Clerks' Stamp:
Court of Appeal of Alberta.

COURT OF APPEAL FILE NUMBER	1703-0288AC
COURT FILE NUMBER	1103 14112 and 1403 04885
COURT	~~COURT OF QUEEN'S BENCH OF ALBERTA~~
REGISTRY OFFICE	EDMONTON

REGISTRAR FILED FEB 02 2018 Court of Appeal of Alberta

Fast Track

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED

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 Trust") and THE SAWRIDGE TRUST ("Sawridge Trusts")

AND

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN OF THE SAWRIDGE INDIAN BAND NO. 19 August 15, 1986 (the "1986 Trust")

APPLICANT	CATHERINE TWINN, as Trustee for the 1985 Trust and the 1986 Trust
STATUS ON APPEAL	Appellant
RESPONDENTS	ROLAND TWINN, EVERETT JUSTIN TWINN, CATHERINE TWINN, BERTHA L'HIRONDELLE, AND MARGARET WARD, as Trustees for the 1985 Trust and 1986 Trust
STATUS ON APPEAL	Respondents
RESPONDENT	OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA
STATUS ON APPEAL	Respondent
DOCUMENT	**FACTUM**

Appeal from the Decision of The Honourable Mr. Justice R.P. Belzil
Dated the 13th day of October, 2017, Presently Not Entered

FACTUM OF THE RESPONDENTS SAWRIDGE TRUSTEES AND FOUR SAWRIDGE TRUSTEES

For the Respondents Roland Twinn, Everett Justin Twinn, Catherine Twinn, Bertha L'hirondelle, And Margaret Ward, as Trustees for the 1985 Trust and 1986 Trust ("Sawridge Trustees")

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COURT OF APPEAL OF ALBERTA

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Part 1 - Facts

1. The underlying proceedings concern two trusts: the Sawridge Band Inter Vivos Settlement created on April 15, 1985 ("1985 Trust"), and the Sawridge Trust settled on August 15, 1986 (the "1986 Trust"). Each has five trustees, and the Appellant is one of those trustees for both trusts. This factum is jointly filed by the Respondents, the other trustees, who for ease of reference will be referred to herein as the "Majority Trustees".

2. In her original application, the Appellant sought full indemnification of her legal fees, past and future, for her participation in Court of Queen's Bench Action No. 1103 14112 (the "2011 Action"), involving the 1985 Trust, and Court of Queen's Bench Action No. 1403 04885 (the "2014 Action"), which involves both the 1985 Trust and the 1986 Trust.

3. The 2011 Action was filed by the trustees of the 1985 Trust, and is being advanced by the Majority Trustees as the applicant. The Appellant has chosen to participate individually to advance various positions that she asserts will not be otherwise considered by the court. The Appellant is advancing the 2014 Action, in which she takes issue with the appointment of trustees in the 1985 Trust and 1986 Trust.

4. Since 2014, the Appellant has taken active, and sometimes counterproductive, steps in the 2011 Action. She has taken positions on every contested interlocutory application, always contrary to the positions taken by the Majority Trustees. None of the contested interlocutory applications supported by the Appellant have been successful. She did not request any costs award on those applications against any party. The Appellant then brought the application that is the subject of this appeal, seeking full reimbursement from the 1985 and 1986 Trusts for all of her past legal fees and full indemnification on a prospective basis for all future costs she incurs.

Twinn v Twinn, 2017 ABCA 419 at paras 4, 18, 21
Respondents' Book of Authorities, Tab 1

The Order of the Honourable Justice Thomas, July 5, 2017
Respondents' Book of Authorities, Tab 2

The Order of the Honourable Justice Nielsen, May 16, 2014
Respondents' Book of Authorities, Tab 3

The Order of the Honourable Justice Ackerl, October 1, 2014
Respondents' Book of Authorities, Tab 4

5. The Honourable Justice Belzil (the "Hearing Judge") heard the Appellant's application, and dismissed it without prejudice to raise the same issues at a later date. The Hearing Judge did not hold that the Appellant will never be entitled to reimbursement or indemnification. Instead, he decided that her application was premature because he was unable to make the factual determinations and decisions about credibility that she sought at this interlocutory stage of the proceedings. The Hearing Judge repeatedly referred to an inability to determine at this stage of the proceedings whether past actions, or indeed future steps, taken by the Appellant were "reasonable" or within the bounds of her duties as a trustee (two of the branches of the indemnification test advanced by the Appellant).

