

COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.8 and 14.12]

COURT OF APPEAL FILE
NUMBER:

2203-0045AC

TRIAL COURT FILE
NUMBER:

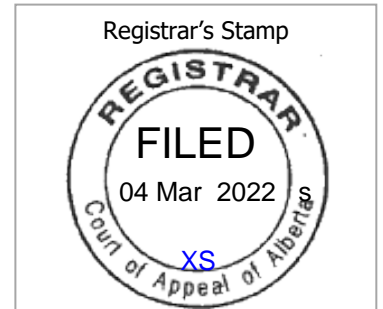
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REGISTRY OFFICE

Edmonton

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")

RESPONDENT

CATHERINE TWINN

STATUS ON APPEAL:

Appellant

APPLICANTS

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 AND GUARDIAN

STATUS ON APPEAL

Respondent

INTERVENORS:

SAWRIDGE FIRST NATION AND SHELBY TWINN

STATUS ON APPEL:

Intervenors

CIVIL NOTICE OF APPEAL

APPELLANT'S
ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION:

McLENNAN ROSS LLP
#600 McLennan Ross
Building
12220 Stony Plain Road
Edmonton, AB T5N 3Y4

Lawyers: David Risling and
Crista Osualdini
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File No.: 144194

WARNING

To the Respondents: 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:

☒ Court of Queen's Bench

Judicial Centre: Edmonton

Justice: The Honourable 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).)

☐ Board, Tribunal or Professional Discipline Body

Specify Body: N/A

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

☒ Permission not required, or ☐ Granted:

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, or

☐ Only specific parts (if specific part, indicate which part):

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.).

5. Provide a brief description of the issues:

An Order of the Honourable Justice J.T. Henderson in relation to the 1985 Sawridge Trustees' application filed on September 13, 2019 seeking, *inter alia*, interpretation of the Consent Order of Justice D.R. Thomas pronounced on August 24, 2016 (the "Consent Order").

Justice J.T. Henderson ("Justice") made errors in law, palpable and overriding errors in fact and/or palpable and overriding errors in mixed fact and law in regards to the following matters:

1. Failure to consider or properly apply the legal test for interpretation of Orders of this Honourable Court, including creating a record that did not exist at the time the Consent Order was granted.
2. In the alternative, the Justice failed to properly consider the evidence and/or apply the law in relation to the interpretation of Orders of this Honourable Court, including the prior orders of this Honourable Court in these proceedings.
3. The Justice acted without jurisdiction in initiating and providing relief on an application for advice and direction that affect the substantive rights of parties.

4. In case management the Justice initiated proceedings related to matters that occurred decades earlier and had been determined by previous court order, and then proceeded to provide final relief acting without jurisdiction.
5. In the alternative, the Justice failed to:
 - a. Properly apply the legal test for limitation periods for relief as against trustee exercises of discretion;
 - b. Properly apply the legal test for determining the scope of authority of the 1982 Trustees to effect advancements under the 1982 Trust Deed;
 - c. Failed to properly consider the evidence and/or apply the law in relation to the scope of authority of the 1982 Trustees to effect advancements under the 1982 Trust Deed;
 - d. Failed to properly apply the legal test for application of section 42 of the *Trustee Act*, RSA 1980 c. T-10;
 - e. Failed to properly consider the evidence and/or apply the law in relation to interference with the exercise of discretion by a trustee;
 - f. Failed to properly consider the Trust structure and transactions that were set up and occurred decades earlier leading to a failure to properly balance current discrimination occurring in relation to beneficiary families with a vested interest in 1985 Trust property with discrimination of a category of woman who suffered historical discrimination, of which only a few remain, resulting in allowing the First Nation to further their goals to enrich one group of beneficiaries from the 1986 Trust at the expense of the 1985 beneficiaries;
 - g. Failed to properly apply the law in relation to the scope of authority of the 1985 Trustees to hold property in trust for 1982 Trust beneficiaries; and
 - h. Failed to properly consider and apply the factors regarding the decision of the 1982 Trustees to arrange for an equitable structure in light of the complex environment existing decades earlier, which included significant per capita pay-outs to Bill C-31 persons restored to Band membership, which was not paid to 1985 Trust beneficiaries.

6. Such further and other matters as shall be raised at the hearing of this appeal.

6. Provide a brief description of the relief claimed:

1. Confirming that the meaning and effect of the Consent Order is to confirm that the subject assets are held subject to the terms of the 1985 Trust Deed;
2. Costs.

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 Respondents or counsel for the Respondents, with contact information:

Name of party and status: Sawridge Trustees
Respondent

Responsible lawyer: Doris C.E. Bonora Q.C. and Michael Sestito

Law firm: Dentons Canada LLP

Address of party or law firm: 2900 Manulife Place, 10180-101 Street,
Edmonton, AB T5J 3V5

Address for service: (same as above)

Phone number of lawyer: (780) 423-7188

File number of lawyer: Unknown

Electronic address of lawyer: doris.bonora@dentons.com and
michael.sestito@dentons.com

Name of party and status: Office of the Public Guardian and Trustee
Respondent

Responsible lawyer: Jonathan Faulds Q.C.,

Law firm: Field Law

Address of party or law firm: 2500, 10175 - 101 Street NW
Edmonton, AB T5J 0H3

Address for service: (same as above)

Phone number of lawyer: (780) 423-7625

File number of lawyer: Unknown

Electronic address of lawyer: jfaulds@fieldlaw.com

Name of party and status: Office of the Public Guardian and Trustee
Respondent

Responsible lawyer: Janet Hutchison

Law firm: Hutchison Law

Address of party or law firm: 190 Broadway Business Square, 130 Broadway
Boulevard, Sherwood Park, AB T8H 2A3

Address for service: (same as above)

Phone number of lawyer: (780) 417-7871 (ext.225)

File number of lawyer: 51433 JLH

Electronic address of lawyer: JHutchison@jlhlaw.ca

Name of party and status: Sawridge First Nation
Intervenor

Responsible lawyers: Edward Molstad, Q.C. and Ellery Sopko

Law firm: Parlee McLaws

Address of party or law firm: 1700 Enbridge Centre, 10175 - 101 Street NW,
Edmonton, AB T5J 0H3

Address for service: (same as above)

Phone number of lawyer: (780) 423-8506 and (780) 423-8536

File number of lawyer: 64203-7 / EHM

Electronic address of lawyer: emolstad@parlee.com and esopko@parlee.com

Name of party and status: Shelby Twinn
Intervenor

Responsible lawyer: Self Represented Litigant

Law firm: N/A

Address of party or law firm: 9918-115 Street, Edmonton, AB T5K 1S7

Address for service: (same as above)

Phone number: (780) 264-4822

File number of lawyer: N/A

Electronic address: stwinn@live.ca

If specific 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))

Not available at the time of filing the Notice to Appeal.

- ☐ 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.