses. We have to -- you know, if other people have
 03887.01 opportunities, we'd be a bunch of lazy bums if we did not
 02 utilize it properly and for the future, so . . .

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

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

09 Exhibit 26, Document Number 913.
 10 THE COURT: 913, Mr. Faulds?
 11 MR. FAULDS: 913, My Lord
 12 Q MR. FAULDS: It's a letter dated
 13 November the 2nd of 1987, directed to the Right
 14 Honourable Brian Mulroney, then-Prime Minister of
 15 Canada. And that was signed by yourself, Chief Twinn?
 16 A Mm-hmm
 17 Q And what I'd ask you to do is look at that letter and in
 18 particular look at the second last paragraph.
 19 MR. HENDERSON: I'm sorry. The Senator is talking
 20 to me, but I don't think he remembers he has to talk out
 21 loud, just to remind him of that
 22 THE COURT Thank you for that disclosure,
 23 Mr. Henderson
 24 A Okay, I read it
 25 Q MR. FAULDS If you look at the second last
 26 paragraph of that letter, Chief Twinn, in that letter,
 03888 01 you say,
 02 "The Sawridge Indian Band is in business and
 03 cannot afford to be jeopardizing its position
 04 in the business world, nor the security of its
 05 four hundred (400), plus employees by
 06 expending huge sums of money and time
 07 stick-handling through the Justice
 08 Department's delay tactics."
 09 So I take it that the principal
 10 activity of the Sawridge Band as a band is business
 11 A In order to survive, probably so. But that only confirms
 12 what I have said, I think, earlier.
 13 Q And that's really what this case is about. It's not
 14 about native rights or culture or tradition or anything
 15 like that; it's about the Sawridge Indian Band's
 16 business?
 17 A Well, I'd beg to differ
 18 MR. FAULDS My Lord?
 19 THE COURT: Yes?
 20 MR. FAULDS Mr. Henderson has passed me a note
 21 to indicate that he has available some of the documents
 22 that he had said that he would look for and that seem to
 23 be relevant to this particular area of the
 24 cross-examination. And I wonder if maybe we could have a
 25 break at this point so that we could look at them. It's
 26 a little bit early, but . . .
 03889.01 THE COURT: All right. I have some questions
 02 of Chief Twinn, and I want to pose them while you all

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

21 description?

22 A That's right.

23 Q And the beneficiaries of the trust are described on
24 page 2 of that document, and I'd ask you to look at the
25 definition there

26 A Page...

03907.01 Q I'm sorry. Page 2, and it's paragraph 2(a) at the
02 bottom. And maybe what I could ask you to do,
03 Chief Twinn, is just read through that definition of
04 "beneficiaries." And it actually goes on to page 4.

05 A How far do you want me to go?

06 Q If you could finish where the definition of "trust fund"
07 starts That would be the top of page 4.

08 Have you had a chance to look that
09 over?

10 A Yeah

11 Q As I understand it, the people who are beneficiaries
12 under this settlement are people who would be considered
13 members of the Sawridge Band under the Indian Act as it
14 was in April of 1982

15 Is that your understanding, too?

16 A That's right. '82?

17 Q I think they say -- the date is April -- I don't know
18 what the significance of it is, but if you look at the
19 top of page 3 --

20 A I just don't know why it wouldn't be '85. That's all
21 That's fine It's a legal document, so...

22 Q Sure But, in any event, what it meant was that the
23 people who would be beneficiaries would be people who
24 would be considered members of the band before the
25 passage of Bill C-31?

26 A That's right.

03908.01 Q The object of that was to exclude people who might become
02 members of the Sawridge Band under Bill C-31 as
03 beneficiaries?

