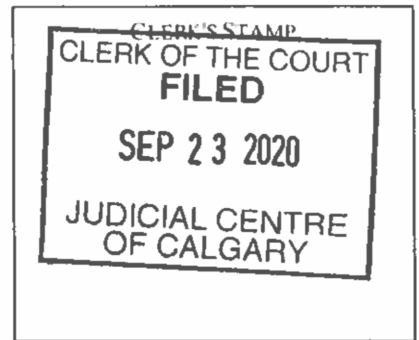


COURT FILE NUMBER	1801-10960
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity
DEFENDANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DE WAAL LAW 1460, 530 – 8th Avenue 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

---

AFFIDAVIT OF PAUL J. DARBY
SWORN ON SEPTEMBER 22, 2020

I, Paul J. Darby, of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am a Senior Vice President with PricewaterhouseCoopers Inc., LIT ("**PwC**"). I am a Chartered Accountant and a licensed insolvency trustee.

{00037420-2/283 001}

2. I have personal knowledge of the facts and matters herein deposed to, except where the context indicates otherwise. Where I have stated something on the basis of information provided to me, the information was provided to me by Luke Rasmussen of De Waal Law and I believe his information to be true.

3. PwC is a licensed insolvency trustee and the trustee in bankruptcy (the "**Trustee**") of the estate of Sequoia Resources Corp., previously known as Perpetual Energy Operating Corp. ("**PEOC**" or "**Sequoia**").

4. I swear this affidavit on behalf of PwC, in its capacity as Trustee of Sequoia, in response to an application by the Defendants Perpetual Energy Inc. ("**PEI**"), Perpetual Operating Corp. and Perpetual Operating Corp. (the "**Perpetual Defendants**") to strike and/or dismiss the Trustee's remaining claims against them (the "***BIA* Summary Dismissal Application**").

5. Three oil and gas industry members were granted status to intervene in the *BIA* Summary Dismissal Application: Canadian Natural Resources Limited ("**CNRL**"), Cenovus Energy Inc. ("**Cenovus**") and Torxen Energy Ltd. ("**Torxen**")(collectively, the "**Industry Intervenors**").

6. During the week of September 14, 2020, the Perpetual Defendants' counsel cross-examined the Industry Intervenors' representatives on affidavits they had sworn in the Action. I attended each of those cross-examinations remotely.

7. In each cross-examination, the Perpetual Defendants introduced into evidence, or sought to introduce into evidence, financial disclosure documents of the Industry Intervenors.

   7.1. During the cross-examination of Ronald Laing, the representative of CNRL, on September 15, 2020, CNRL's 2019 Annual Report was marked as an exhibit. Based on my review of the cross-examination transcript, the 2019 Annual Report was marked as Exhibit 1.

   7.2. During the cross-examination of John Brannan, the representative of Torxen, on September 16, 2020, the Perpetual Defendants' counsel asked Mr. Brannan to provide a copy of Torxen's most recent financial statements. Based on my review of the cross-examination transcript, this was Undertaking No. 1 and it was taken under advisement.

   7.3. During the cross-examination of Antonio Jackson, the representative of Cenovus, also on September 16, 2020, Cenovus' consolidated financial statements for the year ended December 31, 2019 were marked as an exhibit. Based on my review of the cross-examination transcript, Cenovus' 2019 consolidated financial statements were marked as Exhibit 1.

8. I am informed that counsel for the Trustee has not yet received filed copies of the cross-examination transcripts referred to in paragraph 7.

9. The Perpetual Defendants' financial disclosure documents are publicly available on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") website.

10. Attached as **Exhibit 1** is a copy the Perpetual Defendants' Consolidated Financial Statements for the year ended December 31, 2016, audited by KPMG LLP, which I downloaded from the SEDAR website (the "**Perpetual Defendants' 2016 Audited Financials**").

11. The Perpetual Defendants' 2016 Audited Financials state that they are comprised of the accounts of PEI, POC, POT and PEOC and that PEI disposed of PEOC's shares on October 1, 2016.

12. Note 5(a), on pages 16 and 17 of the Perpetual Defendants' 2016 Audited Financials, states in part that:

> On October 1, 2016, the Company disposed of a significant portion of the Company's shallow gas properties in east central and northeast Alberta (the "Shallow Gas Properties") for nominal consideration and the assumption of $128.0 million of decommissioning obligations associated with the Shallow Gas Properties, resulting in a gain on disposition of $19.2 million.

13. Note 13 to the Perpetual Defendants' 2016 Audited Financials, titled "Provisions", lists the following information in a table on page 21:

    13.1. The "decommissioning obligations" were reduced from $159,169,000, at the beginning of 2016, to $33,620,000, at the end of 2016.

    13.2. A reduction of $129,602,000 in "decommissioning obligations" is attributed to "Obligations disposed (note 5a)".

14. Note 13(a) on pages 21 and 22 of the Perpetual Defendants' 2016 Audited Financials, titled "Decommissioning obligations" states in part that:

> During the years ended December 31, 2016 and 2015, the Company achieved efficiencies and cost savings by utilizing internal labor and equipment rather than third party services for various stages of reclamation and abandonment. This resulted in a revision to estimated future abandonment liabilities for all oil and natural gas assets.

15. I have reviewed the brief filed by the Perpetual Defendants' in support of their *BIA* Summary Dismissal Application, a filed copy of which is attached as **Exhibit 2**, without authorities. Footnote 82 on page 21, states in part that:

See the First Amended and Restated Trust Indenture: Article 4.2(t) "to settle and pay and satisfy out of the assets or property of the Trust Properties...any of the obligations of the Trust, including, without limitation...(i) the amount of any...property...or other tax..." and Article 5.4(b): "... the Trustee... shall be entitled to be indemnified and saved harmless out of the Trust Properties... in respect of... all other liabilities... taxes...".

16. I have also reviewed a copy of the brief of the Trustee in response to the Perpetual Defendants' *BIA* Summary Dismissal Application, a filed copy of which is attached as **Exhibit 3**, without authorities. In paragraphs 59 to 65, the Trustee submits that the Perpetual Defendants attempt to rely on an excerpt from the POT Trust Indenture when they have not put the document into evidence.

17. I am informed that counsel for the Trustee wrote to counsel for the Perpetual Defendants by email on September 17, 2020 requesting a copy of the First Amended and Restated Trust Indenture. I am informed that a copy of the email is attached as **Exhibit 4** and that no response has been received.

I swear this affidavit on behalf of the Trustee, in response to the Perpetual Defendants' *BIA* Summary Dismissal Application.

SWORN BEFORE ME at Calgary Alberta, this 22nd day of September, 2020	)	
Luke Rasmussen A Commissioner for Oaths in and for the Province of Alberta	)	**PAUL J. DARBY**

LUKE RASMUSSEN
Barrister & Solicitor

Exhibit 1

This is Exhibit " 1 " referred to in the Affidavit of
[illegible]
Sworn before me this 22nd day
of September A.D. 2020

A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

LUKE RASMUSSEN
Barrister & Solicitor

2016

CONSOLIDATED FINANCIAL STATEMENTS

MANAGEMENT'S REPORT

The consolidated financial statements of Perpetual Energy Inc. ("the Company") are the responsibility of Management and have been approved by the Board of Directors of the Company. These consolidated financial statements have been prepared by Management in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") and the Interpretations of the IFRS Interpretations Committee.

The consolidated financial statements are audited and have been prepared using accounting policies in accordance with IFRS. The preparation of Management's Discussion and Analysis is based on the Company's financial results which have been prepared in accordance with IFRS. It compares the Company's financial performance in 2016 to 2015 and should be read in conjunction with the consolidated financial statements and accompanying notes.

Management is responsible for establishing and maintaining adequate internal control over the Company's financial reporting. Management believes that the system of internal controls that have been designed and maintained at the Company provide reasonable assurance that financial records are reliable and form a proper basis for preparation of financial statements. The internal accounting control process includes Management's communication to employees of policies which govern ethical business conduct.

Internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The Board of Directors has appointed an Audit Committee consisting of unrelated, non-management directors which meets at least four times during the year with Management and independently with the external auditors and as a group to review any significant accounting, internal control and auditing matters in accordance with the terms of the charter of the Audit Committee as set out in the Annual Information Form. The Audit Committee reviews the consolidated financial statements and Management's Discussion and Analysis before the consolidated financial statements are submitted to the Board of Directors for approval. The external auditors have free access to the Audit Committee without obtaining prior Management approval.

With respect to the external auditors, the Audit Committee approves the terms of engagement and reviews the annual audit plan, the Auditors' Report and results of the audit. It also recommends to the Board of Directors the firm of external auditors to be appointed by the shareholders.

The independent external auditors, KPMG LLP, have been appointed by the Board of Directors on behalf of the shareholders to express an opinion as to whether the consolidated financial statements present fairly, in all material respects, the Company's financial position, financial performance and cash flows in accordance with IFRS. The report of KPMG LLP outlines the scope of their examination and their opinion on the consolidated financial statements.

/s/ Susan L. Riddell Rose

Susan L. Riddell Rose

President &
Chief Executive Officer

/s/ William A. Hahn

William A. Hahn

Interim Chief Financial Officer &
Vice President, Finance

March 14, 2017

INDEPENDENT AUDITORS' REPORT

To the Shareholders and Board of Directors of Perpetual Energy Inc.

We have audited the accompanying consolidated financial statements of Perpetual Energy Inc., which comprise the consolidated statements of financial position as at December 31, 2016 and December 31, 2015, the consolidated statements of income (loss) and comprehensive income (loss), changes in equity and cash flows for the years then ended, and notes, comprising a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with International Financial Reporting Standards, and for such internal control as Management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by Management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of Perpetual Energy Inc. as at December 31, 2016 and December 31, 2015, and its consolidated financial performance and its consolidated cash flows for the years then ended, in accordance with International Financial Reporting Standards.

/s/ KPMG LLP

Chartered Professional Accountants
Calgary, Canada
March 14, 2017

PERPETUAL ENERGY INC.
Consolidated Statements of Financial Position

As at (*Cdn$ thousands*)	**December 31, 2016**	December 31, 2015
Assets		
Current assets		
Cash and cash equivalents	**$ 2,877**	$ 2,116
Restricted cash (note 9)	**2,000**	–
Accounts receivable (note 19)	**11,473**	19,532
Tourmaline Oil Corp. ("TOU") share investment (note 4)	**66,343**	145,275
Prepaid expenses and deposits	**990**	3,141
Fair value of derivatives (note 20)	**8,326**	2,319
	92,009	172,383
Fair value of derivatives (note 20)	**2,351**	1,411
Property, plant and equipment (note 5)	**219,886**	347,903
Exploration and evaluation (note 6)	**47,159**	56,407
Gas storage facility investment (note 7)	**–**	25,346
Total assets	**$ 361,405**	$ 603,450
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	**$ 21,257**	$ 38,621
Fair value of derivatives (note 20)	**9,221**	9,353
TOU share margin loans (note 10)	**39,953**	60,059
Gas over bitumen royalty financing (note 12)	**3,390**	2,604
Provisions (note 13)	**7,656**	1,981
	81,477	112,618
Fair value of derivatives (note 20)	**2,023**	7,395
Senior notes (note 11)	**60,120**	271,658
Gas over bitumen royalty financing (note 12)	**4,954**	7,407
Provisions (note 13)	**30,118**	157,188
Total liabilities	**178,692**	556,266
Equity		
Share capital (note 15)	**1,327,016**	1,297,911
Shares held in trust (note 17)	**(1,311)**	(1,177)
Share purchase rights (note 15)	**–**	5,290
Contributed surplus	**42,999**	38,300
Deficit	**(1,185,991)**	(1,293,140)
Total equity	**182,713**	47,184
Total liabilities and equity	**$ 361,405**	$ 603,450

Subsequent events (note 8).

Commitments (note 14).

See accompanying notes to the consolidated financial statements.

/s/ Robert A. Maitland	*/s/ Geoffrey C. Merritt*
Robert A. Maitland	**Geoffrey C. Merritt**
Director	Director

PERPETUAL ENERGY INC.
Consolidated Statements of Income (Loss) and Comprehensive Income (Loss)

	Years Ended December 31,	
	2016	2015
(Cdn$ thousands, except per share amounts)		
Revenue		
Oil and natural gas	$ **81,403**	$ 142,437
Royalties	**(9,415)**	(16,344)
	71,988	126,093
Change in fair value of derivatives (note 20)	**18,041**	(11,437)
Gas over bitumen royalty credit (note 3k)	**1,984**	3,153
	92,013	117,809
Expenses		
Production and operating	**35,019**	65,133
Transportation	**7,925**	12,058
Exploration and evaluation (note 6)	**3,790**	10,730
General and administrative	**23,064**	21,235
Gains on dispositions (notes 5 and 6)	**(27,770)**	(146,632)
Restructuring costs (note 13)	**5,638**	–
Depletion and depreciation (note 5)	**54,317**	88,364
Impairment losses (reversal) (note 5b)	**(6,900)**	23,700
Income (loss) from operating activities	**(3,070)**	43,221
Finance expenses (note 18)	**(24,847)**	(27,890)
Gain on exchange of senior notes for TOU share investment (note 11)	**81,310**	–
Change in fair value of TOU share investment (note 4)	**58,897**	(104,828)
Loss on disposition of gas storage facility investment (note 7)	**(6,165)**	–
Share of net income of gas storage facility investment (note 7)	**1,024**	223
Net income (loss) and comprehensive income (loss)	**107,149**	(89,274)
Income (loss) per share (note 15)		
Basic	$ **2.11**	$ (11.89)
Diluted	$ **1.98**	$ (11.89)

See accompanying notes to the consolidated financial statements.

PERPETUAL ENERGY INC.
Consolidated Statements of Changes in Equity

	Share capital						
	(thousands)	*($thousands)*	Shares held in trust	Share purchase rights	Contributed surplus	Deficit	Total equity
(Cdn$ thousands)							
Balance at December 31, 2015	19,115	$ 1,297,911	$ (1,177)	$ 5,290	$ 38,300	$ (1,293,140)	$ 47,184
Net income	–	–	–	–	–	107,149	107,149
Common shares issued (notes 15 and 17)	34,566	29,105	(162)	(5,290)	(1,184)	–	22,469
Change in shares held in trust (note 17)	–	–	28	–	(28)	–	–
Share based payments (note 16)	–				5,911	–	5,911
Balance at December 31, 2016	**53,681**	**$ 1,327,016**	**$ (1,311)**	**$ –**	**$ 42,999**	**$(1,185,991)**	**$ 182,713**

	Share capital							
	(thousands)	*($thousands)*	Shares held in trust	Share purchase rights	Equity component of convertible debentures	Contributed surplus	Deficit	Total equity
(Cdn$ thousands)								
Balance at December 31, 2014	7,504	$ 1,258,840	$ (1,387)	$ –	$ 3,174	$ 36,754	$ (1,191,098)	$ 106,283
Net loss	–	–	–	–	–	–	(89,274)	(89,274)
Common shares issued (notes 15 and 17)	165	1,019	1,319	5,290	–	(2,239)	(12,768)	(7,379)
Change in shares held in trust (note 17)	–	–	(1,109)	–	–	–	–	(1,109)
Share based payments (note 16)	–	–	–	–	–	3,785	–	3,785
Redemption of convertible debentures	11,446	38,052	–	–	(3,174)	–	–	34,878
Balance at December 31, 2015	19,115	$ 1,297,911	$ (1,177)	$ 5,290	$ –	$ 38,300	$ (1,293,140)	$ 47,184

See accompanying notes to the consolidated financial statements.

PERPETUAL ENERGY INC.
Consolidated Statements of Cash Flows

	Year Ended December 31,	
	2016	2015
(Cdn$ thousands)		
Cash flows from (used in) operating activities		
Net income (loss)	$ **107,149**	$ (89,274)
Adjustments to add (deduct) non-cash items:		
Depletion and depreciation (note 5)	**54,317**	88,364
Exploration and evaluation (note 6)	**2,727**	6,338
Share based payments (note 16)	**5,911**	3,774
Change in fair value of derivatives (note 20)	**(13,340)**	16,063
Change in fair value of TOU share investment (note 4)	**(58,897)**	104,828
Gains on dispositions (note 5a)	**(27,770)**	(146,632)
Finance expenses (note 18)	**10,156**	(2,756)
Restructuring costs (note 13)	**5,638**	–
Gain on exchange of senior notes for TOU share investment (note 11)	**(81,572)**	–
Share of net income from gas storage facility investment (note 7)	**(1,024)**	(223)
Loss on disposition of gas storage facility investment (note 7)	**6,165**	–
Impairment losses (reversal) (note 5)	**(6,900)**	23,700
Expenditures on decommissioning obligations (note 13)	**(3,803)**	(7,589)
Dividends from gas storage facility investment (note 7)	**501**	–
Payments of restructuring costs (note 13)	**(1,484)**	–
Change in non-cash working capital (note 19)	**(4,910)**	15,813
Net cash flows from (used in) operating activities	**(7,136)**	12,406
Cash flows from (used in) financing activities		
Change in TOU share margin loans (note 10)	**(26,613)**	60,230
Change in gas over bitumen royalty financing (note 12)	**(2,164)**	(3,704)
Shares purchased and held in trust (note 17)	**(162)**	(1,109)
Common shares issued	**22,631**	99
Change in non-cash working capital (note 19)	**216**	–
Net cash flows from (used in) financing activities	**(6,092)**	55,516
Cash flows from (used in) investing activities		
Capital expenditures	**(14,580)**	(76,341)
Acquisitions	**(12)**	(243)
Net proceeds on dispositions (note 5a)	**6,521**	23,953
Net proceeds on dispositions - marketing arrangements (note 20)	**(537)**	–
Net proceeds on sale of gas storage facility investment (note 7)	**19,703**	–
Proceeds on sale of TOU share investment (note 4)	**7,354**	8,557
Restricted cash	**(2,000)**	6,552
Change in non-cash working capital (note 19)	**(2,460)**	(39,781)
Net cash flows from (used in) investing activities	**13,989**	(77,303)
Change in cash and cash equivalents	**761**	(9,381)
Cash and cash equivalents, beginning of year	**2,116**	11,497
Cash and cash equivalents, end of year	$ **2,877**	$ 2,116

See accompanying notes to the consolidated financial statements.

1. REPORTING ENTITY

Perpetual Energy Inc. (the "Company") is a Canadian corporation engaged in the exploration, development and marketing of oil and natural gas based energy in Alberta, Canada. The Company operates a diversified asset portfolio that includes liquids-rich natural gas, shallow natural gas and conventional heavy oil producing properties, as well as undeveloped bitumen resource properties.

The address of the Company's registered office is 3200, 605 – 5 Avenue S.W., Calgary, Alberta, T2P 3H5.

The consolidated financial statements of the Company are comprised of the accounts of Perpetual Energy Inc. and its wholly owned subsidiaries: Perpetual Operating Corp., Perpetual Operating Trust, and Perpetual Energy Operating Corp, which are incorporated in Canada. On October 1, 2016, the Company disposed of all the shares in Perpetual Energy Operating Corp. (note 5).

2. BASIS OF PREPARATION

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB").

The consolidated financial statements of the Company were approved and authorized for issue by the Board of Directors on March 14, 2017.

The consolidated financial statements have been prepared on a historical cost basis except for the TOU share investment (note 4), TOU share margin loans (note 10), gas over bitumen royalty financing (note 12), derivative financial instruments (note 20) and share purchase rights (note 15) that have been measured at fair value. The consolidated financial statements are presented in Canadian dollars which is the functional currency of the Company and its subsidiaries.

a) Critical accounting judgments and significant estimates

The preparation of the consolidated financial statements in conformity with IFRS requires management to make judgments, estimates and assumptions that affect the application of accounting policies and reported amounts of assets, liabilities, revenue and expenses. These judgments, estimates, and assumptions are continuously evaluated and are based on management's experience and all relevant information available to the Company at the time of financial statement preparation. As the effect of future events cannot be determined with certainty the actual results may differ from estimates. Revisions to accounting estimates are recognized in the period in which the estimates are revised and in any future periods affected.

Information about the critical judgments and significant estimates made by management are described below and also in the relevant notes to the financial statements.

b) Critical accounting judgments:

The following are the critical judgments that management has made in the process of applying the Company's accounting policies. These judgments have the most significant effect on the amounts reported in the consolidated financial statements.

i) Cash-generating units ("CGUs")

The Company allocates its oil and natural gas properties to CGUs identified as the smallest group of assets that generate cash flows independent of the cash flows of other assets or groups of assets. Determination of the CGUs is subject to management's judgement and is based on geographical proximity, shared infrastructure, and similar exposure to market risk.

ii) Identification of impairment indicators

Judgment is required to assess when impairment indicators exist and impairment testing is required. For the purposes of determining whether impairment of petroleum and natural gas assets has occurred, and the extent of any impairment or its reversal, the key assumptions the Company uses in estimating future cash flows are forecasted petroleum and natural gas prices, expected production volumes, and anticipated recoverable quantities of proved and probable reserves. These assumptions are subject to change as new information becomes available. Changes in economic conditions can also affect the rate used to discount future cash flow estimates. Changes in the aforementioned assumptions could affect the carrying amounts of assets. Impairment charges and reversals are recognized in profit or loss.

iii) Componentization

For the purposes of depletion the Company allocates its oil and natural assets to components with similar useful lives and depletion methods. The grouping of assets is subject to management's judgment and is performed on the basis of geographical proximity and similar reserve life. The Company's oil and gas assets are depleted on a unit-of-production basis.

iv) Exploration and evaluation expenditures

Costs associated with acquiring oil and natural gas licenses and exploratory drilling are accumulated as exploration and evaluation ("E&E") assets pending determination of technical feasibility and commercial viability. Establishment of technical feasibility and commercial viability is subject to judgment and involves management's review of project economics, resource quantities, expected production techniques, production costs and required capital expenditures to confirm continued intent to develop and extract the underlying resources. Management uses the establishment of commercial reserves within the exploration area as the basis for determining technical feasibility and commercial viability. Upon determination of commercial reserves, E&E assets attributable to those reserves are tested for impairment and reclassified from E&E assets to a separate category within property, plant and equipment referred to as oil and natural gas properties.

v) Joint arrangements

Judgment is required to determine when the Company has joint control over an arrangement. In establishing joint control the Company considers whether unanimous consent is required to direct the activities that significantly affect the returns of the arrangement, such as the capital and operating activities of the arrangement.

Once joint control has been established judgment is also required to classify a joint arrangement. The type of joint arrangement is determined through analysis of the rights and obligations arising from the arrangement by considering its structure, legal form, and terms agreed upon by the parties sharing control. An arrangement where the controlling parties have rights to the assets and revenues, and obligations for the liabilities and expenses, is classified as a joint operation. Arrangements where the controlling parties have rights to the net assets of the arrangement are classified as joint ventures.

c) Significant estimates:

The following assumptions represent the key sources of estimation uncertainty at the end of the reporting period. As future confirming events occur the actual results may differ from estimated amounts.

i) Reserves

The Company uses estimates of natural gas, oil, and natural gas liquids ("NGL" or "liquids") reserves in the calculation of depletion and also for value in use ("VIU") and fair value less costs of disposal ("FVLCD") calculations of non-financial assets. Estimates of economically recoverable natural gas, oil, and liquids reserves and their future net cash flows are based upon a number of variable factors and assumptions, such as geological, geophysical, and engineering assessments of hydrocarbons in place on the Company's lands, historical production from the properties, production rates, future commodity prices, ultimate reserve recovery, timing and amount of capital expenditures, marketability of oil and natural gas, royalty rates, the assumed effects of regulation by government agencies and future operating costs. The geological, economic and technical factors used to estimate reserves may change from period to period. Changes in the reported reserves could have a material impact on the carrying values of the Company's oil and natural gas properties, the calculation of depletion and depreciation and the timing of decommissioning cash flows.

Reserve engineers are engaged at least annually to independently evaluate or review the recoverable quantities and estimated future cash flows from the Company's interest in petroleum and natural gas properties. This evaluation of proved and proved plus probable reserves is prepared in accordance with the reserve definitions contained in National Instrument 51-101 and the COGE Handbook.

ii) Provisions for decommissioning obligations

Decommissioning, abandonment, and site reclamation expenditures for production facilities, wells and pipelines are expected to be incurred by the Company over many years into the future. Amounts recorded for decommissioning obligations and the associated accretion are calculated based on estimates of the extent and timing of decommissioning activities, future site remediation regulations and technologies, inflation, liability specific discount rates and related cash flows. The provision represents management's best estimate of the present value of the future abandonment and reclamation costs required. Actual abandonment and reclamation costs could be materially different from estimated amounts.

iii) Derivative financial instruments

Derivatives are measured at fair value on each reporting date. Fair value is the price that would be received or paid to exit the position as of the measurement date. The Company uses estimated external forward market price curves available at period end and the contracted volumes over the contracted term to determine the fair value of each contract. Changes in market pricing between period end and settlement of the derivative contracts could have a material impact on financial results related to the derivatives.

iv) Gas over bitumen royalty financing

The gas over bitumen royalty financing is measured at fair value on each reporting date. Fair value is the price that would be paid to exit the position as of the measurement date.

The fair value of the gas over bitumen royalty financing is estimated by discounting future cash payments based on the forecasted Alberta gas reference price multiplied by the contracted deemed volume. Changes in market pricing between period end and settlement could have a material impact on financial results related to the gas over bitumen royalty financing.

v) TOU share margin loans

The fair value of the TOU share margin loans are estimated using market pricing for identical financial instruments adjusted for provisions specific to the contract such as the maximum repayment amount and the notional amount of shares pledged as security. Changes in the market pricing of the shares could have a material impact on the valuation of TOU share margin loans.

3. SIGNIFICANT ACCOUNTING POLICIES

The accounting policies set out below have been applied consistently to all periods presented in these annual consolidated financial statements, and have been applied consistently by the Company, its subsidiaries, and its equity accounted gas storage facility investment.

a) Basis of consolidation

i) Subsidiaries

Subsidiaries are entities controlled by the Company. Control exists when the Company has the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities. In assessing control, potential voting rights that are currently exercisable are taken into account. The financial statements of subsidiaries are included in the consolidated financial statements from the date that control commences until the date that control ceases.

ii) Business combinations

The acquisition method of accounting is used to account for acquisitions of subsidiaries and assets that meet the definition of a business under IFRS. The cost of an acquisition is measured as the fair value of the assets given, equity instruments issued and liabilities incurred or assumed at the date of acquisition of control. Identifiable assets acquired and liabilities assumed in a business combination are measured at their recognized amounts (generally fair value) at the acquisition date. The excess of the cost of acquisition over the recognized amounts of the identifiable assets acquired and liabilities assumed is recorded as goodwill. If the cost of acquisition is less than the recognized amount of the net assets acquired, the difference is recognized as a bargain purchase gain in net income or loss.

iii) Joint venture

The Company's investment in Warwick Gas Storage Limited Partnership ("WGS LP") was structured through a separate vehicle whereby joint control was established and the contractual arrangement provided the parties with rights to the net assets of WGS LP. The Company's investment in WGS LP was accounted for as an investment in a jointly controlled entity using the equity-method of accounting.

On initial recognition of the investment, any excess of the Company's share of the fair value of WGS LP's net assets over the cost of the investment was included in the determination of the Company's share of WGS LP's profit or losses. The Company's share of WGS LP's profits or losses were recognized in net income or loss. Appropriate adjustments to the Company's share of WGS LP profits or losses were also made to account for depreciation of assets based on their fair values at the date of initial recognition. Dividends receivable were recognized as a reduction to the carrying amount of the investment and were included in cash flows from operating activities.

An impairment loss in respect of an equity-method accounted investee is measured by comparing the recoverable amount of the investment with its carrying amount. An impairment loss is recognized in profit or loss, and is reversed if there is a favorable change in the estimates used to determine the recoverable amount.

iv) Joint operations

Many of the Company's oil and natural gas activities involve jointly controlled operations which are not conducted through a separate vehicle. The consolidated financial statements include the Company's proportionate share of these jointly controlled assets, liabilities, revenues and expenses.

v) Transactions eliminated on consolidation

Intercompany balances and transactions, and any unrealized income and expenses arising from intercompany transactions, are eliminated in preparing the consolidated financial statements.

b) Financial instruments

Financial instruments are initially recognized at fair value on the statement of financial position. Subsequent measurement of financial instruments is based on their initial classification into one of the following categories: financial assets and liabilities measured at fair value through profit or loss, loans and receivables, held to maturity investments, available-for-sale financial assets, or other financial liabilities.

Financial instruments presented in the statement of financial position are shown net of offsetting assets or liabilities where the arrangement provides or the legal right and intention for net settlement exists.

i) Financial assets

Financial Instrument	Category	Subsequent Measurement
Accounts receivable	Loans and receivables	Amortized cost
TOU share investment	Financial assets	Fair value through profit or loss

The Company's accounts receivable are initially recognized on the date they originate and are measured at amortized cost using the effective interest method, less any impairment losses.

The TOU share investment is a non-derivative financial instrument measured at fair value through profit or loss ("FVTPL") as the Company manages such investments and makes decisions based on their fair value in accordance with the Company's risk management or investment strategy.

ii) Financial liabilities

Financial Instrument	Category	Subsequent Measurement
Accounts payable and accrued liabilities	Financial liabilities	Amortized cost
Bank indebtedness	Financial liabilities	Amortized cost
Senior notes	Financial liabilities	Amortized cost
Gas over bitumen royalty financing	Financial liabilities	Fair value through profit or loss
TOU share margin loans	Financial liabilities	Fair value through profit or loss

Accounts payable and accrued liabilities, bank indebtedness and senior notes are recognized initially at fair value and are subsequently measured at amortized cost using the effective interest method.

iii) Derivative assets and liabilities

The Company has entered into certain financial derivative contracts in order to manage the exposure to market risks from fluctuations in commodity prices and currency rates. The Company has not designated its financial derivative contracts as effective accounting hedges, and thus not applied hedge accounting, even though the Company considers all commodity and currency contracts to be economic hedges. As a result, all financial derivative contracts are designated as fair value through profit or loss and recorded as derivatives on the statement of financial position at fair value. Changes in the fair value of the commodity price and currency rate derivatives are recognized in net income or loss.

The Company has accounted for its forward physical delivery fixed-price sales contracts as derivative financial instruments. Accordingly, such forward physical delivery fixed-price sales contracts are designated as fair value through profit or loss and recorded as derivatives on the statement of financial position at fair value.

Transaction costs on derivatives are recognized in net income or loss when incurred.

