

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER: 2503-0193AC
 TRIAL COURT FILE NUMBER: 1103-14112
 REGISTRY OFFICE: 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/RESPONDENTS: ROLAND TWINN, TRACEY SCARLETT, ROY TWINN, JONATHON POTSKIN AND BONNIE BLAKLEY, as Trustees for the 1985 Sawridge Trust

STATUS ON APPEAL: RESPONDENTS

RESPONDENT: CATHERINE TWINN

STATUS ON APPEAL: APPELLANT

RESPONDENT: OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE

STATUS ON APPEAL: RESPONDENT

INTERVENOR/RESPONDENT: SAWRIDGE FIRST NATION

STATUS ON APPEAL: INTERVENOR

DOCUMENT: **WRITTEN SUBMISSIONS**

Appeal from the Decision of
 The Honourable Mr. Justice J. S. Little
 Dated the 3rd day of September, 2025

**WRITTEN SUBMISSIONS OF THE RESPONDENT,
 OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE
 IN RESPONSE TO MR. POTSKIN’S PROPOSED APPLICATION**

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Overview

1. In accordance with the Court’s June 5, 2026 direction, the Office of the Public Guardian and Trustee (“OPGT”) hereby responds to the materials filed by Mr. Jonathon Potskin seeking standing as a dissenting Sawridge Trustee in Appeal No. 2503-0193AC. The OPGT takes no position on whether it may be appropriate to add Mr. Potskin as a dissenting trustee in the ongoing Sawridge Trust matters at the proper time. The OPGT is opposed to granting any standing on this appeal or any order that would delay the June 11, 2026, hearing of this appeal.
2. Mr. Potskin’s materials appear to seek standing on the appeal to raise the following issues:
 - a. A challenge to the validity of the 1985 Trust;
 - b. A challenge to the transfer of assets from the 1982 Trust to the 1985 Trust; and
 - c. Issues with beneficiary identification.

It also appears Mr. Potskin wishes to introduce new evidence that was not before Justice Little.

3. The OPGT opposes Mr. Potskin’s June 4, 2026 application for reasons including:
 - a. The issues Mr. Potskin wishes to raise do not properly arise in this Appeal. They are either premature, *res judicata*, or not in issue before the hearing Justice;
 - b. There are no grounds to introduce new evidence on this appeal;
 - c. Mr. Potskin has had ample time and notice to bring an appropriate application for standing in this Appeal and has not provided any explanation for his delay; and
 - d. All parties would be unduly prejudiced as a result of further delay in a proceeding that has been ongoing since 2011.

The Applicant’s Proposed Issues do not properly arise in this appeal

4. ***The validity of the 1985 Trust-*** The Trustees’ June 28, 2024 multi- step application (“the Full Application”) set out 7 issues.¹ The decision under appeal concerned only one of these, referred to as “the Threshold Issue”. It asked whether the Sawridge Trustees might make distributions from the 1985 Trust to its beneficiaries, notwithstanding the discriminatory nature of the 1985 beneficiary definition.

¹ Case Management Application (Final Application), filed June 28, 2024 [Appeal Record, filed October 31, 2025, pages 4-7]

5. This appeal is confined to that question. Any extant issues respecting the validity of the 1985 Trust, or any of the other issues in the Full Application, will be dealt with at a later stage of the proceedings.
6. ***The validity of the transfer of assets to the 1985 Trust-*** The matter of the validity of the transfer of assets from the 1982 Trust to the 1985 Trust were fully addressed by this Court in its 2022 decision in *Twinn v. Alberta (Office of the Public Guardian and Trustee)*.²
7. Specifically, this Court has already ruled:
 - a. The 1985 transfer of the trust assets “occurred and is final.”³
 - b. Any challenge to the lawfulness of the 1985 transfer of assets is statute barred.⁴
 - c. The 1985 Trustees, which would currently include Mr. Potskin, must discharge their fiduciary duties on the basis that the 1985 transfer of trust assets is valid and binding.⁵
8. Not only is the issue concerning the validity of the asset transfer statute barred, it is also *res judicata*. The doctrine of issue estoppel precludes Mr. Potskin from re-arguing the issue which was squarely addressed in this Court’s 2022 decision. The critical importance of this doctrine to protect litigants from being “twice vexed in the same cause” has been recently reaffirmed by the Supreme Court of Canada.⁶
9. ***Beneficiary identification-*** The OPGT understands Mr. Potskin’s position on this issue to be that the proper beneficiaries of the 1985 Trust assets are the beneficiaries of the 1982 Trust. This was also rejected by this Court in the 2022 appeal, when it set aside the Order of the case management justice that had declared the assets in the 1985 Trust were held for the 1982 beneficiaries. As the Court noted, in a literal sense, who the beneficiaries are is clearly defined in the 1985 Trust.⁷

