

May 25, 2021

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Your reference Our reference
SCC Court File No. 39597 1001040549

Dear Sir:

**Susan Riddell Rose v. PricewaterhouseCoopers Inc., LIT
Supreme Court of Canada File No. 39597**

This is the Reply of Susan Riddell Rose (**Ms. Rose**) to the Memorandum of Fact and Law of PricewaterhouseCoopers Inc., LIT (the **Trustee**), filed in the above-captioned matter.¹

This proceeding concerns the legal authority of a trustee in bankruptcy to visit ARO upon the bankrupt's shareholders and directors, in clear incongruence with the applicable provincial regulatory regime. Can a BIA trustee prosecute a provincial regulatory regime under the guise of corporate stakeholder oppression, or on the basis of a director's fiduciary duty owed to the bankrupt corporation? Can a trustee do so where the alleged stakeholder is a regulator with no authority to prosecute the same claim directly?

While the Trustee's Statement of Claim pleads a creditor-based oppression and director duty claim, on the basis of the subject decision of the Alberta Court of Appeal the Trustee now pursues a more ambitious agenda: to force third party payment of the entire future costs of the bankrupt's regulatory obligations by former shareholders and directors who are not otherwise liable for the regulatory obligations, and where the impugned underlying corporate transaction is conceded to be lawful.²

¹ Capitalized terms not defined herein have the meaning given in Ms. Rose's Memorandum of Fact and Law dated May 13, 2021.

² *Ibid.* at para 74. The Trustee points to evidence (misinterpreted and misstated) to suggest Perpetual and Ms. Rose took active steps to avoid regulatory supervision. This record is before the Court; what it *actually* discloses is that the composition of the Goodyear Assets was carefully considered to ensure that the Licensee Management Ratio (LMR) of PEOC would remain positive after closing. The decision to pursue a turnkey corporate sale affected

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We respectfully submit that, if leave is granted, Ms. Rose’s appeal would raise significant legal issues of national importance in relation to: (i) the statutory authority of trustees in bankruptcy to sue to enforce “public policy”; (ii) the interplay between the *BIA* and provincial regulatory regimes; (iii) the limits of statutory oppression remedies regarding “public policy” claims; and (iv) the limits of a director’s fiduciary duty to the corporation regarding matters of “public policy” where the corporation has complied with all regulatory obligations.

Yours very truly,
Norton Rose Fulbright Canada LLP

Steven H. Leidl

Steven Leidl, QC
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whether *license transfers* were necessary; it did not excuse PEOC from its obligation to maintain an LMR of greater than one. In any case, selling assets by way of a share transaction is neither unlawful nor unusual.