04 A Yes, to a certain extent, yeah

05 Q Was it the intention that all of the assets of the band
06 would be covered by that agreement or only some?

07 A I believe all assets that are -- not including -- I'm
08 going to repeat -- I believe not including the capital --
09 the funds that are held in Ottawa

10 Q So all assets other than that capital fund in Ottawa was
11 to be covered by this trust agreement?

12 A Mm-hmm, or whatever the documents are in there.

13 I can't...

14 Q But I just want to know, when this agreement was being

- 15 prepared, what your objective was. And your first
 16 objective was that people who might become band members
 17 under Bill C-31 wouldn't be beneficiaries?
- 18 A Mm-hmm.
- 19 Q That's correct? That was Objective Number 1?
- 20 A Right.
- 21 Q And Objective Number 2 was that the trust would cover all
 22 of the assets of the Sawridge Band that were under the
 23 Sawridge Band's control?
- 24 A Yes. What's on there, I believe I don't want to be
 25 saying something that --
- 26 Q I'm not trying to trick you I'm wondering if that's
 03909 01 what your objective was
- 02 A That's the objective of those.
- 03 Q Sure. So that even if people under the bill became
 04 members of the band, they would be excluded from sharing
 05 in the assets of the band?
- 06 A For -- especially a short purpose, right, for a short
 07 while there
- 08 Q Until you changed the trust agreement?
- 09 A We didn't know what the Bill C-31 was going to bring
 10 about
- 11 Q So you tried to create a trust arrangement that would
 12 prevent Bill C-31 members from having any share in the
 13 band's assets?
- 14 A That's right, on this one, yeah.
- 15 Q Okay. Now, as far as whether or not -- it's a legal
 16 question, I suppose, whether or not you succeed in doing
 17 what you're trying to do You hire lawyers to try and do
 18 things for you, and sometimes they do it, and sometimes
 19 they don't. You recognize that?
- 20 A I'm not saying the lawyers -- what they try to do or not.
 21 But the document, you know -- I need professional help
 22 for documents
- 23 MR. HENDERSON: My Lord, just so it's clear on the
 24 record -- I want to make sure it is. Because the Senator
 25 has not had a chance to read through all of these
 26 documents, I've been giving history to my friend
- 03910-01 There's an '86 version of the same
 02 trust where the definition of "beneficiary" would include
 03 anyone, from time to time, becoming a member under the
 04 Indian Act or otherwise. And that deals with the
 05 circumstance where the bill is now law, and you have to
 06 deal with people on that basis
 07 So just so it's not misleading,
 08 there's a time period for each of these things

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

- 24 A That's right.
- 25 Q Under the Sawridge Indian Band, again, that is your
26 signature?
- 03952:01 A That's right.
- 02 Q And the witness to your signature on behalf of the
03 Sawridge Indian Band, I believe, that would be
04 Mr. McKinney's?
- 05 A That's the last page?
- 06 Q Yeah, on the last page.
- 07 A That's right.
- 08 Q Yeah. He's the executive director?
- 09 A Right.
- 10 Q I gather from looking at those documents, Chief Twinn,
11 that you sign a variety of legal documents in different
12 capacities
- 13 A Right.
- 14 Q And your capacities include as chief of the band?
- 15 A That's right.
- 16 Q As a director of various corporations?
- 17 A That's right.
- 18 Q As a trustee of the trusts that have been created?
- 19 A That's right.
- 20 Q And I just wanted to be sure that I understood the
21 various points that we talked about yesterday. I wonder
22 if maybe we could just go through a brief summary, and
23 you can tell me if this is correct.
- 24 First of all, I gather that the
25 primary source of -- originally, the primary source of
26 income for the Sawridge Band originated with the
03953:01 discovery of oil under the reserve lands.
- 02 A I'll call it capital funds.
- 03 Q And those capital funds grew with the discovery of oil
04 and the exploration and sale and royalties from that oil?
- 05 A Whatever that says with the Indian Act, that is capital
06 funds.
- 07 Q So the royalties from the oil are received, and those
08 royalties go into the band's capital account?
- 09 A That's right, in Ottawa.
- 10 Q That's right. And then funds can be drawn from that
11 capital account by the band on a resolution of the band
12 council?
- 13 A Sometimes it takes a membership. Sometimes, you know, it
14 takes a general meeting sometimes, depending on who . . .
- 15 Q Okay. Is it fair to say that in the majority of cases
16 where funds have been drawn from the capital account, in
17 the last few years that has been done on the basis of a

