

COURT OF APPEAL OF ALBERTA

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REGISTRY OFFICE:	CALGARY	
OTHER PARTY:	PRICEWATERHOUSECOOPERS INC., in its personal capacity	
STATUS ON APPEAL:	APPELLANT	
PLAINTIFF/RESPONDENT:	PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP.	
STATUS ON APPEAL:	RESPONDENT	
DEFENDANTS/APPLICANTS	PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE	
STATUS ON APPEAL:	RESPONDENTS	
DOCUMENT:	FACTUM OF THE RESPONDENT OF SUSAN RIDDELL ROSE <i>RE: COSTS</i>	

Appeal from the Judgment of
The Honourable Mr. Justice D.B. Nixon
Dated the 26th day of August, 2020
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INTRODUCTION

1. This is the Factum of the Respondent, Susan Riddell Rose (**Rose**), in response to the appeal of PricewaterhouseCoopers Inc. in its personal capacity (**PwC**) from the costs Order¹ of the Honourable Mr. Justice Nixon (the **Chambers Judge**). The costs Order arises from the Chambers Judge’s dismissal and/or striking of all claims made against Rose by PwC in its capacity as the trustee in bankruptcy (the **Trustee**) of Sequoia Resources Corp. (**Sequoia**).

2. The Chambers Judge awarded substantial indemnity costs to Rose, and ordered PwC to pay the costs personally; he did so based on his review of the relevant law and because a costs award against the estate of Sequoia would be worthless.² The *Trustee* conceded that Rose is entitled to costs, and does not appeal any aspect of the costs Order. *PwC* makes no challenge to the Chambers Judge’s factual or legal findings regarding the Trustee’s “egregious” conduct (except for one point about inspector approval of the litigation, which is discussed below), his determination of the scale of costs, or the factual and legal bases for PwC’s personal liability. Rather, on the basis of complaints about three of the many factors considered by the Chambers Judge in exercising his discretion, PwC asserts that the entire costs Order should be “set aside.”

3. It is settled law that a decision assessing costs is an exercise of discretion by the Court, entitled to significant deference on appeal.³ PwC acknowledges this.⁴ PwC faces a heavy burden on this appeal: it must show that the decision of the Chambers Judge was “plainly wrong” or reflects a clear error in principle. PwC has not met this burden.

PART 1 – FACTS

4. The facts regarding the Trustee’s claims against Rose are summarized in the Rose Factum filed on September 25, 2020 in response to the Trustee’s appeal from the Chambers Judge’s Order granted August 26, 2020. The facts relevant to the costs Order are aptly set out in the Chambers Judge’s written reasons. Except for one item concerning inspector approval, PwC makes no challenge of those findings.

¹ Appeal Record, Part 2, Final Documents [Written Reasons for Judgement of D.B. Nixon, J., filed 2020-09-24 (**Reasons**)] at 69.

² Appeal Record, Part 2, Final Documents [Reasons at paras 43-4 and 236-8] at 76 and 101-2.

³ *Abt Estate v Ryan*, 2020 ABCA 133 at paras 26 and 27, [2020] AWLD 1664 [*Ryan*] [Table of Authorities (TOA), Tab 1].

⁴ Factum of the Appellant dated October 22, 2020 (**PwC Factum**) at para 21.

5. In short, the Trustee made an extraordinary claim against Rose which impugned Rose’s conduct and judgment as an officer and director of both Perpetual Energy Inc. (**PEI**) and Perpetual Energy Operating Corp. (**PEOC**), and alleged (among other things) serious misconduct for her own personal benefit and the benefit of others. The Trustee sought damages, interest and full indemnity costs from Rose personally of almost a quarter of a *billion* dollars. Between its pleadings and various written and oral submissions, the Trustee alleged that Rose (among other things) acted dishonestly and in bad faith,⁵ “deliberately abandoned her role as PEOC’s sole director”,⁶ was “disloyal”;⁷ exploited her breaches of fiduciary duty to obtain an “immediate financial advantage” for herself;⁸ exercised “no reasonable degree of prudence or diligence”⁹; and engaged in behaviours that were analogous to criminal conduct.¹⁰

