

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 1703-0239 AC

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

STATUS ON APPLICATION: 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: Respondent

STATUS ON APPLICATION: Respondent

RESPONDENT: PUBLIC TRUSTEE OF ALBERTA

STATUS ON APPEAL: Not a party to the Appeal

STATUS ON APPLICATION: Not a party to the Application

INTERVENOR: THE SAWRIDGE BAND

STATUS ON APPEAL: As determined by the Court
STATUS ON APPLICATION: As determined by the Court

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

STATUS ON APPEAL: Appellant
STATUS ON APPLICATION: Application

DOCUMENT: **AFFIDAVIT IN SUPPORT OF APPLICATION OF
PRISCILLA KENNEDY FOR ADVICE AND
DIRECTION ON PERMISSION TO APPEAL AND,
IF NECESSARY, PERMISSION TO APPEAL**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT: 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

AFFIDAVIT OF PRISCILLA KENNEDY

Sworn on September 29, 2017

I, Priscilla Kennedy, of the City of Edmonton in the Province of Alberta, Barrister and Solicitor, make oath and say that:

1. I am the Applicant herein and as such have personal knowledge of the matters set out herein save where stated to be on information and belief.
2. I am the Priscilla Kennedy who is the subject of the case management decision of the Honourable Mr. Justice Thomas issued on August 31, 2017 (referred to as *Sawridge #7*) in the within action. Attached hereto as Exhibit A is my C.V. In *Sawridge #7*, Justice Thomas found that I had engaged in conduct deserving of sanction as a result of my role

in an application which gave rise to his case management decision referred to as *Sawridge #6*.

3. In *Sawridge #6* Justice Thomas decided an application advanced by me on behalf of “Maurice Felix Stoney and his brothers and sisters”. In that decision released on July 12, 2017 Justice Thomas:
 - deemed the application to have been brought on behalf of Maurice Stoney only,
 - dismissed the application,
 - awarded costs against Maurice Stoney to the Respondents on a solicitor and own client indemnity basis,
 - directed that I appear before the Court on July 28 to show cause why I should not be held personally liable for the costs award against Maurice Stoney, and
 - directed that written submissions be made by August 4, 2017 as to why Maurice Stoney should not be declared a vexatious litigant
4. The hearing on July 28 resulted in the decision in *Sawridge #7*. In that decision Justice Thomas found I had engaged in conduct deserving of sanction, held that I personally be jointly and severally liable with Maurice Stoney for the solicitor and own client indemnity costs awarded against Mr. Stoney in *Sawridge #6*. Justice Thomas further directed that his decision in *Sawridge #7* be delivered to the Law Society of Alberta for its review.
5. I have instructed counsel on my personal behalf to pursue an appeal of the decision in *Sawridge #7*. Because I do not know whether my appeal would be construed as being as to costs only, for which permission is required, I have instructed my counsel to file a Notice of Appeal and concurrently bring an application for Advice and Direction as to whether permission is required, and, if so, for such permission. I make this my affidavit in support of that application.

6. The application giving rise to the decision in *Sawridge #6* was dealt with in writing at the direction of Justice Thomas. Attached hereto as Exhibits B, C, D, E, F, and G are:

- The Notice of Application filed by me leading to the decision in *Sawridge #6*;
- The Affidavit of Maurice Stoney in support of that decision, without exhibits;
- An extract of the transcript from the cross-examination of Mr. Stoney on his Affidavit;
- Initial submissions filed in support of the application, without exhibits;
- Submissions filed by the Sawridge Trustees in response to the application, without exhibits; and
- Reply submissions filed in support of the application, without exhibits.

I am agreeable that for the purposes of this application the Respondents be allowed to refer to any of the other materials filed for the purposes of *Sawridge #6*.

7. Attached hereto as Exhibit H is a transcript of the oral hearing before Justice Thomas giving rise to his decision in *Sawridge #7*. Attached hereto as Exhibit I are three affidavits sworn by family members of Mr. Stoney and provided to Justice Thomas on July 27, 2017. Apart from these affidavits, there were no written submissions made to the Court on my behalf and I am not aware of any written submissions having been made on behalf of any other party for the purpose of the hearing as to whether I should be personally responsible for the costs in *Sawridge #6*.
8. Attached hereto as Exhibit J are the written submissions filed by me August 3 2017, on behalf of Mr. Stoney for the determination by Justice Thomas as to whether Mr. Stoney should be declared a vexatious litigant, without the exhibits thereto. Written submissions were submitted on behalf of the Respondents on July 27 and 27, 2017, respectively.
9. With respect to the prior proceedings on behalf of Mr. Stoney concerning his claim to membership in the Sawridge Band that are referred to in *Sawridge #6* and *Sawridge #7*:

- I was not counsel for Mr. Stoney and was not involved in any way in the proceedings in *Huzar v. Canada* in the Federal Court of Canada and the Federal Court of Appeal resulting in the decision of the Federal Court of Appeal;
- I was counsel for Mr. Stoney and two others in the judicial review proceedings in the Federal Court of Canada reported as *Stoney v. Sawridge First Nation*, 2013 FC 509;
- I was not counsel for Mr. Stoney and was not involved in any way in his January 31, 2014 complaint to the Canadian Human Rights Commission.

10. Counsel for the Respondents have submitted draft bills of the costs for which I am liable in an amount exceeding \$200,000. Counsel on my behalf has disputed the draft bills and Justice Thomas has directed issues relating to the costs be addressed by an Assessment Officer.

11. The decision of Justice Thomas in *Sawridge #7* has received attention in both the popular and legal press. Attached hereto as Exhibit K are copies of articles relating to this matter.

12. I make this affidavit in support of the Application for Advice and Direction on Permission to Appeal and, if necessary, Permission to Appeal.

SWORN (~~OR AFFIRMED~~) BEFORE
ME at Edmonton, Alberta, this 29th day
of September, 2017.

Commissioner for Oaths in and for the
Province of Alberta

P. JONATHAN FARLOS Q.C.
Barrister & Solicitor

PRISCILLA KENNEDY

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NUMBER:

TRIAL COURT FILE NUMBER: 1103 14112

REGISTRY OFFICE: Edmonton

Registrar's Stamp

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

STATUS ON APPLICATION: 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 "Trustees")

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Respondent

RESPONDENT: PUBLIC TRUSTEE OF
ALBERTA (the "OPTG")

STATUS ON APPEAL: Not a Party to the Appeal

STATUS ON APPLICATION: Not a Party to the Application

INTERVENOR: THE SAWRIDGE BAND (the
"SB")

STATUS ON APPEAL: Respondent

STATUS ON APPLICATION: Respondent

COUNSEL for Maurice Felix Stoney and PRISCILLA KENNEDY
His Brothers and Sisters:

STATUS ON APPEAL: Appellant

STATUS ON APPLICATION: Application

DOCUMENT: **MEMORANDUM OF ARGUMENT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT:

and

CONTACT INFORMATION OF ALL
OTHER PARTIES:

This is Exhibit "A" referred to
in the Affidavit of

PRISCILLA KENNEDY

Sworn before me this 29 day
of September A.D., 20 17

[Signature]
A Commissioner for Oaths in and for Alberta

Peter Jonathan Faulds Q.C.
Barrister and Solicitor

PRISCILLA E.S.J. KENNEDY

5820 - 110 Street NW
Edmonton, Alberta, T6H3E3
(780) 436-0384

PRACTICE OF LAW:

Associate Counsel DLA Piper (Canada) LLP, Edmonton, AB - Present

Litigation practice with an emphasis on Aboriginal Law, Constitutional, and Administrative Law. judicial review proceedings in the Federal Court and the Federal Court of Appeal and litigation in the Court of Queen's Bench and Court of Appeal of Alberta, Saskatchewan and British Columbia. Complex litigation involving regulatory issues with the Alberta Energy Regulator, issues of governance of First Nations, historical matters, constitutional matters including duty to consult, aboriginal and Métis rights, and trapping rights with numerous reported decisions.

Associate Witten, LLP., Edmonton, AB - 2006-7

Litigation practice with an emphasis on Constitutional and Aboriginal Law particularly involving administrative legal issues with the Metis Settlements General Council.

Associate Parlee McLaws, LLP., Edmonton, AB - 1987-2005

Litigation practice with an emphasis on Constitutional, Aboriginal and Administrative Law including Human Rights. Complex litigation including aboriginal constitutional and historical issues, school, municipal, human rights, environmental/criminal, scientific research, in all levels of courts primarily in Alberta and Federal Court with a focus on appellate work at the Court of Appeal and Supreme Court of Canada. Cases before the Territorial and Supreme Court in the North West Territories, the British Columbia Supreme Court and the Ontario Court of Appeal. Counsel in *R. v. Badger*, [1996] 1 S.C.R. 771, *Buffalo v. H.M.T.Q.* (F.C.), *Montana v. H.M.T.Q.* (F.C.), *Public School Board Association of Alberta v. Alberta*, (1995) 198 A.R. 204, *Principal Savings and Trust* proceedings, , and numerous other cases.

Director of Legal Research: Parlee McLaws - 1983-1986

Complex legal research issues. Training of articling students. Specialized Westlaw, Quicklaw and Lexis computer research. Supervision of seven staff members and budget.

2.

Legal Researcher, Intergovernmental Relations, B.C. - 1982-1983

Specialized legal research projects for the Province of British Columbia including aboriginal issues, addition of property rights to section 7 of the *Charter of Rights and Freedoms*, inter-boundary disputes with the United States, and matrimonial property schemes in Canada.

EDUCATION:

1984 Master of Laws, Constitutional Law - University of Alberta

1981 Bachelor of Laws - University of Alberta

1977 Bachelor of Arts, Linguistics - University of Alberta

TEACHING:

Instructor, Athabasca University - 1989-1997

Preparation and three revisions of Commercial Law course and preparation of *Charter of Rights* course work. Course work including introduction to law, tort law, contract law, sale of goods, secured interests, real property law Preparation and marking of all Examinations. Instructor in both distance and seminar format. Acting Course Professor.

Instructor, Legal Education Society of Alberta - 1993-1996

Preparation of Legal Research component of Bar Admission Course. Taught Bar Admission course, 1993, 1994, 1996.

Instructor, Legal Resource Centre - 1990-1996

Preparation of course materials and instruction in legal research.

Instructor Grant MacEwan Community College - 1994

Preparation of course materials and instruction in legal research.

Instructor Faculty of Law, U of A - 1984-1985

Instructor in Negotiable Instruments.

PUBLICATIONS AND CONFERENCES:

2014 CI Energy Group Conference on Western Aboriginal Consultation & Negotiation February 11& 12, 2014 Latest Developments in Consultation Case Law: A Review of Landmark Cases and their Implications.

2013 Lorman, Conference on Workplace Privacy. The *Charter* and Privacy Rights.

1987 -2011 Privacy Law Reporter, Education Law Infosource Ltd. Sole contributor to Privacy Law Reporter 2007-11 and Medico-Legal Reporter 2009-11. Editor and contributor of numerous articles on education/college law and human rights issues.

2005 Alberta Law Foundation 2 chapters on Aboriginal Rights to Wildlife and the *Constitution*.

2005 The Canadian Institute Aboriginal Consultation Workshop on the Impact of Supreme Court Decisions.

2000 Canadian Bar Association The Canada Labour Code Under Pressure: First Nation Jurisdiction Over Labour Relations; A Third Level of Government in Canada.

1998 Canadian and U.S. Oil and Gas Producers Duty to Consult with Aboriginals.

1998 Canadian Institute for Resources Law Constitutional Obligation to Consult.

1997 Co-Chair Canadian Bar Association Continuing Legal Education Conference of the Aboriginal Law Section.

1994 Speaker on Fiduciary Duties in Canada.

1989 & 96 Stevenson & Côte *Civil Procedure Guide* [extracts].

1988 Canadian Encyclopaedia Digest Western. *Damages*.

1984 Prosecutorial Power in Canada Unpublished Master Thesis.

1980 Faculty of Law, U of A. Preparation of course materials in Advanced Constitutional Law.

4.

LAW SOCIETIES:

1987 - present Alberta
1993 - 2013 Northwest Territories.

PROFESSIONAL ASSOCIATIONS:

Member of the Constitutional Law Sub-Section, CBA.
Member of the Aboriginal Law Sub-Section and National Section, CBA.

REFERENCES: Available on request

COURT FILE NO.:

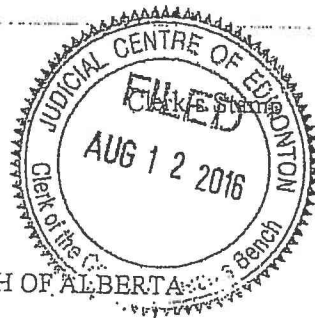
1103 14112

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

This is Exhibit " B " referred to
in the Affidavit of

PRISCILLA KENNEDY

Sworn before me this 29 day
of September A.D., 20 17

A Commissioner for Oaths in and for Alberta

Peter Jonathan Faulds
Barrister and Solicitor

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.

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:

AFFIDAVIT OF Maurice Felix Stoney

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

This is Exhibit " C " referred to
in the Affidavit of

PRISCILLA KENNEDY

Sworn before me this 29 day
of September A.D., 20 17.

A Commissioner for Oaths in and for Alberta
Peter Jonathan Fauds
Barrister and Solicitor

Sworn May 17, 2016.

I, Maurice Stoney, of Slave Lake in the Province of Alberta MAKE OATH AND SAY:

1. All of my brothers and sisters were born to our parents William and Margaret Stoney who were both members of the Sawridge First Nation, and as such I have knowledge of the matters deposed to in this Affidavit unless stated to be made on information and belief, in which case, I do verily believe them to be true.
2. Aline Huzar and June Kolowsky are my cousins. Our grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinodayoo in or about 1895, attached as Exhibit "A" is the list of Kinodayoo's Band, Sawridge showing Johnny Stony as number 18. Chief Kinodayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band.

3. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* and attached as **Exhibit "B"** are letters dated April 6, 1903 and April 15, 1903 to the Deputy Superintendent General of Indian Affairs; attached as **Exhibit "C"** is a letter dated April 16, 1903 from Indian Affairs; attached as **Exhibit "D"** is a letter dated April 17, 1903 from Indian Affairs; attached as **Exhibit "E"** is a letter dated December 9, 1911 from the Assistant Indian Agent; attached as **Exhibit "F"** is a copy of a letter dated April 18, 1913; attached as **Exhibit "G"** is a copy of a letter dated September 9, 1912; and as **Exhibit "H"** is a copy of a letter dated August 19, 1920.
4. In or about 1912, Johnny Stoney and his family were recognized on the first payroll for the Sawridge Band. He was a member of Sawridge, on the payroll until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8* where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920. It does not appear that Johnny Stoney agreed to this.
6. My father was William Stoney, was the son of Johnny Stoney, and he and my mother were members of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.
7. In 1944, my father William Stoney and all of his family including me, along with other members of Sawridge Band, were enfranchised because he was working and attached as **Exhibit "I"** is a copy of enfranchisement documents.
8. My parents had 15 children, 10 are still alive today: Billy born in 1940; myself born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. I have been involved with the Sawridge First Nation all of my life.
9. I applied to Sawridge in 1985 for recognition of my membership because I had been removed from membership by Canada after the enfranchisement of my father. I remained

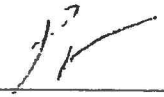
a descendant of the signatories to *Treaty No. 8* throughout all of the years when Canada treated me as "enfranchised". In 1982 when section 35 was passed as part of the *Constitution*, all of our family's *treaty rights* were recognized. I believe I am an acquired rights member recognized as an Registered Indian in 1985 when Sawridge's membership was governed by Indian Affairs. The Sawridge Membership Rules did not become effective until September 26, 1985 when the Minister of Indian Affairs and Northern Development wrote to Chief Walter Twinn reminding him that he must comply with recognition of all "acquired rights" members.

10. In March 1993, the Lesser Slave Lake Indian Regional Council, which included Sawridge Band, passed a Band Council Resolution, attached as **Exhibit "J"** to require Canada to provide lands in severalty as provided in *Treaty No. 8*, attached as **Exhibit "K"**, to all persons reinstated as Indians under Bill C-31.
11. In July, 1995, my cousins Aline Huzar and June Kolowsky, myself, and a number of other persons filed a Federal Court proceeding against Canada and Chief Walter Twinn *Huzar v. Canada*, Federal Court File No. T-1529-95, seeking to have our membership in the Sawridge Band be recognized and seeking a declaration that the membership application and rules of Sawridge were discriminatory and exclusionary. In *Huzar v. Canada*, [1997] F.C.J. 1556, Prothonotary Hargrave found that Sawridge had only accepted two individuals into band membership, both sisters of the Chief Walter Twinn, although there had been more than 200 applications. In June 2000, the Federal Court of Appeal (2000 CanLII 15589) struck this action as a claim for judicial review improperly brought as an action.
12. All of our applications for membership in Sawridge were ignored. On June 22, 2010 we submitted new applications and I called Sawridge many times thereafter to find out what was happening on my application. Finally in December, 2011 I was advised that the Council of Sawridge First Nation had denied my application for membership and attached as **Exhibit "L"** is the Registered letter from Sawridge. On December 19, 2011, I appealed this decision.
13. The Appeal Committee heard the appeal for my membership on April 21, 2012 with the appeal brought by my cousins Aline and June and provided their decision on May 7, 2012

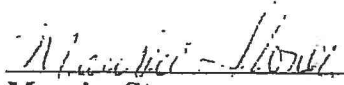
upholding the decision of Chief and Council denying our membership. We filed a judicial review of this appeal decision in the Federal Court on May 11, 2012. This judicial review was denied.

14. For thirty years, I have been seeking to have my membership in Sawridge be recognized. I was born on the Sawridge Reserve and was a member until at least 1944 when my father was enfranchised. All aboriginal and treaty rights were recognized and affirmed in 1982 and enfranchisement was removed in 1985 in Bill C-31 in order to have the *Indian Act* comply with the *Constitution Act, 1982*. I have lived beside the Sawridge Reserve all of my life. My grandfather's lands are now part of the Reserve.

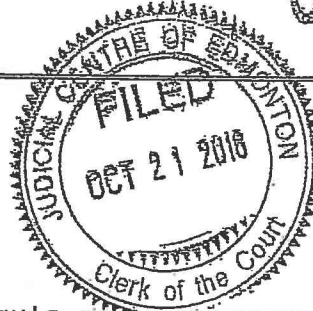
SWORN BEFORE ME at the City)
of Edmonton, in the Province of Alberta)
this 17 day of May, 2016 .)
)
)
)
)


A Commissioner for Oaths in and for the
Province of Alberta

Patricia L.S.J. Kennedy
Barrister & Solicitor


Maurice Stoney

ORIGINAL



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 am.