Embedded derivatives are separated from the host contract and accounted for separately if the economic characteristics and risks of the host contract and the embedded derivative are not closely related, a separate instrument with the same terms as the embedded derivative would meet the definition of a derivative and the combined instrument is not measured at fair value through profit or loss. Changes in the fair value of separable embedded derivatives are recognized immediately in net income or loss.

iv) Share capital

Incremental costs directly attributable to the issue of common shares and share options are recognized as a deduction from equity, net of any tax effects.

c) Property, plant and equipment

i) Production and development costs

Items of property, plant and equipment, which include oil and natural gas development and production assets, are measured at cost less accumulated depletion and depreciation and accumulated impairment losses. The initial cost of property, plant and equipment includes the purchase price or construction costs, costs that are directly attributable to bringing the asset into commercial operations, the initial estimate of decommissioning costs, and borrowing costs for qualifying assets.

Significant parts of an item of property, plant and equipment, including oil and natural gas properties, that have different useful lives from the life of the area or facility in general, are accounted for as separate items.

Gains and losses on disposition of an item of property, plant and equipment, including oil and natural gas properties, are determined by comparing the proceeds from disposition with the carrying amount of property, plant and equipment and are recognized in net income or loss. The carrying amount of any replaced or disposed item of property, plant and equipment is derecognized.

ii) Subsequent costs

Costs incurred subsequent to the determination of technical feasibility and commercial viability and the costs of replacing parts of property, plant and equipment are recognized as property, plant and equipment only when they increase the future economic benefits embodied in the specific asset to which they relate. All other expenditures are recognized in net income or loss as incurred. Such capitalized property, plant and equipment generally represent costs incurred in developing proved and/or probable reserves and bringing on or enhancing production from such reserves, and are accumulated on a field or geotechnical area basis. The costs of the day-to-day servicing of property, plant and equipment are recognized in net income or loss as incurred.

iii) Depletion and depreciation

The net carrying amount of development or production assets is depleted using the unit-of-production method by reference to the ratio of production in the period to the related proved and probable reserves, taking into account estimated future development costs necessary to bring those reserves into production and future decommissioning costs. Future development and decommissioning costs are estimated taking into account the level of development required to produce the reserves. The future development cost estimates are reviewed by independent reserve engineers at least annually.

Costs associated with office furniture, information technology, and leasehold improvements are carried at cost and are depreciated on a straight line basis over a period ranging from one to three years.

Costs associated with abandonment equipment and turnaround equipment at major facilities are carried at cost and are depreciated on a straight line basis over a period ranging from five to seven years.

Depreciation methods, useful lives and residual values are reviewed at each period end date for all classes of property, plant, and equipment.

d) Exploration and evaluation expenditures

Pre-license costs, geological and geophysical costs and lease rentals of undeveloped properties are recognized in net income or loss as incurred.

E&E costs, consisting of the costs of acquiring oil and natural gas licenses, are capitalized initially as E&E assets according to the nature of the assets acquired. Costs associated with drilling exploratory wells in an undeveloped area are capitalized as E&E costs. The costs are accumulated in cost centers by well, field or exploration area pending determination of technical feasibility and commercial viability. When technical feasibility and commercial viability are determined, the relevant expenditure is transferred to oil and gas properties after impairment is assessed and any applicable impairment loss is recognized in net income or loss.

The Company's E&E assets consist of undeveloped land, exploratory drilling assets, and bitumen evaluation assets. Gains and losses on disposition of E&E assets are determined by comparing the proceeds from disposition with the carrying amount and are recognized in net income or loss.

e) Assets held for sale

Non-current assets, or disposal groups consisting of assets and liabilities ("disposal groups"), are classified as held for sale if their carrying amounts will be recovered principally through a sale transaction rather than through continuing use. Assets and liabilities qualifying as held for sale must be available for immediate sale in their present condition subject to normal terms and conditions and their sale must be highly probable.

Non-current assets, or disposal groups, are measured at the lower of the carrying amount and fair value less costs of disposal, with impairments recognized in net income or loss. Non-current assets or disposal groups held for sale are presented in current assets and liabilities within the statement of financial position. Assets held for sale are not subject to depletion and depreciation.

f) Impairment

i) Financial assets

Financial assets are assessed at each period end date to determine whether there is any objective evidence that they are impaired. A financial asset is considered to be impaired if objective evidence indicates that one or more events have had a negative effect on the estimated future cash flows of that asset.

An impairment loss in respect of a financial asset measured at amortized cost is calculated as the difference between its carrying amount and the present value of the estimated future cash flows discounted at the original effective interest rate.

Individually significant financial assets are tested for impairment on an individual basis. The remaining financial assets are assessed collectively in groups that share similar credit risk characteristics.

All impairment losses are recognized in net income or loss. An impairment loss is reversed when there is objective evidence that the value of the financial asset has been partially or fully restored. For financial assets measured at amortized cost the reversal is recognized in net income or loss.

ii) Non-financial assets

The carrying amounts of the Company's non-financial assets, other than E&E assets, are reviewed at each period end date to determine whether there is any indication of impairment. If any such indication exists, then the asset's recoverable amount is estimated. E&E assets are assessed for impairment when they are reclassified to property, plant and equipment, as oil and natural gas properties, and also if facts and circumstances suggest that the carrying amount exceeds the recoverable amount.

For the purpose of impairment testing, assets are grouped together at a CGU level. The recoverable amount of an asset or a CGU is determined based on the higher of its FVLCD and its VIU. FVLCD is determined as the amount that would be obtained from the sale of a CGU in an arm's length transaction between knowledgeable and willing parties. The FVLCD of oil and gas properties is generally determined as the net present value of estimated future cash flows expected to arise from the continued use of the CGU and its eventual disposition, using assumptions that an independent market participant may take into account. These cash flows are discounted by an appropriate discount rate which would be applied by such a market participant to arrive at a net present value of the CGU. In determining value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. VIU is generally determined by reference to the present value of the future cash flows expected to be derived from production of proved and probable reserves.

E&E assets are assessed for impairment both at the time of any triggering facts and circumstances as well as upon their eventual reclassification to oil and natural gas properties in property, plant and equipment. If a test is required as a result of triggering facts and circumstances, the Company considers whether the combined recoverable amount of oil and natural gas properties and E&E assets at the total company level is sufficient to cover the combined carrying value of E&E and oil and natural gas assets.

An impairment loss is recognized if the carrying amount of an asset or its CGU, including the related decommissioning obligation, exceeds its estimated recoverable amount. Impairment losses recognized in respect of CGUs are allocated to reduce the carrying amount of assets in the unit (group of units) on a pro rata basis. Impairment losses are recognized in net income or loss.

In respect of other assets, impairment losses recognized in prior years are assessed at each period end date for any indication that the loss has decreased or no longer exists. An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount. An impairment loss is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depletion and depreciation, if no impairment loss had been recognized.

g) Shares held in trust

The Company has a compensation program whereby employees may be entitled to receive shares of the Company purchased on the open market by a trustee controlled by the Company. Shares acquired and held by the trustee for the benefit of employees that have not yet been issued to employees are presented as a separate category of equity. The balance of shares held in trust represents the cumulative cost of shares held by the trustee. Upon the issuance of shares to the employee, the amount attributable to an employee is deducted from the balance of shares held in trust and transferred to contributed surplus.

h) Share based payments

Awards granted under share based payment plans and agreements are equity-settled and are measured at grant-date fair value. Fair values are determined by means of an option pricing model using the exercise price of the equity instrument granted, the share price at the grant date, the expected life of the grant based on the vesting date and expiry date, estimates of volatility and interest rates over its expected life. A forfeiture rate is estimated on the grant date and is subsequently adjusted to reflect the actual number of options that vest.

The costs of the equity-settled share based payments are recognized within general and administrative expenses, or property, plant and equipment to the extent they are directly attributable, with a corresponding increase in contributed surplus over the vesting period. Upon exercise or settlement of an equity-based instrument, consideration received and associated amounts previously recorded in contributed surplus are recorded to share capital.

i) Flow-through shares

Periodically, the Company finances a portion of its exploration and development activities through the issuance of flow through shares. Resource expenditure deductions for income tax purposes related to exploratory development activities funded by flow-through share arrangements are renounced to investors in accordance with tax legislation. Flow-through shares issued are recorded in share capital at the fair value of common shares on the date of issue. The premium received on issuing flow-through shares is initially recorded as a deferred liability. As qualifying expenditures are incurred, the premium is reversed and a deferred income tax liability is recorded. The net amount is then recognized as deferred income tax expense.

j) Provisions

Provisions are recognized when the Company has a current legal or constructive obligation as a result of a past event, which can be reliably estimated, and will require the outflow of economic resources to settle the obligation. A non-current provision is determined using the estimated future cash flows discounted at a rate that reflects current market conditions and liability specific risks.

i) Decommissioning obligations

The Company's activities give rise to dismantling, decommissioning and site disturbance remediation activities. A provision is made for the estimated cost of site restoration and capitalized in the relevant asset category.

Decommissioning obligations are measured at the present value of management's estimate of expenditures required to settle the present obligation at the statement of financial position date and using a risk free interest rate not adjusted for credit risk. Subsequent to the initial measurement, the obligation is adjusted at the end of each period to reflect the passage of time, changes in the estimated future cash flows underlying the obligation and changes in the risk free rate. The accretion of the provision due to the passage of time is recognized in net income or loss whereas changes in the provision arising from changes in estimated cash flows or changes in the risk free rate are capitalized. Actual costs incurred upon settlement of the decommissioning obligations are charged against the provision to the extent the provision was established.

ii) Restructuring provisions

Restructuring provisions are recognized when the Company has developed a detailed formal plan for restructuring and has announced the plan's main features to those affected by it. The measurement of a restructuring provision includes only the direct expenditures arising from the restructuring, which are those amounts that are not associated with the ongoing activities of the Company.

A provision for onerous contracts is recognized when the expected benefits to be derived by the Company from a contract are lower than the unavoidable cost of meeting its obligations under the contract. The provision is measured at the lower of the expected cost of terminating the contract and the expected net cost of continuing with the contract.

A provision for employee downsizing costs is recognized when the Company has announced the restructuring plan to those affected by it, and can no longer withdraw the offer of those benefits. The provision is measured on initial recognition at the Company's best estimate of the expenditure required to settle the obligation.

k) Revenue

Revenue and royalty expense from the sale of oil and natural gas is recorded when the significant risks and rewards of ownership of the product are transferred to the buyer which is usually when legal title passes to the external party. This is generally at the time product enters a third party transmission pipeline.

Royalty income is recognized as it accrues in accordance with the terms of the overriding royalty agreements.

The Company's entitlement to gas over bitumen royalty adjustments under the Natural Gas Royalty Regulation (2004) with respect to foregone production (deemed production) from gas wells shut-in for the benefit of bitumen producers in the Athabasca oil sands area, is recognized as gas over bitumen revenue in the period that deemed production occurs, to the extent that they are expected to be recovered through gas Crown royalties otherwise payable.

l) Income tax

Income tax expense comprises current and deferred components. Income tax expense is recognized in net income or loss except to the extent that it relates to items recognized directly in equity, in which case it is recognized in equity.

Current tax is the expected tax payable on the taxable income for the year, using tax rates enacted or substantively enacted at the period end date, and any adjustment to tax payable in respect of previous years.

Deferred tax is recognized in respect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for taxation purposes. Deferred tax is not recognized on the initial recognition of assets or liabilities in a transaction that is not a business combination. In addition, deferred tax is not recognized for taxable temporary differences arising on the initial recognition of goodwill. Deferred tax is measured at the tax rates that are expected to be applied to temporary differences when they reverse, based on the laws that have been enacted or substantively enacted by the period end date. Deferred tax assets and liabilities are offset if there is a legally enforceable right to offset, and they relate to income taxes levied by the same tax authority on the same taxable entity, or on different tax entities, but they intend to settle current tax liabilities and assets on a net basis or their tax assets and liabilities will be realized simultaneously.

A deferred tax asset is recognized to the extent that it is probable that future taxable profits will be available against which the temporary difference can be utilized. Deferred tax assets are reviewed at each period end date and are reduced to the extent that it is no longer probable that the related tax benefit will be realized.

m) Income or loss per share amounts

Basic income or loss per share is calculated by dividing the net income or loss by the weighted average number of common shares outstanding during the period. For the dilutive net income or loss per share calculation, the weighted average number of shares outstanding is adjusted for the potential number of shares which may have a dilutive effect on net income or loss.

Diluted income or loss per share is calculated giving effect to the potential dilution that would occur if outstanding Share Options, Restricted Rights, or Performance Share Units, were exercised or converted into common shares. The weighted average number of diluted shares is calculated in accordance with the treasury stock method for Share Options, Restricted Rights and Performance Share Units and the if-converted method for potentially issuable common shares through the convertible debentures. The treasury stock method assumes that the proceeds received from the exercise of all potentially dilutive instruments are used to repurchase common shares at the average market price. The if-converted method assumes conversion of convertible securities at the beginning of the reporting period.

n) Recent pronouncements issued

The Company will be required to adopt the following new standards and amendments as issued by the IASB. The Company is currently evaluating the impact on the consolidated financial statements as discussed below.

i) In April 2016, the IASB issued its final amendments to IFRS 15, "Revenue from Contracts with Customers", which replaces IAS 18 "Revenue", IAS 11 "Construction Contracts", and related interpretations. IFRS 15 provides a single, principles-based five-step model to be applied to all contracts with customers. The standard requires an entity to recognize revenue to reflect the transfer of goods and services for the amount it expects to receive, when control is transferred to the purchaser. Disclosure requirements have also been expanded. The standard is required to be adopted either retrospectively or using a modified retrospective approach for annual periods beginning on or after January 1, 2018, with earlier adoption permitted. IFRS 15 will be applied by Perpetual on January 1, 2018. The Company is currently in the process of reviewing its various revenue streams and underlying contracts with customers to determine the impact, if any, that the adoption of IFRS 15 will have on its financial statements, as well as the impact that adoption of the standard will have on disclosure.

ii) In July 2014, the IASB completed the final elements of IFRS 9, "Financial Instruments". The standard supersedes earlier versions of IFRS 9 and completes the IASB's project to replace IAS 39 "Financial Instruments: Recognition and Measurement". IFRS 9 introduces a single approach to determine whether a financial asset is measured at amortized cost or fair value and replaces the multiple rules in IAS 39. The approach is based on how an entity manages its financial instruments in the context of its business model and the contractual cash flow characteristics of the financial assets. For financial liabilities, IFRS 9 retains most of the requirements of IAS 39; however, where the fair value option is applied to financial liabilities, any change in fair value resulting from an entity's own credit risk is recorded in OCI rather than the statement of income, unless this creates an accounting mismatch. In addition, IFRS 9 introduces a new expected credit loss model for calculating impairment of financial assets, replacing the incurred loss impairment model required by IAS 39. Perpetual does not anticipate that the new impairment model will result in material changes to the valuation of its financial assets on adoption of IFRS 9. IFRS 9 also contains a new model to be used for hedge accounting. The Company does not currently apply hedge accounting to its risk management contracts and does not currently intend to apply hedge accounting to any of its existing risk management contracts on adoption of IFRS 9. The standard will come into effect for annual periods beginning on or after January 1, 2018, with earlier adoption permitted. IFRS 9 will be applied on a retrospective basis by Perpetual on January 1, 2018.

iii) IFRS 16, "Leases" was issued in January 2016 and replaces IAS 17 "Leases". Under the new standard, a single recognition and measurement model for leases is introduced which would require the recognition of most leases with a term greater than twelve months on the statement of financial position. The new standard is effective for annual periods beginning on or after January 1, 2019. Early adoption is permitted for entities that apply IFRS 15 "Revenue from Contracts with Customers" at or before the initial adoption date of January 1, 2018. IFRS 16 will be applied by Perpetual on January 1, 2019 and the Company is currently evaluating the impact of the standard on the financial statements.

4. TOU SHARE INVESTMENT

	December 31, 2016		December 31, 2015	
	Shares *(thousands)*	**Amount *($thousands)***	Shares *(thousands)*	Amount *($thousands)*
Balance, beginning of year	**$ 6,500**	**$ 145,275**	$ –	$ –
Acquired in sale of west Edson assets (note 5a)	**–**	**–**	6,750	258,660
Sold	**(250)**	**(7,354)**	(250)	(8,557)
Exchange for senior notes (note 11)	**(4,403)**	**(130,475)**	–	–
Unrealized change in fair value	**–**	**58,897**	–	(104,828)
Balance, end of year	**$ 1,847**	**$ 66,343**	$ 6,500	$ 145,275

On April 1, 2015, the Company received 6.75 million common shares of Tourmaline Oil Corp. ("TOU"), valued at $258.7 million in exchange for the Company's West Edson asset (note 5a).

TOU is engaged in the acquisition, exploration, development and production of petroleum and natural gas properties situated in western Canada. TOU shares are listed on the Toronto Stock Exchange under the trading symbol "TOU".

During the second quarter of 2016, 4.4 million TOU shares valued at $130.5 million were exchanged for the Company's senior notes (note 11).

At December 31, 2016, the Company held 1.85 million (December 31, 2015 – 6.5 million) TOU shares with a fair market value of $66.3 million (December 31, 2015 - $145.3 million) based on a December 31, 2016 closing price of $35.91 per share (December 31, 2015 - $22.35). Net income for the year ended December 31, 2016 includes an unrealized gain of $58.9 million (2015 – loss of $104.8 million) representing the change in fair value of TOU shares held during the year.

Subsequent to December 31, 2016, the Company sold 180,000 TOU shares for net cash proceeds of $5.7 million (note 10).

At December 31, 2016, 1.5 million TOU shares (December 31, 2015 – 6.5 million TOU shares) were pledged as security for the TOU share margin loans (note 10).

As at December 31, 2016, a $1.00 per share increase in the market price of TOU shares would increase the Company's after tax net income by $1.8 million. The TOU share margin loans detailed in note 10 include put options that effectively protect the Company from potential TOU share price decreases on 0.84 million TOU shares below $27.72 per share and 0.65 million TOU shares below $27.38 per share.

5. PROPERTY, PLANT AND EQUIPMENT

	Oil and Gas Properties	Corporate Assets	Total
Cost			
December 31, 2014	$ 2,633,900	$ 7,021	$ 2,640,921
Additions	69,086	69	69,155
Non-monetary additions	3,700	–	3,700
Change in decommissioning obligations (note 13)	(58,313)	–	(58,313)
Transfers from exploration and evaluation (note 6)	692	–	692
Acquisitions	3	–	3
Dispositions	(218,500)	–	(218,500)
December 31, 2015	2,430,568	7,090	2,437,658
Additions	14,170	92	14,262
Change in decommissioning obligations (note 13)	5,213	–	5,213
Dispositions	(1,838,905)	–	(1,838,905)
December 31, 2016	**$ 611,046**	**$ 7,182**	**$ 618,228**
Accumulated depletion, depreciation and impairment losses			
December 31, 2014	$ (2,072,642)	$ (6,323)	$ (2,078,965)
Depletion and depreciation	(88,067)	(297)	(88,364)
Dispositions	105,096	–	105,096
Impairment	(27,522)	–	(27,522)
December 31, 2015	(2,083,135)	(6,620)	(2,089,755)
Depletion and depreciation	(54,034)	(283)	(54,317)
Dispositions	1,738,830	–	1,738,830
Impairment reversal	6,900	–	6,900
December 31, 2016	**$ (391,439)**	**$ (6,903)**	**$ (398,342)**
Carrying amount			
December 31, 2015	$ 347,433	$ 470	$ 347,903
December 31, 2016	**$ 219,607**	**$ 279**	**$ 219,886**

At December 31, 2016, property, plant and equipment included $1.4 million (December 31, 2015 – $6.1 million) of costs currently not subject to depletion.

Future development costs for the year ended December 31, 2016 of $367.6 million (December 31, 2015 - $458.7 million) were included in the depletion calculation.

a) Dispositions

	Year ended December 31,	
	2016	2015
Net cash proceeds	**$ 6,521**	$ 23,953
Non-cash proceeds	**–**	268,240
Property, plant and equipment after net accumulated DD&A	**(100,075)**	(113,404)
Exploration and evaluation (note 6)	**(6,851)**	(34,096)
Decommissioning obligations (note 13)	**129,602**	1,939
Marketing arrangements related to shallow gas property disposition	**(3,184)**	–
Realized/unrealized changes to retained marketing arrangements	**1,757**	–
Gain on dispositions	**$ 27,770**	$ 146,632

During the year ended December 31, 2016, the Company received net cash proceeds of $6.5 million (2015 - $24.0 million) from dispositions which were attributed to certain oil sands leases, non-core undeveloped lands, seismic data and idle production equipment.

On October 1, 2016, the Company disposed of a significant portion of the Company's shallow gas properties in east central and northeast Alberta (the "Shallow Gas Properties") for nominal cash consideration and the assumption of $128.0 million of decommissioning obligations associated with the Shallow Gas Properties, resulting in a gain on disposition of $19.2 million. In addition, the transaction included marketing arrangements (described below) whereby the Company will receive additional consideration to the extent natural gas average monthly AECO prices exceed $2.81/GJ on 33,611 GJ/d through to August 31, 2018. Additionally, the Company has retained price exposure on 33,611 GJ/d to the extent average monthly AECO prices fall below $2.58/GJ for the April 2018 through August 2018 period.

Realized and unrealized gains and losses on these marketing arrangements are recognized as adjustments to gains/losses on dispositions. During the fourth quarter, $1.8 million of realized and unrealized net gains were recorded with respect to these arrangements.

At December 31, 2016, the retained shallow gas marketing arrangements has been summarized as follows:

Term	Volumes at AECO *(GJ/d)*	Floor price *($CAD/GJ)*	Ceiling price *($CAD/GJ)*	Fair Value *($CAD thousands)*
January 2017 – August 2018	33,611	–	2.81	4,811
April 2018 – August 2018	33,611	2.58	–	(1,002)

On April 1, 2015, the Company sold its joint interest share in its West Edson assets in West Central Alberta in exchange for 6.75 million TOU shares. Non-monetary gross proceeds of $258.7 million were calculated based on the market value of the TOU shares determined using the April 1, 2015 closing price on the Toronto Stock Exchange.

The Company undertook additional property transactions throughout 2015 including the disposition of certain fee simple lands in east central Alberta and related seismic data, for net cash proceeds of $21.0 million. The Company also disposed of its interest in certain non-core undeveloped lands for cash proceeds of $1.2 million and executed an asset swap to acquire an increased interest in existing reserves as well as undeveloped acreage in its core East Edson property in exchange for its working interest in certain undeveloped lands and net cash proceeds of $1.8 million.

b) Cash-generating units, impairments and reversals

For the year ended December 31, 2016, the Company conducted an assessment of impairment indicators for the Company's CGUs. In performing the review, management determined that the disposition of the Shallow Gas Properties justified calculation of the recoverable amount of the Athabasca CGUs (renamed Northern CGU). In addition, technical revisions to Mannville heavy oil reserves related to improved recovery methods along with realized lower operating and capital efficiencies justified a review for impairment reversals for the Birchwavy East CGU (renamed Eastern CGU). The Company determined the recoverable amount of Northern and Eastern CGUs using VIU based on the net present value of cash flows from oil, natural gas, and NGL reserves using estimates of total proved plus probable reserves evaluated or reviewed by the Company's independent reserves evaluators along with the associated year-end commodity price forecast, and an estimate of market discount rates between 12 and 20 percent to consider risks specific to the asset.

At December 31, 2016, the Company recorded a net impairment reversal of $6.9 million to net income which was comprised of the following:

- The Company determined that the carrying amount of the Northern CGU exceeded the recoverable amounts. Accordingly, an impairment charge of $5.8 million was included in net income; and
- The Company determined that the recoverable amount of the Eastern CGU exceeded its carrying amount by $15.9 million; accordingly, a reversal of $12.7 million was recognized in net income representing the full reversal of previously recorded impairments adjusted for depletion.

The independent reserves evaluator's commodity price estimates were used in the VIU calculations as at December 31, 2016:

Year	WTI Crude Oil *(US$/bbl)*	USD/CDN exchange rate *(US$/Cdn$)*	Alberta heavy crude oil *(Cdn$/bbl)*	AECO natural gas *(Cdn$/mmbtu)*
2017	55.00	0.75	46.50	3.40
2018	58.70	0.78	50.50	3.15
2019	62.40	0.80	54.00	3.30
2020	69.00	0.83	58.00	3.60
2021	75.80	0.85	61.90	3.90
2022	77.30	0.85	63.10	3.95
2023	78.80	0.85	64.40	4.10
2024	80.40	0.85	65.60	4.25
2025	82.00	0.85	67.00	4.30
2026	83.70	0.85	68.40	4.40
2027	85.30	0.85	69.60	4.50
2028	87.00	0.85	71.10	4.60
2029	88.80	0.85	72.50	4.65
2030	90.60	0.85	74.00	4.75
2031	92.40	0.85	75.40	4.85

Escalate 2.0 percent per year thereafter

At December 31, 2015, management determined that the recent declines in commodity pricing and the impact these declines have on the economic performance of the Company justified calculation of the recoverable amount for all CGUs. The Company determined that the carrying amount of the Birchwavy East and Birchwavy West CGUs exceeded their recoverable amounts using similar methodology, sources of inputs and discount rates as were used at December 31, 2016. Accordingly, an impairment charge of $9.0 million was included in net income. 2015 impairment losses also included $14.7 million related to de-recognition of the Company's gas over bitumen CGU, comprised of $18.5 million related to the carrying amount of property, plant and equipment offset by a $3.8 million reduction of the gas over bitumen provision for estimated future repayments of gas over bitumen credits received.

6. EXPLORATION AND EVALUATION

	2016	2015
Balance, beginning of year	**$ 56,407**	$ 84,227
Additions	**318**	7,186
Acquisitions	**12**	240
Dispositions (note 5a)	**(6,851)**	(34,096)
Non-cash exploration and evaluation expense	**(2,727)**	(6,338)
Non-monetary additions	**–**	5,880
Transfers to property, plant and equipment (note 5)	**–**	(692)
Balance, end of year	**$ 47,159**	$ 56,407

During the year ended December 31, 2016, the Company disposed of $6.9 million in undeveloped lands mainly in connection with the disposition of the Shallow Gas Properties (note 5a).

During the year ended December 31, 2016, $1.1 million (2015 – $4.4 million) in costs were charged directly to E&E expense in net income (loss).

7. GAS STORAGE FACILITY INVESTMENT

The Company owned a 30 percent partnership interest in the WGS LP gas storage facility located in Alberta, Canada that was accounted for using the equity-method.

On May 25, 2016, the Company disposed of its interest in WGS LP for net cash proceeds of $19.7 million, resulting in a net loss on disposition of $6.2 million.

Prior to the disposition, transactions between the Company and WGS LP totaled $0.6 million in 2016 (2015 - $1.6 million) consisting primarily of fees earned for the provision of management and operational services. This service agreement between the Company and WGS LP was terminated concurrent with the disposition. The Company received dividends of $0.5 million which were declared and received by WGS LP prior to the disposition (2015 - nil).

Summary financial information for the Company's equity method gas storage facility investment is as follows:

For the period ended	**May 25, 2016**	December 31, 2015
Revenue	**$ 6,756**	$ 10,251
Depreciation	**(1,398)**	(3,440)
Other expenses	**(2,511)**	(9,881)
Unrealized gain (loss) on gas storage obligation derivative	**623**	4,023
Net income (loss)	**3,470**	953
Share of net income (loss)	**1,041**	286
Amortization of fair value adjustment on acquisition of interest in WGS LP	**(17)**	(63)
Share of net income (loss) of equity method investment	**$ 1,024**	$ 223

8. CAPITAL MANAGEMENT

The Company's goal is to maintain a strong capital base so as to retain investor, creditor and market confidence and to support the execution of the Company's business plan. The Company manages its capital structure and makes adjustments to its capital spending in light of changes in economic conditions and the risk characteristics of its underlying oil and natural gas assets. The Company considers its capital structure to include share capital, senior notes, bank indebtedness, TOU share margin loans and net working capital (note 9), with value and liquidity enhanced through the current ownership of TOU shares.

With the deterioration of commodity prices continuing in 2016, the Company was focused on liquidity management and preservation of its balance sheet by restricting capital spending, reducing costs and maximizing efficiencies in administration and operations. A diligent focus on reductions in all areas of spending, including operating, financing and administrative costs, will continue in order to establish a sustainable cost structure in this low commodity price environment.
At December 31, 2016, the majority of the Company's debt is in the form of senior notes with maturities in 2018 and 2019. Obligations which will require settlement or extension in 2017 include the reserve based credit facility on April 28, 2017 and two TOU share margin loans maturing March 14, 2017 and November 16, 2017 which can be repaid in cash or through settlement with the TOU shares pledged as security.

Subsequent to December 31, 2016, the Company completed a number of financing transactions to strengthen Perpetual's liquidity and debt repayment profile and secure funding for the Company's 2017 and 2018 business plan. The significant financing transactions are as follows:

- Partial repayment and refinancing of its existing TOU share put option margin loan previously maturing in March 2017, reducing the loan amount outstanding to $18.9 million, extending the maturity to August 1, 2017 and increasing the number of shares pledged as collateral to 0.9 million TOU shares, with a new floor price on these shares of $21.14 per TOU share (note 10);
- Exchange of $17.4 million aggregate principal amount of its existing senior notes maturing in 2018 and 2019 for new 8.75% senior notes having an extended maturity date of January 23, 2022 (the "2022 Senior Notes") (note 11);

- Establishment of a $45 million second lien senior secured term loan facility (the "Second Lien Facility") bearing annual interest at 8.1 percent and maturing March 14, 2021. The initial draw on the Second Lien facility was $35 million with the remaining $10 million to be drawn prior to November 30, 2017. In addition, for no additional consideration, 5.4 million warrants were issued which entitle the holder to acquire common shares on a one for one basis for a period of up to three years, at an exercise price of $2.34 per share, equal to a 45 percent premium to the volume weighted average trading price of the common shares for the ten trading days prior to the date of issue of the warrants on March 14, 2017;
- Issuance of 5.1 million common shares and 1.1 million warrants to purchase common shares on the same terms and conditions as above (collectively, the "Equity Units") at $1.75 per Equity Unit for aggregate gross proceeds of $9 million. Included in the issuance were 1.6 million common shares and 0.4 million warrants issued to directors and officers of the Company or entities controlled by them, for proceeds of $2.9 million (note 15);
- Extension of the Company's current bank lending arrangements to October 31, 2017, while providing for a $14 million increase in total borrowing capacity under the credit facility to $20 million (note 9); and
- Issuance of a notice for the early redemption of all of the $27.6 million aggregate outstanding principal amount of its 8.75% senior notes maturing March 15, 2018, effective April 15, 2017. The redemption amount payable will be either: CDN $1,000 for each $1,000 principal amount of 2018 Senior Notes; or at the election of an eligible holder and subject to the limitations described in the notice, $1,000 principal amount of 2022 Senior Notes for each $1,000 principal amount of 2018 Senior Notes.

The Company will continue to regularly assess changes to its capital structure and repayment alternatives, with considerations for both short term liquidity and longer term financial sustainability.

