

# Fast Track

## COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER: 1703-0239AC

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 SAWIDGE 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  
"Trustees")

STATUS ON APPEAL: Respondents

RESPONDENT: 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: *and Extracts of Key Evidence*  
**FACTUM OF THE TRUSTEES**

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STATUS ON APPEAL: Appellant

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## I. INTRODUCTION AND FACTS

1. On April 12, 2016, Maurice Stoney ("Stoney") and his 10 brothers and sisters (the "Stoney Applicants") applied to be added as parties or intervenors to the advice and direction application ("Advice Application") brought by the Trustees appointed under the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the "Trust"). The Stoney Applicants also sought advance costs to be paid to them by the Trust (the "Stoney Application"). The Sawridge First Nation ("SFN") was granted intervenor status for the Stoney Application, though this was opposed by the Stoney Applicants.
2. On July 12, 2017, the Honourable Justice D.R.G Thomas ("CM Justice" or "Justice Thomas") issued a Case Management Decision (Sawridge #6), which included an interim court filing restriction order against Stoney pending vexatious litigant analysis. Solicitor and own client costs were ordered against Stoney, and submissions were invited as to whether his lawyer, Priscilla Kennedy ("Kennedy"), should also be held responsible for some or all of the costs.<sup>1</sup>
3. In Sawridge #7, the Case Management Decision now appealed, Justice Thomas ordered solicitor and own client costs be paid jointly and severally by Stoney and Kennedy to the Trustees and SFN.<sup>2</sup> In Sawridge #8,<sup>3</sup> Stoney was declared a vexatious litigant and subjected to a court access control order. Justice Thomas also directed that a copy of that decision be sent to the Law Society of Alberta.
4. Kennedy sought leave to participate in Stoney's appeal of Sawridge #6, which application was denied.<sup>4</sup> Stoney's appeal of Sawridge #6 has been deemed abandoned, and this Court commented that it was of questionable merit in any event.<sup>5</sup> Kennedy filed an appeal of Sawridge #8, but her appeal was struck as being without merit.<sup>6</sup> Stoney did not appeal Sawridge #8.
5. The Trustees concur with the facts and substantive submissions advanced by SFN in its factum on this appeal of Sawridge #7, and rely on their submissions. The Trustees will limit their arguments herein to those not already raised and those directly affecting the Trust.
6. The Trustees' position is that the costs award against Kennedy is appropriate and should be upheld. In her factum, Kennedy spends considerable time reviewing various arguments about Stoney's right to status under the *Indian Act*, and her "novel" arguments as to how that might entitle him to membership in the SFN. This ignores past court decisions rejecting his bid for membership, Justice

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<sup>1</sup> 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 436 ("Sawridge #6") [TAB 8 Appellant's Book of Authorities ("Appellant's BOA")]

<sup>2</sup> 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 530 ("Sawridge #7") [TAB 11 Appellant's BOA]

<sup>3</sup> 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548 ("Sawridge #8") [TAB 13 Appellant's BOA]

<sup>4</sup> 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2017 ABCA 418 [Tab 9 Appellant's BOA]

<sup>5</sup> *Stoney v Twinn*, 2018 ABCA 81 ("*Stoney Security #2*"), para 4 [TAB 1 Trustees' Book of Authorities ("Trustees' BOA")]; Report of Civil Appeal No. 1703-0195AC dated March 1, 2018, Appendix A

<sup>6</sup> *Kennedy v 1985 Sawridge Trust*, 2017 ABCA 439 [TAB 14 Appellant's BOA]



Thomas' finding in Sawridge #8 that such arguments are *res judicata*, and his direction in Sawridge #3 that membership is not an issue before the court on the Advice Application.<sup>7</sup>

7. Instead, the question before the court on the Advice Application is whether the definition of "beneficiary" in the Trust Deed should be amended. The membership eligibility of a particular individual, such as Stoney or any of his siblings, is not relevant to that question. Yet, Kennedy has persisted in raising that issue even on this appeal. The Trust has finite resources, which should be preserved as much as possible for its beneficiaries. They should not be depleted by Kennedy's persistent pursuit of Stoney's vexatious claims of membership. Upholding this costs award is supported not only by the law, but by the equities in these circumstances.

## II. GROUNDS OF APPEAL

8. As was stated by the SFN, the issues in the appeal are:
- (a) Did the CM Justice err in his interpretation of the test for a personal cost award against a lawyer?
  - (b) Did the CM Justice err in holding Kennedy personally liable, jointly and severally with her client, for the Respondents' solicitor and own client costs?

## III. STANDARD OF REVIEW

9. The Trustees concur with the standard of review advanced by SFN, and would add only that the exercise of discretion by a case management justice is reviewable on a palpable and overriding error standard. Appellate intervention is only merited if the case management justice had "clearly misdirected himself on the facts or the law, proceeded arbitrarily, or if the decision is so clearly wrong as to amount to an injustice".<sup>8</sup> Otherwise, case management would not be a very effective method for advancing civil proceedings. To facilitate the operation of the judicial system for all parties, exercises of judicial discretion should be disturbed only if clearly unreasonable or legally erroneous.<sup>9</sup>

## IV. LAW AND ARGUMENT

### A. The CM Justice did not err in interpreting the test for a personal cost award against a lawyer

10. In awarding solicitor and own client costs, the CM Justice relied on the most recent case from the highest authority. In *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*,<sup>10</sup> the SCC held that "...the awarding of costs against lawyers personally flows from the right and duty of the courts to supervise the conduct of the lawyers who appear before them and to note, and sometimes penalize, any conduct of such a nature as to frustrate or interfere with the administration of justice".<sup>11</sup> The