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

QUESTIONING ON AFFIDAVIT

OF

MAURICE STONEY

P. E. Kennedy, Ms.

For Maurice Stoney

D. C. Bonora, Ms.
E. M. Lafuente, Ms.

For the Trustees of the
Sawridge Band Inter Vivos
Settlement

C. C. Osualdini, Ms.

For Cathrine Twinn

Joanne Lawrence, CSR(A)

Court Reporter

Edmonton, Alberta
September 23, 2016

This is Exhibit " 0 " referred to
in the Affidavit of

PRISCILLA KENNEDY

Sworn before me this 29 day
of September A.D., 20 17

Peter Jonathan Faulds
A Commissioner for Oaths in and for Alberta

A.C.E. Reporting Services Inc.
Certified Court Reporters

Peter Jonathan Faulds
Barrister and Solicitor

SCANNED

1 applications you mean when you say "our
2 applications," the word O-U-R?

3 Q MS. LAFUENTE: Sir, do you have any
4 information as to whether your siblings have
5 applied for membership in Sawridge First Nation?

6 A siblings? Yes, some of them -- some of them did,
7 but they were all denied.

8 Q Who -- who made application?

9 A Uh, brothers.

10 Q Which brothers?

11 A Bill.

12 Q Okay.

13 A And... I just can't recall right now. I'd have
14 to -- I'd have to look at their response and stuff
15 like that.

16 Q But you've brought this application --

17 A They did --

18 Q -- on behalf of all of you.

19 A They were supposed to send in their applications
20 because we talked about this before, and -- and I
21 told them that maybe you should do -- maybe you
22 should be sending in your applications.

23 Q Okay.

24 A But -- now, whether it's -- they've done it or not,
25 I'm not really sure. I can't answer that.

26 Q Okay. Okay.

27 A And another thing, if they did, they were -- it

1 would be automatically thrown out anyways. Their
2 point of view would be, what is the use?

3 MS. LAFUENTE: Sir, I probably only have a
4 few more questions for you, so I'm going to suggest
5 we just take a 10-minute break, if that's okay with
6 you, and then we'll reconvene and hopefully finish
7 up quite quickly. Okay?

8 (ADJOURNMENT)

9 Q MS. LAFUENTE: Sir, earlier, you had
10 indicated that you were bringing this application
11 and representing your brothers and sisters in doing
12 so. Can you tell me, are any of them incapacitated
13 and unable to represent themselves in this
14 litigation, in this application?

15 A I won't answer that.

16 MS. KENNEDY: I'm going to tell you that I
17 have done a number of actions in QB and in the
18 Federal Court as representative actions where one
19 brother or sister acts for the entire family, and
20 that is the standard method of proceeding, and that
21 is the method of proceeding that's been used since
22 1997.

23 MS. LAFUENTE: So is the answer that they are
24 incapacitated or this is the choice?

25 MS. KENNEDY: This is the choice.

26 MS. LAFUENTE: And this is a representative
27 action?

1 MS. KENNEDY: Yes. On behalf of a family,
2 yes. That's the way you go. Each of them have
3 exactly the same characteristics. They're all
4 members of the same family. They all have the same
5 interest.

6 MS. LAFUENTE: Okay. In going through what
7 we've asked and what's been answered and what has
8 been objected to today, it's clear that we have a
9 very different view as to what's relevant and what
10 ought to be answered, and so, today, we're going to
11 adjourn --

12 MS. KENNEDY: Sure.

13 MS. LAFUENTE: -- this questioning, and
14 we'll proceed after we deal with the application --
15 sorry, the objections --

16 MS. KENNEDY: Sure.

17 MS. LAFUENTE: -- and get some further court
18 direction as to that.

19 MS. KENNEDY: Yeah. Okay. Good.

20
21 PROCEEDINGS ADJOURNED SUBJECT TO UNDERTAKINGS 2:47 P.M.

22

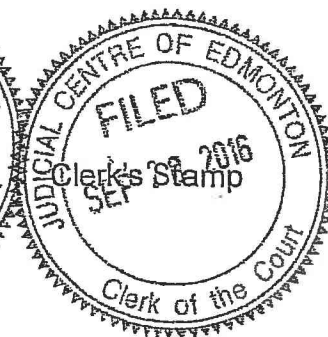
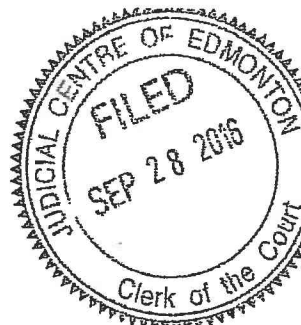
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COURT FILE NO.: 1103 14112

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 ON APRIL 15, 1985 (the "1985
Sawridge Trust")

APPLICANT MAURICE STONEY ON HIS OWN BEHALF AND
THAT OF HIS LIVING SISTERS AND BROTHERS

DOCUMENT: WRITTEN ARGUMENT ON THE APPLICATION TO
BE ADDED as a Party or Intervener by Maurice Felix
Stoney and his brothers and sisters
VOLUME ONE

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This is Exhibit " E " referred to
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PRISCILLA KENNEDY

Sworn before me this 29 day
of September A.D., 2017

A Commissioner for Oaths in and for Alberta

Peter Jonathan Faulds
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WRITTEN ARGUMENT ON APPLICATION TO BE ADDED AS A PARTY OR INTERVENER

I. OVERVIEW

1. Action 1103 14112 was commenced by the Trustees of the 1985 Sawridge Trust seeking Advice and Directions with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust 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.

1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365, paras. 2, 22. and 29 [Tab 1]

2. An appeal was brought by the Trustees of the 1985 Sawridge Trust to the Alberta Court of Appeal with, *inter alia*, Maurice Stoney named as an Interested Party.

1985 Sawridge Trust Civil Notice of Appeal, Appeal No. 1203 0230 AC. [Tab 2]

3. On August 12, 2016, Maurice Stoney brought an Application for himself and his living brothers and sisters, to be named as a Party or as an Intervenor on the ground of being beneficiaries to the 1985 Sawridge Trust, in this Action 1103 14112.

4. On August 24, 2016 an Order consented to by the Trustees and the Office of the Public Guardian and Trustee for Alberta, was granted. This Order permits the 1982 Trust to be moved into the 1985 Sawridge Trust however this consent Order cannot be used as a basis to oppose or prevent a beneficiary from seeking an accounting from the 1985 Trust. Direction was issued for the filing of argument on the issue of whether or not Maurice Stoney et al. should be granted status as parties or interveners in this Action.

1985 Sawridge Trust Consent Order, August 24, 2016. [Tab 3]

I. FACTS

5. Maurice Stoney and all of his brothers and sisters were born to parents William and Margaret Stoney who were both members of the Sawridge Band.

Affidavit of Maurice Stoney. [Tab 4]

6. Their grandfather, Johnny Stoney was born in January 1872 (aka John Stephens and Johnny Assiniboitis), and was a member of the Alexander Band under *Treaty No. 6*. He married Henrietta (aka Harriett Calder) Sinclair born January 1882 who was a member of the Lesser Slave Lake Band, and he became a member of the Lesser Slave Lake Band with Chief Kinosayoo in or about 1895, and Johnny Stony is shown on the list of Kinnosayo's Band as number 18. Chief Kinosayoo signed *Treaty No. 8* in 1899 on behalf of the Lesser Slave Lake Band which included what became known as the Sawridge Band.

Affidavit of Maurice Stoney. [Tab 4]

Treaty No. 8. [Tab 5]

7. Johnny Stoney possessed Lands on the banks of the Lesser Slave River where he operated a stopping place from 1895 on. These Lands were initially considered to be held by him in severalty under *Treaty No. 8* as shown in letters dated April 6, 1903, April 15, 1903, April 16, 1903, April 17, 1903 December 9, 1911, September 9, 1912, April 18, 1913 and August 19, 1920 to and from Indian Affairs.

Affidavit of Maurice Stoney. [Tab 4]

8. In or about 1912, Johnny Stoney and his family were recognized on the first pay list for the Sawridge Band. He was a member of Sawridge, on the pay list until his death in 1956. In 1920, Johnny Stoney was advised by Indian Affairs that his lands would be taken as part of the Sawridge Reserve, this appears to be contrary to the provisions of *Treaty No. 8*, where lands could be held in severalty and were held in severalty by Johnny Stoney until 1920.

Affidavit of Maurice Stoney. [Tab 4]

9. Maurice's father was William Stoney, and his grandfather was Johnny Stoney. His mother was also a member of the Sawridge Band. William Stoney lived in Slave Lake, Alberta on the edge of the Sawridge Indian Reserve. The Sawridge Indian Reserve is located on the northeast boundary of the Town of Slave Lake, Alberta.

Affidavit of Maurice Stoney. [Tab 4]

10. In 1944, William Stoney and all of his family, along with other members of Sawridge Band, were enfranchised because William was working. Enfranchisement removed the names of persons from the *Indian Act*, R.S.C. 1927, c. 98, section 114 and treated them as not being Indians under the *Indian Act*. They were not Canadian 'Citizens' since Canadian citizenship did not exist until at the earliest, January 1, 1947 with the first *Canadian Citizenship Act*, S.C. 1946 which provided Canadian citizenship to British subjects born in or resident in Canada.

Affidavit of Maurice Stoney. [Tab 4]

Canadian Citizenship Act, 1947. [Tab 6]

11. William Stoney had 15 children, 10 are still alive today: Billy born in 1940; Maurice born in 1941, Angeline born in 1944, Linda born in 1948, Bernie born in 1952, Betty Jean born in 1954, Gail born in 1956, Alma and Alva (twins) born in 1958 and Bryan born in 1959. These are the Applicants in this Application.

Affidavit of Maurice Stoney. [Tab 4]

12. On April 17, 1982, the *Constitution Act, 1982*, amended the *Constitution*, and recognized and affirmed treaty and aboriginal rights in section 35:

35.(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Constitution Act, 1982, section 35. [Tab 7]

13. 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 to bring the *Indian Act* into line with the provisions of section 15 of the *Charter of Rights and Freedoms*, for discrimination by removing sections 109 to 113 of the *Indian Act* which had provided for enfranchisement. Indian Affairs knew that these provisions were unconstitutional under the *Constitution Act, 1982*.

Indian Act, R.S.C. 1970, c. I-6, ss. 109-112 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 8]

14. Canada brought a motion for a mandatory injunction against Sawridge in 2003 and obtained a mandatory injunction compelling Sawridge to record the memberships of persons whose memberships in Sawridge were required by Bill C-31 ("acquired rights") effective April 17, 1985 to be included as Sawridge members. Sawridge assumed control of its membership at some point in the summer of 1985, having given notice to the Minister on July 8, 1985. The Minister of Indian Affairs specifically reminded Chief Walter Twinn of this requirement to record and include all of the persons whose membership was restored by Bill C-31 on the Band list for Sawridge, in a letter dated September 26, 1985.

Sawridge Band v. Canada, [2003] 4 FCR 748, paras. 31-40. [Tab 9]

Sawridge Band v. Canada, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 10]

15. Maurice Stoney's membership in Sawridge was properly recorded on the Sawridge Band List when he was born in 1941. It was removed when his family was enfranchised but Sawridge has refused to comply with Bill C-31 and with the Mandamus Order of the Federal Court in 2003, confirmed on appeal, to restore Maurice and his brothers and sisters as members of Sawridge. Nevertheless, under this Federal Court Order of Mandamus still in effect today, Maurice Stoney and all of his living brothers and sisters are members of Sawridge Band.

Affidavit of Maurice Stoney, Exhibit I, pp. 34-5. [Tab 4]

II. 1985 SAWRIDGE TRUST

16. Maurice Stoney and his brothers and sisters are all members of the Sawridge Band such that they are within the terms of "beneficiary" in the 1985 Sawridge Trust.

Affidavit of Paul Bujold filed September 6, 2011, Exhibit "B". [Tab 11]

17. The legal issue involved here, of who is or is not a beneficiary, requires a determination of the fundamental issue of whether all of the parts of the definition of a "beneficiary" under the 1985 Sawridge Trust are valid or whether words contained in that definition are void as against public policy.

18. This is unrelated to the judicial review in the Federal Court in the *Stoney* decision which was a review of an administrative process in 2012-3 related to the membership rules put into place by the Sawridge First Nation after they assumed control of their membership at some point after July 8, 1985.

19. As the Federal Court of Appeal in January, 2004 held Sawridge cannot enact membership rules that "operate to deny membership to those individuals who come within paragraph 11 (1) (c). ... That distinction is not permitted by the Act". Further, the Order of Mr. Justice Hugessen, affirmed by the Federal Court of Appeal, applies to all:

...individuals who acquired the right to be members of the Sawridge Band before it took control of its Band List, with the full rights and privileges enjoyed by all Band members.

Without restricting the generality of the foregoing, this order requires that the following persons, ...

Sawridge Band, (Fed. Ct.) supra, para. 26, 29-32. [Tab 9]

Sawridge Band, (Fed. CA) supra, paras. 29-30. [Tab 10]

Stoney et al. v. Sawridge First Nation, 2013 FC 509. [Tab 12]

20. It is submitted that the issue - acquired rights - and the right of unspecified persons including Maurice Stoney and all of his brothers and sisters to membership in Sawridge Band on April 17, 1985, was determined by the Federal Court of Appeal in January, 2004.

21. The matters addressed in the *Stoney* judicial review in Federal Court were concerned with judicial review of a membership application based on membership rules of the Sawridge First Nation in or about 2012 because Sawridge First Nation had continued to deny membership to Maurice Stoney, even though the 2003 Federal Court required them to recognize Maurice Stoney's membership. Maurice Stoney was not represented during these years from 2003 until 2012.

22. The 1985 Sawridge Trust provides:

(a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982, and ...for greater certainty, that any person who shall become enfranchised, ... or in any manner voluntarily cease to be a member of the Sawridge Indian Band No 19 under the Indian Act R.S.C. 1970, chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement, ...

Affidavit of Paul Bujold, Exhibit "B". [Tab 11]

23. Maurice Stoney and his brothers and sisters are persons who became enfranchised in 1944. These stipulations defining beneficiaries under the 1985 Sawridge Trust are against public policy. Such forms of beneficiary designation which exclude persons based on certain categories such as women and "enfranchised" Indians used here in the definition of beneficiary in the April 15, 1985 Sawridge *Inter Vivos* Trust, are void on the ground of public policy.

Canada Trust Co. v. Ontario Human Rights Commission, 1990 CanLII 6849, pp. 8-10, 17-20, 40-50. [Tab 13]

Fox v. Fox Estate et al., 1996 CanLII 779, pp. 9-11. [Tab 14]

McCorkill v. Streed, 2014 NBQB 148, paras. 59-89. [Tab 15]

Royal Trust Corporation of Canada v. The University of Western Ontario et al., 2016 ONSC 1143. [Tab 16]

24. Unlike some other types of trusts, the courts will interpret this type of trust which is for the benefit of a community, in a fashion that will permit it to continue.

Re Fitzpatrick, 1984 CanLII 3086, paras. 18-21. [Tab 17]

Re Forbes Estate, 2003 NBQB 430, paras. 28-48. [Tab 18]

25. The definition of beneficiary in the 1985 Sawridge Trust is also unconstitutional in 1985 since it seeks to retroactively apply the *Indian Act* as it stood two days before the *Constitution Act, 1982* came into force. Once an event occurs after April 17, 1982, the *Constitution Act, 1982* applies with the only legal method of it not applying provided by section 33 of the *Constitution Act, 1982*. Section 33 only provides this power to not have a law apply to Parliament or to a legislature and such a provision may only have effect for five years. It is submitted that it is unconstitutional for Sawridge, in the 1985 Sawridge Trust to apply provisions of the *Indian Act, 1970*, which are no longer in force, to the definition of a beneficiary of the 1985 Sawridge Trust, in order to exclude persons whose *Treaty* rights were recognized and affirmed on April 17, 1982 and whose memberships in Sawridge were effective on April 17, 1985.

26. Further Sawridge Band does not possess the constitutional authority stated to rest only with Parliament or the legislature in any province, to create an exception to the application of the *Charter of Rights and Freedoms*, as provided by section 33.

Constitution Act, 1982. [Tab 7]

27. It is submitted that as of April 17, 1982, the *Indian Act* and each First Nation under the *Indian Act*, including Sawridge Band, was constitutionally required to comply with the treaty and aboriginal rights of aboriginal peoples recorded or entitled to be recorded as members. Maurice Stoney and others were members of the Sawridge Band, all under *Treaty No. 8*, who were taken off the membership list of the Sawridge Band for various reasons under provisions of the *Indian Act*, which were recognized as unconstitutional and corrected by Bill C-31.

Affidavit of Maurice Stoney. [Tab 4]

28. The *Constitution Act, 1982*, section 35 required recognition of all treaty rights. Maurice Stoney and his brothers and sisters were and are all adherents to *Treaty No. 8* resulting in them being required to be recognized as members of Sawridge Band effect on April 17,

1982 with the *Constitution Act, 1982* and under the Federal Court 2003 Mandamus Order so that they are all "beneficiaries" under the 1985 Sawridge Trust.

29. Questions arise as whether or not the 1985 Sawridge Trust was actually signed on April 15, 1985 since the number on the first page is handwritten while the remainder of the document is typed with no signature bearing the date of when it was signed. This is a matter which the court may need to determine.

III. ORDER REQUESTED

30. It is respectfully submitted that an Order naming Maurice Stoney and his brothers and sisters as beneficiaries of the 1985 Sawridge Trust and listing them as parties or alternatively as Interveners in this Action, should be granted with costs.

31. As the Court previously held at paragraphs 35 and 37 of its June 12, 2012 judgment:

...As a general principle, a trust should pay for legal costs to clarify the construction or administration of that trust: *Deans v. Thachuk*, 2005 ABCA 368 at paras. 42-43, 261 D.L.R. (4th) 300, leave denied [2005] S.C.C.A. No. 555. ...

Aline Huzar, June Kolosky, and Maurice Stoney agree with the Public Trustee and observe that trusts have provided the funds for litigation representation in aboriginal disputes: *Horse Lake First Nation v. Horseman*, 2003 ABQB 114, 337 A.R. 22; *Blueberry Interim Trust (Re)*, 2012 BCSC 254.

Sawridge 1985 Trust, supra, paras. 35 and 37. [Tab 1]

32. This is an aboriginal trust dispute such that the legal costs of Maurice Stoney and his brothers and sisters should be paid by the 1985 Sawridge Trust.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of September, 2016.

DLA Piper (Canada) LLP.

