

**COURT OF APPEAL OF ALBERTA**

**Form AP-3**  
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 1901-0255AC

TRIAL COURT FILE NUMBER: 1801-10960

REGISTRY OFFICE: CALGARY

APPLICANT: SUSAN RIDDELL ROSE

STATUS ON APPEAL: RESPONDENT  
STATUS ON APPLICATION: APPLICANT



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

STATUS ON APPEAL: APPELLANT  
STATUS ON APPLICATION: RESPONDENT

DOCUMENT: **APPLICATION OF SUSAN RIDDELL ROSE (Security for Costs)**

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File No. 283.001

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in its capacity as Trustee in bankruptcy of  
Sequoia Resources Corp., and not in its  
personal capacity.

**NOTICE TO RESPONDENT:**

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

**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

**NOTICE TO RESPONDENT:**

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: October 31<sup>st</sup>, 2019  
Time: 9:30 AM  
Where: Alberta Court of Appeal, 2600 TransCanada Pipelines Tower  
450 – 1<sup>st</sup> SW, Calgary AB T2P 5H1  
Before: A single judge of the court (Rule 14.37)

**Nature of Application and Relief Sought:**

1. The Appellant Susan Riddell Rose (**Rose**) hereby respectfully applies for an Order:
  - a. Directing PricewaterhouseCoopers Inc., LIT. (**PwC**, or the **Trustee**), in its capacity as trustee in bankruptcy of Sequoia Resources Corp. (**Sequoia**), to pay the sum of \$400,000 (the **Security**) to the Clerk of the Court of Appeal of Alberta;
  - b. In the alternative, directing the Trustee to pay the Security in an amount equal to five times Rose's taxable costs as provided for at Column 5 of Schedule "C" to the Alberta *Rules of Court*, Alta Reg 124/2010 (the **Rules**);
  - c. Directing that the Security be held by the Clerk until further order of this Honourable Court as security for any costs award in favour of Rose in the within Appeal;
  - d. Directing that the Security as posted with the Clerk take one of the following forms:
    - i. Cash;
    - ii. A bond or letter of credit or similar instrument securing payment of the Security on terms acceptable to Rose;
    - iii. A written undertaking from the Trustee in its personal capacity to pay any and all costs of this Action and this Appeal when due and owing to Rose; or
    - iv. A written undertaking or guarantee of the payment of costs to Rose from such other party and on such terms as may be acceptable to Rose;
  - e. Directing that if the Security is not posted in accordance with the terms hereof within 30 days of the date of this Order the within Appeal is deemed to be abandoned by the Trustee; and
  - f. Granting such other relief as counsel may advise and this Honourable Court may permit.

**Grounds for making this application:**

2. The Trustee has appealed the decision of the Honourable Mr. Justice D.B. Nixon, issued on August 15, 2019, by way of oral reasons with written reasons to follow (the **Decision**).
3. In the within Action, the Trustee made a number of allegations against Rose, and sought judgment against Rose personally, without a trial, in an amount “not less than \$217,570,800.00.” The Trustee’s claims were based, among other things, on allegations that Rose:
  - a. acted oppressively to the interests of particular alleged creditors of Sequoia;
  - b. breached her fiduciary duty and her duty of care to the corporate predecessor to Sequoia;
  - c. was liable to the Trustee, or to Sequoia, on grounds of “public policy,” “statutory illegality” and “equity.”
4. The Decision dismissed the Trustee’s claims against Rose, and found among other things that:
  - a. the Trustee is not a proper complainant in respect of a claim in oppression, and in any event there is no evidence of any oppression of any creditor interests;
  - b. Rose’s conduct as director of Sequoia’s corporate predecessor did not breach her fiduciary duty or her duty of care, and Rose took her duties as a director and officer seriously and exercised her business judgment to the best of her ability; and
  - c. all of the Trustee’s claims against Rose were barred in any event by virtue of a written release in her favour executed at arm’s length.
5. Rose will be entitled to costs in respect of the Decision. Rose has asked that the Trustee agree to be personally liable for any costs owing to Rose in respect of this Action.
6. The Trustee has neither agreed to pay costs to Rose nor to bear any personal responsibility for those costs.
7. Unless the Trustee agrees to be personally liable for Rose’s costs, it is unlikely that Rose will be able to collect a costs award from Sequoia in this matter. The secured claims against Sequoia (which would rank in priority to a preferred

unsecured claim for payment of costs) currently exceed the value of any remaining funds within the Sequoia estate.

8. The Trustee commenced the within Action at a time when it either knew, or ought to have known, that the funds in the Sequoia estate would be insufficient to pay any costs award.
9. The within appeal by the Trustee is meritless, among other things because:
  - a. the Decision contains numerous factual and other findings which will attract review on a standard of palpable and overriding error only; and
  - b. the Decision, to the extent that it dismissed the claims against Rose, is correct in law.
10. An order directing the Trustee to post security for costs owing by Sequoia will not unduly prejudice the Trustee's ability to continue the Appeal.

**Material or evidence to be relied on:**

11. The Affidavit of Susan Riddell Rose, filed.
12. The pleadings, applications, and affidavits filed in the within Appeal.

**Applicable Acts, regulations and rules:**

13. *Alberta Rules of Court*, Alta Reg 124/2010, Rules 4.22 and 14.67, and such other Rules as counsel may advise.