COURT OF APPEAL OF ALBERTA

Form AP-5
[Rule 14.87]

COURT OF APPEAL FILE NO.:	1803-0076AC
TRIAL COURT FILE NO.:	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:	MAURICE FELIX STONEY AND HIS BROTHERS AND SISTERS
STATUS ON APPEAL:	Interested Party
RESPONDENTS (ORIGINAL APPLICANTS):	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST (the "Sawridge Trustees")
STATUS ON APPEAL:	Respondents
RESPONDENTS:	PUBLIC TRUSTEE OF ALBERTA
STATUS ON APPEAL:	Not a Party to the Appeal
INTERVENOR:	SAWRIDGE FIRST NATION
STATUS ON APPEAL:	Respondent
INTERESTED PARTY	PRISCILLA KENNEDY, Counsel for Maurice Felix Stoney and His Brothers And Sisters
STATUS ON APPEAL:	Appellant
DOCUMENT:	**FACTUM OF THE APPELLANT**

Time Limit Applies
The maximum time limit for oral argument is 45 minutes.

Appeal from the Decision of
The Honourable Mr. Justice D.R.G. Thomas
Dated the 20th day of March, 2018
To be filed

FACTUM OF THE APPELLANT
PRISCILLA KENNEDY

Appendices – Tab A (Authorities) & Tabs 1-9 (Appeal Record)

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Registrar's Stamp

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OVERVIEW

1. The Appellant lawyer (Kennedy) appeals an award of solicitor and own client costs to the Respondents for which she and her client, Maurice Stoney, were made jointly and severally liable. It was the second award of enhanced costs made by the Case Management Judge (CMJ) against the Appellant and Stoney in the proceeding. The first costs award is also under appeal and the appeals are to be heard together.

2. The second costs award was for a vexatious litigant hearing against Stoney that the CMJ ordered in his original decision, and at which Kennedy continued to represent Stoney. The CMJ considered Kennedy's submissions on behalf of Stoney to be a continuation of the abusive conduct that gave rise to the first costs award and again awarded enhanced costs against Kennedy and Stoney together.

3. In making the second costs award the CMJ explicitly relied upon his reasons for the first costs award. Kennedy adopts and incorporates her submissions from the appeal of the first costs award (the first appeal) here.

4. With respect to the second costs award specifically, Kennedy's submissions on the issue of whether Mr. Stoney should be declared a vexatious litigant were made in good faith and for the purpose of providing the Court with an explanation of the legal perspective which underlay the original application when considering whether Stoney should be found a vexatious litigant. She explicitly acknowledged her arguments had been rejected and specifically stated no disrespect to the Court or its process had been intended. Kennedy submits:

- The CMJ wrongly found that Kennedy's submissions explaining why she had considered the original application to be legitimate were a collateral attack on his original decision;
- The CMJ wrongly found that Kennedy's submissions on behalf of Mr. Stoney as to whether he should be found a vexatious litigant were abusive;
- The CMJ wrongly found that Kennedy's submissions on behalf of Stoney were of such a nature as to warrant enhanced costs;

5. The costs of the vexatious litigant hearing were spoken to several months after the hearing and decision, at which time Kennedy and her firm no longer represented Stoney. The CMJ did not afford Stoney, who was known to be unrepresented at that time, an opportunity to make submissions on the costs issue on his own behalf. Kennedy submits the CMJ erred in finding Stoney

jointly and severally liable for costs without having been given the opportunity to speak to those costs.

FACTS

6. The Appellant relies upon the Statement of Facts in the first appeal, which also provides background and context for this appeal.

7. In summary both this appeal and the first appeal arise out of a long running application for advice and directions respecting a trust established by the Sawridge Band, now referred to as the Sawridge First Nation (SFN). Kennedy represented Stoney in an application which he brought on behalf of himself and his siblings to be added as parties or intervenors in the advice and direction proceedings as potential beneficiaries of the trust. Their claim to potential beneficiary status rested on their claim to be entitled to membership in the Sawridge Band.

8. Mr. Stoney's application was heard in writing at the direction of the CMJ. In his decision referred to as *Sawridge #6*, issued July 12, 2017, the CMJ:

(a) dismissed the application,

(b) awarded enhanced costs against Stoney to the Respondents SFN and Sawridge Trustees on a solicitor and own client indemnity basis,

(c) directed that Kennedy appear before the Court on July 28, 2017 to show cause why she should not be held personally liable for the costs award against Stoney, and

(d) directed that a hearing as to whether Stoney should be declared a vexatious litigant be conducted in writing with written submissions due by August 4, 2017.[1]

9. The show cause hearing on July 28 resulted in the CMJ's decision known as *Sawridge #7*.[2] In that decision the CMJ concluded Kennedy had engaged in serious litigation misconduct in bringing an application which he described as abusive, futile and busybody litigation. The CMJ held Kennedy personally liable for the costs awarded against her client in *Sawridge #6* on a joint and several basis with Stoney.

10. Written submissions for the vexatious litigant hearing were filed first on behalf of the SFN and Sawridge Trustees in which they argued the original application had been a collateral attack on

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[1] *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 436 (*Sawridge # 6*), **Appellant's Authorities in Appeal of Sawridge #7 [Sawridge #7 Authorities] Tab 8**

[2] *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 530 (*Sawridge #7*), **Sawridge #7 Authorities Tab 11**

previous Federal Court decisions.[3] Kennedy filed responding submissions on behalf of Stoney addressing this and other issues the SFN and Sawridge Trustees had raised.[4] These responding submissions set out the legal theory which had animated the original application and why Kennedy had concluded it was not doomed to failure. They also included the explicit acknowledgement at paragraphs 14, 23 and 24 that these arguments had been rejected by the Court and that no disrespect to the Court or its processes had been intended by them. The purpose of the submissions was to provide context. Kennedy also submitted that if a vexatious litigant order were to issue, it should be limited in scope to matters concerning the SFN and the Sawridge Trust.

11. In his resulting decision known as *Sawridge #8* the CMJ issued a vexatious litigant order against Stoney.[5] In reaching this decision the CMJ criticized Kennedy's submissions which he said continued to advance the same arguments he had rejected in *Sawridge #6*, stating: "I conclude these statements, no matter how they were allegedly framed in paragraphs 14 and 23 of Stoney's written arguments, are nothing more than an attempt to re-argue *Sawridge #6*." The CJ also suggested that Kennedy's submissions that the original application had been arguable were at odds with the submissions of Mr. Wilson, the partner from her firm who spoke on her behalf at the show cause hearing, that in his opinion the application should not have been brought.

12. Following this decision Kennedy and her firm ceased to act for Stoney.

13. The CMJ did not address costs of either the show cause or vexatious litigant hearings. The Respondents, the Sawridge Trustees and the SFN, took the position that due to the relationship between the various proceedings the enhanced costs award made in *Sawridge #6* automatically extended to *Sawridge #7* and *#8* and provided Kennedy with draft Bills of Costs on that basis. Kennedy disagreed so the issue was referred to the CMJ.[6] In placing the issue before the CMJ, Counsel for the Sawridge Trustees and the SFN stated their position that:

> the solicitor and own client full indemnity costs award applies not only to the time period up to the issuance of Sawridge #6, but it also applies in relation to the costs subsequently incurred by these parties in relation to Sawridge #7 and Sawridge #8, namely:

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[3] Written Submissions of the Sawridge First Nation on Maurice Stoney's Potential Vexatious Litigant Status, filed July 27, 2017, **Extracts of Key Evidence [EKE] Tab 1;** Written Submissions of the Trustees on Maurice Stoney's Potential Vexatious Litigant Status, filed July 27, 2017, **EKE Tab 2**

[4] Written Response Argument of Maurice Stoney on Vexatious Litigant Order, filed August 3, 2017, **EKE Tab 3**

[5] *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548 (*Sawridge #8*) **Appeal Record [AR] Tab 5**

[6] Letter from J. Faulds on behalf of the Appellant Priscilla Kennedy, seeking direction re costs issue, dated November 16, 2017, **AR Tab 2**

- preparation for and attendance at the July 28, 2017 hearing directed by [Justice Thomas] in Sawridge #6 on the issue of whether Ms. Kennedy ought to be held personally liable for some or all of the costs award made in Sawridge #6; and
- preparation of written submissions on the vexatious litigant status of Maurice Stoney as directed by [Justice Thomas] in Sawridge #6.[7]

14. The CMJ directed that the issue be dealt with in writing and established a schedule for submissions by counsel for Kennedy, the SFN and the Sawridge Trustees. The schedule did not contemplate submissions by or on behalf of Stoney and no submissions were received from Stoney.[8]

15. Submissions on behalf of Kennedy were filed setting out why the original costs award should not have prospective effect.[9] In response, the SFN and the Sawridge Trustees changed their position stating they were actually seeking a new order for costs of the show cause and vexatious litigant hearings (*Sawridge #7* and *#8)* on the same scale as the original costs award, and that in the case of *Sawridge #8* that award should be against Kennedy and Stoney jointly.[10] Kennedy filed reply submissions to this new position and noted that Stoney had not been provided an opportunity to respond to the application for costs against him.[11]

16. In his decision referred to as *Sawridge #9* the CMJ held that the costs of *Sawridge #7* and *#8* had not previously been addressed by the Court or the parties. With respect to *Sawridge #7* he awarded Schedule C costs against Kennedy in favor of the Sawridge Trustees and the SFN. With respect to *Sawridge #8* he awarded enhanced costs on a solicitor client basis against Stoney and Kennedy, personally, on a joint and several basis.[12]

17. In making the award of enhanced costs the CMJ held (emphasis added):

> [29] In *Sawridge #8*, Ms. Kennedy, acting as "Counsel for Maurice Stoney," continued to advance futile arguments concerning Mr. Stoney's status as a member of Sawridge Band (*Sawridge #8* at paras 27-32, 113-122). I rejected these arguments in *Sawridge #6*, finding that the Stoney Application was inappropriate, devoid of merit, and abusive in a manner exhibiting the hallmark characteristics of vexatious litigation

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[7] Letter from E. Molstad on behalf of the Respondents the SFN and the Sawridge Trustees to CMJ, seeking direction re costs issue, dated November 15, 2017, **AR Tab 1**

[8] Letter of CMJ providing direction for written submissions on costs issue, dated January 2, 2018, **AR Tab 3**

[9] Written Submissions of Priscilla Kennedy Respecting the Scope of the Costs Award in *Sawridge #6*, submitted January 5, 2018, **EKE Tab 4**

[10] Written Submissions of the Sawridge First Nation on Costs, submitted January 12, 2018, **EKE Tab 5**; Written Submissions of the Sawridge Trustees on Costs (*Sawridge #6, #7* and *#8*), filed January 12, 2018, **EKE Tab 6**

[11] Reply Submissions of Priscilla Kennedy Respecting the Scope of the Costs Award in *Sawridge #6*, submitted January 16, 2018, **EKE Tab 7**

[12] *1985 Sawridge Trust v Alberta (Public Trustee)*, 2018 ABQB 215 (*Sawridge #9*), **AR Tab 4**

> and that it amounted to serious litigation misconduct (*Sawridge #6* at para 67). Ms. Kennedy's submissions in *Sawridge #8* were a collateral attack on the result in *Sawridge #6*, constituting a notorious and serious form of litigation abuse (*Chutskoff v Bonora*, 2014 ABQB 389 at para 92, aff'd 2014 ABCA 444).

and

> [31] ... **In accordance with the reasoning for awarding costs against a lawyer personally in *Sawridge #7*,** there is a sufficient basis to award solicitor-client costs against Ms. Kennedy and Mr. Stoney on a joint and several basis in *Sawridge #8*.[13]

ISSUES ON APPEAL

18. Kennedy submits the following issues arise on appeal:

a. Did the CMJ err in finding Kennedy's submissions continued to advance futile arguments on behalf of Stoney warranting an award of costs against her personally?

b. Did the CMJ err in finding Kennedy's submissions were a collateral attack on his earlier decision warranting an award of costs against her personally?

c. Did the CMJ err in holding Kennedy and Stoney jointly liable for an award of enhanced costs without providing Stoney an opportunity to speak to costs?

d. Did the CMJ err in finding Kennedy's submissions warranted personal liability for enhanced costs?

STANDARD OF REVIEW

19. The standard of review applicable to a costs award was recently stated by the Court in *Twinn v Twinn*, which held "appellate intervention is required where a) a case management judge failed to give sufficient weight to relevant considerations; b) a case management judge proceeded arbitrarily, on wrong principles or on an erroneous view of the facts; or c) there is likely to be a failure of justice if the impugned decision is upheld."[14]

ARGUMENT

20. To the extent the CMJ's decision in *Sawridge #9* rests on the same reasoning as in the first costs award Kennedy relies on her submissions in the first appeal.

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[13] *Sawridge #9*, **AR Tab 4**

[14] *Twinn v Twinn*, 2015 ABCA 419 at para 15, **Sawridge #7 Authorities Tab 7**

21. With respect to the matters specific to this appeal Kennedy respectfully submits the CMJ misconstrued the circumstances, nature and purpose of Kennedy's written submissions concerning Stoney's potential vexatious litigant status, as set out hereafter. That misapprehension was at the root of his finding that her submissions were "a notorious and serious abuse of the litigation process."[15]

The CMJ erred in finding Kennedy's submissions continued to advance futile arguments

22. Kennedy's written submissions were explicitly addressed to the question of whether Stoney should be held to be a vexatious litigant, and were in response to the submissions of the SFN and Sawridge Trustees, which argued for such a finding. Since the trigger for the vexatious litigant hearing was the original application brought on behalf of Stoney, it was relevant, necessary and appropriate for Kennedy to articulate the reasoning on which that application had been based and why she, as Stoney's counsel, had considered that the application was not futile or a collateral attack on other decisions.

23. Such submissions were relevant to the vexatious litigant hearing because:

- They confirmed Stoney acted in and with legal advice;
- They demonstrated Kennedy, as Stoney's counsel, had been of the view there was a legitimate legal basis for the application on which Stoney was entitled to rely;
- They showed the outcome of the application had not been predicted or foreseen; and
- They provided the CMJ with the explanation and rationale for the application which had been alluded to, but not stated, by Wilson in *Sawridge #7*. ("And Ms. Kennedy tried to convince me of the merits of Mr. Stoney's claim. And at a certain point in time I had to tell her he has exhausted his remedies in the legal realm and it's time to move on."[16])

As Kennedy stated, the purpose of these submissions was to provide context for the issue before the Court, not for the improper purposes suggested by the CMJ.[17]

24. Kennedy respectfully submits it was her duty to her client, as his counsel, to provide such an explanation when the question of his status as a vexatious litigant was before the Court and that neither she nor Stoney should have been punished in costs for her having done so.

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[15] *Sawridge #9* at para 29, **AR Tab 4**

[16] Transcript of show cause hearing on July 28, 2017, at page 6, lines 23-26, **Appeal Record in Appeal of Sawridge #7 [Sawridge #7 AR] Tab 19**

[17] Written Response Argument of Maurice Stoney on Vexatious Litigant Order, filed August 3, 2017, at para 14 **EKE Tab 3**

The CMJ erred in finding Kennedy's submissions were a collateral attack on his earlier decision

25. Kennedy's submissions on behalf of Stoney in the vexatious litigation hearing acknowledged, twice, that the legal theory and argument she had been seeking to advance had been rejected by the CMJ. The CMJ referred to one (but not both) of these acknowledgements but rejected it as meaningless. Instead he characterized her submissions as "nothing more than an attempt to reargue *Sawridge #6*".[18]

26. With respect, Kennedy's acknowledgements were unqualified and nowhere did she suggest the CMJ should revisit or revise his conclusions as to the merits of the original application. Her submissions simply asked that the CMJ, when determining Stoney's potential vexatious litigant status, take into account her view as his counsel of the legal landscape when the application was brought.

The CMJ erred in holding Kennedy and Stoney jointly liable for enhanced costs in *Sawridge #8* without giving Stoney an opportunity to speak to costs

27. The Respondents initially took the position that the award of costs in *Sawridge #6* automatically extended to *Sawridge #7 and #8* and sought a ruling from the CMJ to that effect. The CMJ directed this issue be addressed in writing and set a timetable for submissions by Kennedy, the SFN and the Sawridge Trustees, but not Stoney who was unrepresented.

28. In their submissions the SFN and Sawridge Trustees changed their position and asked for a new order dealing with the costs of *Sawridge #7* and *#8*. With respect to *Sawridge #8* they sought an award of enhanced costs against both Stoney and Kennedy. In reply Kennedy pointed out that relief was being sought against Stoney who had not been given an opportunity to make submissions, but the CMJ did not issue any further directions to address this. With respect, the CMJ's statement: "Finally, all participants were offered the opportunity to make written submissions as to costs"[19] is not correct as regards Stoney.

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[18] *Sawridge #8* at para 32, **AR Tab 5**
[19] *Sawridge #9* at para 25, **AR Tab 4**

29. Kennedy submits the failure to provide Stoney with an opportunity to make submissions is not consistent with the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons*, which were endorsed by the Supreme Court of Canada in *Pintea*.[20]

30. The fact that Stoney was made liable for costs in the *Sawridge #8* proceedings without having an opportunity to make submissions is even more notable in light of the CMJ's analysis at paras 29-31 of *Sawridge #9*, which focuses entirely on Kennedy's conduct in those proceedings. Ultimately, the CMJ relied on his prior "reasoning for awarding costs **against a lawyer personally** in *Sawridge #7*" (emphasis added) to justify the costs award against Kennedy and Stoney on a joint and several basis. The CMJ also included in his analysis a passage from his decision in *Sawridge #8* in which he observed that "advancing abusive litigation…is a betrayal of the solicitor-client relationship".[21] In light of this analysis, and without having heard from Stoney, it is difficult to understand the basis on which the CMJ held Stoney liable for enhanced costs with respect to *Sawridge #8*.

31. Having regard to the foregoing, it is respectfully submitted that the CMJ's ruling Stoney be held jointly liable with Kennedy for enhanced costs for *Sawridge #8* cannot stand when Stoney was not given the opportunity to speak to the issue. Kennedy acknowledges and accepts that one possible result of giving effect to this submission could be to leave her solely liable for any award of costs for *Sawridge #8* in the event her appeal from the finding of personal liability were to fail.

32. Kennedy further notes that a similar issue arises in respect of the appeal from the first costs award in *Sawridge #7*. The purpose of the hearing in *Sawridge #7* was to determine whether Kennedy should be liable for some or all of the costs awarded against Stoney in *Sawridge #6*. One possible outcome of that hearing, in which Stoney would have had particular interest, would have been a finding the Kennedy was solely liable for the award. The SFN and Sawridge Trustees argued for this result specifically.

33. Stoney was present at the show cause hearing on July 28 but "he did not make submissions or actively participate in any way".[22] Despite specifically considering whether to hold Kennedy solely liable for the costs awarded against Stoney in *Sawridge #6* or jointly and severally liable with Mr.

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[20] *Statement of Principles on Self-represented Litigants and Accused Persons,* 2006, Canadian Judicial Council; *Pintea v Johns*, 2017 SCC 23 **Appellant's Authorities Tab A**

[21] See para 30 of *Sawridge #9*, **AR Tab 4**, which includes a passage from paras 115-118 of *Sawridge #8*, **AR Tab 5**, which in turn cites a passage from *Sawridge #7*, **Sawridge #7 Authorities Tab 11**, which is the source of this observation.

[22] *Sawridge #9* at para 27, **AR Tab 4**

Stoney for those costs,[23] the CMJ did not invite Stoney to make any submissions on his own behalf or suggest that this should be done

34. The wrongdoing found by the CMJ on which he based his awards of costs in all of *Sawridge #6*, *#7* and *#9* was of a uniquely forensic nature. It arose from Kennedy's legal analysis that there was a legitimate legal basis on which she might advance an application on behalf of Mr. Stoney to participate in the trust proceedings notwithstanding earlier judicial decisions, and that this might be done by way of representative action. Given this, and the fact that Kennedy and her counsel have never suggested Stoney was in any way at fault, the basis for holding Mr. Stoney jointly liable with Kennedy for any award of enhanced costs is not apparent.

35. Kennedy accepts and acknowledges giving effect to this submission could also leave her solely liable for the costs of *Sawridge #6,* in the event her appeal from the decision in *Sawridge #7* were to otherwise fail.

The CMJ erred in finding Kennedy's submissions warranted personal liability for enhanced costs

36. The gravamen of the CMJ's decision in *Sawridge #9* appears to be that given his decision on the original application, no explanation of that application or the legal analysis on which it had been based would be countenanced. Kennedy's explanation of what she had been thinking in bringing the application was rejected as her having "continued to advance futile arguments concerning Mr. Stoney's status as a member of the Sawridge Band".[24]

37. This conclusion was reached notwithstanding the purpose of her submissions was not to address membership at all, but to inform the decision as to whether Mr. Stoney should be considered a vexatious litigant. Her specific recognition and acknowledgement that these arguments, which she had considered viable, had been rejected by the Court demonstrate this.

