

COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER: 1703-0195AC

TRIAL COURT FILE NUMBER: 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 STONEY AND HIS BROTHERS AND
SISTERS

STATUS ON APPEAL: Appellant
STATUS ON APPLICATION: Respondent

RESPONDENTS: ROLAND TWINN, CATHERINE TWINN,
WALTER FELIX TWIN, BERTHA
L'HIRONDELLE and CLARA MIDBO, as Trustees
for the 1985 Sawridge Trust

STATUS ON APPEAL: Respondents
STATUS ON APPLICATION: Interested Party

RESPONDENT: PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL: Not a Party to the Appeal
STATUS ON APPLICATION: Not a Party to the Application

INTERVENOR: SAWRIDGE FIRST NATION ("Sawridge")

STATUS ON APPEAL: Respondent
STATUS ON APPLICATION: Applicant

DOCUMENT **APPLICATION BY SAWRIDGE
FIRST NATION FOR SECURITY FOR COSTS
AGAINST MAURICE STONEY**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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NOTICE TO THE RESPONDENT:

MAURICE FELIX STONEY

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. (Rule 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: **November 29, 2017**
Time: 9:30 a.m.
Where: Court of Appeal, Edmonton, Alberta
Before: Single Justice of the Appeal Court (Rule 14.67)

Nature of Application and relief sought:

1. An Order:
 - a. directing Maurice Stoney to provide security for costs in this Appeal by way of a payment into Court or such further and other mode as this Honourable Court may direct;
 - b. setting the value of the security for costs, in an amount no less than \$25,000.00, or such further and other amount as may be specified by this Honourable Court, to satisfy a potential costs awards against Maurice Stoney on this Appeal;
 - c. directing that Maurice Stoney furnish the above security for costs within 2 months of the date of this Order, or such other time as may be specified by this Honourable Court;
 - d. staying the within Appeal and all applications in the within appeal until the security is provided;
 - e. directing that Maurice Stoney's appeal be dismissed without further Order if the above security for costs is not paid into Court within the time period prescribed by this Order;
 - f. directing that the costs of this Application be payable to the Sawridge First Nation, forthwith and in any event of the cause; and
 - g. directing such further Orders or directions as this Honourable Court deems just and appropriate.

Grounds for making this application:

2. Maurice Stoney's civil notice of appeal of the case management decision of Mr. Justice D.R.G. Thomas, as reported at *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 436, was filed on August 11, 2017.
3. An Order requiring Maurice Stoney to post security for costs would be just and reasonable.
4. It is unlikely that Maurice Stoney would have the ability to pay any costs award in this Appeal and it is further unlikely that Sawridge would be able to enforce an Order or Judgment against the assets of Maurice Stoney in Alberta.
5. Maurice Stoney was an applicant in a previous action, *Stoney v Sawridge First Nation*, 2013 FC 509, wherein he sought judicial review of the decision of Sawridge denying Maurice Stoney's membership application, and his application for judicial review was subsequently denied. Costs were then awarded against Maurice Stoney in favour of Sawridge and such costs remain unpaid.

6. In the underlying action, Maurice Stoney attempted to appeal the December 17, 2015 decision of Mr. Justice D.R.G. Thomas and was unsuccessful in obtaining an extension of time to appeal. Costs were awarded against him in favour of Sawridge and such costs remain unpaid.
7. Maurice Stoney's appeal is wholly without merit.
8. Maurice Stoney has previously attempted, on numerous occasions and at various levels of court or tribunal, to establish a right to membership in Sawridge, and has failed to do so on every occasion.
9. Granting an Order to pay security for costs will not unduly prejudice Maurice Stoney's ability to continue the appeal.
10. Maurice Stoney has a history of failing to comply with the finality of a court order and failing to comply with a court order to pay costs, thereby increasing costs to other participants with no consequences to him.
11. Such further and other grounds as counsel may advise or this Honourable Court may permit.

Material or evidence to be relied on:

12. The within Application;
13. The Appeal record in the within Appeal (yet to be filed);
14. The Affidavit of Roland Twinn, sworn September 21, 2016 filed in the underlying action;
15. The Affidavit of Roland Twinn, sworn on November 15, 2017; and
16. Such further and other material or evidence as counsel may advise.

Applicable Acts, regulations and rules:

17. Rules 14.67, 4.22, 4.23 of the *Alberta Rules of Court*, Alta Reg 124/2010; and
18. Such further and other acts, regulations or rules as counsel may advise.