6. The Chambers Judge’s findings in dismissing the claims against Rose and in awarding costs – all but one of which being left unchallenged by PwC – show that the Trustee not only made those allegations baselessly without any investigation, but that it did so in utter disregard of the Release and then, with the tunnel vision noted by the Chambers Judge, intransigently and inexcusably maintained the allegations in the face of unchallenged exculpatory evidence.¹¹

7. Conduct of that nature would attract significant costs liability for any litigant, but in this case the Trustee was acting as an officer of the Court and thus owed duties of neutrality and honesty *in addition to* its duty to have regard for the best interests of the bankrupt estate.¹²

⁵ Appeal Record, Part 1, Pleadings [Statement of Claim, filed 2018-08-02 at para 16.1] at 10.

⁶ Respondent’s Extracts of Key Evidence (**REKE**) (Trustee’s Response to Requests from, and Questions for, the Parties from the Court of Queen’s Bench (Court Action No. 1801-10960) (the **Trustee’s Answers**) at Question No. 49) at 35.

⁷ REKE (Transcript of the Hearing on November 8, 2018, in Action No. 1801-10960 at 81/41-82/13) at 25-6.

⁸ REKE (Trustee’s Answers at Question No. 44(f)) at 32-4.

⁹ REKE (Trustee’s Answers at Question No. 50) at 36-7.

¹⁰ REKE (Trustee’s Answers at Question No. 38) at 30-31.

¹¹ REKE (Affidavit of Susan Riddell Rose, sworn on October 19, 2018 at paras 77-9) at 41-2; REKE (Transcript of Cross-Examination of Paul Darby, sworn on October 22, 2018 at 70/17 – 72/14 and 95/16-98/2] at 69-71 and 72. For example, at the December 17, 2018 hearing, the Court grilled Trustee counsel on how Rose could have benefitted personally from the Asset Transaction, and there was no coherent answer. At first, Trustee counsel conceded that there must be proof of a direct financial benefit. After grilling, counsel submitted that direct financial benefit is not necessary, and even then was forced to concede the obvious: that there was no such benefit to Rose, direct or indirect. See: REKE (Transcript of the Hearing on December 17, 2018, in Action No. 1801-10960 at 69/17-77/36, 79/21-37, 107-27/30) at 9-17, 18 and 19. Yet the allegation of personal benefit was never withdrawn.

¹² REKE (Reasons for Judgement of Ms. Justice B.L. Veldhuis in *PricewaterhouseCoopers Inc. v Perpetual Energy Inc.*, 2020 ABCA 36 at paras 50-6) at 79-81.

PART 2 – GROUNDS OF APPEAL

8. PwC advances three specific grounds of appeal:
- (a) that the Chambers Judge “was plainly wrong to find that PwC did not provide evidence” that the Sequoia inspectors approved the Trustee’s litigation against Rose;
 - (b) that the Chambers Judge “erred in principle” in applying administrative law duties to the Trustee; and
 - (c) that the Chambers Judge “erred in principle or was plainly wrong” in finding that the pre-litigation investigation of the Trustee justified enhanced costs.
9. Notably, PwC does not question that Rose is entitled to costs; does not question the Chambers Judge’s decision as to scale and quantum; does not question the Court’s jurisdiction to award costs against it personally; and does not question the Chambers Judge’s factual and legal findings in support of PwC’s personal liability. Ironically, PwC raises grounds that focus on the conduct of the Trustee, where the Trustee itself saw no basis to defend its conduct by appeal.

