

COURT OF APPEAL OF ALBERTA

Form AP-3

[Rule 14.53]

COURT OF APPEAL
FILE NUMBER: 2503 - 0193AC

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”)

APPLICANTS: **ROLAND TWINN, TRACEY SCARLETT, ROY
TWINN, JONATHON POTSKIN, and BONNIE
BLAKLEY as Trustees for the 1985 Sawridge
Trust (the “Sawridge Trustees”)**

STATUS ON
APPEAL: **Respondents**

RESPONDENT: **CATHERINE TWINN**

STATUS ON
APPEAL: **Appellant**

RESPONDENT: **OFFICE OF THE PUBLIC GUARDIAN AND
TRUSTEE**

STATUS ON
APPEAL: **Respondent**

DOCUMENT **MEMORANDUM OF ARGUMENT OF THE
RESPONDENTS, SAWRIDGE TRUSTEES**

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I. OVERVIEW AND FACTS

1. On June 28, 2024, the Sawridge Trustees of the 1985 Sawridge Trust filed a multi-part application for advice and direction in Court of King’s Bench Action No. 1103-14112 (the “**Full Application**”).
2. On June 16, 2025, the Sawridge Trustees sought the advice and direction of the Court regarding paragraph 1(b) of the Full Application:

Affirming that notwithstanding that the definition of “Beneficiary” set out under the 1985 Sawridge Trust is discriminatory, and includes certain non-members of the Sawridge Nation, the Sawridge Trustees may proceed to make distributions to the Beneficiaries of the 1985 Sawridge Trust, including to non-members of SFN who qualify as beneficiaries of the 1985 Sawridge Trust,

(the “**Threshold Question**”) and the application was heard on June 16, 2025: the “**Threshold Application**”.

3. Prior to hearing the Threshold Application, the Court heard the application of Sawridge First Nation (“**SFN**”) for intervention status, and granted them status to intervene in the Threshold Application with certain restrictions.¹
4. The Court heard the Threshold Application and the Honourable Justice J.S. Little issued his decision on September 3, 2025 (the “**Threshold Question Decision**”).²
5. Catherine Twinn is now appealing the Threshold Question Decision to this Honourable Court and SFN is seeking leave to intervene in the Appeal.

¹ Order of Justice J.S. Little of April 4, 2025, filed May 13, 2025. [TAB 1]

² [*Twinn v Alberta \(Public Trustee\)*](#), 2025 ABKB 507 (the “**Threshold Question Decision**”). [TAB 2 of the SFN’s Amended Memorandum of Argument filed November 14, 2025 (the “**SFN Memorandum**”)]

II. ISSUE

6. Whether SFN should be granted leave to intervene in this Appeal, and of so, under what conditions?

III. LAW & ARGUMENT

A. Specific Response to SNF's Amended Memorandum of Argument (the "SFN Memorandum")

7. The Sawridge Trustees do not dispute the facts outlined in paragraphs 2, 4, 8, and 9 of the SFN Memorandum.
8. The Threshold Application was purposely set to determine a strict legal question of whether distributions could occur under a trust with discriminatory provisions. Given that the 1985 Sawridge Trust itself was already held to be discriminatory,³ it was not intended, nor was it necessary, for a full review of the nature and extent of the discrimination for the purposes of determining the Threshold Application.⁴
9. While SFN confirms that the discriminatory nature of the beneficiary definition is not in dispute and not a subject of this Appeal,⁵ they continue to make submissions and prepare overviews about the discriminatory nature of the 1985 Sawridge Trust including at paragraphs 1, 3, 5, 10, and 12 of the SFN Memorandum.

B. The Test for Leave to Intervene

³ Consent Order of Justice Thomas dated January 19, 2018, filed January 22, 2018. **[TAB 5 of the SFN Memorandum]**

⁴ The Threshold Question Decision, *supra* note 2 generally and at paras 42-45. **[TAB 2 of the SFN Memorandum]**

⁵ The SFN Memorandum at para 10.

