

COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.8 and 14.12]

Registrar's Stamp



COURT OF APPEAL FILE NUMBER: 2101-0021AC

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

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

STATUS ON APPEAL: RESPONDENTS

DOCUMENT: **CIVIL NOTICE OF APPEAL**

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION: DE WAAL LAW
1460, 530 – 8th Avenue Street SW
Calgary, AB T2P 3S8
Phone: (403) 266-0012

Attention: Rinus de Waal/Luke Rasmussen
Direct: (403) 266-0013
Facsimile: (403) 266-2632
E-mail: rdewaal@dewaallaw.com
File: 283.001

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: Reasons for Judgment issued on January 14, 2021

Date entered: N/A

Date served: N/A

Official neutral citation of reasons for decision, if any:

(do not attach copy) 2021 ABQB 2

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Court of Queen's Bench

Judicial Centre: Calgary

Justice: Mr. Justice D.B. Nixon

On appeal from a Queen's Bench Master or Provincial Court Judge?:

Yes No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge:

(do not attach copy) N/A

(If originating from an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required: Rule 14.18(1)(c).)

Board, Tribunal or Professional Discipline Body

Specify Body:

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

Permission not required, or Granted:

Date:

Justice:

(Attach a copy of order, but not reasons for decision.)

4. Portion being appealed (Rule 14.12(2)(c)):

Whole, or

Only specific parts (if specific part, indicate which part):

(Where parts only of a family law order are appealed, describe the issues being appealed, e.g. property, child support, parenting, etc.)

5. Provide a brief description of the issues:

The Chambers Judge committed errors of law and fact in granting the Respondents' application to dismiss the Appellant's claim against them under s. 96 of the *Bankruptcy and Insolvency Act* (the "*BIA*"), including:

- finding that Asset Retirement Obligations ("**ARO**") should be assigned a value of "nil" in assessing whether Perpetual Energy Operating Corp. ("**PEOC**") was rendered insolvent by a transfer at undervalue within the meaning of s. 96 of the *BIA*;
- disregarding s. 12 of Canada's *Interpretation Act* in holding that the *BIA* was analogous to a "penal statute" and should be construed strictly against trustees in bankruptcy;
- failing to consider the purpose of s. 96 and disregarding the principles of consistent expression and implied exclusion in holding that the words "rendered insolvent" in s. 96 of the *BIA* incorporated the definition of "insolvent person" from s. 2 of the *BIA*;
- failing to consider that s. 96 is forward-looking and contemplates that a debtor may become "insolvent" five years or more before the "initial bankruptcy event" in holding that ARO should be excluded from the s. 96 solvency analysis on the basis that they were not "presently exigible" immediately following the alleged transfer at undervalue;
- disregarding the Appellant's submission that ARO formed a fundamental part of the value of the assets transferred to PEOC and should be considered under paragraph (c) of the *BIA* definition of "insolvent person" in assessing whether the value of those assets was sufficient to satisfy PEOC's obligations, due and accruing due;
- failing to give effect to the words "and accruing due" in paragraph (c) of the *BIA* definition of "insolvent person" in holding that ARO should be excluded because they were not "completely constituted and presently exigible";
- finding that ARO "may be a future obligation" notwithstanding the uncontradicted evidence, including in the Respondents' audited financial statements, that ARO are a present obligation the amount of which is capable of being estimated reliably; and
- finding that ARO are a "mere accounting estimate" and a "statutory fiction" notwithstanding the uncontradicted evidence, including in the Respondents' audited financial statements, that ARO are a present obligation the amount of which is capable of being estimated reliably.

6. Provide a brief description of the relief claimed:

The Appellant seeks an Order:

- i. setting aside the Order granted on January 14, 2021; and

- ii. dismissing the Respondents' application to strike and/or dismiss the Appellant's claims against them.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

Yes No

8. Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))

Yes No

9. Will an application be made to expedite this appeal?

Yes No

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

Yes No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

Yes No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e),14.83)

Yes No

If yes, provide details:

(Attach a copy of any order.)

13. List respondent(s) or counsel for the respondent(s), with contact information:

Counsel for the Respondents Perpetual Energy Inc, Perpetual Operating Trust and Perpetual Operating Corp.:

Burnet, Duckworth & Palmer LLP
8th Avenue Place, East Tower
2400, 525 – 8th Avenue SW
Calgary, AB T2P 1G1

Phone: 403 260 5724 / 403 260 0201
Fax: 403 260 0332

D.J. McDonald, Q.C. / Paul G. Chiswell

If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

N/A Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

N/A Earlier order of Master, etc. (Rule 14.18(1)(c))

N/A Order granting permission to appeal (Rule 14.12(3)(a))

N/A Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.