9. BANK INDEBTEDNESS

As at December 31, 2016, the Company had a reserve based, revolving credit facility (the "Credit Facility") with a borrowing limit (the "Borrowing Limit") of $6.0 million (2015 - $20.0 million) under which $4.0 million of letters of credit had been drawn (2015 - $5.4 million). The Credit Facility matures on April 28, 2017. Borrowings under the Credit Facility bear interest at its lenders' prime rate or Banker's Acceptance rates, plus applicable margins and standby fees. The applicable margins range between 1.25% and 4.75%. Borrowings are secured by general security agreements covering all of the Company's assets with the exception of TOU shares pledged as security for the TOU share margin loans (note 10) and certain lands pledged to the gas over bitumen royalty financing counterparty (note 12). As at December 31, 2016, the Company had pledged restricted cash of $2.0 million in favor of its lender as additional security.

The Credit Facility is subject to a working capital covenant which requires the Company to maintain net working capital plus outstanding letters of credits to not exceed the Borrowing Limit. Net working capital includes the sum of cash and cash equivalents, restricted cash, accounts receivable, prepaid expenses and unpledged TOU shares less accounts payable and accrued liabilities and accrued interest on senior notes up to the Credit Facility maturity date. The Company was in compliance with all Credit Facility covenants at December 31, 2016.

The credit facility also contains provisions which restrict the Company's ability to pay dividends on or repurchase its common shares.

On February 8, 2017, the Company's lender released the restricted cash and on March 8, 2017, increased the Credit Facility Borrowing Limit to $20.0 million and extended its maturity to October 31, 2017. The next Borrowing Limit redetermination will occur on or before May 31, 2017.

10. TOU SHARE MARGIN LOANS

	Years ended December 31,	
	2016	2015
TOU share put option margin loans	**$ 39,953**	$ 18,059
TOU margin loans	**–**	42,000
Total TOU share margin loans	**$ 39,953**	$ 60,059

At December 31, 2016, the Company has TOU share margin loans with two lenders for which TOU shares have been pledged as collateral. Under these TOU share margin loans, the Company effectively purchased embedded TOU put options from the lender ("TOU share put option margin loans"). TOU share put option margin loans bear interest based on fixed interest rates, plus the cost of purchasing the embedded TOU put option, if applicable.

At December 31, 2016, $23.2 million (December 31, 2015 - $18.1 million) TOU share put option margin loans mature in March 2017 and $16.8 million (December 31, 2015 – nil) mature in November 2017. For the March 2017 maturity, 0.84 million (December 31, 2015 – 1.0 million) TOU shares have been pledged as collateral with a put option floor price of $27.72 per share (December 31, 2015 – $21.32 per share). For the November 2017 maturity, 0.65 million TOU shares have been pledged as collateral with a put option floor price of $27.38 per share.

At December 31, 2015, 5.5 million TOU shares had been pledged as collateral for the $42.0 million TOU margin loans. The TOU margin loans bear interest based on floating interest rates.

The TOU share put option margin loans are hybrid financial instruments comprising a debt host with an embedded TOU put option derivative related to indexation of the future settlement amount to changes in the market price of TOU shares pledged as collateral. The Company has designated the TOU share put option margin loans as financial liabilities which are measured at fair value through profit and loss. For the year ended December 31, 2016, an unrealized loss of $6.5 million (December 31, 2015 – unrealized gain of $0.2 million) is included in finance expense, representing the change in fair value of the TOU put options during the year.

Subsequent to December 31, 2016, the Company sold 180,000 TOU shares for net cash proceeds of $5.7 million which was applied as a reduction to the TOU share put option margin loan set to expire in March 2017. The remaining balance was extended to August 1, 2017 subject to a maximum payment of $18.9 million at maturity. The number of shares pledged as collateral was increased to 0.9 million with the floor price being reset to $21.14 per TOU share.

11. SENIOR NOTES

			December 31, 2016		December 31, 2015	
	Maturity date	**Interest rate**	**Principal**	**Carrying Amount**	Principal	Carrying amount
2018 senior notes	March 15, 2018	8.75%	$ 36,013	$ 35,847	$ 150,000	$ 148,724
2019 senior notes	July 23, 2019	8.75%	24,560	24,273	125,000	122,934
			$ 60,573	$ 60,120	$ 275,000	$ 271,658

During the second quarter of 2016, the Company repurchased and cancelled $114.0 million of outstanding 2018 Senior Notes and $100.4 million of outstanding 2019 Senior Notes through the exchange of 4.4 million TOU shares and cash payments of $3.9 million for accrued interest (the "Security Swap"). The fair market value of TOU shares exchanged was $130.5 million based on an average closing price of $29.64 per share. Included in the exchange were $81.6 million 2018 Senior Notes and $57.0 million 2019 Senior Notes held by directors and officers of the Company or entities controlled by them. The Company recorded a net gain on the Security Swap of $81.3 million, representing the difference between the carrying amount of senior notes cancelled of $212.0 million ($214.4 million principal amount) and the fair market value of TOU shares exchanged of $130.5 million, net of transaction costs.

On January 23, 2017, the Company exchanged $8.4 million and $9.0 million aggregate principal amount of 2018 Senior Notes and 2019 Senior Notes respectively for $17.4 million new 8.75% senior notes with a maturity date of January 23, 2022. Included in the exchange were $3.7 million 2018 Senior Notes and $4.3 million 2019 Senior Notes held by directors and officers of the Company or entities controlled by them. The 2022 Senior Notes bear a fixed rate of 9.75% for the first year of issuance and 8.75% thereafter, and have identical covenants and rights as the existing 2018 and 2019 Senior Notes. After giving effect to the exchange, outstanding senior notes are as follows:

	Maturity date	**Interest rate[(1)]**	**Payment dates**	**Principal**
2018 senior notes	March 15, 2018	8.75%	March 15 & September 15	$ 27,617
2019 senior notes	July 23, 2019	8.75%	January 23 & July 23	15,572
2022 senior notes[(1)]	January 23, 2022	8.75%	January 23 & July 23	17,384
				$ 60,573

(1) Annual interest rate for the first year is 9.75% and then 8.75% thereafter.

The senior notes are direct senior unsecured obligations of the Company, ranking pari passu with all other present and future unsecured and unsubordinated indebtedness of the Company. At any time prior to three years before the senior note maturity date, the Company can redeem up to 35 percent of the principal amount of the senior notes at a premium to face value. Within three years of maturity, the Company may redeem up to 100 percent of the senior notes at a premium to face value. Within one year of maturity, the Company may redeem up to 100 percent of the senior notes at the principal amount. On March 15, 2017, the Company issued a notice for early redemption of all outstanding 2018 senior notes (note 8).

The senior notes have a cross-default provision with the Company's credit facility (note 9a). In addition, the senior notes indenture contains restrictions on certain payments including dividends, retirement of subordinated debt and stock repurchases. The permitted amount of any restricted payment is limited to:

i) To the extent the Company's Consolidated Debt (defined as the sum of the Company's period end balance of bank indebtedness, TOU share margin loans and gas over bitumen royalty financing) Ratio is less than 3.0 to 1.0, the sum of 50 percent of income before interest, taxes, depletion and depreciation and non-cash items from January 1, 2011 to the end of the most recently completed fiscal quarter plus 100 percent of the fair market value of any equity contributions made to the Company during that period less the sum of all restricted payments during that period; and

ii) To the extent the Company's Consolidated Debt Ratio is greater than or equal to 3.0 to 1.0 pro forma for the proposed restricted payment, $50 million plus 100 percent of the fair market value of any equity contributions made to the Company.

The Company was in compliance with all covenants at December 31, 2016.

At December 31, 2016 the senior notes are presented net of $0.5 million (December 31, 2015 - $3.3 million) in issue costs which are amortized using a weighted average effective interest rate of 9.2 percent.

12. GAS OVER BITUMEN ROYALTY FINANCING

	December 31, 2016	December 31, 2015
Balance, beginning of year	**$ 10,011**	$ 15,390
Payments	**(2,164)**	(3,704)
Change in fair value	**497**	(1,675)
Balance, end of year	**$ 8,344**	$ 10,011
Gas over bitumen royalty financing – current	**$ 3,390**	$ 2,604
Gas over bitumen royalty financing – non-current	**4,954**	7,407
	$ 8,344	$ 10,011

In 2014, the Company entered into an agreement whereby the Company received cash proceeds of $21.3 million in exchange for an obligation to make a monthly cash payment equivalent to a portion of the Company's monthly gas over bitumen royalty adjustment entitlements until final expiries in June 2021. Monthly payments under the arrangement are due on the 25th day following the entitlement month.

At the inception of the arrangement, the estimated future payments were determined using the same formula as the Company's monthly gas over bitumen royalty adjustment entitlements under the Alberta Natural Gas Royalty Regulation based on a January 1, 2014 forecast for the Alberta gas reference price ("base cash payment"). In the event that the actual Alberta gas reference price for a month causes the actual monthly cash payment under the arrangement to differ from the base cash payment, the Company is required to (a) pay 65 percent of any increase from the base cash payment, or (b) deduct 100 percent of any decrease from the base cash payment. Security for the gas over bitumen royalty financing is provided by an interest in certain lands of the Company and by the Company's entitlement to future gas over bitumen royalty adjustments.

The gas over bitumen royalty financing is a hybrid financial instrument comprised of a debt host with an embedded derivative related to indexation of the future cash payments to changes in the future Alberta gas reference price. The Company has designated the gas over bitumen royalty financing as a financial liability which is measured at fair value through profit and loss. For the year ended December 31, 2016, an unrealized loss of $0.5 million (December 31, 2015 – unrealized gain of $1.7 million) is included in finance expense related to the change in fair value of the gas over bitumen royalty financing.

As at December 31, 2016, if future natural gas prices changed by $0.25 per GJ with all other variables held constant, the fair value of the gas over bitumen royalty financing and after tax net loss for the period would change by $0.9 million (December 31, 2015 - $1.2 million).

13. PROVISIONS

	2016	2015
Decommissioning obligations, beginning of year	**$ 159,169**	$ 222,976
Obligations incurred	**177**	1,442
Obligations disposed (note 5a)	**(129,602)**	(1,939)
Change in risk free rate	**10,184**	617
Change in estimates	**(5,148)**	(60,372)
Obligations settled	**(3,803)**	(7,589)
Accretion (note 18)	**2,643**	4,034
Decommissioning obligations, end of year	**33,620**	159,169
Restructuring costs (b)	**4,154**	–
Balance, end of year	**$ 37,774**	$ 159,169
Provisions – current	**7,656**	1,981
Provisions – non-current	**30,118**	157,188
	$ 37,774	$ 159,169

a) Decommissioning obligations

Total future decommissioning obligations are estimated based on the Company's net ownership interest in all wells and facilities, estimated costs to reclaim and abandon these wells and facilities and the estimated timing of the costs to be incurred in future periods.

The Company adjusts the decommissioning obligations on each period end date for changes in the risk free interest rate. Accretion is calculated on the adjusted balance after taking into account additions and dispositions to property, plant, and equipment. Decommissioning obligations are also adjusted for revisions to future cost estimates and the estimated timing of costs to be incurred in future years.

During the years ended December 31, 2016 and 2015, the Company achieved efficiencies and cost savings by utilizing internal labor and equipment rather than third party services for various stages of reclamation and abandonment. This resulted in a revision to estimated future abandonment liabilities for all oil and natural gas assets.

The following significant assumptions were used to estimate the Company's decommissioning obligations:

	December 31, 2016	December 31, 2015
Undiscounted obligations	**$ 37,877**	$ 179,325
Average risk free rate	**2.3%**	2.3%
Inflation rate	**1.5%**	1.5%
Expected timing of settling obligations	**1 to 25 years**	1 to 25 years

b) Restructuring costs

	Employee downsizing costs	**Onerous office lease contract**	**Total**
Balance, beginning of year	$ –	$ –	$ –
Recognized in 2016	2,926	2,712	5,638
Payments in 2016	(1,320)	(164)	(1,484)
Balance, end of year	1,606	2,548	4,154
Restructuring costs – current	1,606	2,038	3,644
Restructuring costs – non-current	–	510	510
Total	**$ 1,606**	**$ 2,548**	**$ 4,154**

As a result of the Company's disposition of the Shallow Gas Properties on October 1, 2016 (note 5), the Company's employee base and office space requirements were significantly reduced. Restructuring costs of $5.6 million were expensed, comprised of employee downsizing costs of $2.9 million and office lease obligations associated with surplus office space of $2.7 million. Payments made in 2016 with respect to restructuring costs were $1.5 million.

The unused corporate office space is recorded as an onerous contract as the unavoidable costs associated with the lease contract exceed the expected economic benefits to be received.

14. COMMITMENTS

At December 31, 2016, the Company's contractual obligations over the next five years and thereafter are as follows:

Contractual repayments of financial liabilities *($ thousands)*	**2017**	**2018**	**2019**	**2020**	**2021 and Thereafter**	**Total**
Accounts payable and accrued liabilities	21,257	–	–	–	–	**21,257**
Fair value of derivatives	9,221	2,023	–	–	–	**11,244**
TOU share margin loans	39,953	–	–	–	–	**39,953**
Senior notes – principal [1]	–	27,617	15,572	–	17,384	**60,573**
Gas over bitumen royalty financing	3,390	2,416	1,600	615	323	**8,344**
Drilling commitments	3,000	–	–	–	–	**3,000**
Pipeline transportation commitments	7,099	9,454	8,525	4,824	2,336	**32,238**
Office and other operating lease commitments	4,049	1,022	14	–	–	**5,085**
Total	87,969	42,532	25,711	5,439	20,043	**181,694**

(1) Senior Note contractual obligations reflect the exchange of $8.4 million 2018 Senior Notes and $9.0 million 2019 Senior Notes for $17.4 million 2022 Senior Notes completed on January 23, 2017 (note 11).

15. SHARE CAPITAL

	December 31, 2016		December 31, 2015	
	Shares *(thousands)*	**Amount *($thousands)***	Shares *(thousands)*	Amount *($thousands)*
Balance, beginning of year	**19,115**	**$ 1,297,911**	7,504	$ 1,258,840
Flow-through shares	**491**	**839**	–	–
Issued pursuant to share purchase rights	**33,268**	**27,082**	–	–
Issued pursuant to share based payment plans	**807**	**1,184**	165	1,019
Redemption of convertible debentures	**–**	**–**	11,446	38,052
Balance, end of year	**53,681**	**$ 1,327,016**	19,115	$ 1,297,911

a) Authorized

Authorized capital consists of an unlimited number of common shares. On March 24, 2016, shareholders of the Company approved the consolidation of common shares on the basis of 20 common shares to one common share, which has been retroactively applied throughout these consolidated financial statements.

b) Flow through shares

On November 17, 2016, the Company issued 0.5 million flow-through shares at a price of $2.15 per share for total gross cash proceeds of $1.1 million. The implied premium received in excess of the fair value of the common shares on the date of issue was $0.2 million or $0.44 per share and has been recorded in accounts payable and accrued liabilities pending the incurrence of qualified exploration and development expenditures by the Company. As at December 31, 2016 the Company was committed to spend $1.1 million on qualified exploration expenditures by December 31, 2017. The expenditures have been incurred in 2017 and renounced to investors with an effective renunciation date of December 31, 2016.

c) Share purchase rights

On December 7, 2015, the Company filed a short form prospectus with the security regulatory authorities in connection with a rights offering to issue common shares of the Company for gross proceeds of $25 million. The rights offering was fully backstopped by an entity controlled by the Chairmen of the Company's Board of Directors.

Pursuant to the rights offering, each registered holder of common shares as of December 16, 2015 received one right (a "Share Purchase Right") for each common share held. Each Share Purchase Right entitled the holder to acquire 0.2169 common shares upon payment of the exercise price of $3.26 per Share Purchase Right. The number of common shares received for each Share Purchase Right was calculated following the close of trading of the common shares on the Toronto Stock Exchange on December 22, 2015 based upon the volume weighted average price of the common shares for the preceding 20 consecutive trading days, being November 25, 2015 through to and including December 22, 2015.

For the year ended December 31, 2015, the Company recorded a gain of $7.5 million included in non-cash finance expense (note 18) related to the change in the carrying amount of the Share Purchase Rights derivative between filing of the prospectus on December 7, 2015 and determination of the number of common shares to be issued for each Share Purchase Right on December 22, 2015.

Upon closing of the rights offering on January 18, 2016, the Company issued an aggregate of 33.3 million common shares of the Company including 21.4 million issued to entities controlled by the Chairman of the Company's Board of Directors for proceeds of $16.1 million.

d) Redemption of convertible debentures

On December 31, 2015, the Company redeemed all of the outstanding 7.00% Convertible Debentures. The Company elected to satisfy the total principal amount of $34.9 million through the issuance of 11.4 million common shares in accordance with the indenture agreement.

e) Per share information

	Year ended December 31,	
	2016	2015
(thousands, except per share amounts)		
Net income (loss) – basic	**$ 107,149**	$ (89,274)
Effect of dilutive securities	**–**	–
Net income (loss) – diluted	**$ 107,149**	$ (89,274)
Weighted average shares		
Issued common shares	**50,985**	7,598
Effect of shares held in trust (note 17)	**(252)**	(91)
Weighted average common shares outstanding – basic	**50,733**	7,507
Effect of dilutive securities	**3,305**	–
Weighted average common shares outstanding – diluted	**54,038**	7,507
Income (loss) per share - basic	**$ 2.11**	$ (11.89)
Income (loss) per share - diluted	**$ 1.98**	$ (11.89)

In computing per share amounts for the year ended December 31, 2016, 1.5 million potentially issuable common shares through the share based compensation plans (2015 – 0.1 million) were excluded because they were anti-dilutive.

f) Warrants and equity private placement

On March 14, 2017, 5.1 million common shares and 6.5 million common share warrants were issued in connection with the issuance of the Second Lien Facility and private placement of common shares (note 8). Each warrant entitles the holder to acquire common shares on a one for one basis at an exercise price of $2.34 per share prior to March 14, 2020.

16. SHARE BASED PAYMENTS

Concurrent with the share consolidation, the Company's Board of Directors approved modifications to existing share based compensation agreements with directors, officers and employees of the Company. For the year ended December 31, 2016, incremental share based compensation expense associated with the modifications totalled $2.0 million.

a) Share Option Plan

The Share Option Plan provides a long-term incentive to employees and directors to reward them on the basis of the Company's long-term performance. The Board of Directors administers the Share Option Plan and determines participants, number of Share Options and terms of vesting. The exercise price of the Share Options granted shall not be less than the value of the weighted average trading price for the Company's common shares for the five trading days immediately preceding the date of grant. Share Options granted have a maximum term of 5 years and vest evenly on each of the first, second, third and fourth grant anniversary dates.

Participants in the Share Option Plan may offer to surrender their options to the Company in exchange for a cash payment not to exceed the in-the-money value of the Share Options. The Company has the right to accept or refuse such offers. For the year ended December 31, 2016, the Company recorded $0.9 million in share based payments expense related to Share Options (2015 – $1.2 million), with no cash payments made in 2016 (2015 – nil).

The following tables summarize information about Share Options outstanding:

	December 31, 2016		December 31, 2015	
	Average Exercise Price (*$/share*)	**Share Options (*thousands*)**	Average Exercise Price (*$/share*)	Share Options (*thousands*)
Balance, beginning of year	**1.23**	**14,794**	1.33	12,819
Modification	**1.11**	**(13,933)**	–	–
Granted	**1.42**	**2,275**	0.69	2,150
Exercised	**–**	**–**	0.62	(65)
Cancelled/forfeited	**1.69**	**(682)**	1.23	(50)
Expired	**3.41**	**(386)**	3.59	(60)
Balance, end of year	**1.71**	**2,068**	1.23	14,794

	Options Outstanding			**Options Exercisable**	
Range of Exercise Prices	**Number of Share Options (*thousands*)**	**Average Contractual Life (*years*)**	**Weighted Average Exercise Price (*$/share*)**	**Number of Share Options (*thousands*)**	**Weighted Average Exercise Price (*$/share*)**
$1.42 to $1.71	1,805	4.42	$ 1.42	–	$ –
$1.72 to $2.61	83	3.63	2.00	21	2.00
$2.62 to $3.37	93	0.64	3.22	93	3.22
$3.38 to $4.74	3	0.39	3.51	3	3.51
$4.75 to $5.97	84	1.63	5.97	56	5.97
Total	**2,068**	**4.10**	**$ 1.71**	**173**	**$ 3.98**

The Company used the Black Scholes pricing model to calculate the estimated fair value of the outstanding Share Options. The following assumptions were used to arrive at the estimate of fair value as at the date of grant:

	2016	2015
Dividend yield (%)	**0.0**	0.0
Forfeiture rate (%)	**20.6**	20.6
Expected volatility (%)	**60.7**	49.8
Risk-free interest rate (%)	**0.5**	0.4
Expected life (years)	**3.2**	3.2
Vesting period (years)	**4.0**	4.0
Contractual life (years)	**5.0**	5.0
Weighted average grant date fair value	**$ 0.73**	$ 0.18

b) Restricted Rights Plan

The Company has a Restricted Rights Plan for certain officers, employees and consultants. Restricted Rights granted under the Restricted Rights Plan may be exercised during a period (the "Exercise Period") not exceeding five years from the date upon which the Restricted Rights were granted. The Restricted Rights typically vest on a graded basis over two years. At the expiration of the Exercise Period, any Restricted Rights which have not been exercised shall expire. Upon vesting, the plan participant is entitled to receive one common share for each right held at no cost.

For the year ended December 31, 2016, share based payments expense in respect of Restricted Rights outstanding was $0.9 million (2015 – nil).

The following table shows changes in the Restricted Rights outstanding under the Restricted Rights Plan:

(thousands)	**2016**	2015
Balance, beginning of year	**40**	618
Modification	**(38)**	–
Granted	**1,082**	2,727
Exercised	**(811)**	(3,280)
Forfeited	**–**	(25)
Balance, end of year	**273**	40

c) Performance Share Rights Plan

The Company has a Performance Share Rights Plan for the Company's senior management team. Performance Rights granted under the Performance Share Rights Plan vest two years after the date upon which the Performance Rights were granted. The Performance Rights that vest and become redeemable are a multiple of the Performance Rights granted dependent upon the achievement of certain performance metrics over the vesting period. Vested Performance Rights can be settled in cash or Restricted Rights, at the discretion of the Board of Directors. Should participants of the Performance Share Rights Plan leave the organization other than through retirement or termination without cause prior to the vesting date, the Performance Rights would be forfeited.

At December 31, 2016, the Company had 1.0 million Performance Share Rights issued and outstanding under the Performance Share Rights Plan (December 31, 2015 – 2.3 million).

For the year ended December 31, 2016, share based payments expense in respect of the Performance Share Rights outstanding was $0.5 million (2015 – nil) as a result of performance multiplier adjustments related to performance share units issued and outstanding.

d) Compensation awards

The Company has agreements in place with certain employees whereby over a period of three years they may be entitled to receive shares of the Company purchased on the open market by an independent trustee if they remain employees of the Company during such time. This does not dilute equity or involve the issuance of shares from treasury. The shares purchased by the Trustee are reported as shares held in trust (note 17).

At December 31, 2016, the Company had 1.1 million of these awards issued and outstanding (2015 – 4.0 million).

For the year ended December 31, 2016, $0.4 million in share based payments expense was recorded in respect of the awards (2015 – $0.6 million).

The Company also has agreements in place with directors and certain employees whereby, in the case of directors, upon retirement from the board of directors, or in the case of employees, over a period of two years if they remain employees of the Company during such time, may be entitled to receive at the discretion of the Board, cash, a grant of Restricted Rights or shares of the Company purchased on the open market by an independent trustee.

At December 31, 2016, the Company had 2.2 million of these awards issued and outstanding (2015 – 3.5 million).

For the year ended December 31, 2016, $3.2 million in share based payments expense was recorded in respect of the compensation awards granted (2015 – $2.1 million).

17. SHARES HELD IN TRUST

	December 31, 2016		December 31, 2015	
	Shares *(thousands)*	**Amount *($thousands)***	Shares *(thousands)*	Amount *($thousands)*
Balance, beginning of year	**47**	**$ 1,177**	49	$ 1,387
Shares purchased and held in trust	**218**	**162**	51	1,109
Share based payment settlements	**(5)**	**(28)**	(53)	(1,319)
Balance, end of year	**260**	**$ 1,311**	47	$ 1,177

The Company has compensation agreements in place with employees whereby they may be entitled to receive shares of the Company purchased on the open market by a trustee. The balance of shares held in trust represents the cumulative cost of shares held by the trustee for the benefit of employees that have not yet been issued to employees.

18. FINANCE EXPENSE

The components of finance expense are as follows:

	Year ended December 31, 2016	2015
Cash interest		
Interest on senior notes	**11,942**	24,062
Interest on convertible debentures	**–**	2,441
Interest on bank indebtedness	**2,749**	4,143
Total cash interest	**14,691**	30,646
Non-cash finance expense		
Amortization of debt issue costs	**509**	2,036
Accretion on decommissioning obligations (note 13)	**2,643**	4,034
Accretion on gas over bitumen provision	**–**	498
Change in fair value of gas over bitumen royalty financing (note 12)	**497**	(1,675)
Change in fair value of TOU share margin loans (note 10)	**6,507**	(171)
Change in carrying amount of share purchase rights derivative (note 15)	**–**	(7,478)
Total non-cash finance expense	**10,156**	(2,756)
Finance expenses recognized in net income (loss)	**24,847**	27,890

19. CHANGES IN NON-CASH WORKING CAPITAL INFORMATION

	Year ended December 31, 2016	2015
Accounts receivable	**$ 8,059**	$ 30,765
Prepaid expenses and deposits	**2,151**	(1,506)
Accounts payable and accrued liabilities	**(17,364)**	(53,227)
Change in non-cash working capital	**$ (7,154)**	$ (23,968)

The change in non-cash working capital has been allocated to the following activities:

	Year ended December 31, 2016	2015
Operating	**$ (4,910)**	$ 15,813
Financing	**216**	–
Investing	**(2,460)**	(39,781)
Change in non-cash working capital	**$ (7,154)**	$ (23,968)

20. FINANCIAL RISK MANAGEMENT

The Board of Directors has overall responsibility for the establishment and oversight of the Company's risk management framework. The Board of Directors has implemented and monitors compliance with risk management policies.

The Company's risk management policies are established to identify and analyze the risks faced by the Company, to set appropriate risk limits and controls, and to monitor risks and adherence to market conditions and the Company's activities.

a) Credit risk

Credit risk is the risk of financial loss to the Company if a customer or counterparty to a financial instrument fails to meet its contractual obligations, and arises principally from the Company's receivables from joint venture partners, oil and natural gas marketers and derivative contract counterparties.

Credit risk associated with cash and cash equivalents and restricted cash balances is managed by maintaining balances with financial institutions that have investment grade credit ratings.

Receivables from oil and natural gas marketers are normally collected on the 25th day of the month following production. The Company's policy to mitigate credit risk associated with these balances is to establish marketing relationships with large, well established purchasers. The Company historically has not experienced any significant collection issues with its oil and natural gas marketing receivables. Joint venture receivables are typically collected within one to three months of the joint venture bill being issued to the partner. The Company attempts to mitigate the risk from joint venture receivables by obtaining partner approval of significant capital expenditures prior to expenditure. However, the receivables are generally from participants in the oil and natural gas sector, and collection of the outstanding balances is dependent on industry factors such as commodity price fluctuations, escalating costs, the risk of unsuccessful drilling and oil and gas production; in addition, further risk exists with joint venture partners as disagreements occasionally arise that increase the potential for non-collection. The Company does not typically obtain collateral from oil and natural gas marketers or joint venture partners, however, the Company does have the ability in some cases to withhold production or amounts payable to joint venture partners in the event of non-payment.

The Company manages the credit exposure related to derivatives by engaging in risk management transactions with credit worthy counterparties, and periodically monitoring counterparty credit assessments.

The carrying amount of cash and cash equivalents, restricted cash, accounts receivable and fair value of derivative assets represents the Company's maximum credit exposure. As at December 31, 2016, the Company's cash and cash equivalents balance was $2.9 million (December 31, 2015 - $2.1 million), restricted cash was $2.0 million (December 31, 2015 – nil), accounts receivable was $11.5 million (December 31, 2015 - $19.5 million), and derivative assets was $10.7 million (December 31, 2015 - $3.7 million). The Company's credit provisions are represented by its allowance for doubtful accounts receivable as at December 31, 2016 of $0.8 million (December 31, 2015 – $0.6 million). The amount of the allowance was determined by assessing the probability of collection for each past due receivable. The Company is currently involved in negotiations with the joint venture partners involved to recover the full amount of the receivables in question. The total amount of accounts receivables 90 days past due amounted to $2.0 million as at December 31, 2016 (December 31, 2015 – $0.9 million).

b) Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they are due. The Company's approach to managing liquidity is to ensure, as far as possible, that it will have sufficient liquidity to meet its liabilities when due, under both normal and stressed conditions, without incurring unacceptable losses or risking harm to the Company's reputation.

The Company anticipates that cash flows including cash flow from operating activities, proceeds from potential future asset dispositions and future disposition of its TOU share investment, cash and cash equivalents, and access to credit facilities will provide the required funds to discharge the Company's obligations, carry out exploration and development programs and fund ongoing operations for the foreseeable future.

The Company prepares annual capital expenditure budgets, which are regularly monitored and updated as considered necessary. Further, the Company utilizes authorizations for expenditures on both operated and non-operated projects to further manage capital expenditures. The Company also attempts to match its payment cycle with collection of petroleum and natural gas revenues on the 25th of each month.

The Company's minimum contractual obligations, excluding estimated interest payments, at December 31, 2016 are detailed in note 14.

c) Market risk

Market risk is the risk that changes in market prices such as foreign exchange rates, TOU share price, commodity prices and interest rates will affect the Company's net income or the value of financial instruments. The objective of market risk management is to manage and control market risk exposures within acceptable limits, while maximizing returns.

The Company utilizes both financial derivatives and fixed-price physical delivery sales contracts to manage market risks related to commodity prices, foreign currency rates and TOU share investment prices. All such transactions are conducted in accordance with the Company's Risk Management Policy, which has been approved by the Board of Directors.

i) Commodity price risk

Commodity price risk is the risk that the fair value or future cash flow will fluctuate as a result of changes in commodity prices. Commodity prices for oil and natural gas are impacted not only by the relationship between the Canadian and United Stated dollar, but also by world economic events that dictate the levels of supply and demand. The Company manages commodity price risk through the use of various financial derivatives and fixed-price physical delivery sales contracts.

As at December 31, 2016, the Company has variable priced physical natural gas sales contracts based on future market prices. These contracts are not classified as non-financial derivatives due to the fact that the settlement price corresponds directly with fluctuations in natural gas prices.