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<sup>7</sup> 1985 *Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 ("Sawridge #3"), para 35 [TAB 3 Appellant's BOA]

<sup>8</sup> *Balogun v Pandher*, 2010 ABCA 40 at p. 3 [TAB 2 Trustees' BOA]

<sup>9</sup> *Beacon Hill Service (2000) Ltd. v Esso Petroleum Canada*, 2012 ABCA 269 at paras 4-5 [TAB 3 Trustees' BOA]

<sup>10</sup> *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 ("Jodoin") [TAB 15 Appellant's BOA]

<sup>11</sup> *Jodoin* at para 18 [emphasis added] [TAB 15 Appellant's BOA]

decision confirmed that the courts have the power to manage and control the proceedings before them, including the inherent power to control any abuse and prevent the misuse of procedure.<sup>12</sup>

11. *Jodoin* identified two scenarios where these kinds of awards are appropriate: "an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system by the lawyer, or dishonest or malicious misconduct on his or her part, that is deliberate". The French version places the comma in a slightly different position, roughly after the word "misconduct",<sup>13</sup> such that the English version might read: "...or dishonest or malicious misconduct, on his or her part that is deliberate".
12. Kennedy argues that the CM Justice lowered the threshold for the *Jodoin* test by eliminating the need for *deliberate* conduct on the "first branch", on the basis of the comma placement. The comparison of the French and English version to determine whether a comma led Justice Thomas astray is flawed because there was no elimination of the deliberate nature of the conduct for either branch of the *Jodoin* test. It is nonsensical to suggest that a lawyer could advance frivolous, dilatory, or vexatious proceedings that "denote a serious abuse of the judicial system" by accident. The requirement that these actions denote a *serious abuse* entails a clear intention, or willful blindness, on behalf of the lawyer. The question of the comma is a red herring.
13. The reasons of the CM Justice show that he did not eliminate the need to find deliberate misconduct. He reviewed the conduct of Kennedy that he considered under this branch,<sup>14</sup> and it imports such intentionality, as her conduct was held to have been a "deep and fundamental breach of a lawyer's professional, contractual, and court-related obligations".<sup>15</sup> Further, he considered the difference between mistakes and deliberate conduct and stated:<sup>16</sup>

However, where a lawyer persists despite being warned or alerted, then a court may apply the often stated rule that a person may be presumed to intend the natural consequence of their actions: *Starr v Houlden* [citation omitted]. In that context a court may conclude that a lawyer who is breaking the rules knows what the rules are, but has proceeded and broken them anyway. That will create a strong presumption that a costs award is appropriate for a lawyer who engaged in what is, effectively, deliberate misconduct.

14. The filing of repetitive and irrelevant material, excessive motions and applications and acting in bad faith in encouraging abuse and delay has been held to justify a compensatory order for costs against a lawyer.<sup>17</sup> Here, Kennedy acted in bad faith in encouraging such abuse and delay. A personal costs award was within the CM Justice's discretion and it was appropriate in this case.

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<sup>12</sup> *Jodoin* at para 16 [TAB 15 Appellant's BOA]

<sup>13</sup> *Jodoin* at para 29 [TAB 15 Appellant's BOA]. The French version reads: "Ce critère élevé est respecté lorsqu'un tribunal est en présence d'une procédure mal fondée, frivole, dilatoire ou vexatoire, qui dénote un abus grave du système judiciaire ou une inconduite malhonnête ou malveillante, commis de propos délibéré par l'avocat"

<sup>14</sup> Sawridge #7, paras 124-49 [TAB 11 Appellant's BOA]

<sup>15</sup> *Ibid* para 138

<sup>16</sup> *Ibid* para 96

<sup>17</sup> *Jodoin* at para 28 [TAB 15 Appellant's BOA]



15. The CM Justice distinguishes between a mistake and willful blindness by a lawyer. In order to make it clear that a high threshold of deliberate conduct would be required, Justice Thomas went so far as to provide detailed examples of the nature of the conduct that would cause the Court to characterize certain actions as deliberate.<sup>18</sup>
16. The findings of the CM Justice, and his articulation of the test, are consistent with the wording of Rule 10.50,<sup>19</sup> which permits a costs award by the Court against a lawyer "[i]f a lawyer for a party engages in serious misconduct". The Trustees submit that the CM Justice was correct in his view that "serious abuse" and "serious misconduct" are equivalent.<sup>20</sup> Indeed, if a lawyer engages in conduct that constitutes "serious abuse" of the very judicial system she is duty bound to serve, it seems inconceivable that such conduct cannot also be described as "serious misconduct" by the lawyer.
17. The cases cited by the CM Justice in Sawridge #7 show that costs have been awarded for decades on the basis that a lawyer advanced unfounded and vexatious proceedings that are a serious abuse of the judicial system, as do the cases cited by the SFN in its factum.<sup>21</sup> For example, in *Robertson v Edmonton (City) Police Service*, cited by the CM Justice, there are numerous references to costs awards against counsel personally on the basis that the lawyer brought and continued proceedings that the lawyer knew, or ought to have known, were devoid of merit.<sup>22</sup> This "second branch" as articulated in *Jodoin* and applied by the CM Justice is a long-recognized subcategory of "serious misconduct" by a lawyer that would support an award of costs against her personally.

**B. The CM Justice did not err in holding Kennedy personally liable, jointly and severally with her client, for the Respondents' solicitor and own client costs**

**(a) Lawyers are Gatekeepers of the Court**

18. As noted by CM Justice,<sup>23</sup> all lawyers owe a duty to act in the best interest of the public and are expected to conduct themselves and their law practices in ways which are highly ethical and above reproach. This is evident in every key document governing the conduct of lawyers in Alberta:

- (a) The oath of allegiance:<sup>24</sup> "I will, as a barrister and solicitor, ...not promote suits upon frivolous pretenses. ...[I]n all things [I] will conduct myself truly and with integrity."

