

Registrar's Office
TransCanada Pipelines Tower
2600, 450 - 1st ST SW
Calgary AB T2P 5H1

TEL: (403) 297-2208
FAX: (403) 297-5284



COURT OF APPEAL OF ALBERTA

Registrar's Office
Law Courts Building
1A Sir Winston Churchill Square
Edmonton AB T5J 0R2

TEL: (780) 422-2416
FAX: (780) 422-4127

I. Moore
Deputy Registrar, Calgary and Edmonton

<https://albertacourts.ca>

December 18, 2017

Maurice Felix Stoney
500 4 Street
Slave Lake, AB T0G 2A1

D.C. Bonora/ A. Loparco
Dentons Canada LLP
Fax: 780-423-7276

E.H. Molstad, Q.C.
Parlee McLaws LLP
Fax: 780-423-2870

K.A. Platten, Q.C.
McLennan Ross LLP
Fax: 780-482-9100

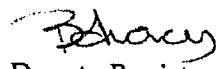
Re: *Maurice Felix Stoney (A) v. Roland Twinn (R) and others*
Appeal No. 1703-0195AC

This is to advise that the reserved judgment in the above named case will be released the morning of **December 19, 2017**. On that day, **between 9:30 a.m. and 10:00 a.m.**, a copy of the judgment will be sent to you as set out above.

That same day, the judgment will also be sent to the Canadian Legal Information Institute (CanLII) at 10:00 a.m. for publishing to its website, which may occur that same day. Any concerns with on-line judgments should be raised directly with CanLII.

If you have any concerns about the judgment being sent to you as set out above, please contact our office as soon as possible to make alternate delivery arrangements.

Thank you,


for Deputy Registrar
Court of Appeal - Edmonton
/bt

Date: DEC 19 2017

As indicated above, attached is the judgment which was released today.

Thank you.

In the Court of Appeal of Alberta

Citation: Stoney v Trustees for the 1985 Sawridge Trust, 2017 ABCA 437

Date: 20171219
Docket: 1703-0195-AC
Registry: Edmonton

Between:

Maurice Felix Stoney and His Brothers and Sisters

Respondents
(Appellants)

- and -

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

Applicants
(Respondents)

- and -

Public Trustee of Alberta

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

- and -

Sawridge First Nation

Applicant
(Respondent)

The Court:

**The Honourable Mr. Justice Jack Watson
The Honourable Mr. Justice Frans Slatter
The Honourable Madam Justice Myra Bielby**

Memorandum of Judgment

Application for Security for Costs

Memorandum of Judgment

The Court:

[1] The applicants (respondents in the appeal) have applied for security for the costs of this appeal.

[2] Mr. Stoney, the appellant, has engaged in 17 years of litigation in an attempt to establish his right to be a member of the Sawridge First Nation. He has been unsuccessful in all of his legal proceedings: see for example *Stoney v Sawridge First Nation*, 2013 FC 509, 432 FTR 253, and *Huzar v Canada* (2000), 258 NR 246 (FCA). Mr. Stoney applied to intervene in Alberta litigation concerning the 1985 Sawridge Trust, with a view to asserting the same right to be a member of the Sawridge First Nation. The case management judge dismissed that application on the basis that Mr. Stoney's claim was barred by issue estoppel as a result of all of the prior proceedings: *Stoney v 1985 Sawridge Trust*, 2017 ABQB 436 at paras. 47-52 (*Sawridge #6*). The case management judge also gave collateral orders, including a vexatious litigant order and a costs award.

[3] Mr. Stoney has appealed *Sawridge #6*, and the applicants have applied for security for costs under R. 4.22, which applies to appeals through R. 14.67:

4.22 The Court may order a party to provide security for payment of a costs award if the Court considers it just and reasonable to do so, taking into account all of the following:

- (a) whether it is likely the applicant for the order will be able to enforce an order or judgment against assets in Alberta;
- (b) the ability of the respondent to the application to pay the costs award;
- (c) the merits of the action in which the application is filed;
- (d) whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action;
- (e) any other matter the Court considers appropriate.

The test for the application of the rule to appeals is discussed in *Access Mortgage Corp. (2004) v Arres Capital Inc.*, 2017 ABCA 373.

[4] It is conceded that R. 4.22(a) and (b) are met. Mr. Stoney confirms that he lives on a fixed income, has very few if any exigible assets, and that he is unable to easily post security for costs or pay a costs award. Previous costs awards made against Mr. Stoney in both the Federal Court and in Alberta remain unpaid.

[5] Mr. Stoney’s Notice of Appeal contains few particulars. There is no obvious reviewable error in the conclusion of the case management judge that the proposed arguments are barred by issue estoppel. The merits of the appeal are questionable.

[6] Rule 4.22(d) requires consideration of whether a security for costs order “would unduly prejudice the respondent’s ability to continue the action”. This criterion is often central to the competing interests that arise in this type of application. On the one hand, the courts are always reluctant to deprive a litigant of his day in court, particularly because of economic hardship. On the other hand, respondents should not be subjected to continuous litigation where they have no prospect of recovering their costs. The presumption in civil procedure that the successful party is entitled to costs acts as an important control on the quantity and intensity of litigation, and that control is missing if the appellant is judgment proof.

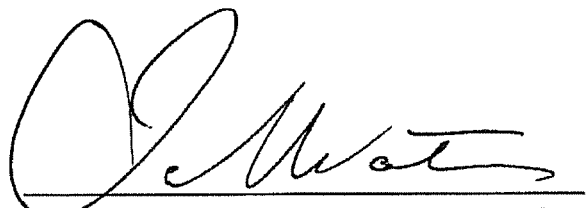
[7] In this appeal, concerns about depriving Mr. Stoney of his day in court are diminished. As noted, he has had repeated opportunities to pursue his claim to membership in the Sawridge First Nation. All of those attempts have been unsuccessful. He has neglected or been unable to pay the resulting costs. Shortly put, Mr. Stoney has had his day in court, and given that his application was dismissed based on issue estoppel his right to further pursue the same arguments on appeal is severely limited.

[8] The scale of costs applicable to this appeal will be in the discretion of the panel hearing the appeal. The amount of security ordered must balance the rights of the respondents to have any costs award secured with Mr. Stoney’s means and interests. Mr. Stoney is accordingly ordered to post security for costs in the sum of \$5,000 for each of the two applicants (The Sawridge First Nation, and the Trustees of the 1985 Sawridge Trust). That security (\$10,000 in total) must be paid into Court by February 28, 2018, failing which the appeal will be deemed abandoned. Until security is posted, the appeal is stayed. The costs of these applications will be in the cause. Rule 9.4(2)(c) will apply.

Application heard on December 14, 2017

Memorandum filed at Edmonton, Alberta
this 19th day of December, 2017






Watson J.A.



Slatter J.A.



Authorized to sign for: Bielby J.A.

Page: 3

Appearances:

D.C. Bonora and A. Loparco

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

E.H. Molstad, Q.C.

for the Applicant Sawridge First Nation

Respondent Maurice Felix Stoney, in person