

COURT OF APPEAL FILE NUMBERS: 1901-0255AC
1901-0262AC
1901-0275AC

TRIAL COURT FILE NUMBER: 1801-10960

REGISTRY OFFICE: CALGARY

PLAINTIFF/RESPONDENT: 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/RESPONDENT

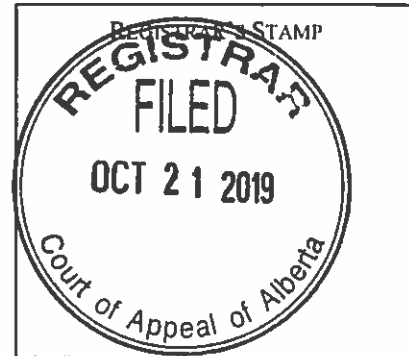
DEFENDANTS/APPLICANTS: PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE

STATUS ON APPEAL: RESPONDENTS/APPELLANTS

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
DE WAAL LAW
1010, 505 – 3RD Street SW
Calgary, AB T2P 3E6

Attention: Rinus de Waal/Luke Rasmussen
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AFFIDAVIT OF PAUL J. DARBY
SWORN ON OCTOBER 18, 2019

I, Paul J. Darby, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am a Senior Vice President with PricewaterhouseCoopers Inc., LIT, the Trustee in Bankruptcy appointed in respect of Sequoia Resources Corp. (the “Trustee”). I swear this affidavit in response to the applications by the Defendants for an order directing the Trustee, in its capacity as Trustee, alternatively in its personal capacity, to pay security for the costs of responding to the Trustee’s appeal.
2. The Defendants’ applications both rely on the affidavit sworn by Rose on September 23, 2019 (the “Rose Affidavit”).
 - 2.1. The Rose Affidavit implies, including by reference to Exhibit I to that affidavit, that the Defendants were successful on every aspect of their case before Mr. Justice Nixon. In fact, the Trustee was substantially successful in opposing the Defendants’ application to dismiss the main claim against all the Defendants, pursuant to s. 96 of the *Bankruptcy and Insolvency Act* (the “Act”).
 - 2.2. The Rose Affidavit suggests that all the costs incurred by the Defendants in the proceedings before Mr. Justice Nixon will be recoverable against the Trustee. No decision on costs has been made yet. Based on its substantial success before Mr. Justice Nixon, the Trustee will be seeking costs against the Defendants for those proceedings.
 - 2.3. The Rose Affidavit only mentions the appeal filed by the Trustee. However, the Perpetual Defendants and Ms. Rose each filed their own appeals against the decision of Mr. Justice Nixon.
 - 2.4. The Rose Affidavit suggests that the substantial costs she expects to be incurred on appeal, all relate to the Trustee’s appeal, when in fact, the Defendants will be proceeding with their own appeals. Although three appeals have been filed, they are all to be heard together, on the same appeal record. The Case Management Officer has directed that “*all of these appeals must proceed and be heard together, and the appellants should file a joint Appeal Record*”. I attach her letter of September 10, 2019 to counsel for the Parties, as **Exhibit 1**.
3. In response to the Defendants’ intention to seek costs against the Trustee personally, rather than against the estate of Sequoia Resources Corp. (the “Estate”), I confirm that the Trustee has not acted and is not acting in its personal capacity, but only in its capacity as trustee of the Estate.
4. In response to Ms. Rose’s stated belief that the Estate will not be able to pay any cost order made in these proceedings, I confirm that the funds currently in the estate easily exceed Ms. Rose’s estimates of the anticipated legal fees to be incurred by herself and the Perpetual Defendants.