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<sup>18</sup> Sawridge #7, paras 97-117 [TAB 11 Appellant's BOA]

<sup>19</sup> *Alberta Rules of Court*, Alta. Reg. 124/2010, r. 10.50 [TAB 4 Trustees' BOA]

<sup>20</sup> Sawridge #7, para 35 [TAB 11 Appellant's BOA]

<sup>21</sup> Factum of the Sawridge First Nation at para. 23 ("SFN Factum"); *Best v Ranking*, 2015 ONSC 6279 [TAB 6 SFN Book of Authorities ("SFN BOA")], aff'd 2016 ONCA 492 [Tab 7 SFN BOA]; *Soderstrom v Hoffman-La Roche Limited*, 2008 CanLII 15778 (ONSC) [Tab 8 SFN BOA]; *Donmor Industries Ltd. v Kremlin Canada Inc. (No. 2)*, 1992 CanLII 7543 (ONSC) [Tab 9 SFN BOA]; *2403177 Ontario Inc. v Bending lake Iron Group Limited*, 2017 ONSC 3566 [Tab 10 SFN BOA]

<sup>22</sup> *Robertson v Edmonton (City) Police Service*, 2005 ABQB 499 at para 18 (citing *Young v Young* (1990), 75 DLR (4th) 46 (BCCA), later endorsed by the SCC); para 20 (citing *Shum v Mitchell*, 2000 ABQB 323); paras 23, 30 [TAB 5 Trustees' BOA], cited in Sawridge #7 at paras. 33, 34 [TAB 11 Appellant's BOA]

<sup>23</sup> Sawridge #7, paras 59-70 [TAB 11 Appellant's BOA]

- (b) Provision 5.1-1 of the Code of Conduct: "When acting as an advocate, the lawyer must represent the client resolutely, and honourably, within the limits of the law...". Commentary 10 further explains that a lawyer has a responsibility to avoid and discourage the client from resorting to frivolous and vexatious objections, or tactics that will merely delay or harass the other side, as such practices can bring the administration of justice and the legal profession into disrepute.<sup>25</sup>
  - (c) Provision 5.1-2(b) of the Code of Conduct: a lawyer must not "take any step in the representation of a client that is clearly without merit."
19. As officers of the Court, lawyers act as gatekeepers of the public interest, protecting against the waste of judicial resources. In doing so, lawyers must apply objective standards, in line with their legal training, to assess and advise clients as to the merits of any claim. It is the lawyer's responsibility to refuse to advance claims on behalf of their clients that are vexatious, abusive or clearly without merit.
20. Kennedy failed to meet this objective standard. She attempted to advance a representative action with no proper foundation or authority,<sup>26</sup> and she advanced a meritless claim that was irrelevant to the Advice Application before the court. Her application on behalf of Stoney attempted to find a back door to re-litigate his membership issue, which already ended unsuccessfully before several different tribunals.
21. Despite the futile nature of the Stoney Application, and having regard to the fact that appellant fails to recognize that this is a case respecting a trust, Kennedy took frivolous steps that dissipated the Trust property, breaching the Oath she took as a lawyer. She again attempts to re-argue, in front of this Court, the issue of Stoney's membership in the SFN. These repetitive arguments were appropriately considered by the CM Justice in making his cost award.

**(b) Stoney's Claim is Irrelevant to the Advice Application and a Clear Abuse of Process**

22. The Stoney Application, which was ruled to be vexatious, was a waste of judicial and Trust resources. The enormous amount of work required to deal with and respond to meritless claims from interlopers depleted Trust resources, causing financial harm to the beneficiaries the Trust was established to assist. The Trust should be fully compensated for its costs of responding.
23. Kennedy knew that Stoney's bid for membership had been rejected by five different tribunals prior to the present application. The "novel" argument now raised about section 35 of the Constitution is not new.<sup>27</sup> However, even if it were new, this trust litigation is not the correct forum in which to argue it. The Advice Application is about whether the definition of "beneficiary" in the Trust Deed is

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<sup>24</sup> *Legal Profession Act*, RSA, L-8, s. 44(2) [TAB 6 Trustees' BOA]; *Rules of the Law Society of Alberta*, r. 67 (7) [TAB 7 Trustees' BOA]

<sup>25</sup> Law Society of Alberta *Code of Professional Conduct* (Sept 28, 2017), Chapter 5 [TAB 8 Trustees' BOA]

<sup>26</sup> See SFN Factum, paras 32-36

<sup>27</sup> See SFN Factum, paras 24-31



discriminatory and should be amended such that the discrimination is eliminated. It is not the forum to permit the airing of past grievances against the SFN.