10. Rules 14.37(2)(e) and 14.58 of the Alberta *Rules of Court* authorize a single Court of Appeal Justice to grant permission to intervene in an appeal, and to impose conditions on that intervention.⁶
11. The test for intervention has been stated in a number of cases and is based on (1) whether the proposed intervenor has a particular interest in, or will be directly and significantly affected by the outcome of the appeal, or (2) whether the intervenor will provide some special expertise, perspective, or information that will help resolve the appeal.⁷ An intervenor need not necessarily satisfy both branches of the test, but intervenor status does not automatically follow from meeting either branch of the test.⁸
12. This Court has considered some of the following questions as factors in determining whether to grant intervenor status: will the intervenor be directly affected by the appeal; is the presence of the intervenor necessary for the Court to properly decide the matter; might the intervenor's interest in the proceedings not be fully protected by the parties; will the intervenor's submission be useful and different or bring particular expertise to the subject matter of the appeal; will the intervention unduly delay the proceedings; will there possibly be prejudice to the parties if intervention is granted; and will intervention widen the *lis* between the parties?⁹

C. SFN Should Be Granted Status to Intervene With Conditions

13. The Sawridge Trustees do not oppose the intervention of SFN in general, but the Sawridge Trustees submit that such intervention must be limited by certain conditions outlined below.

⁶ [*Alberta Rules of Court*](#), Alta Reg 124/2010.

⁷ *A.C. v Alberta*, 2020 ABCA 309 at [para 9](#).

⁸ *VLM v Dominey Estate*, 2023 ABCA 226 at [para 3](#).

⁹ *Pedersen v Alberta*, 2008 ABCA 192 at [para 3](#).

14. While SFN will not be directly affected by the appeal, as it is not a beneficiary of the 1985 Sawridge Trust, its members are affected. The Sawridge Trustees, however, disagree that SFN's presence is necessary for the Court to properly decide the matter, and that their submissions will bring a particular expertise. In the Court below, SFN's submissions were largely repetition of the Appellant's submissions. SFN does, however, bring a different perspective as representatives of its members and on that basis, the Sawridge Trustees consent to conditional intervention.
15. Unfortunately, in the Court below, and notwithstanding both the nature of the Threshold Application and the direction of the Court, SFN focused on the issue of discrimination and did not provide the Court with law or argument related to the legal question. Furthermore, SFN proposed a remedy not sought by the Applicants by requesting that the Court strike down the 1985 Sawridge Trust.¹⁰

D. Proposed Terms for Intervention

16. The Sawridge Trustees propose that SFN be permitted to intervene in this Appeal on the following terms:
 - (a) SFN will not raise new issues or adduce any new evidence;
 - (b) SFN will not expand the evidentiary record before the Court of Appeal or expand the *lis* between the parties to the Appeal, and will avoid duplication of submissions made by the parties to the Appeal;
 - (c) SFN will file a factum of no more than 8 pages on or before a date to be fixed by the Court and will present oral argument at the hearing of the

¹⁰ Excerpts from the Brief of SFN in the Threshold Application dated and filed May 26, 2025 at paras 100-102. [TAB 2]

Appeal not exceeding 15 minutes in duration which was also suggested by the Office of the Public Guardian and Trustee; and

- (d) SFN shall bear its own costs both for the purposes of its Intervention Application and for any participation in the Appeal.

17. On November 20, 2025, Case Management Officer, Bobbi Jo McDevitt, LL.B., confirmed that this Appeal is a fast track appeal and that factums must adhere to the page limit of 12 pages¹¹. Therefore, the Sawridge Trustees submit that any intervenor should also adhere to a reduced page count proportionate to what an intervenor would normally receive in a fast track appeal which, as outlined above, the Sawridge Trustees propose to be 8 pages.

IV. RELIEF SOUGHT

18. The Sawridge Trustees seek an Order granting SFN intervenor status in this Appeal, on the proposed terms outlined above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of November, 2025.

DENTONS CANADA LLP


KPMG LAW LLP

Per: _____


Michael Sestito

Counsel for the Sawridge Trustees

Per: _____


Doris Bonora, K.C.

¹¹ Decision of Case Management Officer, Bobbi Jo McDevitt, LL.B. dated November 20, 2025 [TAB 3]

TABLE OF AUTHORITIES & MATERIALS RELIED ON

Authorities

[*Alberta Rules of Court*](#), Alta Reg 124/2010

[*A.C. v Alberta*](#), 2020 ABCA 309

[*VLM v Dominey Estate*](#), 2023 ABCA 226

[*Pedersen v Alberta*](#), 2008 ABCA 192

Materials Relied On

TAB

- 1 Order of Justice J.S. Little of April 4, 2025, filed May 13, 2025
- 2 Excerpts from the Brief of the SFN in the Threshold Application dated and filed May 26, 2025
- 3 Decision of Case Management Officer, Bobbi Jo McDevitt, LL.B. dated November 20, 2025

