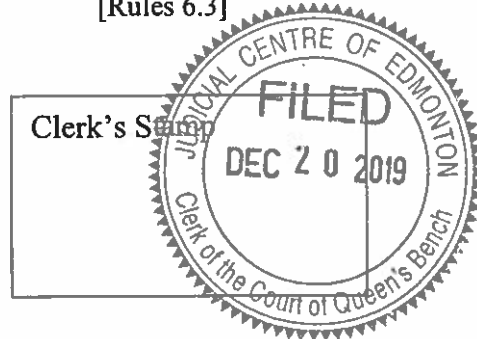


Form 27
[Rules 6.3]



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, 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 TWIN AND DAVID MAJESKI as Trustees for the
1985 Sawridge Trust;

DOCUMENT **APPLICATION BY THE OFFICE OF THE PUBLIC TRUSTEE
AND GUARDIAN FOR ADDITIONAL PRODUCTION**

ADDRESS FOR SERVICES
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO RESPONDENTS: ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, as Trustees for the 1985 Sawridge Trust; and SAWRIDGE FIRST NATION, as intervenor

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: ~~January 16~~ ^{February 5}, 2020, or as otherwise directed by the Case Management Justice
Time: ~~10:00 AM~~ ^{2:00}

Where: Law Courts Building
1A Sir Winston Churchill Square,
Edmonton, Alberta T5J 3Y2

Before: The Honorable Mr. J.T. Justice Henderson in 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. An order requiring the intervenor, the Sawridge First Nation or the 1985 Trustees to provide an Affidavit that:
 - a. Provides the tax filings and financial statements of the 1982 Trust from January 1, 1985 to present;
 - b. Provides the 1985 Trust financial statements from 2005 to present and any other financial records that establish the current value of the \$12 million debenture;
 - c. Provides copies of the notices issued in 1985, with any attachments, to provide notice to SFN Band Members of the Band member meeting ultimately held on April 15, 1985 approving the transfer of assets from the 1982 Trust to the 1985 Trust;;
 - d. Explains the notice and consultation process held for SFN Members prior to the April 15, 1985 vote;
 - e. Provides Minutes of the 1982 Trustees meetings, held prior to April 15, 1985, including Trustee resolutions, referencing the proposal to transfer the 1982 Trust assets to the 1985 Trust and to hold Band members' or beneficiary meetings regarding the transfer;
 - f. Provides Minutes of the Sawridge Chief and Council meetings, held prior to April 15, 1985, including Band Council resolutions, referencing the proposal to transfer

the 1982 Trust assets to the 1985 Trust and to hold Band members' or beneficiary meetings regarding the transfer;

- g. Provides correspondence or financial reporting documents dated prior to April 15, 1985 that address the source of funds used to buy the assets now held in the 1985 Trust, including correspondence to or from Canada approving the original release of SFN capital and revenue funds for the purchase of those assets;
 - h. The complete exchange of correspondence between Sawridge First Nation, or its advisors, and Canada beginning in December 1993 and continuing into at least 1994, regarding the existence of the 1985 Trust and Canada's concerns in relation to s.64 and s.66 of the *Indian Act*;
 - i. Provides documents prepared prior to May 1985 and directed to the SFN, the 1982 Trustees and the 1985 Trustees from their respective financial or legal advisors, including Deloitte Touche (Ron Ewoniak), Davies Ward and Beck or David Fennell that address:
 - i. Advice, comments or discussion regarding the 1982 Trustees' authority to implement, and recommendations for the structuring of, a transfer of assets from the 1982 Trust to a new trust;
 - ii. Advice, comments or discussion regarding the consequences of an asset transfer for the interests of the 1982 Beneficiaries;
 - iii. Advice, comments or discussion regarding the need to consult with, inform, or hold a vote by the SFN Members or 1982 beneficiaries in relation to a transfer of assets.
2. If necessary, an order adjourning the hearing of the Asset Transfer issue, currently scheduled to be heard January 16, 2020, until a date after production of the above documents and questioning on the same.