24. Further, the Trust Deed specifically excludes enfranchised individuals from receiving benefits from the Trust.<sup>28</sup> The Advice Application will do nothing to change that. Given that Kennedy filed an application to intervene in the Advice Application about the Trust Deed, she can be presumed to have read the Trust Deed and the Advice Application. She therefore knowingly used court resources for the purpose of obstructing the orderly and efficient conduct of a judicial process involving a trust. There is no other conclusion other than to say that her actions were abusive, frivolous and vexatious.
25. The materials filed by Kennedy in Sawridge #6 through #8, and on this appeal, underscore this point. Kennedy makes just one passing acknowledgment of the Trust in her factum: at paragraph 24, she asserts that she "sought to protect the potential interests of her aboriginal client, [Stoney], as well as those of his identically or similarly situated siblings, in the process leading to the distribution of the 1985 Sawridge Trust". However, she continues two lines later: "The potential interest she sought to protect was rooted in the assertion the [Stoney Applicants were] entitled to membership in the band on a novel basis never adjudicated by any Court". This ignores the actual issue before the Court in the Advice Application, ignores issue estoppel and *res judicata* principles arising from the long history of Stoney's litigation, and ignores the CM Justice's direction nearly two years earlier that individual questions about membership have no place in the Advice Application.<sup>29</sup>
26. Kennedy now attempts to argue that she expected the Court to grant Stoney intervenor status on the basis of his *potential* claim as a member. This reasoning seeks to put the proverbial cart before the horse. Stoney could not establish an interest in the Advice Application without having first established that he has obvious, existing and established rights as a beneficiary. (And even then, attempts to intervene by beneficiaries have been rejected due to the delay and prejudice they would cause in expanding the Advice Application.<sup>30</sup>) Kennedy did not even attempt to argue his beneficiary status under the definition of beneficiary in the Trust.<sup>31</sup>
27. It is illogical to permit Stoney to have another kick at the can at the Trust's expense on the basis that he failed to raise an argument in prior litigation, and so wants to raise it now in the unrelated Advice Application. Plainly speaking, Kennedy ought to have known better and she should have done what any prudent lawyer following the Law Society Code of Conduct would have done: advise her client that his claim for membership by way of intervening in the Advice Application was futile.

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<sup>28</sup> 1985 Trust Deed, para 2(a), **Appendix B**

<sup>29</sup> Sawridge #3 at paras. 69, 70 [**TAB 3 Appellant's BOA**]

<sup>30</sup> *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 377 at paras. 28-30 ("Sawridge #5") [**TAB 6 Appellant's BOA**], aff'd *Twinn v. Twinn*, 2017 ABCA 419 at para. 20 [**TAB 7 Appellant's BOA**]

<sup>31</sup> *Supra* note 28

28. It is also worth comment that Kennedy's argument that the legal theory underlying the Stoney Application was never adjudicated<sup>32</sup> is in itself another example of abuse of process. She persisted in submitting the same arguments to show that he was not a vexatious litigant when she filed briefs for Sawridge #8.<sup>33</sup> She again persists in her submissions to this Court as summarized in paragraph 31 of her Factum.
29. This Court is urged to uphold the decision of the CM Justice, who had the discretion to control the process in his court after witnessing the multiple attempts to protract, expand and delay the court process without any regard for the waste of judicial and Trust resources. The joint and several nature of the costs award recognized that a cost award against Stoney, who is impecunious,<sup>34</sup> would not properly compensate the Trust. While costs awards may also have the effect of being a sanction arising from inappropriate behaviour, the purpose of costs in civil litigation is to compensate the successful party. The compensatory aspect of an award of costs against a lawyer is not novel.<sup>35</sup> It was clear that Kennedy held the reins to the patently abusive litigation and thus it is appropriate that she ought to now make the Trust whole.

**(c) Kennedy's Counsel Admitted it was "A Bridge Too Far"**

30. The admissions of Kennedy's counsel, Mr. Wilson, demonstrate that the application should not have been brought, was hopeless from the start and 'absolutely' had the effect of being an abuse of court processes. Her own counsel's statements indicate that she cannot escape the finding that her actions met the *Jodoin* threshold, leading to the cost award.<sup>36</sup>
31. The principles underlying the binding nature of a lawyer's admissions have been succinctly described as follows:<sup>37</sup>

Lawyers are agents for their clients. When lawyers speak, they speak on behalf of their clients. When they agree, they agree on behalf of their clients. The justice system would fall apart if these basic principles did not apply. These standards are not Draconian: a client can sue a lawyer who abuses the agency relationship between them.

32. Mr. Wilson's admissions made on behalf of Kennedy cannot be ignored. She cannot have the benefit of having such representations advanced on her behalf in the hope of a good result from the Court in Sawridge #7, and then when they are raised against her position in this appeal, suggest now that these admissions should not be considered.

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<sup>32</sup> Kennedy Factum, paras 30-33

<sup>33</sup> Sawridge #8, paras 115-116 [TAB 13 Appellant's BOA]

<sup>34</sup> *Stoney v Trustees for the 1985 Sawridge Trust*, 2017 ABCA 437 [TAB 10 Appellant's BOA]; *Stoney Security #2* [TAB 1 Trustees' BOA]

<sup>35</sup> *Supra* note 21

<sup>36</sup> Transcript of proceedings held July 28, 2017 at p. 5, lines 17-19; p. 7, lines 15-26, **Appendix C**; Sawridge #7 at para 18, 129-130 [TAB 11 Appellant's BOA]

<sup>37</sup> *Martin v. Busenius*, 1999 ABQB 100 at para. 24 [TAB 9 Trustees' BOA]



## V. CONCLUSION AND RELIEF SOUGHT

33. Kennedy was the primary architect behind this application. Stoney could not have made the legal determination of the potential success of his claim on his own.<sup>38</sup> For all these reasons, a joint and several costs award on a solicitor and own client basis against Kennedy is warranted.
34. Kennedy suggests that the amount being claimed in costs is excessive. While the amount has not been established, it is important to note that amount of solicitor client costs reflects numerous appearances and are an award of costs for two different parties. Further, the briefs filed by Kennedy on behalf of Stoney ran hundreds of pages. She cannot file extensive briefs including historic and constitutional arguments and expect that the replies will not be equally extensive and costly. Deference to the CM Justice is warranted and this decision should not be disturbed as costs awards are a significant tool, of which there are very few, that can be used by a Justice to control process.
35. For the above reasons, the Trustees pray to this Honourable Court that this appeal be denied with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12<sup>th</sup> DAY OF March, 2018.