Natural gas contracts

At December 31, 2016 the Company entered into the following physical fixed natural gas sales arrangements at AECO:

Term	Sold/bought	Volumes (*GJ/d*)	Average price (*$CAD/GJ*)	Fair Value (*$CAD thousands*)
January 2017	Sold	56,100	3.28	(75)
January 2017 – December 2017	Sold	12,500	3.11	697
February 2017	Sold	40,000	3.39	504
February 2017 – December 2017	Sold	2,500	3.20	234
March 2017	Sold	10,000	3.32	125
April 2017 – December 2017	Sold	5,000	3.20	391

At December 31, 2016 the Company had entered into the following financial fixed natural gas sales arrangements at AECO:

Term	Sold/bought	Volumes (*GJ/d*)	Average price (*$CAD/GJ*)	Fair Value (*$CAD thousands*)
January 2017 – December 2017	Sold	7,500	3.16	(265)
March 2017	Sold	5,000	3.29	(9)

At December 31, 2016 the Company had entered into the following financial basis differential contracts between AECO and NYMEX trading:

Term	Sold/bought	Volumes (*MMBTU/d*)	differential price (*$USD/MMBTU*)	Fair Value (*$CAD thousands*)
January 2017 – December 2017	Sold	30,000	(0.69)	5,526
January 2017 – December 2017	Bought	(30,000)	(0.93)	(2,058)
January 2018 – December 2018	Sold	25,000	(0.71)	2,217
January 2018 – December 2018	Bought	(25,000)	(0.82)	(805)

In January 2017, the Company crystalized these basis differential contracts resulting in net cash proceeds of $4.9 million.

Oil contracts

At December 31, 2016, the Company had entered into the following costless collar oil sales arrangements which settle in $USD.

Term	Volumes at WTI (*bbls/d*)	Floor price (*$USD/bbl*)	Ceiling price (*$USD/bbl*)	Fair Value (*$CAD thousands*)
January 2017 – December 2017[(1)]	250	44.50	49.55	(933)
January 2017 – December 2017	500	50.00	59.40	(205)

(1) In January 2017, the Company crystalized this contract at a cost of $0.9 million and reset the floor price to $USD50.00 and the ceiling price to $USD61.50

The following table is a summary of the fair value of the Company's financial contracts by type:

	Year ended December 31, 2016	2015
Physical natural gas contracts	**1,876**	(131)
Financial natural gas contracts	**4,606**	(1,824)
Financial oil contracts	**(1,138)**	2,006
Financial foreign exchange contracts	**(5,022)**	(13,069)
Fixed portion of retained shallow gas marketing arrangements [(1)]	**(4,698)**	–
Non-fixed portion of retained shallow gas marketing arrangements	**3,809**	–
Fair value of derivatives	**(567)**	(13,018)
Derivative assets – current	**8,326**	2,319
Derivative assets – non-current	**2,351**	1,411
Derivative liabilities - current	**(9,221)**	(9,353)
Derivative liabilities – non-current	**(2,023)**	(7,395)
Fair value of derivatives	**(567)**	(13,018)

(1) Upon entering into these arrangements, the term of the put option between the periods of November 1, 2016 and March 31, 2018 was fixed at a cost of $5.1 million which settles monthly over the term. This portion of the contract is recorded at amortized cost. During the year ended December 31, 2016, payments of $0.4 million were recorded as a reduction to this liability.

The following table details the Company's changes in fair value of commodity price derivatives:

	Year ended December 31, 2016	2015
Unrealized gain (loss) on financial oil contracts	**(3,144)**	(4,409)
Unrealized gain (loss) on financial natural gas contracts	**6,430**	(3,165)
Unrealized gain (loss) on physical natural gas contracts	**2,007**	(80)
Unrealized gain (loss) on forward foreign exchange contracts	**8,047**	(8,409)
Unrealized change in fair value of commodity price derivatives	**13,340**	(16,063)
Realized gain (loss) on financial oil contracts	**1,036**	6,651
Realized gain (loss) on financial natural gas contracts	**6,224**	5,161
Realized loss on forward foreign exchange contracts	**(2,559)**	(7,186)
Change in fair value of commodity price derivatives	**18,041**	(11,437)

Natural gas contracts - sensitivity analysis

As at December 31, 2016, if future natural gas prices changed by $0.25 per GJ with all other variables held constant, the fair value of commodity price derivatives and after tax net income for the period would change by $0.6 million. Fair value sensitivity was based on published forward AECO and NYMEX prices.

Oil contracts - sensitivity analysis

As at December 31, 2016, if future oil prices increased by $5.00 per boe with all other variables held constant, the fair value of commodity price derivatives and after tax net income for the period would decrease by $1.0 million. If future oil prices decreased by $5.00 per boe with all other variables held constant, the fair value of commodity price derivatives and after tax net income for the period would increase by $0.6 million. Fair value sensitivity was based on published forward WTI and WCS prices.

ii) Foreign currency exchange rate risk

Foreign currency exchange rate risk is the risk that the fair value or future cash flows of the Company will fluctuate as a result of changes in foreign exchange rates. The majority of the Company's oil and natural gas sales are denominated in Canadian dollars. As the demand for oil and natural gas is substantially driven by the demand in the United States, the Company's exposure to US dollar foreign exchange risk is indirectly driven by the price of oil and natural gas. From time to time, the Company also uses foreign exchange contracts to mitigate the effects of fluctuations in exchange rates on the Company's cash flows.

Foreign exchange contracts

At December 31, 2016, the Company had entered into the following U.S. dollar forward sales arrangement:

Term	Notional (*$USD/month*)	Strike rate (*$CAD/$USD*)	Fair Value (*$CAD thousands*)
January 2017 – March 2018[1]	3,500,000	1.25	(5,134)

[1] If the average monthly exchange rate is greater than the strike rate, the Company pays $USD 3,500,000 multiplied by the difference between the average monthly exchange rate and the strike rate.

In January 2017, the Company terminated the forward U.S. dollar sales arrangement at a cost of $4.3 million.

At December 31, 2016, the Company had entered into the following U.S. dollar boosted forward sales arrangement:

Term	Notional (*$USD/month*)	Boosted notional[1] (*$USD/month*)	Strike rate (*$CAD/$USD*)	Fair Value (*$CAD thousands*)
January 2017 – March 2018[2]	1,000,000	3,000,000	1.25	112

[1] If the spot rate at expiry of each contract month is below the strike rate, the Company pays $USD 3,000,000 multiplied by the difference between the spot rate at expiry and the strike rate.

[2] If the spot rate at expiry of each contract month is above the strike rate, the Company receives $USD 1,000,000 multiplied by the difference between the spot rate at expiry and the strike rate. Cumulative receipts on this contract are limited to a total of $0.8 million, after which the contract terminates.

Foreign exchange contracts - sensitivity analysis

As at December 31, 2016, if future exchange rates increased by $0.10 $CAD/$USD with all other variables held constant, the fair value of foreign exchange derivatives and after tax net income for the period would decrease by $7.0 million. If future exchange rates decreased by $0.10 $CAD/$USD with all other variables held constant, the fair value of foreign exchange derivatives and after tax net income for the period would increase by $3.4 million. Fair value sensitivity was based on published forward $CAD/$USD rates.

iii) Interest rate risk

The Company utilizes a credit facility which bears a floating rate of interest and as such is subject to interest rate risk. Increased future interest rates will decrease future cash flows and net income or loss, thereby potentially affecting the Company's bank indebtedness. The Company had no interest rate swap or financial contracts in place as at or during the year ended December 31, 2016 (December 31, 2015 – nil).

Interest rate sensitivity analysis

For the years ended December 31, 2016 and 2015, if interest rates changed by one percent with all other variables held constant, the impact on interest expense and net income (loss) would be nominal, as the Company's bank indebtedness was minimal.

d) Fair value of financial assets and liabilities

The Company's fair value measurements are classified as one of the following levels of the fair value hierarchy:

Level 1 – inputs represent unadjusted quoted prices in active markets for identical assets and liabilities. An active market is characterized by a high volume of transactions that provides pricing information on an ongoing basis.

Level 2 – inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. These valuations are based on inputs that can be observed or corroborated in the marketplace, such as market interest rates or forward prices for commodities.

Level 3 – inputs for the asset or liability are not based on observable market data.

The Company aims to maximize the use of observable inputs when preparing calculations of fair value. Classification of each measurement into the fair value hierarchy is based on the lowest level of input that is significant to the fair value calculation.
The fair value of cash and cash equivalents, restricted cash, accounts receivable, and accounts payable and accrued liabilities approximate their carrying amounts due to their short terms to maturity. Bank indebtedness bears interest at a floating market rate and accordingly the fair market value approximates the carrying amount.

The fair value of the gas over bitumen royalty financing is estimated by discounting future cash payments based on the forecasted Alberta gas reference price (note 12) multiplied by the contracted deemed volume. This fair value measurement is classified as level 3 as significant unobservable inputs, including the discount rate and forecasted Alberta gas reference prices, are used in determination of the carrying amount. The discount rate of 12.2% was determined on inception of the agreement based on the characteristics of the instrument. The forecasted Alberta gas reference prices for the remaining term are based on AECO forward market pricing with adjustments for historical differences between the Alberta reference price and market prices.

The fair value of the TOU share margin loans are estimated using significant unobservable inputs including discount rates and measures of future volatility required to fair value the embedded TOU share price put options. This fair value measurement is classified as level 3 as significant unobservable inputs, including discount rates and measures of future volatility are used in determination of the carrying amount (see note 10).

The fair value of financial assets and liabilities, excluding working capital, is attributable to the following fair value hierarchy levels:

As at December 31, 2016	**Gross**	**Netting[(1)]**	**Carrying Amount**	**Fair value**		
				Level 1	**Level 2**	**Level 3**
Financial assets						
Fair value through profit and loss						
TOU share investment	**66,343**	**–**	**66,343**	**66,343**	**–**	**–**
Derivatives – current	**10,528**	**(2,202)**	**8,326**	**–**	**8,326**	**–**
Derivatives – non-current	**4,157**	**(1,806)**	**2,351**	**–**	**2,351**	**–**
Financial liabilities						
Financial liabilities at amortized cost						
Senior notes	**60,120**	**–**	**60,120**	**–**	**59,664**	**–**
Fair value through profit and loss						
Derivatives – current	**11,423**	**(2,202)**	**9,221**	**–**	**9,221**	**–**
Derivatives – non-current	**3,829**	**(1,806)**	**2,023**	**–**	**2,023**	**–**
Gas over bitumen royalty financing – current	**3,390**	**–**	**3,390**	**–**	**–**	**3,390**
Gas over bitumen royalty financing – non-current	**4,954**	**–**	**4,954**	**–**	**–**	**4,954**
TOU share margin loans – current	**39,953**	**–**	**39,953**	**–**	**–**	**39,953**

(1) Derivative assets and liabilities presented in the statement of financial position are shown net of offsetting assets or liabilities where the arrangement provides for the legal right and intention for net settlement exists.

As at December 31, 2015	**Gross**	**Netting[(1)]**	**Carrying Amount**	**Fair value**		
				Level 1	**Level 2**	**Level 3**
Financial assets						
Fair value through profit and loss						
TOU share investment	145,275	–	145,275	145,275	–	–
Derivatives – current	2,667	(348)	2,319	–	2,319	–
Derivatives – non-current	1,411	–	1,411	–	1,411	–
Financial liabilities						
Financial liabilities at amortized cost						
Senior notes	271,658	–	271,658	–	168,000	–
Fair value through profit and loss						
Derivatives – current	9,701	(348)	9,353	–	9,353	–
Derivatives – non-current	7,395	–	7,395	–	7,395	–
Gas over bitumen royalty financing – current	2,604	–	2,604	–	–	2,604
Gas over bitumen royalty financing – non-current	7,407	–	7,407	–	–	7,407
TOU share margin loans - current	60,059	–	60,059	–	–	60,059

(1) Derivative assets and liabilities presented in the statement of financial position are shown net of offsetting assets or liabilities where the arrangement provides for the legal right and intention for net settlement exists.

21. DEFERRED INCOME TAXES

The provision for income taxes in the financial statements differs from the result that would have been obtained by applying the combined federal and provincial tax rate to the Company's income (loss) before income tax. This difference results from the following items:

	Years ended December 31, 2016	2015
Net income (loss) before income tax	**$ 107,149**	$ (89,274)
Combined federal and provincial tax rate	**27.0%**	26.0%
Computed income tax expense (recovery)	**$ 28,930**	$ (23,211)
Increase (decrease) in income taxes resulting from:		
Non-deductible expenses	**1,596**	981
Non-taxable capital (gain) loss	**(18,095)**	13,635
Change in unrecognized tax asset	**(13,113)**	16,653
Change in tax rate	**–**	(8,745)
Other	**682**	687
Deferred income taxes	**$ –**	$ –

The Alberta income tax rate increased to 12 percent from 10 percent on July 1, 2015, resulting in an effective tax rate of 27 percent for 2016 and 26 percent for 2015. There were no changes to federal statutory income tax rates.

The following table summarizes the deferred income tax liabilities of the Company and its subsidiaries, which are offset against certain deferred income tax assets:

	Years ended December 31, 2016	2015
Liability:		
Property, plant and equipment	**$ –**	$ 34,609
Marketable securities	**2,087**	–
Other	**3,264**	3,205
Total deferred income tax liabilities	**$ 5,351**	$ 37,814
Asset:		
Decommissioning obligation	**$ (5,351)**	$ (37,814)

The unused tax losses and deductible temporary differences included in the Company's unrecognized deferred income tax assets are as follows:

	Years ended December 31, 2016	2015
Non-capital losses	**$ 138,012**	$ 163,404
Capital losses	**139,937**	161,625
Property, plant and equipment	**50,163**	–
Decommissioning obligation	**2,061**	30,985
Gas over bitumen royalty financings	**8,344**	10,011
Marketable securities	–	104,460
Other	**18,886**	4,752
	$ 357,403	$ 475,237

At December 31, 2016, the unused non-capital losses expire between 2024 and 2036, and unused capital losses have no expiry date. The deductible temporary differences do not expire under current tax legislation. The petroleum and natural gas properties and facilities owned by the Company and its subsidiaries have an approximate tax basis of $317 million (December 31, 2015 – $276 million) available for future use as deductions from taxable income.

Deferred income tax assets have not been recognized in respect of these unused tax losses and temporary differences because it is not probable that future taxable profit will be available against which the Company can utilize the benefits.

22. KEY MANAGEMENT PERSONNEL

The Company has defined key management personnel as executive officers, as well as the Board of Directors, as they have the collective authority and responsibility for planning, directing and controlling the activities of the Company. The following table outlines the total compensation expense for key management personnel:

	Years ended December 31, 2016	2015
Short-term compensation	**$ 2,637**	$ 2,562
Share based payments	**1,871**	1,128
	$ 4,508	$ 3,690

23. SUPPLEMENTAL DISCLOSURE

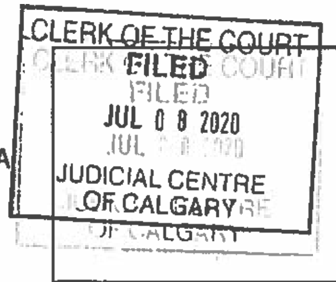
The Company's consolidated statements of income (loss) and comprehensive income (loss) are prepared primarily by nature of expense, with the exception of employee compensation costs which are included in both production and operating and general and administrative expenses.

The following table details the amount of total employee compensation costs included in production and operating and general and administrative expenses in the consolidated statements of income (loss) and comprehensive income (loss).

	Year ended December 31,	
	2016	2015
Production and operating	**$ 4,986**	$ 8,319
General and administrative	**18,336**	20,343
Restructuring costs	**2,926**	–
	$ 26,248	$ 28,662

During the year ended December 31, 2016, total employee compensation costs included share based payments of $5.9 million (2015 – $3.8 million) with the remainder being short-term fees and other short-term benefits.

Exhibit 2



COURT FILE NUMBER	1801-10960
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity
DEFENDANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP. and SUSAN RIDDELL ROSE
DOCUMENT	**BRIEF OF THE DEFENDANTS PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST and PERPETUAL OPERATING CORP.** (the **Perpetual Energy Defendants**) **Application for Strike and Summary Dismissal (insolvency and value)** **before The Honourable Justice D.B. Nixon on July 28-30, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Burnet, Duckworth & Palmer LLP 8th Avenue Place, East Tower 2400, 525 – 8 Avenue SW Calgary, Alberta T2P 1G1

Lawyers:	D.J. McDonald, Q.C./Paul G. Chiswell
Phone:	(403) 260-5724/(403) 260-0201
Fax:	(403) 260-0332
Email:	djm@bdplaw.com/pchiswell@bdplaw.com
File No.:	59140-43

Counsel for the Perpetual Energy Defendants

This is Exhibit " 2 " referred to in the Affidavit of
Paul J. Darby
Sworn before me this 22nd day
of September A.D. 20 20

A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

LUKE RASMUSSEN
Barrister & Solicitor

De Waal Law
Suite 1010, 505 – 3 Street SW
Calgary, AB T2P 3E6

Lawyers:	Rinus de Waal/Luke Rasmussen
Phone:	(403) 266-0013/(403) 266 0014
Fax:	(403) 266-2632
Email:	rdewaal@dewaallaw.com/lrasmussen@dewaallaw.com

Counsel for the Plaintiff PricewaterhouseCoopers Inc., Lit, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp. and not in its personal capacity

TABLE OF CONTENTS

I. OVERVIEW 1

II. FACTS 1

A. Background 1

B. Assets 1

C. Liabilities 4

III. ISSUES 6

Issue 1: Was there a "transfer" reviewable under the *BIA*? 6

Issue 2: If so, was the transfer "at undervalue"? 6

Issue 3: Was PEOC insolvent at the time of the Asset Transaction or rendered insolvent by the Asset Transaction? 6

IV. ARGUMENT 6

A. The test and law on striking pleadings and summary dismissal 6

B. The *BIA* 7

1. Transfer at undervalue 7

2. Solvency tests 9

C. Issue 1: Was there a "transfer" reviewable under the *BIA*? 10

1. The nature of a trust relationship 10

2. The implications of the law of trusts 11

D. Issue 2: If so, was the transfer "at undervalue"? 13

1. The *BIA* Claim discloses no reasonable claim regarding transfer at undervalue and should be struck under Rule 3.68 13

2. The *BIA* Claim discloses no genuine issue for trial regarding transfer at undervalue and should be dismissed under Rule 7.3 15

E. Issue 3: Was PEOC insolvent at the time of the Asset Transaction or rendered insolvent by the Asset Transaction? 17

1. The *BIA* Claim discloses no reasonable claim regarding insolvency and should be struck under Rule 3.68 17

2. The *BIA* Claim discloses no genuine issue for trial regarding insolvency and should be dismissed under Rule 7.3 20

V. RELIEF SOUGHT 27

AUTHORITIES 29

I. OVERVIEW

1. The Perpetual Energy Defendants[1] apply to strike, or alternatively summarily dismiss, all claims in the Statement of Claim not already struck (that is, the *BIA* Claim) on the issues of insolvency and value on the grounds that:

   (a) there was no transfer at undervalue reviewable under s. 96 of the *BIA*; and

   (b) PEOC was not insolvent at the time of the Asset Transaction or rendered insolvent by it.

II. FACTS

A. Background

2. The background necessary for this application is set out in:

   (a) the Reasons and the evidence that was before Justice Nixon on the first summary dismissal application; and

   (b) the May 5, 2020 affidavit of Mark Schweitzer, Perpetual's Vice-President of Finance and CFO, in support of this summary dismissal application (the **May 2020 Schweitzer Affidavit**).

B. Assets

1. Value of the Goodyear Assets

3. At the end of September 2016, production from the Goodyear Assets was approximately 35 MMcf/d (million cubic feet per day).[2]

4. The Darby Affidavit attributes a value of $5,670,200 for the Goodyear Assets based on the McDaniel Report:

> 37.2. The... McDaniel Report... is dated April 11, 2016. It only includes 652, or approximately 26%, of the 2,502 wells included in the Goodyear

---

[1] This brief uses the defined terms in *PricewaterhouseCoopers Inc. v Perpetual Energy Inc.*, 2020 ABQB 6 (the **Reasons**) **[Tab 1]**.

[2] Affidavit of Susan Riddell Rose sworn and filed October 19, 2018 at para. 19 (**Rose Affidavit**).

> Assets (the "Goodyear Wells") and excludes the balance, or approximately 74%, of the Goodyear Wells. The McDaniel report determines a value of $5,670,200, also on a (2P) NPV10 basis, but using a McDaniel pricing forecast.
>
> 38. For the purposes of evaluating the Asset Transaction, the Trustee has used the reserve report received as part of the Perpetual Disclosure that attributes the higher value to the Goodyear Assets.[3]

5. The McDaniel Report:

(a) was effective December 31, 2015—9 months before the Asset Transaction;[4]

(b) considers only 26% of the Goodyear Wells;[5]

(c) includes an estimate of abandonment costs for those Goodyear Wells included in the report;[6] and

(d) does not consider the value of other assets comprising the Goodyear Assets, such as pipelines, other surface facilities, prospect drilling inventory, undeveloped acreage,[7] seismic data,[8] or heavy equipment.[9]

6. All attributes of the Goodyear Assets, inclusive of their future end of life obligations, were considered by the Purchaser Team and the Vendor Team in negotiating the Asset Purchase Agreement as a critical element of the value under the Aggregate Transaction.[10]

7. The 2016 municipal property tax assessments associated with the Goodyear Assets established a fair value for property tax purposes of approximately $257 million.[11] The 2016

---

[3] Affidavit of Paul Darby sworn and filed August 2, 2018 at paras. 37.2 and 38 (**Darby Affidavit**).
[4] Darby Affidavit, Exhibit L.
[5] Darby Affidavit at para. 37.2
[6] Darby Affidavit at para. 41.1.
[7] Affidavit of Mark Schweitzer sworn October 3, 2018 and filed October 4, 2018 at para. 12(c) (**October 2018 Schweitzer Affidavit**).
[8] Rose Affidavit at paras. 43(c), 48(c).
[9] Rose Affidavit, Exhibit J (being the Asset Purchase Agreement, with Schedules E1 (Equipment List) and E2 (Heavy Equipment)).
[10] Rose Affidavit, Exhibit J (being the Asset Purchase Agreement, s. 2.06).
[11] May 2020 Schweitzer Affidavit at para. 11(a), note 1, Exhibit A.

municipal property tax billed for the Goodyear Assets was $6,374,201,[12] which alone exceeds the value attributed to the Goodyear Assets by the Trustee.

8. Nonetheless, as the Trustee has done and solely for the purposes of analyzing the Asset Transaction for this application, the Perpetual Energy Defendants use the value attributed to the Goodyear Assets by the Trustee of $5,670,200.[13]

2. Value of the Crown deposits and prepaid expenses

9. As of the closing of the Asset Transaction (at 12:01 pm on October 1, 2016), PEOC also held the legal and beneficial interest in other assets associated with the Goodyear Assets, including:

(a) Crown royalty deposits and credits totalling $2,240,858;[14]

(b) prepaid expenses of $3,922,533 relating to the Goodyear Assets;[15] and

(c) payment of $134,022 from POT.[16]

3. Value to PEOC as a result of the Aggregate Transaction

10. As per the Share Purchase Agreement executed September 26, 2016 and closed at 12:03 pm on October 1, 2016, PEOC also owned additional assets with significant value as a result of the Aggregate Transaction:

(a) the Gas Marketing Contract, with a cost to POT to put in place of $12.9 million;[17]

---

[12] Rose Affidavit, Exhibit Z.
[13] May 2020 Schweitzer Affidavit at para. 11(a). To be clear, on the application to strike, the Court must accept the allegations of facts in the Statement of Claim as true, including the allegations of the value of the Goodyear Assets, subject to the qualifications in paragraphs 34-36 of the Reasons. The Perpetual Energy Defendants use that value solely for the purposes of this Summary Dismissal Application.
[14] Rose Affidavit, Exhibit H (Schedule I to the Share Purchase Agreement). This total is the sum of a Crown royalty deposit ($200,000), an excess deposit with the Alberta Crown ($413,335) and a Crown royalty account credit ($1,627,523).
[15] Rose Affidavit, Exhibit H (Schedule I to the Share Purchase Agreement). This total is the sum of the Orphan Well levy, AER 2016 administration fee, mineral lease rentals, surface lease rentals, prepaid property taxes, prepaid seismic reproduction costs and prepaid October salaries.
[16] Rose Affidavit at para. 48(a), Exhibits L and K (p. 2).
[17] May 2020 Schweitzer Affidavit at paras. 12(c) and 18; Rose Affidavit at paras. 21, 39(e), 42, 43(c)(i), 48(c) and 49; Reasons at para. 332 **[Tab 1]**.

(b) the Office Sublease of 15,300 square feet of office space without any obligation to pay rent or operating costs until March 31, 2018;[18] and

(c) ownership rights and licences for proprietary seismic data.[19]

C. Liabilities

1. Municipal property taxes associated with the Goodyear Assets

11. The Darby Affidavit estimates the annual property taxes payable with respect to the Goodyear Assets at $10,047,744.20.[20] That amount was for all 201<u>5</u> property taxes; however, the Aggregate Transaction occurred in the fall of 201<u>6</u>.[21] Additionally, those 2015 municipal property taxes were not just for the Goodyear Assets, but also for other properties held by Perpetual not forming part of the Goodyear Assets.

12. The gross property taxes associated with the Goodyear Assets for 2016 were $6,374,201.[22] PEOC or Sequoia paid all outstanding municipal property taxes owing in 2016, with the exception of $1,560,890 owed to the three municipalities that voluntarily entered into payment plans with Sequoia after October 1, 2016.[23] As the Reasons state, there is no record of municipalities issuing notices of default in respect of 2016 municipal property taxes associated with the Goodyear Assets.[24]

13. Justice Nixon determined that the relevant outstanding municipal property taxes were $1,560,890:

> [334] The evidence provided by the Trustee alleged municipal property taxes in the amount of $10,047,744. Based on my review of the evidence, I note that those municipal property taxes were from a 2015 listing. Since the Asset

---

[18] Rose Affidavit at para. 43(c)(ii).
[19] Rose Affidavit at paras. 43(c)(iii) and 48(c).
[20] Darby Affidavit at para. 40.3, Exhibit M.
[21] Darby Affidavit, Exhibit M; October 2018 Schweitzer Affidavit at note 1; Reasons at para. 334.
[22] Rose Affidavit, Exhibit Z. Gross property taxes are inclusive of taxes for properties in which other parties own a working interest in the property. Offsetting the amounts owing to POT by PEOC, on October 1, 2016, at Closing, PEOC assumed the responsibility for future payment of several property tax invoices as they came due in the fourth quarter of 2016; $4.26 million of which related to amounts attributable to POT that were required to be paid by PEOC. Rose Affidavit, Exhibit H (being the Share Purchase Agreement, Schedule I).
[23] Rose Affidavit at paras. 70 and 71; Rose Affidavit, Exhibit Z.
[24] Reasons at para. 335 [**Tab 1**].

> Transaction was effected in 2016, I focused on the municipal property taxes associated with that calendar year. Based on my review of the evidence, I find the relevant outstanding municipal property tax to be in the amount of $1,560,890.[25]

2. ARO associated with the Goodyear Assets

14. The Darby Affidavit states that "the Trustee estimates that the liabilities associated with the Goodyear Assets and assumed by PEOC as part of the Asset Transaction, were:... ARO of $192,127,274 for the Goodyear Wells (abandonment costs of $98,855,218 and reclamation costs of $93,272,056)... [and] ARO of $26,831,000 for the facilities associated with the Goodyear Wells"[26] for a total of $218,958,274.

15. The Rose Affidavit states: "Asset retirement obligations (ARO) associated with the Goodyear Assets sold to Sequoia did not represent a creditor claim or current liability at the time of closing."[27]

16. Justice Nixon determined that ARO is not a liability and:

> [171] ...[C]oncerning the ARO associated with the Goodyear Assets, there is neither a liability nor any amount referable to an existing obligation.[28]

3. Other liabilities

17. The Statement of Claim does not allege that PEOC had other liabilities. Nor does the Darby Affidavit identify any other liabilities.

18. The Rose Affidavit states:

> 72. ...Consistent with common industry practice and the Asset Purchase Agreement and Share Purchase Agreement, Perpetual paid all Goodyear Asset obligations incurred up to closing and Sequoia paid all Goodyear Asset obligations incurred after closing.
>
> 73. Trade and service providers to the Goodyear Assets were similarly paid by Perpetual for goods and services provided with respect to the Goodyear Assets up to closing. Subsequent to closing, trade and service providers to the Goodyear Assets began transacting with Sequoia and accordingly would have been required

---

[25] Reasons at para. 334 **[Tab 1]**. See also Rose Affidavit at paras. 70-71 and 76, Exhibit Z; Darby Affidavit at para. 41.2.
[26] Darby Affidavit at paras. 40, 40.1 and 40.2.
[27] Rose Affidavit at para. 74.
[28] Reasons at para. 171 **[Tab 1]**.

> to establish new accounts with Sequoia and voluntarily make commercial decisions whether or not to extend trade credit to support their business with Sequoia in the normal course.
>
> 74. I understand that all amounts owing to the AER at the time of closing by PEOC were paid in full either by Perpetual or Sequoia.[29]

19. The Reasons state:

> [180] ...[B]ut for the alleged ARO and property taxes, the Trustee SOC provides no further particulars or allegations regarding the amounts or nature of the alleged liabilities.[30]

III. ISSUES

20. There are three issues in this Strike and Summary Dismissal Application:

Issue 1: Was there a "transfer" reviewable under the *BIA*?

Issue 2: If so, was the transfer "at undervalue"?

Issue 3: Was PEOC insolvent at the time of the Asset Transaction or rendered insolvent by the Asset Transaction?

21. The analysis of the first issue is the same whether considering the application to strike or the summary dismissal application. The second and third issues will each be addressed in two parts: first, considering the application to strike based solely on the allegations in the Statement of Claim and second, considering the application for summary dismissal and the evidence. If the Court accepts any of these five distinct submissions, the Statement of Claim in its entirety should be struck or dismissed.

IV. ARGUMENT

A. The test and law on striking pleadings and summary dismissal

22. The test and law on striking pleadings under Rule 3.68 are set out in the Reasons at paragraphs 28-36.[31]

---

[29] Rose Affidavit at paras. 72-74.
[30] Reasons at para. 180 [**Tab 1**].

