

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NO.: 1703 0252AC
TRIAL COURT FILE NO.: 1103 14112
REGISTRY OFFICE: Edmonton



IN THE MATTER OF THE TRUSTEE
ACT, RSA 2000, C T-8, AS AMENDED, and

IN THE MATTER OF THE SAWRIDGE BAND,
INTER VIVOS SETTLEMENT, CREATED BY
CHIEF WALTER PATRICK TWINN, OF THE
SAWRIDGE INDIAN BAND, NO. 19, now known
as SAWRIDGE FIRST NATION, ON APRIL 15,
1985 (the "1985 Sawridge Trust")

APPLICANTS: MAURICE FELIX STONEY and HIS BROTHERS
AND SISTERS

STATUS ON APPEAL: Not a Party to the Appeal

RESPONDENTS (ORIGINAL
APPLICANTS): ROLAND TWINN, CATHERINE TWINN,
WALTER FELIX TWIN, BERTHA
L'HIRONDELLE AND CLARA MIDBO, as
Trustees for the 1985 Sawridge Trust (the
"Sawridge Trustees")

STATUS ON APPEAL: Respondents

STATUS ON APPLICATION: Applicants

INTERVENOR: THE SAWRIDGE FIRST NATION

STATUS ON APPEAL: Respondents

STATUS ON APPLICATION: Interested Party

RESPONDENT: PUBLIC TRUSTEE OF ALBERTA ("OTPG")

STATUS ON APPEAL: Not a Party to the Appeal

INTERESTED PARTY: PRISCILLA KENNEDY, Counsel for Maurice
Felix Stoney and His Brothers and Sisters

STATUS ON APPEAL: Appellant

STATUS ON APPLICATION: Respondent

DOCUMENT: AFFIDAVIT OF PRISCILLA KENNEDY

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

Field LLP
2500, 10175 - 101 Street
Edmonton, Alberta T5J OH3
Attention: P. Jonathan Faulds, QC
Phone: 780-423-7625
Fax: 780-429-9329
Email: jfaulds@fieldlaw.com
File: 65063-1

AFFIDAVIT OF PRISCILLA KENNEDY

Sworn on November 30th, 2017

I, Priscilla Kennedy, of the City of Edmonton in the Province of Alberta, Barrister and Solicitor, make oath and say that:

1. I am the Respondent in this application and the Appellant in the underlying appeal and as such have personal knowledge of the matters set out herein save where stated to be on information and belief.
2. I am the Priscilla Kennedy who is subject to the case management decisions of the Honourable Mr. Justice Thomas issued on August 31, 2017 (referred to as *Sawridge #7*) and September 12, 2017 (referred to as *Sawridge #8*). In each of these decisions, Justice Thomas concluded, among other things, that I had engaged in serious misconduct warranting sending a copy of the judgement to the Law Society of Alberta for review.
3. Following the issuance of the decision in *Sawridge #7* I received a letter from Christine Blair, Conduct Counsel for the Law Society of Alberta, informing me that the Law Society had received a copy of that decision from Justice Thomas and had opened a complaint file pursuant to Rule 85 of the Rules of the Law Society of Alberta. Ms. Blair requested my response. A copy of the letter, with enclosures, is attached as **Exhibit A**.