COURT FILE NUMBER 1103 14112
 COURT COURT OF KING'S BENCH OF ALBERTA
 JUDICIAL CENTRE 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")

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

DOCUMENT CASE MANAGEMENT ORDER

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DATE THIS ORDER WAS PRONOUNCED: April 4, 2025
 PLACE WHERE THIS ORDER WAS PRONOUNCED: Edmonton, Alberta
 NAME OF JUSTICE WHO PRONOUNCED THIS ORDER: Justice J.S. Little


UPON the Case Management Order pronounced November 27, 2024 (the "Case Management Order"); AND UPON review of an application for intervention status provided by the Sawridge First Nation (the "Intervention Application"); AND UPON hearing the submissions from counsel for the Sawridge Trustees, the Office of the Public Guardian and Trustee ("OPGT"), and the Sawridge First Nation; AND UPON hearing submissions from Catherine Twinn; AND UPON the Application from the Sawridge Trustees for certain relief filed June 28, 2024 (the "Full Application"); AND UPON being informed by the Sawridge Trustees that they wish to have the court adjudicate the threshold issue regarding paragraph 1(b) of the Full Application before the balance of the application is considered (the "Threshold Application");

IT IS HEREBY ORDERED THAT:

- 2 -


1. The Sawridge First Nation is granted status to intervene on the Threshold Application on the following conditions:
 - a. The Sawridge First Nation may file a written brief of law on or before May 26, 2025 of no more than 30 pages limited to arguments relating to the Threshold Application;
 - b. The Sawridge First Nation may be entitled to provide oral argument of no more than 60 minutes, or such further time as the Court may allow limited to arguments relating to the Threshold Application;
 - c. The Sawridge First Nation shall not be permitted to adduce any new evidence;
 - d. The Sawridge First Nation may not raise new issues in the Threshold application and may not raise issues that are not raised by the Applicants; and,
 - e. The Sawridge First Nation shall bear its own costs both for the purposes of its Intervention Application and for any participation in the Threshold Application.
2. The Sawridge First Nation's participation in any other part of the Full Application may be determined by consent of the Parties, failing which the Sawridge First Nation may apply for intervention at a later day.
3. The Threshold Application is scheduled for a full day on June 16, 2025. The Sawridge Trustees, as Applicants, shall file their written brief regarding the Threshold Application on April 16, 2025. The Respondents and the Sawridge First Nation shall provide written briefs responding to the Threshold Application on or before May 26, 2025.

COURT OF KING'S BENCH OF ALBERTA


 Justice J.S. Little

APPROVED AS TO FORM AND CONTENT BY:

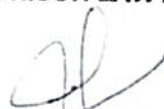
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CATHERINE TWINN


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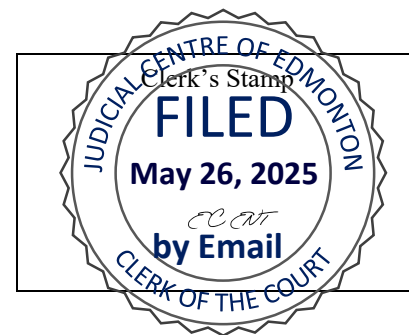
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COURT FILE NO. 1103 14112

COURT COURT OF KING'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, EVERETT JUSTIN TWIN, MARGARET WARD, TRACEY
SCARLETT and DAVID MAJESKI, as Trustees for the 1985 Trust ("Sawridge Trustees")**

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

DOCUMENT **WRITTEN BRIEF OF SAWRIDGE FIRST NATION**

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that “the rightful place of an infant is with his or her parents,”¹⁰⁹ and for this reason these conditions should not be enforced.

H. *Remedy*

1. *The Provisions of the 1985 Trust Are Contrary to Public Policy*

98. Rather than answering the Threshold Question in the affirmative, this Court should conclude that it cannot endorse distributions from the 1985 Trust because its provisions are contrary to public policy, and direct the parties to a hearing to determine the consequences of this finding.
99. The goal of the 1985 Trust was to avoid the implications of the *Bill C-31* amendments, by which Parliament sought to remedy the denigration of women and their descendants which imbue every aspect of the pre-85 status provisions. It is a matter of public record that these provisions caused immense suffering for Indigenous women, by separating them from their birth communities and nations. It would not be revolutionary or daring in the slightest to say that the court will refuse, as a matter of public policy, to allow distribution under an instrument whose express purpose is to undermine Parliament’s attempt to right an egregious historical wrong.