Per: 

Priscilla Kennedy
Solicitor for Maurice Stoney and
his brothers and sisters

TABLE OF AUTHORITIES

1. *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2012 ABQB 365.
2. *1985 Sawridge Trust Civil Notice of Appeal*, Appeal No. 1203 0230 AC.
3. *1985 Sawridge Trust Consent Order*, August 24, 2016.
4. Affidavit of Maurice Stoney.
5. *Treaty No. 8*.
6. *Canadian Citizenship Act, 1947*.
7. *Constitution Act, 1982*.
8. *Indian Act*, R.S.C. 1970, c. I-6, ss. 109-112 and *Indian Act*, R.S.C. 1985, c. I-5, showing ss. 109-112 removed; *An Act to Amend the Indian Act*, SC 1985, c. 27.
9. *Sawridge Band v. Canada*, [2003] 4 FCR 748.
10. *Sawridge Band v. Canada*, 2004 FCA 16.
11. Affidavit of Paul Bujold filed September 6, 2011.
12. *Stony et al. v. Sawridge First Nation*, 2013 FC 509.
13. *Canada Trust Co. v. Ontario Human Rights Commission*, 1990 CanLII 6849.
14. *Fox v. Fox Estate et al.*, 1996 CanLII 779, pp. 9-11.
15. *McCorkill v. Streed*, 2014 NBQB 148, paras. 59-89.
16. *Royal Trust Corporation of Canada v. The University of Western Ontario et al.*, 2016 ONSC 1143.
17. *Re Fitzpatrick*, 1984 CanLII 3086.
18. *Re Forbes Estate*, 2003 NBQB 430.

COURT FILE NUMBER

Clerk's stamp:

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

DOCUMENT

WRITTEN SUBMISSIONS OF THE TRUSTEES
ON THE APPLICATION BY MAURICE STONE
AND HIS SIBLINGS TO BE ADDED AS A
PARTY OR INTERVENOR AND DECLARE
THEM TO BE BENEFICIARIES AND ON THE
APPLICATION BY THE SAWRIDGE FIRST
NATION TO BE ADDED AS INTERVENOR

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Sworn before me this 29 day

of September A.D. 2017

A Commissioner for Oaths in and for Alberta

Peter Jonathan Faulds
Barrister and Solicitor

Clerk's stamp:

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

DOCUMENT

**WRITTEN SUBMISSIONS OF THE TRUSTEES
ON THE APPLICATION BY MAURICE STONEY
AND HIS SIBLINGS TO BE ADDED AS A
PARTY OR INTERVENOR AND DECLARE
THEM TO BE BENEFICIARIES AND ON THE
APPLICATION BY THE SAWRIDGE FIRST
NATION TO BE ADDED AS INTERVENOR**

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TABLE OF CONTENTS

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INTRODUCTION

1. On April 12, 2016, Maurice Stoney ("Stoney") applied on his own behalf, and on behalf of his 10 brothers and sisters (the "Stoney Applicants") to be added as a party, or alternatively, as an intervenor, in the within action, commenced by the trustees ("Trustees") of the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the "1985 Trust"). The application further seeks the Court to declare the Stoney Applicants to be beneficiaries of the 1985 Trust.
2. In response to the application by the Stoney Applicants, the Sawridge First Nation ("Sawridge") brought an application to be granted intervenor status in the within Action, should the Stoney Applicants be successful in being added as an intervenor, or as a party.
3. The Trustees rely on the Affidavit of Chief Roland Twinn, sworn on September 21, 2016 and the written submissions of Sawridge. Chief Twinn's Affidavit provides crucial assistance to this Court to outline the history of Stoney's numerous, duplicative and unsuccessful attempts to gain membership status in Sawridge or have his alleged membership acknowledged. The attempt is being repeated herein, notwithstanding that the application by the Trustees is not the proper forum to address membership disputes, nor a declaration of beneficiary status. The duplication by this application is brought notwithstanding that the Courts and other tribunals have fully and finally decided Stoney's membership issue and this Court specifically advised it will not address membership.
4. The Trustees submit that Chief Twinn's Affidavit, earlier decisions of the Courts and other tribunals in relation to Stoney's attempts to attain membership in Sawridge, as well as Sawridge's Written Submissions, highlight overstatements and inaccuracies in the information that Stoney has filed in the Stoney Application.
5. The Trustees agree with the position of Sawridge that the Stoney Application may be disguised as an application to be added as intervenor or a party, but it is merely another attempt in a long history of attempts by Stoney and his family to assert an entitlement to membership and thereby be recognized as beneficiaries of the Trust.
6. The written submissions filed on behalf of Stoney do not, at any juncture, address the test to be added as a party or intervenor or otherwise provide any assistance to this Court in addressing such an application. The relief sought, at paragraph 30 of Stoney's written submissions, speaks to party or intervenor status tangentially to the *real* relief sought, which is stated as "an Order naming Maurice Stoney and his brother and sisters as beneficiaries of the 1985 Sawridge Trust".

7. By Order of this Court December 17, 2015, it was clearly stated that membership was not an issue to be addressed in this action. Stoney tried, unsuccessfully, to appeal this decision. The within application is another attempt by Stoney to relitigate not only the overarching membership issue, but the decision of this Court that membership is not a proper issue for consideration in this Action. Allowing the Stoney Applicants status in this action for the reasons that are argued in their written materials would squarely bring membership into these proceedings.
8. The Trustees oppose the Application by Stoney and his siblings as being unnecessary, vexatious, frivolous, *res judicata*, and an abuse of process.
9. The Trustees submit that the issue of Stoney and his siblings' alleged right to membership should, *inter alia*, be prohibited by the doctrine of issue estoppel and furthermore is irrelevant to these proceedings. The Trustees further submit that this Court is not the proper forum for the constitutional arguments being advanced by Stoney.
10. The August 24, 2016 Order in this action directed the parties to file written submissions on the applications by both the Stoney Applicants and Sawridge. In the interests of efficiency, the Trustees file the within submissions both in opposition to the application by Stoney and his siblings and in support of the application by Sawridge.

PART I – STATEMENT OF FACTS

11. The Trustees adopt the submissions of Sawridge, filed September 28, 2016, and the facts as submitted in Chief Twinn's Affidavit in relation to the historical background to the Stoney Application, the argument that the Stoney Application ought to be struck or dismissed as being *res judicata*, an abuse of process or pursuant to the doctrine of issue estoppel. Should the Court grant any form of status to Stoney and his siblings in this Action, Sawridge is in a position to be uniquely helpful to the Court in dealing with the merits of Stoney's application and should be granted intervenor status.
12. The Trustees wish to add that Stoney has had costs awarded against him his previous applications which he has failed to pay and thus his numerous applications on this membership have essentially been without recourse to him.
13. The Trustees further add that a review of the transcript of Stoney's questioning shows contempt for the litigation process and an obstructionist demeanor.

PART II - ISSUES

- (a) Should the Stoney Applicants be granted status in this Action?
- (b) If the Stoney Applicants are granted status in this Action, should Sawridge be granted intervenor status?
- (c) Should the Trustees be awarded solicitor client costs or enhanced costs in light of the frivolous and vexatious nature of the Stoney Application?

PART III - SUBMISSIONS

Stoney Application

- 14. The Trustees adopt Sawridge's arguments in relation to the Stoney Application.
- 15. While the Trustees do not wish to repeat arguments that have been made by Sawridge, it is necessary to start at the fundamental problem with the Stoney Application, which is that the Application relies on, assumes and argues that Stoney has an automatic right to membership in Sawridge and a corresponding right to beneficiary status with respect to the 1985 Trust. It is therefore imperative to draw this Court's attention to the decision of the Federal Court of Appeal in *Huzar v Canada* at paragraphs 4 and 5:

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 with the consent of the Band.

It is clear that, until the Band's membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

Huzar v Canada, 2000 CarswellNat 1132 (FCA), at paras. 4 and 5 [TAB 1]

- 16. The Stoney Application, the Stoney Affidavit, the Cross-Examination of Maurice Stoney and the Written Submissions of Maurice Stoney all presuppose that he has an automatic right to membership. A review of Chief Twinn's Affidavit and the materials attached to it, as well as the decisions of the Courts and various tribunals in relation to his matter, bely this assumption. It is submitted that the Stoney Application must fail as it is founded upon an erroneous assumption that has been successfully challenged by Sawridge each time Stoney has raised the issue.

17. The Trustees submit that Stoney's failure to identify or address the applicable Rules or legal test to be applied in considering the application for party or intervenor status ought to influence the Court to dismiss the application in its entirety, and to award costs against the Stoney Applicants. In the event that the Stoney Applicants try to correct their omission of any argument or discussion of the legal tests to be applied by way of reply submissions, the Trustees submit that reply on that topic would be improper and ought not to be given any consideration.

18. The Trustees identify for the Court that the relevant rules for consideration are Rule 3.75 (for adding a party to an originating application) and Rule 2.10 (for adding an intervenor).

[TAB 2]

19. The Trustees adopt the submissions of Sawridge at paras. 40 to 49 of their written submissions as it relates to the test for granting intervenor status. The test for granting party and intervenor status has been said to be largely the same; however, the threshold for party status is greater than for intervenor status.

Carbon Development Partnership v Alberta (Energy & Utilities Board) 2007 ABCA 231 at para. 8

[TAB 3]

20. Judicial consideration of the rules relating to adding parties clearly identifies that the power to confer party or intervenor status is at the discretion of the Court and that the Court should be "satisfied that the Order should be made". The Court may not make an Order if prejudice would result for a party that could not be remedied. It is also a prerequisite that the claim to be added or reviewed not be "hopeless".

869120 Alberta Ltd v B&G Energy Ltd. 2011 ABQB 209 at para. 22 [TAB 4]

21. The Trustees submit that the Order should not be made as the claims being made are hopeless as they have been previously and conclusively decided.

22. The Trustees submit that there is serious prejudice to the Trustees given the 5 year progression of the application to date. Stoney submits that he has been involved in this application from the beginning and yet he waits for 5 years to bring this application.

23. The Stoney Applicants seek in their written submissions that the Trustees should pay Stoney's costs of the action "from the 1985 Trust" without arguments on this issue. As deposed by Chief Twinn, Stoney has failed to pay the costs awarded against him in favour of Sawridge and the Trustees in previous actions is a consideration in the prejudice that arises to the Trustees as Stoney has demonstrated a lack of respect for Court orders regarding costs and has sought an

order seeking the payment of his costs from the Trusts. This request, which is not identified in his motion, but raised in the written submissions, demonstrates a lack of care and concern for the impact of his actions on the beneficiaries of the 1985 Trust, who will be prejudiced by the further complication of this action and the consequent costs should the Stoney Applicants be allowed status.

24. The fact that Stoney's written submissions provide no assistance to this Court in terms of the applicable Rules, the legal tests and the application of the tests to the alleged facts ought to dissuade this Court from allowing the Stoney Applicants status in this action. It is submitted that there should be some element of providing assistance or special expertise to persuade the Court to exercise its discretion to allow the Stoney Applicants status in this action.
25. To the contrary, the Stoney Applicants have complicated the action, overstated their position, and otherwise abused the process in raising matters that are prohibited.
26. Stoney's repeated assertion that he and his siblings are "acquired rights members" and that they are members of Sawridge demonstrates a lack of candor with the Court that would undermine any assistance their participation could otherwise provide.
27. The Sawridge written submissions, along with the Affidavit of Chief Twinn, refute the assumptions made in the written submissions of the Stoney Applicants and clearly call into question the integrity of the Stoney Applicants in repeatedly mischaracterizing Stoney and his siblings as being members of Sawridge when they are clearly not. The Stoney applicants attempt to use this mischaracterization as the basis for a conclusion that Stoney and his siblings are beneficiaries of the 1985 Trust. It is clear from the record that Stoney and his sibling are not members of Sawridge, that Stoney sought judicial review of the decision to deny him membership, and that the application to overturn the decision was dismissed by Justice Barnes in 2013.
28. Justice Barnes' decision made it clear that Stoney did not have an automatic right to membership and noted that Stoney continued to try to relitigate an issue that had already been decided, which was barred under the doctrine of issue estoppel:

I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in Sawridge First Nation to William 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.

Stoney v Sawridge First Nation, 2013 FC 509, at paras. 11-15 and 17
[TAB 5]

29. In light of the decision of Justice Barnes, it is hard to characterize the statements and submissions made by Stoney as anything but a mischaracterization of the facts. The Trustees specifically note the following occasions in which Stoney asserted facts to the direct contrary of Justice Barnes' conclusions:

- The Application at para. 3 (e);
- The Maurice Stoney Affidavit at para. 9;
- The cross-examination of Maurice Stoney at pages 22 and 23; and
- The Written Submissions of the Stoney Applicants at paras. 14, 15, 20, and 21.

Various Materials filed by Stoney Applicants [TAB 6]

30. The Trustees submit that the attempts made by the Stoney Applicants in the written submissions to frame and raise constitutional arguments in the characterization of a private trust does nothing but complicate an action that needs no further complication and is indicative of the complication that the Stoney Applicants will bring to this matter without any useful or helpful purpose.

The same is true for the Stoney Applicants asking this court to regulate the operations of First Nations, which are "bands" within the meaning of the Indian Act. The Federal Court is the only forum for such an issue and since the Federal Court has commented on the Sawridge membership process in previous decisions, there is no need, nor is it appropriate, for this Court to address this subject. If there are outstanding disputes on whether or not a particular person should be admitted or excluded from Band membership, then that should be reviewed in the Federal Court, and not in this 1985 Trust application for modification and distribution process.

1985 Sawridge Trust v Alberta (Public Trustee) 2015 ABQB 799 at para. 35 [TAB 7]

31. That Stoney framed his application as a representative action and filed his Affidavit "on behalf of" his siblings also, demonstrates the confusion that the Stoney Applicants will bring to this action. While representative actions may be appropriate in some circumstances, Stoney has not demonstrated that he can reliably "represent" his siblings in this matter as not all siblings share the same facts on their application for membership.

Questioning on Affidavit Transcript of Maurice Stoney, filed October 21, 2016, at pages 63 line 13
to page 66 line 2.

[Tab 8]

32. The evidence of Chief Twinn at paras. 30 – 36 of his Affidavit filed September 28, 2016 clarifies that William C. Stoney applied and his membership application was denied, that Sawridge

provided a membership application to Bernie Stoney and Gail Stoney, but had never received a completed application, and that Sawridge has no record of any membership application from Linda Stoney, Angeline Stoney, Betty Jena Stoney, Alma Stoney, Alva Stoney or Bryan Stoney.

33. In paragraph 29 of their Written Submissions, the Stoney Applicants suggest the Trust was not signed on the date it was signed. The Trustees state the Trust Deed speaks for itself and to suggest, without any corroborating evidence, that the Deed may not have been signed on the date purported is a further attempt to muddy the waters. The Court does not need to determine this issue and this Court should not exercise its discretion to add a party who is attempting to broaden the scope of this litigation into areas it does not need to go, particularly where there is no evidence to support the allegation.
34. The Affidavit of Stoney very loosely and liberally provides "facts" which cannot be proven and which are clearly refuted by the factual supporting material provided by Chief Twinn in his Affidavit. The affiant ought not to be given any weight in light of the interference of Stoney's counsel in the cross-examination and the refusal of his counsel – and Stoney himself – to answer relevant questions. The conduct of counsel and Mr. Stoney at the cross-examination was obstructionist and his answers, or the lack thereof and refusals clearly show the nature of a vexatious litigant.

Questioning on Affidavit Transcript of Maurice Stoney, filed October 21, 2016, Index of
Objections [TAB 9]

35. It is submitted that the objections, particularly those to factual questions that relate to the oft stated "right" to membership status were improper objections by Mr. Stoney's counsel which impeded the flow of the examination and prevented the examiner from being able to use the exemption to test the truthfulness of the evidence, which is the very purpose of an examination on Affidavit. It is to be noted that, by pages 63 and 64, Mr. Stoney himself was objecting to questions which his counsel condoned. This is improper and ought to have been followed by a direction by his counsel to answer the proper question. As a result of this behaviour, the Trustees abandoned their questioning determining it would serve no useful purpose.

Questioning on Affidavit Transcript of Maurice Stoney, filed October 21, 2016, at pp 63 and 64
[Tab 8]

Ed Miller Sales & Rentals Ltd. v Caterpillar Tractor Co., 1981 CarswellAlta 811 (ABQB) at para. 3 [TAB
10]

36. It is submitted that as a result of Stoney's refusal to cooperate with the cross-examination process, the Trustees were not able to properly test Stoney's evidence, and accordingly, his Affidavit should be given little weight.

Sawridge Application for Intervenor Status

37. In the event that the Stoney Applicants are granted status in this action, the Trustees support the request by Sawridge for intervenor status.
38. Sawridge has clearly and helpfully set out the test as well as the supporting information in respect of its position.
39. The Trustees submit that no one is more poised to attest to the relevant facts in respect of Stoney's frequent and unsuccessful appearances before many levels of Court and tribunals in respect of the issue of membership than Sawridge. Sawridge has substantially outlined these unsuccessful appearances in the filed affidavit of Chief Twinn in support of their application to be added as an intervenor. Those facts are further analyzed in the written submissions filed by Sawridge.
40. The Trustees adopt the facts and arguments presented by Sawridge and support Sawridge's application for reasons which include:
- (a) The participation of Sawridge would likely render the process more efficient as submissions by Sawridge comprehensively contain all that this Court requires to provide balance to Stoney's arguments; and
 - (b) Sawridge brings knowledge of its membership, process particular history in relation to Stoney and could assist this Court in that regard should the need arise.

Costs to the Trustees

41. The Trustees repeat and adopt Sawridge's arguments in respect to an award of solicitor and his own client, or enhanced, costs to the Trustees. These submissions, at paragraphs 74 to 79, provide support for an award of a punitive nature in these proceedings due to the delay, abuse of process and mischaracterization of evidence outlined herein. It is submitted that there is a both a general and a specific deterrent aim for such an award of costs and Stoney has proven to be a litigant with little respect for the finality of the court process and an award of costs of a substantial nature is necessary to deter him from further conduct of this nature.
42. Further, the Trustees point to the futile exercise of the questioning on Affidavit of Stoney, which was thwarted by the intervention of his counsel and further undermined by Stoney's personal

refusal to answer questions, as an example of the costs that have been needlessly and inappropriately borne by the Trustees to address these issues and as a further justification for an award of solicitor and own client costs or costs on an enhanced basis.

PART IV – REMEDY SOUGHT

43. The Trustees respectfully request that the Court deny the application by the Stoney Applicants completely. In the event that status is granted to the Stoney Applicants, the Trustees request that the Court grant intervenor status to Sawridge.
44. The Trustees request costs be awarded to the Trustees on an enhanced basis or solicitor and his own client basis for the reasons set out above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31 DAY OF OCTOBER, 2016.