23. The test and law on summary dismissal under Rule 7.3 are set out in the Reasons at paragraphs 37-54.[32]

B. The *BIA*

1. Transfer at undervalue

24. Section 2 of the *BIA* defines "transfer at undervalue":

> **"transfer at undervalue"** means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor;[33]

25. Section 96(1) of the *BIA* addresses "Transfer at undervalue". It states in part:

> **Transfer at undervalue**
>
> **96 (1)** On application by the trustee, a court may declare that a *transfer at undervalue* is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if
>
> ...
>
> **(b)** the party was not dealing at arm's length with the debtor and
>
> ...
>
> **(ii)** the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
>
> **(A)** *the debtor was insolvent at the time of the transfer or was rendered insolvent by it*...[34]

26. Section 96 of the *BIA* is an anti-abuse mechanism "intended to assist the trustee in recovering assets that the debtor disposed of in advance of bankruptcy for little or no consideration, thereby depriving the estate of value that would have otherwise been available

---

[31] Reasons at paras. 28-36 **[Tab 1]**; *Alberta Rules of Court*, Alta Reg 124/2010, rule 3.68 **[Tab 2]**.
[32] Reasons at paras. 28-36 **[Tab 1]**; *Alberta Rules of Court*, Alta Reg 124/2010, rule 7.3 **[Tab 2]**.
[33] *BIA*, s. 2 **[Tab 3]**.
[34] *BIA*, s. 96(1) **[Tab 3]**. Italics used in this brief show emphasis added.

for distribution to the creditors."[35] Applied here, it is intended to assist the Trustee in recovering assets if it were determined that PEOC disposed of assets for inadequate consideration, thereby depriving PEOC's estate of value that was otherwise available for distribution to creditors.

27. Section 96(2) of the *BIA* requires the Trustee to state what, in the Trustee's opinion, was the fair market value of the actual consideration given or received by the debtor:

> **Establishing values**
>
> **96 (2)** In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.[36]

28. The Trustee's opinion is a rebuttable presumption subject to "evidence to the contrary". But "[o]nce some contrary evidence is adduced, the presumption has 'no more than its own weight'... The effect of the contrary evidence in effect, makes the presumption vanish."[37]

29. Further, if it is demonstrated that the Trustee's opinion of value is premised on an assumption that is wrong in law or is otherwise not reliable, that is sufficient to rebut the presumption.[38]

30. Solely for the purposes of this summary dismissal application, the Perpetual Energy Defendants use the Trustee's opinion of the value of the consideration received by PEOC of $5,670,200. As set out below, the Trustee's opinion of the value of the consideration given by PEOC regarding municipal property taxes is rebutted by contrary evidence, and regarding ARO is premised on a flawed assumption that ARO is a liability.

31. In determining the value of the consideration given or received by the debtor under s. 96, this Court has held that it may consider the value of a transfer on a "holistic assessment", including consideration that is "related to or arose from... other transactions."[39]

---

[35] Industry Canada's Corporate and Insolvency Law Policy Director, Bill C-12: "Clause by Clause Analysis of An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005", available online: <https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br01983.html#a46> **[Tab 4]**.
[36] *BIA*, s. 96(2) **[Tab 3]**.
[37] *Indarsingh, Re*, 2015 ABQB 158 (***Indarsingh***) at para. 18 **[Tab 5]**.
[38] *Randen v HPCB-Online Ltd.*, 2018 BCCA 123 at para. 21 **[Tab 6]**.

2. Solvency tests

32. Section 2 of the *BIA* also defines "insolvent person":

> **"insolvent person"** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;[40]

33. The solvency tests under the *BIA* were explained by Professor Roderick Wood:

> Paragraphs (a) and (b) are both cash flow tests. Paragraph (a) is forward looking in that it considers whether the debtor has the means to meet obligations that have or that are about to come due and does not require an actual default in paying obligations. Paragraph (b) is backward looking in that it considers whether the debtor has ceased to pay current obligations in the ordinary course of business. Paragraph (c) is a balance sheet test that assesses whether the debtor's liabilities exceed the debtor's assets.
>
> Although the cash flow tests are occasionally used in connection with the transfer at undervalue provisions, it is far more common to find that the licensed insolvency trustee relies on the balance sheet test to establish insolvency. This reliance is not unexpected. Many of the transfer at undervalue cases concern transfers by individuals. The cash flow test is more likely to be employed in connection with an operating business.[41]

34. The Ontario Court of Appeal has held that the definition of an insolvent person "is reserved for 'clear cut situations where the liabilities on which the petition is founded and the act of bankruptcy are clearly established by sound and convincing evidence'".[42]

---

[39] *Hofer (Re)*, 2019 ABQB 405 (*Hofer*) at para. 39 **[Tab 7]**.
[40] *BIA*, s. 2 **[Tab 3]**.
[41] Roderick J Wood, "Transfers at Undervalue: New Wine in Old Wineskins?", 2017 Annual Review of Insolvency Law 1 at pg. 9 **[Tab 8]**.
[42] *Kormos v Fast*, 2019 ONCA 430 at para. 13 **[Tab 9]**.

C. Issue 1: Was there a "transfer" reviewable under the *BIA*?

35. Pursuant to s. 2.01 of the Asset Purchase Agreement, PEOC, as trustee for POT, transferred to PEOC "all of the right, title and interest of Vendor in the [Goodyear] Assets."[43] The effect was to combine the legal and beneficial interests in those assets.

36. The purpose of s. 96 is to assist the Trustee in recovering assets that PEOC disposed of for inadequate consideration, depriving PEOC/Sequoia's estate of value—yet PEOC held the same legal (and exigible) interest in the Goodyear Assets before and after the Asset Transaction. There was therefore no disposition of property through the Asset Purchase Agreement within the meaning of s. 96. And the Asset Transaction made no difference to the value of PEOC/Sequoia's estate in that it did not remove value that would have otherwise been available to PEOC's creditors.

1. The nature of a trust relationship

37. Subject to statute, a trust is not a legal entity.[44] It is a description of a fiduciary relationship which exists between parties.[45] The trust relationship involves obligations owed by the person who holds the trust property.[46]

---

[43] Rose Affidavit, Exhibit J (being the Asset Purchase Agreement).

[44] *Garron Family Trust (Trustee of) v R.*, 2012 SCC 14 at para. 10: "Relationships" like partnerships and trusts, are only persons if they are deemed as such by statute **[Tab 10]**. As Justice Nixon stated in Question 17(a): "While a trust is treated as an individual for Canadian tax purposes, that is because of deeming rules within the *Income Tax Act*." The *BIA* defines an "entity" as a person other than an individual (*BIA*, s. 4 **[Tab 3]**). The definition of "person" in the *BIA* does not refer to a trust, although it does include a corporation. The *Interpretation Act*, R.S.C., 1985, c I-21, s 35(1) *sub verbo* "person" does not expand this definition to include trusts. And the definition of "corporation" in the *BIA* does not contemplate a trust (it does include an "income trust", but POT does not fall within that definition) (*BIA*, s. 2 **[Tab 3]**). See also *Canada Deposit Insurance Corp. v Canadian Commercial Bank*, 83 A.R. 341 (Q.B.) (***Canada Deposit Insurance***) at paras. 26 and 42: "As an unincorporated unit trust is not a person, it cannot be a transferee, therefore it cannot be liable as a transferee under s. 62(1) of the [Land Titles] Act" **[Tab 11]**.

[45] *Robinson Engineering Co. v Wasabi Resources Ltd.* (1988), 93 A.R. 321 (Q.B.) (***Robinson***) at para. 17 **[Tab 12]**; *Canada Deposit Insurance* at para. 15: "The R.E.I.T. is structured as an unincorporated trust and as such is not a legal entity and cannot itself be a party to a contract. This does not imply that the contract itself was invalid, but merely that the person who can sue or be sued on the contract is not the R.E.I.T. but its trustee" **[Tab 11]**; *Spencer v Riesberry*, 2012 ONCA 418 at para. 53: "A trust is a form of property holding. It is not a legal entity or person" **[Tab 13]**; *Williamson v Williamson*, 2020 BCSC 108 at paras. 22-25: "a trust is not a separate legal entity but a 'relationship'", quoting the B.C. C.A. **[Tab 14]**; *Healthcare of Ontario Pension Plan Trust Fund v Neuro Discovery II Limited Partnership*, 2017 BCSC 1743

38. As a trust is not a legal entity, any liabilities are liabilities of the trustee. In turn, "a trustee... is entitled to be indemnified out of the trust property against any liabilities which he has properly incurred."[47] In certain circumstances, a creditor of a trustee has a "right to be subrogated to the right of indemnity of a trustee."[48] But that right is limited to the property the trustee holds in trust: "The right of indemnity is not only exercisable against the trust property. It is also a first charge on that property, taking priority over other interests."[49]

2. The implications of the law of trusts

39. There was no transfer or disposition of property when PEOC as trustee "transferred" all of the beneficial interest in the Goodyear Assets to PEOC in its own capacity.

40. This was addressed in the answer to one of the questions Justice Nixon asked counsel. He asked whether a trust (like POT) is an entity, and "what are the implications if POT is a relationship and not an entity?"[50] The Perpetual Energy Defendants answered:

> If POT is not an entity nor a person, then the Asset Transfer Agreement was between PEOC (in its own capacity) and PEOC (in its capacity as trustee for POT). ...[G]iven that s. 96 only applies to transfers between persons, the alleged "transfer" from POT to PEOC is not captured within the meaning of s. 96. Section 96 of the *BIA* cannot reverse a transaction that is between the bankrupt and itself. Accordingly, s. 96 does not apply.
>
> As POT is not a person, it cannot be sued, pay money, nor hold property. Those are responsibilities of its trustee, which on October 1, 2016, was... PEOC.
>
> The Asset Transfer Agreement did not materially change PEOC's position with respect to the Goodyear Assets, and therefore it did not change the position of PEOC's creditors, if any, with respect to the Goodyear Assets. Accordingly, the

---

at para. 48: "the trust is not a legal entity that can sue or be sued except in the name of its trustees" **[Tab 15]**.

[46] AH Oosterhoff *et al*, eds, *Oosterhoff on Trusts*, 7th ed (United States: Thomson Reuters Canada Limited, 2009) at 18, 24: "An express trust is one in which the person creating it has expressed his or her intention to have property held by one or more persons for the benefit of another or others" **[Tab 16]**; *Robinson* at para. 17: "A trust is not a legal entity per se. It is a description of a fiduciary relationship which exists between parties" **[Tab 12]**.

[47] *Canada Deposit Insurance* at para. 28 **[Tab 11]**.

[48] *Canada Deposit Insurance* at para. 30 **[Tab 11]**.

[49] *Canada Deposit Insurance* at para. 30 **[Tab 11]**, quoting Waters, *Law of Trusts in Canada*, 2nd ed. (1984), at p. 950 (not reproduced).

[50] Requests from, and Questions for, the Parties dated December 17, 2018, Question 17(a).

> Asset Transfer did not negatively impact—or even materially change—the value of PEOC's estate.[51]

41. The Trustee's answer to this failed to recognize the significance of the law of trusts, and demonstrated that it is attempting to make Perpetual Energy liable because it was the beneficiary of a trust: "If POT [is a relationship and not an entity] the other 'party' to the Asset Transaction is PEI, the beneficiary of POT."[52] That is not what the Asset Purchase Agreement states—Perpetual Energy is not a party. Nor is that what the law of trusts states—the Asset Purchase Agreement did not transfer assets between two entities, as PEOC continued to hold the legal interest to the Goodyear Assets.

42. The mischief that s. 96 is intended to address—to prevent a debtor from disposing assets for no or inadequate consideration to deprive its estate of value that would otherwise have been available for its creditors—does not exist here. Whatever creditors PEOC had immediately before or after the Asset Transaction, the position of the creditors remained the same: PEOC held the Goodyear Assets and associated liabilities. The creditors' right of recourse was not changed by the Asset Transaction. What assets were disposed of pursuant to the Asset Transaction that deprived the PEOC/Sequoia creditors of assets otherwise available for distribution? None—it always held the Goodyear Assets and associated liabilities.

43. Immediately before and after the Asset Transaction, a creditor of PEOC seeking to enforce a claim relating to the Goodyear Assets could claim against PEOC. Before the Asset Transaction, PEOC could be sued in its capacity as trustee of POT. After the Asset Transaction, PEOC could be sued as legal and beneficial owner. In both cases, PEOC had the same assets out of which to pay these creditors: the Goodyear Assets. The Asset Transaction did not change that.

44. Perpetual Energy was not liable for PEOC's obligations to its creditors before the Asset Transaction. Section 96 does not make it liable for those obligations after that transaction. A judgment that Perpetual Energy is required to pay the estate of Sequoia any money, let alone

---

[51] The Perpetual Energy Defendants' response to Requests from, and Questions for, the Parties dated December 17, 2018, Question 17(c).

[52] Trustee's response to Requests from, and Questions for, the Parties dated December 17, 2018, Question 17(c).

$217 million, would provide Sequoia's creditors a windfall they never would have obtained had the Asset Transaction never taken place.

45. During the first summary dismissal application, counsel for the Trustee argued that PEOC had municipal tax liabilities at the time of the Asset Transaction. If that's the case, this means that there was no transfer at undervalue. Justice Nixon asked counsel for the Trustee about its argument: "If it [PEOC] had those liabilities [municipal property tax] in the first instance, i.e., before the conveyance, and if the obligations for remediation are not liabilities, then did the conveyance improve the status of PEOC?"[53] The Trustee had no substantive response. The answer is "yes". And the answer would be still be "yes" if the question had assumed that ARO associated with the Goodyear Assets were liabilities (although ARO is not a liability) because PEOC was the legal owner of the Goodyear Assets and the person liable for associated liabilities. It is therefore also not surprising that PEOC did not become insolvent as a result of the Asset Transaction. The Asset Transaction did not materially change PEOC's position with respect to the Goodyear Assets, as it continued to hold legal title to the same assets (and the associated municipal property taxes) and acquired further assets under the Aggregate Transaction.[54]

46. In summary, whether one looks at the Asset Transaction through the lens of the law of trusts or considering the purpose of s. 96 of the *BIA*, the conclusion is the same. There was no "transfer" reviewable under the *BIA*.

D. Issue 2: If so, was the transfer "at undervalue"?

1. The *BIA* Claim discloses no reasonable claim regarding transfer at undervalue and should be struck under Rule 3.68

(a) The allegations in the Statement of Claim regarding transfer at undervalue

47. The Statement of Claim alleges that the Asset Transaction was a transfer at undervalue at paragraphs 13, 14, and 22:

---

[53] Transcript from December 17, 2018, 91/38-92/2.
[54] Rose Affidavit at para. 45.

13. The Goodyear Assets had no positive fair market value at the time of the Asset Transaction, but represented a significant net liability;

    13.1. The value of the actual consideration given by Sequoia... in the Asset Transaction was at least $223,241,000; and

    13.2. The value of the actual consideration received by Sequoia in the Asset Transaction was at most $5,670,200.

14. As a result of the Transactions:

    14.1. Sequoia acquired assets with associated ARO and other liabilities which exceeded the value of the assets;

    14.2. Sequoia received consideration which was conspicuously less than the consideration provided by Sequoia; ...

22. The Asset Transaction:

    22.1. was a disposition of property for which the consideration received by PEOC was conspicuously less than the fair market value of the consideration given by PEOC, including by its assumption by PEOC of the ARO associated with the Goodyear Assets; ...

48. The Statement of Claim refers to no "significant" liability to support the allegation of a transfer at undervalue other than the ARO, stating that "the Goodyear Assets... had significant associated abandonment and reclamation liabilities" when PEOC acquired that property in the Asset Transaction,[55] the Goodyear Assets "were high liability assets".[56]

49. Justice Nixon held that the only significant liability alleged is the ARO:

> [212] The substantive focus of the Trustee SOC is on the ARO. It emphasizes that the ARO is significant, and that the Goodyear Assets were high liability assets. I infer that the "high liability" comment in the Trustee SOC [at paragraph 16.31] is an indirect reference to the ARO.[57]

(b) Allegations of transfer at undervalue are incapable of proof

50. The allegations regarding a transfer at undervalue are based on the assumption in the Statement of Claim that the ARO associated with the Goodyear Assets was a liability.

[55] Statement of Claim at para. 5.
[56] Statement of Claim at para. 16.3.1.
[57] Reasons at para. 212 **[Tab 1]**.

51. The assumption that the ARO associated with the Goodyear Assets was a liability is wrong, incapable of proof and bound to fail. Pursuant to *Redwater*[58] and the Reasons:

(a) end-of-life obligations, like ARO, form a fundamental part of the value of the licensed assets, the same as if the associated costs had been paid up front;[59]

(b) on the date of the Asset Transaction, no one (including the AER) was a creditor of PEOC in respect of the ARO associated with the Goodyear Assets;[60]

(c) on the date of the Asset Transaction, PEOC had neither a liability nor any amount referable to an existing obligation arising from the ARO associated with the Goodyear Assets;[61] and

(d) on the date of the Asset Transaction, to the extent that there was ARO associated with the Goodyear Assets, it was a notional and contingent obligation insufficient to constitute a liability.[62]

52. As a result, the claim that the consideration received by PEOC was conspicuously less than the fair market value of the consideration given by PEOC (that is, that there was a "transfer at undervalue" under the *BIA*) is bound to fail. As a result, the *BIA* Claim is bound to fail.

53. Therefore the Statement of Claim discloses no reasonable claim and should be struck.

2. The *BIA* Claim discloses no genuine issue for trial regarding transfer at undervalue and should be dismissed under Rule 7.3

(a) The evidence regarding transfer at undervalue

54. The Trustee's opinion of value of the consideration *received* by PEOC is set out in the Darby Affidavit by reference to the value stated in the McDaniel Report of $5,670,200: "In the

[58] *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 (*Redwater*) **[Tab 17]**.
[59] Reasons at para. 166, citing *Redwater* at para. 157 **[Tab 17]**.
[60] Reasons at para. 170 **[Tab 1]**.
[61] Reasons at para. 171 **[Tab 1]**.
[62] Reasons at para. 172 **[Tab 1]**.

opinion of the Trustee... the value of the actual consideration received by PEOC in the Asset Transaction was at most $5,670,200."[63]

55. The Trustee's opinion of value of the consideration *given* by PEOC is set out in the Darby Affidavit:

(a) ARO of $218,958,274 (comprising $192,127,274 for the Goodyear Wells and $26,831,000 for the facilities associated with the Goodyear Wells);[64] and

(b) municipal property taxes of $10,047,744.20.[65]

56. The Darby Affidavit is wrong. The value of the consideration given by PEOC is at most the amount of the outstanding 2016 municipal property taxes:

(a) ARO is not a liability (its implied end-of-life obligations are built into the market value of the assets);

(b) the outstanding municipal property taxes associated with the Goodyear Assets were paid to Sequoia directly or indirectly by POT through the closing adjustments, and only $1,560,890 in 2016 municipal property taxes were not paid but subject to special deferred payment arrangements between Sequoia and three municipalities; and

(c) there were no other liabilities.

(b) No evidence of a transfer at undervalue

57. In summary, based on the Trustee's evidence and the Reasons, the value of the consideration received by PEOC in the Asset Transaction was $5,670,200[66] and the value of the consideration given by PEOC was $1,560,809,[67] resulting in a positive value to PEOC of $4,109,391.[68] There was no transfer at undervalue.

---

[63] Darby Affidavit at paras. 37.2 and 44.3.
[64] Darby Affidavit at para. 40.
[65] Darby Affidavit at para. 44.2.
[66] Darby Affidavit at para. 44.3.
[67] May 2020 Schweitzer Affidavit at para. 16.
[68] Reasons at paras. 368-69 **[Tab 1]**; May 2020 Schweitzer Affidavit at para. 17.

58. PEOC also received the Gas Marketing Contract and other valuable consideration through the Share Purchase Agreement,[69] a contemporaneous transaction directly related to the Asset Transaction.[70]

(c) Conclusion on application for summary dismissal regarding transfer at undervalue

59. There is no genuine issue requiring a trial. No trial is required to determine whether there was a transfer at undervalue. A fair and just determination can be made on the merits on a summary dismissal application.

60. Here, summary dismissal allows the judge to make the necessary findings of fact, apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result.

E. Issue 3: Was PEOC insolvent at the time of the Asset Transaction or rendered insolvent by the Asset Transaction?

1. The *BIA* Claim discloses no reasonable claim regarding insolvency and should be struck under Rule 3.68

(a) The allegations in the Statement of Claim

61. Paragraphs 14, 20 and 22 of the Statement of Claim allege that PEOC was insolvent at the time of the Asset Transaction[71] or was rendered insolvent by the Asset Transaction:[72]

> 14. *As a result of* the Transactions:
>
> 14.1. Sequola acquired assets with associated ARO and other liabilities which exceeded the value of the assets;
>
> ...
>
> 14.3. *if* Sequola was not already insolvent, *it was rendered insolvent*, as its liabilities exceeded its assets and it was unable to pay its debts as they became due; ...

---

[69] May 2020 Schweitzer Affidavit at paras. 12(c) and 18; Rose Affidavit at paras. 21, 39(e), 42, 43(c)(i), 48(c) and 49; Reasons at para. 332 **[Tab 1]**.
[70] *Hofer* at para. 39 **[Tab 7]**.
[71] Statement of Claim at para. 22.4.
[72] Statement of Claim at paras. 14.3, 20.1 and 20.3.

> 20. *As a result of* the Transactions generally and the Asset Transaction in particular:
>
> 20.1. *if* PEOC was not insolvent, it *was rendered insolvent*;
>
> 20.2. *PEOC was liable for*, but unable to pay, the municipal property taxes with respect to the Goodyear Assets pursuant to the *Municipal Government Act*; and
>
> 20.3. *PEOC became liable for*, but unable to pay, the ARO associated with the Goodyear Assets; ...
>
> 22. The Asset Transaction:
>
> ...
>
> 22.4. was entered into while PEOC was insolvent, *alternatively* rendered PEOC insolvent.

62. The Trustee's allegations are bound to fail. PEOC was not insolvent at the time of the Asset Transaction and was not rendered insolvent by the Asset Transaction, applying either the cash flow test or the balance sheet test.

(b) PEOC was not insolvent at the time of the Asset Transaction

63. The only allegation that PEOC was insolvent at the time of the Asset Transaction is an unparticularized statement in paragraph 22.4 of the Statement of Claim: The Asset Transaction "was entered into while PEOC was insolvent...". The Statement of Claim does not provide any particulars or state any basis for the allegation.

64. Instead, the Statement of Claim alleges that prior to the Asset Transaction, PEOC had no assets or liabilities:

(a) paragraph 12 addresses PEOC's assets: "Prior to the Asset Transaction... PEOC, had functioned solely as trustee for POT and had no material assets or operations;"[73] and

(b) there is no allegation that PEOC had liabilities at the time of the Asset Transaction. The Statement of Claim appears to suggest only that PEOC acquired

[73] Statement of Claim at para. 12.

liabilities (taxes and ARO) *as a result of* the Asset Transaction. For example, paragraph 20:[74]

> 20. *As a result of* the Transactions generally and the Asset Transaction in particular: ...
>
> 20.2: PEOC was liable for, but unable to pay, the municipal property taxes with respect to the Goodyear Assets pursuant to the *Municipal Government* Act; and
>
> 20.3: PEOC became liable for, but unable to pay, the ARO associated with the Goodyear Assets;...

65. As such, the allegations that PEOC was insolvent at the time of the Asset Transaction disclose no reasonable claim. As alleged, PEOC had no assets or liabilities at the time of the Asset Transaction.

(c) PEOC was not rendered insolvent by the Asset Transaction

66. The Trustee alleges in paragraphs 14, 20 and 22 of the Statement of Claim that PEOC acquired assets with associated ARO and municipal property taxes that rendered it insolvent.

67. Justice Nixon determined that the Statement of Claim alleges no significant liabilities other than the ARO:

> [230] In this case, the Trustee SOC refers to the fact that the ARO was significant when the Goodyear Assets were acquired by PEOC in the Asset Transaction. It refers to no other "significant" liability.
>
> [231] I infer from the content of the Trustee SOC that the only significant liability in PEOC is the ARO associated with the Goodyear Assets. This inference is reinforced by the additional statement in the Trustee SOC which reiterated that the Goodyear Assets were "high liability" assets.[75]

68. As set out above, the assumption that the ARO associated with the Goodyear Assets was a liability is wrong, incapable of proof and bound to fail.

---

[74] Statement of Claim at para. 20.
[75] Reasons at paras. 230-231 [**Tab 1**].

69. The Statement of Claim does not allege an amount of municipal property taxes associated with the Goodyear Assets for which PEOC became liable as a result of the Asset Transaction.[76]

70. Therefore, the allegation that, as a result of the Asset Transaction, PEOC was rendered insolvent is wrong, incapable of proof and bound to fail.

(d) Conclusion on application to strike regarding insolvency

71. On this basis alone, the Statement of Claim discloses no reasonable claim and should be struck. If the Court accepts this submission, it is unnecessary to consider the additional submissions in this Brief.

2. The *BIA* Claim discloses no genuine issue for trial regarding insolvency and should be dismissed under Rule 7.3

(a) PEOC was not insolvent at the time of the Asset Transaction

72. The Trustee's own evidence contradicts its argument that PEOC was insolvent at the time of the Asset Transaction.

73. The Darby Affidavit reiterated the allegation[77] that PEOC had no assets or operations prior to the Asset Transaction: "Its sole function, until it was replaced by POC, was to act as trustee for POT. Until October 1, 2016, Sequoia [PEOC] had no material assets or operations."[78] But then Mr. Darby speculates that PEOC was insolvent at the time of the Asset Transaction because—while PEOC had no assets—it nonetheless "may" have been liable for the municipal property taxes associated with the Goodyear Assets: "It had no assets or operations and may have been insolvent, *if* it was personally liable to pay the municipal property tax obligations associated with the assets it held as trustee for POT."[79] But seemingly to contradict this, he

---

[76] See Reasons at paras. 118, 205, 206 and 209 ("The Trustee SOC... is focused on the ARO and unidentified municipalities") **[Tab 1]**.
[77] Statement of Claim at para. 12.
[78] Darby Affidavit at para. 7.
[79] Darby Affidavit at para. 45.

then states: "As a result of the Asset Transaction, PEOC *became* liable for the municipal property taxes with respect to the Goodyear Assets."[80]

74. Justice Nixon asked counsel in writing:

> Do all parties agree that PEOC was solvent as at the end of business on September, 2016? If not please direct the Court to the evidence that supports a contrary conclusion.

75. Counsel for the Trustee repeated Darby's speculation, without directing the Court to any evidence:

> No. *If* it was personally liable for property tax on the properties it held in its own name (as trustee, on behalf of POT), it was not solvent.[81]

76. In any event, the Trustee cannot have it both ways. At the time of the Asset Transaction, either the Goodyear Assets and associated liabilities should be attributed to PEOC or neither should.

77. In summary, if the municipal property taxes associated with the Goodyear Assets are attributed to PEOC, PEOC had what the Darby Affidavit described as a "right [as trustee] to claim reimbursement from POT"[82] such that PEOC was *not insolvent at the time of* the Asset Transaction on either a cash flow or balance sheet basis.

78. Alternatively, if the municipal property taxes associated with the Goodyear Assets are not attributed to PEOC, PEOC was *not insolvent at the time of* the Asset Transaction:

(a) on a cash flow basis, as PEOC had no operations and therefore no obligations that would become due; or

---

[80] Darby Affidavit at para. 57.

[81] Trustee's response to Requests from, and Questions for, the Parties dated December 17, 2018, Question 15.

[82] Darby Affidavit at para. 57; see the First Amended and Restated Trust Indenture: Article 4.2(t) "to settle and pay and satisfy out of the assets or property of the Trust Properties... any of the obligations of the Trust, including, without limitation... (i) the amount of any... property... or other tax..." and Article 5.4(b): "... the Trustee... shall be entitled to be indemnified and saved harmless out of the Trust Properties... in respect of... all other liabilities... taxes...".

(b) on a balance sheet basis, as PEOC had no assets and no associated liabilities (its assets and liabilities on its own account and not as trustee of POT were as set out in financial statements attached as Exhibit I to the Darby Affidavit).[83]

(b) PEOC was not rendered insolvent by the Asset Transaction

79. The evidence that PEOC was rendered insolvent by the Asset Transaction is set out in the Darby Affidavit:

> 46. Accordingly, by acquiring the Goodyear Assets which, according to PEI:
>
> 46.1. had been cash flow negative for many years;
>
> 46.2. represented ARO and tax liabilities of more than $130 million on Perpetual's own records; and
>
> 46.3. required capital for ARO and recompletion of $22.6 million over the next three years, PEOC was immediately rendered insolvent, if it had not already been insolvent immediately prior to acquiring the Goodyear Assets.
>
> 47. As a result of the Asset Transaction, PEOC had no property which, at a fair valuation, was sufficient to enable payment of all its obligations.
>
> ...
>
> 57. As a result of the Asset Transaction, PEOC became liable for the municipal property taxes with respect to the Goodyear Assets, with no right to claim reimbursement from POT or anyone else. As these assets were cash flow negative, PEOC has no ability to pay the taxes.

80. As a result of the Asset Transaction, Sequoia became an operating business. It continued to operate and acquire other assets—through at least three other separate transactions—for 18 months following the Asset Transaction until March 2018.[84] This included acquiring approximately an additional 800 gas wells.[85]

---

[83] Darby Affidavit, Exhibit I is the financial statements of PEOC prepared at the request of 198 for 198's due diligence review that it performed in support of the negotiation of the Transaction. These financial statements are consistent with the financial information that PEOC prepared and filed for income tax purposes. PEOC's balance sheet shows assets of $100 and no liabilities. PEOC's income statement shows no revenue or expenses. This financial information is consistent with PEOC's sole purpose, prior to completing its sale to 198, to act as trustee of POT.

[84] May 2020 Schweitzer Affidavit at para. 14, Exhibit B.

[85] May 2020 Schweitzer Affidavit at para. 14, Exhibit B.

81. Sequoia later became insolvent after natural gas prices severely dropped, negatively impacting realized revenue and cash flow. Sequoia had chosen to close out of the Gas Marketing Contract in the summer of 2017 thereby losing the benefits of the price protection on approximately 90% of the Goodyear Assets' production for the remaining term of the contract through to October 2018, just as gas prices collapsed and remained low.[86] This Court has held that where a downturn in the economy coincided with a transfer, the challenging economic circumstances may explain the subsequent insolvency.[87]

82. Sequoia management and the Trustee have explained that Sequoia was not insolvent until 18 months after the Asset Transaction. In a March 26, 2018 letter, Sequoia's Board of Directors and Management provided an overview of Sequoia's business plan, which involved lowering its operating costs through an aggressive abandonment and reclamation program. The letter states: "From October 1, 2016 to December 31, 2017, [Sequoia] abandoned 150 wells and received reclamation certificates for 90 wells," and "These strategies were successful and on target through to the end of the summer of 2017,"[88] demonstrating that Sequoia was able to pay its debts as they became due. Notably, the Trustee, which is in possession of Sequoia's books and records, has not provided any evidence regarding Sequoia's cash flows after the closing of the Aggregate Transaction.

