

Jon Faulds, KC
Counsel
T 780-423-7625
F 780-428-9329
pfaulds@fieldlaw.com
Assistant: Amy Ball
T 587-773-7180
aball@fieldlaw.com
Our File: 67303-2

June 7, 2023

VIA EMAIL

The Honourable Chief Justice Mary Moreau
Court of King's Bench of Alberta
Law Courts
1A Sir Winston Churchill Square
Edmonton AB T5J 0R2

Dear Chief Justice Moreau:

**Re: In the Matter of the Trustee Act and the Sawridge Inter Vivos Settlement; Action # 1103
14112**

We write with the knowledge of all parties to request you assign the above noted matter to a new case management justice (CMJ). This request follows on the decision of the Court of Appeal which was critical of the current CMJ's handling of the proceedings, a copy of which is attached.¹

The current CMJ's tenure has been almost entirely focussed on the management of an interlocutory application that he invited to be brought in September 2019 as a solution to the central issue in the matter. He ultimately decided the application in extensive reasons issued in early 2022 which reflected the result he had predicted in inviting the application.²

That decision was set aside by the Court of Appeal in November 2022 with reasons that were critical of the CMJ's role in instigating and then deciding the application. In particular, the Court of Appeal held as follows:

[42] However, the appellants correctly argue that the case management judge overstepped his mandate by raising issues about the validity of the 1985 transfer of trust assets 34 years after that transfer occurred. This was not an issue that had been raised by the parties, and it was not a part of the Application (Statement of Issues and Relief Sought) that had been filed (*supra*, para. 15). Litigation is to be initiated and the disputed issues identified by the parties. The court is to remain neutral and should not become a protagonist in the litigation: *R. v Mian*, 2014 SCC 54 at paras. 38-39, [2014] 2 SCR 689; *Jonsson v Lymer*, 2020 ABCA 167 at para. 44, 7 Alta LR (7th) 146. As the Public Trustee points out, one of the first acts of the new case management judge was to question the validity of a transaction that had occurred 34 years earlier, and that all the parties

¹ 2022 ABCA 368

² 2022 ABKB 107

assumed was valid and binding. As noted in *Mian* at para. 39, this can create the impression that the judge is predisposed to a particular outcome.

And

[61] ...A case management judge cannot sidestep the provisions of the *Limitations Act* by the expedient of granting a remedial order on his own motion. This is another consequence of the principle of party presentation under which litigation should be driven by the parties, not the presiding judge: *Mian* at para. 38.

Elsewhere, the Court of Appeal noted the CMJ had “diverted” the proceedings from the issues stated by the parties and carried out “an indirect collateral attack” on an Order he was to interpret.³ The CMJ’s intervention also contributed to a significant delay in the proceedings.

In these circumstances and having regard to the comments of the Court of Appeal, two of the three parties to the proceeding, the Office of the Public Guardian and Trustee and Catherine Twinn, respectfully request that you assign this matter to a replacement CMJ. The third party, the Trustees of the 1985 Sawridge Trust, takes no position on this request, but will write separately concerning it.

No further steps in the proceeding have been taken and there have been no case management meetings or proceedings since the Court of Appeal ruling, but the parties all now wish to proceed as promptly as possible and refocus their efforts on a resolution of the matter.

In these unique circumstances we respectfully suggest the assignment of a new CMJ will be expeditious, enhance confidence in the case management process and allow this proceeding to move forward in a timely way.

We would be pleased to provide any additional information you might wish. Thank you.

Regards,

FIELD LLP

Jon Faulds, KC

Counsel

PJF/ab

Enclosure

cc: The Honourable Mr. Justice John Henderson
All counsel

³ 2022 ABCA 368, at paras 18, 54, 71.