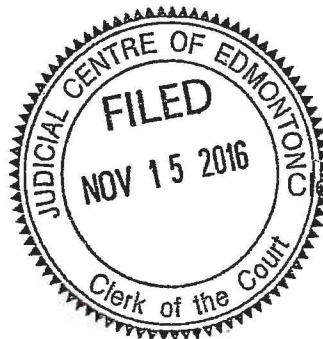
DENTONS CANADA LLP

PER: _____

Doris Bonora
Solicitors for the Trustees

LIST OF ATTACHMENTS AND AUTHORITIES

Tab	Authorities	Page
1	<i>Huzar v Canada</i> , 2000 CarswellNat 1132 (FCA), at paras. 4 and 5.	4
2	<i>Alberta Rules of Court</i> , Rule 3.75 and Rules 2.10.	5
3	<i>Carbon Development Partnership v Alberta (Energy & Utilities Board)</i> 2007 ABCA 231.	5
4	<i>869120 Alberta Ltd v B&G Energy Ltd.</i> 2011 ABQB 209.	5
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10	<i>Ed Miller Sales & Rentals Ltd. v Caterpillar Tractor Co.</i> , 1981 CarswellAlta 811 (ABQB).	8



Clerk's Stamp

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 ON APRIL 15, 1985 (the "1985
Sawridge Trust")

APPLICANT MAURICE STONEY ON HIS OWN BEHALF AND
THAT OF HIS LIVING SISTERS AND BROTHERS

DOCUMENT: WRITTEN RESPONSE ARGUMENT OF MAURICE
STONEY AND SIBLINGS ON SUBMISSIONS OF
1985 SAWRIDGE TRUSTEES: ROLAND TWINN,
WALTER FELIX TWIN, BERTHA L'HIRONDELLE
AND CLARA MIDBO

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File: 84021-00001

This is Exhibit " G " referred to
in the Affidavit of
PRISCILLA KENNEDY
Sworn before me this 29 day
of September A.D., 20 17

A Commissioner for Oaths in and for Alberta
Peter Jonathan Faulds
Barrister and Solicitor

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**WRITTEN RESPONSE ARGUMENT OF MAURICE STONEY AND SIBLINGS ON
SUBMISSIONS OF 1985 SAWRIDGE TRUSTEES: ROLAND TWINN, WALTER
FELIX TWIN, BERTHA L'HIRONDELLE AND CLARA MIDBO**

1. 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.

Indian Act, R.S.C. 1970, c. I-6, ss. 1, 5, 11, 12, 109-110 and *Indian Act*, R.S.C. 1985, c. I-5 (showing sections removed; *An Act to Amend the Indian Act*, SC 1985, c. 27, section 4 amending section 6 (1)(c), section 10 (4) and (5), section 11(1)(c) and section 19 repealing sections 109 to 113 from the Act. [Tab 1 of Written Argument Responding to Sawridge First Nation]

2. **Sawridge First Nation** has repeatedly refused to comply with the law, with Mandamus Orders of the Federal Courts and continues today to refuse to comply. The **1985 Sawridge Trustees** now adopt this position of the Sawridge First Nation as well in its Written Argument which is in contempt of the law and Orders of the Federal Court and Federal Court of Appeal. Like Elizabeth Poitras, Maurice Stoney and his brothers and sisters have faced a tortuous long process with no success in persuading Sawridge Band or Sawridge First Nation, and now it appears the 1985 Sawridge Trustees, to abide by the Mandatory Injunction issued by the Federal Court, confirmed by the Federal Court of Appeal and as stated by the Case Management Judge Aalto in 2012, at paragraph 29, "[n]ot to put too fine a tautological point on it [this issue]- moot is moot is moot is moot".

Sawridge Band v. Canada, [2003] 4 FCR 748, paras. 31-40. [Tab 2 of Written Argument Responding to Sawridge First Nation Application]

Sawridge Band v. Canada, 2004 FCA 16, paras. 28-35, 51-52, 56. [Tab 3 of Written Argument Responding to Sawridge First Nation Application]

Walter Patrick Twinn et al. v. Elizabeth Bernadette Poitras, 2012 FCA 47, para. 29. [Tab 17 of Written Argument Responding to Sawridge First Nation Application]

Elizabeth Bernadette Poitras v. Walter Patrick Twinn et al., 2013 FC 910, paras. 1-19. [Tab 17 of Written Argument Responding to Sawridge First Nation Application]

3. The 1985 Sawridge Trust is prior to Sawridge First Nation having any control or say over its membership. The definition of beneficiaries in this 1985 Sawridge Trust does not fall within the jurisdiction or legal ability of Sawridge First Nation or even the 1985 Sawridge Trustees to say anything about the membership of the Sawridge Band. This was entirely determined by Indian Affairs Canada and Bill C-31. Maurice Stoney and his brothers and sisters are not raising the issue of "membership" as such - their memberships were restored by Bill C-31 and this legal issue determined entirely by Bill C-31.
4. Contrary to the assertion at paragraph 22, there is no prejudice to the 1985 Sawridge Trustees in this proceeding. Maurice Stoney was listed as a party in Action 1103 14112 until 2015 so that the only Order that appeared to remove him was the December, 2015 Order of this Court. An appeal was brought with a decision issued by Mr. Justice Watson on February 26, 2016 that the 1985 Sawridge Trustees participated in. Maurice Stoney filed his affidavit for himself and his brothers and sisters to be added as beneficiaries in May, 2016 following this decision of the Alberta Court of Appeal. Ms. Bonora's statement at paragraph 22 of the Written Submissions of the Trustees that there is "serious prejudice to the Trustees" is false and contrary to what she told Mr. Justice Watson is the Court of Appeal. Mr. Justice Watson noted at paragraph 19:

Ms. Bonora quite fairly points out that Mr. Stoney's position as to whether or not he should be considered to be entitled to be a beneficiary in the trust has not arisen yet before Mr. Justice Thomas. That is going to be decided at some future date whether or not the appeal goes ahead from Mr. Justice Thomas and whether or not Mr. Justice Thomas's judgment in this particular regard, is upheld or in some way dealt with by the Court of Appeal.

Stoney v. 1985 Sawridge Trust, 2016 ABCA 51, para. 19. [Tab 1]
5. Rules 2.10 and 3.75 are fully addressed in the Response of Maurice Stoney et al. to the Application of Sawridge First Nation to be added as an Intervener, paragraphs 24-44. Rather than reprinting them here, reference is made to that Written Brief filed on October 27, 2016.
6. Maurice Stoney has paid the costs owed to 1985 Sawridge Trustees in this matter in two parts with the last payment on November 14, 2016. Maurice Stoney and his brothers and sisters are all elderly and have limited funds. No lack of respect for Orders of costs has

been displayed. The issue of costs where beneficiaries seek to be able to speak to issues related to determination of the terms of a trust when the Trustees are seeking Advice and Directions before the Court, is a matter where the beneficiaries are entitled to have their costs paid by the trust.

Twinn v. Twinn, 2016 ABQB 553, para. 67. [Tab 2]

1985 Sawridge Trust v. Alberta (Public Trustee), 2012 ABQB 365, paras. 35-37. [Tab 4 of Written Argument Responding to Sawridge First Nation Application]

7. On the issue of questioning Maurice Stoney, who is elderly in his seventies and did not receive much education, where he refused or failed to address the questions asked involved legal issues on which Maurice Stoney became confused and disturbed. In the context of the examination the question at Tab 8 of the Trustees Brief referring to Maurice Stoney's statement "All of our applications for membership in Sawridge were ignored" is plainly defined by the words in his Affidavit, in the preceding paragraph 11 where he refers to applications by himself, Aline Huzar and June Kolowsky. The Trustees are well aware of this from the Appeal to Sawridge First Nation and then judicial review in the Federal Court proceedings [relied on in paragraphs 27 to 29 of the 1985 Sawridge Trustees Brief]. He then answered to the best of his ability to recall, questions about applications by his brothers and sisters. Reliance now on this point is a further effort by the Sawridge Trustees to belittle Maurice Stoney.
8. The Affidavit of Maurice Stoney contains the records of Canada. These records are indisputable including showing that he and his family were recorded as members of Sawridge Band. Contrary to the assertion of the 1985 Sawridge Trustees, these are not "loosely and liberally" provided by Maurice Stoney. They are the public records of Canada from Public Archives that show his membership. They cannot be discounted or ignored.

4.

9. There has been no delay, no abuse of process or mischaracterization of evidence by Maurice Stoney. The Trustees are not entitled to costs at all for this application in the determination of beneficiaries in the 1985 Sawridge Trust.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15TH DAY OF NOVEMBER, 2016.

DLA Piper (Canada) LLP

Per: 

Priscilla Kennedy

Solicitor for Maurice Stoney and his
brothers and sisters

5

TABLE OF AUTHORITIES

1. *Stoney v. 1985 Sawridge Trust*, 2016 ABCA 51. [Tab 1]
2. *Twinn v. Twinn*, 2016 ABQB 553. [Tab 2]

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

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1000, 10123 99th Street
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This is Exhibit " H " referred to
in the Affidavit of
Priscilla Kennedy
Sworn before me this 29 day
of September A.D., 20 17
A Commissioner for Oaths in and for Alberta
Peter Jonathan Faulds
Barrister and Solicitor

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

2

3 July 28, 2017

Afternoon Session

4

5 The Honourable

Court of Queen's Bench

6 Mr. Justice Thomas

of Alberta

7

8 E.H. Molstad, QC

For the Sawridge Band

9 E.Sopko

For the Sawridge Band

10 D.C.E. Bonora

For the Sawridge Trustees

11 E.M.L. Lafuente

For the Sawridge Trustees

12 D.J. Wilson

For P. Kennedy

13 E. Holmstrom

Court Clerk

14

15

16 **Discussion**

17

18 THE COURT CLERK:

Order in chambers, all rise.

19

20 THE COURT:

Good afternoon.

21

22 MR. WILSON:

Are you ready, Sir?

23

24 THE COURT:

Actually, I just have a few questions of a case

25 management nature before we get going on your matter. The first question is, I issued that

26 decision, Sawridge number 6 as I call it, and I haven't seen a formal order. And it may be

27 I haven't seen it because I didn't assign responsibility for preparing a formal order on that

28 decision.

29

30 MS. BONORA:

Sir, I think, for me at least, we thought we'd

31 wait until today and then perhaps have final decision about the costs and put it all

32 together. But I will certainly undertake responsibility for putting that together.

33

34 THE COURT:

All right. If you wouldn't mind. I just don't

35 want to lose track.

36

37 MS. BONORA:

Yes.

38

39 THE COURT:

All right. Well we are here today to deal with

40 the question of whether Ms. Kennedy should be made personally liable for solicitor-client

41 costs in respect to the now dismissed application in my case management decision, which

1 I described as Sawridge 6 2017 ABQB 436. What I'd like to do is just begin by having
2 counsel identify themselves for the record and whether or not their clients are present.

3
4 MR. WILSON: My Lord, my name's Don Wilson. I'm a
5 partner at DLA Piper. I'm here speaking on behalf of Ms. Kennedy. I can tell you that
6 Mr. Maurice Stoney is in the courtroom. I met Mr. Stoney for the first time today.

7
8 THE COURT: Okay.

9
10 MR. WILSON: Mr. Molstad, of course you know very well.

11
12 THE COURT: Mr. Molstad.

13
14 MR. WILSON: Ellery Sopko is also here. Erin Lafuente, and
15 Ms. Bonora are here as well.

16
17 MS. BONORA: Sir, I can tell you that our client, Brian
18 (INDISCERNIBLE) as the chair of the trustees is here and Erin Lafuente's going to speak
19 for us this afternoon. My husband's been in hospital so I've been a bit distracted this
20 week. So, I'm here, but Erin Lafuente is going to speak for us this afternoon.

21
22 THE COURT: Okay. All right.

23
24 Let's talk about what we're going -- how we're going to go at this today. I see big piles
25 of books in front of the trustees' counsel. Is that your material?

26
27 MS. BONORA: No. These are all the briefs that had been filed
28 so we just brought them in --

29
30 THE COURT: Oh, just in --

31
32 MS. BONORA: Yes.

33
34 THE COURT: -- in -- okay. All right. Well let's go with you,
35 Mr. Wilson, and then I guess Mr. Molstad can reply and trustees can reply.

36
37 MR. WILSON: I commented to Mr. Molstad as I stepped in,
38 whatever I need I'm sure enough that your office (INDISCERNIBLE) and I'll refer to that
39 in a minute. I should've used Ms. Bonora's approach to bring everything.

40
41 Submissions by Mr. Wilson

1

2 MR. WILSON:

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

15

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

19

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

24

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

31

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

39

40 We then have the application that --

41

1 THE COURT: Sorry, can I just stop you? I think I know that
2 body of litigation as the Hazar or Hajar.

3
4 MR. WILSON: No, the '95 --

5
6 MR. MOLSTAD: *Huzar.*

7
8 MR. WILSON: Mr. Stoney made an application to be added as
9 a member of the bar after C-31. I will say I think it was 12 years before determination of
10 that application was to be made, an appeal was made to the appeal panel that set up for
11 that exact purpose and then a judicial review was made.

12
13 I do know the Court's familiarity with judicial reviews and it isn't an independent look at
14 the determination. It's to determine whether the body is expert qualified and to apply the
15 appropriate rigor and deference. And in that instance, the federal court made a decision
16 and that decision was not appealed.

17
18 I'd love to say that's the end of the matter, but unfortunately it isn't. Mr. Stoney
19 attempted to utilize a Canadian Human Rights tribunal to effect other remedies. And,
20 again, that was unsuccessful.

21
22 An application was made by my colleague, Ms. Kennedy, to be added to an appeal that
23 went before Mr. Justice Watson. Mr. Watson -- Mr. Justice Watson carefully reviewed the
24 matter and determined that there was no way he was going to add them to that appeal. So,
25 that's four.

26
27 We then have Sawridge 6 and Sawridge 6 is, and I said it's unfortunate, it is unfortunate
28 that we got to the point where the Court said enough. And I have all of the sympathy and
29 empathy for my friends who were attempting to prosecute the complex piece of litigation
30 to determine who is members of the trust, and I have no doubt they have prosecuted that
31 litigation with the appropriate standard as officers of the court.

32
33 I can say, I said earlier, Ms. Kennedy litigates with her heart. She listens to her client.
34 She takes their causes of action to her heart and I suspect many instances, one of which is
35 this instance, takes steps to prosecute their rights sometimes when she ought not to. I can
36 say where we're dealing with someone who -- I will say Mr. Stoney's very powerful
37 comments to me, and that were very brief, being a member of the band goes to the
38 totality of his being. And in these circumstances, I will say that Ms. Kennedy has
39 prosecuted this action on his behalf further than I would've, further than I think she
40 should've. But I can understand as an officer of the court when one is dealing with
41 justice, not just the administration of justice, you attempt to get a remedy for your client.

1
2 I will say that one of the cases that you cited was the *Morin* decision of Mr. Justice
3 Graesser. And I do note that I think all counsel here are commercial litigators. In that
4 instance, and I will say Justice Graesser case managed a very large piece of litigation that
5 is on a long time and I know how careful he is a jurist, Justice Graesser had in front of
6 him a claim that was advanced for dead people. That is people who were not in existence.
7 He had assertions that certain people held title or ought to concede to certain lands and
8 they did not. In that litigation, a notice to admit was served upon the parties. The lawyer
9 involved didn't even respond to the notice to admit and I will say throughout the entirety
10 of my legal career not dealing with a notice to admit has fairly significant consequences.
11 And when the evidence, the only evidence before the Court, these people were dead when
12 they started the action and they didn't control the title to which he was served a claim, the
13 lawyer then filed an appeal. And I will say --

14
15 THE COURT:

This is the lawyer Willier?

16
17 MR. WILSON:

Willier, yes. And the reason I go through this,

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

27
28 THE COURT:

TransAlta wasn't it?

29
30 MR. WILSON:

Yeah. And I believe it was about \$4,800 each.

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

37
38 I say this recognizing how serious this is, but also one of the lines in Stoney 5 was the
39 administration of justice. And what Ms. Kennedy is guilty of, if she's guilty of something,
40 is seeing a wrong and has persistently tried to right that wrong.
41

1 Now, if I'm Mr. Molstad, I can tell you that the Band is the person that gets to determine
 2 their membership and that is entirely appropriate. And in Mr. Stoney's case they've done
 3 that. Appeals were made on two different levels. An additional attempt was made at the
 4 Human Rights tribunal. And Mr. Stoney has been told, and I know he's been told this
 5 because I told him this, he is at the end of his rope with respect to the Sawridge Band and
 6 the Court system.

7
 8 And the reason for that is background and history. It's one of Montgomery's campaigns in
 9 World War II, it's a bridge too far. He would've been fine if he'd stopped at bridges, by
 10 going for a third bridge the campaign itself stopped. In this instance, had -- if I'd been
 11 engaged or consulted, had I read Sawridge 5, saw the foreshadowing, that is setting out
 12 section 1.2, Pernell and Modelin, the fact that the Court is not, unlike earlier trust
 13 litigation where often the trust ends up paying for part of the litigant's costs, the Court
 14 could not have been clearer that is not going forward. And the Court indicated interlope.
 15 That is, someone does not have a claim on the trust is coming forward and not only wants
 16 to challenge, wants to be a member of the trial, presumably would make the trial more
 17 complicated, more time consuming, higher costs for everyone. And it's not that
 18 Mr. Stoney's counsel wouldn't be paid, it's that the trust and the trust property would be
 19 depleted by however long that is, however the trial is prolonged by the addition of
 20 Mr. Stoney.

21
 22 Now, I can tell you that in the course of the last week, other than reading way too many
 23 Sawridge decisions, I had occasion to speak in depth with Ms. Kennedy. And
 24 Ms. Kennedy tried to convince me as to the merits of Mr. Stoney's case. And at a certain
 25 point in time, I had to tell her that he has exhausted his remedies in the legal realm with
 26 respect to the Sawridges and it's time to move on.

27
 28 The reason I referred to the Graesser case is, when I read it, my immediate reaction
 29 was --

30
 31 THE COURT: I'm just going to -- Graesser case being the
 32 TransAlta v. Morin --

33
 34 MR. WILSON: Yeah. *Morin*, sorry. My apologies.

35
 36 THE COURT: Yeah. It's okay. I just -- because I'll end up
 37 getting a transcript of this, it's just easier for me to connect the dots. So, thank you.

38
 39 MR. WILSON: I keep forgetting Mr. Justice Graesser writes a
 40 few more than one.

41

1 THE COURT:

Yes, he's pretty prolific.

2

3 MR. WILSON:

I know.

