

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

DOCUMENT **REPLY BRIEF OF ROLAND TWINN, EVERETT JUSTIN TWIN, BERTHA L'HIRONDELLE, AND MARGARET WARD FOR SPECIAL CHAMBERS CASE MANAGEMENT MEETING ON JUNE 30, 2015**

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INTRODUCTION

1. This application is brought in Action No. 1103 14112 only.
2. Bryan & Company LLP acts on behalf of Roland Twinn, Everett Justin Twin, Bertha L'Hirondelle, and Margaret Ward in Action No. 1403 04885.
3. Action No. 1103 14112 seeks the 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 Sawridge Trust;
 - b. Reviewing and providing direction with respect to the transfer of the assets in the 1985 Sawridge Trust;
 - c. Making any necessary variations to the 1985 Trust. **[TAB 1]**
4. On August 31, 2011, Justice D.R.G. Thomas ordered in Action No. 1103 14112 that an application shall be brought:
 - a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary, to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries";
 - b. To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust. **[TAB 2]**
5. Justice D.R.G. Thomas rendered a decision in Action No. 1103 14112 on June 12, 2012. He concluded that it was appropriate that the Public Trustee represent potential affected minors in the Application for Advice and Directions. He further held that the Public Trustee may pursue, through Questioning, information relating to the Sawridge Band membership criteria process as such information may be relevant and material to determining issues arising on the Application for Advice and Directions. **[TAB 3]**
6. The outstanding pleadings in Action No. 1403 04885 consist of an Application for Advice and Directions filed by Catherine Twinn on September 26, 2014. The "remedy claimed or sought" states the following:
 - a. Catherine Twinn, as Trustee of the 1985 Trust and as a matter of the administration of the Trusts, seeks the advice and direction of this Court pursuant

to Section 43(1) of the *Trustee Act* as to the eligibility of Everett Justin Twin to be appointed as a Trustee of the 1985 Trust and, if appropriate the removal of Everett Justin Twin as a Trustee.

- b. Further, Catherine Twinn, as Trustee of the 1985 Trust, seeks the assistance of this Court in the appointment of appropriate replacement Trustees for Everett Justin Twin and for Clara Midbo pursuant to Section 16(1) of the *Trustee Act*.
- c. Catherine Twinn, as Trustee of the 1985 Trust and the 1986 Trust, seeks clarification the Trust Deeds to ensure their proper administration in accordance with Settlor intentions so that the process for Trustee selection is fair, transparent and appropriate going forward.
- d. Catherine Twinn, as Trustee of the 1985 Trust and the 1986 Trust, seeks the direction of the Court respecting the proper composition of the Board of Trustees, including the elimination or reduction of the number of elected officials of the Sawridge Indian Band and the appointment of 2 outside, independent professional Trustees on terms the Court approves should any elected officials remain as Trustees.
- e. Catherine Twinn, as Trustee of the 1985 Trust and of the 1986 Trust, seeks her costs, on a solicitor-client basis, to McLennan Ross for advise as a Trustee, this Application and the previous Application before Justice Nielson on May 16th14 [sic].
- f. Catherine Twinn seeks the Court's Direction that her professional time and costs in dealing with these issues by heard by an Assessment officer and paid as allowed by the Trust Deed." [TAB 4]

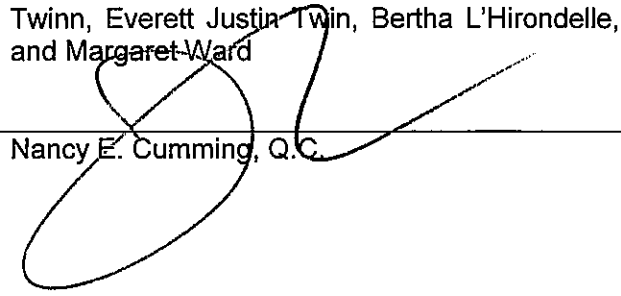
ADVICE AND DIRECTION

- 7. The Public Trustee seeks an Order providing the Court's advice and direction on the following matters:
 - i. 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:
 - a. The evidence produced pursuant to the order requested in paragraph 1(ii) and (iii);
 - b. The real issues in dispute in either proceeding;
 - c. The merits of consolidation, or concurrent hearings, of the two proceedings;
 - d. The most efficient way to resolve the issues that overlap as between the two proceedings; or
 - e. Any other matter consistent with the purposes of the *Alberta Rules of Court*.
- 8. The application of the Public Trustee requests the Court's advice and direction with respect to counsel's ability to communicate with Karen Platten, Q.C., counsel acting for Catherine Twinn in Action No. 1403 04885. The Public Trustee's Brief suggests that communication between counsel is appropriate, "particularly given the overlapping issues".

9. There are no overlapping issues in the two actions. "Pleadings" do not include Affidavits, Exhibits, or evidence. **[TAB 5]** A review of the "pleadings" in the two Actions shows that the Actions are separate and distinct from one another.
10. The pleadings in Action No. 1103 14112 consist of an Application for Advice and Directions with respect to a change in the definition of "Beneficiaries" under the 1985 Sawridge Trust and the transfer of assets to the 1985 Sawridge Trust.
11. The pleadings in Action No. 1403 04885 raise issues with respect to the appointment, removal, and composition of Trustees to the 1985 and 1986 Sawridge Trusts, as well as payment of Catherine Twinn's legal fees and costs.
12. As the two Actions are clearly unrelated to one another, there should be no reason for counsel for the Public Trustee to discuss with counsel for Catherine Twinn any of the issues raised in Action No. 1403 04885. Further, the "mandate" of the Public Trustee in Action No. 1103 14112 does not extend to Action No. 1403 04885.
13. All counsel are bound by an implied undertaking of confidentiality. Both Actions are "live" Actions and thus the implied undertaking of confidentiality should be maintained. The Public Trustee is an unrelated party to Action No. 1403 04885 and thus should not be entitled to enter into private discussions with counsel to the exclusion of all other counsel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23RD DAY OF JUNE, 2015

BRYAN & COMPANY LLP on behalf of Roland
Twinn, Everett Justin Twin, Bertha L'Hirondelle,
and Margaret Ward



Nancy E. Cumming, Q.C.

Estimate of Time for Oral Argument: 20 minutes