² *Twinn v. Alberta (Office of the Public Guardian and Trustee)*, 2022 ABCA 368 [Tab 1, Authorities of the OPGT, Factum of the Respondent, Office of the Public Guardian and Trustee, filed January 8, 2026]

³ *Twinn v. Alberta (Office of the Public Guardian and Trustee)*, 2022 ABCA 368 at para.56 [Tab 1, Authorities of the OPGT, Factum of the Respondent, Office of the Public Guardian and Trustee, filed January 8, 2026]

⁴ *Twinn v. Alberta (Office of the Public Guardian and Trustee)*, 2022 ABCA 368 at para.60-67 [Tab 1, Authorities of the OPGT, Factum of the Respondent, Office of the Public Guardian and Trustee, filed January 8, 2026]

⁵ *Twinn v. Alberta (Office of the Public Guardian and Trustee)*, 2022 ABCA 368 at para.64 [Tab 1, Authorities of the OPGT, Factum of the Respondent, Office of the Public Guardian and Trustee, filed January 8, 2026]

⁶ [*Patrick Street Holdings Ltd. v. 11368 NL Inc.*, 2026 SCC 15](#) at para. 32-44 [Tab 2]

⁷ *Twinn v. Alberta (Office of the Public Guardian and Trustee)*, 2022 ABCA 368, para. 51 [Tab 1, Authorities of the OPGT, Factum of the Respondent, Office of the Public Guardian and Trustee, filed January 8, 2026]

10. To the extent any issues pertaining to the identification of beneficiaries remain to be determined, these will be addressed at a later stage of the Full Application. Such issues do not arise on this appeal.

The Applicant Has No Grounds to Call New Evidence in this Appeal

11. The Applicant has not specifically disclosed the evidence he wishes to call if granted standing although the OPGT infers it may include Mr. Potskin's affidavit sworn May 31, 2026. However, given the issues the Applicant proposes to argue do not properly arise on the appeal, evidence in support of those issues is irrelevant. Mr. Potskin cannot meet the criteria to admit new evidence and this application should also be denied.⁸

The Applicant's Delay Has Not Been Explained or Justified

12. Mr. Potskin has left this application to last moment. The Notice of Appeal herein was served on October 2, 2025.⁹ The Respondents factums were filed January 8, 2026. The Appeal was set down for the June 11, 2026 hearing on February 3, 2026. The Applicant has had the opportunity to bring this application for over 7 months. The Application provides no explanation at all for the delay in seeking standing.
13. All parties are ready to proceed with the June 11, 2026 hearing. The time lost as a result of an adjournment to accommodate this late request for standing would cause undue prejudice and delay for the other parties to this Appeal, particularly given the issues the Applicant wishes to raise do not arise in this appeal.

Relief Sought

14. The OPGT requests the Applicant's application for standing and to submit new evidence be denied in full and the June 11, 2026 hearing proceed as scheduled.

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⁸ *EMM Energy Inc v Canadian Natural Resources Limited*, 2026 ABCA 181 at para. 21-24 [Tab 1]

⁹ Civil Notice of Appeal, 2503 0193AC, filed October 2, 2025 [Appeal Record, filed October 31, 2025, pages 28-34]

Authorities

1. *EMM Energy Inc v Canadian Natural Resources Limited*, 2026 ABCA 181
2. *Patrick Street Holdings Ltd. v. 11368 NL Inc.*, 2026 SCC 15