Estimated Time of Argument: 30 minutes

DENTONS CANADA LLP

PER:

  
Doris Bonora  
Solicitors for the Trustees

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<sup>38</sup> Transcript of Questioning on Affidavit of Maurice Stoney (Sept. 23, 2016) at p. 9, lines 12-18; p. 26, lines 5-15, **Appendix D**

## TABLE OF AUTHORITIES

<b>Tab</b>	<b>Authorities</b>
1.	<i>Stoney v Twinn</i> , 2018 ABCA 81
2.	<i>Balogun v Pandher</i> , 2010 ABCA 40
3.	<i>Beacon Hill Service (2000) Ltd. v Esso Petroleum Canada</i> , 2012 ABCA 269
4.	<i>Alberta Rules of Court</i> , Alta. Reg. 124/2010, r. 10.50
5.	<i>Robertson v Edmonton (City) Police Service</i> , 2005 ABQB 499
6.	<i>Legal Profession Act</i> , RSA 2000, c. L-8, s. 44(2)
7.	Law Society of Alberta, <i>The Rules of the Law Society of Alberta</i> (June 10, 2017), r. 67 (7)
8.	Law Society of Alberta, <i>Code of Professional Conduct</i> (September 28, 2017), Chapter 5 (relevant extracts)
9.	<i>Martin v. Busenius</i> , 1999 ABQB 100

## **APPENDICES**

- Appendix A. Report of Civil Appeal No. 1703-0195AC dated March 1, 2018
- Appendix B. 1985 Trust Deed, para 2(a)
- Appendix C. Transcript of proceedings held July 28, 2017, pp. 5,7
- Appendix D. Transcript of Questioning on Affidavit of Maurice Stoney (Sept. 23, 2016), pp. 9, 26

# Tab A





COURT OF APPEAL OF ALBERTA

## REPORT OF CIVIL APPEAL

<b>Style of Cause:</b> Maurice Felix Stoney (A) v. Roland Twinn (R) and others	<b>Appeal No.:</b> 1703-0195AC
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## Trial Court Information

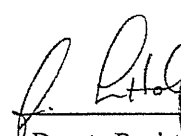

<b>Trial Court No.:</b> 1103 14112
<b>Heard by:</b> Mr. Justice D. R. Thomas
<b>at:</b> QB - Civil Edmonton, Alberta
<b>on:</b> July 12, 2017
<b>Citation Number:</b> 2017 ABQB 436

## Action Taken in Court of Appeal

<b>Date Appeal Filed:</b> August 11, 2017
<b>Place of Hearing:</b> Edmonton, Alberta
<b>Appeal Deemed Abandoned on:</b> March 1, 2018
<b>Result of Appeal:</b> Pursuant to Rule 14.67(2) of the Alberta Rules of Court, the above noted appeal has been deemed to have been abandoned as the security for costs ordered by Mr. Justice J. Watson, Mr. Justice F.F. Slatter, and Madam Justice M.B. Bielby on December 19, 2017 was not provided as ordered.

## Certificate

I certify that the information set out above is correct. Dated March 1, 2018, at Edmonton, Alberta.

  
Deputy Registrar, Court of Appeal  
  
ALBERTA bt

**Tab B**

119

SAWRIDGE BAND INTER VIVOS SETTLEMENT

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15<sup>th</sup>  
day of April, 1985

B E T W E E N :

CHIEF WALTER PATRICK TWINN,  
of the Sawridge Indian Band,  
No. 19, Slave Lake, Alberta,  
(hereinafter called the "Settlor"),

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN,  
GEORGE V. TWIN and SAMUEL G. TWIN,  
of the Sawridge Indian Band,  
No. 19, Slave Lake, Alberta,  
(hereinafter collectively called  
the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day

of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule hereto;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.

2. In this Settlement, the following terms shall be interpreted in accordance with the following rules:

- (a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time



would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band

No 19 under the Indian Act R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement; and

(b) "Trust Fund" shall mean:

- (A) the property described in the Schedule hereto and any accumulated income thereon;
- (B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;
- (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and
- (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

3.       The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.

4.       The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.

5.       Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

6. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number 8, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under section 12(2) thereunder.



The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

8.       The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power

- (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
- (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and
- (c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).

9.       Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.

11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.

12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITNESS WHEREOF the parties hereto have  
executed this Deed.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Bruce J. Thom  
NAME

A. Settlor Alberta

Box 326, Slave Lake, Alta  
ADDRESS

Bruce J. Thom  
NAME

B. Trustees:

1. Alberta

Box 326, Slave Lake, Alta  
ADDRESS

Bruce J. Thom  
NAME

2. B. J. Thom

Box 326, Slave Lake, Alta  
ADDRESS

Bruce J. Thom  
NAME

3. Alberta

Box 326, Slave Lake, Alta  
ADDRESS

Schedule

One Hundred Dollars (\$100.00) in Canadian Currency.



