

Distributed to Duty Judge

Form 21  
[Rules 14.37 and 14.53]



COURT OF APPEAL FILE NUMBER 1901-0255AC

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

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

STATUS ON APPEAL RESPONDENTS

APPLICANTS (NOT A PARTY) CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD.

DOCUMENT **JOINT APPLICATION OF CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD., PROPOSED INTERVENORS ON APPEAL**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Parlee McLaws LLP  
3300, 421 - 7th Ave SW  
Calgary, Alberta T2P 4K9

Attention: G. Scott Watson/Charles W. Ang  
Telephone: (403) 294-7038 / 3457  
Facsimile: (403) 767-8875  
File No. 22-921

**Form 21**  
[Rules 14.37 and 14.58]

COURT OF APPEAL FILE NUMBER	1901-0255AC
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
DEFENDANT/APPLICANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE
STATUS ON APPEAL	RESPONDENTS
APPLICANTS (NOT A PARTY)	CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD.
DOCUMENT	<b>JOINT APPLICATION OF CANADIAN NATURAL RESOURCES LIMITED, CENOVUS ENERGY INC., and TORXEN ENERGY LTD., PROPOSED INTERVENORS ON APPEAL</b>
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Clerk's Stamp

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**NOTICE TO RESPONDENTS: PRICEWATERHOUSECOOPERS INC., LIT in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity, PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE**

**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:	Thursday, November 12, 2020
Time:	9:30 a.m.
Where:	Court of Appeal of Alberta 2600 TransCanada Pipelines Tower 450 - 1st St. S.W. Calgary, AB T2P 5H1
Before:	A single judge of the Court (Rule 14.37)

**Nature of the Application and Relief Sought:**

1. An Order pursuant to Rule 14.58(1) of the *Alberta Rules of Court*, Alta Reg 124/2010, (the “**Rules of Court**”) granting Canadian Natural Resources Limited (“**Canadian Natural**”), Cenovus Energy Inc. (“**Cenovus**”), and Torxen Energy Ltd. (“**Torxen**”; collectively with Canadian Natural and Cenovus as the “**Applicants**”), leave to intervene in Court of Appeal Action No. 1901-0255AC, (this “**Appeal**”) with a right to participate in all proceedings related to the Appeal of the Honourable Mr. Justice D.B Nixon’s (“**Justice Nixon**”) findings on abandonment and reclamation obligations (“**ARO**”), particularly his findings on how ARO should be considered and taken into account under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

2. Further pursuant to Rule 14.58(1) of the *Rules of Court*, an Order prohibiting costs, either in favour of, or against the Applicants, with respect to any other party or intervenor in the Action.
3. Such further and other relief incidental to the above as requested and as this Honourable Court deems appropriate.

**Grounds for Making this Application:**

4. Terms not hereinafter defined shall have the same meaning as set out in the Factum of the Appellant.

Background

5. Canadian Natural is a Canadian-based energy company with headquarters in Calgary, Alberta. It is one of the largest independent producers of crude oil and natural gas in Canada, with operations involving oil sands mining, thermal oil sands, conventional oil (light and heavy), natural gas and natural gas liquids operations throughout Western Canada.
6. Cenovus is a Canadian integrated oil and natural gas company headquartered in Calgary, with operations in oil sands projects in northern Alberta, conventional crude oil, natural gas and natural gas liquids assets in Alberta and British Columbia as well as a non-operated 50 percent interest in two U.S. refineries and a wholly-owned crude-by-rail loading terminal at Bruderheim, Alberta.
7. Torxen is an exploration and production company focused on the development and optimization of conventional oil and gas assets in Southern Alberta.
8. The Applicants collectively hold approximately 30.9% of all AER licenses for wells located in the Province of Alberta, and correspondingly contribute to the Orphan Fund Levy (the “**Levy**”).
9. The Levy is the primary means used by the Orphan Well Association to fund the abandonment and reclamation of wells, facilities, and pipelines that do not have a

- solvent and responsible owner to protect people and the environment through the completion of those processes.
10. Canadian Natural and Cenovus are creditors in the bankruptcy proceedings of Sequoia Resources Corp. (“**Sequoia**”), which was formerly known as Perpetual Energy Operating Corp.

