

FORM N

Appeal Number: 1203-0230 AC

Q.B. Number: 1103 14112

IN THE COURT OF APPEAL OF ALBERTA

IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, C. T-8, AS AMENDED

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

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

APPELLANTS
(Respondents)

-AND-

PUBLIC TRUSTEE OF ALBERTA

RESPONDENT
(Applicant)

-AND-

SAWRIDGE FIRST NATION,
MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT,
ALINE ELIZABETH HUZAR, JUNE MARTHA KOLOSKY and MAURICE STONEY

INTERESTED PARTIES
(Interested Parties)

CIVIL NOTICE OF APPEAL

1. **APPEAL FROM:** Order

PORTION BEING APPEALED (R. 511): Paragraphs 2, 3 and 5.

DESCRIPTION OF THE ISSUES:

The appeal involves a decision of Justice Thomas to award full, and advance, indemnification of costs to the Public Trustee of Alberta to be paid out of the 1985 Sawridge Trust. In making the award, Justice Thomas concluded that the strict criteria for an award of advance costs as set out by the Supreme Court of Canada is not applicable in these proceedings. The Public Trustee was also exempted from liability to pay costs of other parties, and without argument and without reasons the Chambers Judge awarded the Public Trustee solicitor and client costs of the application.

The issues to be addressed are:

- (a) Did the Chambers Judge err in awarding full, and advance, indemnification for its costs on a solicitor and its own client basis to the Public Trustee of Alberta (“Public Trustee”)?
- (b) Did the Chambers Judge err in exempting the Public Trustee of any responsibility to pay costs of the other parties in the proceeding?
- (c) Did the Chambers Judge err in granting the Public Trustee costs of the application on a solicitor and its own client basis?
- (d) Did the Chambers Judge err in concluding that the strict criteria set by the Supreme Court of Canada for the awarding of advance costs does not apply in these proceedings?
- (e) Did the Chambers Judge err in considering facts not properly before him in evidence?
- (f) Did the Chambers Judge err in concluding that the property of the 1985 Sawridge Trust is the equivalent of the assets under control of the Court in an insolvency?
- (g) Did the Chambers Judge err in awarding advance costs without any restriction or guidelines with respect to the amount of costs or the reasonableness of the same?

WHERE ORDER ORIGINATED:

The Order originated in the Court of Queen’s Bench:

File Number: 1103 14112

Location: Edmonton

Justice: The Honourable Justice D.R.G. Thomas

2. PARTICULARS OF ORDER APPEALED FROM:

Date Pronounced: June 12, 2012
Date Entered: September 20, 2012
Date Served: September 24, 2012
Attach Copy: Attached

3. **IF THE ORDER ORIGINATED IN THE COURT OF QUEEN'S BENCH, INDICATE THE TYPE OF ORDER THAT IS UNDER APPEAL:**

Interim order made in chambers, appointing Public Trustee as litigation representative and awarding Public Trustee with full, and advance, indemnification for its costs on a solicitor and its own client basis, exempting the Public Trustee with any responsibility to pay costs of the other parties in the proceeding and granting the Public Trustee costs of the application on a solicitor and its own client basis.

4. **(a) IS THIS APPEAL ABOUT PROCEDURE OR CUSTODY OR ACCESS ONLY UNDER PART J. OF THE CONSOLIDATED PRACTICE DIRECTIONS?**

Yes.

- (b) IS THIS A FAMILY LAW APPEAL?**

No.

5. **HAS THIS FILE BEEN UNDER CASE MANAGEMENT IN THE COURT OF QUEEN'S BENCH?**

No formal case management Order has been issued however Justice Thomas has given a number of Procedural Orders to assist with determining the main issues in the action.

6. **IS THIS CASE RELATED TO ANY CASE PRESENTLY BEFORE OR ABOUT TO BE FILED IN THIS COURT?**

No.

7. **IS THE CONSTITUTIONAL VALIDITY OF AN ACT OR REGULATION BEING CHALLENGED AS A RESULT OF THIS APPEAL?**

No.

8. **HAS MEDIATION BEEN ATTEMPTED IN THE TRIAL COURT?**

No.

9. **ARE YOU WILLING TO PARTICIPATE IN JUDICIAL DISPUTE RESOLUTION WITH A VIEW TO SETTLEMENT OR CRYSTALLIZING OF ISSUES?**

Yes.

10. **WOULD CASE MANAGEMENT BE BENEFICIAL?**

To the extent we already have limited case management it is beneficial and we wish to continue.

