

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBERS: 1901-0255AC

TRIAL COURT FILE NUMBER: 1801-10960

REGISTRY OFFICE: CALGARY

APPLICANT: 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

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

STATUS ON APPEAL: RESPONDENTS

DOCUMENT: **APPLICATION OF PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP.**

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
Telephone: 403266 0013
Facsimile: 403 266 2632
Email: rdewaal@dewaallaw.com

CONTACT INFORMATION FOR ALL OTHER PARTIES: Burnet, Duckworth & Palmer LLP
8th Avenue Place, East Tower
2400, 525-8th Ave SW T2P 1G1

Attention: D.J. McDonald, Q.C./Paul Chiswell
Telephone: 403 260 5724/403 260 0201
Facsimile: 403 260 0332

Norton Rose Fulbright Canada LLP
3700, 400 3rd Ave SW
Calgary, AB T2P 4H2

Attention: S. Leitl/G. Benediktsson
Telephone: 403 267 8140
Facsimile: 403 264 5973



WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENTS:

You have the right to state your side of this matter before the Court.

To do so, you must be in court when the application is heard as shown below:

Date: _____, 2020 *In writing only*
Time: 9:30 a.m.
Where: TransCanada Pipelines, 2600, 450 1st Street SW, Calgary, Alberta
Before: The Presiding Justice in Chambers

Go to the end of this document to see what else you can do and when you must do it.

Nature of the Application and Relief Sought:

PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp., (the “Trustee”) respectfully seeks an Order:

1. referring the Trustee’s February 10, 2020 Application (the “Trustee’s Application”) for an Order, *inter alia*, setting aside Veldhuis J.A.’s January 29, 2020 Order requiring the Trustee post security for costs (the “Security for Costs Order”) with the Reasons for Decision reported at 2020 ABCA 36 (the “Reasons”) to a panel of the Court of Appeal;
2. directing that costs of the Application be costs in the Appeal; and
3. granting such other relief as counsel for the Trustee may advise and the Court may permit.

Grounds for making this application:

1. It is within the discretion of a single appeal judge to refer an application to a panel of the Court of Appeal, including an application for permission to appeal.
2. Any application requiring a judge to decide whether an appeal from the judge’s own decision should be permitted raises the possibility of a reasonable apprehension of bias.

3. In addition to this general consideration, in the present circumstances an informed person, viewing the matter realistically and practically is even more likely to think that Veldhuis J.A., consciously or unconsciously, is less likely to decide the Trustee's Application fairly:
 - 3.1. Veldhuis J.A. has strongly criticized the behaviour of Mr. Darby on behalf of the Trustee, including for what Her Ladyship found to have been his failure to act in accordance with his duty of impartiality and candour as an officer of the Court, without giving him notice or an opportunity to address those questions;
 - 3.2. Veldhuis J.A. intervened in communication between counsel for Mr. Darby and the Case Management Officer relating to a scheduling issue and refused to allow Mr. Darby to even file an application to challenge Her Ladyship's findings against him, without notice that Her Ladyship was considering such an Order and consequently without allowing him an opportunity to address those issues; and
 - 3.3. Veldhuis J.A. intervened again when counsel for Mr. Darby attempted to file an application to challenge Her Ladyship's refusal to allow filing of the first application to challenge the findings against Mr. Darby and again refused to even allow an application to be filed, without notice to Mr. Darby, without hearing from him or his counsel and without providing reasons for decision.
4. These general and specific concerns are sufficient to raise a reasonable apprehension of bias, as described by the Supreme Court of Canada.
5. Accordingly, the Trustee's Application should be referred to a panel of the Court for determination, in accordance with Rule 14.37(2)(f).

Material or evidence to be relied on:

6. The February 13, 2020 Affidavit of Paul Darby.
7. Such other material as counsel for the Applicant may advise and the Court may allow.

Applicable rules:

8. Rules 6.3; 10.29; 10.31; 10.33, 14.5 and 14.37 of the *Alberta Rules of Court*.