Grounds for Making this Application:

- 3. On November 27, 2020 the Court provided clarification respecting the scope of the asset transfer issue currently scheduled to be heard January 16, 2020. The OPGT understands from that clarification that the Court intends to make factual and legal findings concerning the nature and effect of the 1985 asset transfer in order to deal with the submissions of the SFN and the relief it seeks, to which the OPGT and Catherine Twinn have objected on the basis that it constitute a decision on final relief by a case management justice and would constitute a re-argument of the ATO, which is a final order that has never been appealed.
- 4. As part of the Court's clarification, it directed that if there were particular documents the parties needed to advocate their position or if the parties had suggestions as to how to conduct the Asset Transfer issue process in a manner that would come to a fairer result for everyone, the party should file an application.

5. The relief sought by the SFN puts the significant interests of the minor beneficiaries and potential beneficiaries the OPGT represents in grave jeopardy. The Sawridge Trustees do not oppose the relief being sought and appear, at least tacitly, to support it.
6. The SFN's November 2019 submissions put in issue matters and records that the SFN previously maintained were irrelevant, as set out in counsel for the SFN's March 10, 2016, correspondence to counsel for the OPGT. These matters have not been the subject of Questioning to date and the records in issue have not been produced;
7. The OPGT relied on the consent of all parties to the 2016 ATO and on SFN's agreement with the terms of the ATO and withdrew its application to require production from SFN on issues related to the 1985 asset transfer. The OPGT has not had the benefit of production or questioning on these matters as it relied on the ATO to have made those issues moot in the within proceeding.
8. SFN's November 2019 submissions rely on positions and representations by counsel, not evidence that has been tested by the parties.
9. The OPGT has taken the position that additional production is required if the Asset Transfer Issue hearing is to be based on a complete and accurate evidentiary record. The Supplemental Affidavit of Records of Catherine Twinn, sworn December 18, 2019, establishes that additional documents relevant to the Asset Transfer Issue do exist.
10. The SFN's submissions on the issues on which production is sought are currently assertions, unsupported by actual evidence, and untested.
11. These circumstances, which involved protection of the interests of minors and fiduciary obligations to protect the interests of minor beneficiaries, requires the highest standards of fair process be brought to bear. The OPGT takes the position that additional question on the Asset Transfer issue and the new documents, and additional production on matters relevant to the positions raised by SFN must occur before the Asset Transfer Issue is argued before this Court.
12. In relation to the request for documentation from advisors which may be the subject of privilege in the hands of the Trustees, such privilege does not arise against the beneficiaries of the Trust. Beneficiaries of a trust are entitled to the records of the Trustees and the Trustees may not raise a claim of privilege against the persons for whose benefit they hold them.. In the alternative, the OPGT submits that any privilege that may have once attached to these documents has been waived.

Material or Evidence to be Relied Upon:

13. All pleadings, affidavits and submissions filed to date in this proceeding;
14. Catherine Twinn's Supplementary Affidavit of Records sworn December 18, 2019;
15. The Affidavit of Roman Bombak, sworn December 19, 2019; and

16. Such further and other materials as Counsel may advise and this Court may permit.

Applicable Rules and Legislation:

17. Rules 2.10 5.2, 5.10, 5.11, 5.13 , 5.27 and 6.3,

18. Applicable Acts and regulations:

Any irregularity complained of or objection relied on:

19. The OPGT's maintains its position that the issue as framed by the Court and SFN:

- a. Represents as Collateral attack on the ATO;
- b. Constitutes a hearing of a matter of final relief. The OPGT has not consented to the assigned Case Management Justice dealing with final relief in the Asset Transfer Issue

The OPGT's involvement and submissions with respect to this issue are without prejudice to that position.

20. The SFN's filed submission includes assertions that are unsupported by evidence. The SFN should be required to provided evidence on relevant and material matters or their submissions should be struck.

How the application is proposed to be heard or considered:

21. To be heard orally before Justice Henderson on ~~January 16~~, 2020 or as directed by the Court.

February 5

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.