

COURT OF APPEAL OF ALBERTA

Form AP-1

[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: 2203-0043AC

TRIAL COURT FILE NUMBER: 1103 14112

REGISTRY OFFICE: 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”)

APPLICANT: ROLAND TWINN, MARGARET WARD, TRACEY
SCARLETT, EVERETT JUSTIN TWINN AND DAVID
MAJESKI, as Trustees for the 1985 Sawridge Trust (“1985
SAWRIDGE TRUSTEES”)

STATUS ON APPEAL: Respondents

RESPONDENT: THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL: Appellant

RESPONDENTS: CATHERINE TWINN

STATUS ON APPEAL: Respondent

INTERVENERS: SAWRIDGE FIRST NATION and SHELBY TWINN

STATUS ON APPEAL: To be determined

DOCUMENT: CIVIL NOTICE OF APPEAL

APPELLANT'S
ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION:

Hutchison Law
#190 Broadway Business Square
130 Broadway Boulevard
Sherwood Park, AB T8H 2A3

Attn: Janet L. Hutchison

Telephone: (780) 417-7871
Fax: (780) 417-7872
Email: jhutchison@jlhlaw.ca
File: 51433 JLH

Field Law
2500 - 10175 101 ST NW
Edmonton, AB T5J 0H3

Attn: P. Jonathan Faulds, Q.C.

Telephone: (780) 423-7625
Fax: (780) 428-9329
Email: jfaulds@fieldlaw.com
File: 551860-8 JLH

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: February 4, 2022
Date entered: February 4, 2022
Date served: February 4, 2022

Official neutral citation of reasons for decision, if any:
(do not attach copy) *Twinn v. Trustee Act*, 2022 ABQB 107

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Alberta Court of Queen’s Bench

Judicial Centre: Edmonton
Justice: Honourable Mr. Justice John T. Henderson

On appeal from a Queen’s Bench Master or Provincial Court Judge?:
Yes No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge:
(do not attach copy) N/A

(If originating from an order of a Queen’s Bench Master or Provincial Court Judge, a copy of that order is also required: Rule 14.18(1)(c).)

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

Permission not required
Date: N/A
Justice: N/A
(Attach a copy of order, but not reasons for decision.)

4. Portion being appealed (Rule 14.12(2)(c)):

Whole

5. Provide a brief description of the issues:

The Trustees of the 1985 Sawridge Trust applied for advice and direction concerning the interpretation and effect of a Consent Order referred to as the Asset Transfer Order (ATO) which had been granted earlier in the proceedings in 2016. The ATO stated that a transfer of assets carried out in 1985 from a prior trust to the 1985 Trust was approved *nunc pro tunc*. The ATO was granted by the Court after hearing legal and factual submissions that the prior Trustees had the proper authority to effect the transfer, which the Court accepted. In the

decision under appeal the Case Management Justice advised the Trustees that the prior trustees had no such authority, that as a result the ATO approved only the transfer of legal title, and that the beneficial interest in the transferred assets remained with the prior trust. That advice involved errors of law, and palpable and overriding errors of mixed fact and law and errors of fact, including:

- 1.) Constituting a collateral attack on the Consent Order by substituting the Case Management Justice's legal analysis for that of the Court that granted the ATO in order to reach a different result;
- 2.) Failing to correctly apply the accepted principles for interpretation of a Court Order, including by failing to interpret the ATO on an objective basis grounded in the context, facts and circumstances of the proceedings that were before the Court at the time the ATO was granted;
- 3.) Misinterpreting and misapplying the applicable law governing the authority of the trustees of the prior trust to transfer trust assets to the 1985 Trust;
- 4.) Basing the advice and direction on findings of fact that were incorrect and involved palpable and overriding error;
- 5.) Exceeding the scope of authority of a Case Management Justice by making an order affecting substantive rights, which was effectively a final order, without the consent of all parties; and
- 6.) Such further and other issues as may arise from the Appeal Record.

6. Provide a brief description of the relief claimed:

An order granting the appeal, confirming the ATO approved the transfer of both legal title and beneficial interest to the 1985 Trust, and remitting the matter to the Case Management Justice for further proceedings in accordance with this Court's order.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

Yes No

8. Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))

Yes No

9. Will an application be made to expedite this appeal?

Yes No

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

Yes No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

Yes No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e),14.83)

Yes No

If yes, provide details:

(Attach a copy of any order.)

13. List respondent(s) or counsel for the respondent(s), with contact information:

Dentons LLP
Suite 2500 Stantec Tower
10220 – 103 Avenue NW
Edmonton, Alberta T5J 0K4

Attention: Doris Bonora and Michael Sestito
Counsel for the Sawridge Trustees

Phone: 780-423-7100
Fax: 780-423-7276
Email: doris.bonora@dentons.com

Parlee McLaws
Suite 1700, Enbridge Centre
10175 – 101 Street NW
Edmonton, Alberta T5J 0H3

Attention: Edward Molstad, Q.C. and Ellery Sopko
Counsel for the Sawridge First Nation

Phone: 780-423-8500
Fax: 780-423-2870
Email: emolstad@parlee.com /
esopko@parlee.com

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, Alberta T5N 3Y4

Attention: Crista Osualdini and David Risling
Counsel for Catherine Twinn

Phone: 780-482-9200
Fax: 780-482-9100
Email: crista.osualdini@mross.com

Shelby Twinn
9918 – 115 Street
Edmonton, Alberta T5K 1S7

Phone: 780-264-4822
Email: S.twinn@live.ca

Self Represented Litigant

If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Master, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.