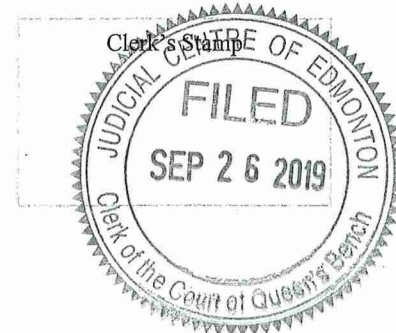


COURT FILE NUMBER 1103 14112
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE: EDMONTON



IN THE MATTER OF THE *TRUSTEE ACT*, RSA 2000, c T-8, AS AMENDED, 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 Sawridge Trust")

APPLICANTS: ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust ("Sawridge Trustees")

DOCUMENT **APPLICATION BY THE SAWRIDGE FIRST NATION FOR INTERVENOR STATUS IN THE JURISDICTION APPLICATIONS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Parlee McLaws LLP
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NOTICE TO THE RESPONDENTS: ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust; THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE OF ALBERTA; and CATHERINE TWINN

This application is made against you. You are the Respondents.

You have the right to state your side in this matter before the Judge.

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

Date:	If in person, on October 17 and 30, 2019
Time:	If in person, on October 17, 2019 at 8:45 am (30 minutes) and, if necessary, October 30, 2019 at 2:00 pm (60 minutes)
Where:	The Law Courts, Edmonton, Alberta
Before Whom:	The Honourable Mr. Justice J.T. Henderson via desktop application or in person

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. An Order pursuant to Rule 2.10 of the *Alberta Rules of Court*, Alta Reg 124/2010, granting the Sawridge First Nation (“**Sawridge**”) status to intervene in the hearing on the Jurisdictional Question ordered by the Honourable Mr. Justice J.T. Henderson pursuant to a Consent Order on December 18, 2018 and in the hearing on the application filed by the Trustees of the 1985 Sawridge Trust on September 13, 2019 (collectively, the “Jurisdiction Applications”), on terms which would include the following:
 - a. Sawridge shall be permitted to make written and oral submissions on the issues raised in the Jurisdiction Applications, including:
 - i. The determination and direction of the Court as to the effect of the Consent Order made by the Honourable Mr. Justice D.R.G. Thomas pronounced on August 24, 2016 (the “2016 Consent Order”) respecting the transfer of assets from the Sawridge Band Trust dated April 15, 1982 (the “1982 Trust”) to the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the “1985 Trust”).
 - ii. Determination of the sufficiency of service of the 2016 Consent Order.
 - iii. Alternatively, the determination of the ability to perform a subsequent trust to trust transfer, similar to what was approved by the 2016 Consent Order.
 - iv. The determination as to whether the Court has the jurisdiction to amend the beneficiary definition contained in the 1985 Trust, on the basis of section 42 of the *Trustee Act*, public policy, its inherent jurisdiction or any other common law plenary power.
 - v. The scope of the Court’s jurisdiction to amend the beneficiary definition contained in the 1985 Trust.

2. Costs of this Application on a party-and-party basis, if this Application for intervenor status is opposed; and.
3. Such further and other relief as this Honourable Court deems just.

Grounds for Making this Application:

4. On April 15, 1982, Chief Walter Patrick Twinn settled a trust named the Sawridge Band Trust (the “1982 Trust”) for the benefit of all present and future members of Sawridge.
5. The assets placed into the 1982 Trust were purchased using band capital and revenue monies with the consent of Sawridge Chief and Council, and the authorization and direction of the Minister of the Department of Indian Affairs and Northern Development, for the benefit of the members of Sawridge, pursuant to sections 64 and 66 of the *Indian Act*, RSC 1970, c I-6.
6. The Trustees of the 1982 Trust are the Sawridge Chief and Council, and the beneficiaries of the 1982 Trust are all present and future members of Sawridge.
7. The members of Sawridge are represented by the duly elected Chief and Council, Chief Roland Twinn, Councillor Darcy Twin, and Councillor Gina Donald.
8. On April 15, 1985, Chief Walter Patrick Twinn settled a trust named the Sawridge Band Inter Vivos Settlement (the “1985 Trust”), and thereafter all assets held in the 1982 Trust were transferred to the 1985 Trust.
9. On August 24, 2016, the Honourable Mr. Justice D.R.G. Thomas granted the 2016 Consent Order in the within Action approving the transfer of assets which occurred in 1985 from the 1982 Trust to the Sawridge Band Inter Vivos Settlement (“1985 Trust”) *nunc pro tunc*.
10. Sawridge was not a party to the 2016 Consent Order, and its counsel did not make submissions on its behalf in relation to the 2016 Consent Order at the August 24, 2016 hearing.
11. On April 25, 2019, prior to the case management hearing scheduled for that afternoon to consider the Jurisdictional Question ordered by the Honourable Mr. Justice J.T. Henderson pursuant to a Consent Order on December 18, 2018, the Honourable Mr. Justice J.T. Henderson emailed the Parties to raise his concern about the terms of the 2016 Consent Order and the impact 2016 Consent Order has on the trust terms pursuant to which the trust assets are currently being held, which he identified as a foundational issue.
12. During the April 25, 2019 case management hearing, the Honourable Mr. Justice J.T. Henderson noted that one of the options is that the assets, though they may be situated in

the 1985 Trust are still subject to the terms of the 1982 Trust (Transcript of April 25, 2019 Proceeding at 4:16-19).