**Tab C**

Action No.: 1103 14112  
E-File No.: EVQ17SAWRIDGEBAND  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF EDMONTON

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

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN,  
BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees  
for the 1985 Sawridge Trust

Applicants

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P R O C E E D I N G S

---

Edmonton, Alberta  
July 28, 2017

Transcript Management Services, Edmonton  
1000, 10123 99th Street  
Edmonton, Alberta T5J-3H1  
Phone: (780) 427-6181 Fax: (780) 422-2826

1  
2 I will say that one of the cases that you cited was the *Morin* decision of Mr. Justice  
3 Graesser. And I do note that I think all counsel here are commercial litigators. In that  
4 instance, and I will say Justice Graesser case managed a very large piece of litigation that  
5 is on a long time and I know how careful he is a jurist, Justice Graesser had in front of  
6 him a claim that was advanced for dead people. That is people who were not in existence.  
7 He had assertions that certain people held title or ought to concede to certain lands and  
8 they did not. In that litigation, a notice to admit was served upon the parties. The lawyer  
9 involved didn't even respond to the notice to admit and I will say throughout the entirety  
10 of my legal career not dealing with a notice to admit has fairly significant consequences.  
11 And when the evidence, the only evidence before the Court, these people were dead when  
12 they started the action and they didn't control the title to which he was served a claim, the  
13 lawyer then filed an appeal. And I will say --

14  
15 THE COURT:

This is the lawyer Willier?

16  
17 MR. WILSON:

Willier, yes. And the reason I go through this,  
18 Sir, is I think quite candidly I've conceded that Ms. Kennedy prosecuted this action  
19 further than I would've, further than I think she ought to have, but we are not dealing  
20 with the circumstance like Willier where there are immutable facts on the record in the  
21 action. And in the face of those facts that he participated in creating by not filing a reply  
22 to the notice to admit, he filed an appeal. And in that instance, and the reason I go to the  
23 Graesser decision, why considered to be the leading member of this bench. He awarded --  
24 he had a payment to the court, not to the parties, of \$1,000. And then he indicated  
25 payments, and I apologize, one was AltaLink and I don't remember the other entity's  
26 name.

27  
28 THE COURT:

TransAlta wasn't it?

29  
30 MR. WILSON:

Yeah. And I believe it was about \$4,800 each.  
31 And the reason I use that juxtaposition, Sir, is in that instance the record is absolutely  
32 without any foundation. I will say I know very well two of my colleagues on the other  
33 table they'll say that's what we're dealing with here. And the difference is, Mr. Stoney is  
34 not dead. Mr. Stoney started as a member of the Sawridge Band. By an act of  
35 Mr. Stoney's father, he took steps to cease being a member of the Band and has tried  
36 repeatedly, sometimes inappropriately, to turn back time and to become a member again.

37  
38 I say this recognizing how serious this is, but also one of the lines in Stoney 5 was the  
39 administration of justice. And what Ms. Kennedy is guilty of, if she's guilty of something,  
40 is seeing a wrong and has persistently tried to right that wrong.  
41

1 Now, if I'm Mr. Molstad, I can tell you that the Band is the person that gets to determine  
 2 their membership and that is entirely appropriate. And in Mr. Stoney's case they've done  
 3 that. Appeals were made on two different levels. An additional attempt was made at the  
 4 Human Rights tribunal. And Mr. Stoney has been told, and I know he's been told this  
 5 because I told him this, he is at the end of his rope with respect to the Sawridge Band and  
 6 the Court system.

7  
 8 And the reason for that is background and history. It's one of Montgomery's campaigns in  
 9 World War II, it's a bridge too far. He would've been fine if he'd stopped at bridges, by  
 10 going for a third bridge the campaign itself stopped. In this instance, had -- if I'd been  
 11 engaged or consulted, had I read Sawridge 5, saw the foreshadowing, that is setting out  
 12 section 1.2, Pernell and Modelin, the fact that the Court is not, unlike earlier trust  
 13 litigation where often the trust ends up paying for part of the litigant's costs, the Court  
 14 could not have been clearer that is not going forward. And the Court indicated interlope.  
 15 That is, someone does not have a claim on the trust is coming forward and not only wants  
 16 to challenge, wants to be a member of the trial, presumably would make the trial more  
 17 complicated, more time consuming, higher costs for everyone. And it's not that  
 18 Mr. Stoney's counsel wouldn't be paid, it's that the trust and the trust property would be  
 19 depleted by however long that is, however the trial is prolonged by the addition of  
 20 Mr. Stoney.

21  
 22 Now, I can tell you that in the course of the last week, other than reading way too many  
 23 Sawridge decisions, I had occasion to speak in depth with Ms. Kennedy. And  
 24 Ms. Kennedy tried to convince me as to the merits of Mr. Stoney's case. And at a certain  
 25 point in time, I had to tell her that he has exhausted his remedies in the legal realm with  
 26 respect to the Sawridges and it's time to move on.

27  
 28 The reason I referred to the Graesser case is, when I read it, my immediate reaction  
 29 was --

30  
 31 THE COURT: I'm just going to -- Graesser case being the  
 32 TransAlta v. Morin --

33  
 34 MR. WILSON: Yeah. *Morin*, sorry. My apologies.

35  
 36 THE COURT: Yeah. It's okay. I just -- because I'll end up  
 37 getting a transcript of this, it's just easier for me to connect the dots. So, thank you.

38  
 39 MR. WILSON: I keep forgetting Mr. Justice Graesser writes a  
 40 few more than one.

41

1 THE COURT:

Yes, he's pretty prolific.

2

3 MR. WILSON:

I know.

4

5 As a seasoned litigator, I read the *Morin v. TransAlta and AltaLink case*, and I see a  
6 lawyer who has no instructions from his client. The client has no entitlement to tie up the  
7 land, participates in a legal process that results, that is not filing the notice to admit, so  
8 that the record crystalizes and could not be any clearer, and then files an appeal. And I go  
9 back to your decision talking about abuse of process, vexatious, et cetera, and that is --  
10 that is the Court regulating its process. I think it's Gascon in *Jodoin* said even in the  
11 context of a criminal case where we're going to go the extra mile to see that the criminal  
12 defendant gets every opportunity to put forward its face, even then the Court will look  
13 where there's an abuse of process and sanction it.