38. The CMJ's decision bears the unfortunate appearance of putting any explanation off-limits and punishing Kennedy and Stoney for having provided one. It is respectfully submitted that Ms. Kennedy's advocacy on behalf of Mr. Stoney in the vexatious litigant hearing was in fact proper and brave in the circumstances, given that her own personal liability for costs had been argued but not yet decided.

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[23] *Sawridge #7* at para 7, **Sawridge #7 Authorities Tab 11**
[24] *Sawridge #9* at para 29, **AR Tab 4**

RELIEF SOUGHT

39. Kennedy respectfully asks that her appeal be allowed and the award of solicitor and client costs be set aside with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 2nd DAY OF May, A.D. 2018

FIELD LLP
Counsel for Priscilla Kennedy

Per: _____
P. Jon Faulds, QC

Per: _____
Kimberly Precht

TABLE OF AUTHORITIES

A. *Statement of Principles on Self-represented Litigants and Accused Persons*, 2006, Canadian Judicial Council; *Pintea v Johns*, 2017 SCC 23

APPEAL RECORD FOR *SAWRIDGE #9*

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PART 3 – Transcripts

There is no oral record that can be transcribed for Part 3 – Transcript

TAB A

CJC
CCM
Canadian
Judicial Council
Conseil canadien
de la magistrature

Statement of Principles
on Self-represented Litigants and Accused Persons

Adopted by the Canadian Judicial Council
September 2006

CANADIAN JUDICIAL COUNCIL

STATEMENT OF PRINCIPLES ON SELF-REPRESENTED LITIGANTS AND ACCUSED PERSONS*

PREAMBLE

Whereas the system of criminal and civil justice in Canada is predicated on the expectation of equal access to justice, including procedural justice, and equal treatment under the law for all persons;

Whereas the achievement of these expectations depends on awareness and understanding of both procedural and substantive law;

Whereas access to justice is facilitated by the availability of representation to all parties, and it is therefore desirable that each person seeking access to the court should be represented by counsel;

Whereas those persons who do remain unrepresented by counsel both face and present special challenges with respect to the court system;

Therefore, judges, court administrators, members of the Bar, legal aid organizations, and government funding agencies each have responsibility to ensure that self-represented persons are provided with fair access and equal treatment by the court; and

Therefore, it is desirable to provide a statement of principles for the guidance of such persons in the administration of justice in relation to self-represented persons.

*Notes:

1. Throughout this document, the term "self-represented" is used to describe persons who appear without representation. The use of this term is not meant to suggest inferences about the reasons the individual is without representation, nor the quality of their self-representation, and recognizes that some individuals prefer to represent themselves.

2. The Statements, Principles and Commentaries are advisory in nature and are not intended to be a code of conduct.

A. PROMOTING RIGHTS OF ACCESS

STATEMENT:

Judges, the courts and other participants in the justice system have a responsibility to promote opportunities for all persons to understand and meaningfully present their case, regardless of representation.

PRINCIPLES:

1. Access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and accommodating.

2. The court process should, to the extent possible, be supplemented by processes that enhance accessibility, informality, and timeliness of case resolution. These processes may include case management, alternative dispute resolution (ADR) procedures, and informal settlement conferences presided over by a judge.

3. Information, assistance and self-help support required by self-represented persons should be made available through the various means by which self-represented persons normally seek information, including for example: pamphlets, telephone inquiries, courthouse inquiries, legal clinics, and internet searches and inquiries.

4. In view of the value of legal advice and representation, judges, court administrators and other participants in the legal system should:
   (a) inform any self-represented parties of the potential consequences and responsibilities of proceeding without a lawyer;
   (b) refer self-represented persons to available sources of representation, including those available from Legal Aid plans, *pro bono* assistance and community and other services; and
   (c) refer self-represented persons to other appropriate sources of information, education, advice and assistance.

COMMENTARY:

1. Informed opinion and research suggests that the numbers of self-represented persons in the courts are increasing. However, the average person may be overwhelmed by the simplest of court procedures.

2. Self-represented persons are generally uninformed about their rights and about the consequences of choosing the options available to them; they may find court procedures complex, confusing and intimidating; and they may not have the knowledge or skills to participate actively and effectively in their own litigation.[1]

3. Many self-represented persons have limited literacy skills, and many speak Canada's official languages as a second language, if at all. As a result, many self-represented persons tend to access information about the courts through means other than the written word. For this reason, it is essential that information be provided using other means, including videos and pictures. Further, having an official available to answer questions posed by self-represented persons should, to the extent possible, supplement pre-packaged materials.

4. Given these factors, it is important that judges, court administrators and others facilitate, to the extent possible, access to justice for self-represented persons.

5. Providing the required services for self-represented persons is also necessary to enhance the courts' ability to function in a timely and efficient manner.

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[1] Hann, Robert *et al.* *A Study of Unrepresented Accused in Nine Canadian Courts*. Ottawa: Department of Justice, 2003.

B. PROMOTING EQUAL JUSTICE

STATEMENT:

Judges, the courts and other participants in the justice system have a responsibility to promote access to the justice system for all persons on an equal basis, regardless of representation.

PRINCIPLES:

1. Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.

2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.

3. Where appropriate, a judge should consider engaging in such case management activities as are required to protect the rights and interests of self-represented persons. Such case management should begin as early in the court process as possible.

4. When one or both parties are proceeding without representation, non-prejudicial and engaged case and courtroom management may be needed to protect the litigants' equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:
   (a) explain the process;
   (b) inquire whether both parties understand the process and the procedure;
   (c) make referrals to agencies able to assist the litigant in the preparation of the case;
   (d) provide information about the law and evidentiary requirements;
   (e) modify the traditional order of taking evidence; and
   (f) question witnesses.

COMMENTARY:

1. It is consistent with the requirements of judicial neutrality and impartiality for a judge to engage in such affirmative and non-prejudicial steps as described in Principles 3 and 4. A careful explanation of the purpose of this type of management will minimize any risk of a perception of biased behaviour.

2. Judges must exercise diligence in ensuring that the law is applied in an even-handed way to all, regardless of representation. The Council's statement of *Ethical Principles for Judges* (1998) has already established the principle of equality in principles governing judicial conduct. That document states that, "Judges should conduct themselves and proceedings before them so as to ensure equality according to law."

3. However, it is clear that treating all persons alike does not necessarily result in equal justice. The *Ethical Principles for Judges* also cites *Eldridge v. British Columbia (Attorney General)*[2] on a judge's duty to "rectify and prevent" discriminatory effects against particular groups.

4. Self-represented persons, like all other litigants, are subject to the provisions whereby courts maintain control of their proceedings and procedures. In the same manner as with other litigants, self-represented persons may be treated as vexatious or abusive litigants where the administration of justice requires it. The ability of judges to promote access may be affected by the actions of self-represented litigants themselves.

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[2] [1997] 3 S.C.R. 624 *per* LaForest, J. for the court at 667.

C. RESPONSIBILITIES OF THE PARTICIPANTS IN THE JUSTICE SYSTEM

STATEMENT:

All participants are accountable for understanding and fulfilling their roles in achieving the goals of equal access to justice, including procedural fairness.

PRINCIPLES:

For Both the Judiciary and Court Administrators

1. Judges and court administrators should meet the needs of self-represented persons for information, referral, simplicity, and assistance.

2. Judges and court administrators should develop forms, rules and procedures, which are understandable to and easily accessed by self-represented persons.

3. To the extent possible, judges and court administrators should develop packages for self-represented persons and standardized court forms.

4. Judges and court administrators have no obligation to assist a self-represented person who is disrespectful, frivolous, unreasonable, vexatious, abusive, or making no reasonable effort to prepare their own case.

For the Judiciary

1. Judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may explain the relevant law in the case and its implications, before the self-represented person makes critical choices.

2. In appropriate circumstances, judges should consider providing self-represented persons with information to assist them in understanding and asserting their rights, or to raise arguments before the court.

3. Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.

4. The judiciary should engage in dialogues with legal professional associations, court administrators, government and legal aid organizations in an effort to design and provide for programs to assist self-represented persons.

For Court Administrators

1. Court administrators should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system.

2. In particular, court administrators should be given sufficient resources to be able to:
   (a) provide, on request, all public information contained in dockets or calendars, case files, indexes and existing reports;
   (b) provide, on request, access to or a recitation of relevant common, routinely employed rules, court procedures, and fees and costs;
   (c) provide, on request, information about where to find applicable laws and rules
   (d) identify and provide, on request, applicable forms and written instructions;
   (e) answer questions about how to complete forms, but not about how answers should be phrased;
   (f) define, on request, terms commonly used in court processes;
   (g) provide, on request, phone numbers for Legal Aid, lawyer referral services, local panels, or other assistance services, such as Internet resources, known to court staff; and
   (h) provide, to the extent possible, and in compliance with applicable law, appropriate aids and services for individuals with disabilities.

3. Court administrators shall not provide legal advice.

4. Court administrators should educate court personnel regarding the importance of public access to the courts and should provide training to court personnel as to how they should assist self-represented persons.

5. Court administrators should allocate the necessary resources to allow court personnel to provide meaningful assistance.

For Self-Represented Persons

1. Self-represented persons are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case.

2. Self-represented persons are expected to prepare their own case.

3. Self-represented persons are required to be respectful of the court process and the officials within it. Vexatious litigants will not be permitted to abuse the process.

For the Bar

1. Members of the Bar are expected to participate in designing and delivering legal aid and *pro bono* representation to persons who would otherwise be self-represented, as well as other programs for short-term, partial and unbundled legal advice and assistance as may be deemed useful for the self-represented persons in the courts of which they are officers.

2. Members of the Bar are expected to be respectful of self-represented persons and to adjust their behaviour accordingly when dealing with self-represented persons, in accordance with their professional ethical obligations. For example, members of the Bar should, to the extent possible, avoid the use of complex legal language. Members of the Bar may be guided by the Canadian Bar Association's *Code of Professional Conduct* and the codes of each jurisdiction (see Guiding Principle XIX (8))and references therein.

For Others

1. Government departments with overall responsibility for court administration should provide Legal Aid plans with sufficient resources to provide a proper range of required services for financially eligible persons, including: education, short-term information and advice, and representation.

2. In addition to providing representation, Legal Aid organizations should be encouraged to create flexible options and models for addressing the challenges of self-represented persons, including programs providing education and short-term information and advice.

3. Providers of judicial education should develop educational programs for judges and court administrators on broad-based methods of assisting and managing the cases of self-represented persons.

4. Government agencies with overall responsibility for court administration should provide courts with the resources and assistance necessary to train court administrators and to provide the funding necessary for them to provide meaningful, broad-based assistance to self-represented persons, including awareness and communications training.

5. Government agencies with overall responsibility for court administration should provide funding for self-help programs for self-represented persons, as well as for programs of assistance to self-represented persons, which falls short of representation.

COMMENTARY:

1. The adoption of these principles in individual courts should be guided, as much as possible, by statistical information about self-represented persons and their cases in each particular court jurisdiction.

2. The design of programs to assist self-represented persons should be a collaborative effort among the judiciary, the courts, the Bar, Legal Aid providers, the public, and relevant governmental agencies.

3. A key requirement is that court personnel understand the distinction between legal information and legal advice, which they are forbidden from providing. Legal advice would include, among other things, advising someone on whether or how to best pursue a case, and explaining the law (as opposed to the process, or distributing information on how to access the law). Research suggests that many court officials may be uncomfortable with providing assistance to self-represented persons for reasons that include uncertainty about how far they may go in answering questions from self-represented persons. Training of court personnel helps them to give meaningful assistance without giving legal advice. Training packages may include such elements as multi-step "protocols" for court personnel and scripts for answering frequently asked questions.

4. Education packages for judges may also include multi-step "protocols" which may include possible scripts for commonly experienced situations. Suggested language for judges typically covers the need to explain the process, the elements and potential consequences, the burden of presenting evidence, the types of evidence which may be presented, the rules governing non-lawyers assisting self-represented persons, and so on.

5. Self-help support for self-represented persons may include such elements as conveniently accessible (e.g., online) forms; "virtual libraries" containing Rules of Court, relevant law, and guidelines to the judiciary in issuing key types of orders or rulings; directions to courthouses; summaries of key areas of law; e-filing; clearinghouses for access to legal services; how-to pamphlets on how to prepare and present a case; and the like.

6. Scheduling should take into account the special challenges and needs of self-represented persons.

Valentin Pintea *Appellant*

v.

Dale Johns and
Dylan Johns *Respondents*

and

National Self-Represented Litigants Project,
Pro Bono Ontario and
Access Pro Bono *Interveners*

INDEXED AS: PINTEA v. JOHNS

2017 SCC 23

File No.: 37109.

2017: April 18.

Present: McLachlin C.J. and Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe JJ.

ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

Civil procedure — Contempt of court — Required knowledge — Self-represented plaintiff failing to comply with case management orders and failing to attend case management meetings after having moved without filing change of address with court as required — Case management judge striking claim, finding plaintiff in contempt of court and awarding costs to defendants — Majority of Court of Appeal affirming decision — Dissenting judge finding that plaintiff's failure to attend case management meetings not act of contempt and that costs award significantly disproportionate consequence for failing to file change of address — Actual knowledge of impugned orders necessary for plaintiff to be found in contempt — Action restored and costs award vacated — Alberta Rules of Court, Alta. Reg. 124/2010, r. 10.52(3)(a)(iii).

Valentin Pintea *Appelant*

c.

Dale Johns et
Dylan Johns *Intimés*

et

National Self-Represented Litigants Project,
Pro Bono Ontario et
Access Pro Bono *Intervenants*

RÉPERTORIÉ : PINTEA c. JOHNS

2017 CSC 23

N° du greffe : 37109.

2017 : 18 avril.

Présents : La juge en chef McLachlin et les juges Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown et Rowe.

EN APPEL DE LA COUR D'APPEL DE L'ALBERTA

Procédure civile — Outrage au tribunal — Connaissance requise — Défaut par un demandeur non représenté de se conformer à des ordonnances relatives à la gestion de l'instance et de se présenter à des rencontres de gestion d'instance après avoir déménagé sans communiquer au tribunal son changement d'adresse comme il était tenu de le faire — Décision de la juge chargée de la gestion de l'instance radiant la demande, déclarant le demandeur coupable d'outrage au tribunal et adjugeant les dépens en faveur des défendeurs — Arrêt de la Cour d'appel confirmant cette décision à la majorité — Opinion dissidente concluant que le défaut du demandeur de se présenter aux rencontres de gestion d'instance ne représentait pas un outrage au tribunal et que la condamnation aux dépens constituait une conséquence disproportionnée par rapport à l'omission d'avoir communiqué le changement d'adresse — Preuve de la connaissance réelle par le demandeur des ordonnances en cause requise pour justifier sa condamnation pour outrage au tribunal — Rétablissement de l'action en justice et annulation de la condamnation aux dépens — Alberta Rules of Court, Alta. Reg. 124/2010, art. 10.52(3)(a)(iii).

decision. The respondents concede that the requirements of Rule 10.52(3)(a)(iii) of the *Alberta Rules of Court*, Alta. Reg. 124/2010, were not met with respect to these two Orders.

[3] As a result, the finding of contempt cannot stand.

[4] We would add that we endorse the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) (online) established by the Canadian Judicial Council.

[5] The appeal is allowed, the action is restored and the costs award vacated.

Judgment accordingly.

Solicitors for the appellant: Osler, Hoskin & Harcourt, Calgary.

Solicitors for the respondents: Gowling WLG (Canada), Calgary.

Solicitors for the intervener the National Self-Represented Litigants Project: Bennett Jones, Toronto.

Solicitors for the interveners Pro Bono Ontario and Access Pro Bono: Torys, Toronto.

sur lesquelles elle a basé sa décision. Les intimés concèdent que les conditions d'application du sous-al. 10.52(3)(a)(iii) des *Alberta Rules of Court*, Alta. Reg. 124/2010, n'étaient pas réunies à l'égard de ces deux ordonnances.

[3] En conséquence, la conclusion selon laquelle il y a eu outrage au tribunal ne saurait être maintenue.

[4] Nous tenons à souligner que nous souscrivons à l'*Énoncé de principes concernant les plaideurs et les accusés non représentés par un avocat* (2006) (en ligne) établi par le Conseil canadien de la magistrature.

[5] L'appel est accueilli, l'action en justice est rétablie et la condamnation aux dépens est annulée.

Jugement en conséquence.

Procureurs de l'appelant : Osler, Hoskin & Harcourt, Calgary.

Procureurs des intimés : Gowling WLG (Canada), Calgary.

Procureurs de l'intervenant National Self-Represented Litigants Project : Bennett Jones, Toronto.

Procureurs des intervenantes Pro Bono Ontario et Access Pro Bono : Torys, Toronto.

TAB 1

November 15, 2017

EDWARD H. MOLSTAD, Q.C.
DIRECT DIAL: 780.423.8506
DIRECT FAX: 780.423.2870
EMAIL: emolstad@parlee.com
OUR FILE #: 64203-23/EHM

Delivered by Hand and
Via email to Nicole.stansky@albertacourts.ca

Court of Queen's Bench of Alberta
6th Floor Law Courts Building
1A Sir Winston Churchill Square
Edmonton, Alberta T5J 0R2

Attention: The Honourable Mr. Justice D.R.G. Thomas

Dear Mr. Justice Thomas:

Re: Solicitor and own client full indemnity costs award in Sawridge #6, Sawridge #7 and Sawridge #8
Court of Queen's Bench Action No: 1103 14112

We write to seek your direction in relation to the resolution of a dispute between the parties.

You have directed the parties to attend before an Assessment Officer for a determination as to the quantum of costs in relation to the above matters. The parties cannot agree with respect to the time for which costs are recoverable. We are of the view that it is probable that the Assessment Officer would not likely address this issue in dispute and would direct that we return to your Lordship for a determination on this point.

The Sawridge First Nation and the Sawridge Trustees take the position that the solicitor and own client full indemnity costs award applies not only to the time period up to the issuance of Sawridge #6, but it also applies in relation to the costs subsequently incurred by these parties in relation to Sawridge #7 and Sawridge #8, namely:

- preparation for and attendance at the July 28, 2017 hearing directed by Your Lordship in Sawridge #6 on the issue of whether Ms. Kennedy ought to be held personally liable for some or all of the cost award made in Sawridge #6; and

- preparation of written submissions on the vexatious litigant status of Maurice Stoney as directed by Your Lordship in Sawridge #6.

Mr. Faulds will communicate to the Court the position of Ms. Kennedy in relation to this dispute.

Mr. Stoney is no longer represented by legal counsel and as a result, we would suggest that a date be set with Mr. Stoney being given notice of this date in order that he be given the opportunity to attend to make submissions.

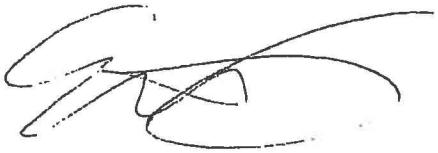
Legal Counsel, on behalf of the Sawridge Trustees and the Sawridge First Nation are prepared to appear before you to make submissions on this point.

When you receive Mr. Faulds' response to setting out his position, should you agree that a date be scheduled, we would request that you advise Counsel of the dates that you have available and we will arrange for all counsel to agree on one of those dates.

We would appreciate your direction in terms of how this matter should be dealt with.

Yours truly,

PARLEE McLAWS LLP



EDWARD H. MOLSTAD, Q.C.
EHM/ELS

cc: Jon Faulds, Field Law
Via email: jfaulds@fieldlaw.com

cc: Doris Bonora and Anna Loparco, Dentons Canada LLP
Via email: doris.bonora@dentons.com ; anna.loparco@dentons.com

cc: Karen Platten, Q.C., McLennan Ross
Via email: kplatten@mross.com

cc: Maurice Felix Stoney
500 4 Street
Slave Lake, AB T0G 2A1
Via Regular Mail

TAB 2

FIELD LAW

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Our File: 65063-1

November 16, 2017

VIA EMAIL TO (NICOLE.STANSKY@ALBERTACOURTS.CA)

Court of Queen's Bench of Alberta
6th Floor Law Courts Building
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2

Attention: The Honourable Mr. Justice D.R.G. Thomas

My Lord:

Re: Solicitor and own client full indemnity costs award in Sawridge #6
Court of Queen's Bench Action No.: 1103 14112

We acknowledge receipt of Mr. Molstad's letter to you concerning the assessment of the costs award in Sawridge #6.

