

File number: _____

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM *THE COURT OF APPEAL OF ALBERTA*)

BETWEEN:

SUSAN RIDDELL ROSE

APPLICANT
(Respondent)

AND:

**PRICEWATERHOUSECOOPERS INC., LIT in its capacity as the TRUSTEE IN
BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not
in its personal capacity**

RESPONDENT
(Appellant)

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(SUSAN RIDDELL ROSE, APPLICANT)**

(Pursuant to section 40 of the *Supreme Court Act*, RSC 1985, c S-26, and Rule 25 of the
Rules of the Supreme Court of Canada, SOR/2002-156)

TAKE NOTICE that Susan Riddell Rose applies for leave to appeal to the Supreme Court of Canada, under section 40 of the *Supreme Court Act*, RSC 1985, c S-26 and Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156, from the judgment of the Court of Appeal of Alberta 1901-0255-AC made on January 25, 2021 and for an order granting leave to appeal.

AND FURTHER TAKE NOTICE that this application for leave to appeal is made on the following grounds:

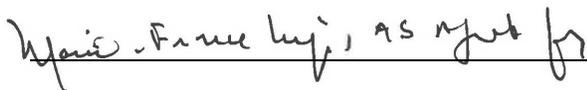
1. The Court of Appeal's decision proposes that a trustee in bankruptcy may have *de facto* authority to sue a former director of the bankrupt in oppression, even where the subject claims do not belong to the bankrupt estate and the complaint does not directly relate to the interests of a recognized complainant, but to the bankrupt's inability to fund its abandonment and reclamation obligations (**ARO**).
2. In addition, the Court of Appeal's decision sanctions the plaintiff's use of corporate law remedies to pursue environmental regulatory objectives in a manner not

contemplated by the legislature, and suggests that directors of companies that are the target in a change of control transaction owe a duty to future stakeholders in respect of environmental claims that is intractably in conflict with the interests of the company's current and future shareholders.

3. The proposed appeal thus raises the following questions of national and legal importance:
- a) is a trustee in bankruptcy entitled to complainant status under the statutory oppression remedy in respect of claims that do not belong to the bankrupt, or to the general body of the bankrupt's creditors, but relate instead to public regulatory obligations or the claims of individual creditors with no financial interest in the estate?
 - b) may a trustee in bankruptcy use the oppression remedy or allegations of breaches of fiduciary duty as a mechanism to render a former director of a bankrupt company personally liable for the bankrupt's subsequent inability to perform environmental and regulatory public duties, including asset retirement obligations?
 - c) does a director of a single-purpose corporation that is the target in a change of control transaction owe a prevailing duty to future creditors and public interest stakeholders of the company in respect of the company's future inability to fund its ARO?

Dated at Calgary, Alberta, this 24th day of March, 2021

SIGNED BY



Applicant
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Ottawa Agent for the Applicant, Susan Riddell Rose

Counsel for the Applicant, Susan Riddell Rose

ORIGINAL TO: **THE REGISTRAR**

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 PricewaterhouseCoopers Inc., LIT in its
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 in its personal capacity**

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PricewaterhouseCoopers Inc., in its personal capacity

NOTICE TO THE RESPONDENT OR INTERVENER: A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*

SCHEDULE “A”

- A. Alberta Court of Queen’s Bench Judgment, February 18, 2020
- B. *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2020 ABQB 6
- C. Alberta Court of Appeal Judgment, January 25, 2021
- D. *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16



COURT FILE NUMBER 1801-10960
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE Calgary
PLAINTIFF PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity
DEFENDANTS PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP. and SUSAN RIDDELL ROSE
DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Lawyers for the Defendant Susan Riddell Rose
 File no.: 1001040549

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 Email: djm@bdplaw.com/pchiswell@bdplaw.com
 File No.: 59140-43

Counsel for Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp.