Transcript of Proceedings: p4, lines 6-18; p49, lines 3-21

Part 2 - Grounds of Appeal

6. In her factum, the Appellant cites three grounds of appeal, although four grounds were listed in the Civil Notice of Appeal. Her factum does not address the ground numbered as #3 in the Civil Notice of Appeal, which listed 13 allegations and contended that the Hearing Judge erred by not finding them as facts. If the Hearing Judge had made factual findings in respect of those 13 allegations, it would have amounted to a determination of all or part of the merits of the 2011 Action. (The Hearing Judge repeatedly declined to make such findings for that very reason.) The Majority Trustees understand the omission of that ground in her factum to mean that the Appellant is not pursuing her appeal of the decision on that basis.

7. The Majority Trustees are therefore addressing the three grounds set out in paragraph 19 of the Appellant's factum. Their position, in the same order, is as follows:

(a) **First Ground** - The Hearing Judge did not fail to consider or apply the test for trustee indemnification, and did not fail to interpret the Trust Deed correctly. There are numerous exchanges in the transcript of the hearing between the Hearing Judge and counsel on those very issues. The Hearing Judge considered and applied the "*Waters*" test, found that no determination could be made on key elements of the test until the hearing of the merits, and dismissed the request without prejudice. Similarly, the Hearing Judge interpreted the Trust Deed as a whole, and determined that paying full indemnity costs to the Appellant at this time was not warranted.

Applying the test, or interpreting the document, and coming to a different conclusion than the Appellant wanted does not amount to an error of law.

(b) **Second Ground** - The 2014 Action is not concluded. As the Appellant herself submits, "the parties agreed to transfer certain issues to private arbitration". That arbitration has not been conducted. Certain other issues may proceed before the Court if not resolved at arbitration. No discontinuance of the 2014 Action has been filed. The Hearing Judge cannot have committed a factual error by not considering the 2014 Action to be at an end, because it is not.

Appellant's Factum, page 11, para 54

(c) **Third Ground** - The Hearing Judge was called upon to apply the legal test to the facts in this case. The Hearing Judge did so. It is not an error for the Hearing Judge to have focussed on the application before him, rather than applying the test to hypothetical situations of hypothetical trustees. Public policy considerations can displace the legal test only in the clearest cases of harm to the public.

Part 3 - Standard of Review

8. The Majority Trustees have a few points to add to what is stated by the Appellant in paragraphs 20 and 21 of her Factum. First, the Majority Trustees believe it is important that this Court has recognized the deference that should be afforded to chambers judges because they must balance competing interests. The Court of Appeal will not interfere with the exercise of discretion by a chambers judge unless the decision was unreasonable.

Re Indian Residential Schools, 2001 ABCA 216 at para 23
Respondents' Book of Authorities, Tab 5

9. The standard of review for the interpretation of a trust deed, like that for a contract, is almost always palpable and overriding error, which means deference. An error in such an interpretive exercise would be one of mixed fact and law. It is only if there is an extricable error of law, which is a rare event, that the standard of review would be correctness.

Creston Molly Corp v Sattva Capital Corp, 2014 SCC 53 at paras 50-55
["***Sattva***"]
Respondents' Book of Authorities, Tab 6

Part 4 - Argument

(1) First Ground: No Error of Law in Considering Indemnification

10. The Appellant asked the Hearing Judge to find that she should be indemnified in one of two ways. The first was to apply a three-part test, referred to by her counsel as the "*Waters* test", and order full indemnification for her legal costs accordingly. The second was to interpret the 1985 Trust Deed as permitting full indemnification of her legal costs. Both of these requests were fully considered by the Hearing Judge, and were rejected. However, the decision made by the Hearing Judge does not accord with the result the Appellant wanted. She characterizes that as an error of law.

(a) *"Waters"* Test

11. The test propounded by the Appellant for the indemnification of a trustee was a common law test she referred to as the "*Waters* test": (a) the expenses are to arise out of an act or within the scope of the trusteeship duties and powers; (b) the expense is reasonable; and (c) the trustee is duty-bound.

Appellant's Factum, page 5, para 25

12. The Appellant's assertion that the Hearing Judge failed to consider the *Waters* test is at odds with the transcript of the hearing, which is replete with exchanges between counsel and the Hearing Judge on that very issue.