PART 3 – STANDARD OF REVIEW

10. PwC acknowledges that the standard of review in this case requires palpable and overriding error. A decision as to costs is entitled to deference on appeal, for obvious reasons.
11. Judges of first instance are in a “privileged position” to make a ruling on costs due to their ability to “assess first-hand the credibility of witnesses”, weigh the facts, and “distill... the essence of a law suit”.¹³ As a result, costs awards are highly discretionary and attract a highly deferential standard.¹⁴ Absent an error in principle or a plainly wrong decision with respect to the law of costs, the award must stand.¹⁵

¹³ *Hamilton v Open Window Bakery Ltd.*, 2004 SCC 9 at para 27, [2004] 1 SCR 303 [TOA, Tab 2]; *Metz v Weisgerber*, 2004 ABCA 151 at para 7, 243 DLR (4th) 220 [TOA, Tab 3]; *Ryan* at para 27 [TOA, Tab 1].

¹⁴ *Ryan* at para 26 [TOA, Tab 1].

¹⁵ *Ryan* at para 26 [TOA, Tab 1]; *Chisholm v Lindsay*, 2015 ABCA 179 at para 13 [TOA, Tab 4].

PART 4 – ARGUMENT

(i) There was *no evidence* that the inspectors authorized the litigation

12. It is common ground that the Trustee had no authority to sue Rose for anything absent specific authorization from the inspectors of the Sequoia estate. This is especially so given the extraordinary nature of the Trustee’s claims against Rose.

13. The evidence filed by the Trustee made no mention of inspector authorization of a law suit. Rose defended on the basis that the claims against her were not authorized. Before the Chambers Judge, Rose emphasized the absence of evidence of inspector approval. In response, counsel for the Trustee *argued* authorization but failed to offer any evidence.¹⁶

14. In exercising his discretion as to costs, the Chambers Judge correctly noted that there was no evidence of inspector authorization before him – either at the time of the substantive hearing or the costs hearing.¹⁷ Again, the Trustee – the officer of the Court responsible for obtaining that authority – does not challenge that finding.

15. PwC argues that the Chambers Judge erred in making that finding but makes no suggestion that such an error would have changed the costs award. Indeed, it would not have: the primary relevance of inspector approval, as is clear from the decision of the Chambers Judge, was as a secondary factor regarding PwC’s *personal liability* for costs, which PwC does not contest.¹⁸

16. PwC submits the Chambers Judge erred because there is some evidence of inspector approval *in the record* but fails to point out it is only in the *appeal* record – having been produced in connection with the Trustee’s failed opposition to motions for security for costs in this appeal.¹⁹ The subject document was in fact never put in evidence by the Trustee in the proceeding below,

¹⁶ See e.g. Appeal Record, Part 3, Transcripts [Transcript of Proceeding November 8, 2018 at 76/28-77/19] at 11-12. PwC suggests this passage is evidence that the Court did not “require” this evidence; however, in context, the transcript tells a different story: the Court put the question directly to Trustee’s counsel, saying “So, you’re going to give evidence tomorrow?” Trustee counsel responded in the affirmative: “If that’s required, My Lord.” The Court’s request on the record is very clear; the simple fact is the Trustee never provided that evidence, and still has not. Counsel for Ms. Rose subsequently repeated the request, as did the Court, but to no avail: the Trustee produced *no* evidence of inspector approval in the proceeding below, and only grudgingly produced the redacted meeting minutes it now relies on in response to undertakings given in the context of an application *in the appeal*. See Appeal Record, Part 3, Transcripts [Transcript of Proceeding December 17, 2018 at 45/33-46/8] at 18-19.

¹⁷ Appeal Record, Part 2, Final Documents [Reasons at para 60] at 78.

¹⁸ For instance, see the Chambers Judge’s written reasons, Appeal Record, Part 2, Final Documents [Reasons at paras 43, 44, and 51] at 76 and 77.