14

15 My submission would be the application that resulted in Sawridge 6 should not have been  
16 made. It was ill-advised. But was not done with bad motives, an attempt to abuse the  
17 process. It had that effect, I have to say in front of my friends it absolutely had that  
18 effect, but it is an advocate putting forward a position she believes in, believes in the  
19 remedy that her client is trying to seek. And I can say, having regard to what one of the  
20 items you indicated in your decision, was we don't even know if the other Stoneys ever  
21 provided instructions. The Stoneys are a little older. Some of them are not in the best of  
22 health. And we attempted on numerous occasions to assemble affidavits confirming at the  
23 time that they instructed Ms. Kennedy -- or, pardon me, Mr. Maurice Stoney to advance  
24 the litigation on their behalf. I can say, Sir, I am aware of the law that says hearsay  
25 evidence is no evidence, I also am aware of the decision by Mr. Justice McMahon who  
26 says using a hearsay affidavit is some evidence of bad counsel.

27

28 We assembled the best affidavits we could in a short period of time with people who  
29 weren't the easiest to get a hold of. And one brother and one sister of Mr. Stoney  
30 confirmed under oath that Ms. Kennedy had the instructions to act on their behalf in  
31 advancing this action. And we got a niece who indicated that she was aware of that. I am  
32 aware that's a hearsay affidavit, it is -- I will say in the federal courts hearsay affidavits  
33 are allowed. I'm not suggesting for a moment they're allowed in this court. I, in fact, use  
34 evidence -- I use case law that points out that's not allowed to counsel when they provide  
35 me with hearsay affidavits. In this instance, it was the best affidavit we could get having  
36 regard to your direction that we come forward on today's date.

37

38 I put that evidence before the Court in part so that you didn't think we were doing what  
39 was done in the *Morin* case that was addressed in the Graesser decision, that is, the  
40 people who, at least on the face of the action, saying they were seeking  
41 (INDISCERNIBLE) were actually seeking summary (INDISCERNIBLE).

1  
2 And, again, I apologize for not having affidavits from all of them but we did the best we  
3 could in the time we had.  
4

5 Now, Sir, you actually canvassed the various remedies with respect to counsel and you  
6 highlight contempt of court, which is the most serious instance; you highlight Law Society  
7 and the sanctions there. And then you raise the Court's own ability, and as Mr. Molstad  
8 has raised, the *Judicature Act* - ability to sanction counsel. And my only comment would  
9 be, with respect to each of those, is what the Court is trying to do, as you properly cite in  
10 your decision with respect to sanctions, is to change behaviour. It's the same rationale  
11 behind torts which is you're giving a tort award so that some other idiot isn't going to  
12 follow and do the same thing. And, with respect, I would submit to you that the  
13 seriousness of what Sawridge 6 is has been driven home to Ms. Kennedy. And, with  
14 respect, it's been driven home as much as an order of contempt or a referral to the Law  
15 Society. The decision is out there, we have a courtroom full of reports here to report on  
16 the matter.  
17

18 And I'm reminded of someone once asked Warren Buffett when he was testifying at the  
19 congress as to what was reasonable, and it was on the context of a company he owned  
20 and insider trading. And Mr. Buffett to the U.S. congress testified it meets a very easy  
21 standard. And the standard is, if they printed the story in your home town and your  
22 mother and your father had an opportunity to read it, would you be embarrassed? And,  
23 with respect, Ms. Kennedy and the Sawridge 6 decision has brought home the falling of  
24 continuing to prosecute the remedy she's seeking for Mr. Stoney. Which, after meeting  
25 Mr. Stoney, I understand. But there's a certain point in time the legal remedies have been  
26 exhausted. And, with respect, it'd be my submission to this Court that solicitor-client costs  
27 awarded against Ms. Kennedy are unnecessary, although clearly within the purview of this  
28 Court's inherent jurisdictions, the *Rules* and the *Judicature Act*. Those are my  
29 submissions, Sir.  
30

31 THE COURT:

Thank you, Mr. Wilson.

32  
33 Mr. Molstad?  
34

35 **Submissions by Mr. Molstad**  
36

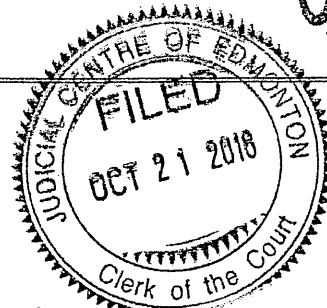
37 MR. MOLSTAD:

Sir, first of all, we submit that the facts  
38 (INDISCERNIBLE) are contained in the findings that you have already made in Sawridge  
39 6. And they're also find, we submit, in the affidavit of Chief Walter Twinn, and in the  
40 three written submissions that were filed on behalf of the Sawridge First Nation.  
41

**Tab D**



ORIGINAL



COURT FILE NUMBER: 1103 14112

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c. T-8, as am.

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS  
SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN,  
OF THE SAWRIDGE INDIAN BAND NO. 19

-----  
QUESTIONING ON AFFIDAVIT

OF

MAURICE STONEY  
-----

P. E. Kennedy, Ms.

For Maurice Stoney

D. C. Bonora, Ms.  
E. M. Lafuente, Ms.

For the Trustees of the  
Sawridge Band Inter Vivos  
Settlement

C. C. Osualdini, Ms.

For Cathrine Twinn

Joanne Lawrence, CSR(A)

Court Reporter

Edmonton, Alberta  
September 23, 2016

A.C.E. Reporting Services Inc.  
Certified Court Reporters

SCANNED

1 Q Okay. Can you -- do you understand where it says,  
2 "Application to be Added as a Party or Intervener  
3 by Maurice Felix Stoney and his Brothers and  
4 Sisters"?

