

SCC Court File No.

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

B E T W E E N:

**PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST and
PERPETUAL OPERATING CORP.**

APPLICANTS
(Appellants/Respondents)

- and -

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

RESPONDENT
(Respondent/Appellant)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL
(PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST and
PERPETUAL OPERATING CORP., APPLICANTS)
(Pursuant to Section 40 of the *Supreme Court Act* and Rule 25 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE that the Applicants apply 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 Judgments of the Court of Appeal of Alberta in Docket Numbers 1901-0255-AC and 1901-0262-AC, made January 25, 2021, and for any further or other order that the Court may deem appropriate;

AND FURTHER TAKE NOTICE that the Applicants request the right to file a single application for leave to appeal from the Judgments in Docket Numbers 1901-0255-AC and 1901-0262-AC;

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

1. This application raises important questions of law that are of such public importance as to warrant a decision by this Honourable Court, namely:
 - a. When and how can the presumption in the *Bankruptcy and Insolvency Act* that related parties are not dealing at arm's length be rebutted?
 - b. Can a trustee in bankruptcy bring an oppression claim on behalf of a select few creditors of a bankrupt estate?
2. The appeals in Docket Numbers 1901-0255-AC and 1901-0262-AC arose from the same proceedings and decision below and were heard at the same time. The Judgments arose from the same Memorandum of Judgment of the Court of Appeal of Alberta.

DATED at Calgary, Alberta this 26th day of March, 2021.

SIGNED BY: 
 Michael S. Deyholos

DAN MCDONALD QC

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ORIGINAL TO: THE REGISTRAR

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

NOTICE TO THE RESPONDENT: A Respondent 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	<i>PricewaterhouseCoopers Inc v Perpetual Energy Inc</i> , 2020 ABQB 6	
B	Order of Justice Nixon pronounced August 15, 2019 in Court or Queen's Bench Action No. 1801-10960	
C	<i>PricewaterhouseCoopers Inc v Perpetual Energy Inc</i> , 2021 ABCA 16	
D	Judgment pronounced January 25, 2021 in Court of Appeal Action No. 1901-0255AC by Justice M. Paperny, Justice J. Watson, and Justice F. Slatter	
E	Judgment pronounced January 25, 2021 in Court of Appeal Action No. 1901-0255AC by Justice M. Paperny, Justice J. Watson, and Justice F. Slatter	



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

Norton Rose Fulbright Canada LLP
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Lawyers for the Defendant Susan Riddell Rose
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Lawyers: D.J. McDonald, QC/Paul G. Chiswell
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 Fax: (403) 260-0332
 Email: djm@bdplaw.com/pchiswell@bdplaw.com
 File No.: 59140-43

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

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

Feb. 18, 2020
Let this order be filed.
[Signature]
McCQB

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: 1901-0262AC

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: RESPONDENT

DEFENDANTS: PERPETUAL ENERGY INC., PERPETUAL
OPERATING TRUST and PERPETUAL
OPERATING CORP.

STATUS ON APPEAL: APPELLANTS

DOCUMENT: **JUDGMENT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT: DE WAAL LAW
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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 Appellants Perpetual Energy Inc., Perpetual Operating Trust and Perpetual Operating Corp. (the "**Appellants**") from the Order of the Honourable Mr. Justice D.B. Nixon granted on August 15, 2019 (the "**Appeal**"); AND UPON HEARING submissions from counsel for the Appellants and counsel for the Respondent PricewaterhouseCoopers Inc., LIT, in its capacity as Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity (the "**Respondent**");

IT IS ORDERED AND ADJUDGED THAT:


1. The Appeal is dismissed.



Registrar, Court of Appeal


Approved as to form and content this
5th day of March, 2021

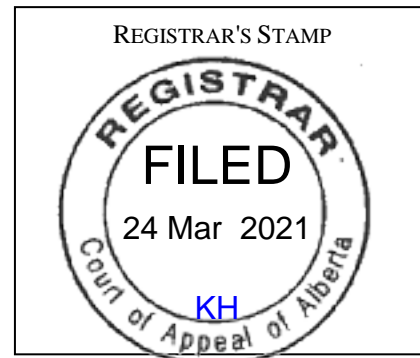
DE WAAL LAW

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

Approved as to form and content this
5th day of March, 2021

**WESTERN ARBITRATION CHAMBERS
 BURNET, DUCKWORTH & PALMER LLP**


 Per: D.J. McDonald, Q.C. / P.G. Chiswell
 Counsel for the Appellants

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
BANKRUPCY 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
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Phone: (403) 266-0012

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:

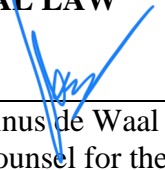
1. The appeal is allowed, paragraphs 2, 3, 4 and 5 of the order of the Court of Queen’s Bench pronounced on August 15, 2019 are set aside, and the action is returned to the trial court.
2. The appellant Trustee in Bankruptcy is granted status as a complainant under Part 19 of the Alberta *Business Corporations 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.
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 ____ 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 Leitzl remotely signed

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

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

DE WAAL LAW

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

**BURNET, DUCKWORTH & PALMER
LLP**

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

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 Leidl remotely signed

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

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.