¹⁹ PwC Factum at paras 23-4. The minutes in question were provided by the Trustee in response to undertakings requested in the context of examination on his affidavit in opposition to an application to the Court of Appeal for security for costs. Though they were subsequently attached to an affidavit of *Mr. Schweitzer* in support of an application by Perpetual to the Court of Queen’s Bench for security for costs, they were never tendered by the Trustee and never referred to in any argument before Justice Nixon. Had he been directed to those minutes, he would no doubt have pointed out that their extensive redaction renders them utterly without probative value. Moreover, he may have ordered production of the cited memo of special counsel.

nor did the Trustee cite it at the costs hearing. It is helpful to note the exact words of the Chambers Justice, which turn out to be absolutely correct in every way:

In this case, despite being asked for evidence that the inspectors had approved the Action, the Trustee never produced any evidence of inspector approval of the lawsuit against Ms. Rose.²⁰

17. Perhaps even more remarkable is the document itself: a heavily redacted copy of an inspector meeting of May 23, 2018.²¹ The only words *not* redacted are a recommendation that the Trustee “proceed as described in Special Counsel’s memos”²², and the text “motion to move forward”, followed by a redaction and the text “all in favor.”²³ There is no evidence of what was actually authorized. This is very curious given that, at the time of the resolution, the Trustee had not asked Perpetual for any information; the Trustee would not deliver its “preliminary views” until a month later; and when it did so, it made no mention of a possible law suit against Rose.²⁴

18. If in fact the inspectors approved the commencement of the action in May 2018, the Trustee’s failure of candor is even more profound; there was no reason for the Trustee to hide its true intentions and then serve Rose with a Statement of Claim and application for judgment on the Friday of a holiday weekend, without any investigation or warning – a tactical sandbagging.

19. The Chambers Judge was troubled by this, finding the time given to Perpetual was “neither ample nor sufficient”, particularly as “the Trustee had not alerted Ms. Rose to her personal exposure in the lawsuit.”²⁵ The Court found that there was no “emergency” to justify the Trustee’s unreasonable and improvident haste.²⁶

20. In summary, there was indeed no evidence of inspector approval of an extraordinary law suit against Rose, and it was appropriate for the Chambers Judge to consider that among the many other factors he considered in exercising his discretion. This primary ground of appeal raised by PwC has no merit.

²⁰ Appeal Record, Part 2, Final Documents [Reasons at para 64] at 79.

²¹ Appellant’s Extracts of Key Evidence (**AEKE**) (Affidavit of W. Mark Schweitzer, sworn May 5, 2020 at Ex. M) at 108-11.

²² Which neither the Trustee nor PwC have produced.

²³ AEKE (Affidavit of W. Mark Schweitzer, sworn May 5, 2020 at Ex. M) at 111.

²⁴ PwC Factum at paras 10-11.

²⁵ Appeal Record, Part 2, Final Documents [Reasons at paras 197-9] at 97.

²⁶ Appeal Record, Part 2, Final Documents [Reasons at para 200] at 97.

(ii) The Chambers Judge did not impose administrative law obligations on bankruptcy trustees

21. The Chambers Judge considered administrative law authorities only in the context of deciding costs. His findings about the Trustee’s duties of fairness did not factor into the Order dismissing and striking the claims against Rose. Nor did he “impose” any new duties on trustees in bankruptcy. Rather, he considered some well-known authorities on the subject of procedural fairness in assessing the Trustee’s pre-litigation investigation.

22. Notably, PwC says nothing about the ample authority holding that a trustee is held to higher standards than ordinary litigants, given its role as an officer of the Court and its obligations to act neutrally. Nor is there any controversy that a trustee should not adopt an adversarial role, and must act fairly and justly and do what is morally right and honest. Equally trite are a trustee’s obligations to “simply present the facts”, *conduct a proper investigation* and ensure it has a proper foundation for commencing legal action. The Chambers Judge simply reflected on the meaning of a *proper investigation* in the circumstances of this case, particularly where the evidence is clear that the Trustee conducted no investigation of Rose at all.²⁷

23. In the end, the Chambers Judge noted some basic steps that the Trustee should have taken, and that was one of the many factors he considered in exercising his discretion as to costs. He did not impose the more onerous obligations required of administrative bodies.²⁸

(iii) The Chambers Judge correctly found that PwC’s conduct throughout justified enhanced costs

24. It is remarkable that PwC personally challenges the Court’s findings regarding the *conduct of the Trustee* where the Trustee does not challenge those findings.

