COURT OF APPEAL OF ALBERTA

Form AP-5
[Rule 14.87]

COURT OF APPEAL FILE NO.:	1703-0239AC
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")
APPLICANT:	MAURICE FELIX STONEY AND HIS BROTHERS AND SISTERS
STATUS ON APPEAL:	Interested Party
RESPONDENTS (ORIGINGAL 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
RESPONDENTS:	PUBLIC TRUSTEE OF ALBERTA
STATUS ON APPEAL:	Not a Party to the Appeal
INTERVENOR:	THE SAWRIDGE BAND
STATUS ON APPEAL:	Respondent
INTERESTED PARTY	PRISCILLA KENNEDY, Counsel for Maurice Felix Stoney and His Brothers And Sisters
STATUS ON APPEAL:	Appellant
DOCUMENT:	**FAST TRACK APPEAL RECORD** **(Sawridge #7)**

Registrar's Stamp

Appeal from the Decision of
The Honourable Mr. Justice D.R.G. Thomas
Dated the 31st day of August, 2017
Filed the 6th day of October, 2017

APPEAL RECORD
Pleadings – Tab 1
Final Documents – Tabs 2-18
Transcripts – Tab 19

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The Appeal Record has been prepared in document format

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PART 2 – Final Documents

Written reasons that led to the decision being appealed

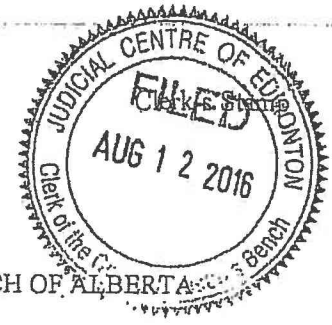
Written reasons of prior decision that led to decision now appealed

Formal order appealed

Prior orders, reference to which is required to resolve the appeal

TAB 1

P001



COURT FILE NO.:	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c. T-8, as am.

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND NO. 19

DOCUMENT:	APPLICATION TO BE ADDED as a Party or Intervener by Maurice Felix Stoney and his brothers and sisters

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DLA PIPER (CANADA) LLP 1201 Scotia 2 Tower 10060 Jasper Avenue NW Edmonton, AB, T5J 4E5 Attn: Priscilla Kennedy Tel: 780.429.6830 Fax: 780.702.4383

NOTICE TO THE RESPONDENTS

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

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

DATE:	Thursday, August 24, 2016
TIME:	10:00 A.M.
WHERE:	Law Courts Edmonton
BEFORE WHOM:	Justice D.R.G. Thomas

1. Applicants

   Maurice Stoney and his 10 living brothers and sisters.

2. Issue to be determined

(a) Addition of Maurice Stoney, Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty Jean Stoney, Gail Stoney Alma Stoney, Alva Stoney and Bryan Stoney as beneficiaries of these Trusts.

3. Grounds for request and relief sought

   (a) William Stoney, father to these Applicants was a member of Sawridge ;

(b) Each of the Applicants was a member of Sawridge;

(c) William Stoney and his children were removed from the Sawridge Pay List by Indian Affairs as being enfranchised;

(d) The *Constitution Act, 1982,* section 35 recognized all *Treaty* rights as constitutional rights on April 17, 1982 so that every enfranchised *Treaty No. 8* members had constitutional rights recognized from then;

(e) Maurice Stoney and his brothers and sisters are all members of Sawridge and beneficiaries under the definitions of beneficiaries of the 1982 and 1985 Trusts;

4. Documents Filed in this application

(a) Affidavit of Maurice Stoney

5. Applicable Statutes

(a) *Constitution Act, 1982,* section 35.

(b) *Treaty No. 8*

(c) *Trustee Act,* RSA 2000, c T-8

(d) *Indian Act,* RSC 1985, c. I-5.

6. Any irregularity complained of or objection relied on:

7. How the application is proposed to be heard or considered:

In chambers before Mr. Justice D.R.G. Thomas, the case management Justice assigned to this file.

WARNING

If you do not come to Court either in person or by your lawyer, the court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

TAB 2

Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 530

Date: 20170831
Docket: 1103 14112
Registry: 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")

Between:

Maurice Felix Stoney and His Brothers and Sisters

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")

Respondents (Original Applicants)

- and –

Public Trustee of Alberta ("OPTG")

Respondent

- and –

The Sawridge Band

Intervenor

Case Management Costs Decision re Lawyer Priscilla Kennedy (Sawridge #7)
of the
Honourable Mr. Justice D.R.G. Thomas

I Introduction

[1] On July 12, 2017 I issued ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 436 ["***Sawridge #6***"] where I 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.

[2] In brief, Maurice Stoney had claimed he was in fact and law a member of the Sawridge Band, had been improperly denied that status, and therefore is a beneficiary of the Trust, and had standing to participate in this Action.

[3] I denied that application on the basis (para 48) that:

1. Maurice Stoney is estopped from making this argument via his concession in ***Huzar v Canada***, [2000] FCJ 873 (QL), 258 NR 246 (FCA) that this argument has no legal basis.

2. Maurice Stoney made this same argument in ***Stoney v Sawridge First Nation***, 2013 FC 509, 432 FTR 253, where it was rejected. Since Mr. Stoney did not choose to challenge that decision, that finding of fact and law has 'crystallized'.

3. In ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2015 ABQB 799 at para 35, time extension denied 2016 ABCA 51, 616 AR 176, I concluded the question of Band membership should be reviewed in the Federal Court, and not in the Advice and Direction Application by the 1985 Sawridge Trustees.

4. In any case I accept and adopt the reasoning of ***Stoney v Sawridge First Nation***, as correct, though I was not obligated to do so.

[4] I made no findings in relation to Maurice Stoney's "10 living brothers and sisters" because I had no evidence they were actually voluntary participants in the application: ***Sawridge #6*** at paras 8-12.

[5] At the conclusion of ***Sawridge #6***, I ordered solicitor and own indemnity costs against Maurice Stoney (paras 67-68), 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 (paras 53-66). These steps were taken in response to what is clearly abusive litigation misconduct. Also at paras 71-81, I concluded that the activities of Maurice Stoney's lawyer, Ms. Priscilla Kennedy ["Kennedy"], required review.

[6] I therefore ordered that Kennedy appear before me on July 28, 2017 and that the 1985 Sawridge Trust Trustees and the Sawridge Band could enter certain restricted evidence that is potentially relevant to whether she should be personally responsible for some or all of her client's costs penalty.

[7] Prior to the July 28, 2017, hearing the Court received three affidavits relating to whether Maurice Stoney had obtained consent from his siblings to represent them in this litigation. At the hearing itself, Mr. Donald Wilson of DLA Piper represented Kennedy, who is also a lawyer with that firm. Mr. Wilson submitted that a costs award against Kennedy was unnecessary. Counsel

for the Trust and the Sawridge Band argued costs were appropriate either vs Kennedy personally, or against Kennedy and Maurice Stoney on a joint and several basis.

[8] At the July 28, 2017 hearing the issue arose of whether two siblings of Maurice Stoney who had provided affidavit evidence that they authorized Maurice Stoney to act on their behalf should also be subject to the solicitor and own client indemnity costs award which I had ordered in ***Sawridge #6*** at para 67. I rejected that possibility in light of the limited and after-the-fact evidence and the question of informed consent.

[9] I reserved my decision at the end of that hearing concerning Kennedy's potentially paying costs, with reasons to follow. These are those reasons.

II Background

[10] This Action was commenced by Originating Notice, filed on June 12, 2011 by the 1985 Sawridge Trustees and is sometimes referred to as the "Advice and Direction Application". In brief, this litigation involves the Court providing directions on how the property held in an aboriginally-owned trust may be equitably distributed to its beneficiaries, members of the Sawridge Band.

[11] The history of the Advice and Direction Application is set out in previous decisions (including the Orders taken out in relation thereto) reported as ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2012 ABQB 365, 543 AR 90 ("***Sawridge #1***"), aff'd 2013 ABCA 226, 543 AR 90 ("***Sawridge #2***"), ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2015 ABQB 799 ("***Sawridge #3***"), time extension denied 2016 ABCA 51, 616 AR 176; ***1985 Sawridge Trust (Trustee for) v Sawridge First Nation***, 2017 ABQB 299 ("***Sawridge #4***"). A separate attempt by three other third parties to inject themselves into this litigation was rejected on July 5, 2017, and that decision is reported as ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 377 ("***Sawridge #5***"). Collectively, these are the "***Sawridge Decisions***".

[12] Some of the terms used in this decision ("***Sawridge #7***") are also defined in the earlier ***Sawridge Decisions***.

III Evidence and Submissions at the July 28 Hearing

[13] ***Sawridge #6*** provides detailed reasons on why I denied Maurice Stoney's application (paras 32-54) and concluded that Maurice Stoney's siblings should not be captured by the potential consequences of that application (paras 8-12).

[14] I also concluded that the Maurice Stoney application exhibited three of the characteristic indicia of abusive litigation, as reviewed in ***Chutskoff v Bonora***, 2014 ABQB 389 at para 92, 590 AR 288, aff'd 2014 ABCA 444, 588 AR 503:

1. Collateral attack that attempts to revisit an issue that has already been determined by a court of competent jurisdiction, to circumvent the effect of a court or tribunal decision, using previously raised grounds and issues.
2. Bringing hopeless proceedings that cannot succeed, here in both the present application and the ***Sawridge #3*** appeal where Maurice Stoney was an uninvolved third party.

3. Initiating "busybody" lawsuits to enforce the rights of third parties, here the recruited participation of Maurice Stoney's "10 living brothers and sisters."

[15] This is the litigation misconduct that may potentially attract court sanction for Kennedy as she was the lawyer who represented Maurice Stoney when he engaged in this abusive litigation.

A. Priscilla Kennedy

[16] As noted above, Ms. Kennedy was represented at the July 28, 2017 hearing by Donald Wilson, a partner at the law firm where Kennedy is employed. He acknowledged that a lawyer's conduct is governed by *Rule* 1.2, and that the question of Maurice Stoney's status had been the subject of judicial determination prior to the August 12, 2016 application.

[17] Nevertheless, Mr. Wilson argued that Kennedy should not be sanctioned because Kennedy "... litigates with her heart." She had been influenced by a perceived injustice against Maurice Stoney, and Maurice Stoney's intention to be a member of the Sawridge Band, which "... goes to the totality of his being." If Kennedy is guilty of anything, it is that she "... is seeing a wrong and persistently tried to right that wrong."

[18] Nevertheless, Mr. Wilson did acknowledge that the August 12, 2016 application was "a bridge too far" and should not have occurred. He advised the Court that he had discussed the Sawridge Advice and Direction Application with Kennedy, and concluded Maurice Stoney had exhausted his remedies. The August 12, 2016 application was not made with a bad motive or the intent to abuse court processes, but, nevertheless, "... it absolutely had that effect ...".

[19] As for the "busybody" aspect of this litigation, Mr. Wilson argued that ***Morin v TransAlta Utilities Corporation***, 2017 ABQB 409 involved a different scenario, since in that instance certain purported litigants were dead. The short timeline for this application had meant it was difficult to assemble evidence that Maurice Stoney was authorized to represent his siblings. These individuals were "a little older" and "[s]ome are not in the best of health."

[20] The Court received three affidavits that relate to whether Maurice Stoney was authorized to represent his other siblings in the Sawridge Advice and Direction Application:

1. Shelley Stoney, dated July 20, 2017, saying she is the daughter of Bill Stoney and the niece of Maurice Stoney. She is responsible "for driving my father and uncles who are all suffering health problems and elderly." Shelley Stoney attests "... from discussions among my father and his brothers and sisters" that Maurice Stoney was authorized to bring the August 12, 2016 application on their behalf.
2. Bill Stoney, brother of Maurice Stoney, dated July 20, 2017, saying he authorized Maurice Stoney to make the August 12, 2016 application on his behalf in the spring of 2016.
3. Gail Stoney, sister of Maurice Stoney, dated July 20, 2017, saying she authorized Maurice Stoney to make the August 12, 2016 application on his behalf in the spring of 2016.

None of these affidavits attach any documentary evidence to support these statements. Kennedy has not provided any documentary evidence to support a relationship with these individuals or Maurice Stoney's other siblings.

[21] Mr. Wilson acknowledged the limited value of this largely hearsay evidence.

[22] Kennedy's counsel argued that in the end no costs award against Kennedy personally is necessary because she has already had the seriousness of her conduct "driven home" by the ***Sawridge #6*** decision and the presence of reporters in the courtroom. He said that is equally as effective as an order of contempt or a referral to the Law Society.

B. Sawridge Band

[23] Mr. Molstad Q.C., counsel for the Sawridge Band, stressed that what had occurred was serious litigation misconduct. Kennedy had conducted a collateral attack with full knowledge of the prior unsuccessful litigation on this topic. She at the latest knew this claim was futile during the 2013 Federal Court judicial review that confirmed Maurice Stoney would not be admitted into the Sawridge Band. It is unknown whether Kennedy had any role in the subsequent unsuccessful 2014 Canadian Human Rights Commission challenge to the Sawridge Band's denying him membership, but she did know that application had occurred.

[24] Kennedy had acted in an obstructionist manner during cross-examination of Maurice Stoney. She made false statements in her written submissions.

[25] As in ***Morin v TransAlta Utilities Corporation***, Kennedy acted without instructions from the persons she purported to represent. Informed consent is a critical factor in proper legal representation. Where that informed consent is absent then a lawyer who acts without authority should solely be responsible for the subsequent litigation costs.

[26] The affidavit evidence does not established Kennedy was authorized to act on behalf of Maurice Stoney's siblings. If these persons were participants in this litigation they could be subject to unfavourable costs awards.

[27] The Sawridge Band again confirmed that the ***Stoney v Sawridge First Nation***, 2013 FC 509, 432 FTR 253 costs order against Maurice Stoney remained unpaid. The costs awarded against Maurice Stoney in ***Stoney v 1985 Sawridge Trust***, 2016 ABCA 51, 616 AR 176 also remain unpaid. Kennedy in her written submissions indicated that Maurice Stoney and his siblings have limited funds. Kennedy should be made personally liable for litigation costs so that the Sawridge Band and Trustees can recover the expenses that flowed from this meritless action.

C. Sawridge Trustees

[28] The Sawridge Trustees adopted the submissions of the Sawridge Band. The question of Maurice Stoney's status had been decided prior to the August 12, 2016 application.

[29] Counsel for the Trustees stressed that the Court should review the transcript of the cross-examination of Maurice Stoney's affidavit. During that process Kennedy objected to questions concerning whether Maurice Stoney had read certain court decisions, and Kennedy said Maurice Stoney did not understand what those decisions meant. That transcript also illustrated that Kennedy was "... the one holding the reins."

[30] This meritless litigation was effectively conducted on the backs of the Sawridge Band community and dissipated the Trust. The only appropriate remedy is a full indemnity costs order vs Kennedy.

IV. Court Costs Awards vs Lawyers

[31] ***Sawridge #6*** at paras 69-77 reviews the subject of when a court should make a lawyer personally liable for costs awarded against their client. *Rule* 10.50 of the *Alberta Rules of Court*, Alta Reg 124/2010 [the "*Rules*", or individually a "*Rule*"] authorizes the Court to order a lawyer pay for their client's costs obligations where that lawyer has engaged in "serious misconduct":

> 10.50 If a lawyer for a party engages in serious misconduct, the Court may order the lawyer to pay a costs award with respect to a person named in the order.

[32] The Supreme Court of Canada in ***Quebec (Director of Criminal and Penal Prosecutions) v Jodoin***, 2017 SCC 26 at para 29, 408 DLR (4th) 581 ["***Jodoin***"] has also very recently commented on costs awards against lawyers, and identified two scenarios where these kinds of awards are appropriate, either:

1. "an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system by the lawyer", or
2. "dishonest or malicious misconduct on his or her part, that is deliberate".

[33] Alberta trial courts have often referenced the judgment of ***Robertson v Edmonton (City) Police Service***, 2005 ABQB 499, 385 AR 325 as providing the test for when a lawyer's activities have reached a threshold that warrants a personal award of costs. In that decision Slatter J (as he then was) surveyed contemporary jurisprudence and concluded at para 21:

> ... The conduct of the barrister must demonstrate or approach bad faith, or deliberate misconduct, or patently unjustified actions, although a formal finding of contempt is not needed ...

[34] I conclude this is no longer the entire test. ***Jodoin*** indicates a new two branch analysis. "[D]ishonest or malicious misconduct on his or her part, that is deliberate" is the category identified in ***Robertson v Edmonton (City) Police Service***. The second branch, "unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system", is a new basis on which to order costs against a lawyer.

[35] I believe this is a useful point at which to look further into what is "serious abuse" that warrants a costs penalty vs a lawyer, following the first of the two branches of this analysis. I consider the language in *Rule* 10.50 ("serious misconduct") and ***Jodion*** ("serious abuse") to be equivalent. I use the Supreme Court of Canada's language in the analysis that follows.

[36] In ***Sawridge #6*** at para 78 I indicated five elements that contributed to what I concluded was potentially "serious abuse":

1. the nature of interests in question;
2. this litigation was by a third party attempting to intrude into an aboriginal community which has *sui generis* characteristics;
3. that the applicant sought to indemnify himself via a costs claim that would dissipate the resources of aboriginal community trust property;
4. the application was obviously futile on multiple bases; and

5. the attempts to involve other third parties on a "busybody" basis, with potential serious implications to those persons' rights.

[37] Ms. Kennedy's litigation conduct is a useful test example to evaluate whether her actions represent "serious abuse", and then should result in her being liable, in whole or in part, for litigation costs ordered against her client.

A. The Shifting Orientation of Litigation in Canada, Court Jurisdiction, and Control of Lawyers

[38] Before proceeding to review the law on costs awards vs lawyers I believe it is helpful to step back and look more generally at how court processes in Canada are undergoing a fundamental shift away from blind adherence to procedure and formality, and towards a court apparatus that focuses on function and proportional response. This transformation of the operation of front-line trial courts has not simply been encouraged by the Supreme Court of Canada. Implementing this new reality is *an obligation* for the courts, but also for lawyers.

[39] This has been called a "culture shift" (for example, ***Hryniak v Mauldin***, 2014 SCC 7 at para 2, [2014] 1 SCR 87), but this transformation is, in reality, more substantial than that. Court litigation, like any process, needs rules. The common law aims to develop rules that provide predictable results. That has several parts. One category of rules establishes functional principles of law, so that persons may structure their activities so that they conform with the law. A second category of rules aims to guarantee what is typically called "procedural fairness". Procedural fairness sets guidelines for how information is presented to the court and tested, how parties structure and order their arguments, that parties know and may respond to the case against them, and how decision-makers explain the reasoning and conclusions that were the basis to reach a decision. Much of these guidelines have been codified in legislation, such as the *Rules*. Other elements are captured as principles of fundamental justice, as developed in relation to *Charter*, s 7.

[40] There is little dispute that litigation in Canada is now a very complex process, particularly in the superior courts such as the Alberta Court of Queen's Bench. Justice Karakatsanis in ***Hryniak v Mauldin*** at para 1 observed that meaningful access to justice is now "the greatest challenge to the rule of law in Canada today." What is the obstacle? "Trials have become expensive and protracted." Canadians can no longer afford to sue or defend themselves. That strikes at the rule of law itself. Justice Karkatsanis continues to explain that historic over-emphasis on procedural rights and exhaustive formality has made civil litigation impractical and inaccessible (para 2):

> ... The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[41] Thus, the "culture shift" is a movement away from rigid formality to procedures that are *proportionate* and lead to results that are "fair and just". The Supreme Court of Canada in ***Hryniak v Mauldin*** called for better ways to control litigation to ensure court processes serve their actual function - resolving disputes between persons - and to reflect economic realities.

[42] More recently the Supreme Court has in ***R v Jordan***, 2016 SCC 27, [2016] 1 SCR 631 and ***R v Cody***, 2017 SCC 31 stressed it is time for trial courts to develop and deploy effective and timely processes "to improve efficiency in the conduct of legitimate applications and motions"

(***R v Cody***, at para 39). In ***R v Cody*** the Supreme Court at para 38 instructs that trial judges test criminal law applications on whether they have "a reasonable prospect of success" [emphasis added], and if not, they should be dismissed summarily. That is in the context of criminal litigation, with its elevated procedural safeguards that protect an accused's rights to make full answer and defence. Both ***R v Jordan*** and ***R v Cody*** stress *all* court participants in the criminal justice process - the Crown, defence counsel, and judges - have an obligation to make trial processes more efficient and timely. This too is part of the "culture shift", and a rejection of "a culture of complacency".

[43] The increasingly frequent appearance of self-represented litigants in Canadian courts illustrates how the court's renewed responsibility to achieve "fair and just" but "proportionate and effective" results is not simply limited to 'streamlining' processes. Chief Justice McLachlin has instructed that the "culture shift" extends to all court proceedings, but "especially those involving self-represented parties": ***Trial Lawyers Association of British Columbia v British Columbia (Attorney General)***, 2014 SCC 59 at para 110, [2014] 3 SCR 31.

[44] As I have illustrated, a key aspect of the "culture shift" means reconsidering how procedural formalities can be an obstacle to "fair and just" litigation. Very recently in ***Pintea v Johns***, 2017 SCC 23 the Supreme Court of Canada endorsed the Canadian Judicial Counsel *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) ["*Statement of Principles*"]. That document and its Principles are important as they illustrate how the traditional formal rules of procedure and evidence bend to the new reality faced by trial courts, and what is required to provide a "fair and just" result for self-represented litigants:

> Principle 2 on page 5:
>
> > Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.
>
> Principle 3 on page 8:
>
> > Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.

I note these and other instructions to trial judges in the "*Statement of Principles*" are not permissive, but mandatory. See for example: ***Gray v Gray***, 2017 CanLII 55190 (Ont Sup Ct J); ***Young v Noble***, 2017 NLCA 48; ***Moore v Apollo Health & Beauty Care***, 2017 ONCA 383; ***R v Tossounian***, 2017 ONCA 618.

[45] Read plain, this is a substantial rejection by the Supreme Court of Canada of the traditional approach, that rules of procedure and evidence apply the same to everyone who appears before a Canadian court. The reason for that is obvious to anyone who has observed a self-represented person in court. They face a complex apparatus, whose workings are at times both arcane and unwritten.

[46] These objectives are all relevant to how the gate of "access to justice" swings both open and closed. The *Statement of Principles* is not simply a licence for self-represented persons to engage the courts as an exception to the rules. They also have responsibilities: ***Clark v Pezzente***, 2017 ABCA 220 at para 13. What is particularly pertinent to the discussion that follows is how the *Statement of Principles* at p 10 indicate that self-represented litigants should also adhere to standards expected of legal professionals, such as politeness, and not abusing the courts personnel, processes, and resources:

> Self-represented persons are required to be respectful of the court process and the officials within it. Vexatious litigants will not be permitted to abuse the process.

