
# Court of King's Bench of Alberta

**Citation: Twinn v Alberta (Public Trustee), 2025 ABKB 276**

**Date:**
**Docket:** 1103 14112
**Registry:** 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)

Between:

**Roland Twinn, Margaret Ward, Tracey Scarlett, Everett Justin Twin and David Majeski, As Trustees For the 1985 Sawridge Trust (Trustees)**

Applicants

- and -

**Catherine Twinn and Office of the Public Guardian and Trustee**

Respondents

- and -

**Sawridge First Nation**

Proposed Intervenor

**Case Management Endorsement**
**of the**
**Honourable Justice J.S. Little**

## I. Nature of the Application

[1] Sawridge First Nation (SFN) has applied for intervenor status in an upcoming application to determine whether the Trustees may distribute funds pursuant to a trust, the beneficiaries of which include members of the SFN.

[2] At a full day hearing April 4, 2025, I granted the application, subject to certain terms proposed by the Trustees. I explained to the parties that I was doing so in order that they have sufficient time to prepare and make submissions for the substantive issue to be heard June 16, 2025 and that I would provide brief reasons before then. These are those reasons.

## II. Background

[3] The background is set out in more detail in the Court of Appeal decision which, by setting aside a case management Order, effectively sent it back to this Court be re-heard: ***Twinn v Alberta (Office of the Public Trustee),*** 2022 ABCA 368.

[4] Briefly, because in 1982 there was some uncertainty about how resource revenues from First Nations land could be held, which resulted in some members holding such revenues in trust for others, the then SFN Chief Walter Twinn established a trust (the 1982 Trust) to hold oil and gas revenues for beneficiaries defined as "all members, present and future, of the Band". In 1985, in anticipation of the equality provisions of the Charter coming into effect, Parliament in Bill C-32 proposed statutory changes to band membership in an effort to remove what were considered discriminatory provisions in the Indian Act that had the effect of denying band membership to Indian women who married non-Indian men.

[5] Because this change would have expanded the membership of the SFN, Chief Walter Twinn, before Bill C-31 became law, created a new trust (the 1985 Trust) under which beneficiaries were defined as only those members of the SFN who qualified as members before the enactment of Bill C-31. The assets then held in the 1982 Trust were transferred to the 1985 Trust.

[6] The parties acknowledge that the definition of Beneficiaries in the 1985 Trust is discriminatory. In broad strokes, while there are other orders sought, the upcoming substantive application by the Trustees is to confirm whether, notwithstanding its discriminatory definition, the Trustees may make distributions to those Beneficiaries.

[7] The Trustees take the position that trust funds may be distributed among Beneficiaries defined as those people who were members of the Sawridge band two days before the expanded definition from Bill C-31.

[8] SFN applies to intervene to argue that because of its discriminatory nature, distribution to the Beneficiaries is contrary to public policy and should not be permitted.

[9] The Trustees do not oppose the intervention but seek to limit its scope.

[10] The Office of the Public Guardian, whose role is to represent minor beneficiaries and potential beneficiaries, supports the position of the Trustees.

[11] Catherine Twinn consents to the intervenor application.

## III. Test for Intervention

[12] Rule 2.10 of the Alberta Rules of Court reads:

> 2.10 On application, a Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

As noted by Justice Macklin in in ***R v McKee***, 2023 ABKB 579:

> [13] Intervenors at the trial level are rare. Appellate Courts are more willing and able to consider intervenor applications than a Court of first instance. Appellate Courts deal with a pre-established record that is not normally subject to change and are far better equipped to limit and control the length and nature of the submissions by intervenors. Trials, on the other hand, must remain manageable and the parties must be able to define the issues and the evidence on which they will be decided: First Nations of Saskatchewan v Canada (Attorney General), 2002 FCT 1001 (Fed TD) at para 10; Rab (RE), 2019 ABPC 178 at para 38.

[13] Counsel for SFN refers to the test for intervention set out in ***Wilcox v Her Majesty the Queen in right of Alberta***, 2019 ABCA 385 in which Feehan, JA, though dealing with intervention at the appellate level, neatly sets out the factors to be considered. Although the parties do not dispute SFN's entitlement to intervene, it is helpful to work through those factors to determine the extent of its intervention.

> 1. Whether the intervenor is directly affected.

[14] If the definition of Beneficiaries in the 1985 Trust is determined not to be fatal to its distribution, certain members of the SFN will be excluded from the constituency determined to benefit from the 1985 Trust, and some non-SFN people may benefit. That can reasonably be expected to cause difficulties for SFN.

> 2. Whether the intervenor is necessary to properly decide the matter.

[15] SFN in its brief emphasizes and gives examples of the kind of discrimination evident from the existing definition of Beneficiaries in the 1985 Trust. But I must keep in mind that my role in the substantive application is not to determine whether the trust is discriminatory – the parties acknowledge that it is. My role is limited to determining whether, as a result of that discrimination, distribution should not be permitted.

> 3. Whether the intervenor has interests in the proceedings that will not be fully protected.

[16] SFN represents constituents who may not represented by other parties. The Office of the Public Guardian represents only minor Beneficiaries. Catherine Twinn would be a Beneficiary of the 1985 Trust no matter how that term is defined**.**

4. Whether the intervenor can contribute useful and different submission expertise.

[17] SFN's focus on this point is that the Court thus far has not received sufficient evidence on the scope of the discriminatory nature of the 1985 Trust and how many people are affected. I point out again that the parties have already acknowledged that the definition of Beneficiaries is discriminatory, and I have not yet received submissions from the parties on whether the degree of discrimination is material. In other words, it may be that the Trustees acknowledge that the discrimination is of the most severe kind but that because of the nature of the trust, even that degree does not prevent distribution.

