

COURT OF APPEAL OF ALBERTA

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 Interested Party

INTERVENOR **SAWRIDGE FIRST NATION**

STATUS ON APPEAL: Respondents

STATUS ON APPLICATION Applicants

RESPONDENT **Public Trustee of Alberta ("OPTG")**

STATUS ON APPEAL: Not a party to the Appeal

INTERESTED PARTY **PRISCILLA KENNEDY**

STATUS ON APPEAL Appellant

STATUS ON APPLICATION Respondent

DOCUMENT: **APPLICATION OF SAWRIDGE FIRST NATION FOR
DISMISSAL OF APPEAL**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY **Parlee McLaws LLP
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Form AP-3

[Rule 14.53]



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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 RESPONDENT:

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: ~~9:30 a.m.~~ 10:00 am
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 (the "Respondent"), 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 the Respondent 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 of the case management justice, Justice D.R.G. Thomas, reported at *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548 (*Sawridge #8*) was not appealed by the Applicant, Maurice Stoney ("Stoney") and his brothers and sisters (collectively the "Stoney Applicants").
3. The Respondent's Appeal, which alleges that Justice D.R.G. Thomas 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 of Justice D.R.G. Thomas in Court of Queen's Bench Action No. 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 Justice D.R.G. Thomas' 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 Justice D.R.G. Thomas 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 the Respondent, Stoney, or the Stoney Applicants.

7. Alternatively, the Appeal should be struck on the basis that the Respondent 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.
8. It is just and reasonable for the Court to exercise its discretion to dismiss or strike the Appeal of the Respondent on the basis that:
 - (a) There is no identifiable adversarial context and the Respondent will not suffer any additional collateral consequence if the merit of her concern is left unresolved;
 - (b) The Honourable Court's decision will have no practical effect on the rights of the Respondent. 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
 - (c) The Respondent has no standing.

Material or evidence to be relied on:

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

Applicable Acts, regulations and rules:

14. 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.