

COURT FILE NO. 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"),

APPLICANTS **ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN
TWIN AND DAVID MAJESKI, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST**

RESPONDENTS **THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE and CATHERINE
TWINN**

DOCUMENT **AFFIDAVIT OF ISAAC TWINN**

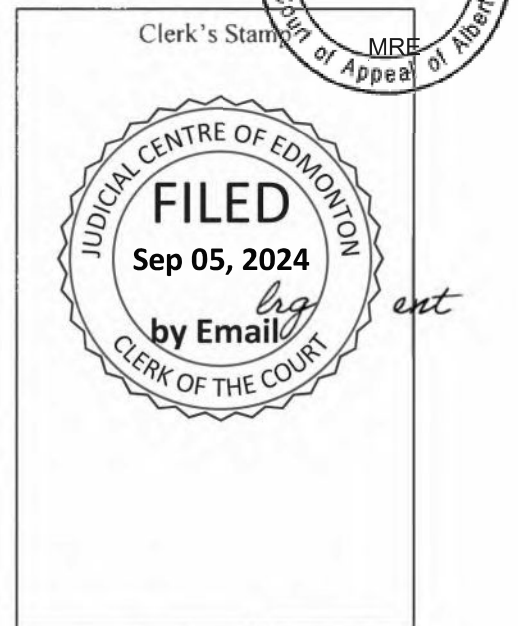
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I Isaac Twinn, of the Sawridge Indian Reserve 150 G, in the Province of Alberta, SWEAR AND SAY
THAT:

1. I am the Chief of the Sawridge First Nation and the son of former Chief Walter Patrick Twinn. I am a member of the Sawridge First Nation ("Sawridge") and have been so since I was a young child. As such, I have a personal knowledge of the matters hereinafter deposed to, save where stated to be based upon information and belief.
2. I am a trained lawyer and hold a Masters Degree in Law from Columbia University.
3. I have been following the decisions and positions taken by the parties in the within proceedings and have a general familiarity with this litigation's history.



4. I was elected Chief of Sawridge in 2023 in an election between myself and the incumbent Roland Twinn. Roland Twinn was the Chief of Sawridge for a number of years and is one of the trustees of the 1985 Sawridge Trust.
5. The Sawridge First Nation presently has 61 members. I am highly concerned that a significant proportion of Sawridge's current members, upwards of 75% of the membership, would not qualify as beneficiaries of the 1985 Sawridge Trust. The discrimination contained in the beneficiary definition found in the 1985 Sawridge Trust is likely far more extensive than what has been represented to the Court, to date, in these proceedings. This concern stems from the recent positions taken by the 1985 Sawridge Trustees which will be outlined in this affidavit.
6. There are currently three members of Sawridge First Nation Chief and Council: myself, who is Chief, Councilor Sam Twinn and Councilor Jeanine Potskin. As duly elected Chief and Council, we represent the members of Sawridge.
7. Councilor Sam Twinn and I are brothers and share the same parents, namely former Chief (Senator) Walter Patrick Twinn and Catherine Twinn. We have another brother, Patrick Twinn, with whom we also share the same parents.
8. I am aware that the assets contained in the 1985 Sawridge Trust find their origin in the wealth of Sawridge.

Beneficiaries of the 1985 Sawridge Trust

9. It is my understanding that, to date, the 1985 Sawridge Trustees have not fulsomely identified the beneficiaries of the 1985 Sawridge Trust, nor have they clearly identified the criteria or application of legal principles they will use to apply the definition of "beneficiary" found in the 1985 Sawridge Trust deed. Given the legislative nature of the definition and the changes since 1985 to the manner in which Indian status is determined, it is my concern that the manner in which the definition could be applied to a specific set of lineage facts could vary, be subject to legal debate or be impossible.
10. I am aware that in these proceedings my brother, Patrick Twinn, filed an application seeking party status. In opposition to that application, the 1985 Sawridge Trustees argued that Patrick was a beneficiary of the 1985 Sawridge Trust and thus his interests were already represented by the 1985 Sawridge Trustees. In the determination of that application, Justice Thomas issued a written decision (*1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377) which stated:

[31] *The Trustees take the position that the interests of Patrick and Shelby Twinn are already represented in the Advice and Direction Application and that their addition would be redundant.*

[32] *In respect to Patrick Twinn, I agree that it is unnecessary to add him as a party. Patrick Twinn takes the position that he is currently, and will remain a Beneficiary of the 1985 Sawridge Trust. The Trustees confirm this and I accept that is correct and declare him to be a current Beneficiary of the Trust.*

(emphasis mine)

11. The decision of Justice Thomas, in this regard, was affirmed by the Alberta Court of Appeal in *Twinn v Twinn*, 2017 ABCA 419.

