

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 WATER 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

APPLICATION BY THE PUBLIC TRUSTEE
OF ALBERTA

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Chamberlain Hutchison
#155, 10403 – 122 Street
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File: 51433 JLH

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: March 6, 2012
Time: 10:00AM
Where: Law Courts Building
1A Sir Winston Churchill Square,
Edmonton, Alberta T5J 3Y2
Before: Justice in Chambers, Special Chambers

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The minors affected by the application of the Sawridge Trustees in the within matter require representation to protect their interests. The Public Trustee seeks to be appointed as litigation representative for the affected minors, on appropriate and acceptable conditions.
2. The order establishing the conditions of the Public Trustee's appointment should require the Sawridge Trustees pay the legal fees associated with representation of the minors' interests out of the funds held by the 1985 Trust and exempt the Public Trustee from any obligation to pay costs in the within matter.
3. Based on the current definition change the Sawridge Trustees seek in relation to the 1985 Trust, there is a potential for a conflict of interest as between 2 groups of affected minors. If appointed as litigation representative, the Public Trustee seeks the advice and direction of the Court regarding whether it can properly act for all affected minors or whether a second litigation representative is required in this case.
4. The Public Trustee considers the Sawridge Band Membership criteria and process as relevant and material to the Sawridge Trustees' application. The issues relating to the Sawridge Band Membership criteria and process, and in particular their impact on certainty of objects of the 1985 Trust, are also directly relevant to protecting the interests of affected and potentially affected minors. The Public Trustee seeks an advance ruling, for the purposes of questioning on affidavits in this matter, that information and evidence relating to the Sawridge Band Membership criteria and process is relevant and material to the main application.
5. Such further and other relief as this Court may deem appropriate.

Grounds for making this application:

6. The August 31, 2011 Order of Justice Thomas directed that the Public Trustee be notified of the main application. However, no litigation representative has actually been appointed to represent the minors affected, or potentially affected, by this proceeding.
7. Members of the Sawridge Band, even the parents of the affected minors, would not be appropriate litigation representatives as they themselves are beneficiaries of the Sawridge Trust and are in a potential conflict of interest. The Sawridge Trustees are in the same position, as they are also all beneficiaries of the Trust.
8. The issues raised by the Sawridge Trustees' application are potentially complex issues of trust and Aboriginal law. Further, the application affects access to trust property worth over \$60,000,000.00. The acquisition, or loss, of beneficiary status will have significant financial and social ramifications for the affected, or potentially affected, minors for the rest of their lives.
9. The Public Trustee is equipped to represent the interests of minors in this matter and has identified issues that must be addressed to ensure the interests of the minors in question are protected. While the issues raised by the main application are important to the minors, they relate to issues within a very wealthy First Nation and a Trust with significant assets. As such, this is not an appropriate case for the Public Trustee to act in if the costs of protecting the interests of the affected, or potentially affected, minors were to be borne by the taxpayers of Alberta. Based on the specific facts of this case, the legal fees associated with representation of the minors should be paid by the Sawridge Trust itself and the Public Trustee should be exempted from liability for any costs in the proceeding.

10. The minors affected by this application have not retained counsel and no other litigation representative has come forward. Given the very substantial assets of the Sawridge Band and the Trust, noted above, there is a profound imbalance of resources and thus ability to affect the outcomes in this matter, as between the minors whose rights are at issue and the Sawridge Band, current beneficiaries (Sawridge Band members) and the Trust. Further, there are special circumstances in this case that merit an order to have the legal fees associated with representation of the minors paid by the trust, including the fact that all Sawridge Band members, including the Sawridge Trustees, are incapable of effectively representing the interest of the minors due to a conflict of interest and the fact the main application raises complex issues that would make it extremely difficult, if not impossible, for an individual to effectively self represent in the proceeding.
11. Of the minors identified as definitely being affected by the within application, there appear to be two groups with potentially opposite interests. For one group, approval of the definition change proposed for the 1985 Trust will grant them beneficiary status. For another group, approval of the definition change will remove their beneficiary status. Given this potential conflict of interest between the two groups, the Public Trustee requests the advice and direction of the Court as to whether it can properly represent both groups or whether a second litigation representative is required.
12. The main application seeks, *inter alia*, an order to vary the definition of the 1985 Trust such that an individual's beneficiary status will depend entirely on whether the Sawridge Band determines the individual qualifies as a member of the Band. As such, the Public Trustee views aspects of the Sawridge Band's membership process and criteria to be relevant and material to the main application. In particular, there may be pending membership applications that affect the interest of minors. Aspects of the membership issues must also be explored to ascertain whether the terms of the Sawridge Trust can meet the key requirement of certainty of objects.
13. There is a great deal of uncertainty, and a lack of evidence currently before the Court, regarding how the Sawridge Band deals with membership applications. The Sawridge Band's membership criteria and process have been the subject of various pieces of litigation over the past 20 years. Even today, the criteria and process used to decide membership entitlements appear uncertain and lacking in transparency. There is evidence before the Court to indicate that individuals filing membership applications may not receive decisions on their membership status, and hence, their beneficiary status.
14. The Public Trustee takes the position that the Sawridge Band membership process and criteria must be explored by questioning on affidavits in order to determine the extent to which interests of minors may be affected by pending applications and to explore how the Sawridge membership process and criteria may impact the proposed definition change for the 1985 Trust.

Material or evidence to be relied upon:

15. The Affidavit of Affidavit of Paul Bujold, dated August 30, 2011
16. The Affidavit of Affidavit of Paul Bujold, dated September 12, 2011
17. The Affidavit of Affidavit of Paul Bujold, dated September 30, 2011
18. The Affidavit of Aline Elizabeth Huzar, dated December 5, 2011
19. Such further and other materials as Counsel may advise and this Honourable Court may allow.

Applicable rules:

20. *Alberta Rules of Court* 1.4, 2.11, 2.15, 2.16, 2.21, 5.1 and 5.2

Applicable Acts and regulation:

21. *Public Trustee Act, S.A. 2004, c. P-44.1*

Any irregularity complained of or objection relied on:

22. N/A

How the application is proposed to be heard or considered:

23. The application is to be heard in Special Chambers before the presiding Justice, on March 6, 2012.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant 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 that date and at the 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.