We understand Mr. Molstad wishes to arrange a hearing before you concerning the scope of the award of costs on a solicitor and own client indemnity basis made against Mr. Stoney in Sawridge #6. We understand Mr. Molstad's position to be that costs award applies prospectively to the subsequent proceedings that gave rise to your decisions in Sawridge #7 and #8.

On behalf of Ms. Kennedy, who is jointly and severally liable for the costs award made in Sawridge #6, it is our position that award applies only to the application giving rise to the decision in Sawridge #6 and not to any subsequent hearings or proceedings. Besides being the normal course we note this is consistent with the language of the decisions including paragraphs 153 and 154 of Sawridge #7 in which Ms. Kennedy was made personally liable for the costs of Sawridge #6 on a joint and several basis with Mr. Stoney.

In the circumstances we agree with Mr. Molstad that the ruling he seeks likely lies beyond the scope of the assessment officer.

Should your Lordship consider a hearing is required to address this we also agree with Mr. Molstad that it should be on notice to Mr. Stoney on a date agreeable to all parties.

Yours truly,

FIELD LLP

Jon Faulds, QC
Partner

PJF/ab

cc: Edward Molstad, Parlee McLaws (via email)
Doris Bonora and Anna Loparco, Dentons Canada LLP (via email)
Karen Platten, Q.C., McLennan Ross (via email)
Maurice Feliz Stoney (via fax)

TAB 3

THE HONOURABLE MR. JUSTICE
DENNIS R. THOMAS

THE LAW COURTS
EDMONTON, ALBERTA
T5J 0R2
TEL: (780) 422-2200

COURT OF QUEEN'S BENCH OF ALBERTA

Fax No. (780) 422-8854

January 2, 2018

Edward Molstad, Q.C.
Parlee McLaws LLP
Email: emolstad@parlee.com

Jon Faulds, Q.C.
Field Law LLP
Email: jfaulds@fieldlaw.com

Dear Counsel:

Re: Solicitor and own client full indemnity costs award in Sawridge #6, Sawridge #7 and Sawridge #8
Action No. 1103 14112

Further to me letter of December 20, 2017, and Mr. Faulds e-mail of the same date addressed to my assistant, Ms. Stansky, it will not be necessary for Mr. Faulds to attend the case management session set for January 5, 2018 at 2 pm.

Instead, I am going to resolve the costs issue described in Mr. Molstad's letter of November 15, 2017 and Mr. Faulds letter of November 16, 2017 through the exchange of written briefs. A hearing to resolve the matter will not be necessary at this time.

To that end, I direct Mr. Faulds to provide to me a short brief, not exceeding three pages in length, on the issue by close of business on Friday, January 5, 2018. The Sawridge First Nation and Sawridge Trustees shall respond with a similar brief, not exceeding three pages, which shall be forwarded to me by close of business on January 12, 2018. All briefs shall be delivered electronically c/o my assistant at nicole.stansky@albertacourts.ca

I am copying the other counsel involved by e-mail and Mr. Stoney by ordinary mail.

Yours truly,

D.R.G. Thomas

DRGT/ns

cc: Doris Bonora and Anna Loparco (via email)
Karen Platten, Q.C. (via email)
Janet Hutchison (via email)
Maurice Felix Stoney (via regular mail)
Sharon Hinz, Case Management Coordinator (via email)

TAB 4

2018 ABQB 213
Alberta Court of Queen's Bench

1985 Sawridge Trust v. Alberta (Public Trustee)

2018 CarswellAlta 536, 2018 ABQB 213, [2018] A.W.L.D. 1627, [2018] A.W.L.D. 1632, [2018] A.W.L.D. 1634, [2018] A.W.L.D. 1693

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")

Maurice Stoney and His Brothers and Sisters (Applicants) and Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle and Clara Midbo, As Trustees for the 1985 Sawridge Trust (the "1985 Sawridge Trustees" or "Trustees") (Respondents / Original Applicants) and The Sawridge Band (Respondent / Intervenor)

D.R.G. Thomas J.

Judgment: March 20, 2018
Docket: Edmonton 1103-14112

Proceedings: additional reasons to *1985 Sawridge Trust v. Alberta (Public Trustee)* (2017), 61 Alta. L.R. (6th) 324, [2018] 2 W.W.R. 390, 2017 ABQB 530, 2017 CarswellAlta 1569, D.R.G. Thomas J. (Alta. Q.B.); additional reasons to *1985 Sawridge Trust v. Alberta (Public Trustee)* (2017), 2017 CarswellAlta 1236, 2017 ABQB 436, D.R.G. Thomas J. (Alta. Q.B.); additional reasons to *1985 Sawridge Trust v. Alberta (Public Trustee)* (2017), 2017 CarswellAlta 1639, 2017 ABQB 548, 13 C.P.C. (8th) 92, D.R.G. Thomas J. (Alta. Q.B.); affirmed *Kennedy v. Trustees for the 1985 Sawridge Trust* (2017), 2017 ABCA 439, 2017 CarswellAlta 2698, Frans Slatter J.A., Jack Watson J.A., Myra Bielby J.A. (Alta. C.A.)

Counsel: P. Jon Faulds, Q.C., for Priscilla Kennedy
Edward H. Molstad, Q.C., for Sawridge Band
Doris Bonora, for 1985 Sawridge Trustees

Subject: Civil Practice and Procedure; Estates and Trusts; Evidence; Public

Related Abridgment Classifications

Civil practice and procedure
XXIV Costs
XXIV.5 Persons entitled to or liable for costs
XXIV.5.f Non-party

Civil practice and procedure
XXIV Costs
XXIV.7 Particular orders as to costs
XXIV.7.d Costs against solicitor personally
XXIV.7.d.ii Misconduct of solicitor

Professions and occupations
IX Barristers and solicitors
IX.6 Relationship with others
IX.6.b Duty as officer of court

Headnote

Civil practice and procedure --- Costs — Persons entitled to or liable for costs — Non-party
S had been involved in protracted litigation with Trustees of First Nation wherein S's application was dismissed in Action 6 with solicitor and own client costs, costs award made against S's lawyer personally in Action 7 and vexatious litigant declaration against S in Action 8 — Appeal from Action 6 was declared abandoned — Costs submissions were made by First Nations Participants for Actions 7 and 8 — Ordinary costs awarded against S's lawyer for Action 7 — Rule 10.28 of Alberta Rules of Court sets out that "party" for purposes of recoverable costs of litigation "includes a person filing or participating in an application or proceeding who is or may be entitled to or subject to a cost award." — Rule provides expanded definition of "party" which allows costs award against anyone participating in proceeding that is not an action — S was present but did actively participate and should not bear costs for hearing involving liability of his lawyer for her actions — No litigation misconduct occurred which would provide sufficient basis for award of enhanced costs — Sufficient basis to award solicitor-client costs against lawyer and S on joint and several basis in Action 8 — Critical that court continue to disapprove of abusive litigation, changing positions, and re-arguing settled issues — In accordance with reasoning for awarding costs against a lawyer personally in Action 7, there was sufficient basis to award solicitor-client costs against lawyer and S on joint and several basis in Action 8 — No costs associated with this ruling as success mixed.

Professions and occupations --- Barristers and solicitors — Relationship with others — Duty as officer of court
S had been involved in protracted litigation with Trustees of First Nation wherein S's application was dismissed in Action 6 with solicitor and own client costs, costs award made against S's lawyer personally in Action 7 and vexatious litigant declaration against S in Action 8 — Appeal from Action 6 was declared abandoned — Costs submissions were made by First Nations Participants for Actions 7 and 8 — Ordinary costs awarded against S's lawyer for Action 7 — S was present but did actively participate and should not bear costs for hearing involving liability of his lawyer for her actions — No litigation misconduct occurred which would provide sufficient basis for award of enhanced costs — Sufficient basis to award solicitor-client costs against lawyer and S on joint and several basis in Action 8 — Critical that court continue to disapprove of abusive litigation, changing positions, and re-arguing settled issues — In accordance with reasoning for awarding costs against lawyer personally in Action 7, there was sufficient basis to award solicitor-client costs against lawyer and S on joint and several basis in Action 8 — No costs associated with this ruling as success mixed.

Civil practice and procedure --- Costs — Particular orders as to costs — Costs against solicitor personally — Misconduct of solicitor
S had been involved in protracted litigation with Trustees of First Nation wherein S's application was dismissed in Action 6 with solicitor and own client costs, costs award made against S's lawyer personally in Action 7 and vexatious litigant declaration against S in Action 8 — Appeal from Action 6 was declared abandoned — Costs submissions were made by First Nations Participants for Actions 7 and 8 — Ordinary costs awarded against S's lawyer for Action 7 — S was present but did actively participate and should not bear costs for hearing involving liability of his lawyer for her actions — No litigation misconduct occurred which would provide sufficient basis for award of enhanced costs — Sufficient basis to award solicitor-client costs against lawyer and S on joint and several basis in Action 8 — Critical that court continue to disapprove of abusive litigation, changing positions, and re-arguing settled issues — In accordance with reasoning for awarding costs against lawyer personally in Action 7, there was sufficient basis to award solicitor-client costs against lawyer and S on joint and several basis in Action 8 — No costs associated with ruling as success mixed.

Table of Authorities

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R. 1.2(2)(e) — considered

R. 1.2(4) — considered

R. 10.28 — considered

R. 10.29 — referred to

R. 10.29(1) — considered

R. 10.30(1)(c) — considered

R. 10.31 — considered

R. 10.33 — considered

R. 10.33(1) — considered

R. 10.33(2)(g) — referred to

Words and phrases considered:

party

The general rule is that the successful party to an application is entitled to a costs award against the unsuccessful party (r 10.29(1)). R 10.28 sets out that a &ldqo;party" for the purposes of the rules pertaining to the recoverable costs of litigation "includes a person filing or participating in an application or proceeding who is or may be entitled to or subject to a cost award." This is an expanded definition of "party" which allows a costs award against anyone participating in a proceeding that is not an action . . .

Although the proceedings in [proceedings] #7 and #8 were initiated by this Court, exercising its inherent jurisdiction, the [First Nation] Participants were directed to appear and invited to make submissions. The [First Nation] Participants participated in those proceedings and argued in support of a costs award personally against [plaintiff's counsel] and a vexatious litigant designation against [the plaintiff]. Both orders were made by this Court. Thus, the [First Nation] Participants fall within the definition of "party" as described in r 10.28 and are entitled to costs.

ADDITIONAL REASONS to decisions reported at *1985 Sawridge Trust v. Alberta (Public Trustee)* (2017), 2017 ABQB 530, 2017 CarswellAlta 1569, 61 Alta. L.R. (6th) 324, [2018] 2 W.W.R. 390 (Alta. Q.B.) and *1985 Sawridge Trust v. Alberta (Public Trustee)* (2017), 2017 ABQB 548, 2017 CarswellAlta 1639, 13 C.P.C. (8th) 92 (Alta. Q.B.), as to costs.

D.R.G. Thomas J.:

I. Introduction

1 This is my ruling on costs arising from *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 530 (Alta. Q.B.) ("*Sawridge #7*") and *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 548 (Alta. Q.B.) ("*Sawridge #8*").

II. Background

2 The history of this matter to date is summarized at paras 1-6 of *Sawridge #8*.

3 On July 12, 2017 I issued *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 436 (Alta. Q.B.) ("*Sawridge #6*"), wherein I denied an application by Maurice Felix Stoney "and his 10 living brothers and sisters" to be added as interveners or parties to a proceeding intended to settle and distribute the assets of the 1985 Sawridge Trust. I ordered solicitor and own client indemnity costs against Maurice Stoney and ordered that he make written submissions on whether he should be subject to court access restrictions (at paras 53-68). At paras 71-81 of that decision I concluded that the activities of

Maurice Stoney's Lawyer, Ms. Priscilla Kennedy, required review. I ordered that Ms. Kennedy appear before me on July 28, 2017 to speak to the costs question.

4 *Sawridge #6* was appealed by Maurice Stoney et al and the Sawridge Band and the Sawridge Trustees (the "Sawridge Participants") applied for security for costs. On December 19, 2017 the Court of Appeal granted that application and stayed the appeal pending the posting of security by February 28, 2017 (*Stoney v. Trustees for the 1985 Sawridge Trust*, 2017 ABCA 437 (Alta. C.A.)). Mr. Stoney applied to extend the time to post security and that application was dismissed (*Stoney v. Twinn*, 2018 ABCA 81 (Alta. C.A.)). The appeal in *Sawridge #6* is deemed abandoned.

5 At the July 28, 2017 hearing the Sawridge Participants were permitted to enter evidence that was potentially relevant to whether Ms. Kennedy should be personally responsible for some or all of a costs award against her client, Maurice Stoney. Counsel for the Sawridge Participants argued that an award of costs was appropriate either against Ms. Kennedy personally, or against Ms. Kennedy and Mr. Stoney on a joint and several basis. Submissions were also received from the Sawridge Participants as to whether Mr. Stoney should have his court access restricted via a "vexatious litigant" order.

6 Following that July 28, 2017 hearing, I issued *Sawridge #7* wherein I concluded that Ms. Kennedy was personally liable, along with her client Maurice Stoney, for the solicitor and own client indemnity costs that I had ordered in *Sawridge #6* (*Sawridge #7* at para 154). In *Sawridge #8* I found Mr. Stoney to be a vexatious litigant and that he should be subject to litigation restraints (*Sawridge #8* at para 110).

7 The issue of costs arising from *Sawridge #7* and *Sawridge #8* had not been addressed by any of the Participants or by the Court. Given the dispute in respect to the scope of my costs award in *Sawridge #6* in relation to *Sawridge #7* and *Sawridge #8*, the Sawridge Participants and Ms. Kennedy were directed in my letter of January 2, 2018, to provide written briefs on the subject. Mr. Stoney was copied with that letter by mail.

III. Positions Taken

8 The Sawridge Participants provided separate written submissions but given the similarities in their arguments, I summarize them as one. They argue that the costs against the unsuccessful parties in *Sawridge #7* and *Sawridge #8* should be awarded on the same basis as in *Sawridge #6*. They say that the findings of misconduct in *Sawridge #7*and*Sawridge #8* are consistent with the same findings of misconduct in*Sawridge #6* which were held to warrant full indemnity costs. *Sawridge #7* and *Sawridge #8* are extensions and arise from the application dealt with in*Sawridge #6*. Accordingly, the Sawridge Participants seek costs on a solicitor and own client full indemnity basis. They seek these costs as against Ms. Kennedy and Mr. Stoney on a joint and several basis for *Sawridge #8*, and as against Ms. Kennedy only for *Sawridge #7*. Alternatively, they seek enhanced or party and party costs.

9 Ms. Kennedy's Reply Submissions take the position that the Court drew a clear line between the application in *Sawridge #6*, which attracted an enhanced costs award, and the subsequent proceedings to determine whether she should be personally liable for such costs and whether Mr. Stoney should be declared a vexatious litigant. Any costs relating to *Sawridge #7* and *Sawridge #8* must be evaluated on their own merits and enhanced costs are not carried over to subsequent proceedings where misconduct is evaluated. Furthermore, she argues that the role of the Sawridge Participants in*Sawridge #7* was limited and in *Sawridge #8* was optional, and that the suggestion that they were "successful" parties misapprehends the nature of those proceedings and their role. Those were hearings that resulted from the Court acting on its own motion. Thus, Ms. Kennedy asks that the costs award in *Sawridge #6* not be extended to proceedings in *Sawridge #7* and *Sawridge #8*, and that the enhanced costs applications of the Sawridge Participants be dismissed. Finally, she asks that the Court direct any issues relating to the quantum of any costs awarded be resolved by an Assessment Officer in accordance with the Court's prior direction.

IV. Jurisdiction on Costs

10 R 1.2 of the *Alberta Rules of Court*, Alta Reg 124/2010 sets out that the "purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way." The provisions that deal with costs uphold the function of r 1.2(2)(e), providing "an effective, efficient and credible system of remedies and

sanctions to enforce these rules and orders and judgments."

11 The issue of costs was not directly addressed by the parties or the Court in *Sawridge #7* or *Sawridge #8*. Nevertheless, the Court retains the jurisdiction to provide the parties with direction in respect of the costs of *Sawridge #7* and *Sawridge #8* (r 10.30(1)(c); *Saskatchewan Power Corp. v. Alberta (Utilities Commission)*, 2015 ABCA 281 (Alta. C.A.) at paras 8-10; *Firemaster Oilfield Services Ltd. v. Safety Boss (Canada) (1993) Ltd.*, 2002 ABCA 96 (Alta. C.A.) at para 2).

12 R 10.30(1)(c) sets out:

> Unless the Court otherwise orders or these rules otherwise provide, a costs award may be made
>
> . . .
>
> (c) in respect of trials and all other matters in an action, after judgment or a final order has been entered.

13 Cost awards are discretionary (r 10.29(1), 10.31; *Court of Queen's Bench Act*, RSA 2000, c C-31, s 21). R 10.33(1) sets out some of the considerations in making a costs award:

> (a) the result of the action and the degree of success of each party;
>
> (b) the amount claimed and the amount recovered;
>
> (c) the importance of the issues;
>
> (d) the complexity of the action;
>
> (e) the apportionment of liability;
>
> (f) the conduct of a party that tended to shorten the action;
>
> (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.

14 In deciding whether to impose an amount through a costs award the Court may consider, among other things, whether a party has engaged in misconduct (r 10.33(2)(g)).

15 As explained by Topolniski J in *EAD Property Holdings (103) Corp. v. Greyhound Canada Transportation ULC*, 2015 ABQB 425 (Alta. Q.B.) at para 19 the r 10.33 considerations "dovetail with Rule 1.2(4), which requires a proportionate remedy when the Court is called upon to exercise its discretion."

16 Finally, a costs award in this case is appropriate and would not be inconsistent with the formal judgments given that neither *Sawridge #7* or *Sawridge #8* directly spoke to costs (*Pivotal Capital Advisory Group Ltd. v. NorAmera BioEnergy Corp.*, 2009 ABQB 230 (Alta. Q.B.) at para 17).

V. Entitlement to Costs

17 The general rule is that the successful party to an application is entitled to a costs award against the unsuccessful party (r 10.29(1)). R 10.28 sets out that a "party" for the purposes of the rules pertaining to the recoverable costs of litigation "includes a person filing or participating in an application or proceeding who is or may be entitled to or subject to a cost award." This is an expanded definition of "party" which allows a costs award against anyone participating in a proceeding that is not an action (Stevenson & Côté, *Alberta Civil Procedure Handbook 2017* (Edmonton: Juriliber, 2017) at 10-32).

18 Although the proceedings in *Sawridge #7* and *Sawridge #8* were initiated by this Court, exercising its inherent jurisdiction, the Sawridge Participants were directed to appear and invited to make submissions. The Sawridge Participants participated in those proceedings and argued in support of a costs award personally against Ms. Kennedy and a vexatious litigant designation against Mr. Stoney. Both orders were made by this Court. Thus, the Sawridge Participants fall within the definition of "party" as described in r 10.28 and are entitled to costs.

19 Commonly, enhanced costs are awarded for litigation misconduct, being confined to the portion of the proceeding in which the misconduct was found to have occurred and are not carried over to the subsequent proceeding in which the conduct is evaluated (see *Lynch v. Checker Cabs Ltd.*, 1999 ABQB 514 (Alta. Q.B.)). However, even if that is the common practice, it is not a complete bar to a costs award here given the misconduct which occurred in *Sawridge #6* by both Ms. Kennedy and Mr. Stoney and continued by them in*Sawridge #8*.

VI. Analysis

20 This Court has broad jurisdiction to order costs (r 10.31, 10.33). However, an increased costs award ought not to be made where there is an absence of notice of the possibility of such an order, no submissions are made on the issue, and no party to the proceedings sought those costs (*Twinn v. Twinn*, 2017 ABCA 419 (Alta. C.A.) at para 27, rev'g in part *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 377 (Alta. Q.B.) ("*Sawridge #5*")). The Court of Appeal in *Twinn* also reiterated that awards of costs on a solicitor and client basis are "rare and exceptional" while awards of solicitor and own client costs are "virtually unheard of except where provided by contract" (at para 25).

21 The *Twinn* decision should not be interpreted as restricting a judge's discretion to award enhanced costs in response to litigation misconduct that emerges during a proceeding (see, for example, *Stagg v. Condominium Plan 882-2999*, 2013 ABQB 684 (Alta. Q.B.) at para 32 citing *Jackson v. Trimac Industries Ltd.* (1993), 138 A.R. 161 (Alta. Q.B.) at para 28, (1993), 8 Alta. L.R. (3d) 403 (Alta. Q.B.) , aff'd on costs 1994 ABCA 199 (Alta. C.A.); *Brown v. Silvera*, 2010 ABQB 224 (Alta. Q.B.) at paras 29-35, aff'd 2011 ABCA 109 (Alta. C.A.)).