11. **COULD THIS MATTER BE DECIDED WITHOUT ORAL ARGUMENT?**

No.

12. **SHOULD THE APPEAL BE EXPEDITED?**

No.

13. **IS THERE A STATUTORY BAN, BAN ON PUBLICATION OR AN ORDER OF THE COURT WHICH AFFECTS THE PRIVACY STATUS OF THIS FILE?**

No.

14. **APPELLANT'S ESTIMATED TIME OF ARGUMENT:**

45 minutes

15. **LIST RESPONDENT(S) OR COUNSEL FOR THE RESPONDENT(S):**

Ms. Janet L. Hutchison
Chamberlain Hutchison
Suite 155, Glenora Gates
10403 – 122 Street
Edmonton, Alberta T5N 4C1
Telephone: (780) 423-3661
Fax: (780) 426-1293
Solicitors for the Office of the
Public Trustee of Alberta

LIST INTERESTED PARTIES OR COUNSEL FOR THE INTERESTED PARTIES:

Mr. Edward H. Molstad, Q.C.
Parlee McLaws LLP
1500 Manulife Place
10180-101 Street
Edmonton, Alberta T5J 4K1
Telephone: (780) 423-8506
Fax: (780) 423-2870
Counsel for Sawridge First Nation

Mr. E. James Kindrake
Department of Justice Canada
Prairie Region
EPCOR Tower
300, 10423 – 101st Street
Edmonton, Alberta T5H 0E7
Telephone: (780) 495-6427
Fax: (780) 495-6427
Solicitors for the Minister of Indian
Affairs and Northern Development

Ms. Priscilla Kennedy
Davis LLP
1201 Scotia Tower
10060 Jasper Avenue
Edmonton, AB T5J 4E5
Telephone: (780) 429-6830
Fax: (780) 702-4383
Solicitors for Aline Elizabeth Huzar,
June Martha Kolosky and
Maurice Stoney

NOTE: The address set out in section 15 will be considered the Respondent's address for service until such time as the Respondent files documentation specifying otherwise.

All parties listed in section 15 must be served with a filed copy of the Notice of Appeal within the prescribed appeal period. (*Rule 510(1)*).

Signed by Appellants' counsel on October 10, 2012.

REYNOLDS MIRTH RICHARDS & FARMER LLP

Per: 

MARCO S. PORETTI
Solicitors for the Appellants

Clerk's Stamp:



COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

EDMONTON

IN THE MATTER OF THE TRUSTEE
ACT, R.S.A 2000, C. T-8, AS AMENDED

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

APPLICANTS

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

DOCUMENT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

ORDER

Chamberlain Hutchison
#155, 10403 – 122 Street
Edmonton, AB T5N 4C1

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

for Clerk of the Court

Attention: Janet Hutchison
Telephone: (780) 423-3661
Fax: (780) 426-1293
File: 51433 JLH

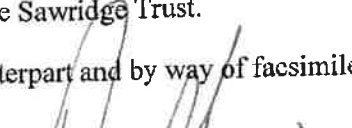
Date on which Judgment Pronounced: June 12, 2012

Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: Justice D.R.G. Thomas

UPON the application of the Public Trustee; AND UPON review of the Affidavits filed in this proceeding; AND UPON review of the filed written submissions; AND UPON hearing the submissions of Counsel for the Public Trustee, Counsel for the Sawridge Trustees and Counsel for the Sawridge First Nation; IT IS HEREBY ORDERED AND DECLARED as follows:


1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.
2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.
3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.
4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.
5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.
6. This Order may be consented to in counterpart and by way of facsimile signature.


Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:


**REYNOLDS MIRTH RICHARDS &
FARMER LLP**

Per:


Marco S. Poretti
Solicitors for the Trustees


PARLEE McLAWS LLP

Per:


Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

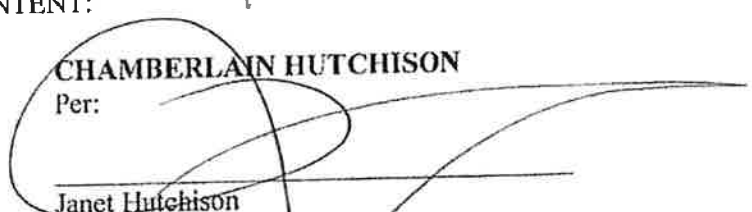
DAVIS LLP

Per:


Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June
Martha Kolosky and Maurice Stoney


CHAMBERLAIN HUTCHISON

Per:

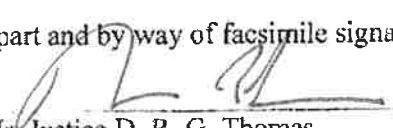

Janet Hutchison
Solicitors for the Office of the
Public Trustee of Alberta

**MYLES J. KIRVAN - DEPUTY
ATTORNEY GENERAL OF CANADA**

Per:


E. James Kindrake
Solicitors for the Minister of Indian Affairs and
Northern Development


1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.
2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.
3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.
4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.
5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.
6. This Order may be consented to in counterpart and by way of facsimile signature.


