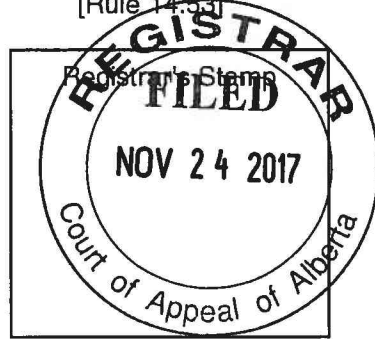


COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]



COURT OF APPEAL FILE NUMBER: 1703 0252AC
TRIAL COURT FILE NUMBER: 1103 14112
REGISTRY OFFICE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT,
RSA 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 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 ("OPTG")

STATUS ON APPEAL

Not a party to the Appeal

STATUS UNKNOWN

PRISCILLA KENNEDY

STATUS ON APPEAL

Appellant

STATUS ON APPLICATION

Respondent

DOCUMENT:

**APPLICATION OF THE SAWRIDGE TRUSTEES TO DISMISS
OR STRIKE THE APPEAL**

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NOTICE TO RESPONDENT: PRISCILLA KENNEDY

WARNING

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

NOTICE TO RESPONDENTS:

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

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

Date: Thursday, December 14, 2017
Time: 10:00 a.m.
Where: Law Courts Building, Edmonton, Alberta
Before: Panel of the Court of Appeal (Rule 14.74, 14.38)

Nature of Application and Relief Sought:

1. An Order directing that:
 - (a) The Appeal of the Respondent, Priscilla Kennedy, shall be dismissed on the grounds that the appeal is improper and moot (Rule 14.74);
 - (b) Alternatively, that the Appeal of the Respondent shall be struck as Ms. Kennedy is not a party or intervenor, has not been granted such status and has not applied for such status in this action, and thus has no right to appeal (Rules 14.37, 14.38).

- (c) Costs of this application payable forthwith and in any event of the cause on a solicitor and his own client basis or in the alternate a party and party basis; and
- (d) Such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application

- 2. The judgment was not appealed by the Applicant, Maurice Stoney and his brothers and sisters.
- 3. The Respondent's Appeal alleging CMJ, Thomas J. erred in sending his judgment to the Law Society of Alberta is improper and without merit because:
 - (a) Such provisions do not appear in the Order of the Court;
 - (b) Any person has the ability to report matters to the Law Society of Alberta; and
 - (c) The act of sending the judgment to the Law Society of Alberta cannot be reversed, and the Court cannot control the proceedings or investigation of the Law Society once notified.
- 4. The judgment in Court of Queen's Bench File Number 1103 14112 has already been sent to the Law Society of Alberta and thus, there remains no appealable issue as the Court's act of sending the judgement to the Law Society is now academic rendering the issue moot.
- 5. A Court may take decisive action in a case before it, *proprio motu*, in extraordinary or exceptional circumstances.
- 6. The Respondent's Appeal seeking to set aside CMJ, Thomas J.'s comment that the Respondent made improper submissions on behalf of Maurice Stoney with respect to his potential status as a vexatious litigant is untenable because it is regarding reasons given by the CMJ and not the disposition of the matter. The reasons do not form part of the Court Order. The terms of the Order have not been appealed by Ms. Kennedy, or Mr. Stoney and his brothers and sisters.
- 7. CMJ, Thomas J. was asked to insert as provisions to the Order the items Ms. Kennedy seeks to appeal and he refused to do so.
- 8. Alternatively, the Appeal should be struck on the basis that Ms. Kennedy is not a proper party to the action and should not be permitted to appeal the decision without an Order of the Court adding her as a party.
- 9. It is just and reasonable for the Court to exercise its discretion to dismiss or strike the Appeal of Priscilla Kennedy on the basis that:
 - (d) There is no identifiable adversarial context and Priscilla Kennedy will not suffer any consequence, collateral or otherwise, if the merit of her concern is left unresolved;
 - (e) The Honourable Court's decision will have no practical effect on the rights of Priscilla Kennedy. The circumstances of this Appeal do not involve any recurring issues and there will be no social cost should the issue raised remain as resolved in the lower court; and
 - (f) Ms. Kennedy has no standing.

Material or evidence to be relied on:

10. Pleadings in this action, filed.
11. Judgment of Justice Thomas dated September 12, 2017.
12. Order of Justice Thomas resulting from the Judgment filed September 12, 2017.
13. Affidavit of Susan Hagerman sworn November 23, 2017.
14. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Acts, regulations and rules:

15. Rules 3.74, 14.37, 14.38, 14.57, 14.74, 14.90(1)(b) of the *Alberta Rules of Court*, Alta. Reg. 124/2010.