4. Following the issuance of the decision in *Sawridge #8* I received a further letter from Ms. Blair. It enclosed a copy of correspondence received by the Law Society from Justice Thomas in which Justice Thomas provided the Law Society with a copy of his decision in *Sawridge #8* for review in respect of me. Ms. Blair requested that I address Justice Thomas' concerns as outlined in paragraph 113 onwards in that decision. The deadline for my response was October 2, 2017. A copy of Ms. Blair's letter, with enclosures, is attached as **Exhibit B**.
5. I am informed by my legal counsel, Jon Faulds of Field LLP, and I believe that he spoke with Ms. Blair by telephone on Tuesday, September 26, 2017 and advised her that he had been retained to pursue an appeal of the decisions of *Sawridge #7* and *Sawridge #8* in so far as these decisions concerned me. Ms. Blair advised Mr. Faulds that the Law Society of Alberta would hold my file in abeyance. Mr. Faulds sent a letter to Ms. Blair, dated September 27, 2017, confirming this advice. A copy is attached as **Exhibit C**.
6. In response to Ms. Blair's request for an update on October 27, 2017, Mr. Faulds advised Ms. Blair that Notices of Appeal had been filed on behalf of Ms. Kennedy from the decisions in *Sawridge #7* and *Sawridge #8*, and indicating that an application for Advice and Direction with respect to our appeal of *Sawridge #7* would be heard the following day, on November 2, 2017. A copy of Ms. Blair's request and Mr. Faulds' update are attached as **Exhibits D and E** respectively.
7. On November 8, 2017, Mr. Faulds emailed Ms. Blair to provide her a copy of the decision by Justice Slatter on the application for Advice and Direction, issued on November 7, 2017, in which Justice Slatter granted me permission to appeal the decision in *Sawridge #7*. Mr. Faulds also advised Ms. Blair of further steps that were planned concerning the appeals, including an application to join the appeals filed on my behalf. Ms. Blair responded the next day, confirming that in the interim, no formal response to the Law Society was required from me pending the outcome of these court matters. A copy of Mr. Faulds' November 8, 2017 email and Ms. Blair's responding email is attached as **Exhibit F**.

SWORN ~~(OR AFFIRMED)~~ BEFORE
ME at Edmonton, Alberta, this 30th day
of November, 2017.

~~Handwritten signature~~

PRISCILLA KENNEDY

TAB A



PERSONAL AND CONFIDENTIAL

OUR FILE NO. CO20172062

(Kindly ensure that all responses have our File No.)

VIA EMAIL

September 8, 2017

Priscilla E.S.J. Kennedy
DLA Piper (Canada) LLP
1201 Scotia Tower 2
10060 Jasper Avenue
Edmonton, AB T5J 4E5

Dear Ms. Kennedy:

RE: Law Society of Alberta

I acknowledge receipt of your correspondence dated September 1, 2017 and received by the Law Society on September 5, 2017.

I enclose a copy of my Rule 85 Memo dated September 8, 2017, outlining the specifics of this matter. Please consider this to be a request for your comments on the enclosed.

Pursuant to Section 78(3) of the *Legal Profession Act*, all materials provided or to be provided to you by the Law Society are confidential, are provided to you only for the purpose of making full answer and defence to this complaint, and must not be used in any other proceeding or for any collateral purpose.

Pursuant to Section 53 of the *Legal Profession Act*, RSA 2000, c. L-8, this letter is written asking for your written response to this complaint. Such response is to contain only relevant information and explanations are to be concise. Supporting documentation should be included. Please do not forward originals. Copies are sufficient.

The personal information you provide in response to this complaint will be used by the Law Society for one or more purposes contemplated by the *Legal Profession Act*, the Rules of the Law Society or the *Code of Conduct* and will be accessible to all departments of the Law Society. The information may be used or disclosed by the Law Society, now or in the future, for regulatory purposes, including Law Society investigations and proceedings. I may contact you to obtain additional information or to obtain clarification on the information you provide. Should you have any questions about the collection, use or disclosure of this information, please contact me at (587) 393-2170 or Christine.Blair@lawsociety.ab.ca.

This is Exhibit " A " referred to
in the Affidavit of
Priscilla Kennedy
Sworn before me this 30th day
of November A.D., 20 17

A Commissioner for Oaths in and for Alberta

Kimberly J. Precht
Barrister & Solicitor

Pursuant to the *Code of Conduct*, your response must be complete, fair, accurate, courteous, and appropriate. (See generally, Chapter 7, Rule 7.1-1.) **Your written response is to be delivered to the Law Society of Alberta within fourteen (14) days of receipt of this letter to the email address noted above. Should you choose to submit a paper copy of your response, please provide same within the aforementioned deadline.** This deadline for your response must be met, or an extension obtained. Failure to do this may result in a referral to the Conduct Committee unless consent has been obtained by you in advance to extend that time.

