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COURT OF APPEAL OF ALBERTA

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FAX COVER SHEET

Date: April 10, 2018

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Re: 1803-0076AC Priscilla Kennedy (AP) v. Roland Twinn (R) and others

Special Instructions:

Please find attached the Oral Reasons for Decision

Total number of pages including this cover sheet:

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In the Court of Appeal of Alberta

Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2018 ABCA 137

Date: 20180410
Docket: 1803-0076-AC
Registry: Edmonton

In the Matter of the *Trustee Act*, RSA 2000, c T-8, as amended; and

In the matter of the Sawridge Band, *Inter Vivos* Settlement, created by Chief Walter Patrick Twinn, of the Sawridge Indian Band, No. 19, now known as the Sawridge First Nation, on April 15, 1985 (the "1985 Sawridge Trust")

Between:

Maurice Felix Stoney and His Brothers and Sisters

Interested Parties
(Interested Parties)

- and -

Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle and Clara Midbo, As Trustees for the 1985 Sawridge Trust

Respondents
(Respondents)

- and -

Public Trustee of Alberta

Not a Party to the Application
(Not a Party to the Appeal)

- and -

The Sawridge Band

Respondent
(Respondent)

- and -

**Priscilla Kennedy, Counsel for Maurice Felix Stoney and
His Brothers and Sisters**

Applicant
(Appellant)

**Oral Reasons for Decision of
The Honourable Mr. Justice Jack Watson**

Application for Permission to Appeal (Sawridge #9)

**Oral Reasons for Decision of
The Honourable Mr. Justice Jack Watson**

[1] Ms. Kennedy seeks to appeal part of a decision which was referred to in the various appearances on this matter including before myself as the decision of *Sawridge #9 [Stoney v. 1985 Sawridge Trust]*, 2018 ABQB 213, [2018] AJ No 337 (QL). This specific decision was one where the Court of Queen's Bench judge held her jointly and severally liable with Mr. Stoney for the solicitor-client costs that he awarded relative to an application that lead to a judgment that has been referred to in the history of this matter *Sawridge #8 [Stoney v. 1985 Sawridge Trust]*, 2017 ABQB 548, [2017] AJ No 937 (QL).

[2] Since this is an appeal from a costs decision only, it is of course the situation where it is required by our *Rules*, particularly Rule 14.5(1)(e) of the *Alberta Rules of Court*, AR 124/2010 that there be permission given to appeal to a panel. The counsel who appeared in front of me on this matter have been quite cooperative with one another and have worked out a scheme for dealing with the matter should permission to appeal be granted.

[3] The test for permission to appeal was set out by Slatter JA who has already granted permission to appeal in connection with a costs award contained within *Sawridge #7 [Stoney v. 1985 Sawridge Trust]*, 2017 ABQB 530, [2017] AJ No 897 (QL), 61 Alta LR (6th) 324] in the proceedings up to now: see *Stoney v. 1985 Sawridge Trust*, 2017 ABCA 368, [2017] AJ No 1164 (QL), 61 Alta LR (6th) 21. *Sawridge #7* related to costs of *Sawridge #6 [Stoney v. 1985 Sawridge Trust]*, 2017 ABQB 436, [2017] AJ No 725 (QL).

[4] I am satisfied that the test that Slatter JA set out in his decision as to the circumstance of permission of appeal should also be applied here and that permission should be granted here. I am of course fortified in that regard by the cooperative approach taken by counsel in front of me today.

[5] The cooperative approach to which I refer includes the fact that counsel had proposed a timeline setting events for the filing of materials in order to try and make sure that this appeal gets tied up with the one which is already booked in this Court in June of this year.

[6] The difference between this one and that one is that the earlier decision [at para 9] had a staged process for delivery of factums. On this occasion -- particularly because of the short amount of time that is available -- it does not seem to me to be necessary to do so again in that counsel is agreeable to the fact that there should not be any staging and the parties will all file in the usual way at the same time. That is to say that the First Nation and the Trust will file at the same time.

[7] It is also agreed by the parties that each party should be given the opportunity to file a 12 page factum for that very reason, namely, that no respondent will get a chance to see the other's factum before they file. Consequently the ability to perhaps trim down a factum to say 8 pages as

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was discussed by Slatter JA in the earlier decision really is not practical at this point. It may well be that counsel will not need the 12 pages in light of the fact that there are already factums filed on the substantive legal questions in the earlier matter.

[8] As far as the deadlines are concerned, counsel provided to me three different agreed dates which were April 18, May 2 and June 4 of 2018 for filing steps and those dates will apply.

[9] As far as the last point that was raised by counsel, that point is whether or not the written submissions that were presented to the Court of Queen's Bench judge Thomas J should be included as part of the extracts filed on the appeal.

[10] I am prepared to authorize doing so in this instance even though ordinarily one doesn't usually use argument as part of a record. In this instance, however, Thomas J dealt with the matter in writing and consequently the only sort of 'record' that was in front of Thomas J at that time is, in fact, the contents of the written submissions. Under those circumstances, it seems wise to me that counsel include those in the extracts. It may turn out, once again though, that counsel may not need to refer to them at all especially if they basically cover the same ground in their other written submissions on the appeal itself.

[11] For clarity, I would add that permission to appeal the motion costs related to *Sawridge #7* as awarded in *Sawridge #9* (the matter that is being heard before me) is also granted. In other words, permission is not merely given to appeal the relevant aspects of *Sawridge #9* which is a costs decision but also the award of costs at para [32] within *that* decision which was imposed relating back to *Sawridge #7*. Thomas J did not award costs of *Sawridge #9* itself.

[12] The applicant, Ms Kennedy, does not seek costs of this present application before me which is reasonable and appropriate, so there will be no costs for today. For completeness I would mention that Mr Stoney was present without counsel when this motion was heard. He appeared to understand what was happening on the motion brought by Ms Kennedy. If counsel wish to obtain any other directions that the case management officer cannot address they are at liberty to send me a letter via the case management officer setting out their request[s].

Application heard on April 4, 2018

Reasons filed at Edmonton, Alberta
this ~~10th~~ day of April, 2018



A handwritten signature in black ink, appearing to read "Watson J.A.", written over a horizontal line. Below the signature, the name "Watson J.A." is printed in a serif font.

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Appearances:

Interested Party Maurice Felix Stoney in Person

M. England

for the Respondents Roland Twinn, Catherine Twinn, Walter Felix Twin, Bertha L'Hirondelle, and Clara Midbo (1985 Sawridge Trustees)

E.H. Molstad, Q.C.

for the Respondent the Sawridge Band

P.J. Faulds, Q.C.

for the Applicant