4

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

14

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

27

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

37

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

1
2 And, again, I apologize for not having affidavits from all of them but we did the best we
3 could in the time we had.
4

5 Now, Sir, you actually canvassed the various remedies with respect to counsel and you
6 highlight contempt of court, which is the most serious instance; you highlight Law Society
7 and the sanctions there. And then you raise the Court's own ability, and as Mr. Molstad
8 has raised, the *Judicature Act* - ability to sanction counsel. And my only comment would
9 be, with respect to each of those, is what the Court is trying to do, as you properly cite in
10 your decision with respect to sanctions, is to change behaviour. It's the same rationale
11 behind torts which is you're giving a tort award so that some other idiot isn't going to
12 follow and do the same thing. And, with respect, I would submit to you that the
13 seriousness of what Sawridge 6 is has been driven home to Ms. Kennedy. And, with
14 respect, it's been driven home as much as an order of contempt or a referral to the Law
15 Society. The decision is out there, we have a courtroom full of reports here to report on
16 the matter.
17

18 And I'm reminded of someone once asked Warren Buffett when he was testifying at the
19 congress as to what was reasonable, and it was on the context of a company he owned
20 and insider trading. And Mr. Buffett to the U.S. congress testified it meets a very easy
21 standard. And the standard is, if they printed the story in your home town and your
22 mother and your father had an opportunity to read it, would you be embarrassed? And,
23 with respect, Ms. Kennedy and the Sawridge 6 decision has brought home the falling of
24 continuing to prosecute the remedy she's seeking for Mr. Stoney. Which, after meeting
25 Mr. Stoney, I understand. But there's a certain point in time the legal remedies have been
26 exhausted. And, with respect, it'd be my submission to this Court that solicitor-client costs
27 awarded against Ms. Kennedy are unnecessary, although clearly within the purview of this
28 Court's inherent jurisdictions, the *Rules* and the *Judicature Act*. Those are my
29 submissions, Sir.
30

31 THE COURT:

Thank you, Mr. Wilson.

32
33 Mr. Molstad?
34

35 **Submissions by Mr. Molstad**
36

37 MR. MOLSTAD:

Sir, first of all, we submit that the facts
38 (INDISCERNIBLE) are contained in the findings that you have already made in Sawridge
39 6. And they're also find, we submit, in the affidavit of Chief Walter Twinn, and in the
40 three written submissions that were filed on behalf of the Sawridge First Nation.
41

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

3
4 THE COURT: Now, sorry, this is in the material that I saw a
5 frontend loader brought a stack of materials into my office. I didn't bring it into court
6 because I thought it was part of the response of Mr. Stoney, if he chooses to make one, to
7 the vexatious litigant issue.

8
9 MR. MOLSTAD: Yeah. I believe our friends on behalf of the
10 trustees in filing a written submission in relation to the vexatious litigant submissions,
11 including a copy of the transcript.

12
13 THE COURT: Okay.

14
15 MR. MOLSTAD: It had been filed in the material.

16
17 THE COURT: Oh, yes, it was in the original one.

18
19 MR. MOLSTAD: It was in the original application that had been
20 filed.

21
22 THE COURT: Okay. Got it.

23
24 MR. MOLSTAD: And, Sir, we submit that Ms. Kennedy
25 participated in a course of conduct advancing an argument with respect to Mr. Stoney that
26 was devoid of merit, vexatious and an abuse of process. We submit, Sir, that this conduct
27 constitutes serious misconduct in accordance with *Rule 10.50* of the *Rules of Court*. This
28 conduct includes preparing and filing an application of a third party who was attempting
29 to insert himself and his siblings into a matter in which he has no legal interest; it
30 includes preparing and filing an application which was a collateral attack attempting to
31 subvert an appealed and crystalized judgment of the federal court which has already
32 addressed and rejected her client's claims and arguments.

33
34 You, Sir, have already found that the application of Maurice Stoney is serious litigation
35 misconduct. It is our submission that Ms. Kennedy participated in this serious litigation
36 misconduct with full knowledge of the history and the previous decisions. Ms. Kennedy's
37 application purported to be an application on behalf of ten persons all to be named as
38 beneficiaries of the Sawridge Trust.

39
40 My friend has referred you to the *Morin* decision. I am intimately familiar with that
41 decision. And that was a case where there were nine plaintiffs that were named, five of

1 whom were deceased, and it appeared obvious that Mr. Willier, counsel who had assumed
2 conduct on behalf of these individuals named, did not have instructions from of course the
3 deceased and all of those others except for the one that continued. And that was the
4 application on behalf of Peter Morin. And the Court recently heard -- Master Smart heard
5 a motion that the claim being advanced by Peter Morin be struck on the basis of a number
6 of arguments including that he had settled with (INDISCERNIBLE), he had agreed in that
7 settlement not to take any legal action as against TransAlta and AltaLink and he was paid
8 compensation for that. But, in any event, it was not a situation where all of the plaintiffs
9 were deceased.

10
11 THE COURT:

Had they all been -- I mean, I recognize quite a
12 few of the names because I used to act for the Enoch First Nation, are they mostly -- they
13 were counsel -- they had been councillors. I saw some of the names there had been
14 councillors or --

15
16 MR. MOLSTAD:

What happened in the case, Sir, is Mr. Willier
17 represented the Enoch Cree Nation as in-house counsel. And he commenced an action
18 naming a number of parties including TransAlta and AltaLink. And he named the chief
19 and councillors of the day as representative of the Nation and he also named person who
20 he felt I assume were owners of a certificate of possession.

21
22 THE COURT:

Okay.

23
24 MR. MOLSTAD:

That had been issued many, many years
25 earlier. And, as a result, some of them had passed away and some of them had passed on
26 their certificate of possession. But the bottom line was that at the end of the day, without
27 excepting Peter Morin, it was clear that he had no instructions to represent those people.

28
29 THE COURT:

Okay.

30
31 MR. MOLSTAD:

And in that decision, in the *Morin* decision, we
32 submit that Justice Graesser stated the obvious. And you've referred to that in paragraph
33 80 of your decision. When he said essentially, counsel cannot commence a lawsuit on
34 behalf of a party without that party's consent. He also stated that instructions must come
35 from the individual themselves. And that's found in paragraph 34 of Justice Graesser's
36 decision in *Morin*.

37
38 He went on to state that the jurisprudence is clear that a solicitor who commences
39 proceedings without proper authority may be liable for costs. And we submit, Sir, that is
40 the natural consequences that should flow when a lawyer commences proceedings in the
41 name of the party, or a party, without instructions and without that party's consent.

1
2 We also submit that consent must be an informed consent. Informed about a potential of a
3 cost award if not successful in the application. We submit, Sir, it would be unjust to hold
4 anyone but the lawyer to be responsible for costs when there is no authority given to
5 commence or continue a proceeding.
6

7 We submit, Sir, that my friend must advise this Court that Ms. Kennedy had instructions
8 directly from each of these nine persons to make this application. It's not enough, in our
9 submission, for Ms. Kennedy to file an affidavit, and I think my friend will agree, of the
10 niece of Mr. Stoney that she heard him talking to his brothers and sisters.
11

12 It's also our submission it's not enough for two affidavits, those of Ms. Gail Stoney and
13 Mr. Bill Stoney, where they say they authorized Maurice Stoney to bring an action. That's
14 not instructing Ms. Kennedy.
15

16 One of the interesting questions that comes up when I look at this, is has anyone given
17 Bill Stoney and Gail Stoney and the brothers and sisters legal advice about the jeopardy
18 that they put themselves in, in coming forward in saying we told our brother to advance
19 this application? Which is the potential to have a cost award. A significant cost award as
20 against them. Or, alternatively, we say is this a situation where they are of limited funds?
21 And Ms. Kennedy in her written submissions in paragraph 6 of the November 15th, 2016
22 submissions, stated that Mr. Stoney and his siblings were of limited funds. So does that
23 mean that a judgment of costs doesn't mean anything?
24

25 The history of this proceeding is not complicated, and my friend touched upon some of
26 the matters in terms of what information Ms. Kennedy had. But we know that in 1995,
27 Maurice Stoney and others commenced an action in federal court where Maurice Stoney
28 sought membership in the Sawridge First Nation. And I refer to that as the 1995 action.
29 Maurice Stoney, in that 1995 action, through his legal counsel, conceded to the Federal
30 Court of Appeal in 2000 that he did not have entitlement to membership in the Sawridge
31 First Nation without the consent of the Sawridge First Nation.
32

33 Ms. Kennedy was not counsel for Mr. Stoney before the Federal Court of Appeal in 2000.
34 However, she was aware of this decision no later than the application for judicial review
35 before Justice Barnes of the federal court which was heard on March 5th, 2013. Because,
36 of course, it was referred to in (INDISCERNIBLE).
37

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

1 electors of the Sawridge First Nation.

2
3 Ms. Kennedy represented Mr. Stoney at this appeal. Ms. Kennedy made written
4 submissions and appeared and made oral submissions before the appeal committee. And in
5 the written submissions of Ms. Kennedy, which are part of the record, on behalf of
6 Mr. Stoney to this appeal committee which would've been in April of 2012, it was argued
7 that Maurice Stoney was entitled to a membership in Sawridge First Nation pursuant to
8 the *Indian Act*. In other words, an acquired right member. And I refer you to her written
9 argument which is found in the Roland Twinn affidavit, Exhibit 2, tab W, paragraphs 9
10 and 13.

11
12 The appeal committee was unanimous in upholding the decision of Chief and council and
13 dismissed the appeal. Ms. Kennedy, on behalf of Mr. Stoney, applied for judicial review
14 of the appeal committee's decision which denied Mr. Stoney's membership in the
15 Sawridge First Nation. And I refer to that judicial review application as the 2012 action.

16
17 In the 2012 action, Ms. Kennedy advanced a number of grounds. They included, however,
18 that Maurice Stoney was entitled to automatic membership. That is, he was an acquired
19 right individual. Mr. Stoney swore an affidavit as part of the 2012 action and in that
20 affidavit, he alleged that he was entitled to automatic membership in the Sawridge First
21 Nation as a result of Bill C-31. As you know, Sir, Justice Barnes of the federal court
22 dismissed the application for judicial review and confirmed again that Maurice Stoney had
23 no right to automatic membership. He also found that Maurice Stoney was attempting to
24 relitigate matters in issue in the 1995 action and that these arguments were barred under
25 the doctrine of issue estoppel. Costs were awarded to the Sawridge First Nation in the
26 sum of \$2,995.65 and these costs were not paid by Mr. Stoney.

27
28 So if I summarize briefly, the knowledge of Ms. Kennedy in May of 2013 includes the
29 following: she knew in 2000 that counsel for Maurice Stoney conceded to the Federal
30 Court of Appeal that Maurice Stoney did not have entitlement to membership in Sawridge
31 First Nation without their consent; she knew on December 7th, 2011, Mr. Stoney's
32 application for membership was denied by Chief and council on grounds including he did
33 not have a specific right to be a member; she knew the Sawridge appeal committee was
34 unanimous in upholding the decision of Chief and council; and, of course, she knew the
35 federal court on May 15th, of 2013, confirmed again that Maurice Stoney had no right to
36 automatic membership and his argument was barred by virtue of the principle of issue
37 estoppel. This was her knowledge in May of 2013.

38
39 As my friend has stated on her behalf, on January 31st, 2014, Mr. Stoney filed a
40 complaint with the Canadian Human Rights Commission regarding Sawridge's decision to
41 deny him membership. We don't know if Ms. Kennedy assisted Mr. Stoney in relation to

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

3
4 The CHRC decision is another decision, we submit, that confirms that this issue was dealt
5 with in the 1995 action and in the 2012 action.

6
7 In 2015, Ms. Kennedy applied on behalf of Mr. Stoney to extend time for him to file an
8 appeal of one of your case management decisions - I believe it was Sawridge 3. And in
9 that application, it was asserted that Mr. Maurice Stoney was a member of the Sawridge
10 First Nation. Mr. Justice Watson dismissed the application and awarded costs to the
11 Sawridge First Nation. Costs were assessed at \$898.70 and they have not been paid to the
12 Sawridge First Nation.

13
14 And, of course, Ms. Kennedy represented Mr. Stoney in this matter in the August 12th,
15 2016 motion which I refer to as the Stoney application, which resulted in Sawridge 6. In
16 this matter, Ms. Kennedy refused to allow Sawridge First Nation's legal counsel to
17 question Mr. Stoney on his affidavit. The legal counsel for the Sawridge Trustees did
18 attend and question Mr. Stoney on his affidavit. And we submit, Sir, that Ms. Kennedy,
19 during that questioning, interrupted, obstructed and refused to permit questions addressing
20 the substance of the application and affidavit. And we respectfully request, Sir, that it is
21 important for this Court to read this transcript again in order to observe the questioning of
22 Maurice Stoney and the conduct of Ms. Kennedy during that questioning. We submit, Sir,
23 that conduct should be taken into consideration in relation to your decision as it relates to
24 costs.

25
26 Ms. Kennedy, in her written submissions, asserted on behalf of Mr. Stoney that the federal
27 court issued an order of mandamus in *Sawridge v. Canada* [2003] 4 FCR 748, compelling
28 Sawridge to restore Stoney applicants as members on the basis that they were acquired
29 rights members. This is both incorrect and, we submit, improper.

30
31 Ms. Kennedy, in her written submissions, misstated the status of the Poitras litigation and
32 misapplied decisions arising from that litigation in an attempt to suggest that the Sawridge
33 First Nation has repeatedly failed to comply with Justice Hugessen's order. She also
34 asserted that Sawridge continued to deny Ms. Poitras membership and that Sawridge
35 continues to deny membership to Ms. Poitras today. These submissions, with the greatest
36 of respect, Sir, are false. And I refer you to tab 8 of the November 14th, 2016 Sawridge
37 submissions.

38
39 This Court has awarded to the Sawridge First Nation solicitor and own client indemnity
40 costs in relation to this application. We submit that the Court has not yet decided who
41 should pay those costs. In paragraph 6 of Ms. Kennedy's November 15th, 2016 written

response on behalf of Mr. Stoney, it is stated that Maurice Stoney and his brothers and sisters are all elderly and have limited funds. Based upon Mr. Stoney's conduct to date in not paying Sawridge First Nation's costs, and this admission that he and his brothers and sisters have limited funds, we submit that it is unlikely that the Sawridge First Nation and the Sawridge Trustees will recover their costs unless they are paid by Ms. Kennedy.

This Court has found that Ms. Kennedy has advanced a futile application on behalf of her client and that the application was abusive and vexatious. We submit, Sir, that based on *Jodoin*, Ms. Kennedy has triggered cost award against her by advancing what is described in that decision as an:

Unfounded, frivolous, dilatory and vexatious proceeding that denotes a serious abuse of the judicial system.

Sir, if costs are not awarded as against Ms. Kennedy in this proceeding, there will be no consequences. And this is a case where, based upon the history and the conduct that has occurred here, there should be consequences, in our submission.

We also say, Sir, that if costs are not ordered to be paid by Ms. Kennedy personally, that the award of costs is against Mr. Stoney and Ms. Kennedy on a joint and several basis.

I'm really not sure how you deal with those siblings who have come forward and put to you and put to this Court the two affidavits as it deals with costs. But one of the question, as I raised it earlier, that comes up is if they're coming forward and saying we're part of this application, should they also be subjected to any cost award that you make should be joint and severally?

THE COURT: I thought I'd already let them off the hook --

MR. MOLSTAD: Well, I think what you --

THE COURT: -- on costs.

MR. MOLSTAD: -- said, Sir, is that you're treating this as an application on behalf of Maurice Stoney.

THE COURT: Yes. I think --

MR. MOLSTAD: It may be that --

THE COURT: Yes.

1
2 MR. MOLSTAD: -- you decided that you're not looking at them.
3
4 THE COURT: I've written so much about this, I don't know
5 what I've said anymore.
6
7 MR. MOLSTAD: Well, yeah. And I'd encourage you - - and I
8 stand to be corrected in that regard. In any event, Sir, our submission is that if you're
9 going to look at attaching costs as it relates to Maurice Stoney that you make it joint and
10 several --
11
12 THE COURT: M-hm. Okay.
13
14 MR. MOLSTAD: -- with Ms. Kennedy. Those are our
15 submissions, Sir.
16
17 THE COURT: Okay. Just a sec. I just want to make a note
18 about the other brothers and sisters. You're still saying that to the extent they've now
19 come forward and say --
20
21 MR. MOLSTAD: I don't have an answer to that, Sir.
22
23 THE COURT: You're going to leave it --
24
25 MR. MOLSTAD: But you're going to have to --
26
27 THE COURT: You're going to leave it to me.
28
29 MR. MOLSTAD: You're going to have to deal with it.
30
31 THE COURT: Okay.
32
33 MR. MOLSTAD: And I don't -- I'm not making a submission
34 one way or another. But it's a very difficult issue to deal with.
35
36 And, based upon Justice Graesser's decision in *Morin*, clearly, if you're coming to court
37 and purporting to represent someone, you must respond that you have instructions to
38 represent that person. And if you can't do that, you know, you put yourself in a situation
39 where you can have costs awarded against you personally.
40
41 THE COURT: Yes. We sort of assume that when people put

1 things into statements of claim that --

2

3 MR. MOLSTAD: Pardon me?

4

5 THE COURT: Once names go into a statement of claim as a
6 claimant --

7

8 MR. MOLSTAD: Well --

9

10 THE COURT: -- you sort of assume that --

11

12 MR. MOLSTAD: I was involved in that *Morin* matter, Sir, and I
13 can't always make that assumption anymore.

14

15 THE COURT: Okay.

16

17 MR. MOLSTAD: Thank you, Sir.

18

19 THE COURT: All right. Thanks, Mr. Molstad.

20

21 MR. MOLSTAD: Thank you.

22

23 **Submissions by Ms. Lafuente**

24

25 MS. LAFUENTE: Good afternoon, My Lord. As I was introduced
26 earlier, but I will repeat my name for you as I'm the least familiar face at the table, my
27 name is Lafuente, initial E., and I'm with Dentons. And I'm here today on behalf of the
28 Trustees.

29

30 My Lord, we are in agreement with our friend Mr. Molstad's submission and we will
31 keep our additional submissions brief and try to limit any repetition.

32

33 My Lord, in presenting this to you today, we believe it's very important that we consider
34 that there is a significant difference between being a zealous advocate and zealously
35 advancing frivolous litigation. And it's important to understand that in the relationship
36 between Ms. Kennedy and her client, it's quite clear who had the abundance of
37 knowledge and understanding of the consequences of the decisions that had been made to
38 that point. And that was brought home in the cross-examination on Mr. Stoney's affidavit.
39 I was counsel at that examination, My Lord, and there were questions asked about court
40 decisions, specifically about pleadings, and the answer that Ms. Kennedy gave on behalf
41 of her client was, "He won't understand that," or, "He didn't read those." And when I

1 tried to pursue that a little further to find out if in fact he had read certain decisions,
2 Ms. Kennedy objected to the questions in their entirety.