25. In any event, PwC’s argument has no basis. First, PwC argues that the Chambers Judge relied *only* on the Trustee’s pre-litigation conduct in awarding enhanced costs. A light perusal of the Reasons shows this to be wrong. He considered the Trustee’s conduct from its appointment through to the completion of the hearing on the merits. For example, he noted that the Trustee had:

²⁷ Appeal Record, Part 2, Final Documents [Reasons at paras 98-100, 112 and 184] at 84-5, 87 and 95.

²⁸ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (SCC) at paras 21-44, 89 ACWS (3d) 777 [TOA, Tab 5].

- (a) sued in the face of the Release;²⁹
- (b) improperly included a legal opinion in a sworn affidavit;³⁰
- (c) interpreted evidence in an affidavit;³¹
- (d) asserted a legal conclusion during cross-examination under oath;³² and
- (e) filed a Statement of Claim without completing a proper investigation³³, without waiting to receive additional forthcoming information³⁴, without providing Ms. Rose with a reasonable period of time to provide that additional information³⁵, and did so based on a false sense of urgency to “move fast”³⁶, and which included a baseless allegation.³⁷

26. In its Factum, PwC points to pre-litigation correspondence between the Trustee and Rose, and implies that this is evidence that it provided her with notice and did an investigation into the facts.³⁸ That is not correct. The record shows that the Trustee’s pre-litigation correspondence was with *Perpetual*, and was not addressed to Rose in her personal capacity;³⁹ none of that correspondence so much as *mentions* that the Trustee had already resolved to sue Rose personally or suggests inspector authorization of such a suit.

27. On June 26, 2018, the Trustee sent *Perpetual* a summary of its “preliminary views” that the Asset Transaction was a transfer at undervalue; as it turns out, these purported “preliminary” views were no such thing; the Trustee had already resolved to commence this action against *Perpetual* and Rose, a fact the Trustee did not see fit to mention.⁴⁰ By that time, the Trustee had already

²⁹ Appeal Record, Part 2, Final Documents [Reasons at paras 152-3 and 178] at 91 and 94.

³⁰ Appeal Record, Part 2, Final Documents [Reasons at para 78] at 81.

³¹ Appeal Record, Part 2, Final Documents [Reasons at paras 79-81] at 81.

³² Appeal Record, Part 2, Final Documents [Reasons at para 137] at 90.

³³ Appeal Record, Part 2, Final Documents [Reasons at paras 139, 143, 153, 176, 206, 218 and 229] at 90-1, 94 and 98-100.

³⁴ Appeal Record, Part 2, Final Documents [Reasons at paras 174-5 and 231] at 94 and 101.

³⁵ Appeal Record, Part 2, Final Documents [Reasons at paras 194, 198-9 and 232] at 96-7 and 101.

³⁶ Appeal Record, Part 2, Final Documents [Reasons at para 200] at 97.

³⁷ Appeal Record, Part 2, Final Documents [Reasons at paras 216-7] at 99.

³⁸ PwC Factum at para 10.

³⁹ REKE (Affidavit of Paul Darby, sworn on August 2, 2018 at paras 10-12) at 83-4. As it turns out, this investigation was largely for show: the Trustee had already determined that it would commence this action; indeed, to the extent the inspectors approved this action they did so *before* *Perpetual* was provided any notice at all.

⁴⁰ REKE (Affidavit of Susan Riddell Rose, sworn on October 19, 2018 at para 61 and Ex. X) at 39 and 43-62.

retained litigation counsel,⁴¹ and the lawsuit against Rose and the Perpetual defendants was well under way behind the scenes,⁴² long before the Trustee can be said to have “investigated” anything.