I look forward to receipt of your response.

Yours truly,

A handwritten signature in black ink, appearing to read 'C. Blair', written in a cursive style.

Christine Blair, BSW, JD
Conduct Counsel
The Law Society of Alberta

CB/kh
Encl.



Memo

To: File

From: Christine Blair

Date: September 8, 2017

File No.: CO20172062

RE: Priscilla E.S.J. Kennedy, Roll # 7393

This memo is pursuant to Rule 85 of the *Rules* of the Law Society of Alberta.

On August 31, 2017, correspondence was received by the Law Society from The Honourable Justice Dennis R. Thomas which enclosed a copy of Case Management Costs Decision filed on same date.

On July 12, 2017, Justice Thomas issued **1985 Sawridge Trust v. Alberta (Public Trustee)**, 2017 ABQB 436 [**"Sawridge #6"**] wherein he denied an application by Maurice Felix Stoney "and his 10 living brothers and sisters" to be added as interveners or parties to a proceeding intended to settle and distribute the assets of the 1985 Sawridge Trust, a trust set up by the Sawridge Band on behalf of its members.

At the conclusion of **Sawridge #6**, Justice Thomas ordered solicitor and own indemnity costs against Mr. Stoney and that he make written submissions on whether he should be subject to court access restrictions, and if so, what those court access restrictions should be. Justice Thomas said that these steps were taken in response to what was clearly abusive litigation misconduct. Justice Thomas also concluded that the activities of Ms. Kennedy, who was Mr. Stoney's lawyer, required review. Justice Thomas ordered Ms. Kennedy to appear before him on July 28, 2017 and to make submissions on why she should not be personally responsible for some or all of her client's costs penalty.

The hearing took place on July 28, 2017 however prior to same, the Court received three affidavits which related to whether Mr. Stoney had obtained consent from his siblings to represent them in this litigation. At the hearing, Ms. Kennedy was represented by Donald Wilson, who is also a lawyer with Ms. Kennedy's firm, DLA Piper. Mr. Wilson submitted a costs award against Ms. Kennedy was unnecessary while counsel for the Trust and Sawridge Band argued costs were appropriate either personally against Ms. Kennedy or against both Ms. Kennedy and Mr. Stoney on a joint and several basis.

An issue also arose at the hearing of whether two siblings of Mr. Stoney who had provided affidavit evidence that they authorized Mr. Stoney to act on their behalf should also be subject to the solicitor and own client indemnity costs award as previously ordered. Justice Thomas however rejected that possibility in light of the limited and after-the-fact evidence and the question of informed consent.

Justice Thomas, in his decision, concluded that Ms. Kennedy had conducted "*an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system*" on two independent bases:

1. she concluded futile litigation that was a collateral attack of a prior unappealed decision of a Canadian court, and
2. she conducted that litigation allegedly on behalf of persons who were not her clients on a "busybody" basis.

Justice Thomas ordered Ms. Kennedy personally liable for the solicitor and own client indemnity costs as previously ordered in **Sawridge #6**, along with her client. He further noted that "*In light of my conclusion that Kennedy is responsible for conducting litigation that abused the Alberta Court of Queen's Bench's processes and the other Sawridge Advice and Direction Application participants, Kennedy admitting the same, and the nature and character of that abuse, I direct that a copy of this judgment shall be delivered to the Law Society of Alberta for its review.*"

Accordingly, a complaint file has been opened and Ms. Kennedy's response is required.