*Feb. 18, 2020
 Let this order
 be filed.
 S.H.C.C.P.A.*

I hereby certify this to be a true copy of the original Order Dated this 18 day of Feb 2020 [Signature] for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: August 15, 2019
NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice D.B. Nixon
LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATIONS of the Defendants; UPON review of the pleadings and evidence filed by the Defendants and the Plaintiff; AND UPON consideration of the written and oral submissions of the parties:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The Defendants' applications to strike and/or dismiss the Plaintiff's claim pursuant to s. 96(1) of the *Bankruptcy and Insolvency Act* are dismissed, subject to paragraph 5.
2. The Plaintiff's claims pursuant to s. 242 of the *Alberta Business Corporations Act* are struck as against all Defendants pursuant to Rule 3.68.
3. The Plaintiff's claims on the grounds of public policy, statutory illegality and equitable rescission are struck as against all Defendants pursuant to Rule 3.68.
4. The Plaintiff's claims against the Defendant Susan Riddell Rose (**Rose**) for breach of fiduciary duty and breach of duty of care are dismissed pursuant to Rule 7.3 and struck pursuant to Rule 3.68.
5. The application of Rose to dismiss all of the Plaintiff's claims against her on the basis of the Resignation & Mutual Release effective October 1, 2016 is granted pursuant to Rule 7.3.
6. Costs shall be determined by the Court following the parties' submissions thereon.



Justice of the Court of Queen's Bench of Alberta

COURT OF APPEAL OF ALBERTA



COURT OF APPEAL FILE NUMBER: 1901-0255AC

TRIAL COURT FILE NUMBER: 1801-06097

REGISTRY OFFICE: CALGARY

PLAINTIFF: PRICEWATERHOUSECOOPERS INC., LIT,
in its capacity as the TRUSTEE IN
BANKRUPTCY OF SEQUOIA RESOURCES
CORP. and not in its personal capacity

STATUS ON APPEAL: APPELLANT

DEFENDANTS: PERPETUAL ENERGY INC., PERPETUAL
OPERATING TRUST, PERPETUAL
OPERATING CORP. and SUSAN RIDDELL
ROSE

STATUS ON APPEAL: RESPONDENTS

DOCUMENT: **JUDGMENT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT: DE WAAL LAW
1460, 530 – 8th Avenue SW
Calgary, AB T2P 3E6
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Attention: Rinus de Waal/Luke Rasmussen
Direct: (403) 266-0014
Facsimile: (403) 266-2632
E-mail: lrasmussen@dewaallaw.com

DATE ON WHICH JUDGMENT WAS PRONOUNCED: **January 25, 2021**

LOCATION OF HEARING: **Calgary, Alberta**

NAMES OF JUDGES WHO GRANTED THIS JUDGMENT: **Madam Justice M. Paperny
Mr. Justice J. Watson
Mr. Justice F. Slatter**

UPON THE HEARING on December 10, 2020 of an appeal by the Appellant PricewaterhouseCoopers Inc., LIT, in its capacity as Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity (the “**Trustee in Bankruptcy**”) from the Order of the Honourable Mr. Justice D.B. Nixon granted on August 15, 2019; AND UPON HEARING submissions from counsel for the Trustee in Bankruptcy and counsel for the Respondents Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp. and Susan Riddell Rose;

IT IS ORDERED AND ADJUDGED THAT:

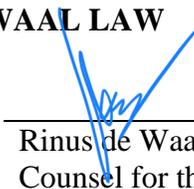
1. The appeal is allowed, paragraphs 2, 3, 4 and 5 of the order of the Court of Queen’s Bench pronounced on August 15, 2019 are set aside, and the action is returned to the trial court.
2. The appellant Trustee in Bankruptcy is granted status as a complainant under Part 19 of the Alberta *Business Corporations Act* to pursue a claim under s. 242(2) of that Act as it may be advised.
3. The appellant Trustee in Bankruptcy, if so advised, is granted permission in accordance with R. 3.65 of the Alberta *Rules of Court* to circulate a proposed amended statement of claim to clarify the claims being advanced. Any disputes about the nature and form of the proposed amendments are referred back to the trial court.