28. At best, the Trustee provided an opportunity (however perfunctory) to *Perpetual*, that it might respond to the allegation that it had participated in a transfer at undervalue and provide any evidence it had to the contrary. The Trustee did not extend even that small courtesy to Rose; rather, despite numerous opportunities, the Trustee did not ask Rose a single question that was relevant to the extraordinary allegations it would make against her personally.⁴³

29. PwC’s second argument under this ground of appeal is that the Chambers Judge did not afford the Trustee an appropriate level of deference. PwC cites *Asian Concepts* for the proposition that a trustee is “entitled to deference in the administration of the bankrupt’s estate.”⁴⁴ However, *Asian Concepts* involved the exercise of “professional judgment” by a trustee in conducting a valuation that was within the trustee’s area of expertise.⁴⁵ There is no principle of deference regarding a trustee’s litigation tactics.

30. Indeed, in this case it is the Chambers Judge, not the Trustee, whose decision is entitled to deference. He evaluated the Trustee’s conduct, found that it fell short of expected standards, and factored that into his analysis. In making his findings, the Chambers Judge cited the Trustee’s obligations to carry out an appropriate investigation,⁴⁶ avoid careless litigation that lacks common sense⁴⁷, remain neutral⁴⁸, refrain from implementing an adversarial strategy,⁴⁹ and act fairly.⁵⁰ Courts in Alberta and across Canada have consistently held that trustees in bankruptcy are required to impartially represent creditors⁵¹, refrain from behaving in a hostile or adversarial manner⁵², present facts in a dispassionate manner,⁵³ and act fairly and justly.⁵⁴

⁴¹ Torys LLP (retained in March 2018) and DeWaal (retained in April 2018).

⁴² REKE (Transcript of Cross-Examination of Paul Darby, sworn on October 22, 2018 at 26/21 – 27/7, 34/22 – 35/4 and 70/9-16) at 65-6, 67-8 and 69. The Trustee’s special litigation counsel, Messrs. DeWaal and Rasmussen, attended at inspector meetings at least as early as May 23, 2018, prior to any contact between the Trustee and Perpetual, as seen in AEKE (Affidavit of W. Mark Schweitzer, sworn May 5, 2020 at Ex. M) at 110.

⁴³ REKE (Affidavit of Susan Riddell Rose, sworn on October 19, 2018 at para 77) at 41.

⁴⁴ PwC Factum at para 48.

⁴⁵ *Asian Concepts Franchising Corporation (Re)*, 2017 BCSC 1986 at para 12, [2017] BCWLD 6714 (*Asian Concepts*) [TOA, Tab 6].

⁴⁶ Appeal Record, Part 2, Final Documents [Reasons at para 66] at 79.

⁴⁷ Appeal Record, Part 2, Final Documents [Reasons at para 66] at 79.

⁴⁸ Appeal Record, Part 2, Final Documents [Reasons at paras 67 and 73-4] at 80-1.

⁴⁹ Appeal Record, Part 2, Final Documents [Reasons at paras 67 and 73-4] at 80-1.

⁵⁰ Appeal Record, Part 2, Final Documents [Reasons at para 88] at 82.

⁵¹ *Canada (Attorney General) v Norris Estate*, 1996 ABCA 357 at para 24, [1997] 2 WWR 281 (*Norris*) [TOA, Tab 7].

⁵² *Norris* at para 24 [TOA, Tab 7].

⁵³ *Royal Bank of Canada v Racher*, 2017 ABQB 181 at para 97, [2017] AWLD 2003 [TOA, Tab 8].

⁵⁴ *Giorgio Galleria Ltd., (Re) (Trustee of)*, 2 BCLR (3d) 337 at para 28, 1995 CarswellBC 76 (BCSC) [TOA, Tab 9].

