

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

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

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: APPLICATION OF PRISCILLA KENNEDY FOR
PERMISSION TO APPEAL (Sawridge #9)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

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And
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ALL OTHER PARTIES:

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NOTICE TO RESPONDENT(S):

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX
TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO, AS
TRUSTEES FOR THE 1985 SAWRIDGE TRUST and THE
SAWRIDGE BAND

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT(S):

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: April 4, 2018

Time: 9:30 a.m.

Where: Law Courts Building, 1A Sir Winston Churchill Square, Edmonton, Alberta

Before: single judge of the court (Rule 14.37)

panel of the court (Rule 14.38)

Nature of Application and Relief Sought:

1. This is an application for:

a. Permission to appeal the decision of Thomas J as Case Management Justice (the “CMJ”) dated March 20, 2018 (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 the Applicant 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

b. If permission is granted, an order that this appeal be expedited and consolidated with or heard at the same time as Ms. Kennedy’s appeal from the substantive decision in *Sawridge #7*, 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.

Grounds for making this application:

2. The test for permission to appeal a decision is met because:

- a. The costs award sought to be appealed arises out of the same proceedings and involves the same as well as closely related issues as the costs award contained in the substantive decision in *Sawridge #7*. As such the decision sought to be appealed is in effect an extension of the decision in *Sawridge #7* for which leave has already been granted.
 - b. There are further arguable issues arising out of the decision sought to be appealed;
 - c. The issues are of importance to the parties and in general;
 - d. There is practical utility to this costs appeal; and
 - e. This appeal will not delay the proceedings.
3. This appeal should be consolidated with or heard at the same time as Ms. Kennedy's appeal from *Sawridge #7* on June 8, 2018 because:
- a. the decisions in *Sawridge #7* and *#9* are directly connected, the participants are the same, and the issues in both decisions are related to and flow from *Sawridge #6*;
 - b. the basis for the CMJ's decision in *Sawridge #9* to award enhanced costs against Ms. Kennedy personally is that she had engaged in, and continued, the same misconduct which resulted in the enhanced costs award in *Sawridge #7* for which leave has already been granted.
 - c. the conduct resulting in the costs award made against Ms. Kennedy in *Sawridge #9* has already been referred to and relied upon by the Respondent *Sawridge* Trustees in their submissions in the appeal from *Sawridge #7*;
 - d. the decisions in *Sawridge #7* and *#9* have a common question of law, namely the basis on which a lawyer may be held personally liable for costs; and
 - e. there is sufficient time for the parties to file supplemental factums and such other materials as may be required with respect to the appeal from *Sawridge #9*, so that it can be heard on June 8, 2018.

Material or evidence to be relied on:

4. The Affidavit of Priscilla Kennedy, filed herein.
5. Such further and other material as counsel may advise and the Court may allow.

Applicable Acts, regulations and rules:

6. Alberta Rules of Court, Rules 3.72; 10.50; 14.5(1)(e); 14.40; 14.44