> Transcript of Proceedings: p8, line 9 through p9, line 38; p10, lines 33-35; p12, lines 17-36; p13, lines 6-29; p18, line 6 through p19, line 34; p21, lines 8-34; p22, line 19 through p23, line 4; p32, line 36 through p34, line 10; p41, line 38 through p42, line 5; p48, lines 21-24; p48, line 38 through p49, line 21

13. The considerations that were weighed by the Hearing Judge in respect of the test were:

(a) It is premature to determine whether the Appellant's actions and positions fall within the scope of her trusteeship duties and powers. She is actively opposing the position of the Majority Trustees. It is unclear that these expenditures arise within the scope of the Appellant's duties and powers as a trustee, insofar as there has been no determination that her positions have merit. It is unclear that a dissenting

trustee should be fully indemnified in advance by the trust for taking whatever legal steps she wants, without regard to the merits of her positions.

Transcript of Proceedings: p 10, lines 10-15, 24-28, p11, lines 4-39; p22, line 19-p23, line4

(b) It is premature to determine whether the Appellant's legal positions and the steps she has taken in the proceedings are "reasonable", and thus whether her legal fees are "reasonable", as the merits of her positions have not been determined. The Majority Trustees put forward evidence in their materials before the Hearing Judge of many examples of behaviour by the Appellant they believe to be clearly unreasonable, such as supporting unsuccessful positions in many interlocutory applications (particularly when her participation in them was unnecessary). The Hearing Judge did not err in finding that the determination of "reasonableness" of the Appellant's participation in litigation, and expenses, will be best decided by the Justice (or arbitrator) who will hear the 2011 Action and/or the 2014 Action.

Transcript of Proceedings: p31, lines 2-20; p33, line 17-p34, line 22

Questioning of Catherine Twinn, p 567, lines 2 to 13
Respondents' Extracts of Key Evidence at R31

Undertakings 60-61 from Questioning of Catherine Twinn
Respondents' Extracts of Key Evidence at R32

(c) It is premature to determine whether the Appellant was "duty-bound" to advance the positions she is taking, as the Appellant, of her own accord, is interpreting her "duty" as a fiduciary more broadly than the Majority Trustees, and extends it to a broader group of people. The Hearing Judge questioned whether the Appellant was actually "duty-bound" to advance positions for the protection of this broader group, and found that it was an issue to be determined on the substantive application.

Transcript of Proceedings: p11, lines 4-39; p33, line 23-p34, line 31

14. Further, it was correct for the Hearing Judge to conclude that there was no legal precedent supporting the position advanced by the Appellant. When the Appellant's counsel disagreed with the Hearing Judge's conclusion that he could not make the findings the *Waters* test required before a determination of the merits, he invited counsel (several times) to show him legal authority that

his interpretation was incorrect. The Appellant could point to no authority in which the order she sought was granted on the basis of the test she advanced, nor did she reference any authority supporting the application of this test to award a full indemnity advance costs award to a dissenting trustee. It is not an error of law for the Hearing Judge to take that into consideration.

Transcript of Proceedings: p8, line 9 - p9, line 7; p10, lines 33-35; p12, lines 17-19; p13, lines 6-29; p19, lines 1-15; p32, lines 36-38

(b) Interpretation of Trust Deed

15. The Appellant also asserts that the Hearing Judge incorrectly interpreted the Trust Deed of the 1985 Trust, which would be an error of mixed fact and law, as it is an interpretive exercise. The finding of the Hearing Judge on this issue cannot be disturbed absent a palpable and overriding error.

Sattva, *supra* at paras 45-47, 49-55
Respondents' Book of Authorities, Tab 6

Housen v Nikolaisen, 2002 SCC 33 at para 36
Respondents' Book of Authorities, Tab 7

16. The Hearing Judge turned his mind to interpreting the Trust Deed. He took a practical, common-sense approach to doing so, in accordance with modern interpretive principles. On its face, the Trust Deed speaks of indemnification for "administration costs and expenses", and later qualifies this is to be "reasonable reimbursement... for costs... incurred in the administration of the Trust". The language does not specifically authorize the indemnification of legal fees for a dissenting trustee who takes steps of her own initiative in an application for advice and direction that has already been brought by the Majority Trustees. Whether legal fees of a dissenting trustee in these circumstances qualify as "costs incurred in the administration of the Trust", and moreover whether they were "reasonable", are factual findings that the Hearing Judge determined are appropriately made by the judge hearing the substantive application.