83. The letter also provides an overview of the causes of Sequoia's insolvency, which included a protracted gas price collapse in Alberta starting in the summer of 2017:

> ... gas had averaged $2.95/GJ over the past four years, prices collapsed to an average of $1.32/GJ for 2017 (source for all historic prices: www.cga.ca). On certain days in October [2017], gas traded at negative prices; producers such as [Sequoia] paid purchasers to take the gas instead of getting paid.
>
> ...During the spring of 2018, gas prices and especially gas futures continued to collapse.... Forecast pricing for 2019, 2020 and 2021 are also very significantly down from forecast pricing when [Sequoia] began operations.
>
> ... Ultimately, as a result of the low price environment, [Sequoia] could not ...continue to operate without sustaining significant losses... Municipal taxes do not scale with gas prices.[89]

[86] May 2020 Schweitzer Affidavit at para. 14.
[87] See e.g. *Indarsingh* at para. 44 **[Tab 5]**.
[88] October 2018 Schweitzer Affidavit at para. 24, Exhibit A.
[89] October 2018 Schweitzer Affidavit at para. 24, Exhibit A.

84. The Trustee's preliminary report corroborates the evidence that Sequoia became insolvent for reasons unrelated to the Asset Transaction. After the Asset Transaction, between October 2016 and August 2017, Sequoia acquired further assets under "key transactions" from Husky Oil, Waldron Energy, and others when gas prices were at historic lows and thought to be at the bottom of the commodity cycle.[90] The report further states:

> Based on materials reviewed by the Trustee, for the period October 1, 2016 to December 31, 2017, [Sequoia] abandoned approximately 150 wells and received reclamation certificates for approximately 90 wells. This ranked [Sequoia] fifth in the province for number of properties abandoned and reclaimed...
>
> Former management of [Sequoia] has advised the Trustee that [Sequoia]'s strategies appeared to be successful until around August, 2017, when gas prices in Alberta began to decline significantly. Gas price depression has continued through the spring of 2018 and forecasted prices for summer 2018 remain low. ...
>
> Former management of [Sequoia] asserts that because of this low price environment, [Sequoia] could not complete its abandonment program or continue to operate without sustaining significant cash losses.[91]

85. If further evidence of Sequoia's solvency following the Asset Transaction is required, the evidence is that PEOC was able to pay, and did pay, its 2016 municipal property taxes. The Rose Affidavit states that the taxes to be paid by PEOC in the fourth quarter of 2016 were offset by expenses prepaid by POT:

> 68 The provisions detailed above had the combined effect of assuring 198 that PEOC would be acquired without any debts at the time of closing, with the exception of certain amounts expected to be paid in the fourth quarter of 2016 with respect to municipal property taxes that were identified on Schedule I to the Share Purchase Agreement and materially offset by prepaid expenses relating to periods after closing and deferred payment obligations to Perpetual related to recovery of the Crown royalty deposit and Crown royalty credit.[92]

86. Three municipalities voluntarily entered into agreements with Sequoia after the closing of the Aggregate Transaction that the 2016 municipal property taxes could be paid without penalty in multiple payments over an extended period.[93] The first installments in these payment

---

[90] October 2018 Schweitzer Affidavit, Exhibit B.
[91] October 2018 Schweitzer Affidavit, Exhibit B.
[92] Rose Affidavit at para. 68.
[93] Rose Affidavit at paras. 70-71; see e.g. Exhibits AA-BB.

plans were paid in 2016, with further installments not due until 2017[94]—when Sequoia experienced a severe change in economic conditions.

87. The Goodyear Assets were not forecasted to be cash flow negative following the Aggregate Transaction:[95]

(a) on the revenue side, PEOC had existing production of approximately 35 MMcf/d from the Goodyear Assets,[96] and owned the Gas Marketing Contract, providing PEOC with a minimum gas price of $2.58/GJ on approximately 90% of production from the Goodyear Assets from October 1, 2016 to October 31, 2018;[97] and

(b) on the cost side, Sequoia's new management implemented a new operating model, having negotiated in the Aggregate Transaction a sustainable cost structure, which significantly reduced labour costs and other operating costs.[98] Investments in abandonment and reclamation activities were forecast to further reduce operating costs (while recompletions would increase production and therefore revenue).[99] The Aggregate Transaction itself lowered PEOC's G&A costs, with Perpetual Energy subleasing to PEOC 15,300 square feet of office space without an obligation to pay rent or operating costs until March 31, 2018,[100] as well as PEOC hiring a reduced group of field and office employees and in-house abandonment and reclamation equipment and processes (Perpetual having paid all severance obligations for employees).[101]

88. Regarding the balance sheet test: the value of PEOC's assets exceeded its liabilities by at least $4,109,391 (the difference between the positive value of the Goodyear Assets of

---

[94] Rose Affidavit at para. 71(a)-(b), Exhibits AA-BB.
[95] Darby Affidavit, Exhibit C (p. 13).
[96] Rose Affidavit at para. 19.
[97] May 2020 Schweitzer Affidavit at para. 12(c); Rose Affidavit at paras. 21, 34, 39(e), 42, 43(c)(i), 48(d), 49 and Exhibit I.
[98] Rose Affidavit at para. 39(b) and (e), Exhibits E and X.
[99] Darby Affidavit, Exhibit C; Rose Affidavit, Exhibit AA; October 2018 Schweitzer Affidavit, Exhibits A-B.
[100] Rose Affidavit at para. 43(c)(ii).
[101] Rose Affidavit at paras. 39(d), 43(c)(iv) and Exhibit H (being the Share Purchase Agreement, sections 5.3(y), 12.1(o), 12.2(h)).

$5,670,200 and the associated municipal property taxes of at most $1,560,809). The Reasons set this out clearly:

> [368] My conclusion is supported by the financial component of the "Value and Consideration" in respect of the Asset Transaction. That financial result is as follows (see the "**Post-*Redwater***" column):[102]

	Trustee SOC	**Post-*Redwater***
Alleged Value of Consideration Received	$5,670,200	$5,670,200
Trustee Estimate of Liabilities Assumed:		
• ARO abandonment costs	98,855,218	NIL
• ARO reclamation costs	93,272,056	NIL
• ARO Facilities	26,831,000	NIL
Alleged Aggregate ARO	218,958,274	NIL
Alleged Aggregate Property Taxes	10,047,744	1,560,809
Sub-Total	229,006,018	1,560,809
Reconciling Adjustment	(5,765,018)	NIL
Alleged Aggregate Liabilities	223,241,000	1,560,809
Net Asset (Deficit)	($217,570,800)	$4,109,391

89. As Justice Nixon stated in the Reasons:

> [369] In effect, the decision in *Redwater* extinguishes the Trustee's assertion that the Asset Transaction resulted in a significant net deficit.[103]

90. Just as Justice Nixon held that *Redwater* extinguishes the Trustee's Public Policy Claim and the Director Claim,[104] it also extinguishes the Trustee's *BIA* Claim.[105]

---

[102] Reasons at para. 368 [**Tab 1**].
[103] Reasons at para. 369 [**Tab 1**].
[104] Reasons at paras. 281 and 370 [**Tab 1**].
[105] Reasons at para. 110 ("While there were good practical reasons for the Perpetual Energy Defendants to confine the BIA Claim to the arm's length issue, I note for the record, without deciding the point, that my findings below in respect of the Oppression Claim may have caused me to arrive at a different conclusion in respect of the BIA claim if I had not been restricted to addressing the arm's length issue.") [**Tab 1**].

91. It is also noteworthy that PEOC had other prepaid expenses and Crown royalty deposits and credits as a result of the Asset Transaction,[106] plus a payment from POT of $134,022.[107] PEOC also owned the Gas Marketing Contract on October 1, 2016 with a cost to POT of $12.9 million,[108] and an office sublease of 15,300 square feet without any obligation to pay rent or operating costs until March 31, 2018.[109]

(c) Conclusion on application for summary dismissal regarding insolvency

92. There is no genuine issue requiring a trial. No trial is required to determine whether PEOC was insolvent at the time of or was rendered insolvent by the Asset Transaction. A fair and just determination can be made on the merits on a summary dismissal application.

93. Here, summary dismissal allows the judge to make the necessary findings of fact, apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result.

V. RELIEF SOUGHT

94. The Perpetual Energy Defendants seek an order:

(a) striking the Statement of Claim;

(b) summarily dismissing the Statement of Claim;

(c) costs of this application and this Action against PwC in its personal capacity, or alternatively PwC in its capacity as trustee in bankruptcy of Sequoia, on a full indemnity basis or on such scale as this Honourable Court determines to be just; and

---

[106] Rose Affidavit, Exhibit H (Schedule I to the Share Purchase Agreement).
[107] Rose Affidavit at para. 48(a).
[108] May 2020 Schweitzer Affidavit at paras. 12(c) and 18; Rose Affidavit at paras. 21, 39(e), 42, 43(c)(i), 48(c) and 49; Reasons at para. 332 [**Tab 1**].
[109] Rose Affidavit at para. 43(c)(ii).

(d) such further and other relief as the Court deems appropriate.

July 8, 2020

RESPECTFULLY SUBMITTED.

BURNET, DUCKWORTH & PALMER LLP

Per: ______________________________

D.J. McDonald, Q.C. / Paul G. Chiswell
Counsel for the Perpetual Energy Defendants

AUTHORITIES

1. *PricewaterhouseCoopers Inc. v Perpetual Energy Inc.*, 2020 ABQB 6

2. *Alberta Rules of Court,* Alta Reg 124/2010, rules 3.68 and 7.3

3. *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, ss. 2, 4, 96

4. Bill C-12: Clause by Clause Analysis

5. *Indarsingh, Re,* 2015 ABQB 158

6. *Randen v HPCB-Online Ltd.,* 2018 BCCA 123

7. *Hofer (Re),* 2019 ABQB 405

8. Roderick J Wood, "Transfers at Undervalue: New Wine in Old Wineskins?", 2017 Annual Review of Insolvency Law 1

9. *Kormos v Fast,* 2019 ONCA 430

10. *Garron Family Trust (Trustee of) v R.,* 2012 SCC 14

11. *Canada Deposit Insurance Corp. v Canadian Commercial Bank,* 83 A.R. 341 (Q.B.)

12. *Robinson Engineering Co. v Wasabi Resources Ltd.* (1988), 93 A.R. 321 (Q.B.)

13. *Spencer v Riesberry,* 2012 ONCA 418

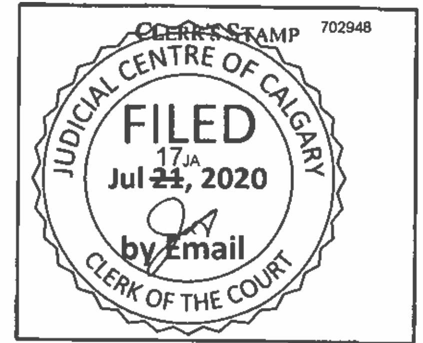
14. *Williamson v Williamson,* 2020 BCSC 108

15. *Healthcare of Ontario Pension Plan Trust Fund v Neuro Discovery II Limited Partnership,* 2017 BCSC 1743

16. AH Oosterhoff et al, eds, *Oosterhoff on Trusts,* 7th ed (United States: Thomson Reuters Canada Limited, 2009)

17. *Orphan Well Association v Grant Thornton Ltd.,* 2019 SCC 5

Exhibit 3



COM
July 28 2020
Justice D.B Nixon

COURT FILE NUMBER	1801-10960
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity
DEFENDANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE
DOCUMENT	**BRIEF OF THE RESPONDENT PRICEWATERHOUSECOOPERS INC., LIT (STRIKING/SUMMARY DISMISSAL)** For the hearing on July 28, 2020 at 10:00 a.m. before Mr. Justice D.B. Nixon
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PERSON FILING THIS DOCUMENT	DE WAAL LAW 1010, 505 – 3RD Street SW Calgary, AB T2P 3E6 Phone: (403) 266-0012

Attention: Rinus de Waal/Luke Rasmussen
Direct: (403) 266-0014
Facsimile: (403) 266-2632
E-mail: lrasmussen@dewaallaw.com

Rinus de Waal/Luke Rasmussen
Counsel for the Respondent

This is Exhibit " 3 " referred to in the Affidavit of
Paul J Darby
Sworn before me this 22nd day
of September A.D. 2020

A Notary Public, A Commissioner for Oaths
In and for the Province of Alberta

LUKE RASMUSSEN
Barrister & Solicitor

{00036346-2/283 001}

TABLE OF CONTENTS

INTRODUCTION		1
PART I - STATEMENT OF FACTS		2
PART II – ISSUES		2
PART III - ARGUMENT		3
A.	The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's s. 96 Claim is an Abuse of Process	3
B.	The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's Claims on the Basis that there was no "Transfer" reviewable under s. 96	14
C.	The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's s. 96 Claim on the Basis that there was no Transfer at Undervalue	21
D.	The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's s. 96 Claim on the Basis that PEOC was not rendered insolvent by the Asset Transaction	28
PART V - RELIEF SOUGHT		39
TABLE OF AUTHORITIES		40

{00036346-2/283001}

INTRODUCTION

1. Perpetual Energy Inc., Perpetual Operating Trust ("**POT**") and Perpetual Operating Corp. (the "**Perpetual Defendants**") apply to strike and/or dismiss the claim brought against them under s. 96 of the *Bankruptcy and Insolvency Act* (the "***BIA***") by PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp. (the "**Trustee**").

2. The Perpetual Defendants' application is an abuse of process. Even on their own, each of the following four issues on its own amounts to an abuse of process. The cumulative effect of all four makes the conclusion inescapable.

   2.1. The Perpetual Defendants rely on alternative evidence. They deliberately had the same witness swear two separate affidavits on the same day, asserting two inconsistent versions of the key facts, to support two different applications.

   2.2. Although they have appealed the dismissal of their first application to strike and/or dismiss the Trustee's s. 96 claim, they have applied again for the same relief, contradicting the basis for their first application and their pending appeal.

   2.3. The defences asserted as the basis for the current application to strike and/or dismiss the Trustee's s. 96 claim have not only not been pleaded, but directly contradict specific admissions in the Perpetual Defendants' Statement of Defence.

3. Even if the merits of the application are viewed in isolation, the application should be dismissed. The three grounds raised by the Perpetual Defendants are without merit.

   3.1. The Perpetual Defendants now argue that there was no "transfer" to which s. 96 of the *BIA* could apply, because Sequoia Resources Corp. ("**Sequoia**" or "**PEOC**") entered into the October 1, 2016 Asset Purchase Agreement (the "**Asset Purchase Agreement**") with itself. This argument is inconsistent with the pleadings, the position taken by the Perpetual Defendants up to this point in

the litigation, the terms of the Asset Purchase Agreement and the relevant provisions of the *BIA*.

3.2. The Perpetual Defendants now argue that any transfer was not a transfer at "undervalue" within the meaning of s. 96, because the asset retirement obligations ("**ARO**") associated with the assets is "not a liability". The argument incorrectly assumes that unless ARO is a liability, it has no effect on the value of the assets with which they are associated. This is inconsistent with two decisions of the Supreme Court of Canada and the Perpetual Defendants' own submissions.

3.3. Finally, they argue that the transaction contemplated by the Asset Purchase Agreement (the "**Asset Transaction**") could not have rendered PEOC insolvent because ARO is "not a liability". This argument incorrectly assumes that the balance sheet insolvency test under the *BIA* is concerned only with liabilities and that ARO therefore need not be considered. However, the *BIA* expressly refers to "obligations, due and accruing due", not to "liabilities".

PART I – STATEMENT OF FACTS

4. The relevant facts are discussed below in relation to each issue.

PART II – ISSUES

5. The Perpetual Defendants' application to strike and/or dismiss the Trustee's s. 96 claim raises four main issues:

5.1. Whether the application should be dismissed as an abuse of process, regardless of its merits;

5.2. Whether the Trustee's s. 96 claim should be struck or dismissed on the basis that there was no "transfer" within the meaning of s. 96;

5.3. Whether the Trustee's claim that the Asset Transaction was a transfer at undervalue should be struck or dismissed; and

5.4. Whether the Trustee's claim that the Asset Transaction rendered PEOC insolvent should be struck or dismissed.

PART III – ARGUMENT

A. The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's s. 96 Claim is an Abuse of Process

1. The Perpetual Defendants rely on alternative evidence

6. The Perpetual Defendants' security for costs application and application for summary dismissal should be dismissed as an abuse of this Court process.

7. As discussed in the Trustee's brief regarding the application for security for costs, the same witness for the Perpetual Defendants swore two affidavits on the same day, one ascribing "marginal value" to the Goodyear Assets as a result of the ARO in support of the Perpetual Defendants' application for security for costs and the other, in support of their application to strike and/or dismiss the Trustee's s. 96 claim, proposing a positive net value of $4,109,391[1] and a NIL value for ARO.

8. In each of Mr. Schweitzer's May 5, 2020 affidavits, both of which are referred to simply as the "May 2020 Schweitzer Affidavit" in the corresponding brief,[2] he asserts a contradictory version of the same key facts.

8.1. In his May 5 affidavit in support of the security for costs application, he agrees with the Trustee's representative that the assets in the estate are of "marginal value" because of the ARO associated with them.[3]

8.2. In his May 5 affidavit in support of the application for summary dismissal, he says the Goodyear Assets, a subset of the assets in the estate, have a "positive

---

[1] May 5, 2020 Affidavit of M. Schweitzer in support of Security for Costs Application ("Security for Costs Affidavit"); May 5, 2020 Affidavit of M. Schweitzer in support of Summary Dismissal Application ("Summary Dismissal Affidavit");

[2] Perpetual Defendants Summary Dismissal Brief ("Summary Dismissal Brief) at footnote 11; Perpetual Defendants' Security for Costs Brief ("Security for Costs Brief"), at footnote 4.

[3] Security for Costs Affidavit, at para. 27.

value" of $4,109,391[4] and the Trustee's "opinion of value mischaracterizes ARO as a liability."[5]

9. It is an abuse of process for a party, with full knowledge, even to *plead* two inconsistent versions of the same facts in two *different* proceedings.[6] Here the Perpetual Defendants attempt to rely on two diametrically opposed affidavits in support of two parallel applications (requiring different supporting evidence) in the same proceeding. This kind of conduct undermines the "integrity of the administration of justice" and is what the abuse of process doctrine exists to prevent.[7]

2. Leaving aside their reliance on alternative evidence, the application to strike and/or dismiss the s. 96 claim is an abuse of process

10. Subject to certain exceptions, it is an abuse of process for a party to bring a second interlocutory application for the same relief.[8] In framing their first application to strike and/or dismiss the Trustee's s. 96 claim, the Perpetual Defendants were careful to scope the application narrowly to focus only on the "arm's length" issue.[9]

11. Although their appeal from the dismissal of that application is pending, they have brought a second application for the same relief. Once again, the application to strike and/or dismiss the s. 96 claim is narrowly focused on discrete issues. The abuse of process is particularly egregious because one of their new arguments for obtaining the same relief contradicts the basis for their first application, this Court's previous decision and their pending appeal.

12. When the Court declines to grant an application for summary dismissal, the decision is interlocutory, not final, and *res judicata* and issue estoppel does not apply. However, as the Court of Appeal confirmed in *Pocklington*, the abuse of process doctrine applies to

---

[4] Summary Dismissal Affidavit, at para. 17.
[5] Summary Dismissal Affidavit, at footnote 3.
[6] *Mystar Holdings Ltd. v 24037 Alberta Ltd.*, 2009 ABQB 480, at para. 62 **[Trustee's Authorities, Tab 1]**
[7] *Calgary (City) v Alberta (Human Rights and Citizenship Commission)*, 2011 ABCA 65, at para. 28, citing Amalgamated Transit Union, Local 583 v Calgary (City), 2007 ABCA 121, at paras. 69, 78 **[Trustee's Authorities, Tab 2]**
[8] *Pocklington Foods Inc. v. Alberta (Provincial Treasurer)*, 1995 ABCA 111 (Pocklington), at paras. 8-14 **[Trustee's Authorities, Tab 3]**
[9] *PricewaterhouseCoopers Inc. v Perpetual Energy Inc.*, 2020 ABQB 6 (Reasons), at paras. 60 and 90.

prevent the re-litigation of interlocutory applications, unless an exception applies.[10] A second interlocutory application for the same relief will not be an abuse of process only:

12.1. if the ruling on the first application was not based on the merits of the issue but on a technical objection;

12.2. if upon the first application the applicant failed to prove essential facts from mistake or inadvertence;

12.3. if there is new evidence that seriously justifies reconsideration of the issue; or

12.4. if there is a material change in circumstances of a non-evidentiary nature.[11]

13. In *Kwinter* Justice Tilleman:

13.1. applied this test to determine if a second application to compel answers was an abuse of process because the first application for the same relief had been dismissed[12] and cited *Pocklington* for the proposition that "the court is not powerless to deal with attempts to re-litigate issues already decided by it."[13]

13.2. Justice Tilleman rejected the argument that a change in the applicable law allowed the Court to hear the second application.[14] Although a Court of Appeal decision was released after the first application was dismissed, the decision would not have affected the outcome of the first application.[15]

14. In *Workum*, the Court of Appeal allowed an appeal from a chambers judge's decision granting a second application after the first application for the same relief had been dismissed.[16] The chambers judge had determined that she could reverse her previous

---

[10] *Pocklington, supra*, at paras. 8-14 **[Trustee's Authorities, Tab 3]**
[11] *Ibid*, at para. 8 **[Trustee's Authorities, Tab 3]**
[12] *Schwartz Estate v Kwinter*, 2011 ABQB 169, at paras. 3, 4 **[Trustee' Authorities, Tab 4]**
[13] *Ibid*, at para. 13, citing *Pocklington*, supra, at para. 8 **[Trustee's Authorities, Tab 4]**
[14] *Ibid*, at para. 19 **[Trustee's Authorities, Tab 4]**
[15] *Ibid*, at para. 23-24 **[Trustee's Authorities, Tab 4]**
[16] *Proprietary Industries Inc. v Workum*, 2006 ABCA 226 (*Workum*), at para. 5 **[Trustee's Authorities, Tab 5]**

ruling because the applicant advanced an argument not made on the previous application.[17] In allowing the appeal, the Court stated that:

> [5] The appeal is allowed for two reasons. First, we conclude the chambers judge committed an abuse of process by allowing Workum to re-argue his case on the second application. [...]
>
> [6] This Court held in *Pocklington Foods Inc. v Alberta (Provincial Treasurer)* [citation omitted], at para. 14: "[w]here the second application seeks only to reargue the first application, *or to make arguments which were available at the time of the first*, it should be dismissed as an abuse of process, or as frivolous and vexation [emphasis added]
>
> [7] Nothing new arose from the time the ruling on the first application and the second application to strike. All that was advanced was an additional argument that should have been made on the first occasion. That is exactly what *Pocklington* precludes.

15. As in *Pocklington*, *Kwinter* and *Workum*, the Perpetual Defendants' second application to strike and/or dismiss the Trustee's s. 96 claim is an abuse of process.

15.1. Their first application to strike and/or dismiss the s. 96 claim was not dismissed based on a "technical objection".[18]

15.1.1. There was complete cross-examination on the affidavits filed by the Parties, several days of oral submissions and supplemental written submissions.

15.1.2. The Reasons for Judgment devoted 66 paragraphs to the dismissal of the Perpetual Defendants' application.[19]

15.2. The second summary dismissal is not the result of issues not raised as a result of "mistake or inadvertence".[20]

15.2.1. The Perpetual Defendants were careful to confine their first application to dismiss the Trustee's s. 96 claim to "only" the "threshold" question of whether the parties were dealing at arm's length.[21]

---

[17] *Ibid* **[Trustee's Authorities, Tab 5]**
[18] *Pocklington*, *supra*, at para. 8 **[Trustee's Authorities, Tab 3]**
[19] Reasons, at paras. 55-111.
[20] *Pocklington*, *supra*, at para. 8 **[Trustee's Authorities, Tab 3]**

15.2.2. As in *Workum*, they are precluded from seeking summary dismissal again based on "arguments which were available" at the time of the first application.[22]

15.3. There is no new evidence that "seriously justifies" reconsideration of the issue:

15.3.1. As noted in the Reasons, "the Perpetual Defendants were careful to assert that they were not challenging the 'value' issue in respect of their opposition to the *BIA* Claim, apparently on the basis that it was irrelevant to the arm's length issue."[23]

15.3.2. Mr. Schweitzer's evidence in support of the first application to strike and/or dismiss the s. 96 claim was that the Perpetual Defendants "will require factual and expert evidence to show that [sic] the fair market value of the consideration given and received by PEOC".[24] Mr. Schweitzer now purports to give contradictory evidence regarding the value of the Goodyear Assets;[25] neither of his versions of the facts justifies a reconsideration of the Perpetual Defendants' application.

15.4. There is no "material change in circumstance" of a non-evidentiary nature:

15.4.1. Mr. Schweitzer attempts to explain why "factual and expert evidence" of value is no longer required by stating that the *Redwater* decision was released after he swore his initial affidavit.[26] He states that, in *Redwater*, the Supreme Court "judicially determined" that "ARO is not a liability".[27]

15.4.2. The *Redwater* decision was released in January 2019. The Parties, including the Perpetual Defendants, made written submissions regarding

[21] Perpetual Defendants' August 28, 2018 Application for Summary Dismissal, at para. 4 **[Trustee's Authorities, Tab 6]**; Reasons, at paras. 60, 89 and 90.
[22] *Workum, supra*, at para. 6 **[Trustee's Authorities, Tab 5]**
[23] Reasons, at paras. 60, 89 and 90.
[24] Summary Dismissal Affidavit, at para. 7.
[25] Security for Costs Affidavit, at para. 27; Summary Dismissal Affidavit, at para. 17 and footnote 3.
[26] Summary Dismissal Affidavit, at para. 8.
[27] Summary Dismissal Affidavit, at para. 8.

the effect of the *Redwater* decision prior to the release of this Court's decision on the Perpetual Defendants' application for summary dismissal. If *Redwater* "judicially determined" that "ARO is not a liability", as they now maintain, the Perpetual Defendants could simply have amended their first application for summary dismissal, as Ms. Rose did twice.[28]

15.4.3. In any event, as in *Kwinter*, the *Redwater* decision did not change the law regarding ARO as it applied to the Trustee's s. 96 claim. The Court in *Redwater* simply confirmed the position it had previously taken in its 2013 decision in *Daishowa*, which was expressly relied on by Ms. Rose. Like Ms. Rose, the Perpetual Defendants could have argued, based on *Daishowa* and *Redwater*, that ARO is not liability in making their first application to strike and/or dismiss the Trustee's s. 96 claim. They were careful not to raise that issue then and it would be an abuse of process to allow them to raise it now.[29]

16. As stated by the Court of Appeal in *Pocklington*:

> [W]e emphasize that the object of the exercise is to avoid re-argument and re-litigation of issues already dealt with by the Court and in respect of which an order has been taken out. Such re-litigation is unfair to the other party and wastes the valuable resources of the Court.[30]

17. If the Perpetual Defendants had simply brought a second application for the same relief disallowed the first time, it would be an abuse of process of the variety described in the above authorities. However, the abuse of process here is particularly egregious because one of the new grounds for striking and/or dismissing the s. 96 claim directly contradicts the basis for their first application and their pending appeal.

---

[28] Amended, Amended Application for Summary Dismissal and Striking Pleadings of Ms. Rose, filed October 19, 2018 **[Trustee's Authorities, Tab 7]**

[29] Reasons, at paras. 60, 89 and 90.

[30] *Pocklington, supra*, at para. 9 **[Trustee's Authorities, Tab 3]**

18. In their first application, filed in August 2018, the Perpetual Defendants assert that:

> Even if the Asset Purchase Agreement is analyzed in isolation under s. 96(1) of the *BIA*, the parties were dealing at arm's-length. When that agreement was executed, 198 had *de facto* control and was negotiating on behalf of PEOC, *while Perpetual controlled and was negotiating on behalf of POT. 198 and Perpetual* were dealing at arm's-length.[31] [Emphasis added.]

19. Consistent with their application to strike and/or dismiss the s. 96 claim, the Perpetual Defendants' Factum sets out the "facts relevant to the appeal", including that:

> *POT sold its beneficial interest in the Goodyear Assets to PEOC* in the Asset Transaction, which combined the legal and beneficial interest in the Goodyear Assets in PEOC;[32] [Emphasis added.]

20. However, although they intend to proceed with their appeal on that basis, they ask this Court to grant a second application to strike and/or dismiss the Trustee's s. 96 claim on the basis *that there was no transfer from POT to PEOC*, that POT was merely a relationship and that PEOC transferred the beneficial interest to itself:

> *There was no transfer or disposition of property when PEOC as trustee* "transferred" all of the beneficial interest in the Goodyear Assets *to PEOC* in its own capacity.[33] [Emphasis added].

21. The abuse of process doctrine exists to preserve the "integrity of the administration of justice" including by preventing conduct that would lead to "inconsistent results".[34]

22. To illustrate the magnitude of the abuse of process here:

22.1. the Perpetual Defendants seek an Order from this Court striking or dismissing the s. 96 claim on the basis that a PEOC to PEOC transaction is not a "transfer" within the meaning of s. 96; and

22.2. at the same time, in their appeal from the Order dismissing their first application to strike or dismiss the s. 96 claim, the Perpetual Defendants seek an Order from

---

[31] Perpetual Defendants' August 2018 Application for Summary Dismissal, at para. 8 **[Trustee's Authorities, Tab X]**

[32] Perpetual Defendants' Factum, at para. 13(a) **[Trustee's Authorities, Tab X]**

[33] Summary Dismissal Brief, at para. 39.

[34] Calgary (City) v Alberta (Human Rights and Citizenship Commission), 2011 ABCA 65, at para. 28, citing Amalgamated Transit Union, Local 583 v Calgary (City), 2007 ABCA 121, at paras. 69, 78.

the Court of Appeal allowing their appeal on the opposite basis, namely that "POT sold its beneficial interest in the Goodyear Assets to PEOC."[35]

23. The Court of Appeal in *Rudichuk* recently criticized parties engaged in three years of litigation on a motion to strike and summary judgment application:

> There were two special chambers motions before two different masters that resulted in detailed written judgments, followed by two special applications before a chambers judge that resulted in two further detailed written judgments, followed by two appeals.
>
> This multiplicity of interlocutory proceedings is not the culture shift contemplated by the Supreme Court of Canada in *Hyrniak v Mauldin*.[36]

24. As in *Rudichuk*, "this multiplicity of interlocutory proceedings" should not be permitted.[37] The Perpetual Defendants have abused this Court's process and their application should be dismissed on that basis.

3. The Perpetual Defendants case for striking and/or dismissal of the Trustee's s. 96 claim contradicts their own pleadings

25. All three of the grounds relied on by the Perpetual Defendants in re-applying to strike and/or dismiss the Trustee's s. 96 claim directly contradict their case in the Statement of Defence.

