

In the Court of Appeal of Alberta

Citation: PricewaterhouseCoopers Inc v Perpetual Energy Inc, 2021 ABCA 113

Date: 20210324

Docket: 2001-0174-AC

Registry: Calgary

Between:

PricewaterhouseCoopers Inc., in its personal capacity

Appellant
(Not Party to Application)

- and -

**PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of
Sequoia Resources Corp. and not in its personal capacity**

Respondent
(Plaintiff)

- and -

**Perpetual Energy Inc., Perpetual Operating Trust, Perpetual Operating Corp.
and Susan Riddell Rose**

Respondents
(Defendants)

The Court:

**The Honourable Madam Justice Marina Paperny
The Honourable Mr. Justice Jack Watson
The Honourable Mr. Justice Frans Slatter**

Memorandum of Judgment Regarding Costs

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The Court:

[1] The parties have applied for directions on the costs consequences of appeal 2001-0174AC, following the allowance of that appeal in the reasons reported as *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16.

[2] The parties agree that the successful appellant is entitled to costs, but disagree on the scale. The appellant proposes five times Column 5. The respondent submits the appropriate scale is single or double Column 4.

[3] The presumption in R. 14.88(3) is that the scale of costs on appeal is the same as the scale of costs at trial. The trial judge awarded 85% of solicitor and client costs for the summary dismissal application. When a subsequent application was brought to settle costs of the summary dismissal application, the trial judge awarded 5 times Column 5 for that costs application. The appellant argues that the presumption in R. 14.88(3) should generate costs on the latter scale.

[4] As the respondent notes, some aspects of this appeal arose because the appellant, while successful on the appeal, did not acknowledge that a trustee in bankruptcy is primarily liable for the costs of estate litigation. On the other hand, as the appellant notes, the respondent made unfounded allegations of professional misconduct against the appellant.

[5] The issues generated by this appeal were complex and of some general importance. While some of them may have arisen as a result of the reasoning of the trial judge, the respondent supported them on appeal. The appeal was hard fought by both sides.

[6] After considering the complexity, number, importance and novelty of the issues, the amount of costs involved, and the presumption in R. 14.88(3), the panel has concluded that the costs of the appeal should be at the same scale as the proceedings settling the costs of the summary dismissal application. The successful appellant is accordingly entitled to costs of the appeal assessed at five times Column 5, plus reasonable disbursements and GST.


[7] While the involvement of second counsel in an advisory role was understandable, second counsel did not actively participate in the appeal. In any event, the costs of the appeal are fairly reflected in the award made, and no separate amount for second counsel should be

added. Although counsel on this appeal may have decided to monitor the argument in the two related appeals, the appearance fee for this appeal should be limited to one half day.

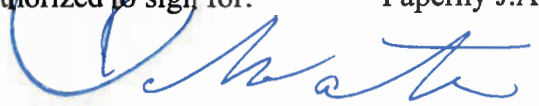
Written submissions March 12 and 18, 2021

Memorandum filed at Calgary, Alberta
this 24th day of March, 2021

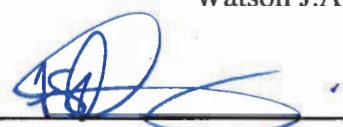




Authorized to sign for: Paperny J.A.



Watson J.A.



Sjatter J.A.

Appearances:

S.H. Leidl, Q.C.

for the Respondent/Cross-Appellant Susan Riddell Rose

C.C.J. Feasby, Q.C.

for the Appellant PricewaterhouseCoopers Inc., in its personal capacity