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Our File Reference: 144194

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PLEASE REPLY TO EDMONTON OFFICE

November 10, 2017

SENT BY E-MAIL

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Attention: Doris Bonora

Attention: Ken Haluschak

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190 Broadway Business Square
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Attention: Janet L. Hutchison

Dear Madam/Sir:

Re: Catherine Twinn v. Roland Twinn et al
Court of Appeal File Number: 1703-0288 AC

Enclosed please find for service upon you, a filed Civil Notice of Appeal with respect to the above noted matter.

Yours truly,

DAVE RISLING
DDR/vc
Encl.

cc: Client

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COURT OF APPEAL OF ALBERTA

Form AP-1

[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: **1703-0288AC**

TRIAL COURT FILE NUMBER: 1103 14112 and 1403 04885

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 Trust"), and

IN THE MATTER OF THE SAWRIDGE TRUST
CREATED BY CHIEF WALTER PATRICK TWINN,
OF THE SAWRIDGE INDIAN BAND, NO. 19 ON
AUGUST 15, 1986 (the "1986 Trust")

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

STATUS ON APPEAL: Appellant

RESPONDENTS: ROLAND TWINN, EVERETT JUSTIN TWINN, CATHERINE TWINN, BERTHA
L'HIRONDELLE and MARGARET WARD, As Trustees for the 1985 Trust and
the 1986 Trust

STATUS ON APPEAL Respondents

RESPONDENT: OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL Respondent

DOCUMENT

CIVIL NOTICE OF APPEAL

APPELLANT'S ADDRESS
FOR SERVICE AND
CONTACT INFORMATION:

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File No.: 144194

WARNING

To the Respondents: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: October 13, 2017

Date entered: N/A

Date served: N/A

Official neutral citation of reasons for decision, if any: N/A

2. Indicate where the matter originated:

☒ **Court of Queen's Bench**

Judicial Centre: Edmonton

Justice: R. P. Belzil

On appeal from a Queen's Bench Master or Provincial Court Judge?: ☐ Yes ☒ No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge:
(do not attach copy) N/A

(If originating from an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required: Rule 14.18(1)(c).)

☐ **Board, Tribunal or Professional Discipline Body**

Specify Body: _____

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

☒ Permission not required, or ☐ Granted:

Date: _____

Justice: _____
(Attach a copy of order, but not reasons for decision.)

4. Portion being appealed (Rule 14.12(2)(c)):

☒ Whole, or

☐ Only specific parts (if specific part, indicate which part):

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.).

5. Provide a brief description of the issues:

This appeal arises from an application by Catherine Twinn for indemnification for legal expenses incurred as a trustee of the 1985 and 1986 Trusts. The Learned Chambers Justice dismissed the application and ordered that Ms. Twinn could apply for indemnification at the final Hearing. The Justice made errors in law, as well as palpable and overriding errors in fact in regards to the following matters:

1. Failing to consider and properly apply the legal test for trustee indemnification;
2. Failing to consider that Action No. 1403 04885 has been completed;
3. Failing to consider, in applying the test for trustee indemnification, the conduct of the majority Trustees in the 2011 Action that has caused Ms. Twinn to have to act independently pursuant to her fiduciary duties, including:
 - (a) Failing to promptly file a constating application preventing an efficient, clear and effective legal process;
 - (b) Failing to take proper steps or direct proper steps be taken to identify the existing beneficiaries and potential beneficiaries of the 1985 Trust;
 - (c) Advocating for a change in the definition of beneficiary within the 1985 Trust to Band Membership exposing existing beneficiaries with irrevocable rights to a discretionary process, without requiring the Band Membership system be amended to ensure fairness and comply with the laws of Canada, including the Charter and recognized customary laws, exposing existing beneficiaries to potentially unfair discretionary decisions;
 - (d) Misrepresenting to Ms. Twinn their intentions to work with the Sawridge First Nation to improve its membership process in order to obtain her agreement for the advice and direction application and failing to take the appropriate steps in that regard;
 - (e) Failing to seek the direction of the Court regarding the validity of the existing definition of beneficiary in the 1985 Trust and advancing a position for a change in definition of beneficiary that would remove or alter the rights of existing beneficiaries without regard to a Trustee's duty of neutrality and loyalty;
 - (f) Filing an Offer with the Court on June 2015, and a Distribution Proposal in January, 2016, to end the 2011 Action that, if accepted:
 - (i) Was unsupported by any process engaging beneficiaries and potential beneficiaries;
 - (ii) Would exclude adult beneficiaries without their express, informed and prior knowledge and consent;