[47] Similarly, the *Statement of Principles* in its commentary at p 5 emphasizes that abusive litigation is not excused because someone is self-represented:

> Self-represented persons, like all other litigants, are subject to the provisions whereby courts maintain control of their proceedings and procedures. In the same manner as with other litigants, self-represented persons may be treated as vexatious or abusive litigants where the administration of justice requires it. The ability of judges to promote access may be affected by the actions of self-represented litigants themselves.

[48] That objective of controlling litigation abuse is a critical facet of the "new reality". This is reflected in recent jurisprudence of this Court. One mechanism to achieve this "culture shift" is interdiction of abusive litigation, for example via vexatious litigant orders issued under this Court's inherent jurisdiction (surveyed in ***Hok v Alberta***, 2016 ABQB 651 at paras 14-25, 273 ACWS (3d) 533, leave denied 2017 ABCA 63, leave to the SCC requested, 37624 (12 April 2017)). Recent Alberta jurisprudence in this strategic direction has stressed how "fair and just" litigant control responses are ones that tackle both caused and anticipated injuries, for example:

1. identifying litigation abuse that warrants intervention in a prospective manner, by investigating what is the plausible future misconduct by an abusive litigant, rather than a rote and reflex response where the Court only restricts forms of abuse that have already occurred (***Hok v Alberta***, at paras 35-37; ***Thompson v International Union of Operating Engineers Local No. 955***, 2017 ABQB 210 at para 61, leave denied 2017 ABCA 193; ***Ewanchuk v Canada (Attorney General)***, 2017 ABQB 237 at para 160-164; ***Chisan v Fielding***, 2017 ABQB 233 at paras 52-54);
2. recognition that certain kinds of litigation abuse warrant a stricter response given their disproportionate harm to court processes (***Ewanchuk v Canada (Attorney General)*** at paras 170-187); and
3. taking special additional steps where an abusive litigant defies simple control in his or her attacks on the Court, its personnel, and other persons (***Re Boisjoli***, 2015 ABQB 629, 29 Alta LR (6th) 334; ***Re Boisjoli***, 2015 ABQB 690).

[49] In many ways none of this should be new. The *Alberta Rules of Court*, *Rule* 1.2 statements of purpose and intention stress both the Court and parties who appear before it are expected to resolve disputes in a timely, cost-effective manner that respects the resources of the Court.

[50] What is new are the *implications* that can be drawn from a lawyer's actions and inactions. They, too, must be part of the "culture shift". If their actions, directly or by implication, indicate that a lawyer is not a part of that process, then that is an indication of intent. The future operation of this and other trial courts will depend in no small way on the manner in which lawyers conduct themselves. If they elect to misuse court procedures then negative consequences may follow.

B. Costs Awards Against Lawyers

1. The Court's Jurisdiction to Control Litigation and Lawyers

[51] Recent jurisprudence, and particularly ***Jodoin***, has clarified the court's supervisory function in relation to lawyers. This is a facet of the inherent jurisdiction of a court to manage and control its own proceedings, which is reviewed in the often-cited paper by I H Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Current Leg Probs 23. The management and control power is a common law authority possessed by both statutory and inherent jurisdiction courts (***Jodoin*** at para 17), that:

> ... flows the right and duty of the courts to supervise the conduct of the lawyers who appear before them and to note, and sometimes penalize, any conduct of such a nature as to frustrate or interfere with the administration of justice ... [Citations omitted.]
>
> (***Jodoin*** at para 18.)

[52] ***Jodoin*** at paras 21, 24 discusses two separate court-mediated lawyer discipline mechanisms, contempt of court vs awards of costs. While "the criteria ... are comparable", these two processes are distinguished in a functional sense by the degree of proof, the possibility of detention, and the implications of a sanction on a lawyer's career:

> ... Contempt of court is strictly a matter of law and can result in harsh sanctions, including imprisonment. In addition, the rules of evidence that apply in a contempt proceeding are more exacting than those that apply to an award of costs against a lawyer personally, as contempt of court must be proved beyond a reasonable doubt. Because of the special status of lawyers as officers of the court, a court may therefore opt in a given situation to award costs against a lawyer personally rather than citing him or her for contempt ...
>
> ...
>
> In most cases ... the implications for a lawyer of being ordered personally to pay costs are less serious than [a finding of contempt or law society discipline]. A conviction for contempt of court or an entry in a lawyer's disciplinary record generally has more significant and more lasting consequences than a one-time order to pay costs. ...

[53] Of course, lawyers are also potentially subject to professional discipline by their supervising Law Society. Gascon J in ***Jodoin*** at paras 20, 22, citing ***R v Cunningham***, 2010 SCC 10 at para 35, [2010] 1 SCR 331, is careful to distinguish how professional discipline and court sanction for lawyer misconduct are distinct processes with separate purposes:

> The power to control abuse of process and the judicial process by awarding costs against a lawyer personally applies in parallel with the power of the courts to punish by way of convictions for contempt of court and that of law societies to sanction unethical conduct by their members. ...
>
> As for law societies, the role they play in this regard is different from, but sometimes complementary to, that of the courts. They have, of course, an important responsibility in overseeing and sanctioning lawyers' conduct, which derives from their primary mission of protecting the public ... However, the

judicial powers of the courts and the disciplinary powers of law societies in this area can be distinguished, as this Court has explained as follows:

> The court's authority is preventative — to protect the administration of justice and ensure trial fairness. The disciplinary role of the law society is reactive. Both roles are necessary to ensure effective regulation of the profession and protect the process of the court.

[54] The Canadian courts' inherent jurisdiction extends to review of lawyers' fees (***Mealey (Litigation guardian of) v Godin*** (1999), 179 DLR (4th) 231 at para 20, 221 NBR (2d) 372 (NBCA)).

[55] Inherent jurisdiction provides the authority for a court to scrutinize and restrict persons who attempt to act as a litigation representative. This usually emerges in relation to problematic layperson representatives. For example, in ***R v Dick***, 2002 BCCA 27, 163 BCAC 62, the British Columbia Court of Appeal evaluated whether an agent with a history of abusive litigation activities should be permitted to act as a representative. The British Columbia Court of Appeal concluded courts have a responsibility to ensure persons who appear before the court are properly represented, and more generally to maintain the integrity of the court process: para 7. Permission to act as an agent is a privilege subject solely to the court's discretion: para 6. A person who is dishonest, shows lack of respect for the law, or who engaged in litigation abuse is not an appropriate agent. Similar results were ordered in ***Gauthier v Starr***, 2016 ABQB 213, 86 CPC (7th) 348; ***Peddle v Alberta Treasury Branches***, 2004 ABQB 608, 133 ACWS (3d) 253; ***R v Maleki***, 2007 ONCJ 430, 74 WCB (2d) 816; ***R v Reddick***, 2002 SKCA 89, 54 WCB (2d) 646; ***The Law Society of B.C. v Dempsey***, 2005 BCSC 1277, 142 ACWS (3d) 346, affirmed 2006 BCCA 161, 149 ACWS (3d) 735.

[56] It seems to me that the same should be true for lawyers. Appellate jurisprudence is clear that courts possess an inherent jurisdiction to remove a lawyer from the record, though this usually occurs in the context of a conflict of interest, see for example ***MacDonald Estate v Martin***, [1990] 3 SCR 1235 at 1245, 77 DLR (4th) 249. I see no reason why a Canadian court cannot intervene to remove a lawyer if that lawyer is not an appropriate court representative. While that is undoubtedly an unusual step, rogue lawyers are not unknown. For example, the Law Society of Upper Canada has recently on an interim basis restricted the access of a lawyer, Glenn Patrick Bogue, who was advancing abusive and vexatious Organized Pseudolegal Commercial Argument ["OPCA"] concepts (***Meads v Meads***, 2012 ABQB 571, 543 AR 215) in a number of court proceedings across Canada: ***Law Society of Upper Canada v Bogue***, 2017 ONLSTH 119. It is disturbing that this vexatious litigation had been going on for over a year.

[57] In relation to control of problematic lawyers I note that the *Judicature Act*, s 23.1(5) indicates that what are commonly called "vexatious litigant orders" cannot be used to restrict court access by a lawyer or other authorized person, provided they are acting as the representative of an abusive and vexatious litigant:

> An order under subsection (1) or (4) may not be made against a member of The Law Society of Alberta or a person authorized under section 48 of the Legal Profession Act when acting as legal counsel for another person.

[58] Arguably, section 23.1(5) is intended to extinguish this Court's inherent jurisdiction to impose some supervisory or preliminary review element to a lawyer's court filings. While I will not continue to investigate the operation of this provision, I question whether *Judicature Act*, s 23.1(5) is constitutionally valid, since it purports to extinguish an element of the Alberta superior court's inherent jurisdiction to control its own processes, but does not provide for an alternative agency or tribunal that can take steps of this kind. Any argument that the Legislature has delegated that task to the Law Society of Alberta fails to acknowledge the distinct and separate court-mediated lawyer-control functionality identified by the Supreme Court of Canada in ***Jodoin*** and its predecessor judgments.

2. The Nuremberg Defence - I Was Just Following Orders

[59] Lawyers are subject to a number of different forms of legal duties and responsibilities. They are employees of their client, and are bound by the terms of that contract. But a lawyer's allegiance is not solely to whoever pays their bills.

[60] When lawyers are admitted to the Alberta Bar a lawyer swears an oath of office that includes this statement:

> That I will as a Barrister and Solicitor conduct all causes and matters faithfully and to the best of my ability. I will not seek to destroy anyone's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favor or prejudice anyone, but in all things will conduct myself truly and with integrity. I will uphold and maintain the Sovereign's interest and that of my fellow citizens according to the law in force in Alberta. [Emphasis added.]

This is not some empty ceremony, but instead these words are directly relevant to a lawyer's duties, and the standard expected of him or her by the courts: ***Osborne v Pinno*** (1997), 208 AR 363 at para 22, 56 Alta LR (3d) 404 (Alta QB); ***Collins v Collins***, 1999 ABQB 707 at para 26, 180 DLR (4th) 361.

[61] This duty is also reflected in the Law Society of Alberta *Code of Conduct*. Though that document largely focuses on lawyers' duty to their clients and interactions with the Law Society, the *Code of Conduct* also requires that a lawyer operate "... honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy and respect.": Chapter 5.1-1. The *Code of Conduct* then continues in Chapter 5.1-2 to identify prohibitions, including that a lawyer may not:

- abuse a tribunal by proceedings that are motivated by malice and conducted to injure the other party (Chapter 5.1-2(a));
- "take any step ... that is clearly without merit" (Chapter 5.1-2(b));
- "unreasonably delay the process of the tribunal" (Chapter 5.1-2(c));
- knowingly attempt to deceive the court by offering false evidence, misstating facts or law, or relying on false or deceptive affidavits (Chapter 5.1-2(g));
- knowingly misstate legislation (Chapter 5.1-2(h));
- advancing facts that cannot reasonably be true (Chapter 5.1-2(i)); and
- failure to disclose relevant adverse authorities (Chapter 5.1-2(n)).

[62] The *Code of Conduct* chapter citations above are to the replacement *Code of Conduct* that came into force on November 1, 2011. Interestingly, I was only able to locate one reported post-2011 Law Society of Alberta Hearing Committee decision that references Chapter 5.1-1 or the 5.1-2 subsections, ***Law Society of Alberta v Botan***, 2016 ABLS 8, where lawyer's abuse of court processes led to a one-day suspension.

[63] Regardless, there is no question that lawyers have a separate, distinct, and direct obligation to the Court. As Justice Gascon recently stated in ***Jodoin*** at para 18:

> ... As officers of the court, lawyers have a duty to respect the court's authority. If they fail to act in a manner consistent with their status, the court may be required to deal with them by punishing their misconduct ...

[64] Similarly ***Law Society of British Columbia v Mangat***, 2001 SCC 67 at para 45, [2001] 3 SCR 113, states that lawyer's status as officers of the court means:

> ... they have the obligation of upholding the various attributes of the administration of justice such as judicial impartiality and independence, as well as professional honesty and loyalty.

[65] Gavin MacKenzie in a paper titled "The Ethics of Advocacy" ((2008) The Advocates Society Journal 26) observed that a lawyers duty to his or her client vs the court "... are given equal prominence ...".

[66] The Alberta Court of Appeal has repeatedly indicated that the lawyers who appear in Alberta courts have an independent and separate duty to those institutions. For example, in ***R v Creasser***, 1996 ABCA 303 at para 13, 187 AR 279, the Court stressed:

> ... the lawyer who would practise his profession of counsel before a Court owes duties to that Court quite apart from any duty he owes his client or his profession or, indeed, the public. That these duties are sometimes expressed as an ethical responsibility does not detract from the reality that the duties are owed to the Court, and the Court can demand performance of them. The expression "officer of the Court" is a common if flowery way to emphasize that special relationship. In Canada, unlike some other common law jurisdictions, the Courts do not license lawyers who practise before them, and do not suspend those licences when duties are breached. But that restraint does not contradict the fact that special duties exist. ... [Emphasis added.]

[67] The professional standards expected of a lawyer as an officer of the court equally apply when a lawyer represents themselves. "[t]he lawyer as Plaintiff stands in a different position than a layman as Plaintiff.": ***Botan (Botan Law Office) v St. Amand***, 2012 ABQB 260 at paras 72-77, 538 AR 307, aff'd 2013 ABCA 227, 553 AR 333. As Rooke J (as he then was) explained in ***Partridge Homes Ltd v Anglin***, [1996] AJ No 768 at para 33 (QL), 1996 CarswellAlta 1136 (Alta QB):

> ... it is significant that he is a member of the Law Society of Alberta. If he were not, one could apply the standard of conduct of an ordinary citizen, and excuse some conduct for which an ordinary citizen might be ignorant or from which he or she would be otherwise excused. In my view such is not the case for an active practising member of the Law Society of Alberta, who has a standard to meet,

> regardless of his technical capacity of appearance, merely by virtue of that membership ...

[68] Having countervailing obligations means that a lawyer's obligations to his or her client vs the Court may conflict, and judges have long recognized that fact. This is the reason why courts are cautious about applying potential sanctions again lawyers. As McLachlin J (as she then was) observed in ***Young v Young***, [1993] 4 SCR 3 at 136, 108 DLR (4th) 193, a court should be mindful that sanctions directed to a lawyer may interfere with that lawyer's execution of his or her duties:

> ... courts must be extremely cautious in awarding costs personally against a lawyer, given the duties upon a lawyer to guard confidentiality of instructions and to bring forward with courage even unpopular causes. A lawyer should not be placed in a situation where his or her fear of an adverse order of costs may conflict with these fundamental duties of his or her calling.

[69] What this does not mean, however, is that a lawyer can simply point at a client and say abuse of the court is the client's fault, and I am just doing my job. In ***LC v Alberta***, 2015 ABQB 84 at para 248, 605 AR 1 my colleague Graesser J captured this principle in a colourful but accurate manner:

> "I was just following orders" does not work as a defence for lawyers any more than it worked for the Watergate burglars or at Nuremburg. Lawyers also owe a duty of candour to their opponents and have duties to the court regarding appropriate professional practices.

[70] I agree. There are kinds of litigation misconduct where responsibility falls not just on the client, but also the lawyer who represents and advocates for that client. This judgment will explore that and chiefly investigate the award of costs against a lawyer on the basis of "unfounded, frivolous, dilatory or vexatious proceeding[s]", rather than the deliberate dishonest or malicious misconduct alternative branch, identified in ***Jodoin*** at para 29.

3. No Constitutional Right to Abusive Litigation

[71] Though there should not have been any doubt on this point, McLachlin CJC has recently in ***Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*** at para 47 confirmed that:

> ... There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice. [Emphasis added.]

[72] I cannot see how this principle would apply differently for a self-represented litigant, or a person represented by a lawyer. A lawyer is a mechanism through which a client interacts with the Court and other court participants. However, a lawyer is not an automaton that does only what the client instructs. The preceding review explicitly indicates lawyers have duties to more than just their clients. They are not required to do whatever they are told.

[73] I stress - there is *no right* to engage in this kind of litigation. Abusive litigation may be blocked, and actions may be taken to punish and control court participants who engage in this kind of litigation misconduct. Steps of that kind are appropriate to enhance access to justice and

protect badly over-taxed court resources. Lawyers have a clear obligation not to promote abuse of court processes.

[74] I therefore conclude any lawyer who acts on behalf of a client who engages in frivolous, vexatious, or abusive litigation is potentially personally subject to a costs award. A lawyer who is the mechanism to conduct frivolous, vexatious, or abusive litigation is not merely acting contrary of his or her obligations to the courts and other litigants. This is also a breach of a lawyer's obligations *to his or her own client*. By facilitating that misconduct the lawyer 'digs a grave for two.'

[75] Restating this point:

1. clients have no right to engage in abusive litigation;
2. lawyers have obligations as professionals and as officers of the court to not misuse court resources and processes.

Combined, lawyers who advance litigation that is an abuse of court have no right to do so. Instead, that is a breach of the lawyer's obligations. Any lawyer who does so is an accessory to their client's misconduct.

4. An Exceptional Step

[76] Appellate jurisprudence that discusses costs awards against lawyers sometimes describes that step as "exceptional", or "rare". For example, in ***Jodoin***, at para 29, Gascon J writes:

> ... an award of costs against a lawyer personally can be justified only on an exceptional basis where the lawyer's acts have seriously undermined the authority of the courts or seriously interfered with the administration of justice. ...

See also ***R v 974649 Ontario Inc.***, 2001 SCC 81 at para 85, [2001] 3 SCR 575.

[77] What these decisions are trying to capture is the fact that most of the time lawyers conduct themselves properly. Costs awards are presumptively awarded in civil litigation anytime a party is unsuccessful in an action or application (*Rule* 10.29(1)), but a lack of success does not necessarily mean actual bad litigation. An additional characteristic, abuse of the court and its processes, is what transforms a simple litigation failure into misconduct that may attract a costs award against a lawyer, personally. Fortunately, that 'added layer' is not a common occurrence. Most lawyers are responsible and responsive to their obligations.

[78] In my opinion this language does not mean that lawyers are subject to a different and reduced standard from other persons who interact with the courts. Saying a costs award against a lawyer personally is "exceptional" does not mean that a lawyer can say that he or she is immune to a costs award because that lawyer may have abused court processes, but that abuse was not "exceptional". Abuse is abuse.

[79] ***Jodoin***, in fact, makes that clear. Paragraph 29 continues to make that point explicit:

> ... This high threshold is met where a court has before it an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system by the lawyer ... [Emphasis added.]

[80] What constitutes "serious abuse" is a separate question. However Alberta courts have been developing guidelines and principles to test when court intervention is warranted to control

litigant activities. This jurisprudence is also helpful to test when a lawyer has engaged in "serious abuse".

5. Abuse of the Court

[81] Alberta decisions have collected and categorized types of litigation misconduct which are a basis on which to conclude that a litigant is "vexatious". These "indicia" are then each a potential basis to restrict a litigant's access to court. Put another way, these "indicia" are a basis to potentially conclude that a litigant is not a 'fair dealer', and so his or her activity needs to be monitored and controlled.

[82] ***Chutskoff v Bonora***, 2014 ABQB 389 at para 92, 590 AR 288, aff'd 2014 ABCA 444 is the leading Alberta authority on the elements and activities that define abusive litigation. That decision identifies eleven categories of litigation misconduct which can trigger court intervention in litigation activities. These "indicia" are described in detail in ***Chutskoff v Bonora***, however for this discussion it is useful to briefly outline those categories:

1. collateral attacks,
2. hopeless proceedings,
3. escalating proceedings,
4. bringing proceedings for improper purposes,
5. conducting "busybody" lawsuits to enforce alleged rights of third parties,
6. failure to honour court-ordered obligations,
7. persistently taking unsuccessful appeals from judicial decisions,
8. persistently engaging in inappropriate courtroom behaviour,
9. unsubstantiated allegations of conspiracy, fraud, and misconduct,
10. scandalous or inflammatory language in pleadings or before the court, and
11. advancing OPCA strategies.

[83] Subsequent jurisprudence has identified two other categories of litigation misconduct that warrant court intervention to control court access:

1. using court processes to further a criminal scheme (***Re Boisjoli***, 2015 ABQB 629 at paras 98-103), and
2. attempts to replace or bypass the judge hearing or assigned to a matter, commonly called "judge shopping" (***McCargar v Canada***, 2017 ABQB 416 at para 112).

[84] While each of these "indicia" is a basis to restrict court access, reported judgments that apply the ***Chutskoff v Bonora*** have instead reviewed the degree of misconduct in each category to assess its seriousness. For example, in ***644036 Alberta Ltd v Morbank Financial Inc***, 2014 ABQB 681 at paras 71, 85, 26 Alta LR (6th) 153; ***Ewanchuk v Canada (Attorney General)*** at para 136; ***Re Boisjoli***, 2015 ABQB 629 at para 89 the presence of some "indicia" was not, alone, a basis to make a vexatious litigant order. These were, instead, "aggravating" factors.

[85] Similarly, vexatious litigant judgments frequently conclude that the presence of multiple ***Chutskoff v Bonora*** "indicia" cumulatively strengthen the foundation on which to conclude

court intervention is warranted in response to abusive litigation conduct: ***Ewanchuk v Canada (Attorney General)*** at para 159; ***Chutskoff v Bonora*** at para 131; ***Re Boisjoli***, 2015 ABQB 629 at para 104; ***Hok v Alberta*** at para 39; ***644036 Alberta Ltd v Morbank Financial Inc*** at para 91.

[86] In ***R v Eddy***, 2014 ABQB 391 at para 48, 583 AR 268, Marceau J awarded costs against a self-represented litigant in a criminal matter, and used the ***Chutskoff v Bonora*** "indicia" as a way to help test the seriousness of the litigation abuse. These were "aggravating" factors:

> I conclude that the characteristics of vexatious litigation, including those as identified in Judicature Act, s 23(2) and the common law authorities recently and comprehensively reviewed in Chutskoff v Bonora, 2014 ABQB 389 are 'aggravating' factors that favour a cost award against a criminal accused. These indicia form a matrix of traits that are shared by the kind of litigation misconduct that calls for court response and deterrence. [Emphasis added.]

I note ***R v Eddy*** applies a costs award analysis developed in ***Fearn v Canada Customs***, 2014 ABQB 114, 586 AR 23, which is cited with approval in ***Jodoin*** at paras 25, 27.

[87] Similarly, Master Smart in ***Lymer (Re)***, 2014 ABQB 674 at paras 34-35, 9 Alta LR (6th) 57 applied the ***Chutskoff v Bonora*** "indicia" as a way to evaluate whether a litigant had acted in contempt of court. In ***Kavanagh v Kavanagh***, 2016 ABQB 107 at para 99, Shelley J concluded the presence of ***Chutskoff v Bonora*** "indicia" meant she should take additional steps to protect the interests of a potentially vulnerable third party to litigation.