2. *The Problem with this Proceeding: The Cart Before the Horse*

100. These issues demonstrate the fundamental problem with the way that the Trustees have chosen to proceed: they ask the Court to bless distributions from the 1985 Trust without first (or at least concurrently) seeking confirmation of the validity of the Trust (which, of course, is one of the remedies they seek in their application) or addressing the obvious public policy problems found in the terms of the 1985 Trust. This is the very definition of putting the cart before the horse. The danger this approach raises is that, after getting the declaration they seek, based on elementary principles of fiduciary duty, the Trustees decide to take this proceeding in a different direction, or even discontinue it, with the result that the validity or public policy issues are never put before the court; meanwhile, the trust monies are spent, and the problems with ascertainability and public policy become concrete

¹⁰⁹ Waters on Trusts at 347 [TAB 18]. See, for example, *Re Thorne*, [1922] OJ No 451 [TAB 17].

when the Trustees cannot determine if, for example, an individual who was a child at the time his mother married out is a beneficiary and the Trustees are forced to continue one of the most discriminatory regimes in Canadian history.

101. Sawridge acknowledges that this Court cannot make a determination on the validity of the 1985 Trust without the question being squarely before it and having been briefed by all parties. But it is trite law that declaratory relief (which is the type of relief sought here by the Trustees) is always discretionary,¹¹⁰ and this Court should exercise that discretion to refuse to grant the relief sought by the Trustees until the validity issue (which they themselves raise) can also be decided.

PART 5 REMEDY SOUGHT

102. For the reasons above, SFN seeks an Order denying the declaratory relief sought by the Trustees on the Threshold Application and declaring the terms of the 1985 Trust are against public policy.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 26th day of May, 2025.



David R. Risling, K.C. and Crista C.
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David Schulze and Nicholas Dodd, Dionne
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Solicitors for Sawridge First Nation

¹¹⁰ For a description of the type of relief that constitutes declaratory relief see: *Shot Both Sides v. Canada*, 2024 SCC 12, para 65-67.

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November 20, 2025

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Re: Catherine Twinn (A) v. Roland Twinn (R) and others
Appeal No. 2503-0193AC

The appellant, Ms. Twinn, has applied for (1) an extension of time to file her factum and (2) an extension of page limits for that factum. This letter is my decision.

Extension of time to file factum

Rule 14.36 gives the case management officer broad powers to assist the Court with respect to the management of matters before it. The Information Note following that rule and section 14 of the *Court of Appeal Act* expressly authorize the case management officer to extend deadlines.

The well-known test on applications to extend time to file appeal materials requires consideration of the following factors: reason for delay, prospects of moving ahead with the appeal, prejudice to the other party and merits of the appeal. See, e.g., *Bowles v Beamish*, 2009 ABCA 243 at para 6; *Keef v Peters*, 2015 ABCA 16 at para 6.

The current deadline for the appellant's factum is today, November 20. Ms. Twinn says that she has been working diligently on the factum but given the complexity of the record and the law, she does not believe that she can meet the November 20th deadline with a "concise, simplified, cogent" factum. She asks for an extension until December 4.

While the respondents, the Sawridge Trustees, submit that Ms. Twinn has not met the test in *Keef v Peters*, they consent to an extension of time until December 4, 2025, but they ask that the respondents (and any intervenors) be required to file their factums on December 22, 2025.

The respondent, Office of the Public Guardian and Trustee, does not take a position on the request for an extension of time, but they ask that they be given leave to file their factum on January 8, 2026.

Ms. Twinn has provided a satisfactory reason for the delay. There is nothing on the record to suggest that she will not diligently pursue the appeal if an extension is granted. Prejudice in this context is related to any delay caused to the scheduling of the appeal as a result of any extension given. The first available hearing date for this appeal is not until March 2026, so extending the appellant's deadline by two weeks will not create any delay or prejudice. While the Sawridge Trustees question the merit of the appeal, the threshold is low.

I grant Ms. Twinn's request for a filing extension for her factum. The new deadline is December 4, 2025.

The respondents' deadline is calculated from the date of service of the appellant's factum. Assuming the appellant's factum is served on December 4, the respondents' deadline will be January 5, 2026. The OPGT has asked for an extension until January 8 given the holiday closure. That is a reasonable request, and I grant it. The Sawridge Trustees can also have until January 8 to file their factum, but they are free to file it earlier if they want to. I will not impose a deadline on the proposed intervenor. If the application to intervene is granted, the Court may provide directions about the intervenor factum at that time.