22 As long as there is a sufficient basis for the award of extraordinary costs such an award may be appropriate (*Twinn* at paras 25, 28).

23 Costs need to be evaluated on their own merits since the appropriateness of an enhanced costs award is on a case by case basis (*Twinn* at para 27). As such, the scale of costs from *Sawridge #6* should not automatically be extended to *Sawridge #7* and *Sawridge #8*.

24 Here, Ms. Kennedy and Mr. Stoney were provided notice that the Sawridge Participants were seeking solicitor and own client full indemnity costs in relation to the applications in *Sawridge #6* and should have been aware of the possibility of such an order in the related proceedings if their litigation misconduct continued (see*Sawridge #6* at para 67). There is direct connection between *Sawridge #6 Sawridge #7* and *Sawridge #8*, the participants are the same, and the issues are related to and flow from *Sawridge #6*.

25 Ms. Kennedy and Mr. Stoney were also aware that the Sawridge Participants sought enhanced costs when they were presented with the draft bills of costs seeking solicitor and own client full indemnity costs in relation to *Sawridge #7* and *Sawridge #8*. An additional form of notification occurred by way of the Sawridge Participants' letter of November 15, 2017 addressed to the Court and copied to Mr. Faulds and Mr. Stoney. Finally, all participants were offered the opportunity to make written submissions as to costs.

Sawridge #7 Costs Award

26 I do not find it necessary, or even appropriate, to order enhanced costs against Ms. Kennedy for *Sawridge #7* and instead order the presumptive party and party costs (r 10.29). That hearing, where Ms. Kennedy was represented by Mr. Wilson, a senior lawyer at her firm, dealt with whether Ms. Kennedy ought to be responsible for all or some of the costs awarded against Mr. Stoney in *Sawridge #6*. She was responding to my direction that she appear and explain her position on

an award of costs.

27 Although Mr. Stoney was present at the hearing, he did not make submissions or actively participate in any way and should not bear the costs for a hearing involving the liability of his lawyer for her actions.

28 No litigation misconduct occurred in the course of *Sawridge #7*which would provide a sufficient basis for an award of enhanced costs. Instead, similar to *Lynch v. Checker Cabs Ltd.*, 1999 ABQB 514 (Alta. Q.B.) , where enhanced costs were not awarded for the subsequent proceeding evaluating the lawyer's conduct, Column 3 of Schedule "C" costs as against Ms. Kennedy are awarded. Costs are set at Column 3 given the court's discretion, wide entitlement to fix the appropriate scale of costs, and in consideration of r 10.33 (*UFCW, Local 401 v. Alberta (Information and Privacy Commissioner)*, 2012 ABCA 244 (Alta. C.A.) at para 3; *Saskatchewan Power Corporation* at para 18).

Sawridge #8 Costs Award

29 In *Sawridge #8*, Ms. Kennedy, acting as "Counsel for Maurice Stoney," continued to advance futile arguments concerning Mr. Stoney's status as a member of Sawridge Band (*Sawridge #8* at paras 27-32, 113-122). I rejected these arguments in*Sawridge #6*, finding that the Stoney Application was inappropriate, devoid of merit, and abusive in a manner exhibiting the hallmark characteristics of vexatious litigation and that it amounted to serious litigation misconduct (*Sawridge #6* at para 67). Ms. Kennedy's submissions in*Sawridge #8* were a collateral attack on the result in *Sawridge #6*, constituting a notorious and serious form of litigation abuse (*Chutskoff Estate v. Bonora*, 2014 ABQB 389 (Alta. Q.B.) at para 92, aff'd 2014 ABCA 444 (Alta. C.A.)).

30 Mr. Wilson, the lawyer that made representations on behalf of Ms. Kennedy in*Sawridge #7*, admitted that these earlier arguments "absolutely" had the effect of being an abuse of the court's process (see submissions as reproduced in*Sawridge #8* at para 114). However, the written submissions of Ms. Kennedy in*Sawridge #8* re-argued those same meritless points (at paras 32, 115). I outlined my concerns with Ms. Kennedy's conduct in *Sawridge #8* (at paras 115-118):

> [Ms. Kennedy's] submissions are the law is unsettled, issues remain arguable, despite her counsel's admission on July 28, 2017 that the effect of the August 12, 2016 application was to abuse of the court's process: " . . . it absolutely had that effect ..." [emphasis added].
>
> Mr. Wilson told me in open court that Ms. Kennedy had learned her lesson. When I read the written brief Kennedy prepared and submitted on behalf of Maurice Stoney, I questioned whether that was true.
>
> In ***Sawridge #7*** at paras 98-99 I explained my conclusion why a lawyer who re-litigates or repeatedly raises settled issues has engaged in serious misconduct that is contrary to the standards expected of persons who hold the title "lawyer". I also observed on how advancing abusive litigation is a breach not merely of a lawyer's professional and court officer duties. It is a betrayal of the solicitor-client relationship, and 'digs a grave for two': para 74.
>
> I am also troubled by Ms. Kennedy relying on a procedure found in the *Federal Court Rules* to explain why Maurice Stoney's August 12, 2016 application was not a "busybody" proceeding. Stating what should be obvious, civil proceedings in front of this Court are governed by the *Alberta Rules of Court*, not the *Federal Court Rules*. I question the competence of a lawyer who does not understand what court rules apply in a specific jurisdiction.

31 It is critical that this Court continue to disapprove of abusive litigation, changing positions, and re-arguing settled issues (*Stagg* at para 32; *Chutskoff* at para 92; *Sawridge #7* at para 82-91). Consequently, Ms. Kennedy and Mr. Stoney, by virtue of their own actions, have opened themselves up to enhanced costs being awarded against them in relation to the proceedings that gave rise to*Sawridge #8*. In accordance with the reasoning for awarding costs against a lawyer personally in *Sawridge #7*, there is a sufficient basis to award solicitor-client costs against Ms. Kennedy and Mr. Stoney on a joint and several basis in *Sawridge #8*.

VII. Conclusion:

32 Costs are awarded on a party and party basis against Ms. Kennedy *only* for *Sawridge #7* (Column 3 of Schedule "C") and on a solicitor-client basis against Ms. Kennedy and Mr. Stoney on a joint and several basis for *Sawridge #8*.

33 There will be no costs associated with this ruling as success has been mixed.

34 Any issues relating to quantum of costs for *Sawridge #6*, *Sawridge #7*, and/or *Sawridge #8* are to be resolved by an Assessment Officer.

Order accordingly

End of Document

TAB 5

2017 ABQB 548
Alberta Court of Queen's Bench

1985 Sawridge Trust v. Alberta (Public Trustee)

2017 CarswellAlta 1639, 2017 ABQB 548, [2017] A.W.L.D. 5010, 13 C.P.C. (8th) 92, 283 A.C.W.S. (3d) 55

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")

Maurice Felix Stoney and His Brothers and Sisters (Applicants) and Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle and Clara Midbo, As Trustees for the 1985 Sawridge Trust (the "1985 Sawridge Trustees" or "Trustees") (Respondents / Original Applicants) and The Sawridge Band (Intervenor)

D.R.G. Thomas J.

Judgment: September 12, 2017
Docket: Edmonton 1103-14112

Counsel: Priscilla Kennedy, for Applicant, Maurice Felix Stoney
Edward H. Molstad, Q.C., for Sawridge Band
D.C. Bonora, for 1985 Sawridge Trustees

Subject: Civil Practice and Procedure; Estates and Trusts; Evidence; Public

Related Abridgment Classifications

Civil practice and procedure
VI Actions
VI.3 Suspension of right of action
VI.3.b Plaintiff persistently instituting vexatious proceedings

Headnote

Civil practice and procedure --- Actions — Suspension of right of action — Plaintiff persistently instituting vexatious proceedings
First Nations trust applied for directions as to distribution of trust — S whose family had formerly been members of First Nation was unsuccessful in attempts to be recognized as member — S continued to bring applications in various courts and before human rights tribunal in search for status — Case management judge put in place interim court order to restrict S from initiating or continuing litigation in Alberta courts, and sought submissions as to whether S should be subject to vexatious litigant order — Order made requiring S to seek leave prior to initiating or continuing litigation in Alberta Court of Queen's Bench and Alberta Provincial Court relating to persons and organizations involved with First Nation and S's disputes concerning membership in it — Payment of all outstanding costs awards prerequisite to leave — S's allegations of conspiracy against self and siblings raised concern that S might shift focus from First Nation and Trusts to individuals involved in the prior litigation and First Nation membership-related processes and decisions — S's refusal to accept dismissal of his claim was very strong predictor of future abusive litigation — Order flowed from court's inherent jurisdiction as strict persistence-driven approach in Judicature Act only targets misconduct that has already occurred — S had history of repeated collateral attacks in relation to subject and related parties — Attempts to re-litigate same issues also represented hopeless litigation — S engaged in busybody litigation exposing others to risk of costs consequences — S failed to pay costs and

attempted to shift responsibility onto trust, which would have depleted communal property of First Nation — Forum shopping by S implied intent to evade legitimate litigation control processes and legal principles, including res judicata — Unproven allegations of fraud provided insight into S's litigation objectives.

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Curle v. Curle (2014), 2014 ONSC 1077, 2014 CarswellOnt 1937 (Ont. S.C.J.) — referred to

Doell v. British Columbia (Minister of Public Safety and Solicitor General) (2016), 2016 BCSC 1181, 2016 CarswellBC 1761 (B.C. S.C.) — considered

Dove v. R. (2015), 2015 FC 1126, 2015 CarswellNat 4972, 2015 D.T.C. 5109, 2015 CF 1126, 2015 CarswellNat 7726 (F.C.) — considered

Dove v. R. (2015), 2015 FC 1307, 2015 CarswellNat 6827, 2015 CF 1307, 2015 CarswellNat 10653 (F.C.) — referred to

Dove v. R. (2016), 2016 FCA 231, 2016 CarswellNat 4557, 2016 CAF 231, 2016 CarswellNat 11479 (F.C.A.) — referred to

Dykun v. Odishaw (2001), 2001 ABCA 204, 2001 CarswellAlta 968, 286 A.R. 392, 253 W.A.C. 392 (Alta. C.A.) — considered

Ebert v. Birch (1999), [2000] Ch. 484, [1999] 3 W.L.R. 670, [1999] EWCA Civ 3043, [2000] B.P.I.R. 14 (Eng. & Wales C.A. (Civil)) — considered

Ewanchuk v. Canada (Attorney General) (2017), 2017 ABQB 237, 2017 CarswellAlta 561, 54 Alta. L.R. (6th) 135, [2017] 9 W.W.R. 533, 378 C.R.R. (2d) 1 (Alta. Q.B.) — referred to

Fearn v. Canada (Customs) (2014), 2014 ABQB 114, 2014 CarswellAlta 321, 94 Alta. L.R. (5th) 318, (sub nom. *Fearn v. Canada Customs)* 586 A.R. 23 (Alta. Q.B.) — referred to

Fiander v. Mills (2015), 2015 NLCA 31, 2015 CarswellNfld 230, 1149 A.P.R. 80, 368 Nfld. & P.E.I.R. 80 (N.L. C.A.) — considered

Gauthier v. Starr (2016), 2016 ABQB 213, 2016 CarswellAlta 680, 86 C.P.C. (7th) 348 (Alta. Q.B.) — referred to

Henry v. El (2010), 2010 ABCA 312, 2010 CarswellAlta 2056 (Alta. C.A.) — referred to

Henry v. El (2011), 2011 CarswellAlta 1197, 2011 CarswellAlta 1198, 426 N.R. 392 (note), 524 A.R. 399 (note), 545 W.A.C. 399 (note) (S.C.C.) — referred to

Hok v. Alberta (2016), 2016 ABQB 335, 2016 CarswellAlta 1142 (Alta. Q.B.) — referred to

Hok v. Alberta (2016), 2016 ABQB 651, 2016 CarswellAlta 2234, [2017] 6 W.W.R. 831 (Alta. Q.B.) — referred to

Hok v. Alberta (2017), 2017 CarswellAlta 1143 (S.C.C.) — referred to

Holmes v. Canada (Attorney General) (2016), 2016 FC 918, 2016 CarswellNat 4864, 2016 CF 918, 2016 CarswellNat 10954 (F.C.) — referred to

Huzar v. Canada (2000), 2000 CarswellNat 1132, 258 N.R. 246, 2000 CarswellNat 5603 (Fed. C.A.) — considered

Isis Nation Estates v. R. (2013), 2013 FC 590, 2013 CarswellNat 1683, 2013 CF 590, 2013 CarswellNat 2339 (F.C.) — considered

Koerner v. Capital Health Authority (2010), 2010 ABQB 590, 2010 CarswellAlta 1854, 498 A.R. 109, 498 N.R. 109 (Alta. Q.B.) — referred to

Koerner v. Capital Health Authority (2011), 2011 ABQB 191, 2011 CarswellAlta 456, 506 A.R. 113 (Alta. Q.B.) — considered

Koerner v. Capital Health Authority (2011), 2011 ABCA 289, 2011 CarswellAlta 2079, 515 A.R. 392, 532 W.A.C. 392 (Alta. C.A.) — referred to

Koerner v. Capital Health Authority (2012), 2012 CarswellAlta 724, 2012 CarswellAlta 725, 435 N.R. 393 (note), 536 A.R. 405 (note), 559 W.A.C. 405 (note) (S.C.C.) — referred to

MacDonald Estate v. Martin (1990), [1991] 1 W.W.R. 705, 77 D.L.R. (4th) 249, 121 N.R. 1, (sub nom. *Martin v. Gray*) [1990] 3 S.C.R. 1235, 48 C.P.C. (2d) 113, 70 Man. R. (2d) 241, 1990 CarswellMan 384, 1990 CarswellMan 233, 285 W.A.C. 241 (S.C.C.) — considered

McCargar v. Canada (2017), 2017 ABQB 416, 2017 CarswellAlta 1180 (Alta. Q.B.) — referred to

McMeekin v. Alberta (Attorney General) (2012), 2012 ABQB 456, 2012 CarswellAlta 1220, 543 A.R. 132 (Alta. Q.B.) — referred to

McMeekin v. Alberta (Attorney General) (2012), 2012 ABQB 625, 2012 CarswellAlta 1739, 543 A.R. 11 (Alta. Q.B.) — referred to

Meads v. Meads (2012), 2012 ABQB 571, 2012 CarswellAlta 1607, [2013] 3 W.W.R. 419, 74 Alta. L.R. (5th) 1, 543 A.R. 215 (Alta. Q.B.) — considered

Nussbaum v. Stoney (July 20, 2017), Doc. 1603-03761 (Alta. Q.B.) — considered

O. (R.) v. F. (D.) (2016), 2016 ABCA 170, 2016 CarswellAlta 964, 87 C.P.C. (7th) 1, 76 R.F.L. (7th) 253, 36 Alta. L.R. (6th) 282 (Alta. C.A.) — considered

R. (F.J.) v. R. (I.) (2015), 2015 ABQB 112, 2015 CarswellAlta 250 (Alta. Q.B.) — considered

R. v. Claeys (2013), 2013 MBQB 313, 2013 CarswellMan 709, (sub nom. *Claeys v. Canada)* 300 Man. R. (2d) 257 (Man. Q.B.) — considered

R. v. Dick (2002), 2002 BCCA 27, 2002 CarswellBC 216, 163 B.C.A.C. 62, 267 W.A.C. 62 (B.C. C.A.) — referred to

R. v. Dove (2017), 2017 CarswellNat 2531, 2017 CarswellNat 2532 (S.C.C.) — referred to

R. v. Fearn (2014), 2014 ABQB 233, 2014 CarswellAlta 681, 586 A.R. 182 (Alta. Q.B.) — referred to

R. v. Grabowski (2015), 2015 ABCA 391, 2015 CarswellAlta 2267, 609 A.R. 217, 656 W.A.C. 217 (Alta. C.A.) — considered

R. v. Hok (2017), 2017 ABCA 63, 2017 CarswellAlta 232 (Alta. C.A.) — referred to

R. v. Prefontaine (2002), 2002 ABQB 980, 2002 CarswellAlta 1369, [2003] 5 W.W.R. 367, 12 Alta. L.R. (4th) 50 (Alta. Q.B.) — considered

R. v. Prefontaine (2004), 2004 ABCA 100, 2004 CarswellAlta 407 (Alta. C.A.) — referred to

Sikora Estate v. Sikora (2015), 2015 ABQB 467, 2015 CarswellAlta 1383 (Alta. Q.B.) — considered

Starr v. Ontario (Commissioner of Inquiry) (1990), [1990] 1 S.C.R. 1366, (sub nom. *Starr v. Houlden)* 68 D.L.R. (4th) 641, (sub nom. *Starr v. Houlden)* 110 N.R. 81, (sub nom. *Starr v. Houlden)* 41 O.A.C. 161, (sub nom. *Starr v. Houlden)* 55 C.C.C. (3d) 472, (sub nom. *Starr v. Houlden)* 72 O.R. (2d) 701 (note), 1990 CarswellOnt 998, 1990 CarswellOnt 1299 (S.C.C.) — referred to

Stoney v. Sawridge First Nation (2013), 2013 FC 509, 2013 CarswellNat 1434, 2013 CF 509, 2013 CarswellNat 2006, 432 F.T.R. 253 (Eng.) (F.C.) — considered

Stoney v. Twinn (2016), 2016 ABCA 51, 2016 CarswellAlta 238, (sub nom. *Twinn v. Public Trustee (Alta.)*) 616 A.R. 176, (sub nom. *Twinn v. Public Trustee (Alta.)*) 672 W.A.C. 176 (Alta. C.A.) — referred to

Thompson v. IUOE, Local 955 (2017), 2017 ABQB 210, 2017 CarswellAlta 505, 2 C.P.C. (8th) 299 (Alta. Q.B.) — referred to

Thompson v. International Union of Operating Engineers Local No 995 (2017), 2017 ABCA 193, 2017 CarswellAlta 1039 (Alta. C.A.) — referred to

Trial Lawyers Assn. of British Columbia v. British Columbia (Attorney General) (2014), 2014 SCC 59, 2014 CSC 59, 2014 CarswellBC 2873, 2014 CarswellBC 2874, 375 D.L.R. (4th) 599, [2014] 11 W.W.R. 213, 59 C.P.C. (7th) 1, 62 B.C.L.R. (5th) 1, 74 Admin. L.R. (5th) 181, 51 R.F.L. (7th) 1, 463 N.R. 336, 361 B.C.A.C. 1, 619 W.A.C. 1, (sub nom. *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*) [2014] 3 S.C.R. 31, (sub nom. *Trial Lawyers Assn. of British Columbia v. British Columbia (Attorney General)*) 320 C.R.R. (2d) 239 (S.C.C.) — considered

West Vancouver School District No. 45 v. Callow (2014), 2014 ONSC 2547, 2014 CarswellOnt 5274 (Ont. S.C.J.) — referred to

Wong v. Giannacopoulos (2011), 2011 ABCA 277, 2011 CarswellAlta 1770, 515 A.R. 58, 532 W.A.C. 58, 4 C.C.L.I. (5th) 1 (Alta. C.A.) — referred to

Yankson v. Canada (Attorney General) (2013), 2013 BCSC 2332, 2013 CarswellBC 3837 (B.C. S.C.) — referred to

1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee) (2012), 2012 ABQB 365, 2012 CarswellAlta 1042, 75 Alta. L.R. (5th) 188, (sub nom. *Twinn v. Public Trustee (Alta.)*) 543 A.R. 90, (sub nom. *1985 Sawridge Trust v. Alberta (Public Trustee)*) [2013] 3 C.N.L.R. 395 (Alta. Q.B.) — referred to

1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee) (2015), 2015 ABQB 799, 2015 CarswellAlta 2373 (Alta. Q.B.) — referred to

1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee) (2017), 2017 ABQB 299, 2017 CarswellAlta 745 (Alta. Q.B.) — referred to

1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee) (2013), 2013 ABCA 226, 2013 CarswellAlta 1015, (sub nom. *1985 Sawridge Trust v. Alberta (Public Trustee)*) [2013] 3 C.N.L.R. 411, 85 Alta. L.R. (5th) 165, (sub nom. *Twinn v. Alberta (Public Trustee)*) 553 A.R. 324, (sub nom. *Twinn v. Alberta (Public Trustee)*) 583 W.A.C. 324 (Alta. C.A.) — referred to

1985 Sawridge Trust v. Alberta (Public Trustee) (2017), 2017 ABQB 377, 2017 CarswellAlta 1193 (Alta. Q.B.) — referred to

1985 Sawridge Trust v. Alberta (Public Trustee) (2017), 2017 ABQB 436, 2017 CarswellAlta 1236 (Alta. Q.B.) — considered

1985 Sawridge Trust v. Alberta (Public Trustee) (2017), 2017 ABQB 530, 2017 CarswellAlta 1569 (Alta. Q.B.) — referred to

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11
Generally — referred to

Judicature Act, R.S.A. 2000, c. J-2
Generally — referred to

s. 23(2) — considered

s. 23(2)(a) — referred to

ss. 23-23.1 — referred to

s. 23.1 [en. 2007, c. 21, s. 2] — referred to

s. 23.1(1) [en. 2007, c. 21, s. 2] — considered

Rules considered:

Alberta Rules of Court, Alta. Reg. 124/2010
Generally — referred to

R. 9.13 — considered

Federal Courts Rules, SOR/98-106
Generally — referred to

R. 114 — considered

CONSIDERATION by court of vexatious litigant order.