25.1. They now argue that the Asset Transaction was not a transfer at undervalue because (i) it was between PEOC and itself, as trustee for POT; and (ii) PEOC assets and liabilities before and after the Asset Transaction did not change. In the Statement of Defence, however, they plead that the Asset Transaction was a transfer between POT and PEOC and that PEOC had no liabilities or assets before the Asset Transaction.

25.2. They now argue that there was no transfer at undervalue because ARO is not a liability. In the Statement of Defence, however, they plead that PEOC's liabilities at the time of the Asset Transaction included ARO.

---

[35] Perpetual Defendants' Factum, at para. 13(a) **[Trustee's Authorities, Tab 8]**
[36] *Rudichuk v Gensis Land Development Corp.*, 2020 ABCA 42, at paras. 34-35 **[Trustee's Authorities, Tab 9]**
[37] *Ibid*, at para. 35 **[Trustee's Authorities, Tab 9]**

25.3. They now argue that PEOC was not rendered insolvent by the Asset Transaction because ARO is not a liability. Again, in the Statement of Defence they plead that PEOC's liabilities at the time of the Asset Transaction included ARO.

(a) The Asset Transaction was not a transfer within the meaning of s. 96

26. The Perpetual Defendants' 19-page Statement of Defence provides a detailed factual and legal response to the allegations in the Trustee's Statement of Claim. The Perpetual Defendants' Statement of Defence does not include any suggestion:

26.1. that "there was no transfer or disposition of property when PEOC as trustee 'transferred' all of the beneficial interest in the Goodyear Assets to PEOC in its own capacity"[38]; or

26.2. that PEOC "always held the Goodyear Assets and associated liabilities" before and after the Asset Transaction.[39]

27. In fact, the Perpetual Defendants pleaded an entirely different version:

> [24] As part of the Transaction, Perpetual and 198 also negotiated the Purchase and Sale Agreement between PEOC and POT dated October 1, 2016. [...] PEOC paid POT a purchase price of $10 [...]. *POT transferred its beneficial interest* in the Goodyear Assets to PEOC."[40] [Emphasis added.]
>
> [...]
>
> [37] [...] The combination of the legal and beneficial interests in PEOC was a technical step required by 198 before it acquired PEOC's shares. The Plaintiff opportunistically attempts to isolate this step, *because it involved a transfer of the beneficial interest in assets between PEOC and POT*, and claims it is reviewable under s. 96 of the *BIA*, when in substance the Transaction was the sale of shares between Perpetual and 198. [Emphasis added.]
>
> [...]
>
> [48] Prior to the Transaction, PEOC was a bare trustee and only held the legal interest in POT's oil and gas assets, contracts, licenses, and permits. It held no beneficial interest in any property *and had no* material revenues, expenses, *assets or liabilities*. [Emphasis added.][41]

[38] Summary Dismissal Brief, at para. 39.
[39] Summary Dismissal Brief, at para. 42.
[40] Perpetual Defendants' Statement of Defence, at para. 24 **[Trustee's Authorities, Tab 10]**
[41] Perpetual Defendants' Statement of Defence, at paras. 24, 37 and 48 **[Trustee's Authorities, Tab 10]**

28. The Perpetual Defendants now argue the Asset Transaction was between PEOC and itself and did not involve a transfer. In the Statement of Defence, however, they pleaded the opposite: that the Asset Transaction was between POT and PEOC and involved "a transfer of the beneficial interest in assets between PEOC and POT.[42]

29. The Perpetual Defendants now argue that the liabilities associated with the Goodyear Assets were always PEOC's, before and after the Asset Transaction. They plead the opposite: that, prior to the Transaction, PEOC was a "bare trustee" and had "no material revenues, expenses, assets or liabilities".[43]

(b) If there was a transfer, it was not at undervalue because ARO is not a liability

30. In seeking to strike and/or dismiss the Trustee's s. 96 claim, the Perpetual Defendants argue that the Asset Transaction could not have been at undervalue because ARO is not a liability.[44]

31. However, they acknowledge that:

> *PEOC/Sequoia's liabilities at the time of the Transaction* were comprised *of estimated future costs to be incurred over time by Sequoia in an efficient abandonment and reclamation program* at a discount rate commensurate with the discount rate for other producing assets, and were considered in the value of the Goodyear Assets;[45] [Emphasis added.]

(c) PEOC could not have been rendered insolvent by the Asset Transaction because ARO is not a liability

32. In seeking to strike and/or dismiss the Trustee's s. 96 claim, the Perpetual Defendants argue that the Asset Transaction could not have rendered PEOC insolvent because ARO is not a liability.[46]

---

[42] Perpetual Defendants' Statement of Defence, at para. 24 and 37 **[Trustee's Authorities, Tab 10]**
[43] Perpetual Defendants' Statement of Defence, at para. 48 **[Trustee's Authorities, Tab 10]**
[44] Summary Dismissal Brief, at paras. 50, 51, 56 and 57.
[45] Perpetual Defendants' Statement of Defence, at para. 44(c) **[Trustee's Authorities, Tab 10]**
[46] Summary Dismissal Brief, at para. 66, 67, 68, 88, 89 and 90.

33. Again, they specifically plead that "PEOC/Sequoia's liabilities at the time of the Transaction" were comprised of "estimated future costs to be incurred by Sequoia in an efficient abandonment and reclamation program."[47]

(d) The Perpetual Defendants' Statement of Defence is a complete answer to the application to strike and/or dismiss the s. 96 claim

34. The Perpetual Defendants are not permitted to seek any relief inconsistent with their own pleading[48] and have not sought to amend their Statement of Defence.

35. It would arguably be an abuse of process for the Perpetual Defendants to seek relief inconsistent with their pleadings *in another action*.[49] It is an obvious abuse of process for the Perpetual Defendants to seek the same relief *for the second time*, on a basis directly contrary to their Statement of Defence *in the same action*.

36. Perpetual Defendants have never suggested that they intend to amend their Statement of Defence. Even if the Perpetual Defendants applied to amend their Statement of Defence, the application should be refused on the basis, *inter alia*, that they should not be allowed to withdraw their admissions almost two years into the litigation, while both sides have appeals pending based on the existing pleadings.[50]

37. Accordingly, the Perpetual Defendants' application to strike and/or dismiss the Trustee's claim should be dismissed on the basis that it is inconsistent with their own Statement of Defence.

4. Conclusion on the abuse of process issue

38. The abuse of process doctrine exists to preserve the "integrity of the administration of justice" including by preventing conduct that would lead to "inconsistent results".[51] The

---

[47] Perpetual Defendants' Statement of Defence, at para. 44(c) **[Trustee's Authorities, Tab 10]**

[48] *Elan Construction Ltd. v South Fish Creek Recreation Assn.*, 2016 ABCA 215 (*Elan*), at paras. 22-23 **[Trustee's Authorities, Tab 11]**

[49] *Mystar, supra*, at para. 62 **[Trustee's Authorities, Tab 1]**

[5050] *Jin v Ren*, 2014 ABQB 250, at paras. 25 and 32 **[Trustee's Authorities, Tab 12]**; *Precision Forest Industries Ltd v East Prairie Investment Corp*, 2018 ABQB 489, at para. 67 **[Trustee's Authorities, Tab 13]**

[51] *Calgary (City) v Alberta (Human Rights and Citizenship Commission)*, 2011 ABCA 65, at para. 28 **[Trustee's Authorities, Tab 2]**

Perpetual Defendants' application to strike and/or dismiss the Trustee's s. 96 claim is an abuse of process for four reasons:

38.1. Firstly, the Perpetual Defendants rely on alternative evidence, advancing inconsistent versions of the same key facts in two different affidavits in support of two different applications at the same time.[52]

38.2. Secondly, the Perpetual Defendants have applied again for the same relief while their appeal for the dismissal of their first application is pending. None of the exceptions identified in Pocklington is engaged.[53]

38.3. Thirdly, the Perpetual Defendants' second application to strike and/or dismiss the Trustee's s. 96 claim contradicts the basis for their first application and their pending appeal.

38.4. Fourthly, the Perpetual Defendants' case for striking and/or dismissing the Trustee's s. 96 claim directly contradicts admissions in their own Statement of Defence, which they have not sought to withdraw by amendment.

39. Any of these issues would be sufficient to merit the dismissal of their application as an abuse of process. However, their cumulative effect calls out for judicial intervention.

B. The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's Claims on the Basis that there was no "Transfer" reviewable under s. 96

40. The Perpetual Defendants argue that there was no "transfer" reviewable under the *BIA* because the Asset Transaction was between PEOC and PEOC as trustee for POT.[54] They argue that POT, as a trust, was merely a relationship and, as a result:

40.1. the Asset Transaction "did not transfer assets between two entities";[55] and

---

[52] Security for Costs Affidavit, at para. 27; Summary Dismissal, at para 17 and footnote 3.
[53] *Pocklington*, *supra*, at paras. 8-14 **[Trustee's Authorities, Tab 3]**
[54] Summary Dismissal Brief, at paras. 36, 38, 39,
[55] Summary Dismissal Brief, at para. 41.

40.2. any liabilities associated with the Goodyear Assets were liabilities of PEOC, before and after the Asset Transaction.[56]

1. The Perpetual Defendants' argument is inconsistent with their own Statement of Defence, their first application to strike and/or dismiss, and their pending appeal

41. The Perpetual Defendants argue that there was no "transfer" because POT was merely a relationship and PEOC transferred the beneficial interest to itself:

> *There was no transfer or disposition of property when PEOC as trustee* "transferred" all of the beneficial interest in the Goodyear Assets *to PEOC* in its own capacity.[57] [Emphasis added.]

42. In their first application, filed in August 2018, the Perpetual Defendants assert that:

> Even if the Asset Purchase Agreement is analyzed in isolation under s. 96(1) of the *BIA*, the parties were dealing at arm's-length. When that argument was executed, 198 had de facto control and was negotiating on behalf of PEOC, *while Perpetual controlled and was negotiating on behalf of POT. 198 and Perpetual* were dealing at arm's-length.[58] [Emphasis added.]

43. In their factum before the Court of Appeal they assert the following "fact" among others:

> *POT sold its beneficial interest in the Goodyear Assets to PEOC* in the Asset Transaction, which combined the legal and beneficial interest in the Goodyear Assets in PEOC;[59] [Emphasis added.]

44. However, although they intend to proceed with their appeal on that basis, they ask this Court to grant a second application to strike and/or dismiss the Trustee's s. 96 claim on the basis *that there was no transfer from POT to PEOC*. POT was merely a relationship and PEOC transferred the beneficial interest to itself:

> *There was no transfer or disposition of property when PEOC as trustee* "transferred" all of the beneficial interest in the Goodyear Assets *to PEOC* in its own capacity.[60] [Emphasis a

---

[56] Summary Dismissal Brief, at paras. 38 and 42.
[57] Summary Dismissal Brief, at para. 39.
[58] Perpetual Defendants' August 2018 Application for Summary Dismissal, at para. 8 **[Trustee's Authorities, Tab 6]**
[59] Perpetual Defendants' Factum, at para. 13(a) **[Trustee's Authorities, Tab 8]**
[60] Summary Dismissal Brief, at para. 39.

45. In their Statement of Defence, they plead that "POT transferred its beneficial interest in the Goodyear Assets to PEOC" and the Asset Transaction "involved a transfer of the beneficial interest in assets between PEOC and POT."[61]

46. Their new argument that there was no transfer because PEOC "always held the Goodyear Assets and liabilities"[62] is also directly contradicted by their Statement of Defence. They plead that prior to the Transaction, PEOC was a "bare trustee" and had "no material revenues, expenses, assets or liabilities."[63]

47. This ground for striking and/or summary dismissal should be dismissed on the basis that it contradicts the position taken by the Perpetual Defendants up to this point in the litigation.

2. The Perpetual Defendants' argument is inconsistent with terms of the Asset Purchase Agreement and the provisions of the *BIA*

48. The argument that the Asset Transaction was entered into between PEOC and itself, as trustee, is inconsistent with the terms of Asset Purchase Agreement confirming that POT was PEOC's counterparty. It is also inconsistent with the provisions of the *BIA*.

49. The allegations in their Statement of Defence regarding the role of POT and the transfer between POT and PEOC are consistent with the Asset Purchase Agreement:

49.1. The definition of "Person" expressly includes a "trust".[64]

49.2. "Vendor" is described as "Perpetual Operating Trust, a trust registered to carry on business in the Province of Alberta" with no reference to PEOC.[65]

49.3. In s. 4.01(b), POT represents that "Vendor has the requisite capacity, power and authority to execute this Agreement and to perform the obligations to which it thereby becomes subject".[66]

---

[61] Perpetual Defendants' Statement of Defence, at paras. 24 and 37.
[62] Summary Dismissal Brief, at para. 42.
[63] Perpetual Defendants' Statement of Defence, at para. 48.
[64] Asset Purchase Agreement, s. 1.1(gg), Affidavit of P Darby, Exhibit "D".
[65] Asset Purchase Agreement, p. 1, Affidavit of P Darby, Exhibit "D".
[66] Asset Purchase Agreement, s. 4.01(b), Affidavit of P Darby, Exhibit "D".

49.4. In s. 4.01(d), POT represents that this Agreement "has been validly executed and delivered by Vendor" and "shall constitute valid and binding obligations of the Vendor".[67]

50. The terms of the Asset Purchase Agreement are inconsistent with any suggestion that it was an agreement by PEOC with itself, as trustee, as the Perpetual Defendants now contend.[68]

51. The argument that POT could not be a "party" to the Asset Transaction is also inconsistent with the provisions of the *BIA*.

52. In arguing their first application for summary dismissal, the Perpetual Defendants submitted that "if POT was not an entity nor a person" then, "[g]iven that s. 96 only applies to transfers between persons, the alleged 'transfer' from POT to PEOC is not captured within the meaning of s. 96."[69]

53. In footnote 44, the Perpetual Defendants point out that "the definition of 'person' in the *BIA* does not refer to a trust, although it does refer to a corporation." However, the definition is not exhaustive and "includes" both a partnership and an unincorporated association, neither of which is traditionally recognized as a separate legal entity.[70] As noted by Justice Romaine in *Networc Health*, the *BIA* is "remedial legislation" that should be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".[71]

54. In a s. 96 transfer involving a trust, the interpretation now urged by the Perpetual Defendants would focus the analysis on the trustee of the trust, rather than the beneficiary:

---

[67] Asset Purchase Agreement, s. 4.01(d), Affidavit of P Darby, Exhibit "D".
[68] Summary Dismissal Brief, at para. 39.
[69] Summary Dismissal Brief, at para. 40.
[70] *Lehndorff General Partner, Re,* [1993] O.J. No. 14, at para. 19; *Berry v Pulley*, 2002 SCC 40, at paras. 34 and 51 **[Trustee's Authorities, Tabs 14 and 15]**
[71] *Alberta Health Services v. Networc Health Inc.*, 2010 ABQB 373, at para. 20 **[Trustee's Authorities, Tab 16]**

54.1. They now say that there was no transfer because PEOC as trustee "transferred" a beneficial interest to itself.[72]

54.2. This is inconsistent with their previous argument on the "arm's length" issue, in which they alleged that POT and PEOC were at arm's length because POT was controlled by its beneficiary PEI and PEOC was controlled by 198.[73]

54.3. The new interpretation urged, focusing on POT's trustee rather than its beneficiary, would be inconsistent with the remedial purposes of the *BIA*.[74] A transfer to or from a trust with an arm's length trustee but a non-arm's length beneficiary would arguably be treated as an arm's length transfer, creating an opportunity for parties to avoid the more stringent provisions in s. 96(1)(b).[75]

55. Consistent with the broad definition of "person" in s. 2 of the *BIA*, which expressly includes other non-legal entities, and the remedial purpose of the *BIA*, s. 96 should not be interpreted in a way that would exclude a transfer to or from a trust like POT.

56. Accordingly, the Perpetual Defendants' argument that there was no "transfer" within the meaning of s. 96 because the Asset Transaction was between PEOC and itself as trustee must be rejected:

56.1. It is inconsistent with the terms of the Asset Purchase Agreement, which contains no suggestion that POT is not the "Vendor" with "valid and binding obligations".[76]

56.2. It is inconsistent with the broad definition of "person" in *BIA* s. 2 and would undermine the remedial purpose of s. 96 by excluding trusts with non-arm's length beneficiaries from the scope of s. 96(1)(b).

---

[72] Summary Dismissal Brief, at para. 39.
[73] Perpetual Defendants' August 2018 Summary Dismissal Application, at para. 8 **[Trustee's Authorities, Tab 6]**
[74] *Networc Health*, *supra*, at para. 20 **[Trustee's Authorities, Tab 16]**
[75] *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, s. 96 **[Trustee's Authorities, Tab 17]**
[76] Asset Purchase Agreement, s. 4.01(d), August 2, 2018 of Affidavit of P Darby, Exhibit "D".

3. Prior to the Asset Transaction, PEOC was not "the legal owner of the Goodyear Assets and the person liable for associated liabilities"[77]

57. The Perpetual Defendants argue that s. 96 should not apply because the position of PEOC's creditors "remained the same" before and after the Asset Transaction: "PEOC held the Goodyear Assets" and was the "person liable for associated liabilities".[78]

58. This argument is directly inconsistent with the Perpetual Defendants' Statement of Defence, which pleads that, prior to the Transaction, PEOC was a "bare trustee" and had no "assets or liabilities."[79]

59. The Perpetual Defendants also now argue that, although the liabilities associated with the Goodyear Assets were always PEOC's liabilities, PEOC was not insolvent at the time of Asset Transaction because it had right to claim reimbursement from POT pursuant to the POT Trust Indenture.[80]

60. This argument relies on an excerpt from the POT Trust Indenture, *which is not in evidence*. Footnote 82 to the Perpetual Defendants' summary dismissal brief states that:

> See the First Amended and Restated Trust Indenture: Article 4.2(t) "to settle and pay and satisfy out of the Trust Properties...any of the obligations of the Trust, including, without limitation...(i) the amount of any...property...or other tax..." and Article 5.4(b): "...the Trustee...shall be entitled to be indemnified and saved harmless out of the Trust Properties...in respect of...all other liabilities...taxes"

61. The Perpetual Defendants' Statement of Defence suggests that the POT Trust Indenture is inconsistent with their current argument that POT was merely a relationship. They plead that "at all material times prior to the Transaction (defined) below, the beneficial interest in the assets was administered *by POT* pursuant to the POT Trust Indenture" (emphasis added).[81]

---

[77] Summary Dismissal Brief, at para. 45.
[78] Summary Dismissal Brief, at paras. 42-43 and 45.
[79] Perpetual Defendants' Statement of Defence, at para. 48 **[Trustee's Authorities, Tab 10]**
[80] Summary Dismissal Brief, at paras. 77 and footnote 82.
[81] Perpetual Defendants' Statement of Defence, at para. 10 **[Trustee's Authorities, Tab 10]**

62. The Perpetual Defendants' Statement of Defence also pleads, presumably based on the POT Trust Indenture that, prior to the Transaction, PEOC was a "bare trustee" and had no "assets or liabilities."[82] This is directly inconsistent with the other argument they now seek to advance, that the Asset Transaction "did not materially change" PEOC's position because it already "held the Goodyear Assets" and was the "person liable for associated liabilities".[83]

63. Even though this is their second attempt at striking and/or dismissing the Trustee's s. 96 claim, the Perpetual Defendants seek to rely on a brief excerpt from one of their own documents, *which they have not put into evidence*. Based on the excerpt, this document appears to relate directly to all of the various grounds advanced by the Perpetual Defendants. As with the deliberate decision not to produce any of the records of the Trustee which have been provided to the Perpetual Defendants, the failure to put the POT Trust Indenture before the Court raises an inference that the document would not support their case.

64. The Court cannot dispose of an issue summarily when the applicants seek to rely on an excerpt from a document they failed to put into evidence.[84] The Trustee can only speculate regarding what else the document says and the implications of its contents for the Perpetual Defendants' arguments.

65. The Perpetual Defendants' attempt to rely on an excerpt from their own document, which they have not put into evidence, is a sufficient basis to dismiss their application.

4. Conclusion on first ground for striking and/or dismissing the Trustee's s. 96 claim

66. The Court should not accept the Perpetual Defendants' argument that there was no "transfer" within the meaning of s. 96:

[82] Perpetual Defendants' Statement of Defence, at para. 48 **[Trustee's Authorities, Tab 10]**
[83] Summary Dismissal Brief, at paras. 42-43 and 45.
[84] *Toronto Dominion Bank v Leffler*, 2017 ABQB 154, at paras. 75 and 79 **[Trustee' Authorities, Tab 18]**

66.1. The Perpetual Defendants' assertion that the Asset Transaction was between PEOC and itself, as trustee, is directly inconsistent with their Statement of Defence, their first application and their pending appeal.

66.2. The Perpetual Defendants' assertion that PEOC "always held the Goodyear Assets and associated liabilities" is inconsistent with their own Statement of Defence.

66.3. The argument is inconsistent with terms of the Asset Purchase Agreement, which describe POT as the counterparty bound by its terms.

66.4. The argument is also inconsistent with the broad definition of "person" under the *BIA* and its acceptance would undermine the *BIA*'s remedial purpose.

66.5. In making the argument, the Perpetual Defendants rely on an excerpt for one of their own records, which they have not put into evidence.

C. The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's s. 96 Claim on the Basis that there was no Transfer at Undervalue

67. This argument incorrectly assumes that ARO must be a "liability" in order to affect the value of the Goodyear Assets transferred to PEOC in the Asset Transaction.

68. That assumption is inconsistent with *Daishowa* and *Redwater*, both of which confirm that regulatory obligations like ARO are an "embedded" future cost that "serves to depress the tenure's value *at the time of sale*."[85] [Emphasis added.]

69. This is consistent with the Perpetual Defendants' Statement of Defence[86] and even their written submissions in this application, which acknowledge that ARO are "built into the market value of the assets".[87]

---

[85] *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 (*Redwater*), at para. 157, citing *Daishowa-Marubeni International Ltd. v Canada*, 2013 SCC 29 (*Daishowa*), at para. 29 **[Trustee's Authorities, Tabs 19 and 20]**

[86] Perpetual Defendants' Statement of Defence, at para. 44(c) **[Trustee's Authorities, Tab 10]**

[87] Summary Dismissal Brief, at para. 56(a).

1. The Perpetual Defendants have failed to establish that the Trustee's claim that there was a transfer at undervalue can be struck for failing to disclose a reasonable claim

(a) The Perpetual Defendants' submissions

70. The Perpetual Defendants' present a simple argument for striking the Trustee's allegations that there was a transfer at undervalue within the meaning of s. 96:

70.1. The Trustee's allegations regarding a transfer at undervalue "are based on the assumption in the Statement of Claim that the ARO with the Goodyear Assets was a liability".[88]

70.2. That assumption was "wrong, incapable of proof and bound to fail" because of *Redwater* and the Reasons.

70.3. As a result, the claim that there was a transfer at under value is "bound to fail" and the *BIA* claim generally are "bound to fail" and should be struck for failing to disclose a reasonable cause of action.[89]

(b) The Perpetual Defendants' misapprehend the allegations in the Trustee's Statement of Claim

71. The Perpetual Defendants suggest that the Trustee alleges that the Asset Transaction was a transfer at undervalue because the ARO was a significant liability assumed by PEOC.[90]

72. That suggestion is incorrect. In fact, the Trustee alleges, consistent with the approach mandated by *Daishowa* and *Redwater*, that the ARO associated with the Goodyear Assets "depressed their value" at the time of the Asset Transaction, such *the Goodyear Assets* themselves had a negative value to PEOC. The Trustee pleads that:

> [13] *The Goodyear Assets* had no positive fair market value at the time of the Asset Transaction, *but represented a significant net liability*;

---

[88] Summary Dismissal Brief, at para. 50.
[89] Summary Dismissal Brief, at paras. 50-54.
[90] Summary Dismissal Brief, at para. 48.

> [13.1] The value of the actual consideration given by Sequoia, then known as PEOC, in the Asset Transaction was at least $223,241,000 and
>
> [13.2] The value of the actual consideration received by Sequoia in the Asset Transaction was at most $5,670,200.
>
> [14] As a result of the Transactions [...] Sequoia acquired assets with associated ARO and other liabilities *which exceed the value of the assets*.[91] [Emphasis added.]

73. In any event and regardless of whether the ARO constitutes a separate liability, there is no dispute that it affects the present value of the assets with which they are associated.[92] The Trustee alleges that consideration given by PEOC in the Asset Transaction included its acceptance of *the negative value Goodyear Assets*.[93] As a result, it is the Goodyear Assets themselves that are alleged to represent a "a significant net liability", not the ARO separately.[94]

74. In arguing that the Trustee's transfer at undervalue allegations can be struck, the Perpetual Defendants misapprehend or misstate the Trustee's case as alleging that PEOC assumed a "significant" liability: the ARO.[95]

    74.1. Whether ARO is a separate "liability" is irrelevant, as long as it depressed the value of the Goodyear Assets to the point where these assets represented a significant net liability for the estate and made the transfer "a disposition of property ... for which the consideration received by [PEOC] conspicuously less than the fair market value of the consideration given by [PEOC]."[96]

    74.2. Whether ARO is a separate "liability" also is irrelevant to the transfer at undervalue allegations actually made by the Trustee in its Statement of Claim,

75. In any event, in determining whether to strike a claim for failing to disclose a reasonable cause of action, the Court "must be generous and err on the side of permitting a novel but

[91] Statement of Claim, at paras. 13-14 **[Trustee's Authorities, Tab 23]**
[92] *Redwater*, at para. 157, citing *Daishowa*, at para. 29 **[Trustee's Authorities, Tabs 19 and 20]**
[93] Statement of Claim, at paras. 13, 14 and 22.1 **[Trustee's Authorities, Tab 23]**
[94] Statement of Claim, at para. 13 **[Trustee's Authorities, Tab 23]**
[95] Summary Dismissal Brief, at para. 48.
[96] *BIA*, s. 96(1) **[Trustee's Authorities, Tab 17]**

arguable claim to proceed to trial."[97] The allegations in the Statement of Claim must be "read generously" in favour of the plaintiff.[98]

76. On that standard, the Perpetual Defendants have not provided this Court with any basis to strike the Trustee's transfer at undervalue allegations.

2. The Perpetual Defendants' application to dismiss the Trustee's transfer at undervalue allegations

77. The Perpetual Defendants' dismissal argument suffers from the same flaw as their striking argument: they assume that the Trustee's case is premised on ARO being a distinct liability. It is not. This argument is also inconsistent with the Perpetual Defendants' Statement of Defence.

78. The Perpetual Defendants also seek to dismiss the Trustee's claim that there was a transfer at undervalue without providing real evidence to challenge the Trustee's opinion on the value of the consideration given and received. They simply assert that "[t]he Darby Affidavit is wrong".[99]

(a) The Perpetual Defendants' submissions

79. The Perpetual Defendants present a very simple case for summary dismissal on the transfer at undervalue issue:

> The Trustee's opinion of value of the consideration given by PEOC is set out in the Darby Affidavit:
>
> (a) ARO of $218,958,274 (comprising $192,127,214 for the Goodyear Wells and $26,831,000 for the facilities associated with the Goodyear Wells); and
>
> (b) municipal property taxes of $10,047,744.20.
>
> *The Darby Affidavit is wrong.*[100] [Emphasis added.]

---

[97] *Rudichuk v Genesis Land Development Corp.*, 2020 ABCA 42, at paras. 5-6 **[Trustee's Authorities, Tab 9]**
[98] *Rudichuk v Genesis Land Development Corp.*, 2017 ABQB 119, at para. 39, citing *Festival Hall Developments Ltd. v. Michael Wilkings* (2009), 57 BLR (4th) 210, at para. 15 **[Trustee's Authorities, Tab 21]**
[99] Summary Dismissal Brief, at para. 56.
[100] Summary Dismissal Brief, at para. 55.

80. The Perpetual Defendants then argue that "ARO is not liability", merely "implied end-of-life obligations built into the market value of the assets", and the only potential liabilities were unpaid municipal taxes in the amount of $1,560,890.[101] As a result, "based on the Trustee's evidence and the Reasons", there was no transfer at undervalue.[102]

81. Although the Perpetual Defendants' assert there is no genuine issue requiring a trial, their seven-paragraph argument fails to address some important issues.[103]

(a) Assuming that ARO is not a liability, the Perpetual Defendants' argument assumes incorrectly that ARO has *no effect* on the value

82. The contradiction between the Perpetual Defendants' argument and their Statement of Defence is discussed above and is not repeated here.

83. The Trustee's evidence is that ARO associated with the Goodyear Assets at the time of Asset Transaction was $218,958,274.[104] The Trustee's opinion as to value of the consideration given and received by PEOC in the Asset Transaction is set out in Mr. Darby's affidavit:

> In the opinion of the Trustee:
>
> [44.1] the Goodyear Assets, transferred to PEOC pursuant to the Asset Transaction, had not positive fair market value at the time of the Asset Transaction, but represented a significant net liability of at least $223,241,000;
>
> [44.2] the value actual consideration given by PEOC in the Asset Transaction was therefore at least $223,241,000; and
>
> [44.3] the value of the actual consideration given by PEOC in the Asset Transaction was at most $5,670,200.[105]

84. The Perpetual Defendants are prepared to accept the Trustee's opinion as to the value of the consideration received by PEOC, but the Trustee's opinion as the value of the consideration given by PEOC is "wrong" because "ARO is not a liability".[106]

---

[101] Summary Dismissal Brief, at para. 56.
[102] Summary Dismissal Brief, at para. 57.
[103] Summary Dismissal Brief, at paras. 54-60.
[104] Summary Dismissal Brief, at para. 55.
[105] August 2, 2018 Affidavit of P Darby, at para. 44.
[106] Summary Dismissal Brief, at para. 56.

85. Although he previously swore that the Perpetual Defendants "will require factual and expert evidence to show that [sic] the fair market value of the consideration given and received by PEOC", one of Mr. Schweitzer's May 5 affidavits now asserts that "[t]he Trustee's opinion of value mischaracterizes ARO as a liability" such that PEOC gave only $1,560,809 in consideration because ARO can simply be excluded.[107]

86. Assuming that ARO is "not a liability", the flaw in the Perpetual Defendants argument is their assumption that ARO *must be liability in order to have any effect on value*. Based on this assumption, they simply delete ARO from the value equation and assert, through Mr. Schweitzer, that the Asset Transaction resulted in "a positive value to PEOC of $4,109,391".[108]

87. The following passage from their written submissions illustrates this:

> ARO is not a liability (its implied end-of-life obligations *are built into the market value of the assets*);[109]

88. Although they acknowledge, based on *Daishowa* and *Redwater*, that the ARO are "built into the market value of the assets", they then do not build the ARO into their valuation of the resulting transaction at all. They simply exclude ARO completely as a factor in determining the value of the consideration given and received by PEOC.