The Findings of the Honourable Mr. Justice D.B. Nixon

11. On March 23, 2018, Sequoia made an assignment into bankruptcy and the Appellant: the Trustee (the “**Appellant**”), was appointed. Subsequently, on August 2, 2018, the Appellant filed a Statement of Claim against the Respondents: Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp., (the “**Perpetual Group**”) and Ms. Susan Riddell Rose (together with the Perpetual Group, the “**Respondents**”) commencing this appealed action, Court of Queen’s Bench file number 1801-10960 (the “**Action**”).
12. The Respondents applied for summary dismissal of the Action, and on August 15, 2019, the Honourable Mr. Justice D.B. Nixon (“**Justice Nixon**”) provided oral reasons for striking all but one of the Trustee’s claims (the “**Oral Reasons**”).
13. On August 23, 2019, the Appellant filed a Civil Notice of Appeal for this instant appeal (“**this Appeal**”). Shortly thereafter, the Perpetual Group filed their cross-appeal.
14. On January 13, 2020, Justice Nixon provided written reasons clarifying his Oral Reasons (the “**Nixon Decision**”).
15. In the Nixon Decision, Justice Nixon makes findings based upon his interpretation of *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (“**Redwater**”), that “ARO is not a liability”.
16. As evidenced in the Nixon Decision, this finding that “ARO is not a liability” was a significant consideration for dismissing the Appellant’s claims that are subject to this Appeal, and is a key consideration in the Perpetual Group’s Application to Strike and for Summary Dismissal of the Action, filed on February 25, 2020, (the “**BIA Application**”).

17. More particularly, the Appellant raises their concerns with Justice Nixon's interpretation of *Redwater* and his determination that "ARO is not a liability" at paragraphs 94 to 120 and paragraphs 139 to 144 of the Appellant's Factum.
18. The Applicants also disagree with the Nixon Decision's characterization of ARO as "not a liability" and argue that ARO must be considered when assessing the value of the Goodyear Assets.
19. Accordingly, the Applicants seek to intervene in the Appeal of Justice Nixon's findings on ARO in the Nixon Decision on the basis that – pursuant to the findings of the Supreme Court of Canada in *Redwater* – Justice Nixon erred in his findings on ARO. Conversely, the Applicants seek confirmation that ARO is instead, an unavoidable public duty or obligation, inherent and fundamental to the value of the licenced assets, equivalent to an up-front cost, and recognized to depress the value of a licensed asset.
20. The Applicants only seek to intervene with respect to that issue, and do not intend to take a position on the other issues under appeal.

#### The Applicants' Unique and Useful Perspectives

21. The Applicants seek to provide unique and useful expertise on the characterization of ARO and its financial and practical effects on the oil and gas industry, including the following perspectives:
  - a) Industry participants, including the Applicants, have long recognized ARO as an inherent, unavoidable certainty associated with all licensed assets regulated by the AER, and intended to mitigate environmental concerns pursuant to the polluter-pay principle;
  - b) Recognition of ARO as a predictable and inevitable financial burden affecting the valuation of assets is reflected in the industry standards and business practices of the oil and gas industry of Alberta;
  - c) The Supreme Court of Canada confirmed ARO as a liability serving to depress the corresponding asset's value in *Redwater*; and