3
4 My friend, Mr. Molstad, has asked today that you go back and look at the transcript and
5 I'm going to repeat that request because I think that it is very important. But I believe that
6 when that transcript is read, it is clear that Ms. Kennedy was the one holding the reins.
7 She was the one who was pursuing this because, as she indicated when giving answers to
8 the questions, he didn't understand what was going on. Ms. Kennedy certainly did and
9 should have understood.

10
11 My friend has indicated today, unfortunately, that even in preparing for this, Ms. Kennedy
12 is still trying to indicate why -- indicate why it should proceed. And that is a concern as it
13 relates to is the decision that you've issued, is Sawridge 6, enough? And we would
14 submit, My Lord, that it is not enough. And it is not enough primarily because the
15 consequence to the community which this trust is supposed to benefit is significant. The
16 costs have been borne by a community and Ms. Kennedy has put forward a position
17 which said right out the shoot, he's of limited means. What I asked -- we sought
18 questions about costs -- previous cost awards that had been unpaid, those were objected
19 to. You can't ignore the risk of costs. You can't try to prevent this Court from knowing
20 that there is unpaid costs in previous litigation, and that is what was done.

21
22 Now, My Lord, this application, as you know it, has been described as another attempt in
23 a long history to try to assert an entitlement to membership. That has been done. It should
24 not have been brought again. But that is even more important in the context of this
25 litigation because, My Lord, as you'll be aware, you issued an order on December 17th,
26 of 2015, where you stated clearly that membership was not an issue to be addressed in
27 this litigation. That was not to be addressed. And yet, when you go back, My Lord, and
28 you look at the transcript you will see numerous references to an entitlement to
29 membership. And there are even parts where we have to redirect both Mr. Stoney and his
30 counsel to that this is not about membership.

31
32 My Lord, we've prepared for you, for your review, a summary of some of the most
33 important places that we would like you to review the transcript. And I'm not going to go
34 through them now today but I will just highlight the different headings. Firstly, pages 4 to
35 6 of the transcript are all of the objections listed in one place and it's a good place to look
36 just to see the number of them. But there was -- there are numerous examples to show
37 that Ms. Kennedy was really directing this litigation. And those are -- there's an inference
38 that the Court decisions were only interpreted by Ms. Kennedy for Mr. Stoney and he was
39 not given the decisions to read, that Mr. Stoney did not understand his own pleadings and
40 could not be asked questions about what claims he had previously made, that
41 Ms. Kennedy would not allow him to answer basic questions, that she refused to allow

1 questions regarding his outstanding costs, that she directed him not to answer questions
2 before they were asked. And there's a reference there, Sir, and I would invite you to look
3 at it, where it was put on the record that no question had yet been asked but an objection
4 had been entered.

5
6 Mr. Stoney asked his counsel at one point if he'd ever seen the statement of claim that he
7 filed and Ms. Kennedy intervened to try to prevent questions on that claim.

8
9 In addition, there was the refusal to answer questions by Mr. Stoney himself. And you
10 will note, Sir, when you read the transcript that by the end of the examination, Mr. Stoney
11 was giving the answers that he wouldn't answer the question and he was not directed by
12 Ms. Kennedy to provide an answer to those questions. And there are further examples,
13 My Lord, of Ms. Kennedy, herself, answering questions.

14
15 My Lord, the most important aspect of this is that this is and has been found to be
16 frivolous litigations -- litigation, sorry. And Ms. Kennedy sought to dissipate the trust
17 property by seeking full indemnity costs for Mr. Stoney in that litigation. So she started
18 out looking for full indemnity costs and now we're looking for our costs back from
19 Ms. Kennedy.

20
21 I want to make sure I'm not repeating what Mr. Molstad has already covered.

22
23 My friend, Mr. Wilson, has indicated that -- has brought up the administration of justice
24 and how strongly that Mr. Stoney feels about the litigation and how strongly that
25 Ms. Kennedy feels about it. And he'd indicated that she was guilty of seeing a wrong and
26 trying to right it. But I would -- I would add to that, that she was also guilty of trying to
27 thwart counsel's ability to show that was a frivolous exercise by refusing to let us ask
28 questions and refusing to have her client answer questions about these immutable facts
29 that this had already been decided time and time again. That this matter, I mean, that
30 there was issue estoppel, it was res judicata, it was an abuse of process.

31
32 I would submit, My Lord, that while I fully understand and I appreciate that Ms. Kennedy
33 is remorseful and I have no doubt about that, that my friend's submission that somehow
34 that's enough of a consequence, it is not enough. Her client was of limited means, there
35 was -- appeared to be limited risk that he would actually have to pay a costs award, but
36 there has been serious harm to the community that this trust was created to benefit. This
37 litigation has had a significant impact on the benefits that can be provided to the
38 beneficiaries. The costs, My Lord, we submit should be borne by Ms. Kennedy
39 personally. And we would agree with my friend Mr. Molstad's suggestion that if any costs
40 are to be borne by Mr. Stoney, that those costs should be jointly and severally owed by
41 Mr. Stoney and Ms. Kennedy. We are seeking full indemnity for our solicitor-client costs.

1
2 THE COURT: Do you have anything to say about the brothers
3 and sisters of Mr. Stoney and whether they should be captured in this should I decide that
4 these costs are to be jointly and severally? Or --

5
6 MS. LAFUENTE: My Lord, I would say I have concern, as
7 Mr. Molstad had indicated earlier, that there is -- whether there is informed consent
8 demonstrated in those affidavits. I don't think the affidavits actually do prove the point
9 that they had instructions -- sorry, given instructions to Ms. Kennedy. But to the extent
10 that you find, My Lord, that they do, I believe there's no option but to include them
11 jointly and severally with Ms. Kennedy.

12
13 MR. MOLSTAD: If I could just add to that, My Lord?

14
15 THE COURT: M-hm.

16
17 MR. MOLSTAD: The problem that we see, with the greatest of
18 respect, is that they have not filed sufficient evidence to show that these two additional
19 people instructed Ms. Kennedy. So, in light of that, I think that you should proceed
20 cautiously as it relates to those two individuals. Until such time as my friend stands up
21 and says we were instructed directly by this person to represent them in relation to this
22 application, it would be unjust to award costs as against them.

23
24 THE COURT: Okay. Thanks.

25
26 Okay. Mr. Wilson, any response?

27
28 **Submissions by Mr. Wilson**

29
30 MR. WILSON: I'm not sure how I'm supposed to assure the
31 Court that I received those instructions. Because, with respect, we received your judgment,
32 we had a tight timeline to turn it around. And, with respect, we got the only two people
33 available at the time. It's my understanding that the cost consequence of their affidavit
34 was explained to them. That is, there is going to be a large cost consequence, and they
35 swore the affidavit. That is my understanding, Sir.

36
37 THE COURT: Okay. I'm going to clean that issue up right
38 now. I'm not going to award --

39
40 MR. WILSON: Yeah. Well I just --

41

1 THE COURT: Okay.
2
3 MR. WILSON: -- part of the --
4
5 THE COURT: Yeah.
6
7 MR. WILSON: -- part of the problem, Sir, is it's summertime,
8 Albertans like to go away during summertime, and we didn't have a large window. And I
9 apologize, it's just actually the reality.
10
11 Now --
12
13 THE COURT: Okay. Well, look, I want to finish it off. I
14 mean, we'll do it right here, now. No costs award, solicitor-client or party-party or
15 anything else will be made against the brothers and sister. Period. That takes care of that.
16
17 MR. WILSON: All right. Sir, I apologize for my lack of
18 comprehensive knowledge of the files. I just do not -- I don't have a copy of any of the
19 '95 pleadings. I have the decision by the Band in '12, the applications made 11 and 12
20 years earlier. Wasn't even 2011 or '12, it was made in 2000. And I have the appeal
21 decision, I have the Court of Appeal's decision, I now have access to the Canada Human
22 Rights decision. My friend says -- my friend, Mr. Molstad, says in paragraph 34 there's a
23 reference to limited funds. That is my understanding and it's my understanding if that was
24 an issue at the time there is provision to apply for security for costs and that application
25 wasn't made.
26
27 MS. BONORA: It was made.
28
29 MR. WILSON: Was made?
30
31 MS. BONORA: Yeah. There was an --
32
33 MR. WILSON: Good thing I started with I don't have a
34 comprehensive knowledge of the file. And was security ordered, Ms. Bonora?
35
36 MS. BONORA: It's referenced in Sawridge 6. It wasn't ordered
37 because there was no -- they weren't added as parties.
38
39 MR. WILSON: Right.
40
41 THE COURT: Yeah.

1
2 MR. WILSON: With respect to the cross-examination on
3 affidavit, I invite you to read it. It is -- it should be something that you should review
4 with respect to your decision. I will say when Ms. Lafuente handed me for the first time
5 the series of concerns about the cross-examination, I was going to ask her if she ever
6 relitigated with Mr. Redmond (phonetic) because I suspect you could have similar
7 comments.

8
9 Sir --

10
11 THE COURT: You should've been his partner.

12
13 MR. WILSON: Well, I will say discoveries were always
14 interesting and everybody has different styles. I've sat in discovery rooms with
15 Mr. Molstad, sat in discovery rooms with a variety of people. My approach, typically, is
16 not to interfere. Typically. There's a wide range. With respect, we're not dealing with a
17 sophisticated person. During the course of my meeting with Mr. Stoney and my
18 discussion with him, he had no problem following what we were discussing, but when he
19 was talking about the legal process he does not understand the process. He doesn't
20 understand that we have a master, Court of Queen's Bench, Court of Appeal and the
21 Supreme Court, doesn't understand leave. So, with respect, to a series of questions about
22 that, I am not surprised that Mr. Stoney did not have the best -- the best answers or the
23 best understanding.

24
25 With respect to Ms. Lafuente, she indicated that the application that was before the Court
26 was for indemnity. It was for indemnity for Mr. Stoney. It was not for indemnity -- so
27 what my friends are now doing is what they want to do is remove Mr. Stoney who has
28 limited funds, reinsert Ms. Kennedy, and to the extent that costs are out there, they want
29 full indemnity for everything from her personally. With respect, I would suggest that's a
30 stretch. And, with respect, and again, I'm not getting into the merits because I've already
31 told my friend we're not, it's my understanding that what we were dealing -- what was
32 being dealt with by you was whether or not Mr. Stoney would be a beneficiary under the
33 trust. And the trust had a specific date, Sir. I will say, often even in courtrooms, people
34 intermittently use different words. There is no question that Mr. Stoney was not
35 attempting to become a member of the Sawridge Band with respect to the application. He
36 was attempting to become a beneficiary under the trust. In law, there is a difference, Sir.
37 Particularly where the trust is set up in 1985.

38
39 I've made my submissions with respect to costs and have nothing further to add.

40
41 THE COURT: Thank you, Mr. Wilson.

1
2 Okay. That's -- don't have anymore questions coming back to the Trustees or the
3 Sawridge First Nation. I'm going to reserve a decision on this issue - the question of
4 whether or not Ms. Kennedy should be personally liable for solicitor-client costs in favour
5 of the Sawridge First Nation and the Sawridge Trustees.
6

7 As you counsel all know, there is also this other matter of whether the
8 (INDISCERNIBLE) in respect to my declaration that Mr. Stoney is a vexatious litigant,
9 that awaits a response. He has until I think next Friday to respond to that. I see there are
10 already some materials have arrived from the Trustees and from the Sawridge First
11 Nation. So that material is incoming I assume. And while it's somewhat of a separate
12 matter, it's still there's going to be some crossover.
13

14 So I'll reserve on the specific question that's here today. I'll be issuing a written decision
15 on it. It will probably not happen until sometime in mid-September just because of
16 resource allocation issues. I will remind myself that what I will do, I will issue a written
17 decision, but I think I will call you all back to deliver a summary of it. In part, because I
18 see there's some interest from the media. Not quite sure who they are but there's some
19 interest. And it's become my practice when that happens that the media gets the decision
20 on a thumb drive so they've got it electronically right away. And I'll make the same,
21 assuming I can talk the Court of Queen's Bench into buying me some thumb drives, I'll
22 make them available to the counsel involved as well.
23

24 MR. WILSON: Sir, I have one question, and it's just a practical
25 question on vexation litigant, is that a total -- I do know that designation like a dangerous
26 sexual offender has very broad definitions, is there the possibility that it can be a vexation
27 litigation, that is, I've already made my comments to the Court with Mr. Stoney and the
28 Sawridge Band and the Trust, that is that it's at an end. My concern is a lease dispute, a
29 personal injury. That's my only -- and I don't know because I've not yet looked at the
30 law.
31

32 THE COURT: Well, I don't know if either the Trustees or
33 Mr. Molstad have taken a position on the scope of the vexatious litigant matter. I just
34 haven't had a chance to read the material.
35

36 MR. MOLSTAD: And I think your direction is that you would
37 deal with this in terms of written submissions.
38

39 MR. WILSON: Yeah.
40

41 THE COURT: Yes.

1
2 MR. MOLSTAD: We've made ours and served our friend, and
3 obviously there are going to be a reply that will be circulated.
4
5 THE COURT: Yes. I mean, I think you make your pitch for
6 narrowing it.
7
8 MR. WILSON: Yeah. I -- because I've never done it, my only
9 concern is I understand my friends wanting protection and I have to say I understand that.
10 I just wouldn't want someone to have to go to court to get permission to do something
11 that might come up in the ordinary course.
12
13 THE COURT: Yes. Well I, you know, should wait until I see
14 all the material --
15
16 MR. WILSON: Absolutely, Sir.
17
18 THE COURT: -- but certainly there's nothing I've seen that
19 Mr. Stoney is a frequent flier in the Court of Queen's Bench.
20
21 MR. WILSON: I don't think he's a frequent --
22
23 THE COURT: Other than his involvement in this particular
24 matter. Off the top --
25
26 MR. MOLSTAD: We've actually addressed --
27
28 THE COURT: -- of my head it's -- oh, sorry.
29
30 MR. MOLSTAD: We have addressed this issue in our written
31 submissions so I encourage my friend --
32
33 THE COURT: Okay. Maybe I'll just leave it at that then. But,
34 you know, I think it's pretty narrow.
35
36 MR. WILSON: Yeah. No, and knowing Mr. Molstad as I do, I
37 have no doubt that it's appropriate in all of the circumstances.
38
39 THE COURT: Yes. As I say, that one will probably be dealt
40 with -- I'll just -- it may just be nothing more than a short memorandum on that one. This
41 one raises -- the solicitor-client cost issue raises far bigger legal and policy issues.

1
2 Anyway, on this particular application heard today, so it's just adjourned sine die.
3 Judgment reserved.

4
5 MR. WILSON: Thank you, Sir.

6
7 THE COURT: All right.

8
9 MR. MOLSTAD: Thank you.

10
11 THE COURT: Thanks, Counsel. Thanks for your help.

12
13 THE COURT CLERK: Order in chambers, all rise.

14
15 THE COURT: Go ahead. I'm organizing things up here.

16
17 _____
18 PROCEEDINGS ADJOURNED
19 _____

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1 Certificate of Record

2
3 I, Erik Holmstrom, certify that this recording is the record made of the evidence in the
4 proceedings in the Court of Queen's Bench, held in courtroom 311, on -- at Edmonton,
5 Alberta, on the 28th day of July, 2017, and that I, Erik Holmstrom, was the court official
6 in charge of the sound-recording machine during the proceedings.
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1 **Certificate of Transcript**

2

3 I, Nicole Carpendale, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and
10 is transcribed in this transcript.

11

12

13

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14

Nicole Carpendale, Transcriber

15

Order No. 71551-17-1

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35 Pages: 28

36 Lines: 1148

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Order No. 71551-17-1	
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Transcript Pages:	26
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ToC Lines:	8
Transcript Lines:	1087
Total Lines:	1148
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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:

AFFIDAVIT OF Bill (aka Billy) Stoney

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



Sworn July 20th, 2017.

I, Bill Stoney, of Edmonton, Alberta MAKE OATH AND SAY:

1. I am the eldest brother of Maurice Stoney. I authorized Maurice Stoney in the spring of 2016 to represent me with my brothers and sisters in bringing an application to be recognized as a beneficiary in the Sawridge 1985 Trust.

SWORN BEFORE ME at the City)
of Edmonton, in the Province of Alberta)
this 20th day of July, 2017)
)
)
)
)

Hannifer Dick)
A Commissioner for Oaths in and for the)
Province of Alberta)

Hannifer Dick
A Commissioner for Oaths
in and for Alberta
My Commission Expires April 26, 2019

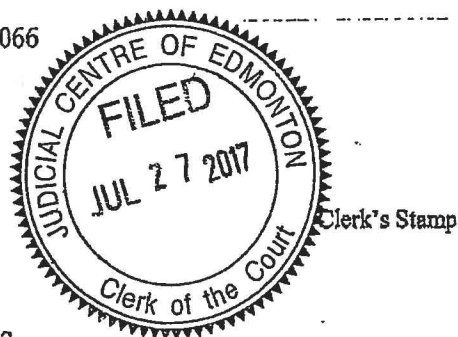
Bill Stoney
Bill Stoney

This is Exhibit " 1 " referred to
in the Affidavit of

Priscilla Kennedy
Sworn before me this 29 day
of September A.D., 20 17

A Commissioner for Oaths in and for Alberta

Peter Jonathan Faulds
Barrister and Solicitor



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: AFFIDAVIT OF Gail Stoney

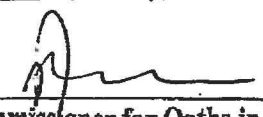
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Sworn July 20, 2017.


I, Gail Stoney, of Slave Lake in the Province of Alberta MAKE OATH AND SAY:

1. I am the sister of Maurice Stoney. I authorized Maurice Stoney in the spring of 2016 to represent me with my brothers and sisters in bringing an application to be recognized as a beneficiary in the Sawridge 1985 Trust..

SWORN BEFORE ME at the Town)
 of Slave Lake, in the Province of Alberta)
 this 20 day of July, 2017)


 A Commissioner for Oaths in and for the
 Province of Alberta

073 2276 exp Sept 9/17


 Gail Stoney
 (180) 805-8387 (home)

Clerk's Stamp

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: AFFIDAVIT OF Shelley Stoney

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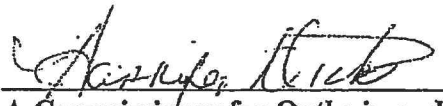


Sworn July 20~~th~~ 2017.


I, Shelley Stoney, of Edmonton, Alberta MAKE OATH AND SAY:

1. I am the Daughter of Bill Stoney and the niece of Maurice Stoney.
2. I am responsible for driving my father and uncles and aunts who are all suffering health problems and elderly.
3. I know from discussions among my father and his brothers and sisters in the spring of 2016 that Maurice was authorized by to represent my father and his brothers and sisters in bringing an application to be recognized as beneficiaries in the Sawridge 1985 Trust.