Mr. Justice D. R. G. Thomas
Thomas J

CONSENTED TO AS TO FORM AND CONTENT:


**REYNOLDS MIRTH RICHARDS &
FARMER LLP**

Per:


Marco S. Poretti
Solicitors for the Trustees

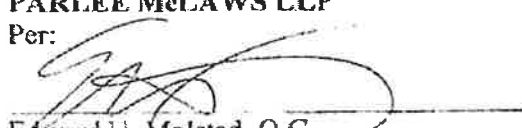
CHAMBERLAIN HUTCHISON

Per:


Janet Hutchison
Solicitors for the Office of the
Public Trustee of Alberta

PARLEE McLAWS LLP

Per:


Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

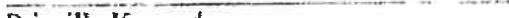
**MYLES J. KIRVAN - DEPUTY
ATTORNEY GENERAL OF CANADA**

Per:


E. James Kindrake
Solicitors for the Minister of Indian Affairs and
Northern Development

DAVIS LLP

Per:


Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June
Martha Kolosky and Maurice Stoney

1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.
2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.
3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.
4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.
5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.
6. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:

**REYNOLDS MIRTH RICHARDS &
FARMER LLP**

Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON

Per:

Janet Hutchison
Solicitors for the Office of the
Public Trustee of Alberta

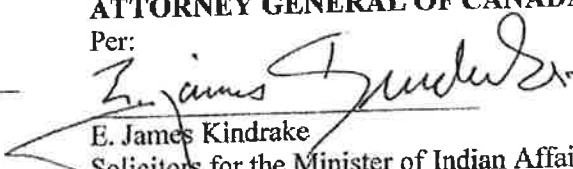
PARLEE McLAWS LLP

Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

**MYLES J. KIRVAN - DEPUTY
ATTORNEY GENERAL OF CANADA**

Per:



E. James Kindrake
Solicitors for the Minister of Indian Affairs and
Northern Development

DAVIS LLP

Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June
Martha Kolosky and Maurice Stoney

1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.
2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.
3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.
4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.
5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.
6. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:


**REYNOLDS MIRTH RICHARDS &
FARMER LLP**
Per:

Marco S. Poretti
Solicitors for the Trustees

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

DAVIS LLP
Per:



Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June
Martha Kolosky and Maurice Stoney

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the
Public Trustee of Alberta

**MYLES J. KIRVAN - DEPUTY
ATTORNEY GENERAL OF CANADA**
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and
Northern Development

Notice to the Respondent:

A Respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

Failure to appear at the appeal hearing may also lead to an order or judgment being made against the respondent in their absence.

Notice to all Parties:

Parties are required to provide an address for service if it is different than the address set out in this document.

Parties are also required to notify the Registrar of any change of address throughout the proceedings, to ensure that they can be contacted at all times.

An address for service within 30 kilometres of the office of the Registrar must be provided (R. 5(1)(b)(i)).



Appeal Number: 1203-0230 Ac
Q.B. Number: 1103 14112

IN THE COURT OF APPEAL OF ALBERTA

IN THE MATTER OF THE TRUSTEE ACT,
R.S.A 2000, C. T-8, AS AMENDED

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

BETWEEN:

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

APPELLANTS
(Respondents)

-AND-

PUBLIC TRUSTEE OF ALBERTA

RESPONDENT
(Applicant)

-AND-

SAWRIDGE FIRST NATION, MINISTER OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT, ALINE ELIZABETH
HUZAR, JUNE MARTHA KOLOSKY and MAURICE STONEY

INTERESTED PARTIES
(Interested Parties)

CIVIL NOTICE OF APPEAL

Counsel for the Appellants:

Marco S. Poretti
Reynolds Mirth Richards & Farmer LLP
3200 Manulife Place, 10180-101 Street
Edmonton, AB T5J 3W8
Phone: 780.425.9510 Fax: 780.429.3044