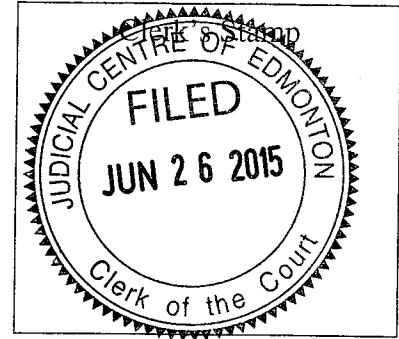


COURT FILE NO. 1103 14112



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

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 TWINN, BERTHA
L'HIRONDELLE, CLARA MIDBO AND CATHERINE TWINN, as
trustees for the 1985 Sawridge Trust**

DOCUMENT **REPLY BRIEF OF CATHERINE TWINN FOR SPECIAL CHAMBERS CASE
MANAGEMENT MEETING ON JUNE 30, 2015**

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PART 1 INTRODUCTION

1. McLennan Ross LLP acts on behalf of Catherine Twinn in her capacity as 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"). This representation extends to being counsel of record for Catherine Twinn in Court of Queen's Bench Action No. 1403 04885 (the "2014 Action").
2. While Dentons LLP and Reynolds Mirth Richards & Farmer LLP, represent the collective group of the trustees of the Trusts, our client has found it necessary to retain independent representation as her instructions and concerns as a trustee of the Trusts were not being represented by these firms due to her views representing the minority position amongst the trustees.

VARIATION OF TRUSTS

3. The trustees of the 1985 Trust are the applicants in Action No. 1103 14112 (the "2011 Action"). It has been represented to the Court that the 1985 Trustees are seeking the Court's direction in setting the procedure for seeking the opinion, advice and direction of the Court in regards to:
 - (a) Determining the beneficiaries of the 1985 Trust;
 - (b) Reviewing and providing direction with respect to the transfer of assets of the 1985 Trust;
 - (c) Making any necessary variations to the 1985 Trust.

Reply Brief of Roland Twinn, Everett Justin Twinn, Bertha L'Hirondelle, and Margaret Ward, filed June 23, 2015 ("Reply Brief") at Tab 1.

4. While it appears that these have become the issues raised in the 2011 Action, an Originating Application or other form of commencement document has not been filed by the applicants in the 2011 Action, despite the Order of Justice Thomas on August 31, 2011 in the 2011 Action to do so.

Reply Brief at Tab 2.

5. This is a serious concern. Without a proper originating document, it is difficult or impossible for persons potentially affected by the proposed variation to respond because the substance of the application is not clear nor is the proposed relief sought.
6. The applicants, without the knowledge or consent of Catherine Twinn, have recently put forward a “with prejudice” settlement offer that, amongst other matters, proposes to grandfather certain minor persons in as beneficiaries of the 1985 Trust. This is being put forward as a solution that will allow the Court to approve the proposed variation of the definition of beneficiaries in the 1985 Trust to include Sawridge Band members only.
7. Ms. Twinn disagrees that this settlement offer is capable of acceptance, for the following reasons, which will be discussed more fulsomely below:
 - (a) The provisions of the *Trustee Act* have not been complied with;
 - (b) The completeness and legality of the proposed list of affected minors has not been adequately substantiated;
 - (c) The issue of the proposed minors to be grandfathered are excluded.
8. The decision of Justice Thomas in the 2011 Action issued June 12, 2012 directs that the Office of the Public Guardian and Trustee (OPGT) 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.”

Reply Brief at Tab 3.

9. At present, the OPGT has not yet been able to fulsomely conduct its Court ordered investigation into Sawridge Band membership criteria process for the purpose of ascertaining how the proposed variation in beneficiary designation will affect minors.
10. The settlement offer proposed by the other trustees of the 1985 Trust fails to provide any reasonable assurances that the minors listed are all of the potential minor beneficiaries of the 1985 Trust pursuant to the current beneficiary designation. Despite being a trustee of the 1985 Trust, Ms. Twinn is unaware of how this list was generated or determined. Further, this offer fails to grandfather in the issue of these listed minors.
11. It is essential that the OPGT's investigation be allowed to proceed, unimpeded, so that the potentially affected minors can be ascertained and the effect of the proposed variation to the beneficiary designation can be fully assessed by this Honourable Court.
12. Ms. Twinn has grave concerns surrounding the current Sawridge Band member selection process. Despite counsel for the applicants' assurances to the Court at the June 24, 2015 application that the process is appropriate, Ms. Twinn, who is a member of the Band and has first-hand knowledge of the process, does not share this view. The particulars of Ms. Twinn's concerns can be shared with counsel for the OPGT if the relief requested by the OPGT in its application to be heard at Case Management is granted.
13. Given that this is ultimately an application seeking to vary the terms of a trust, it is essential to consider the provisions of the *Trustee Act*, RSA 2000, c. T-8 (the "*Trustee Act*").
14. Section 42 of the *Trustee Act* sets out the legislated requirements when a variation of the terms of a trust is sought. In order to vary a trust, the approval of the Court of Queen's Bench is required.