***D.R.G. Thomas J.*:**

I Introduction

1 The Action to which this decision ultimately relates was commenced on June 12, 2011 by the 1985 Sawridge Trustees and is sometimes referred to as the "Advice and Direction Application". The 1985 Sawridge Trust applied to this Court for directions on how to distribute the Trust property to its beneficiaries. Members of the Sawridge Band are the beneficiaries of that Trust. The initial application has led to many court case management hearings, applications, decisions, and appeals: *1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee)*, 2012 ABQB 365, 543 A.R. 90 (Alta. Q.B.) ("*Sawridge #1*"), aff'd 2013 ABCA 226, 553 A.R. 324 (Alta. C.A.) ("*Sawridge #2*"); *1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee)*, 2015 ABQB 799 (Alta. Q.B.) ("*Sawridge #3*"), time extension denied 2016 ABCA 51, 616 A.R. 176 (Alta. C.A.); *1985 Sawridge Trust (Trustees of) v. Alberta (Public Trustee)*, 2017 ABQB 299 (Alta. Q.B.) ("*Sawridge #4*"); *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 377 (Alta. Q.B.) ("*Sawridge #5*"); *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 436 (Alta. Q.B.) ("*Sawridge #6*"); *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017 ABQB 530 (Alta. Q.B.) ("*Sawridge #7*").

2 On July 12, 2017 I rejected an August 12, 2016 application by Maurice Felix Stoney that he and "his brothers and sisters" should be added as beneficiaries to the 1985 Sawridge Trust: *Sawridge #6*. In that decision I concluded that Stoney's application was a collateral attack on previously decided issues, hopeless, without merit, and an abuse of court: paras 34-52. I also concluded that there was no evidence to support that Maurice Stoney's "10 living brothers or sisters" were, in fact, voluntary participants in this application: paras 8-12.

3 I therefore:

1. limited the scope of the August 12, 2016 application to Maurice Stoney;

2. struck out the August 12, 2016 application;

3. ordered solicitor and own client indemnity costs against Maurice Stoney;

4. ordered that Stoney's lawyer, Priscilla Kennedy, appear on July 28, 2017 to make submissions as to whether she should be personally liable for that litigation costs award;

5. concluded that Maurice Stoney's August 12, 2016 application exhibits indicia of abusive litigation, and, therefore, on my own motion and pursuant to the Court's inherent jurisdiction:

a) put in place an interim court order to restrict Maurice Stoney's initiating or continuing litigation in Alberta Courts, and

b) instructed that Maurice Stoney, the Sawridge 1985 Trustees, and the intervener Sawridge Band may file written submissions as to whether Maurice Stoney should have his court access restricted via what is commonly called a "vexatious litigant" order.

4 Written submissions were received from the Trustees on July 26, 2017, the Sawridge Band on July 27, 2017, and Maurice Stoney on August 3, 2017.

5 On August 31, 2017 I issued *Sawridge #7*, where I concluded that Priscilla Kennedy and Maurice Stoney were jointly and severally liable for the costs award ordered in *Sawridge #6*.

6 This judgment evaluates whether Maurice Stoney should be the subject of restrictions on his future litigation activity in Alberta courts.

II. Abusive Litigation and Court Access Restrictions

7 The principles and procedure that govern court-ordered restrictions to access Alberta courts are developed in a number of recent decisions of this Court. This Court's inherent jurisdiction to control abuse of its processes includes that the Alberta Court of Queen's Bench may order that a person requires leave to initiate or continue an action or application: *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at paras 14-25, (2016), 273 A.C.W.S. (3d) 533 (Alta. Q.B.), leave denied 2017 ABCA 63 (Alta. C.A.), leave to the SCC requested, 37624 (12 April 2017) [2017 CarswellAlta 1143 (S.C.C.)]; *Thompson v. IUOE, Local 955*, 2017 ABQB 210 (Alta. Q.B.) at para 56, affirmed 2017 ABCA 193 (Alta. C.A.); *Ewanchuk v. Canada (Attorney General)*, 2017 ABQB 237 (Alta. Q.B.) at paras 92-96;*McCargar v. Canada*, 2017 ABQB 416 (Alta. Q.B.) at para 110.

8 An intervention of this kind is potentially warranted when a litigant exhibits one or more "indicia" of abusive litigation: *Chutskoff Estate v. Bonora*, 2014 ABQB 389 (Alta. Q.B.) at para 92, (2014), 590 A.R. 288 (Alta. Q.B.), aff'd 2014 ABCA 444 (Alta. C.A.); *Boisjoli, Re*, 2015 ABQB 629 (Alta. Q.B.) at paras 98-103, (2015), 29 Alta. L.R. (6th) 334 (Alta. Q.B.); *McCargar v. Canada*, 2017 ABQB 416 (Alta. Q.B.) at para 112. Where a judge concludes these "indicia" are present and control of abusive litigation may be appropriate then the Court usually follows a two-step process prior to imposing court access restrictions, if appropriate: *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at paras 10-11; *Ewanchuk v. Canada (Attorney General)*, at para 97.

9 *Sawridge #6*, at para 55 identified three types of litigation abuse behaviour by Maurice Stoney that potentially warranted court access restrictions:

1. Collateral attack that attempts to reopen an issue that has already been determined by a court of competent jurisdiction, to circumvent the effect of a court or tribunal decision, using previously raised grounds and issues.

2. Bringing hopeless proceedings that cannot succeed, here in both the present application and the *Sawridge #3* appeal where Maurice Stoney was an uninvolved third party.

3. Initiating "busybody" lawsuits to enforce the rights of third parties, here the recruited participation of Maurice Stoney's "10 living brothers and sisters."

10 I therefore on an interim basis and pursuant to *Hok v. Alberta*, 2016 ABQB 335 (Alta. Q.B.) at para 105 restricted Maurice Stoney's litigation activities (*Sawridge #6*, at para 65-66), and invited submissions on whether Maurice Stoney's litigation activities should be restricted, and if so, in what manner (*Sawridge #6*, at paras 63-64).

11 Subsequently Associate Chief Justice Rooke on July 20, 2017 granted an exception to this interim order in relation to *Nussbaum v. Stoney* [(July 20, 2017), Doc. 1603-03761 (Alta. Q.B.)], Alberta Court of Queen's Bench docket 1603 03761 (the "Rooke Order").

12 The current decision completes the second step of the two-part *Hok v. Alberta* process.

13 Relevant evidence for this analysis includes activities both inside and outside of court:

Bishop v. Bishop, 2011 ONCA 211 (Ont. C.A.) at para 9, (2011), 200 A.C.W.S. (3d) 1021 (Ont. C.A.), leave to SCC refused, 34271 (20 November 2011) [2011 CarswellOnt 10865 (S.C.C.)]; *Henry v. El*, 2010 ABCA 312 (Alta. C.A.) at paras 2-3, 5, (2010), 193 A.C.W.S. (3d) 1099 (Alta. C.A.), leave to SCC refused, 34172 (14 July 2011) [2011 CarswellAlta 1197 (S.C.C.)]. A litigant's entire court history is relevant, including litigation in other jurisdictions: *McMeekin v. Alberta (Attorney General)*, 2012 ABQB 456 (Alta. Q.B.) at paras 83-127, (2012), 543 A.R. 132 (Alta. Q.B.); *Curle v. Curle*, 2014 ONSC 1077 (Ont. S.C.J.) at para 24;*Fearn v. Canada (Customs)*, 2014 ABQB 114 (Alta. Q.B.) at paras 102-105, (2014), 586 A.R. 23 (Alta. Q.B.). That includes non-judicial proceedings, as those may establish a larger pattern of behaviour: *Bishop v. Bishop* at para 9; *Canada Post Corp. v. Varma* [2000 CarswellNat 1183 (Fed. T.D.)], 2000 CanLII 15754 at para 23, (2000), 192 F.T.R. 278 (Fed. T.D.); *West Vancouver School District No. 45 v. Callow*, 2014 ONSC 2547 (Ont. S.C.J.) at para 39. A court may take judicial notice of public records when it evaluates the degree and kind of misconduct caused by a candidate abusive litigant: *Wong v. Giannacopoulos*, 2011 ABCA 277 (Alta. C.A.) at para 6, (2011), 515 A.R. 58 (Alta. C.A.).

14 A court may order court access restrictions where future litigation abuse is *anticipated*. As Verville J observed in *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at para 37:

. . . when a court makes a vexatious litigant order it should do so to respond to anticipated abuse of court processes. This is a prospective case management step, rather than punitive. [emphasis in original]

15 When a court considers limits to future court access by a person with a history of litigation misconduct the key questions for a court are:

1. Can the court determine the identity or type of persons who are likely to be the target of future abusive litigation?

2. What litigation subject or subjects are likely involved in that abuse of court processes?

3. In what forums will that abuse occur? (*Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at para 36).

16 Court access restriction orders should be measured versus and responsive to the anticipated potential for future abuse of court processes. Court access restrictions are designed in a functional manner and not restricted to formulaic approaches, but instead respond in a creative, but proportionate, manner to anticipated potential abuse: *Bhamjee v. Forsdick*, [2003] EWCA Civ 1113 (Eng. C.A.).

17 A vexatious litigant order that simply requires the abusive person obtain permission, "leave", from the court before

filing documents to initiate or continue an action is a limited impediment to a person's ability to access court remedies: *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at paras 32-33. Though this step is sometimes called "extraordinary", that dramatic language exaggerates the true and minimal effect of a leave application requirement: *Wong v. Giannacopoulos*, at para 8; *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at paras 32-33.

18 Other more restrictive alternatives are possible, where appropriate, provided that more strict intervention is warranted by the litigant's anticipated future misconduct: *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at para 34; *Ewanchuk v. Canada (Attorney General)*, at paras 167-68.

III. Submissions and Evidence Concerning Appropriate Litigation Control Steps

A. The Sawridge Band

19 The Sawridge Band submits that this Court should exercise its inherent jurisdiction and *Judicature Act*, RSA 2000, c J-2 ss 23-23.1 to restrict Maurice Stoney's access to Alberta courts. The Sawridge Band relied on evidence concerning Maurice Stoney's activities that was submitted to the Court in relation to *Sawridge #6*.

20 The August 12, 2016 application was futile because Maurice Stoney had continued to repeat the same, already discounted argument. Maurice Stoney had not been granted automatic membership in the Sawridge Band by Bill C-31, and that fact had been either admitted or adjudicated in the *Huzar v. Canada*, [2000] F.C.J. No. 873, 258 N.R. 246 (Fed. C.A.) and *Stoney v. Sawridge First Nation*, 2013 FC 509, 432 F.T.R. 253 (Eng.) (F.C.) decisions.

21 Maurice Stoney was allowed to apply to become a member of the Sawridge Band, but that application was denied, as was the subsequent appeal. The lawfulness of those processes was confirmed in *Stoney v. Sawridge First Nation*.

22 A subsequent 2014 Canadian Human Rights Commission complaint concerning the membership application process again alleged the same previously rejected arguments. The same occurred before the Alberta Court of Appeal in *Stoney v. Twinn*, 2016 ABCA 51 (Alta. C.A.)

23 Maurice Stoney's persistent attempts to re-litigate the same issue represent collateral attacks and are hopeless proceedings. Stoney has failed to pay outstanding costs orders. His attempts to shift litigation costs to the 1985 Sawridge Trust are an aggravating factor. These factors imply that Maurice Stoney had brought these actions for an improper purpose. The August 12, 2016 application was a "busybody" attempt to enforce (alleged) rights of uninvolved third parties.

24 Combined, these indicia of abusive litigation mean Maurice Stoney should be the subject of a vexatious litigant order that globally restricts his access to Alberta courts. In the alternative, a vexatious litigant order with a smaller scope should, at a minimum, restrict Maurice Stoney's potential litigation activities in relation to the Sawridge Band, its Chief and Council, the Sawridge 1985 and 1986 Trusts, and the Trustees of those trusts.

25 Given Stoney's history of not paying cost awards he should be required to pay outstanding costs orders prior to any application for leave to initiate or continue actions, as in *R. v. Grabowski*, 2015 ABCA 391 (Alta. C.A.) at para 15, (2015), 609 A.R. 217 (Alta. C.A.).

B. The Sawridge 1985 Trust Trustees

26 The Sawridge 1985 Trust Trustees adopted the arguments of the Sawridge Band, but also emphasized the importance of Maurice Stoney's answers and conduct during cross-examination on his May 16, 2016 affidavit. The Trustees stress this record shows that Maurice Stoney is uncooperative and refused to acknowledge the prior litigation results.

C. Maurice Stoney

27 Maurice Stoney's written submissions were signed by and filed by lawyer Priscilla Kennedy, identified as "Counsel

for Maurice Stoney". The contents of the written submissions are, frankly, unexpected. Paragraphs 6 through 13 advance legal arguments concerning Maurice Stoney's status as a member of the Sawridge Band:

> 1. the *Huzar v. Canada* decision cannot be relied on as "evidence in this matter";
>
> 2. *Stoney v. Sawridge First Nation* is not a "thorough analysis" of Maurice Stoney's arguments;
>
> 3. Maurice Stoney has not attempted to re-litigate the membership issue but rather to set out the legal arguments that address the definition of a beneficiary of the 1985 Sawridge Trust; and
>
> 4. " . . . there have been a number of recent decisions on these constitutional issues that have and are in the process of completely altering the law related to these issues of the membership/citizenship of Indians, in order to have them comply with the *Constitution*." [Italics in original].

28 Paragraph 14 of the written brief, which follows these statements, reads:

> It is acknowledged that this court has dismissed these arguments and they are not referred to here, other than as the facts to set the context for the matters to be dealt with as directed on the issue of whether or not the application of Maurice Stoney was vexatious litigation.

29 I reject that a bald statement that these are "the facts" proves anything, or establishes these statements are, in fact, true or correct.

30 The brief then continues at paras 16-17, 24, 28 to state:

> As shown by the litigation in the Sawridge Band cases above, the on-going case in [Descheneaux c Canada (Procureur Général), 2015 QCCS 3555] and the decision of the Supreme Court of Canada in [Daniels v Canada (Indian Affairs and Northern Development), 2016 SCC 12, [2016] 1 SCR 99], and the review of the Federal Court of Appeal decision in Huzar and the judicial review in Stoney, it is submitted that this is not a proceeding where the issue has been determined by a court of competent jurisdiction. Nor is this a matter where proceedings have been brought that cannot succeed or have no reasonable expectation of providing relief.
>
> It is submitted that litigation seeking to determine whether or not you qualify as a beneficiary under a trust established on April 15, 1985 is a matter where the issue of membership/citizenship has not been settled by the courts, and this application was not brought for an improper purpose . . .
>
> Contrary to the argument of Sawridge First Nation these matters have not been determined in the past Federal Court proceedings. Issues of citizenship and the constitutionality of these proceedings remains a legal question today as shown by the on-going litigation throughout Canada. Plainly, this Court has determined that these arguments are dismissed in this matter and that is acknowledged.
>
> . . . No conclusion was made in the 1995 Federal Court proceedings which were struck as showing no reasonable cause of action and the judicial review was concerned with the issue of the Sawridge First Nation Appeal Committee decision based on membership rules post September, 1985.

31 These are reasons why the August 12, 2016 application was not a collateral attack:

> No disrespect for the court process or intention to bring proceedings for an improper purpose, was intended to be raised by these arguments respecting this time period and the definitions of a beneficiary of this trust.

(Written brief, para 23).

32 Prior to going any further I will at this point explain that I put no *legal* weight on these statements. If Maurice Stoney wishes to appeal *Sawridge #6* and my conclusions therein he may do so. In fact he did file an appeal of *Sawridge #6* as a self-represented litigant on August 11, 2017. If Maurice Stoney or his counsel wish to revisit *Sawridge #6* then they could have made an application under *Rule* 9.13 of the *Alberta Rules of Court*, Alta Reg 124/2010 [the "*Rules*", or individually a "*Rule*"], however they did not elect to do so. I conclude these statements, no matter how they were allegedly framed in paragraphs 14 and 23 of Stoney's written arguments, are nothing more than an attempt to re-argue *Sawridge #6*. Again, I put no *legal* weight on these arguments, but conclude these statements are highly relevant as to whether Maurice Stoney is likely to in the future re-argue issues that have been determined conclusively by Canadian courts.

33 Other submissions by Maurice Stoney are more directly relevant to his potentially being the subject of court-ordered restrictions. He acknowledges that there are unpaid costs to the Sawridge First Nation, but says these will be paid " . . . as soon as it is possible ...". Stoney indicates he has been unable to pay these costs amounts because of a foreclosure action.

34 Affidavit evidence allegedly has established that Maurice Stoney was authorized to represent his brothers and sisters, and that Maurice Stoney was directed to act on their behalf. Counsel for Stoney unexpectedly cites *Federal Courts Rules*, SOR/98-106, s 114 as the authority for the process that Maurice Stoney followed when filing his August 12, 2016 application in the Alberta Court of Queen's Bench:

> . . . The Federal Court Rules, provide for Representative proceedings where the representative asserts common issues of law and fact, the representative is authorized to act on behalf of the represented persons, the representative can fairly and adequately represent the interests of the represented persons and the use of a representative proceeding is the just, more efficient and least costly manner of proceeding. This method of proceeding is frequently used for aboriginals and particularly for families who are aboriginal. It is submitted that this was the most efficient and least costly manner of proceeding in the circumstances where the claim of all of the living children possess the same precise issues respecting their citizenship.
>
> (Written Brief, para 24.)

Maurice Stoney therefore denies this was a "busybody" proceeding where he without authority attempted to represent third parties.

35 The written argument concludes that Maurice Stoney should not be the subject of court access restrictions, but if the Court concludes that step is necessary then that restriction should only apply to litigation vs the Sawridge Band and 1985 Sawridge Trust.

D. Evidence

36 The Trustees and the Sawridge Band entered as evidence a transcript of Maurice Stoney's cross-examination on his May 16, 2016 affidavit. This transcript illustrates a number of relevant points.

> 1. Maurice Stoney claims to be acting on behalf of himself and his brothers and sisters, and that he has their consent to do that: pp 9-10.
>
> 2. Maurice Stoney believes his father was forced out of Indian status by the federal government: p 12.
>
> 2. Maurice Stoney and his counsel Priscilla Kennedy do not accept that Maurice Stoney was refused automatic membership in the Sawridge Band by the *Huzar v. Canada*, [2000] F.C.J. No. 873, 258 N.R. 246 (Fed. C.A.) and *Stoney v. Sawridge First Nation*, 2013 FC 509, 432 F.T.R. 253 (Eng.) (F.C.) decisions: pp 23-27, 30-33.
>
> 3. Maurice Stoney claims he made an application for membership in the Sawridge Band in 1985 but that this application

was "ignored": pp 37-39. Stoney however did not have a copy of that application: pp 39-40.

4. Maurice Stoney refused to answer a number of questions, including:

- whether he had read the *Stoney v. Sawridge First Nation* decision (pp 32-33),
- whether he had made a Canadian Human Rights Commission complaint against the Sawridge Band (p 54),
- whether he had ever read the Sawridge Trust's documentation (pp 60-61),
- the identity of other persons whose Sawridge Band applications were allegedly ignored (pp 63-64), and
- the health status of the siblings for whom Maurice Stoney was allegedly a representative (p 66).

5. Maurice Stoney claims that the Sawridge Band membership application process is biased: pp 41-42.

37 Maurice Stoney introduced three affidavits which he says indicate the August 12, 2016 application was not a "busybody" proceeding and instead Maurice Stoney was authorized to represent his other siblings in the Sawridge Advice and Direction Application:

1. Shelley Stoney, dated July 20, 2017, saying she is the daughter of Bill Stoney and the niece of Maurice Stoney. She is responsible "for driving my father and uncles who are all suffering health problems and elderly." Shelley Stoney attests " . . . from discussions among my father and his brothers and sisters" that Maurice Stoney was authorized to bring the August 12, 2016 application on their behalf.

