

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NO.: 1703-0195AC

TRIAL COURT FILE NO.: 1103 14112

REGISTRY OFFICE: Edmonton

APPLICANTS: MAURICE FELIX STONEY AND HIS BROTHERS AND SISTERS

STATUS ON APPEAL: Appellant

STATUS ON APPLICATION: Respondent

RESPONDENTS (ORIGINAL APPLICANTS): ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST (the "1985 Sawridge Trustees" or "Trustees")

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Respondent

INTERVENOR: THE SAWRIDGE BAND (the "Band" or "SFN")

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Respondent

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

STATUS ON APPEAL: Proposed Appellant or Intervenor

STATUS ON APPLICATION: Applicant

RESPONDENT: PUBLIC TRUSTEE OF ALBERTA ("OPTG")

STATUS ON APPEAL: Not a party to the Appeal

STATUS ON APPLICATION: Not a party to the Application

DOCUMENT: **AMENDED APPLICATION OF PRISCILLA KENNEDY FOR PARTY OR INTERVENOR STATUS IN THE APPEAL OF SAWRIDGE #6 AND FOR THE CONSOLIDATION OR JOINT HEARING OF THIS APPEAL WITH APPEALS NO. 1703-0239AC AND NO. 1703-0252AC**

Form AP-3

[Rule 14.53]

Registrar's Stamp



Let the within be filed.

BOBBI JO MCDEVITT

Bobbi Jo McDevitt
Case Management Officer

Dated: November 10, 2017

FIAT

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NOTICE TO RESPONDENT(S):

MAURICE FELIX STONEY AND HIS BROTHERS AND
SISTERS; ROLAND TWINN, CATHERINE TWINN, WALTER
FELIX TWINN, BERTHA L'HIRONDELLE AND CLARA
MIDBO, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST;
and THE SAWRIDGE BAND

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(S):

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: ~~Tuesday, November 21, 2017~~ Wednesday, November 29, 2017
Time: ~~10:00 am~~ 9:30 am
Where: Law Courts Building, 1A Sir Winston Churchill Square, Edmonton, Alberta
Before: ☒ single judge of the court (Rule 14.37)
☐ panel of the court (Rule 14.38)

Nature of Application and Relief Sought:

1. This is an application by Priscilla Kennedy, a barrister and solicitor, for:
 - party or intervenor status in the within appeal,
 - the consolidation or joint hearing of this appeal with Kennedy's appeals in two related decisions by the same court, and
 - directions respecting the steps for the consolidated or joint hearing.

Grounds for making this application:

2. The within appeal has been brought by the appellant, Maurice Stoney, acting on his own behalf, from the July 12, 2017 decision of Thomas J, the Case Management Justice (the CMJ). In that decision referred to as *Sawridge #6* the CMJ:
 - dismissed an application brought by Kennedy on behalf of Stoney,
 - concluded the application involved serious litigation misconduct,
 - awarded costs on a solicitor and own client indemnity basis against Stoney,
 - directed that Kennedy appear before the CMJ to show cause why she should not be personally liable for those costs, and
 - ordered that Stoney show cause why he should not be declared a vexatious litigant.

3. As a result of the show cause hearing concerning Kennedy's personal liability for costs the CMJ issued a further decision referred to as *Sawridge #7* in which he found Kennedy had engaged in serious misconduct and made her jointly and severally liable for the costs awarded in *Sawridge #6*. The CMJ also forwarded a copy of his decision to the Law Society of Alberta for review with respect to Kennedy. Kennedy has appealed the decision in *Sawridge #7* (Court of Appeal File No. 1703-0239AC).
4. As a result of the vexatious litigant hearing concerning Stoney the CMJ issued a further decision referred to as *Sawridge #8* in which the CMJ made a Court Access Control Order against Stoney. The Court also made a further finding of misconduct against Kennedy and forwarded a copy of this decision to the Law Society of Alberta for review with respect to Kennedy. Kennedy has appealed the decision in *Sawridge #8* insofar as it concerns her (Court of Appeal File No. 1703-0252AC).
5. The CMJ's decision in *Sawridge #6* is the foundation for the adverse findings and sanctions against Kennedy in *Sawridge #7 and #8*. It also establishes the scale of costs for which she has been held personally liable. Kennedy seeks party or intervenor status in this appeal with respect to the issues directly affecting her, as follows:
 - Did the CMJ err in finding the application on behalf of Stoney was futile and abusive and vexatious in nature warranting an award of costs against Stoney on a solicitor and own client indemnity basis?
 - Did the CMJ err in concluding that Kennedy advanced a futile application on behalf of Stoney, which was of an abusive and vexatious nature, and amounted to an attempt "to involve other third parties on a 'busybody' basis" warranting a show cause hearing as to her personal liability for costs and a referral to the Law Society of Alberta?
 - Such further issues as may be identified during oral argument of this application.
6. Kennedy meets the test for party or intervenor status because she is directly and significantly affected by the outcome of Stoney's appeal of *Sawridge #6*, and has

experience and an informed perspective on the subject matter of the appeal that is useful for its resolution. More particularly:

- Kennedy has a direct legal interest in and is ~~will be~~ directly affected by the outcome of the appeal in *Sawridge #6*, and her interests are not fully protected by the parties to the appeal of *Sawridge #6*;
- Kennedy's participation as ~~an~~ party or intervenor on the issues identified above is necessary for the Court to properly decide Stoney's appeal of *Sawridge #6*, as well as Kennedy's pending appeals of *Sawridge #7* and *Sawridge #8*;
- Kennedy's submissions will be useful and different from other parties to the appeal of *Sawridge #6* and will be of particular assistance as Stoney is unrepresented in this appeal;
- Kennedy's participation as ~~an~~ party or intervenor will not unduly delay the proceedings, and will not prejudice the parties, nor widen the *lis* between the parties.

7. Given the relationship between the facts and decisions in *Sawridge #6*, *#7*, and *#8*, it would be appropriate, just, and convenient that the appeals from those decisions be consolidated or heard together.

Material or evidence to be relied on:

8. The Affidavit of Priscilla Kennedy, filed on September 29, 2017 in support of the Application of Priscilla Kennedy for Advice and Direction on Permission to Appeal and Permission to Appeal if Required (re *Sawridge #7*) in Court of Appeal File No. 1703-0239AC.

Applicable Acts, regulations and rules:

9. Alberta Rules of Court, Rule 3.74, 14.37(2)(e), 14.40, 14.53, 14.54, 14.57 and 14.58.