SWORN BEFORE ME at the City)
of Edmonton, in the Province of Alberta)
this 20 day of July, 2017 .)
)


A Commissioner for Oaths in and for the
Province of Alberta

Hannifer Dick
A Commissioner for Oaths
in and for Alberta
My Commission Expires April 26, 2019


Shelley Stoney

Clerk's Stamp



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 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
RESPONDENT: MAURICE STONEY
INTERVENER: SAWRIDGE FIRST NATION
DOCUMENT: WRITTEN RESPONSE ARGUMENT OF MAURICE STONEY ON VEXATIOUS
LITIGANT ORDER

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT:

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Email: priscilla.kennedy@dlapiper.com
File: 84021-00001

This is Exhibit " J " referred to
in the Affidavit of
Priscilla Kennedy
Sworn before me this 29 day
of September A.D., 20 17
A Commissioner for Oaths in and for Alberta

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- 2. *Huzar v. Canada*, 2000 CanLII 15589 (FCA).
- 3. *Powder v. H.M.T.Q.* August 16, 2016.
- 4. *Stoney v. Sawridge First Nation; Huzar and Kolosky v. Sawridge First Nation*, 2013 FC 509.
- 5. *Benner v. Canada*, [1997] 1 SCR 358 (headnote only).
- 6. *Re Manitoba Language Rights*, [1985] 1 SCR 721 (headnote only).
- 7. *Mclvor v. Canada*, 2009 BCCA 153.
- 8. *Descheneaux v. Canada (A.G.)*, 2015 QCCS 3555 [this is currently before the Quebec Court of Appeal as a result of Canada failing to comply with the 18 months' time period to resolve the issues of membership and status under the *Indian Act*, set to be heard on August 9, 2017].
- 9. *The Government of Canada's Response to the Descheneaux Decision*.
- 10. *Daniels v. Canada (Indian Affairs and Northern Development)*, [2016] 1 SCR 99.
- 11. *Sawridge Band v. H.M.T.Q.* 2009 FCA 123.
- 12. And see *Twinn v. Sawridge Band*, 2017 ABQB 366.
- 13. *Poitras v. Twinn*, 2013 FC 910.
- 14. *Federal Court Rules*, Rule 114.

I. QUESTION SET BY THE COURT

1. Case Management Decision (Sawridge #6) orders in paragraph 63 that Maurice Stoney make written submissions prior to the close of the Law Courts on August 4, 2017 on the following two matters:

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

2. This Order further stipulates:

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 proceedings is conducted, or his or her designate. ...

3. An exception to the Interim Court Filing Restriction Order was granted by Associate Chief Justice Rooke on July 19, 2017 filed on July 20, 2017 which permits completion of the direction of Master Schulz in Alberta QB Action 1603 03761 *Gabriel Nussbaum v. Maurice Felix Stoney and Eliza Marie Stoney*. The Associate Chief Justice did not require any notice to any other person nor any conditions or security for costs.

Consent Order of Associate Chief Justice Rooke July 19, 2017. [Tab 1]

4. This Consent Order was agreed to by Counsel for the Trustees and by Counsel for the Sawridge First Nation who both signed the Consent Order.

II. FACTS

5. The 1985 Sawridge Trustees have adopted the arguments of the Sawridge First Nation. Paragraph 2 of the submissions of the 1985 Sawridge Trustees states:

The trustees have reviewed the brief filed by the Sawridge First Nation and confirm that they agree with the contents. In the interests of saving costs to the 1985 Sawridge Trustee and in the interest of avoiding duplicative arguments, the Trustees wish to adopt the arguments of the Sawridge First Nation as filed in this action.

(A) Misstated Facts of Sawridge First Nation

6. The Federal Court of Appeal struck the Statement of Claim issued in Federal Court in 1995 on the ground that there was "no reasonable cause of action" and that the matter was properly a judicial review under section 18(3) of the *Federal Court Act*. On such a proceeding where the argument is that there is no reasonable cause of action, no evidence is admissible: *Canada (A.G.) v. Inuit Tapirisit of Canada*, [1980] SCJ No. 99 quoted at paragraph 24 in *Powder v. H.M.T.Q.* [Tab 3]. Accordingly, the striking of the Statement of Claim does not rely on any Affidavit evidence of Sawridge First Nation nor make any finding on it. It is improper to rely upon that evidence in this matter.

Huzar v. Canada, 2000 CanLII 15589 (FCA). [Tab 2]

Powder v. H.M.T.Q. August 16, 2016. [Tab 3]

7. The judicial review in 2013 did not include a "thorough analysis" of Maurice Stoney's arguments regarding his entitlement to membership since it was determined that no constitutional arguments could be made, see paragraph 22 as a result of not completing the Constitutional Question Notice required by section 57 of the *Federal Courts Act*, which provides in subsection 1 that it applies whenever "the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act, is in question before the ...Federal Court" must be served on each Attorney General in Canada.

Stoney v. Sawridge First Nation; Huzar and Kolosky v. Sawridge First Nation, 2013 FC 509, para. 22. [Tab 4]

8. Paragraphs 10 to 14 are in reference to the claims by Aline Huzar and June Kolosky to Sawridge First Nation membership as stated by Mr. Justice Barnes at paragraphs 10 to 14 and concluded by his statement "the legislation is clear in its intent and does not support a claim by Ms. Huzar and Ms. Kolosky to automatic band membership". Only paragraph 15 refers to Maurice Stoney.

Stoney, supra, paras. 10-14, 15. [Tab 4]

9. As noted at paragraph 4, Mr. Justice Barnes did state that the Sawridge First Nation membership rules only applied from the point when the Minister of Indian and Northern Affairs gave notice under section 10(7) of the *Indian Act*, which occurred in September, 1985. This is contrary to the assertions throughout the facts stated by Sawridge First Nation. The date of issue in this matter of the beneficiaries of the 1985 Sawridge Trust is the date of the Trust which is dated April 15, 1985.

Stoney, supra., para. 4. [Tab 4]

(B) Other Facts

10. Following the cross-examination of Maurice Stoney on September 23, 2016, counsel for the Trustees did not make any applications to require further examination nor request any further cross-examination.
11. At no time did the Sawridge First Nation apply for clarification of whether or not they were a party entitled to attend cross-examination prior to the examination although they were well aware of the timing of the examination and the refusal of their participation much earlier in September, 2016 and had time to apply for such an Order.
12. Maurice Stoney has not attempted to re-litigate the membership issue but rather to set out the legal arguments to address the direct issue of the definition of a beneficiary under the 1985 Sawridge Trust made on April 15, 1985 at a time when the Sawridge First Nation was not legally able to limit its membership as noted by Mr. Justice Barnes in his decision at paragraph 4. The Supreme Court of Canada has held that citizenship is always an issue to be reviewed on constitutional rights see: *Benner v. Canada*, [1997] 1 SCR 358 (headnote only). Limitation periods, long periods where legislation have been treated as being constitutional, and prior decisions, even of the Supreme Court of Canada do not limit the ability to bring forward a question before the Courts: *Re Manitoba Language Rights*, [1985] 1 SCR 721. In this context, there have been a number of recent decisions on these constitutional issues that have and are in the

process of completely altering the law related to these issues of the membership/citizenship of Indians, in order to have them comply with the *Constitution*.

Benner v. Canada, [1997] 1 SCR 358 (headnote only). [Tab 5]

Re Manitoba Language Rights, [1985] 1 SCR 721 (headnote only). [Tab 6]

Mclvor v. Canada, 2009 BCCA 153. [Tab 7]

Descheneaux v. Canada (A.G.), 2015 QCCS 3555 [this is currently before the Quebec Court of Appeal as a result of Canada failing to comply with the 18 months' time period to resolve the issues of membership and status under the *Indian Act*, set to be heard on August 9, 2017]. [Tab 8]

The Government of Canada's Response to the Descheneaux Decision. [Tab 9]

Daniels v. Canada (Indian Affairs and Northern Development), [2016] 1 SCR 99. [Tab 10]

13. The Federal Court of Appeal determined on April 21, 2009, that the Sawridge Band's action seeking an order declaring that certain amendments to the *Indian Act* regarding membership, were unconstitutional. Sawridge Band had brought action against all of the amendments which "compelled the appellants [Sawridge Band], against their wishes, to add certain individuals to the list of band members. The appellants had argued that the legislation is an invalid attempt to deprive them of their right to determine the membership of their own bands." The first trial had commenced in 1993 and the history of the trial and re-trial is set out at paragraph 4. It is to be noted that the length of time this matter was before the Federal Court is indicative of the unsettled nature of the issues raised. The issue of membership/citizenship remains an unsettled matter as shown by the decisions of various courts including the Supreme Court of Canada, cited in paragraph 12 above.

Sawridge Band v. H.M.T.Q. 2009 FCA 123. [Tab 11]

And see *Twinn v. Sawridge Band*, 2017 ABQB 366. [Tab 12]; *Poitras v. Twinn*, 2013 FC 910. [Tab 13]

14. It is acknowledged that this court has dismissed these arguments and they are not referred to here, other than as the facts to set the context for the matters to

be dealt as directed on the issue of whether or not the application of Maurice Stoney was vexatious litigation.

III. RESTRICTED ACCESS TO ALBERTA COURTS

(A) The Judicature Act, section 23(2)

15. Section 23(2) requires that the following matters be considered as a list of vexatious litigation:
 - (2) For the purposes of this Part, instituting vexatious proceedings or conducting a proceeding in a vexatious manner includes, without limitation, any one or more of the following:
 - (a) persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction;
 - (b) persistently bringing proceedings that cannot succeed or that have no reasonable expectation of providing relief;
 - (c) persistently bringing proceedings for improper purposes;
 - (d) persistently using previously raised grounds and issues in subsequent proceedings inappropriately;
 - (e) persistently failing to pay the costs of unsuccessful proceedings on the part of the person who commenced those proceedings;
 - (f) persistently taking unsuccessful appeals from judicial decisions;
 - (g) persistently engaging in inappropriate courtroom behavior.
16. As shown by the litigation in the Sawridge Band cases above, the on-going case in *Descheneaux* and decision of the Supreme Court of Canada in *Daniels*, and by the review of the Federal Court of Appeal decision in *Huzar* and the judicial review in *Stoney*, it is submitted that this is not a proceeding where the issue has already been determined by a court of competent jurisdiction. Nor is this a matter where proceedings have been brought that cannot succeed or have no reasonable expectation of providing relief.
17. It is submitted that litigation seeking to determine whether or not you qualify as a beneficiary under a trust established on April 15, 1985 in a matter where the issue of membership/citizenship has not been settled by the courts, and this

application was not brought for an improper purpose. Nor have the matters raised in (d), (f) and (g) occurred.

18. Costs to the Sawridge First Nation have not been paid however the intention is to pay them as soon as it is possible for Maurice Stoney. Costs to the 1985 Sawridge Trust have been paid.

B. Inherent Jurisdiction

19. The elements of vexatious litigation are set out in *Chutskoff v. Bonora*, at paragraph 92 quoted at pages 13-16 of the Written Submissions of the Sawridge First Nation.
20. It is submitted that this application by Maurice Stoney was not a collateral attack. The issue before the Court here is the definition of beneficiary in the 1985 Sawridge Trust when beneficiary is to be determined as of April 15, 1985. As Mr. Justice Barnes stated at paragraph 4 of the judicial review of the Sawridge First Nation membership application, that the Sawridge First Nation membership application does not apply to anything before the date that the Minister agreed to the Sawridge First Nation membership by-law in September, 1985, leaving a period from April 17, 1985 until September, 1985 which is not covered by the Sawridge First Nation membership process. The issue that was argued in the written submission during the fall of 2016, was the status of Maurice Stoney under the Sawridge Band on or about April, 1985 which was not *res judicata* from the previous matters in Federal Court. The issue of the status in the period from April 15, 1985 to September, 1985 was a completely new issue. Mr. Justice Barnes determined that the decision of the Appeal Committee of the Sawridge First Nation was reasonable on the question of membership in the Sawridge First Nation, based on the application made by Maurice Stoney to the Sawridge First Nation.

Stoney, supra. [Tab 4]

21. It is acknowledged that the costs owed from the Federal Court proceeding are owed by Maurice Stoney and because the judicial review was heard with the judicial review by Aline Huzar and June Kolosky, owed by all three of them and have not been paid along with the costs of the application before the Court of Appeal in Feb. 2016, although the costs of the 1985 Sawridge Trustees have been paid by Maurice Stoney in November, 2016. Maurice Stoney is 77 years of age and Aline Huzar and June Kolosky are all senior citizens of limited means.
22. There has been no 'escalating' of proceedings in this matter. The law related to status of Indians in Canada has changed over the years and Canada is still involved in proceedings to determine and satisfy these membership and status issues currently outstanding as a result of the *Descheneaux v. Canada (A.G.)* decision [Tabs 8 and 9] and the decision in the *Daniels* case [Tab 10]. These matters all include the issue of who, in law, is a member of a band and that will affect the issue of the Sawridge Band during the time period from April 17, 1985 until September, 1985.
23. No disrespect for the court process or intention to bring proceedings for an improper purpose, was intended to be raised by these arguments respecting this time period and the definition of beneficiary in this trust.
24. Contrary to the argument of Sawridge First Nation these matters have not been determined in the past Federal Court proceedings. Issues of citizenship and the constitutionality of these provisions remains a legal question today as shown by the on-going litigation throughout Canada. Plainly this Court has determined that these arguments are dismissed in this matter and that is acknowledged.
25. Throughout all of these proceedings and proceedings in the Federal Court, Maurice Stoney has honoured his Court obligations. The failure to pay the costs of Sawridge First Nation is the intervening result of foreclosure proceedings against Maurice Stoney and his wife in Q.B. Action No. 1603 03761 (originally started in Peace River in 2011 and transferred to Edmonton in 2016) in which the Associate Chief Justice Rooke has issued a Consent Order on July 19, 2017

directing that this Action is an exception to the Interim Order granted on July 12, 2017. This Order of the Associate Chief Justice has been consented to by the 1985 Sawridge Trustees and by the Sawridge First Nation [see Tab 1].

26. Affidavit evidence has been filed and provided to the Court on July 28, 2017, by Bill Stoney, brother to Maurice, by Gail Stoney, sister to Maurice and by Shelley Stoney, daughter of Bill Stoney, respecting the approval of the other brothers and sisters, to show that they commenced this application and directed that Maurice Stoney proceed on their behalf. The *Federal Court Rules*, provide for Representative proceedings where the representative asserts common issues of law and fact, the representative is authorized to act on behalf of the represented persons, the representative can fairly and adequately represent the interests of the represented persons and the use of a representative proceeding is the just, most efficient and least costly manner of proceeding. This method of proceeding is frequently used for aboriginals and particularly for families who are aboriginal. It is submitted that this was the most efficient and least costly manner of proceeding in the circumstances where the claim of all of the living children possess the same precise issues respecting their citizenship.

Federal Court Rules, Rule 114. [Tab 14]

27. No collateral attack was intended nor was this brought as a "busy body" proceeding in presenting the arguments of Maurice Stoney and his brothers and sisters respecting the fact that they were born as members (citizens) of the Sawridge Band, they were removed by the provisions of the *Indian Act* during the 1940's and effective April 17, 1985 their removal from the *Indian Act*, was repealed.
28. It is also submitted that this application was not a hopeless proceeding without any reasonable expectation to provide relief. This is an area of the law that is changing rapidly as shown by *McIvor* [Tab 7], *Descheneaux* [Tab 8], *The Government of Canada's Response to the Descheneaux Decision* [Tab 9] and *Daniels* [Tab 10]. No conclusion was made in the 1995 Federal Court

proceedings which were struck as showing no reasonable cause of action and the judicial review was concerned with the issue of the Sawridge First Nation Appeal Committee decision based on membership rules post September, 1985.

IV. SCOPE OF THE RESTRICTION

29. In *Hok v. Alberta*, para. 36 [Tab 2 of the Sawridge First Nation Authorities], three questions are set out to be answered on the question of how to structure the court order restricting access to the court for the litigant. These questions are:
1. Can the court determine the identity or type of persons who are likely to be the target of future abusive litigation?
 2. What litigation subject or subjects are likely involved in that abuse of court processes?
 3. In what forums will that abuse occur?
30. The Sawridge First Nation submits at paragraph 57 of their Written Submissions, that the claims of Maurice Stoney to membership in the Sawridge First Nation show the indicia of vexatious litigation. In paragraph 80, their submission is that Maurice Stoney's access to the Alberta Courts should be restricted for any litigation against:
- (a) Sawridge First Nation
 - (b) any past, present, or future members of the Chief and Council of the Sawridge First Nation;
 - (c) the 1985 Sawridge Trust;
 - (d) the 1986 Sawridge Trust; and
 - (e) the Trustees of the 1985 and 1986 Sawridge Trusts.
31. It is submitted that the Interim Court Filing Restriction Order should not be made permanent on the grounds that the necessary conditions for such an Order are not met as set out in argument above.
32. In the alternative, it is submitted that such an Order should only restrict actions by Maurice Stoney against the Sawridge First Nation and the 1985 Sawridge Trust.

33. In paragraph 82 of the Sawridge First Nation Written Argument it appears that the Sawridge First Nation is also asking that all access to the Courts be restricted for Maurice Stoney although they have submitted in the previous paragraph that the restriction should only be with respect to the bodies set out in paragraph 30 above. It is submitted that there is no basis for restriction of Mr. Stoney's rights to access the Alberta Courts for matters unrelated to the Sawridge First Nation and the 1985 Sawridge Trust.

V. ORDER SOUGHT

34. It is respectfully submitted that Maurice Stoney should not be declared to be a vexatious litigant and that the Interim Order should not be made permanent.
35. In the alternative, it is submitted that, if Maurice Stoney is declared to be a vexatious litigant, it should be narrowed to restrict actions against the Sawridge First Nation and the 1985 Sawridge Trust.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd day of August, 2017.

DLA PIPER (CANADA) LLP.

Per: 

Priscilla Kennedy
Associate Counsel
Counsel for Maurice Stoney

LIST OF AUTHORITIES

1. Consent Order of Associate Chief Justice Rooke July 19, 2017.
2. *Huzar v. Canada*, 2000 CanLII 15589 (FCA).
3. *Powder v. H.M.T.Q.* August 16, 2016.
4. *Stoney v. Sawridge First Nation; Huzar and Kolosky v. Sawridge First Nation*, 2013 FC 509.
5. *Benner v. Canada*, [1997] 1 SCR 358 (headnote only).
6. *Re Manitoba Language Rights*, [1985] 1 SCR 721 (headnote only).
7. *Mclvor v. Canada*, 2009 BCCA 153.
8. *Descheneaux v. Canada (A.G.)*, 2015 QCCS 3555 [this is currently before the Quebec Court of Appeal as a result of Canada failing to comply with the 18 months' time period to resolve the issues of membership and status under the *Indian Act*, set to be heard on August 9, 2017].
9. *The Government of Canada's Response to the Descheneaux Decision*.
10. *Daniels v. Canada (Indian Affairs and Northern Development)*, [2016] 1 SCR 99.
11. *Sawridge Band v. H.M.T.Q.* 2009 FCA 123.
12. And see *Twinn v. Sawridge Band*, 2017 ABQB 366.
13. *Poitras v. Twinn*, 2013 FC 910.
14. *Federal Court Rules*, Rule 114.