- 18 band council resolution?
- 19 A Everything has to be done at least by band council
- 20 resolution. Sometimes the department, from time to time,
- 21 requests the majority vote, et cetera
- 22 Q Okay. Unless the department asks for something, it's
- 23 done on band council resolution?
- 24 A It always -- it has to be done by band council
- 25 resolution
- 26 Q And band council resolution would involve a resolution
- 03954:01 which would be passed by -- well, the band council is you
- 02 and your two close relatives?
- 03 A And my two close relatives.
- 04 Q Yes. And when funds have been drawn from the capital
- 05 account, those funds have been invested in various
- 06 companies that carry on business under the Sawridge name?
- 07 A That's right.
- 08 Q And those companies are -- you and your two close
- 09 relatives are the directors and shareholders in those
- 10 companies?
- 11 A Myself and my two close relatives are
- 12 Q And the shares in those companies that carry on business
- 13 under the Sawridge name have then been placed in a trust
- 14 for which you and your two close relatives are the
- 15 trustees?
- 16 A Sometimes it doesn't go necessarily directly. Sometimes
- 17 it goes directly to the company, and then the company
- 18 later on, at a convenient time, will go to the trust, as
- 19 accounting procedures require, to do audits, whatever. A
- 20 lot of this is done by accountants plus legal people.
- 21 Q So I understand you're talking about the financing of the
- 22 corporations
- 23 A Not only financing, even the trust declarations there.
- 24 It's done with legal and accounting procedures. As
- 25 accountants become aware there is, you know -- they have
- 26 to be audited, so there is advice from two sources here
- 03955:01 that we get
- 02 THE COURT: Is your question predicated,
- 03 Mr. Faulds, on net revenue from the business operations
- 04 going into the trust?
- 05 MR. FAULDS No. My question related to the
- 06 shares in the corporation.
- 07 And perhaps that's where we're
- 08 missing each other, Chief Twinn.
- 09 Q MR. FAULDS: What I was suggesting was that the
- 10 shares in the Sawridge companies, I believe you've
- 11 indicated to us, have then been placed in the Sawridge

- 12 trust.
- 13 A I think generally it comes in directly to the company.
- 14 If it's a new company, something, say, like the food
- 15 store, something is coming in, if there is equity put in,
- 16 it goes into that. And generally, after awhile, when
- 17 that's been set up, on an appropriate time, accounting
- 18 procedures, whatever, then it's usually placed in a
- 19 trust
- 20 Q Okay. So that in the end result -- and I think you've
- 21 said this was the intention of the trust -- the trust
- 22 holds the band's assets, and that means the shares of the
- 23 Sawridge companies?
- 24 A Let me put it -- I'll try and put it in simple terms
- 25 again, I guess
- 26 The trust -- the companies go into
- 03956:01 the Sawridge trust after -- after some time the company
- 02 is formed, it generally goes into the Sawridge trust.
- 03 Q Sure. When you say "the companies go into the Sawridge
- 04 trust," that means that the shares are held by the trust?
- 05 A Right
- 06 Q And the trustees of the Sawridge trust --
- 07 THE COURT. Could I interrupt, Mr. Faulds?
- 08 MR. FAULDS: I'm sorry
- 09 THE COURT: The shares are held by the Sawridge
- 10 trust ultimately, sooner or later
- 11 THE WITNESS. That's right.
- 12 THE COURT: Net revenues of the business
- 13 operations, what becomes of them?
- 14 THE WITNESS: The companies run -- the revenues
- 15 are in there. And when there is an overflow, which isn't
- 16 often, but, you know, if there is sometimes equities
- 17 needed for a new business, that plus some more funds
- 18 could go in. Like, if it's a food fare business or
- 19 something that's purchased to . . .
- 20 THE COURT: Do they touch base -- are they
- 21 placed in the trust and then spent for equities in the
- 22 new businesses, or do they go directly from the operation
- 23 of the corporation as net revenues to the equity fund for
- 24 new businesses?
- 25 THE WITNESS. Generally, I think what's done --
- 26 the companies are -- itself have the funds separately.
- 03957:01 The trust -- all the trust is doing, replacing -- in
- 02 essence, I guess, the band is not a legal entity, and
- 03 there is from time to time -- I guess it could be
- 04 difference of legal opinion or accounting opinion. So,
- 05 to be assured, our advice, that's what we've done. The