- (iii) Included certain minor children in the proposal that may not qualify as 1985 beneficiaries and excluded others who likely qualify as beneficiaries; and
 - (iv) Selectively discriminated against certain adult beneficiaries not included in the grandfathering proposal, including Shelby Twinn an applicant for party status in the Action, while grandfathering her sister Kaitlin Twinn, younger by two years;
 - (g) Advocating positions that burden the 1985 Trust with legal expenses, and positions that would enrich the beneficiaries of the 1986 Trust, including all five Trustees;
 - (h) Using majority rule to oppress concerns raised by Ms. Twinn despite her communication to the Trustees that they are all duty bound as Trustees to act bona fide and on legal advice and her repeated offers for ADR, JDR and a specific proposal for Trustee Succession to ensure proper identification of and collaboration with beneficiaries and potential beneficiaries;
 - (i) Refusing to give due regard and take appropriate steps in response to obvious conflicts, structural and actual, created by Band Leaders involvement in the governance of both the Trusts and the Band, which remain and affect the administration of the Trust, including the conduct of the 2011 Action and the "end goal" of the Trustees;
 - (j) Improperly delegating Trustee authority and decision making to the Trust Administrator such that he alone instructs legal counsel often without Trustee knowledge or evidence endorsement;
 - (k) Authorizing full funding of the Band and other Trustees expenses from the Trust and excluding funding for Ms. Twinn;
 - (l) Refusing or failing to participate in alternative resolution processes involving all Trustees and beneficiaries in good faith; and
 - (m) Engaging the Band to assist in advancing the "end goal" of the majority Trustees to limit the beneficiary pool.
4. Delaying the indemnification application to be made by the Trial Judge creating an unfair and oppressive financial burden on Ms. Twinn, a Trustee proceeding in a bona fide manner in relation to fiduciary duties, when adult beneficiaries and potential beneficiaries remain unrepresented and vulnerable in protecting their interests against the majority Trustees.
5. Such further and other matters as shall be raised at the hearing of this appeal.

6. Provide a brief description of the relief claimed:

Direct full indemnification of Catherine Twinn for past and future legal fees incurred in relation the 1103 14112 Action and 1403 04885 Action, with any issues relating to quantum to be returned to the Court of Queen's Bench for assessment.

Full solicitor/client costs to be awarded to the Appellant from the 1985 and 1986 Trust assets, or in the alternative from the Respondent Trustees, on a solicitor/client basis.

- 7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)**
- ☐ Yes ☒ No
- 8. Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))**
- ☐ Yes ☒ No
- 9. Will an application be made to expedite this appeal?**
- ☐ Yes ☒ No
- 10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**
- ☐ Yes ☒ No
- 11. Could this matter be decided without oral argument? (Rule 14.32(2))**
- ☐ Yes ☒ No
- 12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e), 14.83)**
- ☐ Yes ☒ No

If yes, provide details: _____
(Attach a copy of any order.)

- 13. List Respondent or counsel for the Respondent, with contact information:**

Counsel for the Respondents, Roland Twinn, Catherine Twinn, Everett Justin Twinn, Bertha L'Hirondelle and Margaret Ward, As Trustees for the 1985 and 1986 Trusts:

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Counsel for the Respondent, Public Trustee of Alberta:

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14. Attachments (check as applicable)

☒ Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))
Not yet available, will provide when available

- ☐ Earlier order of Master, etc. (Rule 14.18(1)(c))
- ☐ Order granting permission to appeal (Rule 14.12(3)(a))
- ☐ Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.