[88] I see the ***Chutskoff v Bonora*** "indicia" as a useful tool to test whether a lawyer's conduct is "serious abuse" warranting that costs be ordered against that lawyer. Each individual abusive conduct category is potentially relevant, and together these factors may operate in a cumulative manner.

[89] In this discussion of the potential application of the ***Chutskoff v Bonora*** "indicia" I acknowledge that Gascon J in ***Jodoin*** is explicit that when a court examines whether a costs award should be made against a lawyer that the court's attention should focus on the specific conduct that has attracted court scrutiny. Justice Gascon stresses that an investigation of a particular instance of potential litigation misconduct should be restricted to the specific identified litigation misconduct and not put the lawyer's "career[,] on trial": para 33. A lawyer costs award analysis is not a review of the lawyer's "entire body of work", though external facts may be relevant in certain circumstances: paras 33-34.

[90] This means for the purposes of a ***Jodoin*** lawyer costs analysis the ***Chutskoff v Bonora*** "indicia" will need to be adapted to the specific context. For example, a history of persistent through futile appeals is only relevant to a potential order of costs against a lawyer where the alleged abusive litigation is a persistent abusive appeal. Other ***Chutskoff v Bonora*** "indicia" have broader implications. An action where there is no prospect for success may not, in itself, illustrate a "serious abuse" of the court, but where the action also features scandalous or inflammatory language that may lead a judge to conclude the lawyer is deliberately acting in breach of his or her duties.

[91] I will later discuss how certain kinds of litigation misconduct will, on their own, in most cases represent a basis to order costs against a lawyer. However, first, it is important to consider whether litigation misconduct is deliberate.

6. Knowledge and Persistence

[92] Lawyers make mistakes. They sometimes get the law wrong, miss a key authority, overlook a critical fact, or simply become confused.

[93] What ***Jodoin*** and other decisions indicate is that a misstep such as a "mere mistake or error of judgment" is not a basis, in itself, for an order of costs against a lawyer. Something higher is necessary, for example gross negligence (para 27) or deliberate misconduct (para 29). One way of satisfying a higher standard of proof, even to "beyond a reasonable doubt", is where a court concludes an actor is "willfully blind" to the fact their actions are wrong.

[94] A mistake, in itself, is therefore not often likely to be a basis to order costs against a lawyer, though the presence of ***Chutskoff v Bonora*** "indicia" may lead to a conclusion that a purported mistake was not honest, but instead a stratagem. What is more damning, however, is when a lawyer advances frivolous, vexatious, or abusive litigation in the face of warnings of exactly that.

[95] For example, a costs award would rarely be warranted against a lawyer if:

1. a lawyer had made an argument, application, or proceeding based on a false statement of law, an invalid authority, or other mistake;
2. that error was identified by another party or the court; and
3. the lawyer then acknowledged the error and abandoned the argument, application, or proceeding.

Of course, party and party costs would still be presumptively due against the litigant (*Rule* 10.29(1)), but at least the lawyer had taken steps to conduct 'damage control', and that should be encouraged and respected.

[96] However, where a lawyer persists despite being warned or alerted, then a court may apply the often stated rule that a person may be presumed to intend the natural consequence of their actions: ***Starr v Houlden***, [1990] 1 SCR 1366, 68 DLR (4th) 641. In that context a court may conclude that a lawyer who is breaking the rules knows what the rules are, but has proceeded and broken them anyway. That will create a strong presumption that a costs award is appropriate for a lawyer who engaged in what is, effectively, deliberate misconduct.

7. Examples of Lawyer Misconduct that Usually Warrant Costs

[97] With that foundation in place, I believe it is useful to provide a non-exclusive set of scenarios where a lawyer will likely be a potential valid target for a personal costs award. Again, I stress that anytime a court considers whether to make a costs award of this kind the analysis should be contextual. Exceptional circumstances are no doubt possible. That said, there are some ground rules that any reasonable lawyer would be expected to know and follow. Some of these examples will overlap with the ***Chutskoff v Bonora*** "indicia" because, naturally, neither a lawyer nor litigant should expect a court to stand by and tolerate certain abusive behaviour.

a. Futile Actions and Applications

[98] Conducting a futile action or application is a potential basis for an award of costs against a lawyer, particularly where the court concludes the lawyer has advanced this litigation knowing that it is hopeless, or being willfully blind as to that fact.

[99] A key category of futile action that warrants court sanction is a collateral attack. This is where litigation seeks to undo or challenge the outcome of another court case. A collateral attack is a breach of a cornerstone of the English tradition common law - the principle of *res judicata* - that once a court has made a decision and the appeal period has ended, then that decision is final. This is a basic principle of law taught to every lawyer. Collateral attacks are serious litigation misconduct because they waste court and litigant resources. A collateral attack inevitably fails in the face of *res judicata*.

[100] Similarly, litigation conducted in the face of a binding authority may render that action futile. A court literally cannot ignore *stare decisis*, and any lawyer should know that. Defying identified binding authority leads to the presumption that the lawyer is intending the natural consequence. That said, this does not mean that a lawyer should automatically be subject to a potential costs award if that lawyer has advanced a basis for why an established rule is incorrect, or should be modified, or how this case is somehow factually or legally different. However, simply telling the trial judge to ignore a court of appeal or Supreme Court of Canada decision indicates a bad litigation objective. Similarly, claims to distinguish binding jurisprudence on an arbitrary basis that is unrelated to the principle(s) in play implies an attempt to circumvent *stare decisis*.

[101] Other examples of futile litigation are litigation in the wrong venue, premature appeals or judicial reviews, or actions that seek impossible or grossly disproportionate remedies. A lawyer who seeks general damages near the ***Andrews v Grand & Toy Alberta Ltd.***, [1978] 2 SCR 229, 83 DLR (3d) 452 maximum for a modest injury raises the presumption that the lawyer intended this breach of an obvious and well-established legal rule; overstating the damages claimed was deliberate. That is doubly so if the maximum were exceeded. Courts are permitted to read between the lines and, in the context of the "culture shift", inquire what it means when a client and his or her lawyer advance a dubious, overstated claim.

[102] An application made outside a limitations period and without any explanation is another example of a futile action which puts the lawyer's motivation in doubt.

[103] All of these prior examples should be examined in context. Knowledge (obvious or implied) of the critical defect will often be an important factor. Again, a lawyer who makes a misstep but then corrects it will usually not be liable for litigation costs, personally. The ***Chutskoff v Bonora*** "indicia" may, however, tip the balance.

b. Breaches of Duty

[104] Another category of litigation conduct which will usually attract a costs award against a lawyer is where a lawyer has breached a basic aspect of their responsibility to the courts and clients. As I have previously indicated, the Court's supervisory function includes scrutinizing whether an in-court representative is qualified for that task.

[105] For example, ***Morin v TransAlta Utilities Corporation***, 2017 ABQB 409 involved a lawyer who had conducted litigation on behalf of persons who were not his clients. He had no authority to represent them. Graesser J concluded, and I agree, that this kind of misconduct would almost always warrant costs paid personally by that lawyer. This is a form of "busybody" litigation, one of the ***Chutskoff v Bonora*** "indicia", but for a lawyer this action is in clear violation of both their professional duties and is a basic and profound abuse of how courts trust lawyers to speak in court on behalf of others.

[106] Similarly, a lawyer who is aware of but does not disclose relevant unfavourable jurisprudence or legislation runs the risk of being subject to a personal costs penalty, particularly if the concealed item is a binding authority. This disclosure requirement is an obligation under the Law Society of Alberta *Code of Conduct*, but is even more critically an aspect of a lawyer's role and duties as an officer of the court. The simple fact is that judges rely on lawyers to assist in understanding the law. Intentionally omitting unfavourable case law has no excuse, and does nothing but cause unnecessary appeals, unjust results, and the waste of critical resources.

[107] The same is true for a lawyer who does not discharge their duty to provide full disclosure during an *ex parte* proceeding. It is too easy for a monologue to lead to spurious and unfair results. A judge has no way to test evidence in that context. This scenario creates a special and elevated obligation on a lawyer as an officer of the court, see ***Botan (Botan Law Office) v St. Amand***.

c. Special Forms of Litigation Abuse

[108] Certain kinds of litigation abuse will attract special court scrutiny because of their character and implications.

[109] For example, *habeas corpus* is an unusual civil application that has a priority 'fast track' in Alberta courts. As I explained in ***Ewanchuk v Canada (Attorney General)*** at paras 170-187, abuse of this procedure has a cascading negative effect on court function. Further, the potential basis and remedy for *habeas corpus* is extremely specific and specialized. *Habeas corpus* may only be used to challenge a decision to restrict a person's liberty. The only remedy that may result is release. A lawyer who makes a *habeas corpus* application which does not meet those criteria can expect the possibility of a personal costs award. This kind of application is "serious abuse" because of how it damages the court's effective and efficient functioning.

[110] OPCA strategies, a category of vexatious and abusive litigation that was reviewed by Rooke ACJ in ***Meads v Meads***, are another special form of litigation abuse that will almost certainly be a basis for a costs award against a lawyer. In brief, these are legal-sounding concepts that are intended to subvert the operation of courts and the rule of law. These ideas are so obviously false and discounted that simply employing these concepts is a basis to conclude a party who argues OPCA motifs intends to abuse the courts and other parties for an ulterior purpose: ***Fiander v Mills***, 2015 NLCA 31, 368 Nfld & PEI R 80. The same is true for a lawyer who invokes OPCA concepts.

[111] Another special category of litigation abuse that may attract a costs award against a lawyer personally is the practice of booking a hearing or an application in a time period that is obviously inadequate for the issues and materials involved. For example, a lawyer may appear in Chambers and attempt to jam in an application that obviously requires a full or half day, rather than the 30 minute time slot allotted. The end result will either be an incomplete application, an application that goes overtime and disrupts the conduct of the Chambers session, or that the judge who received the application simply orders it re-scheduled to a future appearance with the appropriate duration.

[112] In criticizing this practice I understand why it happens. The Alberta Court of Queen's Bench is no longer able to respond to litigants in a timely manner due to the now notorious failure of governments to maintain an adequate judicial complement, facilities, and supporting staff. In ***Ewanchuk v Canada (Attorney General)***, at para 178 I reported how long persons must

wait to access this court, for example waiting over a year to conduct a one-day special chambers hearing. While preparing this judgment I checked to see if things have improved. They haven't.

[113] When people attempt to 'game the system', and jump the que, that simply makes things worse. Again, in saying this, I am not denying that I understand the reason why this happens. It is just this ship is riding low in the water, if not sinking. Placing unanticipated pressures on this institution only makes things worse.

[114] Lawyers have a special responsibility in the efficient management and allocation of limited court resources. They are the ones who are best positioned to accurately estimate the time needed for a court procedure, a hearing, or a trial. Lawyers cause great and cascading harm when they try to squeeze large pegs into small holes. The result is the surrounding wood shatters. A lawyer should not be surprised if this Court concludes the lawyer should personally face costs for this pernicious practice. It must stop. In one sense or another, we are all on the same (sinking) ship. Don't make it capsize.

d. Delay

[115] Delay is an increasing issue in both civil and criminal proceedings in Canada. ***R v Jordan*** and ***R v Cody*** challenge the "culture of complacency" which has led to long and unacceptable pre-trial delays. These two decisions demand all court actors take steps to ensure 'justice delayed is not justice denied.'

[116] ***Jodoin*** also makes explicit that when a lawyer represents a client, delays in a civil proceeding may be a basis to order costs are paid by the lawyer. In ***Pacific Mobile Corporation v Hunter Douglas Canada Ltd.***, [1979] 1 SCR 842, 26 NR 453 unnecessary repeated adjournments were one of the bases that Pigeon J identified for the award of costs against lawyers, personally. In ***Jodoin*** at para 29 Gascon J identifies "dilatory" proceedings as a basis for targeting a lawyer for costs:

> ... lawyer may not knowingly use judicial resources for a purely dilatory purpose with the sole objective of obstructing the orderly conduct of the judicial process in a calculated manner. ...

[117] Avoiding delay is clearly a priority in the new post-"culture shift" civil litigation environment, but since this particular factor is not in play in the current costs proceeding I will not comment further on this basis for a potential costs award against a lawyer. This complex subject is better explored in the context of a fact scenario that involves potentially unnecessary or unexplained adjournments, and other questionable procedures that caused delay.

C. Conclusion

[118] The Supreme Court of Canada has now provided clear guidance that Canada's legal apparatus can only operate, provide "access to justice", by refocussing the operation of courts to achieve "fair and just" results, but in a manner that is proportionate to the issues and interests involved. I have reviewed some of the aspects of this "culture shift".

[119] This objective involves many actors. Parliament and the legislatures should design procedures and rules that better align with this objective. Some kinds of disputes, such as family law matters that involve children, are poor matches for the adversarial court context. Judges and courts should develop new approaches, both formal and informal, to better triage, investigate,

and resolve disputes. Judicial review and appeal courts should be mindful to limit their intrusion into the operation of subordinate tribunals.

[120] Litigants and their lawyers have a part in this. ***Hryniak v Mauldin***, ***R v Jordan***, ***R v Cody***, and now ***Jodoin*** indicate that in Canada being in court is a right that comes with responsibilities. Lawyers are a critical interface between the courts and the lay public. Their conduct will be scrutinized in this new reality. The door of "access to justice" swings open or drops like a portcullis depending on how the courts and their resources are used. Personal court costs awards against lawyers are simply a tool to help the court apparatus function, and ultimately that is to everyone's benefit.

V. Priscilla Kennedy's Litigation Misconduct

[121] I reject that 'litigating from one's heart' is any defence to a potential costs award vs a lawyer, or for that matter from any other sanction potentially faced by a lawyer. Lawyers are not actors, orators, or musicians, whose task is to convey and elicit emotions. They are highly trained technicians within a domain called law. A perceived injustice is no basis to abuse the court, breach one's oath of office, or your duties as a court officer.

[122] When a lawyer participates in abusive litigation that lawyer is not an empty vessel, but an accessory to that abuse. Persons are subject to sanctions including imprisonment where they engage in misconduct but are willfully blind to that wrongdoing. Lawyers have responsibilities and are held to a standard that flows from their education and training, and it is on that basis that Canadian courts give them a special trusted status. Abuse of that trust will have consequences.

[123] Turning to Stoney's lawyer, Priscilla Kennedy, there are two main bases on which Ms. Kennedy may be liable for a court-ordered costs award against her, personally.

A. Futile Litigation

[124] First, the August 12, 2016 application filed by Kennedy on behalf of Stoney was clearly an example of futile litigation. This is detailed in ***Sawridge #6*** at paras 38-52.

[125] The August 12, 2016 application seeks to have Stoney added as a beneficiary of Sawridge 1985 Trust because he says he is in fact and law a member of the Sawridge Band. Stoney was refused membership in the Sawridge Band and challenged that result in Federal Court by judicial review, where his application was rejected: ***Stoney v Sawridge First Nation***, 2013 FC 509, 432 FTR 253. The Federal Court decision was not appealed. Kennedy was Stoney's lawyer in this proceeding. I concluded in ***Sawridge #6*** that the August 12, 2016 application was a collateral attack on the Federal Court's decision and authority. It is "... an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.": ***Wilson v The Queen***, [1983] 2 SCR 594 at 599, 4 DLR (4th) 577.

[126] I have previously commented on how a collateral attack is a very serious form of litigation misconduct that is a basis for court intervention and response. Kennedy was perfectly aware of the result in ***Stoney v Sawridge First Nation***. She was Stoney's lawyer in that proceeding. Further, the arguments made against Stoney by the Sawridge Band and the Sawridge 1985 Trust Trustees made clear that Kennedy was attempting to re-litigate on the same ultimate subject.

[127] My review of Stoney's submissions in ***Sawridge #6*** and the reported ***Stoney v Sawridge First Nation*** arguments illustrates that Kennedy's arguments in these two proceedings are effectively the same. Kennedy brought nothing novel to the ***Sawridge #6*** dispute.

[128] It gets worse. Not only was ***Stoney v Sawridge First Nation*** judicial review unsuccessful, but in that decision Justice Barnes at para 16 observed that Maurice Stoney had raised the same claim years earlier, in ***Huzar v Canada***, [2000] FCJ 873, 258 NR 246 (FCA), and in that action at para 4 had acknowledged that Stoney had abandoned that aspect of the appeal because that claim "discloses no reasonable cause of action". Justice Barnes therefore at para 17 concluded (and I agree) that the result in ***Stoney v Sawridge First Nation*** was already barred by issue estoppel - Stoney was attempting to "... relitigate the same issue that was conclusively determined in an earlier proceeding."

[129] Kennedy therefore did not merely engage in a hopeless proceeding before me. The ***Stoney v Sawridge First Nation*** judicial review was also doomed from the start. Both actions were abuse of the courts. Neither Stoney nor Kennedy had any right to waste court and respondent resources in these actions.

[130] Kennedy's counsel admitted this is true, that the August 12, 2016 application was hopeless from the start, and an abuse of court processes.

[131] Acting to advance a futile action such as a collateral attack which proceeds in the face of objections on that ground is a clear basis to find a lawyer has engaged in serious abuse of judicial processes, and to then order costs against the lawyer, personally. The ***Sawridge #6*** application was an unfounded, frivolous, and vexatious proceeding. This was a serious abuse not only because of the character of the misconduct (a futile action), but that misconduct is aggravated because Kennedy had done the same thing with the same client before. There is a pattern here, and one that should be sharply discouraged.

[132] This is the first basis on which I conclude that Priscilla Kennedy should be personally liable for litigation costs in the ***Sawridge #6*** application.

B. Representing Non-Clients

[133] The three affidavits presented by Kennedy do not establish that Maurice Stoney was authorized to represent his siblings. Even at the most generous, these affidavits only indicate that Bill and Gail Stoney gave some kind of oral sanction for Maurice Stoney to act on their behalf. I put no weight on the affidavit of Shelley Stoney. It is hearsay, and presumptively inadmissible.

[134] I note that none of these affidavits were supported by any form of documentation, either evidence or records of communications between Maurice Stoney and his siblings, or between Kennedy and her purported clients.

[135] I make an adverse inference from the absence of any documentary evidence of the latter. The fact that no documentation to support that Kennedy and the Stoney siblings communicated in any manner, let alone gave Kennedy authority to act on their behalf, means none exists.

[136] There is no documentation to establish that Maurice Stoney applied to become a litigation representative or was appointed a litigation representative, per *Rules* 2.11-2.21. This is not a class action scenario where Maurice Stoney is a representative applicant. While Kennedy has argued that Maurice Stoney's siblings are elderly and unable to conduct litigation, then that is not simply a basis to arbitrarily add their names to court filing. Instead, a person who lacks the

capacity to represent themselves (*Rule* 2.11(c-d)) may have a self-appointed litigation representative (*Rule* 2.14), but only after filing appropriate documentation (*Rule* 2.14(4)). That did not occur.

[137] I therefore conclude on a balance of probabilities that Kennedy did not have instructions or a legal basis to file the August 12, 2016 application on behalf of "Maurice Felix Stoney and his brothers and sisters".

[138] I adopt the reasoning of Graesser J in ***Morin v TransAlta Utilities Corporation*** that a costs award against a lawyer is appropriate where that lawyer engages in unauthorized "busybody litigation". This is a deep and fundamental breach of a lawyer's professional, contractual, and court-related obligations.

[139] While at the July 28, 2017 hearing I concluded that no potential costs liability should be placed on Bill and Gail Stoney, I stress the potential deleterious consequences to these individuals for them being gathered into this Action in an uncertain and ill-defined manner. The Sawridge Band and Trustees stressed the importance of *informed* consent, and I have no confidence that sort of consent was obtained for either Bill or Gail Stoney, let alone the other siblings of Maurice Stoney.

[140] In any case, I order costs against Kennedy on the basis of her "busybody litigation", but I believe that the submissions received in this costs application are a further aggravating factor given the potential of putting persons who are operationally non-clients at risk of court-imposed sanctions. This is a second independent basis that I find Kennedy should be liable to pay costs.

C. The Presence of *Chutskoff v Bonora* "Indicia" and other Aggravating Factors

[141] As previously indicated, the presence of ***Chutskoff v Bonora*** "indicia" may assist the court in determining whether or not a lawyer has engaged in abusive litigation that is "serious abuse".

[142] A point that was in dispute at the ***Sawridge #6*** application was whether or not Stoney had outstanding unpaid costs orders. This is a well-established indicium of vexatious litigation: ***Chutskoff v Bonora*** at para 92. This is a useful point to illustrate how, in my opinion, ***Jodoin*** instructs how a court 'quarantines' relevant vs extraneous evidence when the court evaluates a lawyer's potential liability due to litigation abuse. One of the allegations that emerged was that Stoney had not paid the costs awarded against him in ***Stoney v Sawridge First Nation***. If so, then that fact aggravates the fact Kennedy then conducted a collateral attack on the judicial review's outcome. Similarly, Maurice Stoney's failure to pay costs in relation to the ***Stoney v 1985 Sawridge Trust*** appeal of ***Sawridge #3*** is related to the August 12, 2016 application by both subject matter and as it occurred in the same overall litigation. However, if Stoney had, hypothetically, not paid costs awarded in other actions where he was represented by Kennedy then that is of little relevance to this specific decision and the question of whether Kennedy should be liable for the ***Sawridge #6*** costs award.

[143] I conclude that the fact that Kennedy proceeded with the August 12, 2016 application while there were outstanding costs orders in relation to ***Stoney v Sawridge First Nation*** and ***Stoney v 1985 Sawridge Trust*** is an aggravating factor but not, in itself, a basis to order costs against Kennedy.

[144] The Trustees and Band indicated I should consider Kennedy's conduct during cross-examination of her client on his affidavit. While I have reviewed that material I do not think it is

germane to my analysis because Kennedy's obstructionist conduct is distinct from the main bases for my award of costs against Kennedy. Similarly, the degree to which Kennedy was "holding the reins" of this litigation is not actually directly relevant to my analysis. What is critical is that the August 12, 2016 application had no merit. Kennedy's misconduct is essentially the same no matter whether she 'was just following orders', or 'the person behind the wheel'.

[145] Another factor which I conclude is relevant and aggravating is that the Stoney August 12, 2016 application attempts to off-load litigation costs on the 1985 Sawridge Trust. Stoney's application seeks to have his entire litigation costs paid from the Trust. I would consider it a significant indication of good faith litigation intent if Stoney had acknowledged his litigation was 'a long shot', and acknowledged a willingness to cover the consequences to other involved parties. Instead Stoney resisted an application by the Sawridge Band that he pay security for costs.

[146] The attempted 'offloading' of litigation costs in this instance is not in itself a basis to conclude that Kennedy should be liable to pay her client's court costs, but it favours that result. Stoney, whether he won or lost, sought to have the beneficiaries of an aboriginally owned trust pay for his (and his lawyer's) expenses.