- d) Such further and other submissions in respect of matters incidental to the above, as counsel may advise and this Honourable Court may permit.
22. The Applicants further seek to provide perspective on the commercial consequences and policy implications from the potential outcomes of this matter, including:
- a) The potential sanction of similar stepwise transactions concluded by insolvency, resulting in the diversion of ARO to third party license holders, and the abandonment of the polluter-pay principle.
  - b) The direct and indirect impacts of tolerating the Asset Transaction on the Levy, and the immediate and long-term consequences to private industry, as well as the environment; and
  - c) Such further and other submissions in respect of matters incidental to the above, as counsel may advise and this Honourable Court may permit.
23. The Applicants' perspectives are necessary for this Honourable Court to properly consider the private industry interests of Alberta's oil and gas sector, as well as the associated public interest in requiring industry members to be guided by both economic and environmental objectives.
24. In particular, the Applicants will provide their extensive knowledge and experience to assist this Honourable Court understand the pragmatic effects of ARO, and the potential consequences of its decision on the issue of ARO that are raised by the Applicant in the Appeal.
25. Finally, as a diversified cohort of industry members, the Applicants are well situated to serve as a representative sample of the oil and gas industry, and will each lend their unique perspective to assist this Honourable Court.

The Applicants will be Directly and Significantly Affected by the Appeal

26. The Applicants will be directly and significantly affected by the outcome of the Appeal on the Nixon Decision's findings on ARO in several ways, including:

- a) This Honourable Court's decision may be dispositive or otherwise significantly affect the outcome of the *BIA* Application before Justice Nixon, in which the Applicants have been granted leave to intervene;
- b) More particularly, should Justice Nixon's findings on ARO be upheld at the Appeal, that will likely result in the summary dismissal of the *BIA* Application and uphold the Asset Transaction, which will almost certainly result in an orphaning of the impugned assets and shift the financial burden of the corresponding ARO to the Levy, which includes the Applicants, estimated to be:
  - i. Approximately \$42,000,000.00 to Canadian Natural;
  - ii. Approximately \$6,000,000.00 to Cenovus; and
  - iii. Approximately \$6,500,000.00 to Torxen; and
- c) This Honourable Court's ruling on the characterization of ARO will have significant effects on industry standards, as well as the future and present business arrangements of all industry participants.

#### Intervenor Conditions

27. Any delay in the timing of this Application may be attributed to uncertain timing in the determination of the ongoing *BIA* Application. In particular, the Applicants have only recently come to understand that it is unlikely that Justice Nixon will render his decision on the *BIA* Application prior to the hearing of this Appeal, as scheduled.
28. Furthermore, there is considerable overlap of issues between this Appeal and the ongoing *BIA* Application, and any perceived prejudice to the Defendants in granting the Applicants intervenor status will be minimized by the parallels of the proceedings in the Action and this Appeal.
29. However, to further mitigate any perceived delay, the Applicants propose to file their factum within two business days from the hearing of this Application.
30. In any event, granting the Applicants leave to intervene in this Appeal will not:
  - a) unduly delay the proceedings;

- b) cause prejudice to either of the parties; or
  - c) widen the *lis* between the parties.
31. Further, or in the alternative, any concerns regarding timeliness or the *lis* can be addressed through the conditions imposed on the Applicants by this Honourable Court restricting the scope of intervention.
32. Finally, the Applicants understand that the Trustee will support the intervention of the Applicants in this Appeal.

**Material or Evidence to be Relied on:**

33. The written reasons of judgment of the Chambers Justice dated January 13, 2020: *PriceWaterhouseCoopers Inc v Perpetual Energy Inc*, 2020 ABQB 6.
34. The pleadings and materials filed in the Court of Queen's Bench of Alberta Action No. 1801-10860.
35. Such further and other material as counsel may advise and this Honourable Court may allow.

**Applicable Acts, Regulations, and Rules:**

36. The inherent jurisdiction of this Honourable Court to control its own process.
37. Rules 14.28, 14.37, 14.40, and 14.58 of the *Alberta Rules of Court*.
38. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
39. Such further and other material, legislation, and rules as counsel may advise and this Honourable Court may allow.