Christine Blair, BSW, JD
Conduct Counsel
The Law Society of Alberta

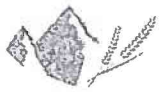
APPENDIX

Relevant provisions of the Rules of the Law Society

Review by the Executive Director

- 85 (1) Any matter regarding the conduct of a member that comes to the attention of the Society, whether by way of a complaint or otherwise, shall be delivered to or otherwise brought to the attention of the Executive Director to enable the Executive Director to conduct a review of the matter under section 53 of the Act.
- (2) If a complaint or other information brought to the attention of the Executive Director under subrule (1) is not then in writing, the Executive Director shall
- (a) in the case of a complaint, attempt to obtain the complaint in writing and, if the attempt fails, prepare a memorandum summarizing the complaint as accurately as possible on the basis of the complainant's oral statements and any records submitted by the complainant,
 - (b) in the case of other information, prepare a memorandum summarizing the other information on the basis of the oral statements or records received by the Executive Director, and
 - (c) subject to subrule (3), furnish to the member a copy of the complaint or memorandum.

TAB B



LAW SOCIETY
of ALBERTA

587 393 2170

PERSONAL AND CONFIDENTIAL

OUR FILE NO. CO20172062

(Kindly ensure that all responses have our File No.)

VIA EMAIL

September 18, 2017

Priscilla E.S.J. Kennedy
DLA Piper (Canada) LLP
1201 Scotia Tower 2
10060 Jasper Avenue
Edmonton, AB T5J 4E5

Dear Ms. Kennedy:

RE: Law Society of Alberta

Further to my correspondence of September 8, 2017, I enclose a copy of correspondence dated September 13, 2017 received from The Honourable Mr. Justice Dennis R. Thomas.

I would ask that you please address in your response, as previously requested, Justice Thomas' concerns for your conduct as outlined in paragraph [113] onwards of his Case Management Decision re Vexatious Litigant Status of Maurice Stoney (Sawridge #8).

In light of these new allegations, I advise the deadline for delivery of your response is fourteen (14) days from the date of this letter.

Yours truly,

Christine Blair, BSW, JD
Conduct Counsel
The Law Society of Alberta

CB/kh
Encl.

- Informal agreement until
now

= Update in 3 weeks

This is Exhibit " B " referred to
in the Affidavit of

Priscilla Kennedy

Sworn before me this 30th day

of November A.D., 20 17

[Signature]
A Commissioner for Oaths in and for Alberta

Kimberly J. Precht
Barrister & Solicitor

THE HONOURABLE MR. JUSTICE
DENNIS R. THOMAS



COURT OF QUEEN'S BENCH OF ALBERTA

THE LAW COURTS
EDMONTON, ALBERTA
T5J 0R2
TEL: (780) 422-2200
FAX: (780) 427-0334

September 13, 2017

SENT VIA E-MAIL

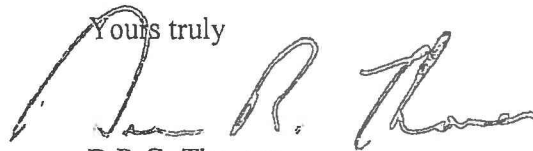
Ms. Christine Blair, BSW, JD
Conduct Counsel
The Law Society of Alberta
\$500, 919 – 11 Avenue SW
Calgary, AB T2R 1P3
Phone: 403-229-4700
Email: Christine.blair@thelawsociety.ab.ca

Dear Ms. C. Blair:

**Re: Sawridge Band Inter Vivos Settlement ("1985 Sawridge Trust");
Action No. 1103 14112; Application by Maurice Felix Stoney et al. to be
Added as parties – Case Management Decision re Lawyer Priscilla Kennedy
(Sawridge #8)**

I attach in PDF format a copy of Case Management Decision re Vexatious Litigant Status of Maurice Stoney (Sawridge #8) which was filed yesterday.

I had indicated in paras 122 and 125 of this Decision that I would be sending a copy of my judgment to the Law Society of Alberta for review in respect to Ms. Priscilla Kennedy and that is why you are receiving a copy of my Judgment.

