



March 25, 2022

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OUR FILE #: 64203-7/EHM

The Honourable Mr. Justice J.T. Henderson
Alberta Court of Queen's Bench
1A Sir Winston Churchill Square
Edmonton, Alberta

Via email
elise.russell@albertacourts.ca
alexandra.van@albertacourts.ca

Dear Sir:

Re: In the Matter of the Trustee Act, RSA 2000, c T-8, as Amended et al v. Roland Twinn et al.; Court of Queen's Bench Action No: 1103 14112

Further to the correspondence from the Trustees' counsel on March 23, 2022, we write on behalf of the intervenor, Sawridge First Nation, to provide our position on the form of order arising from your decision in Sawridge #12, which was issued on February 4, 2022 and is indexed as *Twinn v Trustee Act, 2022 ABQB 107*.

It is our position that the appropriate form of order arising from Sawridge #12 is the one titled Order No. 1 in the Trustees' correspondence, a copy of which is enclosed for ease of reference.

A formal order or judgment is intended to record only the outcome of the proceeding and is not intended to replicate what was said in the reasons which speak for themselves.¹ Further, collateral comments going beyond the ultimate result should not be included as they may have the effect of rendering the formal order or judgment ambiguous when it should be precise.²

The issue to be determined in Sawridge #12, as set out in the application filed by the Trustees on September 13, 2019, was as follows:

Determination and direction of the effect of the consent order made by Mr. Justice D.R.G. Thomas pronounced on August 24, 2016 (the "2016 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"), more particularly described below.

The only issue decided in Sawridge #12 is set out in paragraphs 106, 107 and 109 of your Memorandum of Decision:

¹ See for example, *Thompson Brothers (Construction) Ltd. v Alberta (Appeals Commission for Alberta Workers' Compensation)*, [2012 ABCA 150](#) at paras 5-6; and *Enmax Energy Corporation v TransAlta Generation Partnership*, [2016 ABCA 263](#) at para 3.

² *Davidson v. Patten*, [2006 ABQB 370](#) at para 5.

[106] The only issue on this Application is the meaning and effect of the 2016 Consent Order.

[107] More specifically, the issue is whether, when he approved the transfer of the 1982 Trust assets to the 1985 Trust, Justice Thomas also ordered that the beneficial interest in the trust assets be transferred so that the trust assets would be held subject to the terms of the 1985 Trust for the 1985 Beneficiaries, or whether the Order confirmed that the 1985 Trustees lawfully held the trust assets but that the beneficial interest in the assets did not change.

...

[109] I must determine the meaning and effect of the 2016 Consent Order.

The ultimate outcome of Sawridge #12 and the advice and direction provided to the Trustees in response to their application is fully encompassed by paragraphs 1 and 2 of form of Order No. 1:

1. The 2016 Consent Order should be interpreted as meaning that it approved transfer of the legal title in the trust assets to the 1985 Trustees but that it did not approve transfer of the beneficial interest in the trust assets to the 1985 Beneficiaries (paragraph 285 of the Decision); and
2. The beneficial interest in the assets which were the subject of the 2016 Consent Order has not changed since 1982 and remains with the 1982 Beneficiaries on terms described in the 1982 Trust Deed (paragraph 286 of the Decision).

Sawridge First Nation is concerned that inclusion of paragraphs 3 through 5 of form of Order No. 2 renders the form of order less precise and potentially ambiguous. Those paragraphs relate to collateral comments made by this Court about potential future applications which may or may not be required and go beyond the specific matter at issue in Sawridge #12. These paragraphs are not necessary to record outcome of this Court's decision on the specific issue in question in Sawridge #12, and they should not be included in the formal order.

We look forward to receiving this Court's direction on the appropriate form of order arising from Sawridge #12 in due course.

Yours truly,

PARLEE McLAWS LLP



ELLERY SOPKO

ELS/

cc: Doris Bonora and Michael Sestito (Counsel for the Trustees) *via email*
cc: Janet Hutchison & Jon Faulds, Q.C. (Counsel for the OPGT) *via email*
cc: Crista Osualdini and David Risling (Counsel for Catherine Twinn) *via email*
cc: Shelby Twinn *via email*

Clerk's stamp:

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")

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

DOCUMENT **ORDER re: ADVICE AND DIRECTION ON TRANSFER
ISSUE Sawridge #12**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Dentons Canada LLP
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Edmonton, AB T5J 3V5

Attention: Doris C.E. Bonora and Michael Sestito
Telephone: (780) 423-7100
Fax: (780) 423-7276
File No: 551860-001-DCEB

DATE ORDER PRONOUNCED **FEBRUARY 4, 2022**

LOCATION WHERE ORDER PRONOUNCED **Edmonton, Alberta**

NAME OF JUSTICE WHO MADE THIS ORDER **Honourable Justice J.T. Henderson**

ORDER

UPON ISSUES being raised by the Court at a Case Management meeting on April 25, 2019 and thereafter at multiple Case Management meetings, as to the interpretation of the August 24, 2016 Consent Order by Justice D.R.G. Thomas (the 2016 Consent Order);

AND UPON the Application, filed September 13, 2019, of the 1985 Sawridge Trustees for advice and direction in relation to the interpretation of the 2016 Consent Order as directed by the Court;

AND UPON the Court having reviewed and considered the materials and extensive Briefs filed by the parties and intervenors;

AND UPON the Court having heard and considered the oral submissions from the parties and intervenors on September 27 & 28, 2021;

AND UPON the Court providing its Memorandum of Decision (Sawridge #12) on February 4, 2022 (the "Decision");

THE COURT HEREBY provides the following advice and direction and orders that:

1. The 2016 Consent Order should be interpreted as meaning that it approved transfer of legal title in the trust assets to the 1985 Trustees but that it did not approve transfer of the beneficial interest in the trust assets to the 1985 Beneficiaries (paragraph 285 of the Decision); and
2. The beneficial interest in the assets which were the subject of the 2016 Consent Order has not changed since 1982 and remains with the 1982 Beneficiaries on terms described in the 1982 Trust Deed (paragraph 286 of the Decision).

The Honourable Mr. Justice J.T. Henderson

APPROVED AS TO THE FORM OF ORDER ONLY:

DENTONS CANADA LLP

Doris Bonora, Q.C. and Michael Sestito, Counsel for the 1985 Sawridge Trustees

FIELD LAW

Jonathan Faulds, Q.C., Counsel for the Office of the Public Guardian and Trustee

McLENNAN ROSS LLP

Crista Osualdini, Counsel for Catherine Twinn

Shelby Twinn, Self represented

HUTCHISON LAW

Janet Hutchison, Counsel for the Office of the Public Guardian and Trustee

PARLEE McLAWS LLP

Edward Molstad, Q.C., Counsel for Sawridge First Nation

Witness to the signature of Shelby Twinn