[147] Another aggravating factor is that in ***Sawridge #2*** I concluded at para 35 that this Court would not take jurisdiction to review the Sawridge Band membership process. That was the jurisdiction of the Federal Courts. Stoney and Kennedy ignored that instruction by advancing the ***Sawridge #6*** application.

[148] Last, I note that Stoney's application has a special aggravating element. The intended relief was that Stoney be added as a member of an Indian Band. There is no need to review and detail the extensive jurisprudence on the special *sui generis* character of aboriginal title, how aboriginal property is held in a collective and community-based manner, and the unique fiduciary relationship between the Crown and Canada's aboriginal peoples. Suffice to say that membership in an Indian Band brings unusual consequences to both the member and that band member's community.

[149] Put simply, a challenge to that status, and the internal decision-making, self-determination, and self-government of an aboriginal community is a serious matter. If I had been unclear on whether an illegal and futile attempt to conduct a collateral attack on the ***Stoney v Sawridge First Nation*** decision qualified as "serious abuse" then I would have no difficulty concluding the ***Sawridge #6*** application was "serious abuse of the judicial system" in light of the interests involved, combined with the fact the Stoney application had no basis in law or fact.

D. Conclusion

[150] I conclude that Priscilla Kennedy has conducted "an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system" on two independent bases:

1. she conducted 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.

[151] Each of these are a basis for concluding that Kennedy should be liable for the ***Sawridge #6*** costs, personally. The aggravating factors I have identified simple emphasize that conclusion and result is correct.

E. Quantum of the Costs Award

[152] In certain instances it might be possible to conclude that a lawyer's participation in an abusive application or action is really only related to a part of the problematic events, and on that basis a court might only make a lawyer responsible for a part of the court-ordered costs.

[153] Here, however, Kennedy was involved fully throughout the ***Sawridge #6*** application. The abusive character of that litigation was established from the August 12, 2016 application date, onwards. I therefore conclude that Kennedy and Stoney are liable for the full costs of ***Sawridge #6***, on a joint and several basis.

VI. Conclusion

[154] I order that Kennedy is personally liable for the solicitor and own client indemnity costs that I ordered in ***Sawridge #6*** at paras 67-68, along with her client.

[155] Stoney, Kennedy, the Trustees, and the Sawridge Band may return to the court within 30 days of this decision if they require assistance to determine those costs. Once determined, costs are payable immediately.

[156] 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.

Heard on the 28th day of July, 2017.
Dated at the City of Edmonton, Alberta this 31st day of August, 2017.

D.R.G. Thomas
J.C.Q.B.A.

Submissions in writing from:

Donald Wilson
DLA Piper
for Priscilla Kennedy

D.C. Bonora and
Erin M Lafuente
Dentons LLP
for 1985 Sawridge Trustees

Edward Molstad, Q.C.
Ellery Sopko
Parlee McLaws LLP
for the Sawridge Band (Intervenor)

TAB 3

Court of Queen's Bench of Alberta

Citation: 1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 436

Date: 20170712
Docket: 1103 14112
Registry: 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" or "Trust")

Between:

Maurice Felix Stoney and His Brothers and Sisters

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")

Respondents (Original Applicants)

- and –

Public Trustee of Alberta ("OPTG")

Respondent

- and –

The Sawridge Band (the"Band" or "SFN")

Intervenor

Case Management Decision (Sawridge #6) of the Honourable Mr. Justice D.R.G. Thomas

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Table of Contents

I. Introduction

[1] This is a case management decision on an application filed on August 12, 2016 (the "Stoney Application") by Maurice Felix Stoney "and his brothers and sisters" (Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty Jean Stoney, Gail Stoney, Alma Stoney, and Bryan Stoney) to be added "as beneficiaries to these Trusts". In his written brief of September 28, 2016, Maurice Stoney asks that his legal costs and those of his siblings be paid for by the 1985 Sawridge Trust.

[2] The Stoney Application is opposed by the Trustees and the Sawridge Band, which applied for and has been granted intervenor status on this Application. The Public Trustee of Alberta ("OPTG") did not participate in the Application.

[3] The Stoney Application is denied. Maurice Stoney is a third party attempting to insert himself (and his siblings) into a matter in which he has no legal interest. Further, this Application is a collateral attack which attempts to subvert an unappealed and crystallized judgment of a Canadian court which has already addressed and rejected the Applicant's claims and arguments. This is serious litigation misconduct, which will have costs implications for Maurice Stoney and also potentially for his lawyer Priscilla Kennedy.

II. Background

[4] This Action was commenced by Originating Notice, filed on June 12, 2011, by the 1985 Sawridge Trustees and is sometimes referred to as the "Advice and Direction Application".

[5] The history of the Advice and Direction Application is set out in previous decisions (including the Orders taken out in relation thereto) reported as ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2012 ABQB 365, 543 AR 90 ("***Sawridge #1***"), aff'd 2013 ABCA 226, 543 AR 90 ("***Sawridge #2***"), ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2015 ABQB 799 ("***Sawridge #3***"), time extension for appeal denied 2016 ABCA 51, 616 AR 176, ***1985 Sawridge v Alberta (Public Trustee)***, 2017 ABQB 299 ("***Sawridge #4***"). A separate motion by three third parties to participate in this litigation was rejected on July 5, 2017, and that decision is reported as ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 377 ("***Sawridge #5***"), (collectively the "***Sawridge Decisions***").

[6] Some of the terms used in this decision ("***Sawridge #6***") are also defined in the various Sawridge Decisions.

[7] I directed that this Application be dealt with in writing and the materials filed include the following:

August 12, 2016	Application by Maurice Felix Stoney and His Brothers and Sisters
September 28, 2016	Written Argument of Maurice Stoney, supported by an Affidavit of Maurice Stoney sworn on May 17, 2016.
September 28, 2016	Written Submission of the Sawridge Band, supported by an Affidavit of Roland Twinn, dated September 21, 2016, for the Sawridge Band to be granted Intervenor status in the Advice and Direction Application in relation to the August 12, 2016 Application, and that the Application be struck out per *Rule* 3.68.
September 30, 2016	Application by the Sawridge Trustees that Maurice Stoney pay security for costs.
October 27, 2016	Written Response Argument to the Application of Sawridge First Nation filed by Maurice Stoney.
October 31, 2016	The OPTG sent the Court and participants a letter indicating it has "no objection" to the Stoney Application.
October 31, 2016	Trustees' Written Submissions in relation to the Maurice Stoney Application and the proposed Sawridge Band intervention.
October 31, 2016	Sawridge Band Written Submissions responding to the Maurice Stoney Application.
November 14, 2016	Reply argument to Maurice Stoney's Written Response Argument filed by the Sawridge Band.

November 15, 2016	Further Written Response Argument of Maurice Stoney.

III. Preliminary Issue #1 - Who is/are the Applicant or Applicants?

[8] As is apparent from the style of cause in this Application, the manner in which the Applicants have been framed is unusual. They are named as "Maurice Felix Stoney and His Brothers and Sisters". The Application further states that the Applicants are "Maurice Stoney and his 10 living brothers and sisters" (para 1). Para 2 of the Application states the issue to be determined is:

> Addition of Maurice Stoney, Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty Jean Stoney, Gail Stoney Alma Stoney, Alva Stoney and Bryan Stony as beneficiaries of these Trusts.

[9] There is no evidence before me or on the court file that indicates any of these named individuals other than Maurice Stoney has taken steps to involve themselves in this litigation. The "10 living brothers or sisters" are simply named. Maurice Stoney's filings do not include any documents such as affidavits prepared by these individuals, nor has there been an *Alberta Rules of Court*, Alta Reg 124/2010 [the "*Rules*", or individually a "*Rule*"] application or appointment of a litigation representative, per *Rules* 2.11-2.21. In fact, aside from Maurice Stoney, the Applicant(s) materials provide no biographical information or records such as birth certificates for any of these additional proposed litigants, other than the year of their birth.

[10] Counsel for Maurice Stoney, Priscilla Kennedy, has not provided or filed any data to show she has been retained by the "10 living brothers or sisters".

[11] Participating in a legal proceeding can have significant adverse effects, such as exposure to awards of costs, findings of contempt, and declarations of vexatious litigant status. Being a litigant creates obligations as well, particularly in light of the positive obligations on litigation actors set by *Rule* 1.2.

[12] In the absence of evidence to the contrary and from this point on, I limit the scope of Maurice Stoney's litigation to him alone and do not involve his "10 living brothers and sisters" in this application and its consequences. I will return to this topic because it has other implications for Maurice Stoney and his lawyer Priscilla Kennedy.

IV. Preliminary Issue #2 - The Proposed Sawridge Band Intervention and Motion to Strike Out the Stoney Application

[13] To this point, the role of the Sawridge Band in this litigation has been what might be described as "an interested third party". The Sawridge Band has taken the position it is not a party to this litigation: ***Sawridge #3*** at paras 15, 27. The Sawridge Band does not control the 1985 Sawridge Trust, but since the beneficiaries of that Trust are defined directly or indirectly by membership in the SFN, there have been occasions where the Sawridge Band has been involved in respect to that underlying issue, particularly when it comes to the provision of relevant information on procedures and other evidence: see ***Sawridge #1*** at paras 43-49; ***Sawridge #3***.

[14] The Sawridge Band argued that its intervention application under *Rule* 2.10 should be granted because the Stoney Application simply continues a lengthy dispute between Maurice Stoney and the Sawridge Band over whether Maurice Stoney is a member of the Sawridge Band.

[15] The Trustees support the application of the Sawridge Band, noting that the proposed intervention makes available useful evidence, particularly in providing context concerning Maurice Stoney's activities over the years.

[16] The Applicant, Stoney responds that intervenor status is a discretionary remedy that is only exercised sparingly. Maurice Stoney submits the broad overlap between the Sawridge Band and the Trustees means that the Band brings no useful or unique perspectives to the litigation. Maurice Stoney alleges the Sawridge Band operates in a biased and discriminatory manner. If any party should be involved it should be Canada, not the Sawridge Band. Maurice Stoney demands that the intervention application be dismissed and costs ordered against the Band.

[17] Two criteria are relevant when a court evaluates an application to intervene in litigation: whether the proposed intervenor is affected by the subject matter of the proceeding, and whether the proposed intervenors have expertise or perspective on that subject: ***Papaschase Indian Band v Canada (Attorney General)***, 2005 ABCA 320, 380 AR 301; ***Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)***, 2014 ABCA 340, 584 AR 255.

[18] The Sawridge Band intervention is appropriate since that response was made in reply to a collateral attack on its decision-making on the core subject of membership. The common law approach is clear; here the Sawridge Band is particularly prejudiced by the potential implications of the Stoney Application. Indeed, it is hard to imagine a more fundamental impact than where the Court considers litigation that potentially finds in law that an individual who is currently an outsider is, instead, a part of an established community group which holds title and property, and exercises rights, in a *sui generis* and communal basis: ***Delgamuukw v British Columbia***, [1997] 3 SCR 1010, 153 DLR (4th) 193; ***R v Van der Peet***, [1996] 2 SCR 507, 137 DLR (4th) 289.

[19] I grant the Sawridge Band application to intervene and participate in the Advice and Direction Application, but limited to the Stoney Application only.

V. Positions of the Parties on the Application to be Added

A. Maurice Stoney

[20] The Applicant's argument can be reduced to the following simple proposition. Maurice Stoney wants to be named as a party to the litigation or as an intervenor because he claims to be a member of the Sawridge Band. The Sawridge 1985 Trust is a trust that was set up to hold property on behalf of members of the Sawridge Band. He is therefore a beneficiary of the Trust, and should be entitled to participate in this litigation.

[21] The complicating factor is that Maurice Stoney is not a member of the Sawridge Band. He argues that his parents, William and Margaret Stoney, were members of the Sawridge Band, and provides documentation to that effect. In 1944 William Stoney and his family were "enfranchised", per *Indian Act*, RSC 1927, c 98, s 114. This is a step where an Indian may accept a payment and in the process lose their Indian status. The "enfranchisement" option was subsequently removed by Federal legislation, specifically an enactment commonly known as "Bill C-31".

[22] Maurice Stoney argues that the enfranchisement process is unconstitutional, and that, combined with the result of a lengthy dispute over the membership of the Sawridge Band, means he (and his siblings) are members of the Sawridge Band. In his Written Response argument this claim is framed as follows:

> Retroactive to April 17, 1985, Bill C-31 (R.S.C. 1985, c. 32 (1st Supp.) amended the provisions of the Indian Act, R.S.C. 1985, I-5 by removing the enfranchisement provisions returning all enfranchised Indians back on the pay lists of the Bands where they should have been throughout all of the years.

[23] In 2012, Maurice Stoney applied to become a member of the Sawridge Band, but that application was denied. Maurice Stoney then conducted an unsuccessful judicial review of that decision: ***Stoney v Sawridge First Nation***, 2013 FC 509, 432 FTR 253. Maurice Stoney says all this is irrelevant to his status as a member of the Sawridge Band; the definition of beneficiaries is contrary to public policy, and unconstitutional. The Court should order that Maurice Stoney and his siblings are beneficiaries of the 1985 Sawridge Trust and add them as parties to this Action. The Trust should pay for all litigation costs.

[24] The Written Response claims the Sawridge Band is in breach of orders of the Federal Court, that Maurice Stoney and others "have faced a tortuous long process with no success". Maurice Stoney and his siblings' participation does not cause prejudice to the Trustees, and claims that Maurice Stoney has not paid costs are false. I note the Written Response was not accompanied by any evidence to establish that alleged fact.

[25] The October 27, 2016 Written Response Argument stresses the Sawridge Band is not a party to this litigation, it has voluntarily elected to follow that path, and a third party should not be permitted to interfere with Maurice Stoney's litigation. In any case, the Sawridge Band is wrong - Maurice Stoney is already a member of the Sawridge Band. He deserves enhanced costs in response to the *Rule* 3.68 Application by the Band.

B. Sawridge Band

[26] The Sawridge Band points to the decision in ***Stoney v Sawridge First Nation*** and says the Maurice Stoney Application is an attempt to revisit an issue that was decided and which is now subject to *res judicata* and issue estoppel. Maurice Stoney is wrong when he argues that he automatically became a Sawridge Band member when Bill C-31 was enacted. His Affidavit contains factual errors. Maurice Stoney's claim to be a Sawridge Band member was rejected in court judgments that Maurice Stoney did not appeal.

[27] Instead, Maurice Stoney had a right to apply to become a Sawridge Band member. He did so, and that application was denied, as was the subsequent appeal. The Federal Court reviewed and confirmed that result in the ***Stoney v Sawridge First Nation*** decision. The issue of Maurice Stoney's potential membership in the Sawridge Band is therefore closed.

[28] The Sawridge Band has entered evidence that Maurice Stoney has not paid the costs that were awarded against him in the ***Stoney v Sawridge First Nation*** action, and that Maurice Stoney has unpaid costs awards in relation to the unsuccessful appeal in ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2016 ABCA 51, 616 AR 176.

[29] On January 31, 2014, Maurice Stoney filed a Canadian Human Rights Commission complaint concerning the Sawridge Band's decision to refuse him membership. The Commission

refused the complaint, and concluded the issue had already been decided by ***Stoney v Sawridge First Nation***.

[30] The Sawridge Band says this Court should do the same and strike out the Stoney Application per *Rule* 3.68.

[31] As for the "10 brothers and sisters", the Sawridge Band indicates it has received and refused an application from one individual who may be in that group.

[32] The Sawridge Band seeks solicitor and own client costs, or elevated costs, in light of Maurice Stoney's litigation history in relation to his alleged membership in the Sawridge Band.

C. 1985 Sawridge Trustees

[33] The Trustees echo the Sawridge Band's arguments, assert the Application is "unnecessary, vexatious, frivolous, *res judicata*, and an abuse of process", and that the Stoney Application should be denied. The Trustees seek solicitor and own client costs or enhanced costs as a deterrent against further litigation abuse by Maurice Stoney.

VI. Analysis

[34] The law concerning *Rule* 3.68 is well established and is not in dispute. This is a civil litigation procedure that is used to weed out hopeless proceedings:

> 3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following:
>
> (a) that all or any part of a claim or defence be struck out;
>
> (b) that a commencement document or pleading be amended or set aside;
>
> (c) that judgment or an order be entered;
>
> (d) that an action, an application or a proceeding be stayed.
>
> (2) The conditions for the order are one or more of the following:
>
> ...
>
> (b) a commencement document or pleading discloses no reasonable claim or defence to a claim;
>
> (c) a commencement document or pleading is frivolous, irrelevant or improper;
>
> (d) a commencement document or pleading constitutes an abuse of process;
>
> ...
>
> (3) No evidence may be submitted on an application made on the basis of the condition set out in subrule (2)(b).
>
> (4) The Court may
>
> (a) strike out all or part of an affidavit that contains frivolous, irrelevant or improper information;

...

[35] An action or defence may be struck under *Rule* 3.68 where it is plain and obvious, or beyond reasonable doubt, that the action cannot succeed: ***Hunt v Carey Canada Inc.***, [1990] 2 SCR 959, 74 DLR (4th) 321. Pleadings should be considered in a broad and liberal manner: ***Tottrup v Lund***, 2000 ABCA 121 at para 8, 186 DLR (4th) 226.

[36] A pleading is frivolous if its substance indicates bad faith or is factually hopeless: ***Donaldson v Farrell***, 2011 ABQB 11 at para 20. A frivolous plea is one so palpably bad that the Court needs no real argument to be convinced of that fact: ***Haljan v Serdahely Estate***, 2008 ABQB 472 at para 21, 453 AR 337.

[37] A proceeding that is an abuse of process may be struck on that basis: ***Reece v Edmonton (City)***, 2011 ABCA 238 at para 14, 335 DLR (4th) 600. "Vexatious" litigation may be struck under either *Rule* 3.682(c) or (d): ***Wong v Leung***, 2011 ABQB 688 at para 33, 530 AR 82; ***Mcmeekin v Alberta (Attorney General)***, 2012 ABQB 144 at para 11, 537 AR 136.

[38] The documentary record introduced by Maurice Stoney makes it very clear that in 1944 William J. Stoney, his wife Margaret, and their two children Alvin Joseph Stoney and Maurice Felix Stoney, underwent the enfranchisement process and ceased to be Indians and members of the Sawridge Band per the *Indian Act*.

[39] As noted above, the Advice and Direction Application was initiated on June 11, 2011.

[40] On December 7, 2011, the Sawridge Band rejected Maurice Stoney's application for membership. An appeal of that decision was denied.

[41] Maurice Stoney then pursued a judicial review of the Sawridge Band membership application review process, in the Federal Court of Canada, which resulted in a reported May 15, 2013 decision, ***Stoney v Sawridge First Nation***. At that proceeding, Maurice Stoney and two cousins argued that they were automatically made members of the Sawridge Band as a consequence of Bill C-31. At paras 10-14, Justice Barnes investigates that question and concluded that this argument is wrong, citing ***Sawridge v Canada***, 2004 FCA 16, 316 NR 332.

[42] At para 15, Justice Barnes specifically addresses Maurice Stoney:

> I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to [Maurice] Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

I note the original text of this paragraph uses the name "William Stoney" instead of "Maurice Stoney". This is an obvious typographical error, since it was William Stoney who in 1944 sought and obtained enfranchisement. Maurice Stoney is William Stoney's son.

[43] Justice Barnes continues to observe at para 16 that this very same claim had been advanced in ***Huzar v Canada***, [2000] FCJ 873, 258 NR 246 (FCA), but that Maurice Stoney as a respondent in that hearing at para 4 had acknowledged this argument had no basis in law:

> It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band. [Emphasis added.]

[44] Justice Barnes at para 17 continues on to observe that:

> It is not open to a party to relitigate the same issue that was conclusively determined in an earlier proceeding. The attempt by these Applicants to reargue the question of their automatic right of membership in Sawridge is barred by the principle of issue estoppel ...

[45] As for the actual judicial review, Justice Barnes concludes the record does not establish procedural unfairness due to bias: paras 19-21. A *Charter*, s 15 application was also rejected as unsupported by evidence, having no record to support the relief claims, and because the Crown was not served notice of a challenge to the constitutional validity of the *Indian Act*: para 22.

[46] Maurice Stoney did not appeal the ***Stoney v Sawridge First Nation*** decision.

[47] The Sawridge Band and the Trustees argue that Maurice Stoney's current application is an attempt to attack an unappealed judgment of a Canadian court. They are correct. Maurice Stoney is making the same argument he has before - and which has been rejected - that he now is one of the beneficiaries of the 1985 Sawridge Trust because he is automatically a full member of the Sawridge Band, due to the operation of Bill C-31.

[48] In summary, there are four separate grounds for rejecting Maurice Stoney's application:

1. He is estopped from making this argument via his concession in ***Huzar v Canada*** that this argument has no legal basis.
2. He made this same argument in ***Stoney v Sawridge First Nation***, where it was rejected. Since Mr. Stoney did not choose to challenge that decision on appeal, that finding of fact and law has 'crystallized'.
3. In ***Sawridge #3*** at para 35 I concluded the question of Band membership should be reviewed in the Federal Court, and not in the Advice and Direction Application.
3. In any case I accept and adopt the reasoning of ***Stoney v Sawridge First Nation*** as correct, though I am not obliged to do so.

[49] Maurice Stoney has conducted a "collateral attack", an attempt to use 'downstream' litigation to attack an 'upstream' court result. This offends the principle of *res judicata*, as explained by Abella J in ***British Columbia (Workers' Compensation Board) v Figliola***, 2011 SCC 52 at para 28, [2011] 3 SCR 422:

> The rule against collateral attack similarly attempts to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route ... [Emphasis added.]

[50] McIntyre J in ***Wilson v The Queen***, [1983] 2 SCR 594 at 599, 4 DLR (4th) 577 explains how it is the intended effect that defines a collateral attack:

> It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally — and a collateral attack may be

> described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. [Emphasis added.]

See also: ***R v Litchfield***, [1993] 4 SCR 333, 86 CCC (3d) 97; ***Quebec (Attorney General) v Laroche***, 2002 SCC 72, 219 DLR (4th) 723; ***R v Sarson***, [1996] 2 SCR 223, 135 DLR (4th) 402.

[51] While I am not bound by the Federal Court judgments under the doctrine of *stare decisis*, I am constrained by *res judicata* and the prohibition against collateral attacks on valid court and tribunal decisions. Maurice Stoney's application to be a member of the Sawridge Band was rejected, and his court challenges to that result are over. He did not pursue all available appeals. He cannot now attempt to slip into the Sawridge Band and 1985 Sawridge Trust beneficiaries pool 'through the backdoor'.