31. As if that were not enough, the Trustee is also subject to a codified Code of Ethics (the **Code**) that he violated in multiple ways.⁵⁵ The Code required him to perform his duties with competence, honesty, integrity, and due care, to be honest and impartial, to provide interested parties with full and accurate information, and to avoid signing any documents that he knew or reasonably ought to have known were false.⁵⁶

32. There is nothing about the Chambers Judge’s findings with respect to the Trustee’s obligations in this case – including the fact that it utterly failed to abide by them – that is “plainly wrong” or reflects any “error in principle.”

33. PwC also argues the Chambers Judge erred by failing to recognize that the Trustee carried out his duties in “good faith.” First, the Trustee adduced no such evidence. Indeed, this argument runs contrary to the Chambers Judge’s findings, including that the Trustee’s conduct was “egregious”,⁵⁷ that the Trustee “exercised very poor judgment that equates to positive misconduct,”⁵⁸ and that the Trustee’s behavior warranted a costs award “so that other Officers of the Court are deterred from similar conduct”.⁵⁹ Second, and in any event, the fact an action is brought in good faith is no defence against a costs award.⁶⁰

PART 5 – RELIEF SOUGHT

34. On the evidence before the Chambers Judge, the Trustee acted without legal authority, attempted to evade the obvious implication of the Release, made extraordinary allegations in the absence of any investigation, and then obdurately ploughed ahead in the face of unchallenged exculpatory responding evidence. Every allegation it made against Rose was dismissed summarily and/or struck as showing no viable cause of action. The Chambers Judge was right to express concern, to award enhanced costs, and to order that PwC pay those costs so that the costs order has meaning.

⁵⁵ *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368 at ss 34-54 (*BIA General Rules*) [TOA, Tab 10].

⁵⁶ *BIA General Rules* at ss 34-53 [TOA, Tab 10].

⁵⁷ Appeal Record, Part 2, Final Documents [Reasons at para 202] at 97.

⁵⁸ Appeal Record, Part 2, Final Documents [Reasons at para 228] at 100.

⁵⁹ Appeal Record, Part 2, Final Documents [Reasons at para 233] at 101.

⁶⁰ *Moore v Republic of Greece*, 2013 ONSC 322 at para 24, 226 ACWS (3d) 53 [TOA, Tab 11].

35. PwC is remarkably silent on the only issue in respect of which it has clear standing: personal liability. That is because the law is very clear that personally liability followed the Trustee's decision to launch an extraordinary law suit knowing that the estate could not pay an adverse costs award.

36. Rose respectfully requests that PwC's appeal be dismissed, that the Chambers Judge's ruling on costs stand, and that the costs of this appeal be payable to Rose on the same basis as ruled below.

Counsel estimates the length of argument will not exceed 45 minutes.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF NOVEMBER,
2020**

Norton Rose Fulbright Canada LLP

Steven Leith

Steven H. Leith QC | Gunnar Benediktsson
Counsel for Susan Riddell Rose

Table of Authorities

Tab #	Style of Cause	Citation
1.	<u><i>Abt Estate v Ryan</i></u>	2020 ABCA 133
2.	<u><i>Hamilton v Open Window Bakery Ltd.</i></u>	2004 SCC 9
3.	<u><i>Metz v Weisgerber</i></u>	2004 ABCA 151
4.	<u><i>Chisholm v Lindsay</i></u>	2015 ABCA 179
5.	<u><i>Baker v Canada (Minister of Citizenship and Immigration)</i></u>	[1999] 2 SCR 817 (SCC)
6.	<u><i>Asian Concepts Franchising Corporation (Re)</i></u>	2017 BCSC 1986
7.	<u><i>Canada (Attorney General) v Norris Estate</i></u>	1996 ABCA 357
8.	<u><i>Royal Bank of Canada v Racher</i></u>	2017 ABQB 181
9.	<u><i>Giorgio Galleria Ltd., (Re) (Trustee of)</i></u>	2 BCLR (3d)
10.	<u><i>Bankruptcy and Insolvency General Rules</i></u>	C.R.C., c. 368
11.	<u><i>Moore v Republic of Greece</i></u>	2013 ONSC 322