[18] *In this case, it is unclear what interest the individual appellants have that is not represented by the parties already before the court, or what position they would bring to the litigation, necessary to permit the issues to be completely and effectually resolved, that will not be presented by those existing parties. As a matter of law, the Trustees represent the interests of the Beneficiaries, who include Patrick and Shelby Twinn. Catherine Twinn, as dissenting trustee, is separately represented, has taken an opposing view as to the need for amendment of the Trust, and will place that position before the court. The Public Trustee is tasked with representing the interests of all Beneficiaries who were minors when the litigation began, although it is acknowledged that the Public Trustee does not represent the interests of Patrick and Shelby Twinn (notwithstanding a comment made by the case management judge to the contrary).*

(emphasis mine)

12. My lineage facts are identical to those of my brother, Patrick. As such, and from my perspective, the ruling of Justice Thomas would inferentially mean that I am also a beneficiary of the 1985 Sawridge Trust.

Trustee Replacement Process

13. I am aware that the 1985 Sawridge Trust has a succession policy that provides for a maximum of two consecutive three year terms for a trustee. Trustee, Justin Everett Twin, was subject to replacement by spring of 2024 in accordance with the policy.
14. Attached as **Exhibit "A"** is a copy of the current trustee succession policy, as has been made aware to me.
15. In anticipation of Justin Everett Twin's retirement, I engaged in correspondence with the 1985 Sawridge Trustees regarding my interest in being appointed as his successor. Since the inception of the 1985 Sawridge Trust (and save for since my election as Chief), there has never been a time (to my knowledge) when the Chief was not a trustee. I understand this to be a well known historical practice that the trustees have acknowledged and acted upon. Attached as **Exhibit "B"** are copies of correspondence from my office to the 1985 Sawridge Trustees in this regard.
16. In response to my letters, I received a letter dated February 9, 2024 from Tracey Scarlett on behalf of the 1985 Sawridge Trustees which provided information regarding the Trustees' positions on trustee succession. Notably, the letter advised:
- (a) "...the Trustees Application before the court for advice and direction regarding the identification of the beneficiaries of the 1985 Trust is currently and involuntarily on hold..."
 - (b) "...the Trustees have had to find alternate approach to determine who would be eligible to serve as a beneficiary-trustee of the Sawridge Trusts. That determination is currently in process."

Attached as **Exhibit "C"** to my affidavit is a copy of the February 9, 2024 letter.

17. In or around February 28, 2024, I received correspondence from the administrator of the Sawridge Trusts that the 1985 Sawridge Trustees were seeking candidates to fill trustee positions. The notice enclosed an application form. Attached as **Exhibit "D"** to my Affidavit is a copy of the February 28, 2024 email with attachments.
18. In response to the application for trusteeship and the February 9th letter from Ms. Scarlett, I wrote again to the trustees seeking information about the trustee replacement process. Attached as **Exhibit "E"** to my Affidavit is my March 5, 2024 letter in this regard.
19. By March 20, 2024 I still had not received a response to my March 5, 2024 letter, despite the 1985 Sawridge Trustees imposed deadline for applications of March 29 2024. Attached as **Exhibit "F"** to my Affidavit is my March 20, 2024 follow up letter to the trustees in this regard.
20. Later in the day on March 20, 2024 I received a reply from the Sawridge Trustees. In their written reply, the 1985 Sawridge Trustees refused to answer my pointed questions regarding the trustee selection process and acknowledged that they would not be identifying the beneficiaries of the 1985 Sawridge Trust in accordance with the terms of the deed until after the subject proceedings are concluded. Attached as **Exhibit "G"** to my Affidavit is the March 20, 2024 letter from the 1985 Sawridge Trustees.
21. Despite having serious concerns regarding the legitimacy of the selection process, I submitted my application for trusteeship by the imposed March 29th deadline.
22. In response to my application, I received a request from the 1985 Sawridge Trustees for further information regarding my lineage, more specifically they were seeking information regarding my mother's, maternal grandmother's and paternal grandmother's:
 - (a) Status at birth
 - (b) Band Number; and
 - (c) First Nation at birthAttached as **Exhibit "H"** to my Affidavit is the April 5, 2024 letter from the trustees' administrator in this regard.
23. By way of letter dated April 10, 2024, I wrote to the Sawridge Trustees and stated my objection to the information they were seeking in regards to my application to sit as a trustee. It was not apparent to me how the requested information was relevant to my application for trusteeship or required in order to assess my status as a beneficiary of the 1985 Sawridge Trust as the Court of Queen's Bench had already confirmed my brother Patrick's status as a beneficiary and our lineage is identical. Attached as **Exhibit "I"** to my Affidavit is my April 10, 2024 letter in this regard.
24. In response to my objection, I received a letter from Tracey Scarlett dated April 11, 2024, which reiterated that this information was required and was being requested of all applicants, but failed to address why this information was needed in order to assess beneficiary status. Attached as **Exhibit "J"** to my Affidavit is the April 11, 2024 letter from Ms. Scarlett in this regard.