Transcript of Proceedings: p5, lines 33-37; p6, lines 24-37; p9, lines 14-27; p10, lines 24-28; p25, line 20-p29, line 23; p32, line 40-p33, line 15; p48, line 38-p49, line 10

1985 Trust Deed, sections 9, 13
Respondents' Extracts of Key Evidence at R11-R13

Sattva, *supra* at paras 46, 47
Respondents' Book of Authorities, Tab 6

17. The Hearing Judge rightly found that it would be premature to determine those issues now, as the reasonableness and necessity of the Appellant's individual participation in these proceedings is intrinsically linked to the findings on the substantive hearing of the application for advice and direction. It is only following a determination of the merits of the positions the Appellant is putting forward that it can be determined whether her participation was "reasonable" or furthered the administration of the Trust. This does not demonstrate a failure to consider the law; rather, it demonstrates that the Hearing Judge considered what he was being asked to interpret, what determinations he would need to make in order to do so, and what would be required for those determinations. It is in no way an error for the Hearing Judge to recognize that he cannot make findings on an interim application that presume outcomes of the substantive hearing, and to decline to put the cart before the horse. It is not an error for the Hearing Judge to refuse to make important factual findings that would tie the hands of the judge hearing the substantive application.

Transcript of Proceedings: p1, lines 21-25; p48, lines 16-19

18. The Hearing Judge also found that the paragraph dealing with indemnification could not be read in isolation, and the existence of the "majority rules" clause in the Trust Deed must also be considered. The indemnification provision, as interpreted by the Hearing Judge, did not clearly provide for indemnification of the actions of a dissenting trustee that were not established to be reasonable or necessary to the administration of the trust. Again, the Hearing Judge held that the judge hearing the substantive application is the one who needs to make those factual determinations.

19. These findings of the Hearing Judge are entitled to deference. The Appellant has not met the standard required to overturn the decision; rather, she has merely established that she disagrees with the finding that her application is premature. This ground of appeal is not only an appeal of the Hearing Judge, but also of the majority decision of the trustees made under the Trust Deed to refuse such reimbursement.

Affidavit of Paul Bujold sworn February 15, 2017 at paras 128-130
Respondents' Extracts of Key Evidence at R35, R36

20. The Hearing Judge dismissed the application without prejudice to the Appellant's ability to raise these arguments at a later time in the proceedings. The Majority Trustees themselves took the position that a dismissal of the Appellant's application should be on a without prejudice basis. The Hearing Judge did not make a final determination that the Appellant will never be in a position to

obtain indemnification; rather, he decided that her application was premature and he was unable to make the factual determinations she sought at this interlocutory stage of the proceedings. This does not constitute a failure to consider or apply the test, nor does it constitute an appealable error.

Transcript of Proceedings: p30, lines 20-41; p31, lines 13-20; p49, lines 9-21

(2) Second Ground: No Error of Fact Regarding 2014 Action

21. The Appellant asserts that "[t]he 2014 Action was effectively concluded in early 2017, as the Trustees agreed to transfer the outstanding issues to private arbitration, which has been scheduled".

Appellant's Factum, page 2, para 6

22. The October 4, 2016 Decision and Order of the Honourable Justice Graesser referred issues for which a dispute mechanism is provided in the Trustees' Code of Conduct to arbitration. There was an express provision in his Decision and the Order that, "Any Trustees removed at the Code of Conduct Process will continue to have the right to fully participate in Queen's Bench Actions 1103 14112 and 1403 04885 in the same manner as if they were still a Trustee." [underlining added] If the 2014 Action truly was pre-empted or concluded, this provision would be meaningless. Further, the Order provides, "To the extent that the issues raised by the Plaintiff in Action No. 1403 04885 are not subsumed in the [arbitration] process, the Plaintiff may pursue these proceedings in Action No. 1403 04885." Again, this clearly contemplates that the 2014 Action is not concluded, but has been held in abeyance pending the completion of the arbitration.