89. The evidence actually given by the Trustee is entirely consistent with *Daishowa* and *Redwater*. Once the ARO were "built into the market value of the assets", the assets had a significant net negative value:

> [T]he Goodyear Assets, transferred to PEOC pursuant to the Asset Transaction, had no positive fair market value at the time of the Asset Transaction, but represented a significant net liability of at least $231,241,000.[110]

90. As a result, PEOC gave consideration of at least $223,241,000 when it accepted the transfer of the negative value Goodyear Assets in the Asset Transaction.[111]

---

[107] Summary Dismissal Affidavit, at paras. 7, 16, 17 and footnote 3.
[108] Summary Dismissal Brief, at para. 57; Summary Dismissal Affidavit, at para. 17 and footnote 3.
[109] Summary Dismissal Brief, at para. 56(a).
[110] August 2, 2018 Affidavit of P. Darby, at para. 44.1.
[111] August 2, 2018 Affidavit of P. Darby, at para. 44.2.

91. The Court in *Daishowa* confirmed that regulatory obligations have a present effect on the fair market value of the asset:

> The effect of Alberta's scheme is to embed the reforestation obligations into the forest tenure, such the obligations cannot be severed from the property itself. As such, the reforestation obligations *are simply a future cost tied to the tenure that depresses the value of the tenure.* A prospective purchaser of the tenure would take into account the income-earning potential of the tenure as well as the expected future costs associated with the ownership of the tenure. The existence of reforestation obligations, *a future cost that cannot be severed from the tenure would decrease the amount such a prospective purchaser would be willing to pay*; see J. Frankovic, "Supreme Court to Hear Daishowa Appeal – Back to Basics on Basis and Proceeds" (July 12, 2012), CCH Tax Topics No. 1205, at pp. 2-3.[112] [Emphasis added.]

92. The Supreme Court in *Redwater* endorsed this approach and applied it to ARO:

> All licenses held by Redwater were received by it subject to end-of-life obligations that would one day arise. *These end-of-life obligations form a fundamental part of the value of the licensed assets, the same as if the associated costs had been paid up front.*[113] [Emphasis added.]

93. The Court in *Daishowa* could not have been more clear in illustrating how regulatory obligations affect the fair market value of an asset at the time of sale:

> Here, for instance, the record establishes that Tolko valued the High Level Division's forest tenure $31 million *less the $11 million estimated cost of future reforestation obligations.* The forest tenure *thus had a value of $20 million.* To include the full $31 million in DMI's proceeds of disposition would disregard the fact that DMI did not have $31 million of value to sell. *Under no circumstances could DMI have received $31 million for the forest tenure.*[114] [Emphasis added.]

94. If the Perpetual Defendants approach were applied to the facts in *Daishowa*, the "$11 million estimated cost of future reforestation obligations" would have no effect on the present value of the forest tenure. So, instead of being "built into built into the market value of the assets" at the time of sale, as required by *Daishowa* and *Redwater*,[115] the cost of complying with regulatory obligations would simply be excluded from the value equation on the basis that it is "not a liability".[116]

---

[112] *Daishowa, supra*, at para. 31 **[Trustee's Authorities, Tab 20]**
[113] *Redwater, supra*, at para. 157, citing Daishowa, supra, at para. 29 **[Trustee's Authorities, Tab 19]**
[114] *Daishowa, supra*, at para. 31 **[Trustee's Authorities, Tab 20]**
[115] *Redwater, supra*, at para. 157, citing Daishowa, at para. 29 **[Trustee's Authorities, Tab 19]**
[116] Summary Dismissal Brief, at paras. 56(a) and 57.

95. Even if it were not contradicted by their own pleadings, the Perpetual Defendants' argument that there was no transfer at undervalue is inconsistent with their own understanding of *Daishowa* and *Redwater*. On their version, ARO must be "built into the market value of the assets", not simply ignored.[117]

96. In any event, to the extent that Mr. Schweitzer's May 5 summary dismissal affidavit purports to disagree with the Trustee's opinion regarding the effect of ARO on the value of assets:

 96.1. His evidence is contradicted by his other May 5 affidavit, in which his other "understanding" was consistent with the Trustee's position.[118]

 96.2. More importantly, it is only sufficient, *at best*, to create a conflict in the evidence on a material fact, meaning that summary dismissal should not be granted.[119]

 96.3. Section 96(2) provides, in any event, that "the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee."

97. The Perpetual Defendants' application to dismiss the Trustee's s. 96 claim on the basis that there was no transfer at undervalue should be dismissed.

D. The Perpetual Defendants' Application to Strike and/or Dismiss the Trustee's s. 96 Claim on the Basis that PEOC was not rendered insolvent by the Asset Transaction

98. The Perpetual Defendants' argument on this issue suffers from the same flaw as their argument on the transfer at undervalue issue: it assumes that the finding that ARO is "not a liability" is relevant and a complete answer to the Trustee's allegations.

99. The specific flaw in the Perpetual Defendants' reasoning on this issue is the assumption that the balance sheet insolvency test under the *BIA* is concerned with *liabilities*, when it is actually concerned with "*obligations, due or accruing due*".

---

[117] Summary Dismissal Brief, at para. 56.
[118] Security for Costs Affidavit, at para. 27.
[119] *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49, at para. 38 **[Trustee's Authorities, Tab 22]**

100. The Trustee's allegation is that PEOC was rendered insolvent by the Asset Transaction "if it was not already insolvent".[120]

1. The Perpetual Defendants have failed to establish that the Trustee's allegations should be struck

(a) The Perpetual Defendants' submissions

101. The Perpetual Defendants argue that the Trustee's allegation that PEOC was rendered insolvent by the Asset Transaction should be struck for failing to disclose a reasonable claim. Their argument is simple and is essentially a repetition of their argument for striking the Trustee's transfer at undervalue allegations:

101.1. The Trustee alleges that PEOC was rendered insolvent by the Asset Transaction because it acquired assets with significant associated ARO and municipal property taxes.[121]

101.2. The allegation that the ARO associated with the Goodyear Assets was a liability "is wrong, incapable of proof and bound to fail".[122]

101.3. The Trustee's Statement of Claim "does not allege an amount" of municipal taxes associated with the Goodyear Assets for which PEOC became liable.[123]

101.4. As a result, the allegation that PEOC was rendered insolvent by the Asset Transaction should be struck for failing to disclose a reasonable cause of action.[124]

102. As with their application to strike the Trustee's transfer at undervalue allegations, the Perpetual Defendants rely on little more than this Court's finding that "ARO is not a liability". Their five-paragraph argument fails to address a number of important issues.

---

[120] Statement of Claim, at para. 14.3 **[Trustee's Authorities, Tab 23]**
[121] Summary Dismissal Brief, at para. 66.
[122] Summary Dismissal Brief, at para. 68.
[123] Summary Dismissal Brief, at para. 74.
[124] Summary Dismissal Brief, at paras. 70.

(b) **The Perpetual Defendants' argument is inconsistent with their own Statement of Defence**

103. The Perpetual Defendants plead that ARO was one of PEOC's "liabilities" at the time of the Asset Transaction.[125] They are not entitled to seek relief on an alternative basis which has not been pleaded and is inconsistent with their Statement of Defence.[126]

104. That is a sufficient basis to dismiss their application on this issue.

(c) **The Perpetual Defendants' argument assumes that ARO must be a liability in order for the Asset Transaction to have rendered PEOC insolvent**

105. Like their argument on the transfer at undervalue issue, the Perpetual Defendants proceed directly from this Court's finding that "ARO is not a liability" to the desired conclusion: PEOC could not have been rendered insolvent by the Asset Transaction.[127] Their argument on the solvency issue suffers from a similar flawed assumption: that ARO *must be* a liability in order for PEOC to have been rendered insolvent by Asset Transaction.

106. The allegation actually made by the Trustee's in its Statement of Claim is that the ARO and municipal property taxes associated with the Goodyear Assets exceeded any positive value such that *the Goodyear Assets* "had no positive fair market value at the time of the Asset Transaction but represented a significant net liability".[128]

107. The Trustee alleges that "as a result of the Transactions generally, and the Asset Transaction in particular":

> [20.1] if PEOC was not insolvent, it was rendered insolvent;
>
> [20.1] PEOC was liable for, but unable to pay, the municipal property taxes with respect to the Goodyear Assets pursuant to the Municipal Government Act; and
>
> [20.2] PEOC became liable for, but unable to pay, the ARO associated with the Goodyear Assets;[129]

[125] Perpetual Defendants' Statement of Defence, at para. 44(c) **[Trustee's Authorities, Tab 10]**
[126] Elan, supra, at paras. 22-23 **[Trustee's Authorities, Tab 11]**
[127] Summary Dismissal Brief, at paras. 68 and 70.
[128] Statement of Claim, at para. 13 **[Trustee's Authorities, Tab 23]**
[129] Statement of Claim, at para. 20 **[Trustee's Authorities, Tab 23]**

108. Consistent with *Daishowa* and *Redwater*, the Trustee's allegation is that, when the ARO and municipal tax liabilities were "built into" the value of the Goodyear Assets,[130] the Goodyear Assets themselves had a significant negative value at the time they were transferred to PEOC in the Asset Transaction.

109. As a result, following the Asset Transaction, PEOC could not pay the municipal taxes and ARO associated with the Goodyear Assets and was rendered insolvent.[131]

110. This Court's finding that ARO "not a liability" has no effect on the Trustee's case that the Asset Transaction rendered PEOC insolvent. There is no dispute that, consistent with the Trustee's allegations, ARO must be "built into the market value" of the Goodyear Assets at the time of the Asset Transaction.[132]

111. In deciding whether to strike the allegation that the Asset Transaction rendered PEOC insolvent, the Court "must be generous and err on the side of permitting a novel but arguable claim to proceed to trial."[133] The Trustee's allegations must be "read generously" in favour of the Trustee.[134]

112. Even if their arguments were not contradicted by their own Statement of Defence, the Perpetual Defendants have not shown that the Trustee's allegation that PEOC was rendered insolvent can be struck in accordance with those principles. Their application should be dismissed.

2. The Perpetual Defendants have failed to show that the Trustee's claim that the Asset Transaction rendered PEOC insolvent can be dismissed summarily

113. The Perpetual Defendants' argument on this issue should be dismissed for at least three reasons:

---

130 *Redwater*, at para. 157, citing *Daishowa*, at para. 29 **[Trustee's Authorities, Tab 19]**; Summary Dismissal Brief, at para. 56(a).

131 Statement of Claim, at para. 20 **[Trustee's Authorities, Tab 23]**

132 *Redwater*, at para. 157, citing *Daishowa*, at para. 29 **[Trustee's Authorities, Tab 19]**; Summary Dismissal Brief, at para. 56(a).

133 *Rudichuk v Genesis Land Development Corp.*, 2020 ABCA 42, at paras. 5-6 **[Trustee's Authorities, Tab 9]**

134 *Rudichuk v Genesis Land Development Corp.*, 2017 ABQB 119, at para. 39, citing *Festival Hall Developments Ltd. v. Michael Wilkings* (2009), 57 BLR (4th) 210, at para. 15 **[Trustee's Authorities, Tab 21]**

113.1. The Perpetual Defendants' case for summary dismissal is inconsistent with their own Statement of Defence.

113.2. They assume, incorrectly, that the balance sheet insolvency test under the *BIA* is concerned with "liabilities" rather than obligations, with the result that PEOC could not have been rendered insolvent if ARO is not a liability.

113.3. If Mr. Schweitzer's alternative evidence is considered, it creates, *at best*, a conflict in the evidence on a material issue.

(a) The Perpetual Defendants' submissions

114. Although the solvency tests prescribed by the *BIA* are disjunctive, the Perpetual Defendants devote only 3 paragraphs to their argument that PEOC was not rendered insolvent by the Asset Transaction.[135]

115. The Perpetual Defendants argue that "the value of PEOC's assets exceeded its liabilities by at least $4,109,391 (the difference between the positive value of the Goodyear Assets of $5,670,200 and the associated municipal property taxes of at most $1,560,809).[136]

116. Again, the Perpetual Defendants argument proceeds directly from the finding that ARO is "not a liability" to the desired conclusion that PEOC was not insolvent following the Asset Transaction. The Perpetual Defendants simply assume that ARO can be assigned a value of "nil" in applying the balance sheet solvency test. This is directly inconsistent with the express terms of the *BIA*, as discussed below.

(b) "Test (c)" under the *BIA* definition of "insolvent person"

117. Section 96(1)(b)(ii) of the *BIA* provides that a transfer at undervalue between the debtor and a party not dealing at arm's length may be set aside if:

(A) The debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) The debtor intended to defraud, defeat or delay a creditor.[137]

---

[135] Summary Dismissal Brief, at paras. 88-90.
[136] Summary Dismissal Brief, at para. 88.

118. Although the *BIA* does not define the term "insolvent", s. 2 of the *BIA* incorporates the following disjunctive test in defining an "insolvent person" as a person:

> (a) who is for any reason unable to meet his obligations as they generally become due;
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; *or*
>
> (c) the aggregate of whose property is not, at fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment *of all his obligations, due and accruing due*;[138] [Emphasis added.]

119. In *Stelco Inc., Re*, Justice Farley considered the *BIA* definition of "insolvent person" in determining whether a *CCAA* Initial Order should be set aside on the basis that the applicant corporation was not "insolvent".[139] In interpreting the part (c) test for insolvency, Justice Farley stated that:

> To my view the preferable interpretation to given to "sufficient to enable payment of all his obligations, due and accruing due" is to be determined in the context of this test as a whole. What is being put up to satisfy those obligations is the debtor's assets and undertaking *in total*; in other words, the debtor in essence is taken to have sold everything. There would be no residual assets and undertaking to pay off an obligation which would not be encompassed by the phrase "all of his obligations, due and accruing due". Surely, there cannot be "orphan" obligations which are left hanging unsatisfied. *It seems to be that the intention of "due and accruing due" was to cover off all obligations of whatever nature or kind and leave nothing in limbo.*[140] [Emphasis added.]

120. Justice Farley also confirmed that the term "obligations" included "contingent and unliquidated claims",[141] finding that:

> It seems to me that the phrase "accruing due" has been interpreted by the courts as broadly identifying obligations that will "become due". See *Viteway Natural Foods Ltd.* below at pp. 163-4 – at least at some point in the future. Again, I would refer to my conclusion above that *every obligation* of the corporation in the hypothetical or notional sale must be treated as "accruing due" to avoid orphan obligations. In that context, it matters not that a wind-up pension liability may be discharged over 15 years; in a test (c) situation, it is crystallized on the date of the test.[142].

---

[137] *BIA*, s. 96(1)(b)(ii) **[Trustee's Authorities, Tab 17]**

[138] *BIA*, s. 2 **[Trustee's Authorities, Tab 17]**; *Stelco Inc., Re*, [2004] O.J. No. 1257 (*Stelco*), at para. 28 **[Trustee's Authorities, Tab 24]**

[139] *Ibid*, at paras. 1, 6 and 22 **[Trustee's Authorities, Tab 24]**

[140] *Ibid*, at para. 50 **[Trustee's Authorities, Tab 24]**

[141] *Ibid*, at para. 52 **[Trustee's Authorities, Tab 24]**

[142] *Ibid*, at para. 59 **[Trustee's Authorities, Tab 24]**

121. Justice Farley's analysis in *Stelco* has been cited with approval in numerous decisions, including *4519922 Canada Inc., Re*, in which the Court applied the *BIA* definition of "insolvent person" to determine whether a corporation was insolvent. The Court described the "obligations" relevant under "test (c)":

> At present CLCA's outstanding obligations for which the applicant is liable include: [...] contingent liabilities relating to or arising from the Castor litigation, the claims of which with interest that have not yet been decided being approximately $1.5 billion.[143]

122. The Court rejected the solvency analysis of the party seeking to set aside the *CCAA* Initial Order on the basis, *inter alia*, that it "also ignored the contingent $1.5 billion liabilities of CLCA in the remaining Castor litigation". The Court found that:

> These contingent liabilities must be taken into account in an insolvency analysis under the subsection (c) definition of an insolvent person in the *BIA* which refers to obligations due and accruing due. In *Stelco Inc.*, Re, supra, Farley J. states that all liabilities, contingent or unliquidated, have to be taken into account. See also *Muscletech Research & Development Inc., Re* (2006), 19 C.B.R. (5th) 54 (Ont. S.C.J [Commercial List]) (per Farley J.).[144]

123. Accordingly, in determining whether an entity satisfies the balance sheet insolvency test under the *BIA*, all of the entity's "obligations due and accruing due" are considered. This includes "contingent and unliquidated claims" to cover off "all obligations of whatever nature and kind and leave nothing in limbo."[145]

124. The Perpetual Defendants' cite only two authorities in support of their argument that PEOC was not rendered balance sheet insolvent by the Asset Transaction, a journal article and a recent decision from the Ontario Court of Appeal concerning a personal bankruptcy.

125. They cite Professor Roderick Wood's statement that:

> Paragraph (c) is a balance sheet test that assesses whether the debtor's liabilities exceed the debtor's assets.

126. As discussed in *Stelco*, the language in "test (c)" is not limited to current liabilities: it asks whether the person's assets are sufficient to enable payment of "all of his obligations, due

---

[143] *4519922 Canada Inc., Re*, 2015 ONSC 124, at para. 27 **[Trustee's Authorities, Tab 25]**
[144] *Ibid*, at para. 32 **[Trustee's Authorities, Tab 25]**
[145] *Stelco*, *supra*, at para. 50 **[Trustee's Authorities, Tab 24]**; *4519922 Canada Inc., Re*, *supra*, at para. 31 **[Trustee's Authorities, Tab 25]**

and accruing due."[146] Professor Wood uses the term "obligation" in discussing the other two solvency tests under the *BIA*.[147] Presumably he was therefore using "liability" in a general sense analogous with the term "obligation" used in "test (c)".

127. In *Kormos*, the other authority cited by the Perpetual Defendants, the Court considered a situation in which an individual assigned herself into personal bankruptcy to avoid paying a $25,565.64 judgment debt owed to her neighbours.[148] The Court was not even required to even consider the balance sheet test, which was not in issue below.[149]

128. The Perpetual Defendants have not provided any authority overruling *Stelco* and the cases citing it. The balance sheet insolvency test under the *BIA* is concerned with "obligations due or accruing due", not with "liabilities".

(c) The evidence regarding PEOC's solvency

129. Mr. Schweitzer swore two affidavits on May 5, 2020, one affidavit in support of the Perpetual Defendants' application for summary dismissal and the other affidavit in support of their security for costs application. The affidavits present contradicting evidence on the key facts, specific to each application.

    129.1. In his affidavit in support of the application for security for costs, Mr. Schweitzer states that his understanding is consistent with the evidence of the Trustee's representative: the assets in the estate have "marginal value" because of the ARO associated with them.[150]

    129.2. However, in his other affidavit, Mr. Schweitzer cites the Reasons in stating that, at the time of the Asset Transaction, PEOC had "no other liabilities" other than $1,560,890 in municipal taxes.[151] He cites the Reasons again in stating that, based on the Trustee's valuation of the assets received by PEOC and the "nil"

---

[146] *BIA*, s. 2 **[Trustee's Authorities, Tab 17]**
[147] Summary Dismissal Brief, at para. 33.
[148] *Kormos v Fast*, at paras. 1-3, 13 and 15 **[Perpetual Defendants' Authorities, Tab 9]**
[149] *Ibid*, at para. 6 **[Perpetual Defendants' Authorities, Tab 9]**
[150] Security for Costs Affidavit, at para. 27.
[151] Summary Dismissal Affidavit, at paras. 11(b) and 11(c).

value attributable to ARO, the "net financial result of the Asset Transaction" was a gain for PEOC in the amount of $4,109,391.[152]

130. Mr. Schweitzer concludes that "[t]he above fully explains that PEOC was not insolvent at the time of the Asset Transaction and was not rendered insolvent by the Asset Transaction."[153]

131. One version of the facts presented by Mr. Schweitzer's is directly inconsistent with the Perpetual Defendants' application for summary dismissal. The other version he presents is based on two incorrect assumptions made by the Perpetual Defendants: (i) ARO has no effect on the value of assets; and (ii) the balance sheet test is concerned only with liabilities and ignores obligations.

132. Mr. Schweitzer's summary dismissal affidavit also contradicts his earlier statement, presumably based on the Perpetual Defendants' Statement of Defence, that they "will require factual and expert evidence to show that the fair market value of the consideration given and received by PEOC, *as well as to address PEOC's solvency at the time of and after the Transaction*" (emphasis added).[154]

133. The Trustee's representative, on the other hand, directly addresses the correct balance sheet insolvency test in his affidavit:

> As a result of the Asset Transaction, PEOC had no property which, at a fair valuation, was sufficient to enable payment of all of its obligations.[155]

134. The Trustee's evidence is that ARO associated with the Goodyear Assets transferred to PEOC represented "costs" of $218,958,274:

> [40.1] ARO of $192,127,274 for the Goodyear Wells (abandonment costs of $98,855,218 and reclamation costs of $93,272,056);
>
> [40.2] ARO of $26,831,000 for the facilities associated with the Goodyear Wells, calculated as the costs attributable to the Goodyear Assets, proportionate to the total ARO for all POT facilities.[156]

---

[152] Summary Dismissal Affidavit, at para. 13.
[153] Summary Dismissal Affidavit, at para. 14.
[154] Summary Dismissal Affidavit, at para. 7.
[155] August 2, 2018 Affidavit of P Darby, at para. 47.

135. The Trustee's evidence also confirmed that the $5,670,200 positive value attributed to the assets transferred to PEOC in the Asset Transaction "used the reserve report received as part of the Perpetual Disclose that attributes the highest value to the Goodyear Assets."[157]

136. The Trustee's representative also referred to PEI's own Third Quarter 2016 Interim Financial Statements effective September 30, 2016, which reflected ARO as $131.0 million.[158]

(d) The Trustee's claim that PEOC was rendered insolvent by the Asset Transaction cannot be dismissed summarily

137. Even ignoring the contradictory version of the key facts presented by Mr. Schweitzer in his other May 5 affidavit (where the assets in the estate have marginal value because of ARO), the Perpetual Defendants have failed to establish that PEOC was not rendered insolvent by the Asset Transaction.

138. As discussed above, the flaw in the Perpetual Defendants' insolvency analysis is that the relevant definition of "insolvent person" under the *BIA* is not concerned with "liabilities," as defined in the Reasons, but with "obligations due or accruing due."

139. Justice Farley in *Stelco* confirmed that "obligations due or accruing due" includes "all obligations of whatever nature or kind" so as to the leave no "orphan" obligations in "limbo."[159] This includes contingent and unliquidated claims, as stated in Stelco and *4519922 Canada Inc., Re.* [160]

140. The Reasons address, among other things, the issue of whether the ARO are *a liability*. There was no dispute that ARO are an "obligation," as confirmed by the Supreme Court in *Redwater*.[161] The Reasons held that this reference confirmed that ARO were not a

[156] August 2, 2018 Affidavit of P Darby, at para. 40.
[157] August 2, 2018 Affidavit of P Darby, at paras. 37.2, 38, 41.1 and 44.3.
[158] August 2, 2018 Affidavit of P Darby, at pra. 42.
[159] *Stelco, supra*, at para. 50 **[Trustee's Authorities, Tab 24]**
[160] *Stelco, supra*, at para. 52, *4519922 Canada Inc., Re, supra*, at para. 31 **[Trustee's Authorities, Tabs 24 and 25]**
[161] *Redwater, supra*, at para. 157; *Daishowa, supra*, at para. 29 **[Trustee's Authorities, Tabs 19 and 20]**; Reasons, at para. 357.

"current debt or liability" and then cited *Daishowa* for the proposition that a "contingent liability is not liability in law".[162]

141. Consistent with *Redwater*, the ARO associated with the Goodyear Assets transferred to PEOC in the Asset Transaction became an "obligation" of PEOC. As in *Stelco*, the ARO must be included, along with all of PEOC's other obligations *"of whatever nature or kind"* in determining whether PEOC was rendered insolvent by the Asset Transaction.

142. The Perpetual Defendants have not provided evidence to contradict the Trustee's valuation of the ARO associated with the Goodyear Assets transferred to PEOC in the Asset Transaction. They simply state, through Mr. Schweitzer, that the ARO are not *liabilities*, based on the Reasons, so they can be ignored. Accordingly, pursuant to s. 96(2), the values on which the Court makes *any finding under this section*, are the values stated by the Trustee. This will include findings regarding whether PEOC was solvent at the time of the transfer or rendered insolvent by the transfer.

143. As the balance sheet insolvency test under the *BIA* is concerned with obligations, not liabilities, the Perpetual Defendants cannot satisfy the test for summary dismissal on this point.[163] That is so even if we ignore Mr. Schweitzer alternative version of the key facts, in which he concurs with the Trustee's view that these assets had "marginal value" because of the ARO associated with them.[164]

144. The Perpetual Defendants application to dismiss the Trustee's claim on the basis that PEOC was not rendered insolvent by the Asset Transaction should be dismissed.

---

[162] Reasons, at paras. 357 and 360.
[163] *BIA*, s. 2 **[Trustee's Authorities, Tab 17]**
[164] Security for Costs Affidavit, at para. 27.

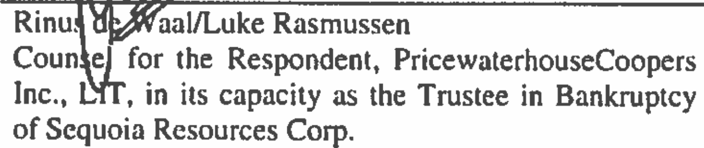
PART IV - RELIEF SOUGHT

145. The Trustee respectfully request that the Perpetual Defendants' application to strike and/or dismiss its s. 96 claim be dismissed, with costs.

Calgary, Alberta
July 17, 2020

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DE WAAL LAW



Per: ______________________________

Rinus de Waal/Luke Rasmussen
Counsel for the Respondent, PricewaterhouseCoopers Inc., LIT, in its capacity as the Trustee in Bankruptcy of Sequoia Resources Corp.

TABLE OF AUTHORITIES

Part 1

1. *Mystar Holdings Ltd v 24037 Alberta Ltd.*, 2009 ABQB 480
2. *Calgary (City) v Alberta (Human Rights and Citizenship Commission)*, 2011 ABCA 65
3. *Pocklington Foods Inc. v. Alberta (Provincial Treasurer)*, 1995 ABCA 111
4. *Schwartz Estate v Kwinter*, 2011 ABQB 169
5. *Proprietary Industries Inc. v Workum*, 2006 ABCA 226
6. Perpetual Defendants' August 28, 2018 Application for Summary Dismissal
7. Ms. Rose's October 19, 2019 Amended Amended Application for Summary Dismissal and Striking
8. Factum of the Appellants in Appeal No. 1901-0262AC
9. *Rudichuk v Gensis Land Development Corp.*, 2020 ABCA 42
10. Perpetual Defendants' Statement of Defence
11. *Elan Construction Ltd. v South Fish Creek Recreation Assn.*, 2016 ABCA 215
12. *Jin v Ren*, 2014 ABQB 250
13. *Precision Forest Industries Ltd v East Prairie Investment Corp*, 2018 ABQB 489
14. *Lehndorff General Partner, Re*, [1993] O.J. No. 14
15. *Berry v Pully*, 2002 SCC 40
16. *Alberta Health Services v. Networc Health Inc.*, 2010 ABQB 373
17. *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, ss. 2, 4 and 96
18. *Toronto Dominion Bank v Leffler*, 2017 ABQB 154
19. *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5

20. *Daishowa-Marubeni International Ltd. v Canada*, 2013 SCC 29

21. *Rudichuk v Genesis Land Development Corp.*, 2017 ABQB 119

22. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49

<u>Part 2</u>

23. Trustee's Statement of Claim

24. *Stelco, Inc., Re*, [2004] O.J. No. 1257

25. *4519922 Canada Inc., Re*, 2015 ONSC 124

26. Perpetual Defendants' September 24, 2019 Memorandum of Argument for Security for Costs

27. Ms. Rose's September 23, 2019 Memorandum of Argument for Security for Costs

28. *Business Corporations Act*, RSA 2000, c B-9, ss. 1, 50(1), 161(2)(b)(iii) and 206.1

29. Trustee's February 10, 2020 Memorandum of Argument for Leave to Appeal

30. *Access Mortgage Corporation (2004) Limited v. Arres Capital Inc.*, 2017 ABCA 373

31. *Alberta Civil Procedure Handbook, 2018*, Stevenson & Côté

32. *Sirron Systems Inc. v. Insyght Systems Inc.*, 2018 ONSC 2019

33. *1007374 Alberta Ltd. v. Ruggieri*, 2013 ABQB 420

34. *Amex Electrical Ltd v 726934 Alberta Ltd*, 2014 ABQB 66

35. *Manson Insulation Products Ltd v Crossroads C & I Distributors*, 2019 ABQB 684

36. May 1, 2020 Letter from D. McDonald, Q.C. to the Court of Appeal

37. May 1, 2020 Letter from S. Leitl, Q.C. to the Court of Appeal

38. Statement of Defence of Ms. Rose

39. Brief of Ms. Rose for November 2018 Hearing

40. *McKay-Cocker Constructions Ltd. v McMurdo*, 2001 CarswellOnt 3833 (ONSCJ)

41. *Tongue v Vencap Equities Alberta Ltd.*, 1994 CarswellAlta 35 (ABQB)

42. *Tongue v Vencap Equities Alberta Ltd.*, 1996 ABCA 208

43. *Alberta Energy Regulator v Grant Thornton Limited*, 2017 ABCA 278

44. *King v O'Toole*, 2017 ONSC 1915

45. *369413 Alberta Ltd. v Pocklington*, [2000] A.J. No. 410

46. *Gordon v Bourque*, 2002 ABQB 222

Exhibit 4

Luke Rasmussen

From:	Luke Rasmussen
Sent:	Thursday, September 17, 2020 3:01 PM
To:	Paul Chiswell
Cc:	Dan McDonald; Rinus de Waal
Subject:	PwC as Trustee for SRC v Perpetual Energy Inc et al

Paul,

Can you send us a copy of the First Amended and Restated Trust Indenture referred to in footnote 82 to Perpetual's Summary Dismissal Brief?

Thanks,

Luke

DE WAAL LAW
BARRISTERS

Luke Rasmussen
Direct: 403.266.0014
Main: 403.266.0012 | Fax: 403.266.2632
1010, 505 – 3rd Street S.W. Calgary, AB T2P 3E6
www.dewaallaw.com

This email and any attachments may contain privileged and confidential information and is intended only for the named recipients. If you have received this email in error, please notify me and destroy the email.

Our Office has Moved!
Our new address is:
1460, 530 – 8th Avenue SW
Calgary, Alberta T2P 3S8

This is Exhibit " A " referred to in the Affidavit of
Paul J. Darby
Sworn before me this 22nd day
of September A.D. 2020

A Notary Public, A Commissioner for Oaths
In and for the Province of Alberta

LUKE RASMUSSEN
Barrister & Solicitor