Application to increase page limits

Rule 14.25(4) authorizes the case management officer to vary the format of a factum.

This is a fast track appeal. Rule 14.26(2)(e) says that a factum in a fast track appeal must not exceed 12 pages. Ms. Twinn asks that she be allowed to file a factum of 30 pages. That means that Ms. Twinn wants an additional 18 pages which amounts to a factum that is 150% longer than what the rules allow.

This Court has not prescribed a specific test for applications to increase page limits, but I am guided by, and I adopt, the key principles set out by the Ontario Court of Appeal in *OZ Merchandising Inc v Canadian Professional Soccer League Inc*, 2020 ONCA 532. While that case dealt with a factum that was subject to a 30-page limit, the principles are applicable regardless of the page limit involved. They are as follows:

- a) The maximum length for appellate facta is “not a suggestion or a starting point”; rather, it has “been set with a view to reasonably complex cases – simpler cases can often be dealt with adequately in much shorter factums”.
- b) Leave to file a factum exceeding the page limit is an exceptional request, to be “granted sparingly in special circumstances” only.
- c) “While a party must be permitted to present its whole case effectively, this does not take away from the requirement of conciseness and the duty of efficiency to the court”.
- d) “The overarching question is whether the extension is required in the interests of procedural fairness and justice to advise the other side of the issues in dispute so it can prepare properly for the appeal and to assist the division of the Court that hears the appeal to deal effectively with the issues”.
- e) “The fact that the appeal raises important and complicated questions of fact or law, there are numerous grounds of appeal, the underlying proceedings have been ongoing for many years, or the trial was lengthy, does not automatically justify an extension of the page limit. These circumstances inform many appeals that are nevertheless contained within the 30-page factum limit”.

While Ms. Twinn’s submissions focused on the test for an extension of time to file her factum, it seems that her reason for the increase in page limits is due to the complexity of the matter. She says that for the Court to have “a full picture, consideration of an extensive Court record is required, not just this Action but 3 other related Actions”. She also says that the law and facts are “complex, dense and enmeshed”.

The respondents, the Sawridge Trustees, oppose the request to increase the page limit of the appellant’s factum. They say that such an increase is not in keeping with the spirit of the rules governing fast track appeals and that Ms. Twinn’s reasons for the request are vague and not supported. They argue that this appeal is a straightforward appeal from a threshold issue involving a question of law with very limited case law jurisprudence. They submit that Ms. Twinn has not demonstrated why the 12-page limit should not be respected.

The respondent, Office of the Public Guardian and Trustee, does not take a position on the request for an increase in page limits, but they ask that they be granted the same page limit increase as may be granted to Ms. Twinn.

While Ms. Twinn has alleged complexity, appellate courts have found that complexity alone does not justify a relaxation of page limits. See, for example, *Forestethics Advocacy Association v Canada (Attorney General)*, 2014 FCA 182; *OZ Merchandising Inc v Canadian Professional Soccer League Inc*, 2020 ONCA 532; *Sagkeeng v Government of Manitoba et al*, 2020 MBCA 100.

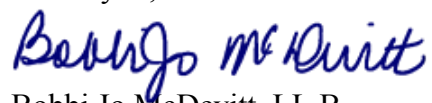
The application before Justice Little was heard in less than a day, and the reasons for decision are just over 7 pages. Even if lengthy written submissions were filed in the court below, an appeal is from the reasons for decision and is not a re-hearing. The appellant's factum must focus on the alleged reviewable errors in the decision and not on the arguments made. (That is why written briefs from the court below are not allowed on the Court of Appeal record: rule 14.27(1)(c) and Part F.6 of the Consolidated Practice Directions.)

Parties are expected to comply with the page limits set out in the rules. Requests to increase those limits are granted sparingly and in exceptional circumstances only. The Court expects the parties to clearly isolate the relevant issues, to sift through the evidence and the record, and to distill the appeal and the argument down to its essential features.

Ms. Twinn has not specifically addressed how she is prevented from writing a factum within the 12-page limit nor why or how an additional 18 pages would assist. To the contrary, one of the reasons given for the extension of time was to enable Ms. Twinn to file a "concise, simplified, cogent factum".

A broad assertion that the factual and legal issues are complex is not an exceptional circumstance to warrant a deviation from the 12-page limit. The request to file a 30-page factum is denied.

Thank you,



Bobbi Jo McDevitt, LL.B.
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/bjm