Twinn v Twinn, 2016 ABQB 553 at para 83(c)
Respondents' Book of Authorities, Tab 8

Order of October 4, 2016 of the Honourable Justice Robert A. Graesser, paras 2(c), 6 [**"Graesser Order"**]
Respondents' Book of Authorities, Tab 9

23. No discontinuance of the 2014 Action has been filed with the Court of Queen's Bench. Further, although she asserts that the 2014 Action is concluded, the Appellant seeks as relief on this appeal her future legal fees in respect of the "Actions", which she defines as including the 2014 Action. If the 2014 Action were truly at an end, there would be no "future legal fees" to seek. It is not a fact that the 2014 Action is concluded. The Hearing Judge cannot be found to have made an error of fact because he did not consider it as done.

Appellant's Factum, page 1, para 2; page 12, para 62(iii)

24. In any event, even if it is at an end, the Appellant has not been precluded from seeking costs of the 2014 Action. There is a provision in Justice Graesser's Order for all of the trustees, including the Appellant, to receive full indemnity for their reasonable legal costs in respect of the arbitration, with a further provision that the arbitrator will determine what is reasonable. All of the trustees are to submit bills periodically to the arbitrator. The Order also provided for reimbursement to the Appellant for the steps she had taken in the 2014 Action up to December 16, 2015, and declined to award costs for the application heard on October 4, 2016. The issue of legal costs in respect of the 2014 Action have either already been dealt with, or they are to be dealt with according to a mechanism provided for in the Order. It is not open to the Appellant to now seek another decision from the Court in respect of the same legal costs.

Transcript of Proceedings: p4, lines 6-25; p19, lines 30-34; p44, lines 7-20; p45, line 18-p46, line 12

Graesser Order, paras 2(d), 3
Respondents' Book of Authorities, Tab 9

(3) Third Ground: No Error Respecting Public Policy Concerns

25. The Appellant asserts that the Hearing Judge "failed to consider how Ms. Twinn is to continue putting forward her positions in the 2011 Action when she is not indemnified by the Trusts", and further asserts, "[i]t is not practical or likely possible for Ms. Twinn to continue to effectively advocate in the 2011 Action, unfunded". There is no evidence that Ms. Twinn will not continue, and in fact to date Ms. Twinn has actively participated in virtually every aspect of the 2011 and 2014 Actions and the arbitration. While the Appellant does not specify the nature of the alleged error, it would seemingly be an error of law, reviewable on a correctness standard.

Appellant's Factum, page 3, para 13

26. When the Hearing Judge is called upon to apply a legal test to facts, he cannot be expected to allow hypothetical public policy concerns to override the specific application. Public policy should be invoked to override a legal test only in clear cases, in which the harm to the public is substantially incontestable. Further, in this case, the Hearing Judge was not specifically asked to do so by the Appellant.

Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways), 2010 SCC 4 at para 117
Respondents' Book of Authorities, Tab 10

27. The Appellant confirmed in an affidavit before the Court that she had been self-funding. She would not respond during Questioning to inquiries about her finances and the funding of her substantial legal bills to date. When appearing before the Hearing Judge, the Appellant's counsel made the following submissions:

> We also, and I again want to be clear, weren't suggesting in our submissions that Ms. Twinn couldn't afford litigation. What I was saying [about the precedent this may set] was providing an example of a trustee who might not be able to afford. So, I just want to make sure that my submissions were clear in that regard.
>
> Affidavit of Catherine Twinn sworn December 15, 2015 at para 31
> Respondents' Extracts of Key Evidence at R2, R3
>
> Questioning of Catherine Twinn on December 15, 2016 at p408, lines 19-25
> Respondents' Extracts of Key Evidence at R21
>
> Questioning of Catherine Twinn July 20 and 21, 2017 at p489, lines 17-27; p490, lines 19-27; p491, lines 1-23; p532, lines 18-27; p533, lines 1-12
> Respondents' Extracts of Key Evidence at R24-R26, R29, R30
>
> Undertaking 82 from Questioning of Catherine Twinn
> Respondents' Extracts of Key Evidence at R33
>
> Transcript of Proceedings: p46, lines 35-38

28. The Majority Trustees do not see how, in light of her own evidence and submissions to the Hearing Judge, the Appellant can advance as an appealable error any failure to consider potential difficulty in continuing to afford counsel. She represented to the Hearing Judge that she could.

29. A secondary complaint by the Appellant in this regard is that the Hearing Judge not only failed to consider her financial ability to advance her litigation, but failed to consider the effect that this decision *might* have on *other* dissenting trustees, who *might* not pursue litigation without full, advance indemnification.