2. Bill Stoney, brother of Maurice Stoney, dated July 20, 2017, saying he authorized Maurice Stoney to make the August 12, 2016 application on his behalf in the spring of 2016.

3. Gail Stoney, sister of Maurice Stoney, dated July 20, 2017, saying she authorized Maurice Stoney to make the August 12, 2016 application on his behalf in the spring of 2016.

38 In *Sawridge #7* at paras 133-37 I conclude these affidavits should receive little weight:

The three affidavits presented by Kennedy do not establish that Maurice Stoney was authorized to represent his siblings. Even at the most generous, these affidavits only indicate that Bill and Gail Stoney gave some kind of oral sanction for Maurice Stoney to act on their behalf. I put no weight on the affidavit of Shelley Stoney. It is hearsay, and presumptively inadmissible.

I note that none of these affidavits were supported by any form of documentation, either evidence or records of communications between Maurice Stoney and his siblings, or between Kennedy and her purported clients.

I make an adverse inference from the absence of any documentary evidence of the latter. The fact that no documentation to support that Kennedy and the Stoney siblings communicated in any manner, let alone gave Kennedy authority to act on their behalf, means none exists.

There is no documentation to establish that Maurice Stoney applied to become a litigation representative or was appointed a litigation representative, per *Rules* 2.11-2.21. This is not a class action scenario where Maurice Stoney is a representative applicant. While Kennedy has argued that Maurice Stoney's siblings are elderly and unable to conduct litigation, then that is not simply a basis to arbitrarily add their names to court filing. Instead, a person who lacks the capacity to represent themselves (*Rule* 2.11(c-d)) may have a self-appointed litigation representative (*Rule* 2.14), but only after filing appropriate documentation (*Rule* 2.14(4)). That did not occur.

39 I come to the same conclusion here and also find as a fact that in this proceeding Maurice Stoney was not authorized to file the August 12, 2016 application on behalf of his siblings.

IV. Analysis

40 What remains are two steps:

1. to evaluate the form and seriousness of Maurice Stoney's litigation misconduct, and

2. determine whether court access restrictions are appropriate, and, if so, what those restrictions should be.

41 However, prior to that I believe it is helpful to briefly explore the inherent jurisdiction of this Court to limit litigant activities, vs the authority provided in *Judicature Act*, ss 23-23.1, since these two mechanisms were broached in the submissions of the parties.

A. Control of Abusive Litigation via Inherent Jurisdiction vs the Judicature Act

42 An argument can be made that that Alberta Court of Queen's Bench may only restrict prospective litigation via the procedure in *Judicature Act*, ss 23-23.1. I disagree with that position, though at present this question has not been explicitly and conclusively decided by the Alberta Court of Appeal, or the Supreme Court of Canada.

43 The most detailed investigation of this issue is found in *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.), where Verville J at paras 14-25 concluded that one element of this Court's inherent jurisdiction is an authority to restrict prospective and hypothetical litigation activities, both applications and entirely new actions.

44 In coming to that conclusion Justice Verville rejected a principle found in I H Jacobs often-cited paper, "The Inherent Jurisdiction of the Court" ((1970) 23:1 Current Legal Problems 23 at 43), that UK tradition courts do not have an inherent jurisdiction to block commencement of potentially abusive proceedings:

> The court has no power, even under its inherent jurisdiction, to prevent a person from commencing proceedings which may turn out to be vexatious. It is possibly by virtue of this principle that many a litigant in person, perhaps confusing some substratum of grievance with an infringement of legal right, is lured into using the machinery of the court as a remedy for his ills only to find his proceedings summarily dismissed as being frivolous and vexatious and an abuse of the process of the court. The inherent jurisdiction of the court has, however, been supplemented by statutory power to restrain a vexatious litigant from instituting or continuing any legal proceedings without leave of the court.

45 Jacobs elsewhere in his paper explains that the inherent jurisdiction of the court flows from its historic operation, and stresses this is an adaptive tool that applies as necessary to address issues that would otherwise interfere with the administration of justice and the court's operations:

> . . . inherent jurisdiction of the court may be defined as the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just and equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them. ...
>
> (Jacobs at 51)

46 However, Jacob's conclusion that courts have no inherent jurisdiction to limit future litigation was based on a historical error, as explained in *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.), at para 17:

> Two UK Court of Appeal decisions, Ebert v Birch & Anor, (also cited as Ebert v Venvil), [1999] EWCA Civ 3043 (UK CA) and Bhamjee v Forsdick & Ors (No 2), [2003] EWCA Civ 1113 (UK CA), set out the common law authority of UK courts to restrict litigant court access. Some Commonwealth authorities had concluded that UK and Commonwealth courts had no inherent jurisdiction to restrict a person from initiating new court proceedings, and instead that authority was first obtained when Parliament passed the Vexatious Actions Act, 1896.
>
> Ebert concludes that is false, as historical research determined that in the UK courts had exercised common law authority to restrict persons initiating new litigation prior to passage of the Vexatious Actions Act, 1896. That legislation and its successors do not codify the court's authority, but instead legislative and common-law inherent jurisdiction control processes co-exist.

47 Furthermore, the Alberta Court of Appeal has itself issued vexatious litigant orders which do not conform to *Judicature Act* processes. For example, in *Dykun v. Odishaw*, 2001 ABCA 204, 286 A.R. 392 (Alta. C.A.), that Court issued an "injunction" that restricted court access without either an originating notice or the consent of the Minister of Justice and Attorney General of Alberta (then required by *Judicature Act*, s 23.1). Justice Verville concludes (*Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.), at paras 19-20, 25), and I agree, that this means Alberta courts have an inherent jurisdiction to take steps of this kind. If the Court of Appeal had the inherent jurisdiction to make the order it issued in *Dykun v. Odishaw*, then so does the Alberta Court of Queen's Bench.

48 Beyond that, the efficient administration of justice simply requires that there must be an effective mechanism by which the courts may control abusive litigation and litigants. This must, of course, meet the constitutional requirement that any obstacle or expense requirement placed in front of a potential court participant does not " . . . effectively [deny] people the right to take their cases to court ..." or cause "undue hardship": *Trial Lawyers Assn. of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 (S.C.C.) at paras 40, 45-48, [2014] 3 S.C.R. 31 (S.C.C.). As I have previously observed, an obligation to make a document-based application for leave to file is a comparatively minor imposition and obviously does not cause "undue hardship".

49 The question, then, is whether the *Judicature Act*, ss 23-23.1 procedure is an adequate one, or does the Court need to draw on its "reserve" of "residual powers" to design an effective mechanism to control abusive litigants and litigation. I conclude that it must. A critical defect in this legislation is that section 23(2) defines proceedings that are conducted in a "vexatious manner" as requiring "persistent" misconduct, for example "persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction" [emphasis added]: *Judicature Act*, s 23(2)(a).

50 The Alberta Court of Appeal in certain decisions that apply *Judicature Act*, ss 23-23.1 appears to apply this rule in a strict manner, for example, in *O. (R.) v. F. (D.)*, 2016 ABCA 170, 36 Alta. L.R. (6th) 282 (Alta. C.A.) at para 38 the Court stresses this requirement. Further, the *O. (R.) v. F. (D.)* decision restricts the scope of a *Judicature Act*, ss 23-23.1 order on the basis that the vexatious litigant had no " . . . history of "persistently" ..." engaging in misconduct that involves outside parties. In other words, according to *O. (R.) v. F. (D.)* the *Judicature Act*, ss 23-23.1 process operates retrospectively. *Judicature Act*, ss 23-23.1 authorize court access restrictions only after "persistent" misconduct has occurred.

51 That said, it is clear that the Alberta Court of Appeal does not actually apply that requirement in other instances where it has made an order authorized per the *Judicature Act*. For example, in *Henry v. El* Slatter JA ordered a broad, multi-court ban on the plaintiff's court activities, though only one dispute is mentioned. There is no or little record of 'persistent history'. *Henry v. El* does not identify repeated or persistent litigation steps, nor are multiple actions noted. The misconduct that warranted the litigation restraint was bad arguments, and out- of-court misconduct: a need for the target of the misconduct to obtain police assistance, the plaintiff had foisted allegedly binding legal documents on the defendant, the abusive plaintiff was the target of a court ordered peace bond, and the abusive plaintiff posted a bounty for the defendant on the Internet.

52 In *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) at paras 36-37, Justice Verville concluded that an effective mechanism to limit court access should operate in a *prospective* manner - based on evidence that leads to a prediction of

future abusive litigation activities. This is also the approach recommended in the UK Court of Appeal *Ebert v. Birch*, [1999] EWCA Civ 3043 (Eng. & Wales C.A. (Civil)) and *Bhamjee v. Forsdick* decisions.

53 However, the strict "persistence"-driven approach in the *Judicature Act* and *O. (R.) v. F. (D.)* only targets misconduct that has already occurred. It limits the court to play 'catch up' with historic patterns of abuse, only fully reining in worst-case problematic litigants after their litigation misconduct has metastasized into a cascade of abusive actions and applications.

54 That outcome can sometimes be avoided.

1. Statements of Intent

55 First, abusive litigants are sometimes quite open about their intentions. For example, in *McMeekin v. Alberta (Attorney General)*, 2012 ABQB 625 (Alta. Q.B.) at para 44, (2012), 543 A.R. 11 (Alta. Q.B.), a vexatious litigant said exactly what he planned to do in the future:

> I can write, I can write the judicature counsel, I can write the upper law society of Canada. I got Charter violations. I got administrative law violations. I've got civil contempt. I've got abuse of process. I've got abuse of qualified privilege. I can keep going, I haven't even got, I haven't even spent two days on this so far. And if you want to find out how good I am, then let's go at it. But you know, at the end of the day, I'm not walking away. And it's not going to get any better for them.

56 It seems strange that a court is prohibited from taking that kind of statement of intent into account when designing the scope of court access restrictions. This kind of stated intention obviously favours broad control of future litigation activities.

57 A modern twist on a statement of intentions is that some abusive litigants document their activities and intentions on Internet websites. For example, *West Vancouver School District No. 45 v. Callow*, 2014 ONSC 2547 (Ont. S.C.J.) at paras 31, 40 describes how an abusive court litigant had, rather conveniently, documented and recorded online his various activities and his perceptions of a corrupt court apparatus.

58 However, there is no reason why the opposite scenario would not be relevant. Where an abusive litigant chooses to take steps to indicate good faith conduct, then that action predicts future conduct, for example by taking tangible positive steps to demonstrate they are a 'fair dealer' by:

1. voluntarily terminating or limiting abusive litigation,

2. abandoning claims, restricting the scope of litigation, consenting to issues or facts previously in dispute,

3. retaining counsel, and

4. paying outstanding cost awards.

59 These kinds of actions may warrant a problematic litigant receiving limited court access restrictions, or no court access restrictions at all. Rewarding positive self-regulation is consistent with the administration of justice, and a modern, functional approach to civil litigation.

2. Demeanor and Conduct

60 Similarly, a trial court judge may rely on his or her perception of an abusive court participant's character, demeanor, and conduct. Obviously, there is a broad range of conduct that may be relevant, but it is helpful to look at one example. Maurice Prefontaine, a persistent and abusive litigant who has often appeared in Alberta and other Canadian courts, presents

a predictable in-court pattern of conduct, which is reviewed in *R. v. Prefontaine*, 2002 ABQB 980, 12 Alta. L.R. (4th) 50 (Alta. Q.B.), appeal dismissed for want of prosecution 2004 ABCA 100, 61 W.C.B. (2d) 306 (Alta. C.A.).

61 Mr. Prefontaine presented himself in a generally ordered, polite manner in court. He was at one point a lawyer. He has for years pursued a dispute with the Canada Revenue Agency, and has appeared on many occasions in relation to that matter. Mr. Prefontaine's behaviour changed in a marked but predictable manner when his submissions were rejected. He explodes, making obscene insults and threats directed to the hearing judge and opposing parties. When a person responds to the court in this manner, that conduct is a significant basis to conclude that future problematic litigation is impending from that abusive court participant. Sure enough, that has been the case with Mr. Prefontaine.

62 Also perhaps unsurprising is that Mr. Prefontaine's conduct is probably linked to his being diagnosed with a persecutory delusional disorder, or a paranoid personality disorder: *R. v. Prefontaine*, at paras 8-17, 82, 94-98.

3. Abuse Caused by Mental Health Issues

63 There are many other examples of how litigation abuse has a mental health basis. For example, the plaintiff in *Koerner v. Capital Health Authority*, 2011 ABQB 191, 506 A.R. 113 (Alta. Q.B.), affirmed 2011 ABCA 289, 515 A.R. 392 (Alta. C.A.), leave to SCC refused, 34573 (26 April 2012) [2012 CarswellAlta 724 (S.C.C.)] engaged in vexatious litigation because her perceptions were distorted by somatoform disorder, a psychiatric condition where a person reports spurious physical disorders (*Koerner v. Capital Health Authority*, 2010 ABQB 590 (Alta. Q.B.) at paras 4-5, (2010), 498 A.R. 109 (Alta. Q.B.)). Similarly, in *R. (F.J.) v. R. (I.)*, 2015 ABQB 112 (Alta. Q.B.), court access restrictions were appropriate because the applicant was suffering from dementia that led to spurious, self-injuring litigation. In these cases future abuse of the courts can be predicted from a person's medical history.

64 Another and very troubling class of abusive litigants are persons who are affected by querulous paranoia, a form of persecutory delusional disorder that leads to an ever-expanding cascade of litigation and dispute processes, which only ends after the affected person has been exhausted and alienated by this self-destructive process. Querulous paranoiacs attack everyone who becomes connected or involved with a dispute via a diverse range of processes including lawsuits, appeals, and professional complaints. Anyone who is not an ally is the enemy. This condition is reviewed in Gary M Caplan & Hy Bloom, "Litigants Behaving Badly: Querulousness in Law and Medicine" 2015 44:4 Advocates' Quarterly 411 and Paul E Mullen & Grant Lester, "Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour" (2006) 24 Behav Sci Law 333.

65 Persons afflicted by querulous paranoia exhibit a unique 'fingerprint' in the way they frame and conduct their litigation as a crusade for retribution against a perceived broad-based injustice, and via a highly unusual and distinctive document style. The vexatious litigants documented in *McMeekin v. Alberta (Attorney General)*, 2012 ABQB 456, 543 A.R. 132 (Alta. Q.B.), *McMeekin v. Alberta (Attorney General)*, 2012 ABQB 625, 543 A.R. 11 (Alta. Q.B.), *Chutskoff Estate v. Bonora*, 2014 ABQB 389, 590 A.R. 288 (Alta. Q.B.), *Hok v. Alberta*, 2016 ABQB 335 (Alta. Q.B.), and *Hok v. Alberta*, 2016 ABQB 651 (Alta. Q.B.) all exhibit the characteristic querulous paranoiac litigation and document fingerprint criteria.

66 Mullen and Grant observe these persons cannot be managed or treated: pp 347-48. Early intervention is the only possible way to interrupt the otherwise grimly predictable progression of this condition: Caplan & Bloom, pp 450-52; Mullen & Lester, pp 346-47. Disturbingly, these authors suggest that the formal and emotionally opaque character of litigation processes may, by its nature, transform generally normal people into this type of abusive litigant: Caplan & Bloom, pp 426-27, 438.

67 A "persistent misconduct" requirement means persons afflicted by querulous paranoia cannot be managed. They will always outrun any court restriction, until it is too late and the worst outcome has occurred.

4. Litigation Abuse Motivated by Ideology

68 Other abusive litigants are motivated by ideology. A particularly obnoxious example of this class are the Organized Pseudolegal Commercial Argument ["OPCA"] litigants described in *Meads v. Meads*, 2012 ABQB 571, 543 A.R. 215 (Alta.

Q.B.). Many OPCA litigants are hostile to and reject conventional state authority, including court authority. They engage in group and organized actions that have a variety of motives, including greed, and extremist political objectives: *Meads v. Meads*, at paras 168-198. Justice Morissette ("Querulous or Vexatious Litigants, A Disorder of a Modern Legal System?" (Paper delivered at the Canadian Association of Counsel to Employers, Banff AB (26-28 September 2013)) at pp 11) has observed for this population that abuse of court processes is a political action, " . . . the vector of an ideology for a class of actors in the legal system."

69 Some OPCA litigants use pseudolegal concepts to launch baseless attacks on government actors, institutions, lawyers, and others. For example:

- *B. (A.N.) v. Hancock*, 2013 ABQB 97, 557 A.R. 364 (Alta. Q.B.) - after his children were seized by child services the Freeman-on-the-Land father sued child services personnel, lawyers, RCMP officers, and provincial court judges, demanding return of his property (the children) and $20 million in gold and silver bullion, all on the basis of OPCA paperwork.

- *Ali v. Ford*, 2014 ONSC 6665 (Ont. S.C.J.) - the plaintiff sued Toronto mayor Rob Ford and the City of Toronto for $60 million in retaliation for a police attendance on his residence. The plaintiff claimed he was a member of the Moorish National Republic, and as a consequence immune from Canadian law.

- *Dove v. R.*, 2015 FC 1126 (F.C.), aff'd 2015 FC 1307 (F.C.), aff'd *Dove v. R.*, 2016 FCA 231 (F.C.A.), leave to the SCC refused, 37487 (1 June 2017) [2017 CarswellNat 2531 (S.C.C.)] - the plaintiffs claimed international treaties and the *Charter* are a basis to demand access to a secret personal bank account worth around $1 billion that is associated with the plaintiffs' birth certificates; this is allegedly a source for payments owed to the plaintiffs so they can adopt the lifestyle they choose and not have to work.

- *R. v. Claeys*, 2013 MBQB 313, 300 Man. R. (2d) 257 (Man. Q.B.) - the plaintiff sued for half a million dollars and refund of all taxes collected from her, arguing she had waived her rights to be a person before the law, pursuant to the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. Canada had no authority because Queen Elizabeth II was " . . . Crowned on a fraudulent Stone and ... violated her Coronation Oath by giving Royal Assent to laws that violate God's Law ...".

- *Doell v. British Columbia (Minister of Public Safety and Solicitor General)*, 2016 BCSC 1181 (B.C. S.C.) - an individual who received a traffic ticket for riding without a helmet sued British Columbia, demanding $150,000.00 in punitive damages, because he is a human being and not a person, and the RCMP had interfered with his right "to celebrate divine service".

- *Fiander v. Mills*, 2015 NLCA 31, 368 Nfld. & P.E.I.R. 80 (N.L. C.A.) - a person accused of fisheries offenses sued the Crown prosecutor, fisheries officer, and provincial court judge, arguing he was wrongfully prosecuted because he had opted out of "having" a "person" via the *Universal Declaration of Human Rights*.

- *Isis Nation Estates v. R.*, 2013 FC 590 (F.C.), the plaintiff, "Maitreya Isis Maryjane Blackshear, the Divine Holy Mother of all/in/of creation", sued Alberta and Canada for $108 quadrillion and that they "cease and desist all blasphemy" against the plaintiff.

70 There is little need to explore why these claims are anything other than ridiculous.

71 OPCA litigants have been formally declared vexatious, for example: *Boisjoli, Re*, 2015 ABQB 629, 29 Alta. L.R. (6th) 334 (Alta. Q.B.); *Boisjoli, Re*, 2015 ABQB 690 (Alta. Q.B.); *Cormier v. Nova Scotia*, 2015 NSSC 352, 367 N.S.R. (2d) 295 (N.S. S.C.); *Curle v. Curle*, 2014 ONSC 1077 (Ont. S.C.J.); *Gauthier v. Starr*, 2016 ABQB 213, 86 C.P.C. (7th) 348 (Alta. Q.B.); *Holmes v. Canada (Attorney General)*, 2016 FC 918 (F.C.); *R. v. Fearn*, 2014 ABQB 233, 586 A.R. 182 (Alta. Q.B.); *Yankson v. Canada (Attorney General)*, 2013 BCSC 2332 (B.C. S.C.).

72 Judicial and legal academic authorities uniformly identify OPCA narratives and their associated pseudolegal concepts as resting on and building from a foundation of paranoid and conspiratorial anti-government and anti-institutional political

and social belief. These individuals are sometimes called 'litigation terrorists' for this reason. They may act for personal benefit, but they also do so with the belief they are justified and act lawfully when they injure others and disrupt court processes. Persons who advance OPCA litigation to harm others have no place in Canada's courts. The court's inherent jurisdiction must be able to shield the innocent potential victims of these malcontents. Their next target can be anyone who crosses their path - government officials or organizations, peace officers, lawyers, judges, business employees - and who then offends the OPCA litigant's skewed perspectives.

73 These individuals believe they have a right to attack others via the courts, they like the idea of doing that, and they view their litigation targets as bad actors who deserve punishment. Waiting for these individuals to establish "persistent misconduct" simply means they just have more opportunities to cause harm.