[52] I dismiss the Stoney Application to be named either as a party to this litigation, or to participate as an intervenor. Maurice Stoney has no interest in the subject of this litigation, and is nothing more than a third-party interloper. In light of this conclusion, it is unnecessary to address the Sawridge Band's application that Maurice Stoney pay security for costs.

VII. Vexatious Litigant Status

[53] Maurice Stoney's conduct in relation to the Advice and Direction Application has been inappropriate. He arguably had a basis to be an interested party in 2011, because when the Trustees initiated the distribution process he had a live application to join the Sawridge Band. Therefore, at that time he had the potential to become a beneficiary. However, by 2013, that avenue for standing was closed when Justice Barnes issued the ***Stoney v Sawridge First Nation*** decision and Maurice Stoney did not appeal.

[54] Maurice Stoney nevertheless persisted, appearing before the Alberta Court of Appeal in ***1985 Sawridge Trust (Trustee for) v Alberta (Public Trustee)***, 2016 ABCA 51, 616 AR 176, where Justice Watson concluded Mr. Stoney should not receive an extension of time to challenge ***Sawridge #3*** because he had no chance of success as he did not have standing and was "... in fact, a stranger to the proceedings insofar as an appeal from the decision of Mr. Justice Thomas to the Court of Appeal is concerned.": paras 20-21. Now Maurice Stoney has attempted to add himself (and his siblings) to this action as parties or intervenors, in a manner that defies *res judicata* and in an attempt to subvert the decision-making of the Sawridge Band and the Federal Court of Canada.

[55] ***Chutskoff v Bonora***, 2014 ABQB 389 at para 92, 590 AR 288, aff'd 2014 ABCA 444 is the leading Alberta authority on the elements and activities that define abusive litigation. That decision identifies eleven categories of litigation misconduct which can trigger court intervention in litigation activities. Several of these indications of abusive litigation have already emerged in Maurice Stoney's legal actions:

1. Collateral attacks that attempt to determine an issue that has already been determined by a court of competent jurisdiction, to circumvent the effect of a court or tribunal decision, using previously raised grounds and issues;
2. Bringing hopeless proceedings that cannot succeed, here in both the present application and the ***Sawridge #3*** appeal where Maurice Stoney was declared to be an uninvolved third party; and

3. Initiating "busybody" lawsuits to enforce the rights of third parties, here the recruited participation of Maurice Stoney's "10 living brothers and sisters."

[56] The Sawridge Band says Maurice Stoney does not pay his court-ordered costs. Maurice Stoney denies that. Failure to pay outstanding cost awards is another potential basis to conclude a person litigates in an abusive manner. However, I defer any finding on this point until a later stage.

[57] Any of the abusive litigation activities identified in ***Chutskoff v Bonora*** are a basis to declare a person a vexatious litigant and restrict access to Alberta courts. Maurice Stoney has exhibited three independent bases to take that step. The Alberta Court of Queen's Bench has adopted a two-step vexatious litigant application process to meet procedural justice requirements set in ***Lymer v Jonsson***, 2016 ABCA 32, 612 AR 122, see ***Hok v Alberta***, 2016 ABQB 651 at paras 10-11, leave denied 2017 ABCA 63; ***Ewanchuk v Canada (Attorney General)***, 2017 ABQB 137 at para 97.

[58] I therefore exercise this Court's inherent jurisdiction to control litigation abuse (***Hok v Alberta***, 2016 ABQB 651 at paras 14-25, ***Thompson v International Union of Operating Engineers Local No. 955***, 2017 ABQB 210 at para 56, affirmed 2017 ABCA 193; ***Ewanchuk v Canada (Attorney General)*** at paras 92-96; ***McCargar v Canada***, 2017 ABQB 416 at para 110) and to examine whether Maurice Stoney's future litigation activities should be restricted.

[59] To date this two-step process has sometimes involved a hearing on the second step, for example ***Kavanagh v Kavanagh***, 2016 ABQB 107; ***Ewanchuk v Canada (Attorney General)***; ***McCargar v Canada***. However, other vexatious litigant analyses have been conducted via written submissions and affidavit evidence: ***Hok v Alberta***, 2016 ABQB 651.Veldhuis J in ***Hok v Alberta***, 2017 ABCA 63 at para 8 specifically reproduces the trial court's instruction that the process was conducted via written submissions and subsequently concludes the vexatious litigant analysis and its result shows no error or legal issues that raise a serious issue of general importance with a reasonable chance of success: para 10.

[60] In this case, I follow the approach of Verville J. in ***Hok v Alberta*** and proceed using a document-only process. In ***R v Cody***, 2017 SCC 31, the Court at para 39 identified that one of the ways courts may improve their efficiencies is to operate on a documentary record rather than to hold in-person court hearings. That advice was generated in the context of criminal proceedings, which are accorded a special degree of procedural fairness due to the fact the accused's liberty is at stake.

[61] The Ontario courts use a document-based 'show cause' procedure authorized by *Rules of Civil Procedure*, RRO 1990, Reg 194, s 2.1 to strike out litigation and applications that are obviously hopeless, vexatious, and abusive. This mechanism has been confirmed as a valid procedure for both trial level (***Scaduto v Law Society of Upper Canada***, 2015 ONCA 733, 343 OAC 87, leave to the SCC denied 36753 (21 April 2016)) and appellate proceedings (***Simpson v Institute of Chartered Accountants of Ontario***, 2016 ONCA 806).

[62] I conclude the procedural fairness requirements indicated in ***Lymer v Jonsson*** are adequately met by a document-only approach, particularly given that the implications for a litigant of a criminal proceeding application, or for the striking out of a civil action or application, are far greater than the potential consequences of what is commonly called a vexatious litigant order. As Justice Verville observed in ***Hok v Alberta***, 2016 ABQB 651 at paras

30-34, the implications of a restriction of this kind should not be exaggerated, it instead "... is not a great hurdle."

[63] I therefore order that Maurice Stoney is to make written submissions **by close of business on August 4, 2017**, if he chooses to do so, on whether:

1. his access to Alberta courts should be restricted, and
2. if so, what the scope of that restriction should be.

[64] The Sawridge Band and the Trustees may make submissions on Maurice Stoney's potential vexatious litigant status, and introduce additional evidence that is relevant to this question, see ***Chutskoff v Bonora*** at paras 87-90 and ***Ewanchuk v Canada (Attorney General)*** at paras 100-102. Any submissions by the Sawridge Band and the Trustees are due **by close of business on July 28, 2017.**

[65] In addition, I follow the process mandated in ***Hok v Alberta***, 2016 ABQB 335 at para 105, and order that Maurice Stoney's court filing activities are immediately restricted. I declare that Maurice Stoney is prohibited from filing any material on any Alberta court file, or to institute or further any court proceedings, without the permission of the Chief Justice, Associate Chief Justice, or Chief Judge of the court in which the proceeding is conducted, or his or her designate. This order does not apply to:

1. written submissions or affidavit evidence in relation to the Maurice Stoney's potential vexatious litigant status; and
2. any appeal from this decision.

[66] This order will be prepared by the Court and filed at the same time as this Case Management decision.

VIII. Costs

[67] I have indicated Maurice Stoney's application had no merit, and was instead abusive in a manner that exhibits the hallmark characteristics of vexatious litigation. The Sawridge Band and Trustees seek solicitor and own client indemnity costs against Maurice Stoney. Those are amply warranted. In ***Sawridge #5***, I awarded solicitor and own client indemnity costs against two of the applicants since their litigation conduct met the criteria identified by Moen J in ***Brown v Silvera***, 2010 ABQB 224 at paras 29-35, 488 AR 22, affirmed 2011 ABCA 109, 505 AR 196, for the Court to exercise its *Rule* 10.33 jurisdiction to award costs beyond the presumptive *Rule* 10.29(1) party and party amounts indicated in Schedule C. The same principles apply here.

[68] The costs award to the Sawridge Band is appropriate given its valid intervention and the important implications of Maurice Stoney's attempted litigation, as discussed above.

[69] In ***Sawridge #5***, at paras 50-51, I observed that there is a "new reality of litigation in Canada":

> *Rule* 1.2 stresses this Court should encourage cost-efficient litigation and alternative non-court remedies. The Supreme Court of Canada in ***Hryniak v Mauldin***, 2014 SCC 7 at para 2, [2014] 1 SCR 87 has instructed it is time for trial courts to undergo a "culture shift" that recognizes that litigation procedure must reflect economic realities. In the subsequent ***R v Jordan***, 2016 SCC 27, [2016]

> 1 SCR 631 and ***R v Cody***, 2017 SCC 31 decisions, Canada's high court has stressed it is time for trial courts to develop and deploy efficient and timely processes, "to improve efficiency in the conduct of legitimate applications and motions" (***R v Cody***, at para 39). I further note that in ***R v Cody*** the Supreme Court at para 38 instructs that trial judges test criminal law applications on whether they have "a *reasonable* prospect of success" [emphasis added], and if not, they should be dismissed summarily. That is in the context of *criminal* litigation, with its elevated protection of an accused's rights to make full answer and defence. This Action is a civil proceeding where I have found the addition of the Applicants as parties is unnecessary.
>
> This is the new reality of litigation in Canada. The purpose of cost awards is notorious; they serve to help shape improved litigation practices by creating consequences for bad litigation practices, and to offset the litigation expenses of successful parties. ...
>
> [Emphasis in original.]

[70] Then at para 53, I concluded that the "new reality of litigation in Canada" meant:

> ... one aspect of Canada's litigation "culture shift" is that cost awards should be used to deter dissipation of trust property by meritless litigation activities by trust beneficiaries.

[71] The Supreme Court of Canada has recently in ***Quebec (Director of Criminal and Penal Prosecutions) v Jodoin***, 2017 SCC 26 [***"Jodoin"***] commented on another facet of the problematic litigation, where lawyers abuse the court and its processes. ***Jodoin*** investigates when a costs award is appropriate against criminal defence counsel. At para 56, Justice Gascon explicitly links court discipline of abusive lawyers to the "culture of complacency" condemned in ***R v Jordan*** and ***R v Cody***. Costs awards are a way to help control this misconduct, and are a tool to help achieve the badly needed "culture shift" in civil and criminal litigation.

[72] I pause at this point to note that ***Jodoin*** focuses on *criminal* litigation, where the Courts have traditionally been cautious to order costs against defence counsel "in light of the special role played by defence lawyers and the rights of accused persons they represent": para 1.

[73] At paras 16-24 Justice Gascon discusses the issue of costs awards against lawyers in a more general manner:

> The courts have the power to maintain respect for their authority. This includes the power to manage and control the proceedings conducted before them ... A court therefore has an inherent power to control abuse in this regard ... and to prevent the use of procedure "in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute" ...
>
> It is settled law that this power is possessed both by courts with inherent jurisdiction and by statutory courts ... It is therefore not reserved to superior courts but, rather, has its basis in the common law ...
>
> There is an established line of cases in which courts have recognized that the awarding of costs against lawyers personally flows from the right and duty of the

> courts to supervise the conduct of the lawyers who appear before them and to note, and sometimes penalize, any conduct of such a nature as to frustrate or interfere with the administration of justice ... As officers of the court, lawyers have a duty to respect the court's authority. If they fail to act in a manner consistent with their status, the court may be required to deal with them by punishing their misconduct ...
>
> The power to control abuse of process and the judicial process by awarding costs against a lawyer personally applies in parallel with the power of the courts to punish by way of convictions for contempt of court and that of law societies to sanction unethical conduct by their members. ...
>
> ... although the criteria for an award of costs against a lawyer personally are comparable to those that apply to contempt of court ... the consequences are by no means identical. Contempt of court is strictly a matter of law and can result in harsh sanctions, including imprisonment. In addition, the rules of evidence that apply in a contempt proceeding are more exacting than those that apply to an award of costs against a lawyer personally, as contempt of court must be proved beyond a reasonable doubt. Because of the special status of lawyers as officers of the court, a court may therefore opt in a given situation to award costs against a lawyer personally rather than citing him or her for contempt ...
>
> In most cases, of course, the implications for a lawyer of being ordered personally to pay costs are less serious than those of the other two alternatives. A conviction for contempt of court or an entry in a lawyer's disciplinary record generally has more significant and more lasting consequences than a one-time order to pay costs. Moreover, as this appeal shows, an order to pay costs personally will normally involve relatively small amounts, given that the proceedings will inevitably be dismissed summarily on the basis that they are unfounded, frivolous, dilatory or vexatious.
>
> [Emphasis added, citations omitted.]

[74] This costs authority operates in a parallel but separate manner from the disciplinary and lawyer control functions of law societies: paras 22-23. Cost awards against a lawyer are potentially triggered by either:

1. "an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system by the lawyer", or
2. "dishonest or malicious misconduct on his or her part, that is deliberate".

[***Jodoin***, para 29]

[75] The Court stresses that an investigation of a particular instance of potential litigation misconduct should be restricted to the specific identified litigation misconduct and not put the lawyer's "career[,] on trial": para 33. This investigation is not of the lawyer's "entire body of work", though external facts can be relevant in certain circumstances: paras 33-34.

[76] The lawyer who is potentially personally subject to a costs sanction must receive notice of that, along with the relevant facts: para 36. This normally would occur after the end of litigation, once "... the proceeding has been resolved on its merits.": para 36.

[77] I conclude this is one such occasion where a costs award against a lawyer is potentially warranted. Maurice Stoney's attempted participation in the Advice and Direction Application has ended, so now is the point where this issue may be addressed. I consider the impending vexatious litigant analysis a separate matter, though also exercised under the Court's inherent jurisdiction. I do not think this is an appropriate point at which to make any comment on whether Ms. Kennedy should or should not be involved in that separate vexatious litigant analysis, given her litigation representative activities to this point.

[78] I have concluded that Maurice Stoney's lawyer, Priscilla Kennedy, has advanced a futile application on behalf of her client. I have identified the abusive and vexatious nature of that application above. This step is potentially a "serious abuse of the judicial system" given:

1. the nature of interests in question;
2. this litigation was by a third party attempting to intrude into an aboriginal community which has *sui generis* characteristics;
3. that the applicant sought to indemnify himself via a costs claim that would dissipate the resources of aboriginal community trust property;
4. the application was obviously futile on multiple bases; and
5. the attempts to involve other third parties on a "busybody" basis, with potential serious implications to those persons' rights.

[79] I therefore order that Priscilla Kennedy **appear before me at 2:00 pm on Friday, July 28, 2017**, to make submissions on why she should not be personally responsible for some or all of the costs awards against her client, Maurice Stoney.

[80] I note that in ***Morin v TransAlta Utilities Corporation***, 2017 ABQB 409, Graesser J. applied *Rule* 10.50 and ***Jodoin*** to order costs against a lawyer who conducted litigation without obtaining consent of the named plaintiffs. Justice Graesser concludes at para 27 that a lawyer has an obligation to prove his or her authority to represent their clients. Here, that is a live issue for the "10 living brothers and sisters".

[81] ***Jodoin*** at para 38 indicates the limited basis on which the other litigants may participate in a hearing that evaluates a potential costs award against a lawyer. The Sawridge Band and Trustees may introduce evidence as indicated in paras 33-34 of that judgment. They should also appear on July 28th to comment on this issue.

Heard and decided on the basis of written materials described in paragraph 7 hereof.
Dated at the City of Edmonton, Alberta this 12th day of July, 2017.

D.R.G. Thomas
J.C.Q.B.A.

Submissions in writing from:

Priscilla Kennedy
DLA Piper
for Maurice Felix Stoney (Applicant)

D.C. Bonora and
A. Loparco, Q.C.
Dentons LLP
for 1985 Sawridge Trustees (Respondents)

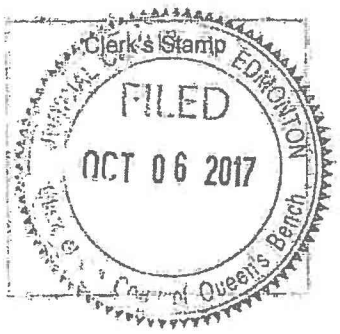
J.L. Hutchison
Hutchison Law LLP
for the OPTG (Respondent)

Edward Molstad, Q.C.
Parlee McLaws LLP
for the Sawridge Band (Intervenor)

TAB 4

F045

COURT FILE NUMBER	1103 14112
COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	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 STONEY and HIS BROTHERS AND SISTERS
RESPONDENTS:	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees") and
	THE OFFICE OF THE PUBLIC TRUSTEE AND GUARDIAN ("OPGT")
INTERVENOR	SAWRIDGE FIRST NATION aka THE SAWRIDGE BAND ("SFN")
DOCUMENT	**ORDER RE: SAWRIDGE #7**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Dentons Canada LLP** 2900, 10180 101 Street Edmonton, AB T5J 3V5 Attention: Doris Bonora Telephone: (780) 423-7188 Facsimile: (780) 423-7276 File No.: 551880 -1



DATE ON WHICH ORDER WAS PRONOUNCED: August 31, 2017 (Sawridge #7)

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Justice D.R.G. Thomas

UPON THIS COURT'S DIRECTION that Priscilla Kennedy appear before me at 2 p.m. on Friday, July 28, 2017, to make submissions on why she should not be personally responsible for some or all of the costs awarded against her client, Maurice Stoney; in Case Management Decision (Sawridge #6) herein;

AND UPON THIS COURT'S FURTHER DIRECTION that counsels for the Sawridge First Nation and the Trustees of the 1985 Sawridge Trust should appear to comment on this issue and may introduce evidence as further described at paragraph 81 of Case Management Decision (Sawridge #6);

AND UPON HAVING READ THE AFFIDAVITS filed on behalf of Priscilla Kennedy only;

AND UPON HAVING HEARD what was said by the counsels for Priscilla Kennedy, the Sawridge First Nation and the Trustees of the 1985 Sawridge Trust;

AND UPON THE DELIVERY OF WRITTEN REASONS FOR DECISION of Honourable Mr. Justice Thomas dated August 31, 2017, entitled Case Management Decision (Sawridge #7);

IT IS HEREBY ORDERED THAT:

1. Priscilla Kennedy has conducted an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system on two independent bases:

   (a) Priscilla Kennedy conducted futile litigation that was a collateral attack of a prior unappealed decision of a Canadian court; and

   (b) Priscilla Kennedy conducted that litigation allegedly on behalf of persons who were not her clients on a "busybody" basis (150).

2. Priscilla Kennedy and Maurice Stoney are liable jointly and severally for solicitor and client indemnity costs of the Sawridge Trustees and the Sawridge First Nation. (150, 152, 153 and 154).

3. Maurice Stoney, Priscilla Kennedy, the Sawridge Trustees and Sawridge First Nation may return to the Court if they require assistance to determine the costs payable. Costs are payable immediately. (155)

4. A copy of Case Management Decision (Sawridge #7) shall be delivered to the Law Society of Alberta for its review.

Honourable Justice D.R.G. Thomas

Entered this _____ day of October, A.D. 2017

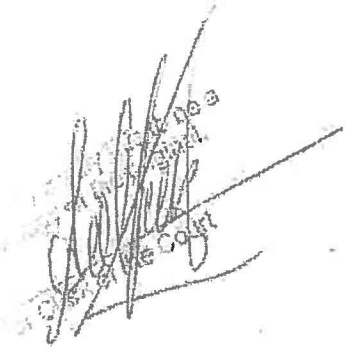
CLERK OF THE COURT

TAB 5

F048

COURT FILE NUMBER	1103 14112
COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	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 STONEY and HIS BROTHERS AND SISTERS
RESPONDENTS:	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees") and
	THE OFFICE OF THE PUBLIC TRUSTEE AND GUARDIAN ("OPGT")
INTERVENOR	SAWRIDGE FIRST NATION aka THE SAWRIDGE BAND ("SFN")
DOCUMENT	**ORDER RE: SAWRIDGE #6**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Dentons Canada LLP** 2900, 10180 101 Street Edmonton, AB T5J 3V5 Attention: Doris Bonora Telephone: (780) 423-7188 Facsimile: (780) 423-7276 File No.: 551880 -1

JUDICIAL CENTRE OF EDMONTON
Clerk's Stamp
FILED
OCT 06 2017
Clerk of the Court of Queens Bench



DATE ON WHICH ORDER WAS PRONOUNCED: July 12, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Justice D.R.G. Thomas

UPON THE APPLICATION of Maurice Stoney and his brothers and sisters to be added as parties or intervenors in the within action as beneficiaries of the 1985 Sawridge Trust and for the legal costs of Maurice Stoney and his brothers and sisters to be paid by the 1985 Sawridge Trust;

AND UPON THE APPLICATION of the Sawridge First Nation to be added as an intervenor in the application of Maurice Stoney and his brothers and sisters and for an Order striking and/or dismissing the application of Maurice Stoney and his brothers and sisters;

AND UPON THE APPLICATION of the Sawridge Trustees that Security for Costs be posted by Maurice Stoney and his brothers and sisters in the event they are added as parties or intervenors in the within action;

AND UPON THE DIRECTION of the Case Management Justice that the applications herein be dealt with in writing; AND UPON HAVING READ the written submissions herein from counsels for Maurice Stoney and his brothers and sisters, the Office of the Public Trustee and Guardian, the Sawridge First Nation, and the Sawridge Trustees; AND UPON THE DELIVERY of written reasons for the decision of the Honourable Mr. Justice D.R.G. Thomas dated July 12, 2017;

IT IS HEREBY ORDERED THAT:

1. Sawridge First Nation is granted intervenor status herein with respect to the Application by Maurice Stoney and his brothers and sisters only;

2. The Application by Maurice Stoney and his brothers and sisters is limited to Maurice Stoney alone and will not involve his "10 living brothers and sisters";

3. The application by Maurice Stoney is dismissed;

4. The application by the Sawridge Trustees for security for costs need not be addressed;

5. The Sawridge First Nation and the Sawridge Trustees are awarded solicitor and own client indemnity costs against Maurice Stoney;

6. Counsel for Maurice Stoney, Priscilla Kennedy, has advanced a futile application which has been identified by the Court as abusive and vexatious and as a result, Priscilla Kennedy shall appear before this Court at 2:00 p.m. on Friday, July 28, 2017 to make submissions on why she should not be personally responsible for some or all of the costs awards against Maurice Stoney. The Sawridge First Nation and the Sawridge Trustees should appear on July 28, 2017 to comment on this issue and may introduce evidence as indicated in ***Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin***, 2017 SCC 26 (CanLII), paragraphs 33 and 34.

7. Maurice Stoney is subject to an Interim Court Filing Restriction on terms set out in the Order filed herein on July 12, 2017;

8. Maurice Stoney shall, if he chooses to do so, make written submissions by close of business on August 4, 2017 on whether his access to the Alberta courts should be restricted, and if so, what the scope of such restrictions should be;

9. The Sawridge First Nation and the Sawridge Trustees may make submissions on Maurice Stoney's potential vexatious litigant status and introduce additional evidence that is relevant to this question by the close of business on July 28, 2017.