5 A Yes.

6 Q So do you understand, then, sir, that you are  
7 applying to be added as a party to Court of Queen's  
8 Bench Action Number 1103 14112?

9 A Yes.

10 Q Okay.

11 MS. KENNEDY: That's the court number.

12 A Okay.

13 Q MS. LAFUENTE: And, alternatively, you're  
14 seeking to be added as an intervener in that party;  
15 is that correct?

16 A Intervener?

17 MS. KENNEDY: He is not going to understand  
18 that at all.

19 Q MS. LAFUENTE: Okay. Okay. Fair enough,  
20 sir. Okay. Can I just draw your attention, then,  
21 to where it says, under -- beside "document," "By  
22 Maurice Felix Stoney and his brothers and sisters"?

23 A Application... Yeah.

24 Q Okay. You're bringing this application on behalf  
25 of your brothers and sisters?

26 A Yes.

27 Q Okay. And do you have their consent to do that?

1 Q MS. LAFUENTE: Okay, sir. I've placed before  
2 you a decision of the Federal Court of Appeal,  
3 Docket Number A-326-98. Do you have that in front  
4 of you?

5 A Yes.

6 Q Okay. And when -- sorry, sir. Halfway down the  
7 page, you see the plaintiffs listed. Do you see  
8 your name, Maurice Stoney, listed as a plaintiff in  
9 that action?

10 A Yes.

11 Q Okay. And, sir, were you represented by counsel in  
12 this action? You had a lawyer, I should ask?

13 A Yes.

14 Q Mr. Abrahmets?

15 A Abrahmets, yeah.

16 Q Abrahmets? Thank you. Sir, I'm going to read you  
17 paragraphs 4 and 5 and 6 of this decision, and this  
18 is a decision of Justice Evans of the Federal Court  
19 of Appeal. (As read)

20 It was conceded by counsel for the  
21 respondents --

22 And the front page lists the  
23 respondents as the plaintiffs.

24 -- that without the proposed  
25 amending paragraphs, the unamended  
26 Statement of Claim discloses no  
27 reasonable cause of action insofar

1 as it asserts or assumes that the  
2 respondents are entitled to band  
3 membership without the consent of  
4 the band. It is clear that until  
5 the band's membership rules are  
6 found to be invalid, they govern  
7 membership of the band, and the  
8 respondents have, at best, a right  
9 to apply for the band for  
10 membership -- sorry, to the band for  
11 membership. Accordingly, the  
12 Statement of Claim against the  
13 appellants, Walter Patrick Twinn as  
14 chief of the Sawridge Indian band  
15 and the Sawridge Indian band, will  
16 be struck as disclosing no  
17 reasonable cause of action.

18 Do you see that, sir?

19 MS. KENNEDY: Those are what the words on  
20 the page say, and what the legal argument means and  
21 the intent that it has with respect to this  
22 particular proceeding are legal questions, and I  
23 will be making argument on them.

24 MS. LAFUENTE: Okay.

25 MS. KENNEDY: And Mr. Stoney will not be  
26 answering questions about legal interpretation.

27 MS. LAFUENTE: Okay. I think my question to

1 Mr. Stoney was, had he ever been told by the  
2 Federal Court that he did not have an automatic  
3 right to membership, to which --

4 MS. KENNEDY: And --

5 MS. LAFUENTE: Just a second, Ms. Kennedy.  
6 To which he indicated he had not been told that.

7 MS. KENNEDY: No, and he had not. This is a  
8 judgment. He doesn't read --

9 MS. LAFUENTE: Of the Federal Court.

10 MS. KENNEDY: -- judgments of the Federal  
11 Court. His lawyer may very well. What his lawyer  
12 says to him is a question of solicitor-client  
13 privilege, and I am telling you that, as his  
14 lawyer, I will be making legal arguments.

15 MS. LAFUENTE: Okay.

16 MS. KENNEDY: That's the end of the  
17 questions on that.

18 MS. LAFUENTE: Well, I have a couple more  
19 questions.

20 Q MS. LAFUENTE: Sir --

21 MS. KENNEDY: Fine, but we're not going to  
22 be answering them.

23 Q MS. LAFUENTE: Sir, did you read the Federal  
24 Court of Appeal decision?

25 MS. KENNEDY: Don't answer that.

26 MS. LAFUENTE: You're objecting to the  
27 question of whether he read it?

1 MS. KENNEDY: Yes, I am.

2 MS. LAFUENTE: Okay. We'll put your  
3 objection on the record.

4 MS. KENNEDY: That's right.

5 OBJECTION TO QUESTION:

6 Sir, did you read the Federal Court of  
7 Appeal decision?

8 MS. LAFUENTE: I'd ask that this Federal  
9 Court of Appeal decision be marked for  
10 identification.

11 MS. KENNEDY: It doesn't need to be marked  
12 for identification. It's clear what it is, and you  
13 can cite it any time you want.

14 MS. KENNEDY: I'm going to ask for it be  
15 marked for identification because we're going to  
16 probably need to proceed with these objections and  
17 deal with them, and it is going to be much easier  
18 for the Court if we can identify what document we  
19 were each looking at. And there is no prejudice to  
20 you of marking it for identification purposes.

21 MS. KENNEDY: No, and there is no need to do  
22 it either. Go ahead and do it.

23 MS. LAFUENTE: Thank you.

24 MS. KENNEDY: You don't need one with an  
25 Exhibit 'D' stamp on it that's from Roland Twinn's  
26 Affidavit --

27 MS. LAFUENTE: That's the one that I have, so