Registrar, Court of Appeal

Approved as to form and content this 18th day
of March, 2021

DE WAAL LAW

Per: 
Rinus de Waal / Luke Rasmussen
Counsel for the Appellant

Approved as to form and content this ___ day
of March, 2021

**NORTON ROSE FULBRIGHT
(CANADA) LLP**

Per: Steven H. Leitzl, Q.C. / Gunnar
Benediktsson, counsel for the
Respondent Susan Riddell Rose

Approved as to form and content this ___ day of March, 2021

**BURNET, DUCKWORTH & PALMER
LLP**

Per: Paul G. Chiswell, counsel for the
Respondents Perpetual Energy Inc.,
Perpetual Operating Trust and
Perpetual Operating Corp.

Approved as to form and content this ___ day of March, 2021

D.J. McDonald, Q.C., counsel for
the Respondents Perpetual Energy
Inc., Perpetual Operating Trust and
Perpetual Operating Corp.

UPON THE HEARING on December 10, 2020 of an appeal by the Appellant PricewaterhouseCoopers Inc., LIT, in its capacity as Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity (the “Trustee in Bankruptcy”) from the Order of the Honourable Mr. Justice D.B. Nixon granted on August 15, 2019; AND UPON HEARING submissions from counsel for the Trustee in Bankruptcy and counsel for the Respondents Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp. and Susan Riddell Rose;

IT IS ORDERED AND ADJUDGED THAT:

1. The appeal is allowed, paragraphs 2, 3, 4 and 5 of the order of the Court of Queen’s Bench pronounced on August 15, 2019 are set aside, and the action is returned to the trial court.
2. The appellant Trustee in Bankruptcy is granted status as a complainant under Part 19 of the Alberta *Business Corporations Act* to pursue a claim under s. 242(2) of that Act as it may be advised.
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Registrar, Court of Appeal

Approved as to form and content this ____ day
of March, 2021

DE WAAL LAW

Per: _____
Rinus de Waal / Luke Rasmussen
Counsel for the Appellant

Approved as to form and content this
~~16th~~ day of March, 2021

**BURNET, DUCKWORTH & PALMER
LLP**

Per: 
Paul G. Chiswell, counsel for the
Respondents Perpetual Energy Inc.,
Perpetual Operating Trust and
Perpetual Operating Corp.

Approved as to form and content this 18th
day of March, 2021

**NORTON ROSE FULBRIGHT
CANADA LLP**

Steven Leitt remotely signed

Per: _____
Steven H. Leitt, Q.C. / Gunnar
Benediktsson, counsel for the
Respondent Susan Riddell Rose

Approved as to form and content this
22nd day of March, 2021



Per: _____
D.J. McDonald, Q.C., counsel for
the Respondents Perpetual Energy
Inc., Perpetual Operating Trust and
Perpetual Operating Corp.

UPON THE HEARING on December 10, 2020 of an appeal by the Appellant PricewaterhouseCoopers Inc., LIT, in its capacity as Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity (the “**Trustee in Bankruptcy**”) from the Order of the Honourable Mr. Justice D.B. Nixon granted on August 15, 2019; AND UPON HEARING submissions from counsel for the Trustee in Bankruptcy and counsel for the Respondents Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp. and Susan Riddell Rose;

IT IS ORDERED AND ADJUDGED THAT:

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Registrar, Court of Appeal

Approved as to form and content this ____ day
of March, 2021

DE WAAL LAW

Per: _____
Rinus de Waal / Luke Rasmussen
Counsel for the Appellant

Approved as to form and content this
____ day of March, 2021

**BURNET, DUCKWORTH & PALMER
LLP**

Per: _____
Paul G. Chiswell, counsel for the
Respondents Perpetual Energy Inc.,
Perpetual Operating Trust and
Perpetual Operating Corp.

Approved as to form and content this 18th
day of March, 2021

**NORTON ROSE FULBRIGHT
CANADA LLP**

Steven Leitl remotely signed

Per: _____
Steven H. Leitl, Q.C. / Gunnar
Benediktsson, counsel for the
Respondent Susan Riddell Rose

Approved as to form and content this
____ day of March, 2021

Per: _____
D.J. McDonald, Q.C., counsel for
the Respondents Perpetual Energy
Inc., Perpetual Operating Trust and
Perpetual Operating Corp.