Honourable Justice D.R.G. Thomas

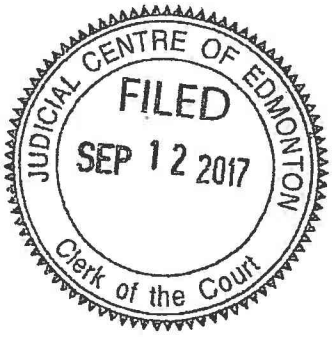
Thomas J

Entered this _____ day of October, A.D. 2017

CLERK OF THE COURT

TAB 6

F051



COURT FILE NUMBER	1103 114112
COURT	Court of Queen's Bench of Alberta
JUDICIAL CENTRE	Edmonton
APPLICANT	Maurice Felix Stoney
RESPONDENTS	Roland Twinn, Catherine Twinn, Walter Felix Twin, Martha L'Hirondelle and Clara Midho, as Trustees for the 1985 Sawridge Trust, the Public Trustee of Alberta, and the Sawridge Band
DOCUMENT	**COURT ACCESS CONTROL ORDER FOR MAURICE FELIX STONEY**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF THE PARTY FILING THIS DOCUMENT	Justice D.R.G. Thomas, Alberta Court of Queen's Bench Judicial District of Edmonton 3rd Floor – Law Courts Building 1A Sir Winston Churchill Square Edmonton, Alberta T5J 0R2

DATE ON WHICH ORDER WAS PRONOUNCED: September 12, 2017

NAME OF THE JUDGE WHO MADE THIS ORDER: Honourable D.R.G. Thomas

WHEREAS on July 12, 2017 this Court dismissed the Application of Maurice Felix Stoney and "His Brothers and Sisters" to be added to Docket 11103 14112 action, that decision reported as ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 436;

AND WHEREAS on concluding that the Application of Maurice Felix Stoney disclosed indicators of vexatious and abusive litigation;

AND UPON the Court receiving and reviewing written submissions filed on behalf of Maurice Felix Stoney and others concerning whether his access to Alberta courts should be restricted, and if so, the scope of those restrictions;

AND UPON THE COURT'S OWN MOTION;

IT IS HEREBY ORDERED THAT:

1. The Interim Court Filing Restriction Order for Maurice Felix Stoney made and filed July 12, 2017 is vacated.

2. Maurice Felix Stoney is prohibited, under the inherent jurisdiction of the Alberta Court of Queen's Bench, from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate, without an order of the Chief Justice or Associate Chief Justice, or Chief Judge, of the Court in which the proceeding is conducted, or his or her designate, where that litigation involves any one or more of:

   (i) the Sawridge Band,

   (ii) the 1985 Sawridge Trust,

   (iii) the 1986 Sawridge Trust,

   (iv) the current, former, and future Chief and Council of the Sawridge Band,

   (v) the current, former, and future Trustees of the 1985 Sawridge Trust and 1986 Sawridge Trust,

   (vi) the Public Trustee of Alberta,

   (vii) legal representatives of categories 1-6,

   (viii) members of the Sawridge Band,

   (ix) corporate and individual employees of the Sawridge Band, and

   (x) the Canadian federal government.

3. Maurice Felix Stoney is prohibited from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate, until Maurice Felix Stoney pays in full all outstanding costs ordered by any Canadian court.

4. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may, at any time, direct that notice of an application to commence or continue an appeal, action, application, or proceeding be given to any other person.

5. Maurice Felix Stoney must describe himself, in the application or document to which this Order applies as "Maurice Felix Stoney", and not by using initials, an alternative name structure, or a pseudonym.

6. Any application to commence or continue any appeal, action, application, or proceeding must be accompanied by an affidavit:

   (i) attaching a copy of the Order issued herein, restricting Maurice Felix Stoney's access to the Alberta Court of Queen's Bench and Provincial Court of Alberta;

   (ii) attaching a copy of the appeal, pleading, application, or process that Maurice Felix Stoney proposes to issue or file or continue;

   (iii) deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it;

   (iv) indicating whether Maurice Felix Stoney has ever sued some or all of the defendants or respondents previously in any jurisdiction or Court, and if so providing full particulars;

   (v) undertaking that, if leave is granted, the authorized appeal, pleading, application or process, the Order granting leave to proceed, and the affidavit in support of the Order will promptly be served on the defendants or respondents;

   (vi) undertaking to diligently prosecute the proceeding; and

   (vii) providing evidence of payment in full of all outstanding costs ordered by any Canadian court.

7. Any application referenced herein shall be made in writing.

8. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may:

   (i) give notice of the proposed claim or proceeding and the opportunity to make submissions on the proposed claim or proceeding, if they so choose, to:

      a) the involved potential parties;

      b) other relevant persons identified by the Court; and

      c) the Attorney Generals of Alberta and Canada.

   (ii) respond to the leave application in writing; and

   (iii) hold the application in open Court where it shall be recorded.

9. Leave to commence or continue proceedings may be given on conditions, including the posting of security for costs.

10. An application that is dismissed may not be made again.

11. An application to vary or set aside this Order must be made on notice to any person as directed by the Court.

12. The exception granted in the Order made by Associate Chief Justice Rooke on July 20, 2017 in the matter of ***Nussbaum v*** Stoney, Alberta Court of Queen's Bench docket 1603 03761 shall apply to this Court Access Control Order.

D.R.G. Thomas
JUSTICE OF QUEEN'S BENCH OF ALBERTA

ENTERED this 12 day of Sept, A.D. 2017

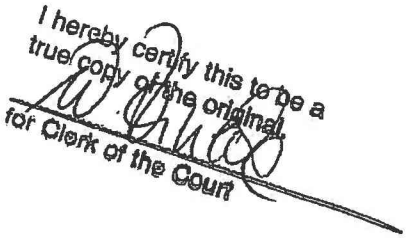
CLERK OF THE COURT

TAB 7

F055

Form 11
[Rule 3.31]

COURT FILE NUMBER	1103 14112
COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	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:	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Hutchison Law** #190 Broadway Business Square 130 Broadway Boulevard Sherwood Park, AB T8H 2A3 Attention: Janet L. Hutchison Telephone: (780) 417-7871 Fax: (780) 417-7872 Email: jhutchison@jlhlaw.ca File: 51433 JLH



DATE ON WHICH ORDER WAS PRONOUNCED: April 28, 2017

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Hon. Justice D.R.G. Thomas

UPON THE APPLICATION of the Office of the Public Guardian and Trustee of Alberta ("Public Trustee"); **AND UPON** hearing from Counsel for Sawridge First Nation, the Public Trustee and the Sawridge Trustees; **AND UPON** being advised by the Public Trustee that the Public Trustee's Rule 5.13 Application as against Sawridge First Nation pertaining to additional information to assist the Court in addressing the Sawridge Trustee's application regarding the settlement of assets into the 1985 Trust is withdrawn; **AND UPON** being advised by the Public Trustee that the Public Trustee's Rule 5.13 Application as against Sawridge First Nation pertaining to membership was brought before the Court to ensure the parties have appropriately applied the decision of this Court in *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 *(Sawridge #3)* and to confirm that the Court is satisfied all evidence required to identify the potential minor beneficiaries was before the Court in an acceptable form; **AND UPON** the decision of the Honourable Mr. Justice Dennis R. Thomas dated April 28, 2017;

IT IS HEREBY ORDERED THAT:

1. The Public Trustee's Application for production of records/information from Sawridge First Nation pertaining to membership is denied;

2. The list of minors provided by the Sawridge Trustees on April 5, 2016 is adequate for the Public Trustee to discharge its obligation to identify minors who are children of members of the Sawridge First Nation (Category 2, paragraph 56 of *Sawridge #3).*

3. The January 18, 2016 list provided to the Public Trustee by the Sawridge First Nation is sufficient to provide the Public Trustee with the identities of individuals with completed, but unresolved Sawridge First Nation membership applications, being the individuals contemplated by category 3 set out in paragraph 56 of *Sawridge #3.* The children, if any, of the category 3 individuals will fall into category 4 of the *Sawridge #3* decision.

4. The terms "rejected" and "unsuccessful" as used in *Sawridge #3* are operationally synonymous. The Public Trustee's obligation is to identify the following populations, and then determine if they have minor children:

a) Persons who have made Band applications prior to this date, had that application rejected, but are challenging the outcome; and

b) Persons who have filed completed and unresolved Band applications ("pending Band applications") who are in the future rejected during the application process, and then challenge the outcome.

5. The Sawridge First Nation's advice that there are no outstanding membership appeals or judicial reviews of Band applications is sufficient to define the current category 5 individuals, as defined in *Sawridge #3.*

6. The Sawridge First Nation's request for a costs award against the Public Trustee, without indemnification from the 1985 Sawridge Trust, is denied.

7. **The costs neutral approach with respect to the Sawridge Trustees, the Sawridge First Nation and the Public Trustee will have no application to third party interlopers in the distribution process as it advances to trial. The same is true for their lawyers. Attempts by persons to intrude into the process without a valid basis, for example, in an abusive attempt to conduct a collateral attack on a concluded court or tribunal process, can expect very strict and substantial costs awards against them (both applicants and lawyers) on a punitive or indemnity basis.**

Hon. Justice D.R.G. Thomas

Thomas J

APPROVED AS BEING THE ORDER GRANTED:
Hutchison Law

Per:_____
Janet Hutchison, Counsel for the Office of the Public Trustee

APPROVED AS BEING THE ORDER GRANTED:
Dentons Canada LLP

Per:_____
Doris Bonora, Counsel for the Sawridge Trustees

APPROVED AS BEING THE ORDER GRANTED:
Parlee McLaws LLP

Per:_____
Edward H. Molstad, Q.C., Counsel for the Sawridge First Nation

TAB 8

F058

I hereby certify this to be a true copy of the original.

Clerk of the Court

Clerk's stamp:

JUDICIAL CENTRE OF EDMONTON
FILED
DEC 01 2016
Clerk of the Court

COURT FILE NUMBER	1103 14112
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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

APPLICANTS	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees")
DOCUMENT	**CASE MANAGEMENT ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5 Attention: Doris C.E. Bonora Telephone: (780) 423-7100 Fax: (780) 423-7276 File No: 551860-001-DCEB Reynolds Mirth Richards & Farmer LLP 3200, 10180 101 Street Edmonton AB T5J 3W8 Attention: Marco S. Poretti Telephone: (780) 497-3325 Fax: (780) 429-3044

DATE ON WHICH ORDER WAS PRONOUNCED:	**AUGUST 24, 2016**
LOCATION OF HEARING:	**EDMONTON, ALBERTA**
NAME OF JUDGE WHO GRANTED THIS ORDER:	**MR. JUSTICE D.R.G. THOMAS**

UPON reading the written submissions of select counsel and hearing the oral submissions of counsel before this Court; IT IS HEREBY ORDERED THAT:

1. The Consent Order regarding the transfer of assets from the 1982 trust to the 1985 trust is granted.

2. The application for advice and direction respecting ~~a revised beneficiary definition and for~~ an approval of a distribution proposal is adjourned *sine die*.

3. The application by Maurice Stoney for party or intervenor standing is adjourned and shall be decided by written submissions to the Case Management Justice as follows:

   (a) The Applicant for standing shall file and serve its Brief on all participants, including the Sawridge First Nation, by September 30, 2016;

   (b) The Respondents, including the Sawridge First Nation proposed Intervenor shall file and serve their Reply by October 31st, 2016; and,

   (c) The Applicant for standing's response shall be filed and served by November 15, 2016.

4. The application of Sawridge First Nation for Intervenor Status shall be decided by written submissions to the Case Management Justice as follows:

   (a) The Sawridge First Nation shall file and serve its Motion, Affidavit evidence and written submissions on all participants by September 30th, 2016;

   (b) Maurice Stoney, the Sawridge Trustees and the Public Trustee shall file and serve their response by October 31st, 2016; and

   (c) Sawridge First Nation shall file and serve their Reply by November 15th, 2016.

5. The request to enter a Consent Order for scheduling of the Application by Patrick Twinn, on his behalf and on behalf of his infant daughter Aspen Saya Twinn, and his wife Melissa Megley, and Shelby Twinn and Deborah A. Serafinchon for standing in this matter is denied.

6. The Application for standing by Patrick Twinn, Melissa Megley, Shelby Twinn, Aspen Saya Twinn and Deborah Serafinchon is adjourned and shall be decided by written submissions to the Case Management Justice with the same deadlines as in paragraph 3 above.

7. The Rule 5.13 Application by the Office of the Public Trustee and Guardian of Alberta for document production from the Sawridge First Nation is reserved.

8. The Court's Decision in relation to the Sawridge First Nation's Application for Costs as against the Public Trustee on the basis that these costs not be indemnified from the Sawridge Trust is reserved.

9. The Application by the Public Trustee and Guardian of Alberta for the Court's approval of the list of potential beneficiaries is denied.

The Honourable Mr. D.R.G. Thomas

TAB 9

F061

COURT FILE NUMBER	1103 14112
COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	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:	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Dentons Canada LLP** **2900, 10180 101 Street** **Edmonton, AB T5J 3V5** **Attention: Doris Bonora** **Telephone: (780) 423-7188** **Facsimile: (780) 423-7276** **File No.: 551880 -1**

DATE ON WHICH ORDER WAS PRONOUNCED: December 17, 2015

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Justice D.R.G. Thomas

UPON THE APPLICATION of the Office of the Public Guardian and Trustee of Alberta ("Public Trustee"), and Upon hearing from the counsel for: Sawridge First Nation, the Public Trustee, Sawridge Trustees and Catherine Twinn; and Upon the decision of The Honourable Mr. Justice Dennis R. Thomas dated December 17, 2015 (2015 ABQB 799);

IT IS HEREBY ORDERED THAT:

1. The Public Trustee's application for production of records/information from the Sawridge First Nation ("SFN") is denied.

2. Document production by SFN shall only be compelled pursuant to *Rule* 5.13(1) of the *Alberta Rules of Court*, Alta Reg 124/2010.

3. The Public Trustee shall not conduct an open-ended inquiry into the membership of the SFN and the historic disputes that relate to that subject.

4. The Public Trustee shall not conduct a general inquiry into potential conflicts of interest between SFN, its administration and the Sawridge Trustees.

5. The Public Trustee shall be limited to four tasks:

   (a) Representing the interests of minor beneficiaries and potential minor beneficiaries so that they receive fair treatment (either direct or indirect) in the distribution of the assets of the 1985 Sawridge Trust; and

   (b) Examining on behalf of the minor beneficiaries the manner in which the property was placed/settled in the Trust; and

   (c) Identifying potential but not yet identified minors who are children of SFN members or membership candidates as these are potentially minor beneficiaries of the 1985 Sawridge Trust; and

   (d) Supervising the distribution process itself.

6. The Public Trustee and the Sawridge Trustees are to immediately proceed to complete the first three tasks outlined in paragraph 5 above.

7. The Sawridge Trustees will submit a distribution arrangement by January 29, 2016.

8. The Public Trustee shall have until March 15, 2016 to prepare and serve an application, pursuant to *Rule* 5.13(1), on SFN identifying specific documents it believes are relevant and material to test the fairness of the proposed distribution arrangement to minors who are children of beneficiaries or potential beneficiaries.

9. If no Rule 5.13(1) application is made in relation to the proposed distribution scheme, submissions on the distribution proposal shall be made by the Public Trustee and Sawridge Trustees at a case management meeting held before April 30, 2016.

10. The Public Trustee shall have until January 29, 2016 to prepare and serve an application, pursuant to *Rule* 5.13(1), on SFN identifying specific documents for production which it believes are relevant and material to the issue of the assets settled in the 1985 Sawridge Trust.

11. If necessary, a case management meeting will be held before April 30, 2016 to decide any disputes concerning any Rule 5.13(1) application by the Public Trustee.

12. SFN shall provide the following to the Public Trustee by January 29, 2016:

    (a) the names of individuals who have:

        (i) made applications to join the SFN which are pending; and

        (ii) had applications to join the SFN rejected and are subject to challenge;

    (b) the contact information for those individuals where available.

13. The Public Trustee is instructed that if it requires any additional documents from the SFN to assist it in identifying the current and possible members of category 2, (Minors who are children of members of the SFN), the Public Trustee shall file a *Rule* 5.13(1) application by January 29th, 2016.

14. The SFN and the Sawridge Trustees shall have until March 15, 2016 to make written submissions in response to any application by the Public Trustee described in paragraph 13 above

15. The Public Trustee shall not engage in collateral attacks on membership processes of the SFN. The Sawridge Trustees shall not engage in collateral attacks on SFN's membership processes.

16. The decision on costs in relation to the Public Trustee's production application is reserved until the Court evaluates any Rule 5.13(1) applications brought by the Public Trustee

Honourable Justice D.R.G. Thomas

APPROVED AS TO FORM:

Reynolds, Mirth, Richards & Farmer LLP

Per:_____

Marco Poretti, Counsel for the Sawridge Trustees

Dentons Canada LLP

Per:_____

Doris Bonora, Counsel for the Sawridge Trustees

Hutchison Law

Per:_____

Janet L. Hutchison, Counsel for the Office the Public Guardian and Trustee

Parlee McLaws LLP

Per:_____

Edward H. Molstad QC, Counsel for Sawridge First Nation

Bryan & Co. LLP

Per:_____

Nancy E Cumming QC and Joseph Kueber QC , Counsel for Roland Twinn, Bertha L'Hirondelle, Margaret Ward and E. Justin Twin

McLennan Ross LLP

Per:_____

Karen Platten QC and Crista Osualdini, Counsel for Catherine Twinn

APPROVED AS TO FORM:

Reynolds, Mirth, Richards & Farmer LLP

Per:_____

Marco Poretti, Counsel for the Sawridge Trustees

Dentons Canada LLP

Per:_____

Doris Bonora, Counsel for the Sawridge Trustees

Hutchison Law

Per:_____

Janet L. Hutchison, Counsel for the Office the Public Guardian and Trustee

Parlee McLaws LLP

Per:_____

Edward H. Molstad QC, Counsel for Sawridge First Nation

Bryan & Co. LLP

Per:_____

Nancy E Cumming QC and Joseph Kueber QC , Counsel for Roland Twinn, Bertha L'Hirondelle, Margaret Ward and E. Justin Twin

McLennan Ross LLP

Per:_____

Karen Platten QC and Crista Osualdini, Counsel for Catherine Twinn

Supreme Advocacy LLP

Per: _____

Eugene Meehan QC, Counsel for the Office the Public Guardian and Trustee

20761457_1|NATDOCS

TAB 10

F068

I hereby certify this to be a true copy of the original.

for Clerk of the Court

Clerk's stamp:	
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")
DOCUMENT	**CONSENT ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Doris Bonora Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V8 Telephone: (780) 423-7188 Fax: (780) 423-7276 File No: 551860-1-DCEB

Date on which Order Pronounced: April 30, 2014

Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: D.R.G. Thomas

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that direction was required to proceed with the litigation; AND UPON being advised of the discussions between counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation, and counsel for Aline Elizabeth Huzar and June Martha Kolosky; IT IS HEREBY ORDERED AND DECLARED as follows:

1. Questioning of Paul Bujold and Elizabeth Poitras shall occur May 27, 28 and 29, 2014.

2. The Office of the Public Trustee will provide the Sawridge Trustees with a list of documents that appear, from the contents of Mr. Bujold's affidavits, to be relevant and likely to exist by May 5, 2014. The Sawridge Trustees will deliver to Chamberlain Hutchison the documents they are able to locate by May 16, 2014. The parties acknowledge that this process will not limit the scope of examination of Mr. Bujold nor obligate the Office of the Public Trustee to complete questioning on the documents received on May 16, 2014 in the May 27-29 questioning. Rather, the purpose of the process is to assist Mr. Bujold in informing himself and to limit the number of undertakings required at the May 27-29, 2014 questioning.

3. Service of notice of this application in accordance with paragraph 18 of the Procedural Order of August 31, 2011, as amended, is hereby deemed good and sufficient.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

DENTONS CANADA LLP
Per:

Doris Bonora
Counsel for the Trustees

8090005_1|NATDOCS

TAB 11

F071

	Clerk's stamp:
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Marco S. Poretti Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-MSP

JUDICIAL CENTRE OF EDMONTON
FILED
OCT 30 2012
Clerk of the Court of Queen's Bench

Date on which Order Pronounced: October 26, 2012

Location of hearing or trial: Edmonton, AB

Name of Justice who made this Order: D.R.G. Thomas

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that the Trustees intend to pursue an appeal in respect of the Order of the Honourable Mr. Justice D.R.G. Thomas pronounced June 12, 2012 and entered September 20, 2012; AND UPON noting the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for

the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney;

IT IS HEREBY ORDERED AND DECLARED as follows:

1. Leave is hereby granted from the Alberta Court of Queen's Bench for the Trustees of the 1985 Sawridge Trust to appeal the Order of Mr. Justice D.R.G. Thomas pronounced June 12, 2012 to the Alberta Court of Appeal.

2. Service of notice of this application in accordance with paragraph 18 of the Procedural Order pronounced in the within action on August 31, 2011, as amended, is hereby deemed good and sufficient.

3. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney;

IT IS HEREBY ORDERED AND DECLARED as follows:

1. Leave is hereby granted from the Alberta Court of Queen's Bench for the Trustees of the 1985 Sawridge Trust to appeal the Order of Mr. Justice D.R.G. Thomas pronounced June 12, 2012 to the Alberta Court of Appeal.

2. Service of notice of this application in accordance with paragraph 18 of the Procedural Order pronoun ced in the within action on August 31, 2011, as amended, is hereb y deemed good and sufficient.

3. This Order may be consented to in counterpart and by way of facsimile signature.

_____
Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

_____
Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

_____
Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

_____
Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

_____
E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

_____
Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney;

IT IS HEREBY ORDERED AND DECLARED as follows:

1. Leave is hereby granted from the Alberta Court of Queen's Bench for the Trustees of the 1985 Sawridge Trust to appeal the Order of Mr. Justice D.R.G. Thomas pronounced June 12, 2012 to the Alberta Court of Appeal.

2. Service of notice of this application in accordance with paragraph 18 of the Procedural Order pronounced in the within action on August 31, 2011, as amended, is hereby deemed good and sufficient.

3. This Order may be consented to in counterpart and by way of facsimile signature.

_____
Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

_____
Marco S. Poretti
Solicitors for the Trustees

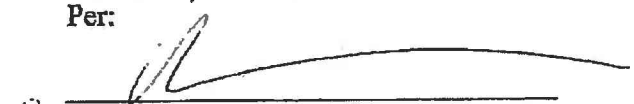
CHAMBERLAIN HUTCHISON
Per:

_____
Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

_____
Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:



_____
E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

_____
Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney; IT IS HEREBY ORDERED AND DECLARED as follows:

1. Leave is hereby granted from the Alberta Court of Queen's Bench for the Trustees of the 1985 Sawridge Trust to appeal the Order of Mr. Justice D.R.G. Thomas pronounced June 12, 2012 to the Alberta Court of Appeal.