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

06 Department of Indian Affairs They approve it.
 07 Q What I am saying to you, sir, is, Was there a band vote
 08 for that \$1,553,000 that the Sawridge Band withdrew?
 09 A I cannot tell you exactly what that is right now -- right
 10 here now. I'm telling you -- all I can answer you, the
 11 Department approves these upon their requests. Sometimes
 12 they'll want the band vote, or sometimes they won't.
 13 Q Is it fair to say that the band takes for face value your
 14 band council resolution and acts on it except in very
 15 exceptional circumstances where they may ask you to hold
 16 a band vote? Is that a fair statement?
 17 THE COURT. The Department takes, not the band.
 18 A The Department of Indian Affairs approves everything,
 19 so . . .
 20 Q MR. AKMAN. Sir, they take for face value, in
 21 good faith and good credit, your band council resolutions
 22 requesting payments out of capital account, and in very
 23 exceptional circumstances they ask you for a vote Is
 24 that correct?
 25 A That's right
 26 Q So that most of the funds that come out of the capital
 04004.01 account, go into your companies, which go then into the
 02 trusts, are all down on band council resolution?
 03 A One intercompany, they're not done by band council
 04 resolution.
 05 Q Hmm?
 06 A They're not done by one intercompany, once it gets from
 07 one to . . .
 08 THE COURT: I think Mr. Akman was asking,
 09 Senator, whether transfers from the band accounts to any
 10 of the companies, not intercompany transfers but from the
 11 band's funds to the companies, if those are done by band
 12 council resolution alone or by a vote That's what he's
 13 asking
 14 A At the best of my knowledge, because I don't have -- a
 15 band council resolution stresses what it set out to do.
 16 In order to get that audited, that has -- an auditor
 17 could not at that level. Basically states what the use
 18 of that capital fund is going to do, and then it goes
 19 in. Then I thought it became legal at that point, when
 20 the Minister approved it for that reason. That's what it
 21 spent for.
 22 Q MR. AKMAN. That's right So the oil comes out
 23 of the ground, it goes into the capital account, it comes
 24 out of the capital account through band council
 25 resolutions --

26 A Right.

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

02 A Some of it.

03 Q -- for economic development?

04 A Right.

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

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

07 the company assets or intended to place all the company

08 assets in these trusts. Is that right?

09 A Right.

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

11 all to be found in these trusts?

12 A I think they'll all be traceable.

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

14 permission to deal with this property from any band

15 member living off reserve? You have no authority or

16 permission from any of these people to be director or

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

18 too?

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

20 and council

21 Q Good

22 Now, then, I want you to turn to

23 Document 92(G), paragraph 6

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

25 MR. AKMAN: G, yes, My Lord

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

04006:01 Clause 6, of page 4

02 Now, this second paragraph of 6

03 says,

04 "During the existence of this trust, the

05 trustees shall have complete and unfettered

06 discretion to pay or to apply all or so much

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

08 or to accumulate the same, or any proportion

09 thereof, and all or so much of the capital

10 trust fund as they in their unfettered

11 discretion from time to time deem appropriate

12 for any one or more of the beneficiaries. The

13 trustees may make such payments at such time

14 from time to time in such manner and such

15 proportions as the trustees in their

16 uncontrolled discretion deem appropriate."

17 Do you see that?

18 A I see that.

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



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
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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.

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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 settlers 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 Foretti
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, Katlyn (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, Jacyl (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