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Alberta lawyer potentially faces costs

July 14, 2017 | Written By Alex Robinson

An Alberta judge has ordered a lawyer to explain why she should not be held personally responsible for costs against her client after advancing a "futile application" on his behalf.

Court of Queen's Bench Justice Denny Thomas is considering potential costs personally against Priscilla Kennedy, of DLA Piper (Canada) LLP, for advancing litigation that is "abusive and vexatious nature" and could potentially be a "serious abuse" of the judicial system.

Kennedy's client, Maurice Stoney, brought an application in *1985 Sawridge Trust v Alberta (Public Trustee), 2017* to be added as a beneficiary of a trust set up for members of the Sawridge Band along with 10 other brothers and sisters. Stoney is the son of parents who had been members of the Sawridge First Nation at one point, but gave up their status for an enfranchisement payment.



This is Exhibit " K " referred to
in the Affidavit of
Priscilla Kennedy.
Sworn before me this 29 day
of September, A.D., 20 17
A Commissioner for Oaths in and for Alberta

Peter Jonathan Faulds
Barrister and Solicitor

Thomas found that the courts had already decided the issue in *Stoney v. Sawridge First Nation* and that Stoney's argument had already been rejected.

Thomas noted that Stoney did not pursue all available appeals in the earlier proceedings, but he cannot now "attempt to slip into the Sawridge Band and 1985 Sawridge Trust beneficiaries pool 'though the backdoor'"

"...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," Thomas said.

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"This is serious misconduct, which will have costs implications for Maurice Stoney and also potentially his lawyer Priscilla Kennedy."

x

Paul Paton, the Dean of Law at the University of Alberta, says that while this is an interim decision, the judge is sending a clear signal as to what the courts' expectations are for lawyers' conduct.

"Lawyers play a critically important role in the administration of justice and are often caught between a rock and a hard place," Paton says.

"You've got your responsibilities to your client and you've got your responsibilities to the court."

Paton says that costs are rarely awarded against lawyers personally and that this decision shows courts are looking to take control of their process.

The Supreme Court of Canada recently upheld costs awarded against a criminal defence lawyer personally in *Quebec (Criminal and Penal Prosecutions) v. Jodoin*.

Whether or not Kennedy will avoid costs could largely hinge on whether she is able to argue that something new was being litigated in this proceeding, Paton says.

"It's got to be anchored in the good faith argument that there actually was a case to be made here and that's where... there is a bit of back and forth about which previous decisions either apply or bind the court," Paton says.

Another issue that could affect the outcome is the fact that Thomas had limited the scope of the application to Stoney alone, as there was no evidence before him that the "10 living brothers or sisters" named had taken any steps to be involved in the litigation.

While Thomas found that Stoney's application had no merit and was "abusive in a manner that exhibits the hallmark characteristic of vexatious litigation," Stoney has not been declared a vexatious litigant yet.

Thomas will determine that at a later date, and he has invited Stoney to make written submissions by Aug. 4 as to whether his access to courts should be restricted.

In the meantime, Thomas has prohibited Stoney from filing any material in Alberta courts without the permission of the chief justice, associate chief justice or chief judge.

Paton says it is too early to say whether this matter could create a chill on lawyers accepting difficult cases, but that lawyers should pay close attention to the proceedings.

"It's a stay tuned message, but with some really important signals for lawyers and the bar," he says.

Kennedy, who did not respond to requests for comment, is set to appear before the court to make her submissions on July 28.

Doris Bonora, one of the lawyers representing the trustees of the trust set up for the members of the Sawridge Band, did not respond to requests for comment.

COMMENTS

LATEST FROM ALEX ROBINSON

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LSUC to consider name change

The provincial regulator's governing body, Convocation, will consider a motion Thursday proposing to change its name, which dates back to 1797. Proponents of such a shift have said "Upper Canada" is an archaic term that points back to a period in history when unfair treaties were struck between indigenous communities and the government of the time.

Judge flags Edmonton lawyer's conduct to law society

A judge has referred an Edmonton lawyer's conduct to the Law Society of Alberta after finding she had pursued vexatious litigation on behalf of a client.

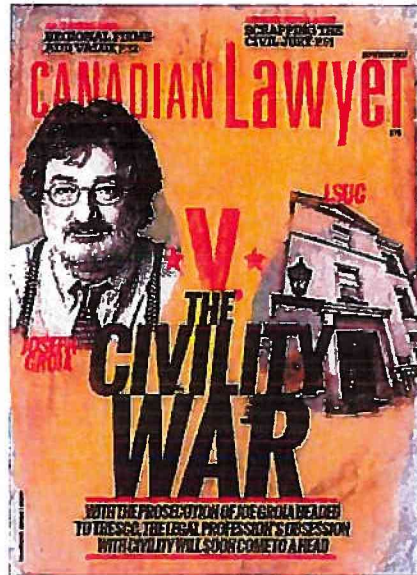
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Nickolas Troulas
Legal Counsel
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SPECIAL REPORTS

Evolving with the times: Top 10 Ontario regional firms

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Globalization is no longer a theoretical trend for Ontario's regional firms, but they are uniquely placed to provide value for clients. Canadian Lawyer asked lawyers, in-house counsel and clients from across Canada to vote on the top full-service, regional firms in Ontario. Check out the rankings for Top 10 Ontario regional firms.

LEGAL FEEDS ARCHIVES

- ▶ September 2017 (4)
- ▶ August 2017 (6)
- ▶ July 2017 (4)
- ▶ June 2017 (6)
- ▶ May 2017 (4)
- ▶ April 2017 (3)
- ▶ March 2017 (4)
- ▶ February 2017 (4)
- ▶ January 2017 (2)
- ▶ 2016 (33)

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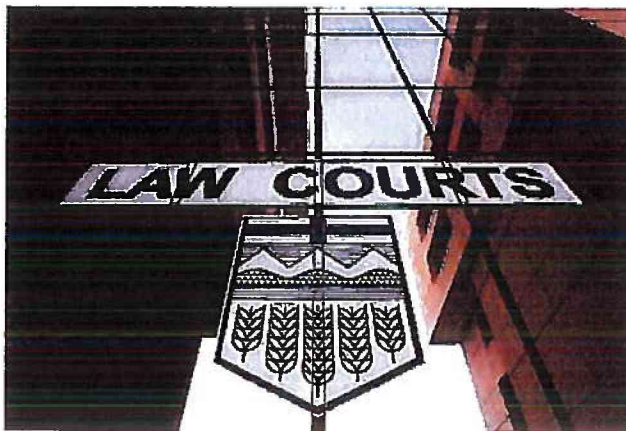
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Edmonton lawyer argues she shouldn't pay costs of client's 'vexatious' litigation

BY PAIGE PARSONS

FIRST POSTED: FRIDAY, JULY 28, 2017 07:15 PM MDT



Edmonton law courts

An Edmonton lawyer who advanced an "abusive and vexatious" court application for a client argued Friday she shouldn't be made to pay legal costs related to the action.

Lawyer Priscilla Kennedy appeared before Court of Queen's Bench Justice Denny Thomas at a hearing to argue that though she took the application of client Maurice Stoney further than she should have, she should not have to pay costs.

The application was related to Stoney's ongoing efforts to become a member of the Sawridge Band, and in turn a beneficiary of a trust that was set up in 1985 to hold the band's assets.

The Sawridge First Nation is near the Town of Slave Lake, about 250 km north of Edmonton.

Stoney's parents were members of the Sawridge band, but lost their Indian status in 1944. Stoney's attempts to be readmitted to the band were rejected, and subsequent efforts through the Canadian Human Rights Commission and the courts also failed.

In an interim ruling in mid-July, Thomas rejected Stoney's latest application and ordered Kennedy to appear to explain why she shouldn't be liable for associated costs. He wrote that her advancement of the "futile" application could be "a serious abuse of the judicial system."

Kennedy was represented at the hearing by a colleague from her firm, lawyer Donald Wilson.

Kennedy "litigates with her heart," Wilson told the court. He said Kennedy shouldn't have advanced the application, but argued ordering her to pay costs would be "unnecessary."

"What Ms. Kennedy is guilty of, if she is guilty of anything, is seeing a wrong and persistently trying to right that wrong," Wilson said.

Lawyers for the Sawridge Band and for the trustees both argued Kennedy should be ordered to pay costs awarded against Stoney.

Court heard Stoney has limited funds, and has failed to pay previous costs ordered by the court.

Catherine Twinn, a Sawridge trustee who disagrees with the band's rejection of Stoney, was in court Friday for the proceedings, which she said were a continuation of the injustice. She said Stoney is 75 years old and works as a cab driver in Slave Lake.

"What happened today to Mr. Stoney and his family is a travesty," Twinn said.

Thomas, who reserved his decision until September, also asked all parties to make submissions about whether or not Stoney should be declared a vexatious litigant.

In Canada, vexatious litigants are blocked from commencing or continuing legal actions without leave from the court.

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Lawyer argues she shouldn't pay costs of 'vexatious' application

Parsons, Paige . Edmonton Journal ; Edmonton, Alta. [Edmonton, Alta]29 July 2017: A.2.

[ProQuest document link](#)

FULL TEXT

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"What happened today to Mr. Stoney and his family is a travesty," Twinn said.

Thomas, who reserved his decision until September, also asked all parties to make submissions about whether or not Stoney should be declared a vexatious litigant.

In Canada, vexatious litigants are blocked from commencing or continuing legal actions without leave from the court. pparsons@postmedia.com twitter.com/paigeepparsons

Credit: Paige Parsons; Edmonton Journal

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Judge orders Edmonton lawyer to pay costs in 'vexatious' claim – Edmonton Journal

by ahnationtalk on September 1, 2017

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Thomas also directed that a copy of his decision be delivered to the Law Society of Alberta — the regulatory body for lawyers in the province.

"I conclude that Priscilla Kennedy has conducted an 'unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the justice system," Thomas wrote.

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PAIGE PARSONS, EDMONTON JOURNAL 09.01.2017 |

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“I conclude that Priscilla Kennedy has conducted an unfounded, frivolous, dilatory or vexatious proceeding that denotes a serious abuse of the justice system,” Thomas wrote.

The ruling stems from Stoney’s latest effort to gain membership of the Sawridge Band, and in turn to become a beneficiary of a trust that was set up in 1985 to hold the band’s assets.

At [a hearing in July \(http://edmontonjournal.com/news/local-news/edmonton-lawyer-argues-she-shouldnt-pay-costs-of-clients-vexatious-litigation\)](http://edmontonjournal.com/news/local-news/edmonton-lawyer-argues-she-shouldnt-pay-costs-of-clients-vexatious-litigation), Kennedy was defended by a colleague from her firm who admitted that although Kennedy should not have advanced the application, she “litigates with her heart” and was simply trying to right an injustice.

Stoney’s parents were members of the Sawridge Band, but lost their Indian status in 1944. Stoney’s attempts to be readmitted to the band were rejected, and subsequent efforts through the Canadian Human Rights Commission and the courts also failed.

Thomas rejected Kennedy’s argument that she was trying to right a wrong, and said that the education and training of lawyers gives them a “special, trusted status” by Canadian courts, and that advancing an abusive application makes them an accessory to the abuse.

"A perceived injustice is no basis to abuse the court, breach one's oath of office, or your duties as a court officer," Thomas stated.

He based his decision on two findings — that Kennedy had conducted a "collateral attack" on prior court decisions by launching the application, and that she conducted litigation on behalf of persons who weren't her clients.

The application filed in August 2016 purported to be made on behalf of Stoney and his 10 brothers and sisters, but Kennedy was unable to show any proof that any of the siblings had actually asked her to represent them.

Thomas found that Kennedy's actions were further aggravated by having done the same thing for the same client before.

"There is a pattern here, and one that should be sharply discouraged," Thomas stated.

He also found that the intent of the application — for Stoney to gain membership in the Sawridge Band — was especially aggravating as an attempt to interfere in a First Nation's self-governance.

"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."

The Sawridge First Nation is near the town of Slave Lake, about 250 kilometres north of Edmonton.

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9/28/2017

Judge orders Edmonton lawyer to pay costs in 'vexatious' claim

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Lawyer must pay costs in 'vexatious' legal action over band membership

Parsons, Paige . Edmonton Journal ; Edmonton, Alta. [Edmonton, Alta]02 Sep 2017: A.4.

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FULL TEXT

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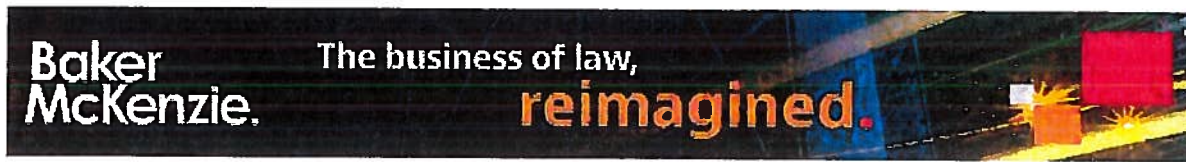
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Judge flags Edmonton lawyer's conduct to law society

Lawyer ordered to pay costs personally for pursuing vexatious litigation for client

September 22, 2017 | Written By Alex Robinson

A judge has referred an Edmonton lawyer's conduct to the Law Society of Alberta after finding she had pursued vexatious litigation on behalf of a client.

Court of Queen's Bench Justice Dennis Thomas sent a judgment to the regulator detailing his concerns with the conduct of Priscilla Kennedy, of DLA Piper (Canada) LLP, after she continued to re-argue the same points of a "hopeless application" that the judge determined was a "serious abuse of the court."

Paul Paton, dean at the Faculty of Law at the University of Alberta, says the decision is a cautionary tale for lawyers.



"It's quite clear that there are some serious issues here about the representation, and it's a question for me of a lawyer being responsible not only to his or her client but also to the court and the system of justice, and the judge is saying here enough," he says.

In the underlying matter, Kennedy's client, Maurice Stoney, brought an application requesting he be added as a beneficiary of a trust set up for members of the Sawridge band along with 10 other brothers and sisters. Stoney is the son of former members of the Sawridge First Nation, who gave up their status for an enfranchisement payment.

Thomas found that Stoney was relitigating an issue that had already been decided by the courts, and that Kennedy had facilitated misconduct by advancing the matter. Thomas has barred Stoney from bringing further actions or applications without seeking leave of the court first.

"In my opinion Ms. Kennedy's conduct raises the question of whether she is a suitable representative for Maurice Stoney, and whether the proper administration of justice requires that Ms. Kennedy should be removed from this litigation," Thomas wrote in his decision in *1985 Sawridge Trust v. Alberta (Public Trustee)*, 2017.

In late August, Thomas then took the rare step of ordering Kennedy to pay costs personally for advancing the matter. In that decision, the judge found that any lawyer who acts on behalf of a client who engages in frivolous, vexatious or abusive litigation is acting contrary to their obligations to the courts and other litigants, as well as their own client.

"By facilitating that misconduct, the lawyer 'digs a grave for two,'" he wrote.

Lawyers say having costs awarded personally against a practitioner is a rare occurrence.

Gavin MacKenzie, of MacKenzie Barristers, says that, historically, courts have been extremely cautious in awarding costs personally against lawyers because of their duties to bring forward even unpopular cases.

He says the decision to award costs against Kennedy reflects an approach that treats this tradition of caution as no longer justified because of the culture shift mandated by the Supreme Court of Canada in *Hryniak v. Mauldin*.

"The court nevertheless recognizes that costs must not be awarded against lawyers personally merely because they assert claims or defences that are weak or unmeritorious," says MacKenzie, who was not involved in the *Sawridge* matter.

"A 'serious abuse of the judicial system' is required. Persistently relitigating a claim that has been finally determined adversely in previous litigation is a strong indicator of abuse of the court's process."

At a hearing to determine if Kennedy should pay costs, David Wilson, a partner and colleague at DLA Piper, represented Kennedy and admitted that she had gone too far and that Stoney had "exhausted his remedies in the legal realm."

He said that the application was "ill-advised" but was not done "with bad motives," and while it was not an attempt to abuse the process, "it absolutely had that effect . . ."

He added that the seriousness of the matter has been "driven home as much as an order of contempt or a referral to the Law Society."

Despite this, Kennedy continued to re-argue the same points in her most recent submission, according to the decision.

"Mr. Wilson told me in open court that Ms. Kennedy had learned her lesson," Thomas wrote. "When I read the written brief Kennedy prepared and submitted on behalf of Maurice Stoney, I questioned whether that was true."

Kennedy also tried to rely on a procedure from Federal Court rules to explain why the application was justified. Thomas, however, pointed out that proceedings in the Court of Queen's Bench are subject to the Alberta Rules of Conduct.

"I question the competence of a lawyer who does not understand what court rules apply in a specific jurisdiction," Thomas said.

Paton says referrals to the law society by the court are comparatively rare. He says issues of conduct in courtrooms are often addressed on the spot so that the client interests can be dealt with and the system of justice can move along. There is reluctance on behalf of judges to wait for referrals to the law society, except in cases of particularly egregious conduct, he says.

"To have a situation, where you have not only a costs award being made... but then a situation, where the lawyer comes back and essentially engages in the same conduct that led to the cost award is just astonishing," he says. "Particularly where a senior partner in that lawyer's law firm is making submissions to the effect that that lawyer learned her lesson from the previous decision."

Kennedy was not available for comment and Wilson did not respond to requests for comment.

Doris Bonora, one of the lawyers representing the trustees of the trust set up for the members of the Sawridge Band, declined to comment. Edward Molstad, who acted for the Sawridge Band, also declined to comment.

Colleen Brown, a spokeswoman for the Law Society of Alberta, declined to confirm whether the matter was being investigated, and said that the regulator can only make details public about a particular complaint if and when a hearing begins.

MacKenzie says that the lesson lawyers can take from this case is that "zealous advocacy" should not be their only or primary guide.

"We have to avoid being zealots," says MacKenzie.

"Our *Rules of Professional Conduct* require lawyers to represent their clients 'resolutely' and honourably within the limits of the law while observing their duties as officers of the court. Allowing this balance to become out of sync can lead to unfortunate consequences, as the *Stoney* case illustrates."

professional regulation | alberta court of queen's bench | discipline | law society of alberta | vexatious litigant

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