(2) Subject to any trust terms reserving a power to any person or persons to revoke or in any way vary the trust or trusts, a trust arising before or after the commencement of this section, whatever the nature of the property involved and whether arising by will, deed or other disposition, shall not be varied or terminated before the expiration of the period of its natural duration as determined by the terms of the trust, except with the approval of the Court of Queen's Bench.

15. Section 42(6) of the *Trustee Act* provides that prior to submitting an application for approval of a variation to the trust to the Court of Queen's Bench, written approval of all beneficiaries who are capable of consenting must be obtained.

(6) Before a proposed arrangement is submitted to the Court for approval it must have the consent in writing of all other persons who are beneficially interested under the trust and who are capable of consenting to it.

16. The written approval of all persons beneficially interested in the 1985 Trust has not been obtained because the other trustees of the 1985 Trust, to the knowledge of Ms. Twinn, have not taken steps to properly ascertain these persons.

17. Ms. Twinn, who believes herself to be a beneficiary of the 1985 Trust, certainly does not approve of the proposed variation.

18. Ms. Twinn is very concerned by the other trustees insistence that the beneficial designation of the 1985 Trust be modified without first ascertaining who the beneficiaries of the 1985 Trust are and obtaining their consent. This is a requirement under the *Trustee Act*.

19. Further, Section 42(7) of the *Trustee Act* provides that when exercising its discretion to approve a variation of trust on behalf of those persons enumerated in 42(5) of the *Trustee Act*, the Court may not approve an arrangement unless it is satisfied that the arrangement appears to be for the benefit of, amongst others, minor persons.

(7) The Court shall not approve an arrangement unless it is satisfied that the carrying out of it appears to be for the benefit of

each person on behalf of whom the Court may consent under subsection (5), and that in all the circumstances at the time of the application to the Court the arrangement appears otherwise to be of a justifiable character.

(5) In approving any proposed arrangement, the Court may consent to the arrangement on behalf of

- (a) any person who has, directly or indirectly, an interest, whether vested or contingent, under the trust and who by reason of minority or other incapacity is incapable of consenting,
- (b) any person, whether ascertained or not, who may become entitled directly or indirectly to an interest under the trusts as being, at a future date or on the happening of a future event, a person of any specified description or a member of any specified class of persons,
- (c) any person who after reasonable inquiry cannot be located, or
- (d) any person in respect of any interest of the person's that may arise by reason of any discretionary power given to anyone on the failure or determination of any existing interest that has not failed or determined.

20. Ms. Twinn supports the OPGT's application and implores the Court to allow the OPGT to complete their investigation so that a just result can be reached for all the beneficiaries of the 1985 Trust. Our client submits that without the OPGT's investigation, a determination of whether the proposed variation to the beneficiary designation is beneficial to entitled minors cannot occur, as is required pursuant to the *Trustee Act*.

21. To date, Ms. Twinn has self funded her representation in this matter, unlike the other trustees, which she believes to show her deep concern for these matters and commitment to obtaining a just result for the 1985 Trust beneficiaries.

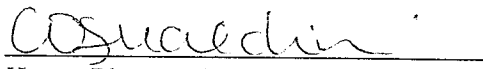

CONFIDENTIALITY CONCERNS

22. Bryan & Company LLP, counsel for the other trustees, has raised concerns pertaining to McLennan Ross LLP communicating confidentiality with counsel for the OPGT, Ms. Hutchinson, due to our retainer in the 2014 Action.

23. Our client asserts that while the matters that may need to be discussed with the OPGT also relate to the 2014 Action, this does not mean that they do not relate independently to the 2011 Action. As such, we can see no basis for any requirement that all communications with the OPGT must include all counsel.
24. In fact, given the OPGT's mandate to investigate the Band Membership process, it impedes that investigative process if private communications with Ms. Hutchinson cannot occur.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 26th day of June, 2015.

MCLENNAN ROSS LLP

Per: 
 Karen Platten, Q.C.
Solicitor for Catherine Twinn, trustee of the
1985 Trust