Yours truly

D.R.G. Thomas

ds

Attach. Case Management Decision, 2017 ABQB 548

TAB C



2500 - 10175 101 ST NW
Edmonton AB T5J 0H3
fieldlaw.com

CALGARY / EDMONTON / YELLOWKNIFE

Jon Faulds, QC
Partner
AB
T 780-423-7625
F 780-428-9329
pfaulds@fieldlaw.com
Assistant: Amy Ball
T 587-773-7180
aball@fieldlaw.com

Our File: 65063-1

September 27, 2017

VIA EMAIL

Law Society of Alberta
500, 919 - 11th Avenue SW
Calgary, AB T2R 1P3

Attention: Christine Blair

Dear Ms. Blair:

Re: Priscilla Kennedy

This is Exhibit " C " referred to
in the Affidavit of

Priscilla Kennedy
Sworn before me this 30th day
of November A.D., 2017

[Signature]
A Commissioner of Oaths in and for Alberta

Kimberly J. Precht
Barrister & Solicitor

I refer to our telephone conversation on Tuesday morning.

As discussed we have been retained by Ms. Kennedy to pursue an appeal of the decisions of Justice Thomas in what are known as *Sawridge #7* and *Sawridge #8* insofar as these decisions concern our client.

Because it is uncertain whether these appeals are such as to require permission, we shall be filing concurrently notices of appeal and applications for permission to appeal which we expect will have been heard within three weeks or so.

We confirm your advice that in light of the foregoing you will be holding your file in informal abeyance, and that it will not be necessary for Ms. Kennedy to respond to your letters of September 8 and September 18, 2017 until further notice. We also confirm we will provide you with an update on the status of this matter in three weeks.

Yours truly,

FIELD LLP

[Signature]
Jon Faulds, QC
Partner

PJF/ab



TAB D



LAW SOCIETY
of ALBERTA

PERSONAL AND CONFIDENTIAL

OUR FILE NO. CO20172062

(Kindly ensure that all responses have our File No.)

VIA EMAIL

October 27, 2017

P. Jonathan Faulds, QC
Field LLP
2500, 10175 - 101st Street NW
Edmonton, AB T5J 0H3


Dear Mr. Faulds:

RE: Law Society of Alberta & Priscilla E.S.J. Kennedy

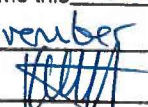
I refer to our telephone conversation of September 26, 2017, wherein you advised Ms. Kennedy had retained you in relation to both this matter and her appeal of Justice Thomas' decision.

I confirm that we await receipt of Ms. Kennedy's response and would request that you please provide me with an update on proceedings in this matter.

Yours truly,


Christine Blair, BSW, JD
Conduct Counsel
The Law Society of Alberta

CB/kh

is Exhibit " D " referred to
in the Affidavit of
Priscilla Kennedy
on before me this 30th day
November A.D., 20 17

Commissioner for Oaths in and for Alberta

Kimberly J. Precht
Barrister & Solicitor

TAB E



2500 – 10175 101 ST NW
Edmonton AB T5J 0H3
fieldlaw.com

CALGARY / EDMONTON / YELLOWKNIFE

Jon Faulds, QC
Partner
AB
T 780-423-7625
F 780-428-9329
pfaulds@fieldlaw.com
Assistant: Amy Ball
T 587-773-7180
aball@fieldlaw.com

Our File: 65063-1

November 1, 2017


VIA EMAIL

Law Society of Alberta
500, 919 - 11th Avenue SW
Calgary, AB T2R 1P3

Attention: Christine Blair

Dear Ms. Blair:

Re: Priscilla Kennedy

is Exhibit " E " referred to
in the Affidavit of
Priscilla Kennedy
on before me this 30th day
November A.D., 2017

Commissioner for Oaths in and for Alberta

Kimberly J. Precht
Barrister & Solicitor

Thank you for your letter. I apologize for not having updated you sooner on this matter.