2. Service of notice of this application in accordance with paragraph 18 of the Procedural Order pronounced in the within action on August 31, 2011, as amended, is hereby deemed good and sufficient.

3. This Order may be consented to in counterpart and by way of facsimile signature.

_____
Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

_____
Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

_____
Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

_____
Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

_____
E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

_____
Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

TAB 12

	Clerk's stamp:
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Marco S. Poretti Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-MSP

Date on which Order Pronounced: August 16, 2012

Location of hearing or trial: EDMONTON, ALBERTA

Name of Justice who made this Order: D. R. C. THOMAS

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that an appeal will be filed in respect of the Reasons for Judgment of the Honourable Mr. Justice

D.R.G. Thomas dated June 12, 2012; AND UPON noting the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney; IT IS HEREBY ORDERED AND DECLARED as follows:

1. The dates and timelines for the Advice and Direction Application relating to questioning on affidavits, the filing of legal argument and reply, and the hearing of the Advice and Direction Application, contained in this Court's Order pronounced on August 31, 2011 in the within action (the "Procedural Order"), as revised by this Court's Orders pronounced on November 8, 2011, February 16, 2012, February 24, 2012 and June 4, 2012, are no longer binding, and the August 23 and 24, 2012 dates for the Advice and Direction Application are specifically vacated and released.

2. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order or the Procedural Order on not less than 7 days' notice to those persons identified in paragraph 18 of the Procedural Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

3. Service of notice of this application in accordance with paragraph 18 of the Procedural Order, as amended, is hereby deemed good and sufficient.

4. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

TAB 13

F081

Clerk's Stamp:	
COURT FILE NUMBER:	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Chamberlain Hutchison #155, 10403 – 122 Street Edmonton, AB T5N 4C1 Attention: Janet Hutchison Telephone: (780) 423-3661 Fax: (780) 426-1293 File: 51433 JLH

Date on which Judgment Pronounced: June 12, 2012

Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: Justice D.R.G. Thomas

UPON the application of the Public Trustee; AND UPON review of the Affidavits filed in this proceeding; AND UPON review of the filed written submissions; AND UPON hearing the submissions of Counsel for the Public Trustee, Counsel for the Sawridge Trustees and Counsel for the Sawridge First Nation; IT IS HEREBY ORDERED AND DECLARED as follows:

1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.

2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.

3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.

4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.

5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.

6. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.

2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.

3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.

4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.

5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.

6. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

Thomas J

CONSENTED TO AS TO FORM AND CONTENT:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.

2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.

3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.

4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.

5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.

6. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

1. The Public Trustee is appointed litigation representative for the 31 minors who are children of current Sawridge First Nation members as well as any minors who are children of applicants seeking to be admitted into membership of the Sawridge First Nation.

2. The Public Trustee shall receive full, and advance, indemnification for its costs for participation in the within proceedings, to be paid by the Sawridge Trust.

3. The Public Trustee will be exempted from any responsibility to pay the costs of the other parties in the within proceeding.

4. The Public Trustee may inquire, on questioning on affidavits, into the process the Sawridge Band uses to determine membership, the Sawridge Band membership definition and into the status and number of Band membership applications that are currently awaiting determination.

5. The Public Trustee is granted costs of this application to be calculated on a solicitor and its own client basis, to be paid by the Sawridge Trust.

6. This Order may be consented to in counterpart and by way of facsimile signature.

_____
Mr. Justice D. R. G. Thomas

CONSENTED TO AS TO FORM AND CONTENT:

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

_____
Marco S. Poretti
Solicitors for the Trustees

PARLEE McLAWS LLP
Per:

_____
Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

DAVIS LLP
Per:

_____
Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

CHAMBERLAIN HUTCHISON
Per:

_____
Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

_____
E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

TAB 14

F086

	Clerk's stamp:
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Marco S. Poretti Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-MSP

Date on which Order Pronounced: June 4, 2014

Location of hearing or trial: EDMONTON, ALBERTA

Name of Justice who made this Order: D. R. G. THOMAS

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that certain of the timelines in the Orders pronounced on August 31, 2011, November 8, 2011, February 16, 2012 and February 24, 2012 in the within matter require adjustments; AND UPON noting the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney; IT IS HEREBY ORDERED AND DECLARED as follows:

1. The dates and timelines for the Advice and Direction Application contained in this Court's Order pronounced on August 31, 2011 in the within action (the "Procedural Order"), as revised by this Court's Orders pronounced on November 8, 2011, February 16, 2012 and February 24, 2012, are revised as follows:

    a. Any questioning on affidavits filed with respect to the Advice and Direction Application shall be completed no later than June 30, 2012.

    b. The legal argument of the Applicants shall be filed no later than July 19, 2012.

    c. The legal argument of any other person shall be filed no later than August 7, 2012.

    d. Any replies by the Applicant shall be filed no later than August 17, 2012.

    e. The Advice and Direction Application shall be heard on August 23 and August 24, 2012, on the Commercial Duty list.

2. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order or the Procedural Order on not less than 7 days' notice to those persons identified in paragraph 18 of the Procedural Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

3. Service of notice of this application in accordance with paragraph 18 of the Procedural Order, as amended, is hereby deemed good and sufficient.

4. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

Thomas J

CONSENTED TO BY:

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

4. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

4. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

SAWRIDGE FIRST NATION
Per:

Michael R. McKinney
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

4. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

CHAMBERLAIN HUTCHISON
Per:

Janet Hutchison
Solicitors for the Office of the Public Trustee of Alberta

MYLES J. KIRVAN - DEPUTY ATTORNEY GENERAL OF CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Indian Affairs and Northern Development

PARLEE McLAWS LLP
Per:

Edward H. Molstad, Q.C.
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS & FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar, June Martha Kolosky and Maurice Stoney

TAB 15

F092

	Clerk's stamp:
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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 I hereby certify this to be a true copy of the original. for Clerk of the Court	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Marco S. Poretti Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-MSP

Date on which Order Pronounced: February 24, 2012

Location of hearing or trial: EDMONTON, ALBERTA

Name of Justice who made this Order: D. R. C. THOMAS

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that the timelines in the Orders pronounced on August 31, 2011, November 8, 2011 and February 16, 2012 in the within matter require adjustments; AND UPON noting the consent of counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar and June Martha Kolosky; IT IS HEREBY ORDERED AND DECLARED as follows:

1. The dates and timelines for the Advice and Direction Application contained in this Court's Order pronounced on August 31, 2011 in the within action (the "Procedural Order"), as revised by this Court's Orders pronounced on November 8, 2011 and February 16, 2012, are revised as follows:

    a. The Advice and Direction Application shall be heard on June 26 and June 27, 2012, on the Commercial Duty list.

2. The dates and timelines for the applications of the Office of the Public Trustee regarding its role, costs and the relevance of the membership issue contained in this Court's Order pronounced on February 16, 2012 are revised such that the applications shall be heard April 5, 2012 on the Commercial Duty list, for a full day, and materials shall be filed with the Trial Co-ordinator's Office and served on each of the parties consenting to this Order, as follows:

    a. The Office of the Public Trustee shall file and serve its application, affidavits, written briefs and authorities by no later than February 22, 2012.

    b. Any other person shall file and serve their written briefs and authorities by no later than March 8, 2012.

    c. The Office of the Public Trustee shall file and serve any replies by no later than March 16, 2012.

3. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order or the Procedural Order on not less than 7 days' notice to those persons identified in paragraph 18 of the Procedural Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

4. Service of notice of this application in accordance with paragraph 18 of the Procedural Order, as amended, is hereby deemed good and sufficient.

5. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

Thomas J

CONSENTED TO BY:

OFFICE OF THE PUBLIC TRUSTEE
Per:

Janet Hutchinson
Solicitors for the Office of the
Public Trustee of Alberta

DEPARTMENT OF JUSTICE CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Aboriginal
Affairs and Northern Development Canada

SAWRIDGE FIRST NATION
Per:

Michael R. McKinney
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS &
FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar and
June Martha Kolosky

5. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

OFFICE OF THE PUBLIC TRUSTEE
Per:

Janet Hutchinson
Solicitors for the Office of the
Public Trustee of Alberta

DEPARTMENT OF JUSTICE CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Aboriginal
Affairs and Northern Development Canada

SAWRIDGE FIRST NATION
Per:

Michael R. McKinney
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS &
FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar and
June Martha Kolosky

5. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

OFFICE OF THE PUBLIC TRUSTEE
Per:

Janet Hutchinson
Solicitors for the Office of the
Public Trustee of Alberta

DEPARTMENT OF JUSTICE CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Aboriginal
Affairs and Northern Development Canada

SAWRIDGE FIRST NATION
Per:

Michael R. McKinney
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS &
FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar and
June Martha Kolosky

5. This Order may be consented to in counterpart and by way of facsimile signature.

Mr. Justice D. R. G. Thomas

CONSENTED TO BY:

OFFICE OF THE PUBLIC TRUSTEE
Per:

Janet Hutchinson
Solicitors for the Office of the
Public Trustee of Alberta

DEPARTMENT OF JUSTICE CANADA
Per:

E. James Kindrake
Solicitors for the Minister of Aboriginal
Affairs and Northern Development Canada

SAWRIDGE FIRST NATION
Per:

Michael R. McKinney
Counsel for Sawridge First Nation

REYNOLDS MIRTH RICHARDS &
FARMER LLP
Per:

Marco S. Poretti
Solicitors for the Trustees

DAVIS LLP
Per:

Priscilla Kennedy
Solicitors for Aline Elizabeth Huzar and
June Martha Kolosky

TAB 16

F098

	Clerk's stamp: JUDICIAL CENTRE OF EDMONTON FILED FEB 16 2012 Clerk of the Court of Queen's Bench
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Trustees")
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Marco S. Poretti Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-3325 Fax: (780) 429-3044 File No: 108511-001-MSP

Date on which Order Pronounced: February 16, 2012

Location of hearing or trial: Edmonton, Alberta

Name of Justice who made this Order: D. R. G. Thomas

UPON the application of the Trustees of the 1985 Sawridge Trust; AND UPON being advised that the timelines in the Orders pronounced on August 31, 2011 and November 8, 2011 in the within matter require adjustments; AND UPON being advised of the discussions between counsel for the Trustees, counsel for the Office of the Public Trustee, counsel for the Minister of Aboriginal Affairs and Northern Development Canada, counsel for the Sawridge First Nation and counsel for Aline Elizabeth Huzar and June Martha Kolosky; IT IS HEREBY ORDERED AND DECLARED as follows:

1. The dates and timelines for the Advice and Direction Application contained in this Court's Order pronounced on August 31, 2011 in the within action (the "Procedural Order") are revised as follows:

   a) Any questioning on affidavits filed with respect to the Advice and Direction Application shall be completed no later than April 30, 2012.

   b) The legal argument of the Applicants shall be filed no later than May 29, 2012.

   c) The legal argument of any other person shall be filed no later than June 14, 2012.

   d) Any replies by the Applicant shall be filed no later than June 22, 2012.

   e) The Advice and Direction Application shall be heard June 26, 2012 in Special Chambers, for a full day.

2. The applications of the Office of the Public Trustee regarding its role, costs and the relevance of the membership issue shall be heard March 6, 2012 in Special Chambers, for a full day. Materials shall be filed with the Special Applications Clerk and served on each of the parties consenting to this Order, as follows:

   a. The Office of the Public Trustee shall file and serve its application, affidavits, written briefs and authorities by no later than February 17, 2012.

   b. Any other person shall file and serve their written briefs and authorities by no later than February 29, 2012.

3. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order or the Procedural Order on not less than 7 days' notice to those persons identified in paragraph 18 of the Procedural Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

4. Service of notice of this application in accordance with paragraph 18 of the Procedural Order, as amended, is hereby deemed good and sufficient.

Mr. Justice D. R. G. Thomas

TAB 17

F101

	Clerk's stamp:
COURT FILE NUMBER	1103 14112
COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 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	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
DOCUMENT	**Order**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Attention: Doris C.E. Bonora Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8 Telephone: (780) 425-9510 Fax: (780) 429-3044 File No: 108511-001-DCEB

Date on which Order Pronounced: August 31, 2011

Name of Justice who made this Order: D. R. G. Thomas

UPON the application of the Trustees of the 1985 Sawridge Trust (the "Applicants" or the "Trustees"); AND UPON hearing read the Affidavit of Paul Bujold, IT IS HEREBY ORDERED AND DECLARED as follows:

Application

1. An application shall be brought by the Trustees of the 1985 Sawridge Trust for the opinion, advice and direction of the Court respecting the administration and management of the property held under the 1985 Sawridge Trust (hereinafter referred to as the "Advice and Direction Application"). The Advice and Direction Application shall be brought:

    a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".

    b. To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust.

Notice

2. The Trustees shall send notice of the Advice and Direction Application to the following persons, in the manner set forth in this Order:

    a. The Sawridge First Nation;

    b. All of the registered members of the Sawridge First Nation;

    c. All persons known to be beneficiaries of the 1985 Sawridge Trust and all former members of the Sawridge First Nation who are known to be excluded by the definition of "Beneficiaries" in the Sawridge Trust created on August 15, 1986, but who would now qualify to apply to be members of the Sawridge First Nation;

    d. All persons known to have been beneficiaries of the Sawridge Band Trust created on April 15, 1982 (hereinafter referred to as the "1982 Sawridge Trust"), including any person who would have qualified as a beneficiary subsequent to April 15, 1985;

    e. All of the individuals who have applied for membership in the Sawridge First Nation;

    f. All of the individuals who have responded to the newspaper advertisements placed by the Applicants claiming to be a beneficiary of the 1985 Sawridge Trust;

    g. Any other individuals who the Applicants may have reason to believe are potential beneficiaries of the 1985 Sawridge Trust;

    h. The Office of the Public Trustee of Alberta (hereinafter referred to as the "Public Trustee") in respect of any minor beneficiaries or potential minor beneficiaries; and

    i. The Minister of Aboriginal Affairs and Northern Development Canada (hereinafter referred to as the "Minister") in respect, *inter alia,* of all those

persons who are Status Indians and who are deemed to be affiliated with the Sawridge First Nation by the Minister.

(those persons mentioned in Paragraph 2 (a) – (i) shall collectively be referred to as the "Beneficiaries and Potential Beneficiaries")

3. Notice of the Advice and Direction Application on any person shall not be used by that person to show any connection or entitlement to rights under the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to entitle a person to being held to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust, nor to determine or help to determine that a person should be admitted as a member of the Sawridge First Nation. Notice of the Advice and Direction Application is deemed only to be notice that a person may have a right to be a beneficiary of the 1982 Sawridge Trust or the 1985 Sawridge Trust and that the person must determine his or her own entitlement and pursue such entitlement.

Dates and Timelines for Advice and Direction Application

4. The Trustees shall, within 10 business days of the day this Order is made, provide notice of the Advice and Direction Application to the Beneficiaries and Potential Beneficiaries in the following manner:

   a. Make this Order available by posting this Order on the website located at www.sawridgetrusts.ca (hereinafter referred to as the "Website");

   b. Send a letter by registered mail to the Beneficiaries and Potential Beneficiaries for which the Applicants have a mailing address and by email to the Beneficiaries and Potential Beneficiaries for which the Applicants have an email address, advising them of the Advice and Direction Application and advising them of this Order and of the ability to access this Order on the Website (hereinafter referred to as the "Notice Letter"). The Notice Letter shall also provide information on how to access court documents on the Website;

   c. Take out an advertisement in the local newspapers published in the Town of Slave Lake and the Town of High Prairie, setting out the same information that is contained in the Notice Letter; and

   d. Make a copy of the Notice Letter available by posting it on the Website.

5. The Trustees shall send the Notice Letter by registered mail and email no later than September 7, 2011.

6. Any person who is interested in participating in the Advice and Direction Application shall file any affidavit upon which they intend to rely no later than September 30, 2011.

7. Any questioning on affidavits filed with respect to the Advice and Direction Application shall be completed no later than October 21, 2011.

8. The legal argument of the Applicants shall be filed no later than November 11, 2011.

9. The legal argument of any other person shall be filed no later than December 2, 2011.

10. Any replies by the Applicant shall be filed no later than December 16, 2011.

11. The Advice and Direction Application shall be heard January 12, 2012 in Special Chambers.

Further Notice and Service Provisions

12. Except as otherwise provided for in this Order, the Beneficiaries and Potential Beneficiaries need not be served with any document filed with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument.

13. The Applicants shall post any document that they file with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument, on the Website within 5 business days after the day on which the document is filed.

14. The Beneficiaries and Potential Beneficiaries shall serve the Applicants with any document that they file with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument, which service shall be completed by the relevant filing deadline, if any, contained in this Order.

15. The Applicants shall post all of the documents the Applicants are served with in this matter on the Website within 5 business days after the day on which they were served.

16. The Applicants shall make all written communications to the Beneficiaries and Potential Beneficiaries publicly available by posting all such communications on the Website within 5 business days after the day on which the communication is sent.

17. The Beneficiaries and Potential Beneficiaries are entitled to download any documents posted on the Website by the Applicants pursuant to the terms of this Order.

18. Notwithstanding any other provision in this Order, the following persons shall be served with all documents filed with the Court in regard to the Advice and Direction Application, including any pleading, notice of motion, affidavit, exhibit or written legal argument:

    a. Legal counsel for the Applicants;

    b. Legal counsel for any individual Trustee;

    c. Legal counsel for any Beneficiaries and Potential Beneficiaries;

    d. The Sawridge First Nation;

    e. The Public Trustee; and

f. The Minister.

Variation or Amendment of this Order

19. Any interested person, including the Applicants, may apply to this Court to vary or amend this Order on not less than 7 days' notice to those persons identified in paragraph 17 of this Order, as well as any other person or persons likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Justice of the Court of Queen's Bench in Alberta

809772;August 31, 2011

TAB 18

F106

COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.8 and 14.12]

COURT OF APPEAL FILE NUMBER: 1703-0239AC

Registrar's Stamp

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 FELIX STONEY AND HIS BROTHERS AND SISTERS

STATUS ON APPEAL: Interested Party

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

STATUS ON APPEAL: Respondents

RESPONDENTS: PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL: Not a Party to the Appeal

INTERVENOR: THE SAWRIDGE BAND

STATUS ON APPEAL: As determined by the Court

INTERESTED PARTY	PRISCILLA KENNEDY, Counsel for Maurice Felix Stoney and His Brothers and Sisters
STATUS ON APPEAL:	Appellant
DOCUMENT:	**CIVIL NOTICE OF APPEAL**
APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:	Field LLP 2500, 10175 - 101 Street Edmonton, Alberta T5J OH3 Attention: P. Jonathan Faulds, QC Phone: 780-423-7625 Fax: 780-429-9329 File: 65063-1

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. **Particulars of Judgment, Order or Decision Appealed From:**
   Date pronounced: August 31, 2017

   Date entered:

   Date served:

   Official neutral citation of reasons for decision, if any:
   1985 Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 530

2. **Indicate where the matter originated:**
   Alberta Court of Queen's Bench

   Judicial Centre: Edmonton

   Justice: Honourable Mr. Justice D.R.G. Thomas

   On appeal from a Queen's Bench Master or Provincial Court Judge?:

   ☐ Yes ☑ No

   Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge:
   n/a

3. **Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).**
   ☑ Permission not required, or ☐ Granted:

   Date:

   Justice:
   (Attach a copy of order, but not reasons for decision.)

   Note: The Appellant takes the position that permission is not required, but recognizes this may be disputed. Accordingly, the Appellant has also filed an Application for Advice and Direction on Permission to Appeal and, if necessary, Permission to Appeal.

4. **Portion being appealed (Rule 14.12(2)(c)):**
   ☑ Whole, or

   ☐ Only specific parts (if specific part, indicate which part):

5. **Provide a brief description of the issues:**
   The Appellant, a barrister and solicitor, appeals from the decision of Thomas J sitting as Case Management Justice (the "CMJ") finding her personally liable for an award of solicitor and own client costs against her client. The CMJ held that the Appellant had conducted "an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the judicial system" and engaged in litigation on a "busybody" basis. The CMJ also directed that his decision be forwarded to the Law Society of Alberta for its review; and

   The issues on appeal include:

a. Did the CMJ err in finding the Appellant advanced an application on a "busybody" basis, warranting sanction by way of a personal costs award and referral to the Law Society of Alberta;

b. Did the CMJ err in finding the Appellant's conduct in advancing the application constituted serious abuse of the judicial system warranting sanction by way of a personal costs award and referral to the Law Society of Alberta;

c. Did the CMJ err in his identification and application of the test for an award of costs against a solicitor personally;

d. Did the CMJ err by basing his judgment on irrelevant considerations and factors wrongly characterized as aggravating;

e. Such further issues as may be identified.

6. **Provide a brief description of the relief claimed:**

The Appellant requests that the decision of the CMJ be set aside.

7. **Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)**
☐ Yes ☐ No As determined by the Court

8. **Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))**
☐ Yes ☑ No

9. **Will an application be made to expedite this appeal?**
☐ Yes ☑ No

10. **Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)**
☐ Yes ☑ No

11. **Could this matter be decided without oral argument? (Rule 14.32(2))**
☐ Yes ☑ No

12. **Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e),14.83)**
☐ Yes ☑ No

If yes, provide details:
(Attach a copy of any order.)

13. List respondent(s) or counsel for the respondent(s), with contact information:

DENTONS LLP
2900 Manulife Place
10180-101 Street NW
Edmonton, AB T5J 3V5
Attention: Doris Bonora & Erin Lafuente
Phone: 780 423 7188
Fax: 780 423 7276
Counsel for the Sawridge Trustees

PARLEE MCLAWS LLP
1700 Enbridge Centre
10175-101 Street NW
Edmonton, AB T5J 0H3
Attention: Edward Molstad, QC & Ellery Sopko
Phone: 780 423 8500
Fax: 780 423 2870
Counsel for The Sawridge Band

Maurice Felix Stoney
500 4th Street NW
Slave Lake, AB T0G 2A1

If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

☐ Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

The Order under appeal has not yet been settled and filed

☐ Earlier order of Master, etc. (Rule 14.18(1)(c))

☐ Order granting permission to appeal (Rule 14.12(3)(a))

☐ Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.

TAB 19

Action No.: 1103 14112
E-File No.: EVQ17SAWRIDGEBAND
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

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

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

Applicants

PROCEEDINGS

Edmonton, Alberta
July 28, 2017

Transcript Management Services, Edmonton
1000, 10123 99th Street
Edmonton, Alberta T5J-3H1
Phone: (780) 427-6181 Fax: (780) 422-2826

Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

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July 28, 2017	Afternoon Session
The Honourable	Court of Queen's Bench
Mr. Justice Thomas	of Alberta
E.H. Molstad, QC	For the Sawridge Band
E.Sopko	For the Sawridge Band
D.C.E. Bonora	For the Sawridge Trustees
E.M.L. Lafuente	For the Sawridge Trustees
D.J. Wilson	For P. Kennedy
E. Holmstrom	Court Clerk

Discussion

THE COURT CLERK: Order in chambers, all rise.