13. At a further case management meeting on September 4, 2019, the Honourable Mr. Justice J.T. Henderson again identified the effect of the 2016 Consent Order as a foundational and pivotal issue:

“[D]oes the 2016 Order mean that the monies or the assets transferred from 1982 to 1985 and that those assets are then to be administered under the terms of the 1985 Trust for the benefit of those beneficiaries as described in the 1985, or are the 1985 Trustees holding the assets in some form, and I use the term loosely, so I – without meaning to ascribe any legal definition to it, are they holding it by way of constructive trust for the beneficiaries as defined in the 1982 Trust?” (Transcript of September 4, 2019 Proceeding at 13:16-21).

14. The Honourable Mr. Justice J.T. Henderson further noted, with respect to the Jurisdictional Question and his concern over the effect of the 2016 Consent Order:

“Well, you can go ahead and continue with the application that is currently before me, that is whether or not the 1985 Trust terms should be modified so as to change the beneficiary, definition of beneficiaries, but as I tried to explain last time, one of the things that’s – if I can’t satisfy this foundational problem, one of the options available to me is to say I’m not going to do anything to modify the definition of beneficiary in the 1985 Trust terms, because there are no Trust assets held for the benefit of the 1985 beneficiaries. They’re being held for the benefit of the 1982 beneficiaries. That’s the terms that we need to be dealing with. That’s one of the options that’s available. So unless we deal with this foundational issue, I’m not going to be able to carry forward and give you a meaningful answer in relation to the modification of the 1985 Trust terms” (Transcript of September 4, 2019 Proceeding at 14:3-13).

15. The Honourable Mr. Justice J.T. Henderson further described his concern and the issue as follows: “When the Order says that the transfer of assets from 1985 to 1982 is approved, it’s approved, so the assets are here to there. On what terms are those assets being held?...Are they being held subject to 1985 or subject to 1982? That’s the issue for me” (Transcript of September 4, 2019 Proceeding at 20:26-28, 32-33).

16. The Honourable Mr. Justice J.T. Henderson directed the filing of an application to have the following issue determined: “...the meaning and consequences that flow from Justice Thomas’ order of August 24th, 2016, specifically with respect to whether or not after the transfer of assets to the 1985 Trust, those assets are being held subject to the terms of the 1985 Trust, or whether they’re being held subject to the terms of the 1982 Trust” (Transcript of September 4, 2019 Proceeding at 22:29-32).

17. The Honourable Mr. Justice J.T. Henderson then further stated the foundational issue as follows: “[W]hat flows from the order of Justice Thomas on August 24th, 2016, and whether, as a result of that order, the Trust assets are held subject to the terms of the 1985 Trust, whether the beneficiaries as described in the 1985 Trust are actually the beneficiaries of these Trust assets, and whether that took away the Trust obligation that existed in the 1982 Trust” (Transcript of September 4, 2019 Proceeding at 26:4-8).
18. On September 13, 2019, the 1985 Trustees filed the Application directed by The Honourable Mr. Justice J.T. Henderson seeking, *inter alia*, a determination of the effect of the 2016 Consent Order.
19. Sawridge would be specially affected by the decisions in the Jurisdiction Applications, as its members are the beneficiaries of the 1982 Trust, Chief and Council are the Trustees of the 1982 Trust, and the source of funds used to purchase the assets held in the 1982 Trust are capital and/or revenue expenditures made pursuant to sections 64 and 66 of the *Indian Act*, RSC 1970, c I-6, which must only be used for the benefit of the members of Sawridge.
20. Sawridge has a unique perspective and insight concerning the issues raised by the Jurisdiction Applications, as the interests of the Trustees and the beneficiaries of the 1982 Trust are not currently represented by the parties to the within Action.
21. If granted intervenor status on the Jurisdiction Applications, Sawridge intends to put forth positions which have not yet been canvassed by the Parties to the within Action and which will include:
 - a. The assets that were transferred from the 1982 Trust to the 1985 Trust remain 1982 Trust assets and are subject to the terms of the 1982 Trust deed, which described the beneficiaries as those present and future members of Sawridge and which prohibits the diversion of those trust assets to purposes other than those set out in the 1982 Trust deed.
 - b. Alternatively, if the Court find that the assets that were transferred from the 1982 Trust to the 1985 Trust are subject to the terms of the 1985 Trust deed, then any jurisdiction to amend the beneficiary definition in the 1985 Trust deed should be restricted to amendments that limit beneficiaries to members of Sawridge, having regard to, *inter alia*, the 1982 Trust terms and the source of funds used to purchase the trust assets which funds may only be used for the benefit of Sawridge members. Further, if any further assets transferred to the 1985 Trust were similarly held in trust for Sawridge and may only be used for the benefit of members of Sawridge.
22. Such further and other grounds as counsel may advise.

Material or Evidence to be Relied Upon:

23. The Affidavit of Darcy Twin, sworn September 24, 2019;

24. Affidavit of Paul Bujold sworn September 12, 2011, Exhibit K (The Sawridge Band Trust dated August 15, 1986) at para 2(a);
25. Such further and other material as counsel may advise and this Honourable Court may allow.

Applicable Rules and Legislation:

26. Rules 2.10 of the *Rules of Court*, Alta Reg 124/2010.
27. Part 10, Division 2 of the *Rules of Court*, Alta Reg 124/2010.

Applicable Acts and regulations:

28. None

Any irregularity complained of or objection relied on:

29. None

How the application is proposed to be heard or considered:

30. The Parties will advise by October 4, 2019 as to whether they consent to this Application proceeding in writing via desktop application before Justice J.T. Henderson or whether the Parties require an in person hearing before Justice J.T. Henderson at 8:45 am on October 17, 2019. If necessary, a further in person hearing may be held before Justice J.T. Henderson at 2:00 pm on October 30, 2019.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.