

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 2203 0043AC and
2203 0045AC

TRIAL COURT FILE NUMBER: 1103 14112

REGISTRY OFFICE: 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")

Applicant (in this appeal) SHELBY TWINN

APPLICANTS: ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTICE TWINN AND DAVIE MAJESKI, as Trustees for the 1985 Sawridge Trust ("1985 SAWRIDGE TRUSTEES")

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Applicant

RESPONDENT: THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA (the "OPGT")

STATUS ON APPEAL: Appellant

STATUS ON
APPLICATION

Respondent

RESPONDENT:

Catherine Twinn

STATUS ON APPEAL:

Appellant

STATUS ON
APPLICATION:

Respondent

DOCUMENT:

**APPLICATION BY SHELBY TWINN FOR
INTERVENOR STATUS**

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CONTACT
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NOTICE TO RESPONDENT(S): THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA, THE 1985 SAWRIDGE TRUSTEES, and CATHERINE TWINN

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT:

You have the right to state your side of this matter before the Court.

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

Date:	June 15, 2022
Time:	9:30 a.m.
Where:	Court of Appeal, Edmonton, Alberta
Before:	Single Justice of the Appeal Court (Rule 14.37(2)(e))

Nature of Application and Relief Sought:

1. An Order granting Shelby Twinn intervenor status in the Appeals, pursuant to Rule 14.58 on the same terms as the Sawridge First Nation (SFN);
2. This Application is consented to by the parties who support Shelby Twinn's intervenor status on the same terms as the SFN; and
3. Such further or other relief as this Honourable Court deems just and appropriate.

Grounds for making this application:

a. The CMJ's Decision

4. The Appeals are from the Memorandum of Decision of the Case Management Justice, the Honourable Mr. Justice John T. Henderson (the "CMJ"), dated February 4, 2022 and indexed as *Twinn v Trustee Act*, 2022 ABQB 107 ("Sawridge #12").
5. The CMJ issued his decision in Sawridge #12 in respect of the application filed by the 1985 Sawridge Trustees on September 13, 2019 (the "Asset Transfer Application") seeking advice and direction on the interpretation of the effect of an earlier Consent Order pronounced by the prior CMJ, the Honourable Mr. Justice D.R.G. Thomas, on August 24, 2016, which provided, in part, as follows:

The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement Trust ("1985 Trust") is approved *nunc pro tunc*. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1985 Trust that existed upon settlement of the 1985 Trust.
6. Shelby Twinn applied for and was granted intervenor status in the Asset Transfer Application, pursuant to an Order of the CMJ pronounced on October 31, 2019, and was permitted to file written briefs of law, put forth evidence, and make oral submissions.

7. The position which Shelby Twinn advocated for before the CMJ was ignored or rejected by the CMJ. In Sawridge #12, the CMJ provided the following advice to the 1985 Trustees:

[285] For all these reasons, the advice I give to the 1985 Trustees is that the 2016 Consent Order should be interpreted as meaning that it approved the 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.

[286] The assets were only notionally transferred in 1985. At the time, the 1982 Trustees were exactly the same persons as the 1985 Trustees. Thus, no tracing issues arise. The assets continued to be held in trust for the 1982 Beneficiaries by the very persons who held the assets previously: see *Wood's Homes Society v Selock*, 2021 ABCA 431 at para 21. Over the years, successor trustees have assumed control over the assets but they took legal title to the assets on the same terms as their predecessors. Therefore, the advice I give to the 1985 Trustees is that the beneficial interest in the trust assets has not changed since 1982 and remains with the 1982 Beneficiaries on terms described in the 1982 Trust Deed.

b. Shelby Twinn's Interest in the Appeal

8. On April 15, 1982, Shelby Twinn's grandfather, 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 SFN who were determined and vested in accordance with the entitlement provisions of s.11 of the Indian Act, 1970, continued today under s.6(1)(a).
9. It is not proven that that the primary source of funds or assets placed into the 1982 Trust were band capital and revenue monies. There is evidence to the contrary: the first hotel was funded by grants; Indian Affairs who controlled access to band capital and revenue monies rigidly followed policy that forbid such funds to be used off-reserve; my grandfather signed personal guarantees; early assets leveraged financing for later assets. The Trustees and the SFN strategically chose to produce scant evidence.
10. The 1985 Trust beneficiaries were vested under the same Indian Act rules found in s.11 of the 1970 Indian Act that determined band members under the 1982 Trust. When the 1985 Trust was settled, the beneficiaries were identical under both Trusts. The morning of hearing the April 25, 2019 Jurisdiction Application, the CMJ abruptly adjourned it to now question what flowed from the settled

2016 Consent Order, conceiving, directing and in Decision #12, ruling in favor of the Asset Transfer Application.

11. The beneficiaries of the 1982 Trust continued under the 1985 Trust and their irrevocable status vested regardless of whether the SFN admitted them into or later revoked their membership under s.10 of the Indian Act, 1985. Their vested status fell within categories so defined since 1850, when the first definition of Indian appeared in colonial legislation.
12. Shelby Twinn is specially affected by the Appeals of Sawridge #12 which guts the 1985 Trust of its property thereby depriving and discriminating against her and other adult beneficiaries who have not been admitted into SFN membership. They are amongst the most vulnerable descending from the Charter group who never enfranchised and bore the full brunt of racism, discrimination and inequality. All persons who enfranchised prior to Bill C-31 took payments of SFN monies, completed forms and signed surrenders and releases. Decision #12 wields a narrow and colonial concept of discrimination to favor a small and very diminished group thereby discriminating against Shelby and others in her circumstances. Decision #12 denies Shelby equal opportunities and support enjoyed by the restricted membership pool of privileged SFN members who have received substantial benefits under the 1986 Trust since about 2010. Decision #12 privileges SFN members by engorging Trust property just for them. The SFN Chief and Council have not and should not hold beneficial title to the assets properly transferred from the 1982 Trust to the 1985 Trustees on April 15, 1985. The CMJ's decision in Sawridge #12 is wrong.
13. Shelby Twinn has a unique perspective and insight concerning the issues raised in the Appeals, as the interests of the adult beneficiaries of the 1985 Trust are not currently represented by the parties to the Appeals. The families and descendants of the 1985 Trust beneficiaries who are SFN members, such as Patrick Twinn, are harmed by Decision #12.
14. Shelby Twinn's submissions are necessary and helpful in assessing the foundation leading to the decision being reviewed. The issues are the same on appeal and impact her interests. Her perspective can therefore inform the discussion as framed on appeal.
15. If granted intervenor status, Shelby Twinn will not argue any issues not already raised by the parties and will abide by the timelines proposed by the parties and/or directed by the Court including the August filing date for her Memorandum.
16. Such further and other grounds as counsel may advise or this Honorable Court may permit.

Material or evidence to be relied on:

17. The Appeal record in the within Appeal (filed by the OPGT);
18. The Affidavit of Shelby Twinn, sworn on May 25, 2022; and
19. Such further and other material or evidence as permitted by the Court.

Applicable Acts, regulations and rules:

20. Rules 14.37(2)(e) and 14.58 of the *Alberta Rules of Court*, Alta Reg 124/2010; and
21. Such further and other acts, regulations or rules as counsel may advise.