25. I immediately sent a response letter to Ms. Scarlett (dated April 12, 2024) that set out in clear terms my concerns with the information being sought by the Sawridge Trustees. Excerpting from my letter:

It concerns me that the Trustees are reaping sensitive information from the members of the Sawridge First Nation without any regard to the necessity or the propriety of such requests and without providing full disclosure as to how the Trustees intend to utilize and safeguard this sensitive personal information. I am becoming quite concerned that the Trustee selection process that has been employed is arbitrary, abusive, and inconsistent with the Trustees' fiduciary duty to their beneficiaries.

I reiterated to Ms. Scarlett that I required full disclosure as to the purpose for which this personal information had been requested from me and how it related to the trustee selection process.

Attached as **Exhibit "K"** to my Affidavit is my April 12, 2024 letter in this regard.

26. By way of letter dated April 18, 2024 I received a response from Ms. Scarlett to my request for disclosure as to how the requested information would be applied. Ms. Scarlett wholly failed to address how this information specifically related to an application of the beneficiary definition in the 1985 Sawridge Trust deed. More alarmingly, Ms. Scarlett advised that despite the existence of Court of Appeal authority confirming my brother Patrick's status as a beneficiary of the 1985 Trust, such authority did **NOT** necessarily mean that all others with identical fact patterns would also be considered beneficiaries by the Sawridge Trustees. My perception formed from this correspondence is the 1985 Sawridge Trustees may have changed their views on what fact patterns qualify an individual as a beneficiary since the time they made representations to the Court of Queen's Bench (as it then was) and the Court of Appeal of this province that my brother, Patrick, qualified as a beneficiary of the 1985 Sawridge Trust.

Attached as **Exhibit "L"** to my Affidavit is the April 18, 2024 letter from Ms. Scarlett in this regard.

27. The day after Ms. Scarlett's letter, an email was sent to me by the administrator of the Sawridge Trusts that the trustee selection process had been suspended due to beneficiary identification issues. Attached as **Exhibit "M"** to my Affidavit is the April 19, 2024 email from Mr. Bujold in this regard.
28. By way of email dated May 22, 2024, I received further information from the administrator of the 1985 Sawridge Trust regarding the trustee selection process. Amongst other matters, the communication confirmed that the trustee selection process was adjourned indefinitely and that:

"The Court has also determined that the 1985 Trust is a "discriminatory trust" in that it discriminates primarily against women who married out or will marry out in the future and discriminates against illegitimate children, among other discriminatory elements."

("emphasis mine")

Attached as **Exhibit "N"** to my Affidavit is the May 22, 2024 email from Mr. Bujold in this regard.

29. Prior to filing this application for intervenor status, I wrote to the 1985 Sawridge Trustees seeking a list of currently identified beneficiaries. Attached as **Exhibit "O"** to my Affidavit is my July 18, 2024 letter in this regard.
30. By way of letter dated July 24, 2024, I received a response from the 1985 Sawridge Trustees (through counsel) which confirmed that a fulsome list of identified beneficiaries did not exist and no lists, fulsome or not, were provided to me. In addition, I was advised that the 1985 Sawridge Trustees did not see the application of the beneficiary definition as relevant to the application for which intervenor status is sought in relation to. Attached as **Exhibit "P"** to my Affidavit is the July 24, 2024 letter in this regard.
31. I swear this Affidavit in support of an application for an Order granting Sawridge status to intervene in the application filed by the Sawridge Trustees on June 28, 2024.

Town **SWORN BEFORE ME** at the
City of Slave Lake
in the Province of Alberta
the 14 day of August, 2024

Derek R. Renzini #20387
A Commissioner for Oaths in and
for the Province of Alberta

Isaac Twinn
CHIEF ISAAC TWINN

Derek R. Renzini
Barrister & Solicitor