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Calgary AB T2P 5H1

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COURT OF APPEAL OF ALBERTA

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Case Management Officer: L. Baptiste
Email: laurie.baptiste@albertacourts.ca
<https://albertacourts.ca>

September 10, 2019

S.H. Leidl and G. Benediktsson
Norton Rose Fulbright Canada LLP
Email: steven.leidl@nortonrosefulbright.com, and
Email: gunnar.benediktsson@nortonrosefulbright.com

Re: **Susan Riddell Rose (A) v. Pricewaterhousecoopers Inc., Lit (R)**
Appeal No. 1901-0275AC

Case Management Officer: B.J. McDevitt
Email: bobbi.mcdevitt@albertacourts.ca
<https://albertacourts.ca>

This is Exhibit " 1 " referred to in the

Affidavit of
Paul Dache
Sworn before me this *18th* day
of *October* A.D. 20 *19*.

A Notary Public, Commissioner for Oaths
in and for the Province of Alberta

LUKE RASMUSSEN
Barrister & Solicitor

Type of Appeal and Procedural Issues

Your recently filed Notice of Appeal has been reviewed and the appeal has been categorized as a **Fast Track** appeal.

From the materials filed, it appears that the following procedural issues are outstanding:

- A filed copy of the order/judgment under appeal has not been included with the Notice of Appeal. Written or transcribed reasons are not sufficient. A filed copy of the order/judgment will be required for inclusion in the appeal record. Please note that the appeal cannot be scheduled for hearing until the order/judgment under appeal is filed.
- This appeal was filed out of time and a filing extension was required in order to proceed. However, I note that a Consent Order was obtained and filed on September 6, 2019 in related appeal 1901-0262AC, which permitted the filing of this Notice of Appeal.
- This appeal is related to two existing appeals: 1901-0255AC and 1901-0262AC. As a result, all of these appeals must proceed and be heard together, and the appellants should file a joint Appeal Record. **Counsel to the 3 related appeals should prepare and provide a proposed Timetable for the 3 related appeals as soon as possible and prior to the earliest deadline for any Appeal Record in the related appeals, which is the deadline in 1901-0262AC = September 26, 2019.** Please contact me should you require further direction in that regard.

Should you require assistance with managing this appeal, please contact me. Please be reminded to always copy all other parties to the appeal with any correspondence to the Court.

Deadlines / Timetables

A summarized version of appeal deadlines is available on the Court of Appeal's website under Registry > Filing Information > Filing Deadlines. **You are encouraged to review the applicable deadlines as failure to comply with them will result in the appeal being struck.** I draw your particular attention to rule 14.23(1) (for standard appeals) and rule 14.24(1)(a) (for fast track appeals) which provides that the appellant's factum must be filed by the earlier of two dates. You will want to ensure that you diarize your file for the earlier of those dates to prevent the appeal from being unnecessarily struck.

In addition, it is strongly recommended that documents be prepared and filed *in advance* of any deadline in order to allow sufficient time to address any issues or make any necessary corrections.

There is an option to submit timetables for the appeal instead of following the deadlines set by the Rules of Court. A timetable sets out mutually-agreed upon deadlines for the filing of all materials, including the hearing date. The proposed timetable is sent to myself for approval. A sample timetable is available on the Court of Appeal's website under Registry > Filing Information > Filing Deadlines.

Judicial Dispute Resolution (JDR)

JDR is readily available at the Court of Appeal. Resolving a matter through JDR may result in the appeal being settled more expeditiously and at less expense than if it proceeded to hearing. A JDR may be initiated at any stage of the appeal proceedings. Further details on JDRs can be found in Division 5, Subdivision 4 of the Alberta Rules of Court, and in Part D of the Consolidated Practice Directions. Please contact me if all parties are interested in JDR or if you have any questions about the JDR process at the Court of Appeal.

Resources

The *Alberta Rules of Court* and the Consolidated Practice Directions (CPD) of the Court of Appeal are available on the Court of Appeal website at <https://albertacourts.ca>. Please review the resources that are available on the website including forms, checklists, information sheets, sitting dates and more.

Thank you,



Laurie Baptiste, B.A., J.D.
Case Management Officer
Court of Appeal - Calgary
/lb

cc: R. de Waal and L. Rasmussen
De Waal Law
Email: rdewaal@dewaallaw.com, and
Email: lrasmussen@dewaallaw.com

D.J. McDonald, QC and P.G. Chiswell
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