[18] In its submissions, SFN gives a number of examples of how the definition of Beneficiaries discriminates against women and children of unmarried couples. Because the parties accept this interpretation of the trust deed and the legislation as ruled on by other courts referred to in SFN's material, no evidence is required.

[19] At this stage, therefore, I accept only that this claimed expertise may be necessary down the road. I do not accept that the further expert evidence SFN seeks to lead is necessary to the determination of the legal issue before me. The test is whether SFN's submissions can contribute – not whether its evidence is required. This is not a trial.

5. Whether the intervenor will unduly delay the proceedings.

[20] Here, it may be argued that SFN has already delayed the proceedings somewhat. Without the need for this application, the substantive application may have been set for an earlier date. But given the complexity of this litigation and its decades-old history, I do not find the matter of a few months to argue this intervenor application to have caused undue delay.

6. Whether the parties will suffer any possible prejudice.

[21] To the extent that the narrow issue does not require any additional evidence, I do not see any prejudice to the parties by having SFN make submissions, not on whether the definition is discriminatory but on whether the extent of the discrimination bears on whether distribution should be permitted.

7. Whether the intervenor will widen the dispute.

[22] Here, the dispute is narrowly defined, and the parties are well aware of the position of SFN. It has participated in the dispute throughout, and I am not persuaded that such participation has widened the gap between the parties' positions to date.

8. Whether the intervenor will transform the court into a political arena.

[23] I have more to say on this below. But here, the substantive issue is one of trust law. The political decision has already been made by Parliament respecting membership in bands generally. Chief Walter Twinn as settlor of the 1985 Trust took that into account in defining the Beneficiaries. The legal consequences of those decisions on what would otherwise be private rights need not become political.

[24] Weighing these factors, I am of the view that SFN ought to be able to intervene respecting the substantive issue.

[25] As support for this determination, an additional factor for consideration is whether the party was granted intervenor status in the proceedings below: ***Suncor Energy Inc v Unifor Local 707A,*** 2016 ABCA 265 at para 20.

[26] SFN has intervened in a number of applications in this matter at this court level: see 2018 ABQB 213, 2017 ABQB 548, 2017 ABQB 530, and 2017 ABQB 436. It was an intervenor in the application that gave rise to the appeal of the case management decision: 2022 ABQB 107. It was an intervenor at the Court of Appeal level in this action by consent order: (2203-0043AC and 2203 0045AC, May 5, 2022).

[27] Although the substantive application now before me is different than what was determined in the previous case management decision, SFN's history of successful intervenor applications strongly supports it being granted that status here.

## IV. Is There a Need for Conditions on SFN's Participation?

[28] I have noted above that one of the factors for consideration is whether the intervenor will transform the court into a political arena. It was apparent during the SFN's extensive submissions during this application that it has much to say about the discriminatory, sexist, and racist nature of the Indian Act and the role that it played and continues to play in Canada's shameful colonial history. I accept that. But that is not the issue. The issue is whether, despite the acknowledgment by all parties that the definition of Beneficiaries is discriminatory, the Trustees are entitled to distribute the 1985 Trust to the Beneficiaries as defined by Chief Walter Twinn, the settlor of the Trust.

[29] Counsel for SFN urges me to interpret paragraph 3 of Justice Thomas's 2018 case management Order as requiring a more fulsome review of the extent of such discrimination.

[30] I reproduce the full text of that Order below:

> 1. The definition of "Beneficiary" in the 1985 Trust is declared to be discriminatory insofar as it prohibits persons who are members of the Sawridge Indian Band No. 19 pursuant to the amendments to the Indian Act made after April 15, 1982 from being beneficiaries of the 1985 Trust.
>
> 2. The remaining issues in the Application, including the determination of any remedy in respect of this discriminatory definition, are to be the subject of a separate hearing. The timeline for this hearing will be as set out in Schedule "A" hereto and may be further determined at a future Case Management Meeting.
>
> 3. The Justice who hears and determines the remaining issues in this Application may consider all forms of discrimination in determining the appropriate relief.

[31] As counsel for the Trustees points out, this litigation has proceeded on a point by point basis. The point before me is whether, as a matter of law, the Trustees are entitled to distribute. No party is yet claiming any relief. I have no desire to expand the scope of the June 16, 2025 application by pre-determining what relief, if any, SFN may be entitled to if my determination following that application is that the Trustees are entitled to make a distribution.

[32] Accordingly, I accept the position of the Trustees that while intervention by SFN should be permitted, the Court needs to attach certain conditions to its participation in order that determination of the substantive issue not turn into a debate about the failings of the Indian Act.

## V. Decision

[33] Intervention by SFN is permitted subject to the following terms:

[34] The Trustees shall file their written brief by April 16, 2025 and the Respondents by May 26, 2025.

[35] SFN may submit a written brief of up to 30 pages by May 26, 2025. It shall be permitted oral argument of up to 60 minutes. It shall not adduce new evidence. It shall not raise issues not raised by the parties. It shall bear its own costs.

Heard on the 4th day of April, 2025.
**Dated** at the City of Edmonton, Alberta this 6th day of May, 2025.

**J.S. Little**
**J.C.K.B.A.**

**Appearances:**

Doris C.E. Bonora, K.C.
Michael S. Sestito
for the Trustees Applicant

Janet Hutchison
Jonathan Faulds
Respondent - Office of the Public Guardian and Advisory Counsel to Public Trustee

Catherine Twinn
Self-represented Respondent

Crista Osualdini
David Risling
David Schulze
Nicolas Dodd
for the Proposed Intervenor – Sawridge First Nation