74 The plaintiff in *Henry v. El* was obviously an OPCA litigant engaged in a vendetta. Slatter JA in that matter did not wait for the plaintiff to establish a pattern of "persistently" misusing the courts to attack others. I agree that is the correct approach. If a person uses pseudolaw to attack others as a 'litigation terrorist' then that should be a basis for immediate court intervention to prevent that from recurring. If the *Judicature Act* cannot provide an authority to do that, then this Court's inherent jurisdiction should provide the basis for that step.

5. Persistent Abusive Conduct is Only One Predictor of Future Misconduct

75 All this is not to say that "persistence" is irrelevant. In fact, it is extremely important. A history of persistent abuse of court processes implies the likelihood of other, future misconduct. Persistence is relevant, but must not be *the only prerequisite* which potentially triggers court intervention. Persistence is a clear and effective basis for a court to predict actions when it cannot ascertain motivation or pathology, and from that derive what is likely and predictable. However, that should not be the only evidence which is an appropriate basis on which to restrict court access.

76 The reason that I and other Alberta Court of Queen's Bench judges have concluded that this Court has an inherent jurisdiction to limit court access to persons outside the *Judicature Act*, ss 23-23.1 scheme is not simply because the UK appeal courts have concluded that this jurisdiction exists, *but also because that authority is necessary. Sawridge #7* at paras 38-49 reviews how the Supreme Court has instructed that trial courts conduct a "culture shift" in their operation towards processes that are fair and proportionate, without being trapped in artificial and formulaic rules and procedures. This is *an obligation* on the courts. The current *Judicature Act*, ss 23-23.1 process is an inadequate response to the growing issue of problematic and abusive litigation.

77 Even though the *Judicature Act* is not the sole basis for this Court's jurisdiction to control abusive litigation, that legislation could be amended to make it more effective. One helpful step would be to remove the requirement that "vexatious" litigation involves misconduct that occurs "persistently". Another would be to re-focus the basis for when intervention should occur. Currently, section 23.1(1) permits intervention when " . . . a Court is satisfied that a person is instituting vexatious proceedings in the Court or is conducting a proceeding in a vexatious manner ...". This again is backwards-looking, punitive language. In my opinion a superior alternative is "... when a Court is satisfied that a person may abuse court processes ...".

78 The Legislature should also explicitly acknowledge that the *Judicature Act* procedure does not limit how courts of inherent jurisdiction may on their own motion and inherent authority restrict a person's right to initiate or continue litigation.

79 As Veit J observed in *Sikora Estate v. Sikora*, 2015 ABQB 467 (Alta. Q.B.) at paras 16-19, where a person seeks to have the court make an order that restricts court access then the appropriate procedure is *Judicature Act*, ss 23-23.1. That is a distinct process and authority from that possessed by judges of this Court. Given that the Masters of the Alberta Court of Queen's Bench derive their authority from legislation, another helpful step would be for the Legislature to extend *Judicature Act*, ss 23-23.1 to authorize Masters, on their own motion, to apply the *Judicature Act* procedure to control abusive litigants who appear in Chambers. This is not an uncommon phenomenon; the Masters are in many senses the 'front line' of the Court, and frequently encounter litigation abuse in that role.

B. Maurice Stoney's Abusive Activities

80 In reviewing Maurice Stoney's litigation activities I conclude on several independent bases that his future access to Alberta courts should be restricted. His misconduct matches a number *Chutskoff Estate v. Bonora* "indicia" categories and exhibits varying degrees of severity.

1. Collateral Attacks

81 First, Maurice Stoney has clearly attempted to re-litigate decided issues by conducting the *Stoney v. Sawridge First Nation* judicial review, the 2016 Canadian Human Rights Commission application, and his attempts to interfere in the Advice and Direction Application litigation via the *Stoney v. Twinn*, 2016 ABCA 51 (Alta. C.A.) appeal and his August 12, 2016 application. In each case he attempted to argue that he has automatically been made a member of the Sawridge Band by the passage of Bill C-31. He has also repeatedly attacked the processes of the Sawridge Band in administering its membership. My reasons for that conclusion are found in *Sawridge #6* at paras 41-52.

82 This is the first independent basis on which I conclude Maurice Stoney's litigation activity should be controlled. He has a history of repeated collateral attacks in relation to this subject and the related parties. This has squandered important court resources and incurred unnecessary litigation and dispute-related costs on other parties.

2. Hopeless Proceedings

83 Maurice Stoney's attempts to re-litigate the same issues also represent hopeless litigation. The principle of *res judicata* prohibits a different result. This is a second independent basis on which I conclude Maurice Stoney's litigation conduct needs to be controlled, though it largely overlaps with the issue of collateral attacks.

3. Busybody Litigation

84 Maurice Stoney appears to have alleged two bases for why I should conclude his purportedly acting in court as a representative of his "living brothers and sisters" is not "busybody" litigation:

1. he has provided affidavit evidence to establish he was an authorized representative, and
2. representation in this manner is authorized by the *Federal Court Rules*, s 114.

85 As I have previously indicated I reject that the affidavit evidence of Shelley, Bill, and Gail Stoney established on a balance of probabilities that Maurice Stoney was authorized to represent his siblings. As for the *Federal Court Rules*, that legislation has no legal relevance or application to a proceeding conducted in the Alberta Court of Queen's Bench.

86 "Busybody" litigation is a very serious form of litigation abuse, particularly since it runs the risk of injuring otherwise uninvolved persons. I am very concerned about how the weak affidavit evidence presented by Maurice Stoney represents an after-the-fact attempt to draw Maurice Stoney's relatives not only into this litigation, but potentially with the result these individuals face court sanction, including awards of solicitor and own client indemnity costs. While I have rejected that possibility (*Sawridge #7* at paras 8, 139), the fact that risk emerged is a deeply aggravating element to what is already a very serious form of litigation abuse. This is a third independent basis on which I conclude Maurice Stoney's court access should be restricted.

4. Failure to Follow Court Orders - Unpaid Costs Awards

87 Maurice Stoney admitted he has outstanding unpaid cost awards. Maurice Stoney says he is unable to pay the outstanding costs orders because he does not have the money for that. No evidence was tendered to substantiate that claim.

88 A costs order is a court order. A litigant who does not pay costs is disobeying a court order.

89 Outstanding costs orders on their own may not be a basis to conclude that a person's litigation activities require control. What amplifies the seriousness of these outstanding awards is that Maurice Stoney has attempted to shift all his litigation costs to a third party, the 1985 Sawridge Trust: *Sawridge #6* at para 78. Worse, the effect of that would be to deplete a trust that holds the communal property of an aboriginal community: *Sawridge #7* at paras 145-46, 148.

90 A court may presume that a person intends the natural consequences of their actions: *Starr v. Ontario (Commissioner of Inquiry)*, [1990] 1 S.C.R. 1366, 68 D.L.R. (4th) 641 (S.C.C.). Maurice Stoney appears to intend to cause harm to those he litigates against. He conducts hopeless litigation and then attempts to shift those costs to innocent third parties. If unsuccessful, he says he is unable to pay those costs. In this context Maurice Stoney's failure to pay outstanding costs orders to the Sawridge Band is in itself a basis to take steps to restrict his court access.

5. Escalating Proceedings - Forum Shopping

91 In *Sawridge #6* and *Sawridge #7* I noted that Maurice Stoney's dispute with the Sawridge Band has been spread over a range of venues. He acted in Federal Court, and when unsuccessful there he shifted to the Canadian Human Rights Commission. Again unsuccessful, he now renewed his abusive litigation, this time in the Alberta Court of Queen's Bench and the Alberta Court of Appeal.

92 I conclude this is a special kind of escalating proceedings, "forum shopping", where a litigant moves between courts, tribunals, and jurisdictions in an attempt to prolong or renew abusive dispute activities. Forum shopping is a particular issue in relation to vexatious litigants because court-ordered restrictions on litigation have a limited scope. For example, I have no authority to order steps that would affect a litigant's access to a court in a different province, or the federal courts.

93 Abusive litigants can exploit this gap in Canadian court jurisdictions to repeatedly harm other litigants and, in the process, multiple courts. The litigation activities of a British Columbia resident, Roger Callow, are a dramatic example of forum shopping: reviewed in *West Vancouver School District No. 45 v. Callow*, 2014 ONSC 2547 (Ont. S.C.J.); *Callow v. West Vancouver School District No. 45*, 2008 BCSC 778, 168 A.C.W.S. (3d) 906 (B.C. S.C.).

94 Callow's dispute began in 1985 as a labour arbitration proceeding in response to Callow's employment being terminated. That led to litigation and appeals in that jurisdiction. The Supreme Court refused leave. More British Columbia lawsuits followed, and by 2003 Callow was declared a "vexatious litigant" in British Columbia. Callow then persisted with multiple appeals and leave applications. That led to a further 2010 order to control his court access. Callow now shifted to the Federal Court, where his actions were struck out as an abuse of process: *Callow v. British Columbia (Court of Appeal Chief Justice)* (November 9, 2011), Doc. T-1386-11 (F.C.), aff'd (December 2, 2011), Doc. Vancouver T-138611 (F.C.); *Callow v. Board of School Trustees (#45 West Vancouver)* (February 2, 2015), Doc. Vancouver T-2360-14 (F.C.). In 2012 Callow then sued in Ontario, which led to him being subjected to broad court access restrictions in that jurisdiction as well: *West Vancouver School District No. 45 v. Callow*, 2014 ONSC 2547 (Ont. S.C.J.).

95 The saga then continued, with Callow next having filings struck out in Quebec (*Callow v. West Vancouver S.D. No. 45*, 2015 QCCS 5002 (C.S. Que.), affirmed 2016 QCCA 60 (C.A. Que.), leave to the SCC refused, 36883 (9 June 2016) [2016 CarswellQue 4744 (S.C.C.)] and Saskatchewan (*Callow v. West Vancouver S.D. No. 45*, 2015 SKQB 308 (C.S. Que.), affirmed 2016 SKCA 25 (Sask. C.A.), leave to the SCC refused, 36993 (6 October 2016) [2016 CarswellSask 624 (S.C.C.)]. I would be unsurprised if Alberta is not at some point added to this list.

96 Clearly, at least some persistent abusive court participants are willing to 'shop around', and Roger Callow's litigation is an extreme example of the waste that can result. Given the manner in which Canadian court and tribunal jurisdictions are structured there seems little way at present to escape scenarios like this. Academic commentary on the control of abusive litigation has recommended a national "vexatious litigant" registry: Caplan & Bloom at 457-58, Morissette at 22. I agree that would be a useful addition.

97 Forum shopping by its very nature implies an intent to evade legitimate litigation control processes and legal principles, including *res judicata*. In the case of Maurice Stoney his forum shopping largely overlaps his abusive collateral attack and futile litigation activities, and is a highly aggravating factor to that misconduct.

6. Unproven Allegations of Fraud and Corruption

98 The May 16, 2016 cross-examination transcript reveals that Maurice Stoney believes he and his relatives are the subjects of fraud and conspiracy that is intended to deny them their birthright. For example, he says Sawridge Band membership applications have been ignored, though he has no proof of that.

99 These allegations are not in themselves a basis to restrict Maurice Stoney's court access, however they provide some insight into his litigation objectives and how he views his now longstanding conflict with the Sawridge Band and its administration.

7. Improper Litigation Purposes

100 The Sawridge Band argues Maurice Stoney's August 12, 2016 application has an improper purpose, or no legitimate purpose. Maurice Stoney's exact objective is not obvious. It may be he intends to pursue his perceived objective no matter the consequences or justification, to disrupt the membership process of the Sawridge Band, to obtain monies from the 1985 Sawridge Trust, or a combination of those motives. However, as I have previously indicated, the combination of futile litigation, unpaid costs awards, costs shifting, forum shopping, and a claim that the abusive litigant lacks the means to pay costs leads to a logical inference. The August 12, 2016 application had no legitimate purpose. Its only effect was to waste court and litigant resources.

101 This is another independent basis on which I conclude court intervention is warranted to control Maurice Stoney's access to Alberta Courts.

C. Anticipated Litigation Abuse

102 This decision identifies five independent bases on which this Court should take steps to control future litigation abuse by Maurice Stoney in Alberta Courts. Collectively, that strongly favours court intervention. His litigation history predicts future litigation abuse.

103 But that is secondary to another fact - that the submissions received in the second stage of the procedure found in *Hok v. Alberta* shows that Maurice Stoney and his counsel still do not accept that prior decisions mean Maurice Stoney has no right to continue his interference with the Sawridge Band and its membership processes. Instead, Maurice Stoney and his counsel say his arguments are viable, if not correct. Those are "the facts". This is a very strong predictor of future abusive litigation activities. Maurice Stoney's objectives and beliefs remain unchanged.

104 What remains is to determine the scope of that court access restriction order. The combination of trial, appeal, judicial review, and tribunal activities strongly predicts that Maurice Stoney will not restrict his abusive litigation activities to a particular forum. Instead, his history of forum shopping suggests the opposite.

105 While I have agreed with many of the Sawridge Band and 1985 Sawridge Trust's arguments, I do not accept that Maurice Stoney's litigation history and apparent intentions means that his plausible future abusive litigation activities cannot be restricted to a particular target group or dispute. Instead, Maurice Stoney's complaint-related activities have a clear focus: his long-standing dispute with the Sawridge Band concerning band membership. I did not receive any evidence or statements that suggest that Stoney's abusive activities will expand outside that target set. I therefore only require Stoney obtain leave to initiate or continue litigation in Alberta courts where the litigation involves:

1. the Sawridge Band,

2. the 1985 Sawridge Trust,

3. the 1986 Sawridge Trust,

4. the current, former, and future Chief and Council of the Sawridge Band,

5. the current, former, and future Trustees of the 1985 Sawridge Trust and 1986 Sawridge Trust,

6. the Public Trustee of Alberta,

7. legal representatives of categories 1-6,

8. members of the Sawridge Band,

9. corporate and individual employees of the Sawridge Band, and

10. the Canadian federal government.

106 I have defined this plausible target group broadly because Maurice Stoney's allegations of conspiracy against himself and his siblings raises a concern that Maurice Stoney may shift his focus from the Sawridge Band and the Trusts to the individuals who are involved in the prior litigation and Sawridge Band membership-related processes and decisions.

107 Maurice Stoney's litigation misconduct extends to appeals. Normally that would mean that I would restrict his access to all three levels of Alberta Courts, however in light of the inconsistent Alberta Court of Appeal jurisprudence on control of abusive and vexatious litigation in that forum I do not extend my order to that Court: *Hok v. Alberta*, 2016 ABQB 335 (Alta. Q.B.); *Ewanchuk v. Canada (Attorney General)*.

108 I agree that Maurice Stoney's future litigation activities should be made dependent on him first paying outstanding cost awards.

109 Maurice Stoney's "busybody" activities, and his attempts to justify his purportedly authorized representation activities in this hearing raise the troubling possibility that Stoney will again attempt to draw others into his disputes. Persons have no constitutional right to represent others (*Gauthier v. Starr*, 2016 ABQB 213, 86 C.P.C. (7th) 348 (Alta. Q.B.)), and appearing before a court is a privilege solely subject to the court's discretion (*R. v. Dick*, 2002 BCCA 27, 163 B.C.A.C. 62 (B.C. C.A.)). Maurice Stoney has badly abused that privilege and his arguments concerning his "busybody" activities are highly problematic. He has demonstrated he is an unfit litigation representative. I therefore order that Maurice Stoney is prohibited from representing any person in all Alberta Courts.

D. Court Access Control Order

110 I therefore order:

1. Maurice Felix Stoney is prohibited, under the inherent jurisdiction of the Alberta Court of Queen's Bench, from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate, without an order of the Chief Justice or Associate Chief Justice, or Chief Judge, of the Court in which the proceeding is conducted, or his or her designate, where that litigation involves any one or more of:

(i) the Sawridge Band,

(ii) the 1985 Sawridge Trust,

(iii) the 1986 Sawridge Trust,

(iv) current, former, and future Chief and Council of the Sawridge Band,

(v) the current, former, and future Trustees of the 1985 Sawridge Trust and 1986 Sawridge Trust,

(vi) Public Trustee of Alberta,

(vii) legal representatives of categories 1-6,

(viii) members of the Sawridge Band,

(ix) corporate and individual employees of the Sawridge Band, and

(x)) the Canadian federal government.

2. Maurice Felix Stoney is prohibited from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate, until Maurice Felix Stoney pays in full all outstanding costs ordered by any Canadian court.

3. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may, at any time, direct that notice of an application to commence or continue an appeal, action, application, or proceeding be given to any other person.

4. Maurice Felix Stoney must describe himself, in the application or document to which this Order applies as "Maurice Felix Stoney", and not by using initials, an alternative name structure, or a pseudonym.

5. Any application to commence or continue any appeal, action, application, or proceeding must be accompanied by an affidavit:

(i) attaching a copy of the Order issued herein, restricting Maurice Felix Stoney's access to the Alberta Court of Queen's Bench and Provincial Court of Alberta;

(ii) attaching a copy of the appeal, pleading, application, or process that Maurice Felix Stoney proposes to issue or file or continue;

(iii) deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it;

(iv) indicating whether Maurice Felix Stoney has ever sued some or all of the defendants or respondents previously in any jurisdiction or Court, and if so providing full particulars;

(v) undertaking that, if leave is granted, the authorized appeal, pleading, application or process, the Order granting leave to proceed, and the affidavit in support of the Order will promptly be served on the defendants or respondents;

(vi) undertaking to diligently prosecute the proceeding; and

(vii) providing evidence of payment in full of all outstanding costs ordered by any Canadian court.

6. Any application referenced herein shall be made in writing.

7. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may:

(i) give notice of the proposed claim or proceeding and the opportunity to make submissions on the proposed claim or proceeding, if they so choose, to:

a) the involved potential parties;

b) other relevant persons identified by the Court; and

c) the Attorney Generals of Alberta and Canada.

(ii) respond to the leave application in writing; and

(iii) hold the application in open Court where it shall be recorded.

8. Leave to commence or continue proceedings may be given on conditions, including the posting of security for costs.

9. An application that is dismissed may not be made again.

10. An application to vary or set aside this Order must be made on notice to any person as directed by the Court.

111 This order will be prepared by the Court and filed at the same time, as this Case Management Decision and takes effect immediately. The exception granted in the Rooke Order shall apply to this court access control order.

112 The interim order made per *Sawridge #6* at para 65-66 is vacated.

V. Representation by Priscilla Kennedy in this Matter

113 I have deep concerns about the manner in which Maurice Stoney's lawyer, Priscilla Kennedy, has conducted herself in this matter. Certain of those issues are reviewed in *Sawridge #7*, a judgment where I determined that Kennedy should be personally responsible for her client's costs award because of her misconduct. She represented a client who made a hopeless application that was a serious abuse of the Court and other litigants, and involved other third parties without their authorization.

114 In *Sawridge #7* Ms. Kennedy was represented by Mr. Donald Wilson, a partner of the law firm DLA Piper, which is the law firm that employs Ms. Kennedy. I reproduce verbatim certain of Mr. Wilson's submissions to the Court in *Sawridge #7*:

> . . . in these circumstances, I will say that Ms. Kennedy has prosecuted this action on [Maurice Stoney's] behalf further than I would've, further than I think she should've. ...
>
> . . . the reason I go through this, Sir, is I think quite candidly I've conceded that Ms. Kennedy prosecuted this action further than I would've, further than I think she ought to have ...
>
> Now, if I'm [counsel for the Sawridge Band], I can tell you that the Band is the person that gets to determine their membership and that is entirely appropriate. And in Mr. Stoney's case they've done that. Appeals were made on two different levels. An additional attempt was made at the Human Rights tribunal. And Mr. Stoney has been told, and I know he's been told this because I told him this, he is at the end of his rope with respect to the Sawridge Band and the Court system.
>
> And the reason for that is background and history. It's one of Montgomery's campaigns in World War II, it's a bridge too far. He would've been fine if he'd stopped at bridges, by going for a third bridge the campaign itself stopped. In this instance, had -- if I'd been engaged or consulted, if I read Sawridge 5 . . . the fact that the Court is not, unlikely earlier trust litigation where often the trust ends up paying for part of the litigant's costs, the Court could not have been clearer that is not going forward. And the Court indicated interlope. That is, someone does not have a claim on the trust, presumably would make the trial more complicated, more time consuming, higher costs for everyone. ...