THE COURT: Good afternoon.

MR. WILSON: Are you ready, Sir?

THE COURT: Actually, I just have a few questions of a case management nature before we get going on your matter. The first question is, I issued that decision, Sawridge number 6 as I call it, and I haven't seen a formal order. And it may be I haven't seen it because I didn't assign responsibility for preparing a formal order on that decision.

MS. BONORA: Sir, I think, for me at least, we thought we'd wait until today and then perhaps have final decision about the costs and put it all together. But I will certainly undertake responsibility for putting that together.

THE COURT: All right. If you wouldn't mind. I just don't want to lose track.

MS. BONORA: Yes.

THE COURT: All right. Well we are here today to deal with the question of whether Ms. Kennedy should be made personally liable for solicitor-client costs in respect to the now dismissed application in my case management decision, which

MR. WILSON: Sir, I can tell you that today's application is very serious. It is exceedingly unfortunate that we're here. I can say that the gravity of this application that's been brought to Ms. Kennedy, to Mr. Stoney, and I will say to myself and my partners, I can say that I spent -- I knew nothing about this litigation until sometime last week. Just going to point out you were referring to Sawridge 6, there's a whole bunch of Sawridge that don't have numbers so I've read lots of those as well. By no means am I conversant in the litigation like my friends are. And I can say that more than anything, the Sawridge 5 represents what I consider to be a very clear foreshadowing of how the Court is approaching this and how since the change in our *Alberta Rules of Court* 2010, section 1.2, the Parnell and Modelin (phonetic) case, it has truly brought forward the difference with respect to how litigation is to be conducted. It isn't the litigation myself, yourself, Mr. Molstad or Ms. Bonora started with. And the Supreme Court has given us very clear guidance that things have to change.

When I say foreshadowing, I think of Sawridge 5 where it points out where parties think they're going to get into a trust, and if they're unsuccessful, that the trust is going to pay for the litigation. That is not something that's going to happen moving forward.

And I can say that reality is also recognized by Ms. Kennedy, myself, and our law firm. And we've had some discussions with Mr. Stoney with respect to that. And we obviously have the vexatious litigation next week that we'll -- or, pardon me, August 4 which will have to be addressed.

But, with respect, what we're dealing with, Sir, is Ms. Kennedy from our office prosecuting litigation that the Court found to be improper. And I can say, like some of the other lawyers I know, Ms. Kennedy litigates with her heart. I indicated to the Court earlier that I met Mr. Stoney for the first time. I don't do Aboriginal litigation at all. And Mr. Stoney's comment to me was I was born a member of the Sawridge Band, I'm 75 years old, and I want to die a member of the Sawridge Band.

As I told Mr. Stoney, Courts have been heard, subject to whatever appeal you may try to prosecute in this matter, but the Courts have been heard. And I can say that Mr. Molstad in the vexatious litigation, I don't know if you've had a chance to look at his materials, in the recitation of the facts has set out five separate attempts by Mr. Stoney to become a member of the Sawridge Band. We have the long ago 1995 litigation. I have to say I don't have the file, my colleague, Ms. Kennedy, doesn't have the file. And there was an attempt then to get some regress.

We then have the application that --

I will say that one of the cases that you cited was the *Morin* decision of Mr. Justice Graesser. And I do note that I think all counsel here are commercial litigators. In that instance, and I will say Justice Graesser case managed a very large piece of litigation that is on a long time and I know how careful he is a jurist, Justice Graesser had in front of him a claim that was advanced for dead people. That is people who were not in existence. He had assertions that certain people held title or ought to concede to certain lands and they did not. In that litigation, a notice to admit was served upon the parties. The lawyer involved didn't even respond to the notice to admit and I will say throughout the entirety of my legal career not dealing with a notice to admit has fairly significant consequences. And when the evidence, the only evidence before the Court, these people were dead when they started the action and they didn't control the title to which he was served a claim, the lawyer then filed an appeal. And I will say --

THE COURT: This is the lawyer Willier?

MR. WILSON: Willier, yes. And the reason I go through this, Sir, is I think quite candidly I've conceded that Ms. Kennedy prosecuted this action further than I would've, further than I think she ought to have, but we are not dealing with the circumstance like Willier where there are immutable facts on the record in the action. And in the face of those facts that he participated in creating by not filing a reply to the notice to admit, he filed an appeal. And in that instance, and the reason I go to the Graesser decision, why considered to be the leading member of this bench. He awarded -- he had a payment to the court, not to the parties, of $1,000. And then he indicated payments, and I apologize, one was AltaLink and I don't remember the other entity's name.

THE COURT: TransAlta wasn't it?

MR. WILSON: Yeah. And I believe it was about $4,800 each. And the reason I use that juxtaposition, Sir, is in that instance the record is absolutely without any foundation. I will say I know very well two of my colleagues on the other table they'll say that's what we're dealing with here. And the difference is, Mr. Stoney is not dead. Mr. Stoney started as a member of the Sawridge Band. By an act of Mr. Stoney's father, he took steps to cease being a member of the Band and has tried repeatedly, sometimes inappropriately, to turn back time and to become a member again.

I say this recognizing how serious this is, but also one of the lines in Stoney 5 was the administration of justice. And what Ms. Kennedy is guilty of, if she's guilty of something, is seeing a wrong and has persistently tried to right that wrong.

THE COURT: Yes, he's pretty prolific.

MR. WILSON: I know.

As a seasoned litigator, I read the *Morin v. TransAlta and AltaLink case,* and I see a lawyer who has no instructions from his client. The client has no entitlement to tie up the land, participates in a legal process that results, that is not filing the notice to admit, so that the record crystalizes and could not be any clearer, and then files an appeal. And I go back to your decision talking about abuse of process, vexatious, et cetera, and that is -- that is the Court regulating its process. I think it's Gascon in *Jodoin* said even in the context of a criminal case where we're going to go the extra mile to see that the criminal defendant gets every opportunity to put forward its face, even then the Court will look where there's an abuse of process and sanction it.

My submission would be the application that resulted in Sawridge 6 should not have been made. It was ill-advised. But was not done with bad motives, an attempt to abuse the process. It had that effect, I have to say in front of my friends it absolutely had that effect, but it is an advocate putting forward a position she believes in, believes in the remedy that her client is trying to seek. And I can say, having regard to what one of the items you indicated in your decision, was we don't even know if the other Stoneys ever provided instructions. The Stoneys are a little older. Some of them are not in the best of health. And we attempted on numerous occasions to assemble affidavits confirming at the time that they instructed Ms. Kennedy -- or, pardon me, Mr. Maurice Stoney to advance the litigation on their behalf. I can say, Sir, I am aware of the law that says hearsay evidence is no evidence, I also am aware of the decision by Mr. Justice McMahon who says using a hearsay affidavit is some evidence of bad counsel.

We assembled the best affidavits we could in a short period of time with people who weren't the easiest to get a hold of. And one brother and one sister of Mr. Stoney confirmed under oath that Ms. Kennedy had the instructions to act on their behalf in advancing this action. And we got a niece who indicated that she was aware of that. I am aware that's a hearsay affidavit, it is -- I will say in the federal courts hearsay affidavits are allowed. I'm not suggesting for a moment they're allowed in this court. I, in fact, use evidence -- I use case law that points out that's not allowed to counsel when they provide me with hearsay affidavits. In this instance, it was the best affidavit we could get having regard to your direction that we come forward on today's date.

I put that evidence before the Court in part so that you didn't think we were doing what was done in the *Morin* case that was addressed in the Graesser decision, that is, the people who, at least on the face of the action, saying they were seeking (INDISCERNIBLE) were actually seeking summary (INDISCERNIBLE).

We also suggest and submit, Sir, that you should have reference to the transcript of the questioning of Mr. Maurice Stoney which has been filed.

THE COURT: Now, sorry, this is in the material that I saw a frontend loader brought a stack of materials into my office. I didn't bring it into court because I thought it was part of the response of Mr. Stoney, if he chooses to make one, to the vexatious litigant issue.

MR. MOLSTAD: Yeah. I believe our friends on behalf of the trustees in filing a written submission in relation to the vexatious litigant submissions, including a copy of the transcript.

THE COURT: Okay.

MR. MOLSTAD: It had been filed in the material.

THE COURT: Oh, yes, it was in the original one.

MR. MOLSTAD: It was in the original application that had been filed.

THE COURT: Okay. Got it.

MR. MOLSTAD: And, Sir, we submit that Ms. Kennedy participated in a course of conduct advancing an argument with respect to Mr. Stoney that was devoid of merit, vexatious and an abuse of process. We submit, Sir, that this conduct constitutes serious misconduct in accordance with *Rule* 10.50 of the *Rules of Court.* This conduct includes preparing and filing an application of a third party who was attempting to insert himself and his siblings into a matter in which he has no legal interest; it includes preparing and filing an application which was a collateral attack attempting to subvert an appealed and crystalized judgment of the federal court which has already addressed and rejected her client's claims and arguments.

You, Sir, have already found that the application of Maurice Stoney is serious litigation misconduct. It is our submission that Ms. Kennedy participated in this serious litigation misconduct with full knowledge of the history and the previous decisions. Ms. Kennedy's application purported to be an application on behalf of ten persons all to be named as beneficiaries of the Sawridge Trust.

My friend has referred you to the *Morin* decision. I am intimately familiar with that decision. And that was a case where there were nine plaintiffs that were named, five of

We also submit that consent must be an informed consent. Informed about a potential of a cost award if not successful in the application. We submit, Sir, it would be unjust to hold anyone but the lawyer to be responsible for costs when there is no authority given to commence or continue a proceeding.

We submit, Sir, that my friend must advise this Court that Ms. Kennedy had instructions directly from each of these nine persons to make this application. It's not enough, in our submission, for Ms. Kennedy to file an affidavit, and I think my friend will agree, of the niece of Mr. Stoney that she heard him talking to his brothers and sisters.

It's also our submission it's not enough for two affidavits, those of Ms. Gail Stoney and Mr. Bill Stoney, where they say they authorized Maurice Stoney to bring an action. That's not instructing Ms. Kennedy.

One of the interesting questions that comes up when I look at this, is has anyone given Bill Stoney and Gail Stoney and the brothers and sisters legal advice about the jeopardy that they put themselves in, in coming forward in saying we told our brother to advance this application? Which is the potential to have a cost award. A significant cost award as against them. Or, alternatively, we say is this a situation where they are of limited funds? And Ms. Kennedy in her written submissions in paragraph 6 of the November 15th, 2016 submissions, stated that Mr. Stoney and his siblings were of limited funds. So does that mean that a judgment of costs doesn't mean anything?

The history of this proceeding is not complicated, and my friend touched upon some of the matters in terms of what information Ms. Kennedy had. But we know that in 1995, Maurice Stoney and others commenced an action in federal court where Maurice Stoney sought membership in the Sawridge First Nation. And I refer to that as the 1995 action. Maurice Stoney, in that 1995 action, through his legal counsel, conceded to the Federal Court of Appeal in 2000 that he did not have entitlement to membership in the Sawridge First Nation without the consent of the Sawridge First Nation.

Ms. Kennedy was not counsel for Mr. Stoney before the Federal Court of Appeal in 2000. However, she was aware of this decision no later than the application for judicial review before Justice Barnes of the federal court which was heard on March 5th, 2013. Because, of course, it was referred to in (INDISCERNIBLE).

In August of 2011, Mr. Stoney applied for membership in Sawridge. The decision of the chief and council was to deny his application and that decision included the reason that he did not have a specific right to be a member of the Sawridge First Nation. Mr. Stoney appealed the decision of the chief and council to the appeal committee which was the

that matter. However, she was clearly made aware of the complaint and the decision in this motion as it was included in the Roland Twinn affidavit.

The CHRC decision is another decision, we submit, that confirms that this issue was dealt with in the 1995 action and in the 2012 action.

In 2015, Ms. Kennedy applied on behalf of Mr. Stoney to extend time for him to file an appeal of one of your case management decisions - I believe it was Sawridge 3. And in that application, it was asserted that Mr. Maurice Stoney was a member of the Sawridge First Nation. Mr. Justice Watson dismissed the application and awarded costs to the Sawridge First Nation. Costs were assessed at $898.70 and they have not been paid to the Sawridge First Nation.

And, of course, Ms. Kennedy represented Mr. Stoney in this matter in the August 12th, 2016 motion which I refer to as the Stoney application, which resulted in Sawridge 6. In this matter, Ms. Kennedy refused to allow Sawridge First Nation's legal counsel to question Mr. Stoney on his affidavit. The legal counsel for the Sawridge Trustees did attend and question Mr. Stoney on his affidavit. And we submit, Sir, that Ms. Kennedy, during that questioning, interrupted, obstructed and refused to permit questions addressing the substance of the application and affidavit. And we respectfully request, Sir, that it is important for this Court to read this transcript again in order to observe the questioning of Maurice Stoney and the conduct of Ms. Kennedy during that questioning. We submit, Sir, that conduct should be taken into consideration in relation to your decision as it relates to costs.

Ms. Kennedy, in her written submissions, asserted on behalf of Mr. Stoney that the federal court issued an order of mandamus in *Sawridge v. Canada* [2003] 4 FCR 748, compelling Sawridge to restore Stoney applicants as members on the basis that they were acquired rights members. This is both incorrect and, we submit, improper.

Ms. Kennedy, in her written submissions, misstated the status of the Poitras litigation and misapplied decisions arising from that litigation in an attempt to suggest that the Sawridge First Nation has repeatedly failed to comply with Justice Hugessen's order. She also asserted that Sawridge continued to deny Ms. Poitras membership and that Sawridge continues to deny membership to Ms. Poitras today. These submissions, with the greatest of respect, Sir, are false. And I refer you to tab 8 of the November 14th, 2016 Sawridge submissions.

This Court has awarded to the Sawridge First Nation solicitor and own client indemnity costs in relation to this application. We submit that the Court has not yet decided who should pay those costs. In paragraph 6 of Ms. Kennedy's November 15th, 2016 written

MR. MOLSTAD: -- you decided that you're not looking at them.

THE COURT: I've written so much about this, I don't know what I've said anymore.

MR. MOLSTAD: Well, yeah. And I'd encourage you - - and I stand to be corrected in that regard. In any event, Sir, our submission is that if you're going to look at attaching costs as it relates to Maurice Stoney that you make it joint and several --

THE COURT: M-hm. Okay.

MR. MOLSTAD: -- with Ms. Kennedy. Those are our submissions, Sir.

THE COURT: Okay. Just a sec. I just want to make a note about the other brothers and sisters. You're still saying that to the extent they've now come forward and say --

MR. MOLSTAD: I don't have an answer to that, Sir.

THE COURT: You're going to leave it --

MR. MOLSTAD: But you're going to have to --

THE COURT: You're going to leave it to me.

MR. MOLSTAD: You're going to have to deal with it.

THE COURT: Okay.

MR. MOLSTAD: And I don't -- I'm not making a submission one way or another. But it's a very difficult issue to deal with.

And, based upon Justice Graesser's decision in *Morin,* clearly, if you're coming to court and purporting to represent someone, you must respond that you have instructions to represent that person. And if you can't do that, you know, you put yourself in a situation where you can have costs awarded against you personally.

THE COURT: Yes. We sort of assume that when people put

tried to pursue that a little further to find out if in fact he had read certain decisions, Ms. Kennedy objected to the questions in their entirety.

My friend, Mr. Molstad, has asked today that you go back and look at the transcript and I'm going to repeat that request because I think that it is very important. But I believe that when that transcript is read, it is clear that Ms. Kennedy was the one holding the reins. She was the one who was pursuing this because, as she indicated when giving answers to the questions, he didn't understand what was going on. Ms. Kennedy certainly did and should have understood.

My friend has indicated today, unfortunately, that even in preparing for this, Ms. Kennedy is still trying to indicate why -- indicate why it should proceed. And that is a concern as it relates to is the decision that you've issued, is Sawridge 6, enough? And we would submit, My Lord, that it is not enough. And it is not enough primarily because the consequence to the community which this trust is supposed to benefit is significant. The costs have been borne by a community and Ms. Kennedy has put forward a position which said right out the shoot, he's of limited means. What I asked -- we sought questions about costs -- previous cost awards that had been unpaid, those were objected to. You can't ignore the risk of costs. You can't try to prevent this Court from knowing that there is unpaid costs in previous litigation, and that is what was done.

Now, My Lord, this application, as you know it, has been described as another attempt in a long history to try to assert an entitlement to membership. That has been done. It should not have been brought again. But that is even more important in the context of this litigation because, My Lord, as you'll be aware, you issued an order on December 17th, of 2015, where you stated clearly that membership was not an issue to be addressed in this litigation. That was not to be addressed. And yet, when you go back, My Lord, and you look at the transcript you will see numerous references to an entitlement to membership. And there are even parts where we have to redirect both Mr. Stoney and his counsel to that this is not about membership.

My Lord, we've prepared for you, for your review, a summary of some of the most important places that we would like you to review the transcript. And I'm not going to go through them now today but I will just highlight the different headings. Firstly, pages 4 to 6 of the transcript are all of the objections listed in one place and it's a good place to look just to see the number of them. But there was -- there are numerous examples to show that Ms. Kennedy was really directing this litigation. And those are -- there's an inference that the Court decisions were only interpreted by Ms. Kennedy for Mr. Stoney and he was not given the decisions to read, that Mr. Stoney did not understand his own pleadings and could not be asked questions about what claims he had previously made, that Ms. Kennedy would not allow him to answer basic questions, that she refused to allow

THE COURT: Do you have anything to say about the brothers and sisters of Mr. Stoney and whether they should be captured in this should I decide that these costs are to be jointly and severally? Or --

MS. LAFUENTE: My Lord, I would say I have concern, as Mr. Molstad had indicated earlier, that there is -- whether there is informed consent demonstrated in those affidavits. I don't think the affidavits actually do prove the point that they had instructions -- sorry, given instructions to Ms. Kennedy. But to the extent that you find, My Lord, that they do, I believe there's no option but to include them jointly and severally with Ms. Kennedy.

MR. MOLSTAD: If I could just add to that, My Lord?

THE COURT: M-hm.

MR. MOLSTAD: The problem that we see, with the greatest of respect, is that they have not filed sufficient evidence to show that these two additional people instructed Ms. Kennedy. So, in light of that, I think that you should proceed cautiously as it relates to those two individuals. Until such time as my friend stands up and says we were instructed directly by this person to represent them in relation to this application, it would be unjust to award costs as against them.

THE COURT: Okay. Thanks.

Okay. Mr. Wilson, any response?

Submissions by Mr. Wilson

MR. WILSON: I'm not sure how I'm supposed to assure the Court that I received those instructions. Because, with respect, we received your judgment, we had a tight timeline to turn it around. And, with respect, we got the only two people available at the time. It's my understanding that the cost consequence of their affidavit was explained to them. That is, there is going to be a large cost consequence, and they swore the affidavit. That is my understanding, Sir.

THE COURT: Okay. I'm going to clean that issue up right now. I'm not going to award --

MR. WILSON: Yeah. Well I just --

MR. WILSON: With respect to the cross-examination on affidavit, I invite you to read it. It is -- it should be something that you should review with respect to your decision. I will say when Ms. Lafuente handed me for the first time the series of concerns about the cross-examination, I was going to ask her if she ever relitigated with Mr. Redmond (phonetic) because I suspect you could have similar comments.

Sir --

THE COURT: You should've been his partner.

MR. WILSON: Well, I will say discoveries were always interesting and everybody has different styles. I've sat in discovery rooms with Mr. Molstad, sat in discovery rooms with a variety of people. My approach, typically, is not to interfere. Typically. There's a wide range. With respect, we're not dealing with a sophisticated person. During the course of my meeting with Mr. Stoney and my discussion with him, he had no problem following what we were discussing, but when he was talking about the legal process he does not understand the process. He doesn't understand that we have a master, Court of Queen's Bench, Court of Appeal and the Supreme Court, doesn't understand leave. So, with respect, to a series of questions about that, I am not surprised that Mr. Stoney did not have the best -- the best answers or the best understanding.

With respect to Ms. Lafuente, she indicated that the application that was before the Court was for indemnity. It was for indemnity for Mr. Stoney. It was not for indemnity -- so what my friends are now doing is what they want to do is remove Mr. Stoney who has limited funds, reinsert Ms. Kennedy, and to the extent that costs are out there, they want full indemnity for everything from her personally. With respect, I would suggest that's a stretch. And, with respect, and again, I'm not getting into the merits because I've already told my friend we're not, it's my understanding that what we were dealing -- what was being dealt with by you was whether or not Mr. Stoney would be a beneficiary under the trust. And the trust had a specific date, Sir. I will say, often even in courtrooms, people intermittently use different words. There is no question that Mr. Stoney was not attempting to become a member of the Sawridge Band with respect to the application. He was attempting to become a beneficiary under the trust. In law, there is a difference, Sir. Particularly where the trust is set up in 1985.

I've made my submissions with respect to costs and have nothing further to add.

THE COURT: Thank you, Mr. Wilson.

MR. MOLSTAD: We've made ours and served our friend, and obviously there are going to be a reply that will be circulated.

THE COURT: Yes. I mean, I think you make your pitch for narrowing it.

MR. WILSON: Yeah. I -- because I've never done it, my only concern is I understand my friends wanting protection and I have to say I understand that. I just wouldn't want someone to have to go to court to get permission to do something that might come up in the ordinary course.

THE COURT: Yes. Well I, you know, should wait until I see all the material --

MR. WILSON: Absolutely, Sir.

THE COURT: -- but certainly there's nothing I've seen that Mr. Stoney is a frequent flier in the Court of Queen's Bench.

MR. WILSON: I don't think he's a frequent --

THE COURT: Other than his involvement in this particular matter. Off the top --

MR. MOLSTAD: We've actually addressed --

THE COURT: -- of my head it's -- oh, sorry.

MR. MOLSTAD: We have addressed this issue in our written submissions so I encourage my friend --

THE COURT: Okay. Maybe I'll just leave it at that then. But, you know, I think it's pretty narrow.

MR. WILSON: Yeah. No, and knowing Mr. Molstad as I do, I have no doubt that it's appropriate in all of the circumstances.

THE COURT: Yes. As I say, that one will probably be dealt with -- I'll just -- it may just be nothing more than a short memorandum on that one. This one raises -- the solicitor-client cost issue raises far bigger legal and policy issues.

Certificate of Record

I, Erik Holmstrom, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 311, on -- at Edmonton, Alberta, on the 28th day of July, 2017, and that I, Erik Holmstrom, was the court official in charge of the sound-recording machine during the proceedings.

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