30. The Hearing Judge was called upon to apply the legal test to this case, and determine whether indemnification was warranted. He did so. That was not an error of law. The Hearing Judge determined that, on the facts of this case, the application was premature. This finding cannot be overturned on the basis that in another, hypothetical case with different facts a different result might be desirable.

31. There is no clear harm to the public justifying the displacement of the established legal test in favour of public policy considerations. Rather, there are public policy considerations that militate *against* the kind of order sought by the Appellant, and the Hearing Judge rightly noted those as well. In particular, there is the need to consider the precedent of fully indemnifying a dissenting trustee for voluntary participation in a court action, before a determination of the merits of that action, on the basis that the dissenting trustee does not believe the other trustees are advancing the litigation in the same manner that she would.

Transcript of Proceedings: p10, lines 10-35; p13, lines 27-29; p45, line 8-p46, line 11

32. The Appellant also asserts that the Majority Trustees are somehow relying on her advocacy in the 2011 Action and therefore it is "manifestly unjust" to deny her indemnification of all of her costs in that regard. This position is not well-founded. The acknowledgment of her participation does not constitute reliance. A plaintiff in any action might acknowledge that there are two co-defendants. If someone sought leave to intervene, that same plaintiff might acknowledge the positions those parties are taking, and in light of those positions, conclude that an intervener is unnecessary. Those acknowledgements do not constitute "reliance", and certainly do not ground an argument that the plaintiff must fund the entirety of the defendant's legal bill, simply because he pointed out that their position rendered an application to intervene unnecessary. The Appellant has been clear about her intention to continue her participation. She was not proposing to cease participation if an intervener was added. Concluding that the position the intervener proposed to represent would already be covered does not create obligations.

Appellant's Factum, pages 9-10, paras 47-50

33. In any event, the Majority Trustees have maintained throughout this litigation that the Appellant is not advancing anything that will not be before the Court. The Hearing Judge pursued that point with the Appellant, and questioned, "why should I presume that the majority will not act appropriately and have [such] evidence before the Court?" The Hearing Judge, noting the many boxes of filings to date in these proceedings, questioned the basis on which he could presume that the Majority Trustees would not advance all issues on the substantive hearing, thus making the Appellant's advocacy necessary.

Transcript of Proceedings: p4, lines 22-25; p15, lines 24-39; p45, line 19-p46, line 11

Part 5 - Relief Sought

34. The Majority Trustees seek dismissal of the appeal with enhanced costs to them, and further seek a special direction with respect to costs.

> *Alberta Rules of Court*, Alta Reg 124/2010, r 14.25(1)(f) ["***Rules of Court***"]
> Respondents' Book of Authorities, Tab 11

35. Included in the Appellant's Book of Authorities, at Tab 2, is a letter from Parlee McLaws LLP to the Honourable Justice D.R.G. Thomas of September 18, 2017. That letter was not put in evidence before the Hearing Judge, nor is it a legal authority contemplated by the *Rules*.

> *Rules of Court*, r 14.25(1)(h)
> Respondents' Book of Authorities, Tab 11

36. The Appellant's Extracts of Key Evidence are also in breach of the *Rules*, in particular Rule 14.27(1)(b), because the Appellant has included substantially more evidence, exhibits and other materials than are likely to be needed to resolve the issues in the appeal. This appeal involves straightforward determinations that do not require a substantial record. It was neither reasonable nor necessary for the Appellant to inundate this Court, and the Majority Trustees, with the voluminous materials reproduced and incorporated by reference in the two Volume Extracts of Key Evidence.

> *Rules of Court*, r 14.27(1)(b)
> Respondents' Book of Authorities, Tab 11

37. As a result, the Majority Trustees seek additional costs in the sum of $1,500.00 from the Appellant payable in any event of the underlying causes and within a reasonable time pursuant to Rule 14.90(1)(a)(ii) or (iii). This order is sought whether the Appeal is successful, dismissed or enjoys mixed success.

> *Rules of Court*, r 14.90(1)(a)(ii), (iii)
> Respondents' Book of Authorities, Tab 11

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of February, 2018.
Estimated time for oral argument: 45 minutes, to be split between counsel for the two Respondents.

Kenneth B. Haluschak
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TABLE OF AUTHORITIES