> Now, I can tell you that in the course of the last week . . . I had occasion to speak in depth with Ms. Kennedy. And Ms. Kennedy tried to convince me as to the merits of Mr. Stoney's case. And at a certain point in time, I had to tell her that he has exhausted his remedies in the legal realm with res pect to the Sawrid ges an d it's time to move on.
>
> . . .
>
> My submission would be the application that resulted in Sawridge 6 should not have been made. It was ill-advised. But was not done with bad motives, an attempt to abuse the process. It had that effect, I have to say in front of my friends it absolutely had that effect . . .
>
> . . . what the Court is trying to do, as you properly cite in your decision with respect to sanctions, is to change behaviour. It's the same rationale behind torts which is you're giving a tort award so that some other idiot isn't going to follow and do the same thing. And, with respect, I would submit to you that the seriousness of what Sawridge 6 is has been driven home to Ms. Kennedy. And, with respect, it' s been driven home as much as an order of contempt or a referral to the Law Society. The decision is out there, we have a courtroom full of reporters here to report on the matter.
>
> And I'm reminded of someone once asked Warren Buffett when he was testifying at the congress as to what was reasonable, and it was on the context of a company he owned and insider trading. And Mr. Buffett to the U.S. congress testified it meets a very easy standard. And the standard is, if they printed the story in your home town and your mother and your father had an opportunity to read it, would you be embarrassed? And, with respect, Ms. Kennedy and the Sawridge 6 decision has brou ght ho me the falling o f continuing to prose cute the r eme d y she 's seeking for Mr. Stoney. Which, after meeting Mr. Stoney, I understand. But there's a certain point in time the legal remedies have been exhausted. . . .
>
> [Emphasis added.]

115 I believe I am fair when I indicate these submissions say that at the *Sawridge #7* hearing Mr. Wilson, on behalf of Ms. Kennedy, had acknowledged that there was no merit to the August 12, 2016 application, and that the legal issues involved in that application had been decided, conclusively, in a series of earlier court proceedings. Yet, here in her written submissions, Ms. Kennedy on behalf of Maurice Stoney, re-argues the very same points. Her submissions are the law is unsettled, issues remain arguable, despite her counsel's admission on July 28, 2017 that the effect of the August 12, 2016 application was to abuse of the court's process: " . . . it absolutely had that effect ..." [emphasis added].

116 Mr. Wilson told me in open court that Ms. Kennedy had learned her lesson. When I read the written brief Kennedy prepared and submitted on behalf of Maurice Stoney, I questioned whether that was true.

117 In *Sawridge #7* at paras 98-99 I explained my conclusion why a lawyer who re-litigates or repeatedly raises settled issues has engaged in serious misconduct that is contrary to the standards expected of persons who hold the title "lawyer". I also observed on how advancing abusive litigation is a breach not merely of a lawyer's professional and court officer duties. It is a betrayal of the solicitor-client relationship, and 'digs a grave for two': para 74.

118 I am also troubled by Ms. Kennedy relying on a procedure found in the *Federal Court Rules* to explain why Maurice Stoney's August 12, 2016 application was not a "busybody" proceeding. Stating what should be obvious, civil proceedings in front of this Court are governed by the *Alberta Rules of Court*, not the *Federal Court Rules*. I question the competence of a lawyer who does not understand what court rules apply in a specific jurisdiction.

119 In *Sawridge #7* at paras 51-58 I reviewed case law concerning the inherent jurisdiction of a Canadian court to control lawyers and their activities. At para 56 I cited *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 (S.C.C.) at 1245, (1990), 77 D.L.R. (4th) 249 (S.C.C.) for the rule that courts as part of their supervisory function may remove lawyers from litigation, where appropriate. In that decision representation by lawyers was challenged on the basis of an alleged conflict of interest. However, the inherent jurisdiction of the court is not expressly restricted to simply that:

> . . . The courts, which have inherent jurisdiction to remove from the record solicitors who have a conflict of interest, are not bound to apply a code of ethics. Their jurisdiction stems from the fact that lawyers are officers of the court and their

> conduct in legal proceedings which may affect the administration of justice is subject to this supervisory jurisdiction. ... [Emphasis added.]

120 In my opinion Ms. Kennedy's conduct raises the question of whether she is a suitable representative for Maurice Stoney, and whether the proper administration of justice requires that Ms. Kennedy should be removed from this litigation.

121 This judgment represents what I believe should be Ms. Kennedy's final opportunity to participate in the Advice and Direction Application in the Alberta Court of Queen's Bench as a representative of Maurice Stoney. If that were not the case then I would have proceeded to invite submissions from Ms. Kennedy why she and her law firm, DLA Piper, should not be removed as representatives of Maurice Stoney, and prohibited from any future representation of Maurice Stoney in the Advice and Direction Application.

122 Instead I will send a copy of this judgment to the Law Society of Alberta for review.

VI. Conclusion

123 I conclude that Maurice Felix Stoney has engaged in abusive litigation activities resulting in him being required to seek leave prior to initiating or continuing litigation in the Alberta Court of Queen's Bench and Alberta Provincial Court that relates to persons and organizations involved with the Sawridge Band and Maurice Stoney's disputes concerning membership in that Band. Maurice Stoney may only seek leave after he has paid all outstanding costs awards.

124 Maurice Stoney is also prohibited from representing others in any litigation before the Alberta Provincial Court, Alberta Court of Queen's Bench, and Alberta Court of Appeal.

125 I confirm that I will send a copy of this judgment to the Law Society of Alberta for review in respect to Ms. Kennedy.

Order accordingly.

End of Document

TAB 6

As of March 2, 2018 a form of Order re *Sawridge #9* endorsed by Counsel for Ms. Kennedy, the SFN and the Sawridge Trustees had been sent to Thomas J for approval, but was not yet filed.

TAB 7

COURT FILE NUMBER	1103 114112
COURT	Court of Queen's Bench of Alberta
JUDICIAL CENTRE	Edmonton
APPLICANT	Maurice Felix Stoney
RESPONDENTS	Roland Twinn, Catherine Twinn, Walter Felix Twin, Martha L'Hirondelle and Clara Midho, as Trustees for the 1985 Sawridge Trust, the Public Trustee of Alberta, and the Sawridge Band
DOCUMENT	**COURT ACCESS CONTROL ORDER FOR MAURICE FELIX STONEY**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF THE PARTY FILING THIS DOCUMENT	Justice D.R.G. Thomas, Alberta Court of Queen's Bench Judicial District of Edmonton 3rd Floor – Law Courts Building 1A Sir Winston Churchill Square Edmonton, Alberta T5J 0R2

DATE ON WHICH ORDER WAS PRONOUNCED: September 12, 2017

NAME OF THE JUDGE WHO MADE THIS ORDER: Honourable D.R.G. Thomas

WHEREAS on July 12, 2017 this Court dismissed the Application of Maurice Felix Stoney and "His Brothers and Sisters" to be added to Docket 11103 14112 action, that decision reported as ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 436;

AND WHEREAS on concluding that the Application of Maurice Felix Stoney disclosed indicators of vexatious and abusive litigation;

AND UPON the Court receiving and reviewing written submissions filed on behalf of Maurice Felix Stoney and others concerning whether his access to Alberta courts should be restricted, and if so, the scope of those restrictions;

AND UPON THE COURT'S OWN MOTION;

IT IS HEREBY ORDERED THAT:

1. The Interim Court Filing Restriction Order for Maurice Felix Stoney made and filed July 12, 2017 is vacated.

2. Maurice Felix Stoney is prohibited, under the inherent jurisdiction of the Alberta Court of Queen's Bench, from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate, without an order of the Chief Justice or Associate Chief Justice, or Chief Judge, of the Court in which the proceeding is conducted, or his or her designate, where that litigation involves any one or more of:

   (i) the Sawridge Band,

   (ii) the 1985 Sawridge Trust,

   (iii) the 1986 Sawridge Trust,

   (iv) the current, former, and future Chief and Council of the Sawridge Band,

   (v) the current, former, and future Trustees of the 1985 Sawridge Trust and 1986 Sawridge Trust,

   (vi) the Public Trustee of Alberta,

   (vii) legal representatives of categories 1-6,

   (viii) members of the Sawridge Band,

   (ix) corporate and individual employees of the Sawridge Band, and

   (x) the Canadian federal government.

3. Maurice Felix Stoney is prohibited from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate, until Maurice Felix Stoney pays in full all outstanding costs ordered by any Canadian court.

4. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may, at any time, direct that notice of an application to commence or continue an appeal, action, application, or proceeding be given to any other person.

5. Maurice Felix Stoney must describe himself, in the application or document to which this Order applies as "Maurice Felix Stoney", and not by using initials, an alternative name structure, or a pseudonym.

6. Any application to commence or continue any appeal, action, application, or proceeding must be accompanied by an affidavit:

   (i) attaching a copy of the Order issued herein, restricting Maurice Felix Stoney's access to the Alberta Court of Queen's Bench and Provincial Court of Alberta;

   (ii) attaching a copy of the appeal, pleading, application, or process that Maurice Felix Stoney proposes to issue or file or continue;

   (iii) deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it;

   (iv) indicating whether Maurice Felix Stoney has ever sued some or all of the defendants or respondents previously in any jurisdiction or Court, and if so providing full particulars;

   (v) undertaking that, if leave is granted, the authorized appeal, pleading, application or process, the Order granting leave to proceed, and the affidavit in support of the Order will promptly be served on the defendants or respondents;

   (vi) undertaking to diligently prosecute the proceeding; and

   (vii) providing evidence of payment in full of all outstanding costs ordered by any Canadian court.

7. Any application referenced herein shall be made in writing.

8. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may:

   (i) give notice of the proposed claim or proceeding and the opportunity to make submissions on the proposed claim or proceeding, if they so choose, to:

      a) the involved potential parties;

      b) other relevant persons identified by the Court; and

      c) the Attorney Generals of Alberta and Canada.

   (ii) respond to the leave application in writing; and

   (iii) hold the application in open Court where it shall be recorded.

9. Leave to commence or continue proceedings may be given on conditions, including the posting of security for costs.

10. An application that is dismissed may not be made again.

11. An application to vary or set aside this Order must be made on notice to any person as directed by the Court.

12. The exception granted in the Order made by Associate Chief Justice Rooke on July 20, 2017 in the matter of ***Nussbaum v*** Stoney, Alberta Court of Queen's Bench docket 1603 03761 shall apply to this Court Access Control Order.

D.R.G. Thomas
JUSTICE OF QUEEN'S BENCH OF ALBERTA

ENTERED this 12 day of Sept, A.D. 2017

CLERK OF THE COURT

TAB 8

I hereby c .to be a true copy.

For Deputy Registrar
Court of Appeal of Alberta

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

Registrar's Stamp

REGISTRAR FILED MAY 01 2018 Court of Appeal of Alberta

COURT OF APPEAL FILE NO.:	1803-0076AC
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:	MAURICE FELIX STONEY AND HIS BROTHERS AND SISTERS
STATUS ON APPEAL:	Interested Party
STATUS ON APPLICATION:	Interested Party
RESPONDENTS (ORIGINAL APPLICANTS):	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST (the "Sawridge Trustees")
STATUS ON APPEAL:	Respondent
STATUS ON APPLICATION:	Respondent
RESPONDENT:	PUBLIC TRUSTEE OF ALBERTA
STATUS ON APPEAL:	Not a party to the Appeal
STATUS ON APPLICATION:	Not a party to the Application
INTERVENOR:	THE SAWRIDGE BAND
STATUS ON APPEAL:	Respondent
STATUS ON APPLICATION:	Respondent
INTERESTED PARTY:	PRISCILLA KENNEDY, Counsel for Maurice Felix Stoney and His Brothers and Sisters
STATUS ON APPEAL:	Appellant
STATUS ON APPLICATION:	Applicant
DOCUMENT:	**ORDER (RE Leave to Appeal Sawridge #9)**

E3729787-1

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	Field LLP 2500, 10175 - 101 Street Edmonton, Alberta T5J OH3 Attention: P. Jonathan Faulds, QC Phone: 780-423-7625 Fax: 780-429-9329 Email:jfaulds@fieldlaw.com File: 65063-1

DATE ON WHICH THE ORDER WAS PRONOUNCED	April 4, 2018
LOCATION OF HEARING:	Edmonton, Alberta
NAME OF JUDGE WHO GRANTED THIS ORDER:	The Honourable Mr. Justice J. Watson

UPON THE APPLICATION OF Priscilla Kennedy for:

- leave to appeal the decision of Mr. Justice D.R.G. Thomas issued March 20, 2018 and referred to as *Sawridge #9*, awarding enhanced costs of the proceeding known as *Sawridge #8* in favor of the Sawridge Trustees and the Sawridge First Nation on a solicitor and client basis and making Priscilla Kennedy personally liable for such costs on a joint and several basis with her former client Maurice Stoney, and awarding costs of the proceeding known as *Sawridge #7* in favor of the Sawridge Trustees and the Sawridge First Nation against Priscilla Kennedy, and

- if leave is granted, for the appeal to be expedited and consolidated or heard together with Priscilla. Kennedy's appeal from the substantive decision in *Sawridge #7*, (Appeal #1703 0239AC) which is scheduled to be heard on June 8, 2018, and direction given as to the timelines for the parties to file such supplemental extracts of key evidence, authorities, and factums as may be required.

AND UPON HAVING READ the Affidavit of Priscilla Kennedy sworn and filed on March 23, 2018 and the submissions filed on behalf of the Applicant and the Respondents herein, and hearing from Counsel for the Applicant and Respondents;

AND UPON NOTING that the application is not opposed by the Respondents, and that the Applicant and the Respondents have agreed upon a schedule for the filing of materials to allow the proposed appeal to be heard together with Appeal #1703-0239AC;

AND UPON BEING ADVISED by Counsel for the Applicant that the Applicant does not seek costs of this application:

IT IS HEREBY ORDERED THAT:

1. Leave to appeal the decision of Mr. Justice Thomas is granted;

2. The appeal will be heard together with Appeal #1703-0239AC on June 8, 2018 with filing dates as follows:

   a. April 18, 2018 - Appeal Record

   b. May 2, 2018 - Appellant's Factum, Extracts of Key Evidence and Authorities

   c. June 4, 2018 - Respondents' Factum, Extracts of Key Evidence and Authorities

3. The parties are at liberty to include in their Extracts of Key Evidence the written submissions made to Mr. Justice Thomas in connection with *Sawridge #8 and #9*;

4. There will be no costs of this application.

Registrar, Court of Appeal

APPROVED AS BEING THE ORDER GRANTED:

DENTONS CANADA LLP

Mandy England
Counsel for the Respondents Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle and Clara Midbo, as Trustees for the 1985 Sawridge Trust

PARLEE McLAWS LLP

E.H. Molstad, Q.C.
Counsel for the Respondent, Sawridge First Nation

FIELD LLP

P.J. Faulds, Q.C.
Counsel for the Applicant, Priscilla Kennedy

1. Leave to appeal the decision of Mr. Justice Thomas is granted;

2. The appeal will be heard together with Appeal #1703-0239AC on June 8, 2018 with filing dates as follows:

   a. April 18, 2018 - Appeal Record

   b. May 2, 2018 - Appellant's Factum, Extracts of Key Evidence and Authorities

   c. June 4, 2018 - Respondents' Factum, Extracts of Key Evidence and Authorities

3. The parties are at liberty to include in their Extracts of Key Evidence the written submissions made to Mr. Justice Thomas in connection with *Sawridge #8 and #9*;

4. There will be no costs of this application.

"B. Tracy"

Registrar, Court of Appeal

APPROVED AS BEING THE ORDER GRANTED:

DENTONS CANADA LLP

Mandy England
Counsel for the Respondents Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle and Clara Midbo, as Trustees for the 1985 Sawridge Trust

PARLEE McLAWS LLP

E.H. Molstad, Q.C.
Counsel for the Respondent, Sawridge First Nation

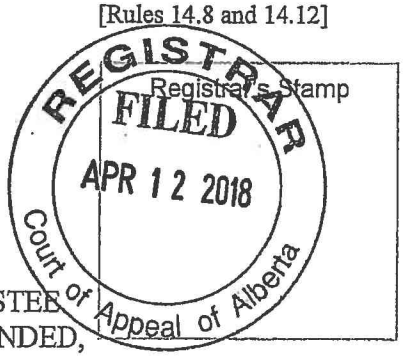
FIELD LLP

P.J. Faulds, Q.C.
Counsel for the Applicant, Priscilla Kennedy

TAB 9

COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.8 and 14.12]



Registrar's Stamp

COURT OF APPEAL FILE NO.:	1803-0076-AC
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:	MAURICE FELIX STONEY AND HIS BROTHERS AND SISTERS
STATUS ON APPEAL:	Interested Party
RESPONDENTS (ORIGINAL APPLICANTS):	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST (the "Sawridge Trustees")
STATUS ON APPEAL:	Respondents
INTERVENOR:	THE SAWRIDGE BAND
STATUS ON APPEAL:	Respondents
INTERESTED PARTY:	PRISCILLA KENNEDY, Counsel for Maurice Felix Stoney and His Brothers and Sisters
STATUS ON APPEAL:	Appellant
DOCUMENT:	**CIVIL NOTICE OF APPEAL (Sawridge #9)**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:

Field LLP
2500, 10175 - 101 Street
Edmonton, Alberta T5J OH3
Attention: P. Jonathan Faulds, QC
Phone: 780-423-7625
Fax: 780-429-9329
Email: jfaulds@fieldlaw.com
File: 65063-1

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. **Particulars of Judgment, Order or Decision Appealed From:**
Date pronounced: March 20, 2018

Date entered: TBD

Date served: TBD

Official neutral citation of reasons for decision, if any:

1985 Sawridge Trust v Alberta (Public Trustee), 2018 ABQB 215 (*Sawridge #9*)

2. **Indicate where the matter originated:**
Alberta Court of Queen's Bench

Judicial Centre: Edmonton

Justice: Honourable Mr. Justice D.R.G. Thomas

On appeal from a Queen's Bench Master or Provincial Court Judge?:

☐ Yes ☑No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge:

n/a

3. **Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).**
☐ Permission not required, or ☑ Granted:

Date: April 4, 2018

Justice: Honourable Mr. Justice J. Watson

4. **Portion being appealed (Rule 14.12(2)(c)):**
☐ Whole, or

☑ Only specific parts (if specific part, indicate which part):

The Appellant appeals the parts of Justice Thomas' order in which he:

- awarded enhanced costs of the proceeding known as *Sawridge #8* in favour of the Sawridge Trustees and the Sawridge First Nation on a solicitor and client basis;
- made the Appellant personally liable for such costs on a joint and several basis with her former client Maurice Stoney; and
- awarded costs of the proceeding known as *Sawridge #7* in favour of the Sawridge Trustees and the Sawridge First Nation against the Appellant.

5. **Provide a brief description of the issues:**

The issues in this appeal include whether Justice Thomas erred in:

- finding the submissions on behalf of Maurice Stoney constituted a collateral attack on the decision in *Sawridge #6*;
- finding the conduct of the proceeding known as *Sawridge #8* warranted an award of costs in favour of the Sawridge Trustees and the Sawridge First Nation on a solicitor and client basis;
- making the Appellant personally liable for such costs;
- making the Appellant personally liable for such costs on a joint and several basis with her former client Maurice Stoney, without affording Mr. Stoney an opportunity to make submissions on the costs issue; and
- awarding costs of the proceeding known as *Sawridge #7* in favour of the Sawridge Trustees and the Sawridge First Nation against the Appellant.

6. **Provide a brief description of the relief claimed:**

The Appellant requests that the parts of Justice Thomas' order identified above be set aside.

7. **Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)**
☑ Yes ☐ No

8. **Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))**
☐ Yes ☑ No

9. **Will an application be made to expedite this appeal?**
☑ Yes ☐ No

The decision granting permission to appeal set expedited deadlines for the parties to submit materials related to this appeal so that it may be heard together with the appellant's existing appeal (Court of Appeal File No. 1703-0239-AC) scheduled to be heard on June 8, 2018.

10. **Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**
☐ Yes ☑ No

11. **Could this matter be decided without oral argument? (Rule 14.32(2))**
☐ Yes ☑ No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e),14.83)
☐ Yes ☑ No

13. List respondent(s) or counsel for the respondent(s), with contact information:

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Counsel for the Sawridge Trustees

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Counsel for Sawridge First Nation

Maurice Felix Stoney
500 4th Street NW
Slave Lake, AB T0G 2A1
Phone: 780-516-1143
Fax: 780-849-3128
(Note: Mr. Stoney has indicated that he prefers to receive materials by mail.)

14. Attachments (check as applicable)

☐ Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))
☐ Earlier order of Master, etc. (Rule 14.18(1)(c))
☐ Order granting permission to appeal (Rule 14.12(3)(a))
☐ Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.

Note: Neither the order under appeal (Rule 14.12(3)(b)) nor the order granting permission to appeal (Rule 14.12(3)(a)) are finalized as of the time of filing of this Notice of Appeal. These documents will be appended to the factum or included elsewhere in the appeal record.