We have now filed Notices of Appeal on behalf of Ms. Kennedy arising from the decisions of Justice Thomas in the cases known as Sawridge #7 and Sawridge #8 which he referred to the Law Society.

As mentioned in our previous letter of September 27, 2017 we concurrently filed an application for Advice and Direction. That application is to obtain the Court's direction on whether leave is required and, if so, to be granted leave with respect to the appeal in Sawridge #7. (We concluded leave is not required with respect to Sawridge #8). The application will be heard tomorrow (November 2).

We will advise you of the outcome of that application and report further on the progress of the appeals herein in due course.

Please let me know if you require any additional information. Thank you.

Yours truly,

FIELD LLP


Jon Faulds, QC
Partner

PJF/ab



TAB F

Jon Faulds

From: Christine Blair <Christine.Blair@lawsociety.ab.ca>
Sent: Thursday, November 09, 2017 8:15 AM
To: Jon Faulds
Cc: Kimberly Precht; Amy Ball; Kristin Heisler
Subject: RE: Fax from 7804224127 received (tracking # 10280)

Good Morning Mr. Faulds,


Thank you for providing me with the update on this matter.

I look forward to receiving further updates.

I confirm that in the interim, no formal response to the Law Society is required from Ms. Kennedy pending the outcome of these upcoming court matters.

Kind Regards,

CHRISTINE BLAIR
Conduct Counsel
587-393-2170

This is Exhibit * F " referred to
in the Affidavit of
Priscilla Kennedy
Sworn before me this 30th day
of November A.D., 20 17

A Commissioner for Oaths in and for Alberta

Kimberly J. Precht
Barrister & Solicitor

-----Original Message-----

From: Jon Faulds [mailto:jfaulds@fieldlaw.com]
Sent: Wednesday, November 08, 2017 5:22 PM
To: Christine Blair <Christine.Blair@lawsociety.ab.ca>
Cc: Kimberly Precht <KPrecht@fieldlaw.com>; Amy Ball <ABall@fieldlaw.com>
Subject: FW: Fax from 7804224127 received (tracking # 10280)

Hi Christine,

Further to my letter of November 1, I now attach a copy of the decision of Justice Slatter granting Ms. Kennedy permission to appeal the decision in Sawridge #7 which found she engaged in serious misconduct warranting an award of personal costs against her.

We have now filed a further application seeking (1) to intervene in the appeal of the decision in Sawridge #6 which gave rise to the decisions in Sawridge #7 and #8, and (2) to have the three appeals in Sawridge #6, #7, and #8 consolidated or heard together.

We will update you further once this motion has been determined. We would be happy to answer any further questions you might have.

Jon

P. Jonathan Faulds, QC
Partner

Field Law

T 780-423-7625
F 780-428-9329
jfaulds@fieldlaw.com
fieldlaw.com

"Field Law" is a registered trademark of Field LLP.

-----Original Message-----

From: Edmonton Reception
Sent: Tuesday, November 07, 2017 9:48 AM
To: Jon Faulds; Amy Ball
Subject: FW: Fax from 7804224127 received (tracking # 10280)

Edmonton Reception

Field Law
T 780-423-3003
F 780-428-9329
ereception@fieldlaw.com
fieldlaw.com

"Field Law" is a registered trademark of Field LLP.

-----Original Message-----

From: EDM-RelayFax
Sent: Tuesday, November 07, 2017 9:44 AM
To: Edm Fax
Subject: Fax from 7804224127 received (tracking # 10280)

RelayFax has received a new fax.

Replies to this message will be directed to "7804224127" <edm-relayfax@fieldlaw.com>

Remote fax ID: 7804224127
CND Number:
CND Name:
Date/time rcvd: 2017/11/07 09:44:00
Speed (baud): 14400
Total pages: 7

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