



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 **APPLICATION TO RESOLVE PARTICULAR QUESTIONS AND TO STAY THE PLAINTIFF'S APPLICATION**

PARTIES FILING THIS DOCUMENT PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP. (the **Perpetual Defendants**)

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File No.: 59140-43

NOTICE TO PLAINTIFF:

This application is made against you. You are the respondent.

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

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

DATE	<u>August 30, 2018</u>
TIME	<u>4:00 pm – Commercial List</u>
WHERE	<u>Calgary Courts Centre</u>
BEFORE WHOM	<u>The Honourable Justice P.R. Jeffrey</u>

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Perpetual Defendants seek orders:
 - (a) that their Application for Summary Dismissal (the **Perpetual Defendants' Application**), which raises discrete threshold issues that will dispose of all of the Plaintiff's claim and save significant time and expense, be heard before the Plaintiff's Application filed on August 2, 2018 (the **Plaintiff's Application**) pursuant to Rule 7.1(a);
 - (b) permanently or temporarily staying the Plaintiff's Application pursuant to Rule 7.1(c);
 - (c) directing the Plaintiff to pay to the Perpetual Defendants the costs of this application and this action on a full indemnity basis or on such scale as this Honourable Court determines to be just; and
 - (d) granting such other relief that this Honourable Court determines to be just.
2. The abbreviations and defined terms in the Perpetual Defendants' Statement of Defence are used in this application.

Grounds for making this application:

3. The Plaintiff's Application was filed concurrently with the Statement of Claim and seeks orders:
 - (a) setting aside the October 1, 2016 Transaction between PEOC and POT and declaring it void as against the Plaintiff; and
 - (b) alternatively, granting judgment against the Defendants, jointly and severally, for \$217,570,800.
4. The first relief requested in the Plaintiff's Application seeks a declaration that a complex commercial transaction be set aside and is void, on the grounds that it constituted a transfer at

undervalue within the meaning of ss. 2 and 96 of the *BIA*. Among other things, the Perpetual Defendants claim that three essential conditions for the relief sought are not satisfied:

- (a) there was no transfer at undervalue;
- (b) the parties were dealing at arm's-length; and
- (c) PEOC/Sequoia was not insolvent at the time of the transfer nor rendered insolvent by it.

5. The first relief requested in the Plaintiff's Application also relies on the grounds that the Transaction is void and should be set aside "on the basis of public policy, statutory illegality and equitable grounds".

6. The second relief requested in the Plaintiff's Application seeks a significant monetary award based on complex issues concerning the value of assets and liabilities and relies on not only s. 96 of the *BIA* but the oppression remedy.

7. It is inconceivable that the Plaintiff's Application could be determined summarily. Both questions raise complex and disputed issues of fact and law requiring a trial. The Plaintiff's Application should be stayed.

8. Conversely, the Perpetual Defendants' Application for summary dismissal or to strike the action, raises three discrete threshold issues:

- (a) Were the parties dealing at arm's-length with each other within the meaning of the *BIA*?
- (b) Is the Plaintiff a "complainant" entitled to bring an oppression claim under s. 242 of the *ABCA*?
- (c) Should the claim made on the grounds of "Public Policy, Statutory Illegality and Equitable Rescission" in paragraph 24 of the Statement of Claim be struck?

9. The issues raised in the Perpetual Defendants' Application, if decided in the Perpetual Defendants' favour, will dispose of all of the claim and eliminate the need for a trial. Even if

only some of those issues are decided in the Perpetual Defendants' favour, it will substantially shorten the trial. In either case, substantial expense will be saved.

10. The Perpetual Defendants' Applications can likely be heard within six months, assuming the availability of the Court. A trial could not take place for many years.

Material or evidence to be relied on:

11. Pleadings and proceedings herein.

12. Such other materials as counsel advises and this Honourable Court admits.

Applicable Rules:

13. Rules 1.4 and 7.1 of the *Alberta Rules of Court*, Alta. Reg. 124/2010.

Applicable Acts and Regulations:

14. The *Bankruptcy and Insolvency Act* (Canada), s. 96.

15. The *Business Corporations Act* (Alberta), ss. 239(b)(iv), 242.

How the application is proposed to be heard or considered:

16. Orally.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant(s).